

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Tuesday, 16<sup>th</sup> February, 2016

The House met at 2.30 p.m.

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

### PRAYERS

### PAPERS LAID

**Hon. A.B. Duale:** Hon. Speaker, I beg to lay the following Papers on the Table of the House today, Tuesday 16<sup>th</sup> February 2016:-

The National Treasury, Medium Term, Budget Policy Statement, February 2015 (pursuant to Section 25 of the Public Finance Management Act 2012).

The National Treasury Medium Term Debt Management Strategy, 2015 (pursuant to Section 33 of the Public Finance Management Act, 2012).

The National Treasury Quarterly Economic and Budgetary Review (QEBR) for the first half, Financial Year 2015/2016 period ending 31<sup>st</sup> December 2015 (pursuant to Section 83 of the Public Finance Management Act).

The Commission on Revenue Allocation recommendation on the sharing of revenue raised nationally between the national and the county governments for the 2016/2017 Financial Year (pursuant to Article 216(5) of the Constitution).

The East Africa Community Appropriations Acts, 2003, 2004, 2005, 2006, 2007 and 2009.

The East African Trade and Negotiations Act, 2008.

The Summit (Delegation of Powers and Functions ) Act, 2008.

The Lake Victoria Transport Act, 2008.

The East African Customs Management (Amendment Act, 2009.

The Inter-University Council for East Africa Act, 2009.

The Community Emblems (Amendment) Act, 2009.

The East African Community Budget Act, 2009.

The Administration of the East African Legislative Assembly Act, 2012.

The East Africa Parliamentary Institute Act, 2012.

The East African Customs Management (Amendment) Act, 2012.

The East African Legislative Assembly Elections Act, 2012.

The Third Quarterly Report of the Ethics and Anti-Corruption Commission for the period 1<sup>st</sup> July 2015 to 30<sup>th</sup> September 2015.

Hon. Speaker, items 5 to 16 are in pursuant to Article 65(b) of the Treaty for the establishment of the East Africa Community.

*(Hon. A.B. Duale laid the documents on the Table)*

**Hon. Speaker:** Chairman of the Departmental Committee on Agriculture, Livestock and Co-operatives.

**Hon. Nooru:** Hon. Speaker, I beg to lay the following Paper on the Table of the House today, Tuesday 16<sup>th</sup> February 2016:-

The Report of the Departmental Committee on Agriculture, Livestock and Cooperatives on the Benchmarking Visit to India on Warehouse Receipt Systems and Commodity Exchange on 18<sup>th</sup> to 24<sup>th</sup> October 2015.

Thank you.

**Hon. Speaker:** For avoidance of doubt, it is fair to point out that the various documents relating to matters to do with the East African Community which have been tabled by the Leader of the Majority Party stand committed to the Committee on Regional Integration for their consideration and report to the House as appropriate. I will be making a further Communication relating to the Budget Policy Statement (BPS) Paper which the Leader of the Majority Party has also tabled.

### NOTICES OF MOTIONS

**Hon. Speaker:** The Leader of the Majority Party, are you giving a notice of Motion?

**Hon. A.B. Duale:** Yes, Hon. Speaker.

#### ANNUAL REPORT ON THE STATE OF NATIONAL SECURITY

**Hon. A.B. Duale:** Hon. Speaker, I beg to give notice of the following Motions:-

THAT, pursuant to Article 240(7) of the Constitution and Section 16 of the National Security Council Act, this House notes the Annual Report to Parliament on the state of the national security submitted by His Excellency the President on Thursday, 26<sup>th</sup> March 2015, laid on the Table of the House on Tuesday, 31<sup>st</sup> March 2015.

#### REPORT ON REALISATION OF NATIONAL VALUES AND PRINCIPLES OF GOVERNANCE

THAT, pursuant to Article 132(1)(c)(i) of the Constitution, this House notes the Report on the measures taken and progress achieved in the realisation of national values and principles of governance submitted by His Excellency the President on Thursday, 26<sup>th</sup> March 2015, and laid on the Table of the House on Tuesday, 31<sup>st</sup> March 2015.

#### REPORT ON FULFILMENT OF INTERNATIONAL OBLIGATIONS

THAT, pursuant to Article 132(1)(c)(iii) of the Constitution, this House notes the Report on progress made in fulfilment of international obligations of the Republic submitted by His Excellency the President on Thursday, 26<sup>th</sup> March, 2015, and laid on the Table of the House on Tuesday, 31<sup>st</sup> March 2015.

Thank you.

**Hon. Speaker:** Member for Emuhaya, Hon. Otichilo.

REPORT OF MEDIATION COMMITTEE ON NATIONAL DROUGHT  
MANAGEMENT AUTHORITY BILL

**Hon. (Dr.) Otichillo:** Hon. Speaker, I beg to give notice of the following Motion:-

THAT, pursuant to the provision of Article 113(2) of the Constitution and Standing Order No.150, this House adopts the Report of the Mediation Committee on the National Drought Management Authority Bill, 2013 laid on the table of the House on Thursday, 17<sup>th</sup> December 2015 and approves the mediated version of the National Drought Management Authority Bill, National Assembly Bill No.42 of 2013

**Hon. Speaker:** Member for Mukurweini, Hon. Kabando wa Kabando.

REPORT OF THE KENYAN DELEGATION TO IPU

**Hon. Kabando wa Kabando:** Hon. Speaker, I beg to give notice of the following Motion:-

THAT, this House adopts the Report of the Kenyan delegation to the 131<sup>st</sup>, 130<sup>th</sup> and 129<sup>th</sup> assemblies of the Inter-Parliamentary Union (IPU) and related meetings held in Geneva Switzerland from 12<sup>th</sup> to 16<sup>th</sup> October 2014; 16<sup>th</sup> to 20<sup>th</sup> March 2014 and 7<sup>th</sup> to 9<sup>th</sup> October 2013 respectively, laid on the Table of the House on Thursday, 4<sup>th</sup> December 2014.

**Hon. Speaker:** Next Order!

PROCEDURAL MOTION

REDUCTION OF PUBLICATION PERIOD

**Hon. Chepkong'a:** Hon. Speaker, I beg to move the following Motion:-

THAT, notwithstanding the provisions of Standing Order 120, this House resolves to reduce the publication period of the Political Parties (Amendment) Bill (National Assembly Bill No.2 of 2016) from 14 to 11 days.

This is a fairly straightforward Bill which ought to have come to the Floor of the House last year. The Election Laws (Amendment) Bill was read for the first time last week. This Political Parties (Amendment) Bill was also discussed together with the Election Laws (Amendment) (No.3) Bill, 2015. The urgency of this Amendment Bill is that it has a consequence on the time within which political parties are expected to present their constitutions to the Registrar of Political Parties. There are certain timelines contained in this Bill within which we need to pass this Bill. This is because of the problems we had in the last election. It is important that this Amendment Bill be considered now so that we sort out those problems that we had in 2012/2013.

I beg to move.

**Hon. Speaker:** Who is the seconder?

**Hon. Chepkong'a:** Hon. A.B. Duale.

**Hon. A.B. Duale:** Hon. Speaker, Hon. Chepkong'a is ambushing me. He should have told me in advance. This is a Procedural Motion. There are many Bills being considered by that Committee, including the Election Laws (Amendment) Bill. It is good that we reduce the publication period so that as we go through the First Reading, we can refer the Bill to the Committee. The House has a huge backlog of constitutional Bills that need to be given priority. As we approach the elections, we must give priority to amendments to the Political Parties Act or the Election Act.

I beg to second.

**Hon. Speaker:** Order, Hon. Members, including the Member for Kamukunji!

*(Question proposed)*

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

*(Question put and agreed to)*

## BILL

### *First Reading*

#### THE POLITICAL PARTIES (AMENDMENT) BILL

*(Order for First Reading read – Read the First Time and ordered to be referred to the relevant Departmental Committee)*

## MOTIONS

#### RECONSTITUTION OF PUBLIC INVESTMENTS COMMITTEE

**Hon. Speaker:** Hon. Members, I wish to draw your attention to the existence of a Supplementary Order Paper. I hope that every Member has a copy of that Supplementary Order Paper. It is a consequence of the meeting of the Committee on Selection and the leadership. That is why there was need to have a Supplementary Order Paper. Some of the reasons are related to the Budget Policy Statement which has just been laid on the Table by the Leader of the Majority Party. Those who may not have received a copy of the Supplementary Order Paper can make an effort to get the copies which are being distributed.

Let us have the Leader of the Majority Party.

**Hon. A. B. Duale:** Hon. Speaker, I beg to move the following Motion:-

THAT, pursuant to the provisions of Standing Order Nos. 175 and 206, this House approves the appointment of the following Members to the Public Investments Committee:-

1. Hon. Adan Wehliye Keynan, MP
2. Hon. Anthony Ichung'wah Kimani, MP
3. Hon. (Dr.) Oburu Oginga, MP

4. Hon. (CPA) Thomas Ludindi Mwadeghu, MP
5. Hon. Sammy Mwaita, MP
6. Hon. John Olago Aluoch, MP
7. Hon. (Dr.) Paul Nyongesa Otuoma, MP
8. Hon. (Ms.) Dorcas Kedogo, MP
9. Hon. Abdullswamad Sheriff Nassir, MP
10. Hon. (Ms.) Beatrice Nkatha Nyaga, MP
11. Hon. Bernard Munywoki Kitungi, MP
12. Hon. Chrisanthus Wamalwa, MP
13. Hon. Cornelly Serem, MP
14. Hon. Johana Kipyegon Ngeno, MP
15. Hon. John Ogutu Omondi, MP
16. Hon. Korei Lemein, MP
17. Hon. (Ms.) Mary Sally Keraa, MP
18. Hon. Onesmus Njuki, MP
19. Hon. Francis Mwanzia Nyenze, MP
20. Hon. Wafula Wamunyinyi, MP
21. Hon. Elias Bare Shill, MP
22. Hon. Adan M. Nooru, MP
23. Hon. John Muchiri Nyaga, MP
24. Hon. Franklin Mithika Linturi, MP
25. Hon. (Eng.) John Kiragu, MP
26. Hon. Ejidius Njogu Barua, MP
27. Hon. Irungu Kang'ata, MP

Hon. Speaker, there are five committees that, as per the Standing Orders, need to be reconstituted. The Public Investments Committee is one of them as per Standing Order Nos. 175 and 206. The Majority and Minority Whips, in consultation with the leadership of various coalitions, taking into consideration the rights and privileges accorded to independent Members of Parliament sitting in this House, have submitted these names this morning at 10 O'clock, to the Committee on Selection that I chair. The Committee on Selection, in the quorum that we had this morning, adopted the two lists which were provided by the various coalition whips.

Having done that and the Public Investments Committee being a very important Committee of this House that deals with all investment and value-for-investments that come from Government and are used for all the monies appropriated by this House, I have no doubt that the men and women who have been selected to this Committee will do whatever it takes to make sure that there is value for all investment in any project in our country that the Executive is involved in.

With those few remarks, I ask the Leader of the Minority Party who is very busy talking to his Whip and his deputy, to second this Motion.

**Hon. Speaker:** Hon. Francis Mwanzia Nyenze.

**Hon. Nyenze:** Thank you, Hon. Speaker. I second this Motion. We arrived at this through consultations. This morning, the Committee on Selection passed these names. I urge the House to support this Motion.

I beg to second.

**Hon. Speaker:** Hon. Members, if you are upstanding, just remain upstanding. You are not in your constituencies.

*(Question proposed)*

*(Question put and agreed to)*

RECONSTITUTION OF BUDGET AND APPROPRIATIONS COMMITTEE

**Hon. A.B. Duale:** Hon. Speaker, I beg to move the following Motion:-

THAT, pursuant to the provisions of Standing Orders No. 175 and 207, this House approves the appointment of the following Members to the Budget and Appropriations Committee:-

1. Hon. Mutava Musyimi, MP
2. Hon. (Ms.) Mary Emaase, MP
3. Hon. Alfred Sambu, MP
4. Hon. Benjamin Langat, MP
5. Hon. Charles Nyamai, MP
6. Hon. (Capt.) Clement Wambugu, MP
7. Hon. Ferdinand Waititu, MP
8. Hon. Jackson Kiptanui, MP
9. Hon. Jamleck Kamau, MP
10. Hon. John Mbadi, MP
11. Hon. Mohammed Shidiye, MP
12. Hon. Moses Lessonet, MP
13. Hon. Moses ole Sakuda, MP
14. Hon. Nelson Gaichuhie, MP
15. Hon. Ahmed I. Abass, MP
16. Hon. Abdulaziz Farah, MP
17. Hon. Alfred Agoi, MP
18. Hon. (Ms.) Alice Ng'ang'a, MP
19. Hon. Banticha Jaldesa, MP
20. Hon. Benjamin Andola Andayi, MP
21. Hon. Bitok S. Kirwa, MP
22. Hon. Daniel Nanok, MP
23. Hon. Dennis Kariuki, MP
24. Hon. (Dr.) J. W. Nyikal, MP
25. Hon. (Dr.) Reginalda Wanyonyi, MP
26. Hon. (Eng.) Steve Ngare, MP
27. Hon. (Ms.) Fatuma Ali Ibrahim, MP
28. Hon. Francis Njenga, MP.
29. Hon. Irshad Sumra, MP.
30. Hon. Isaack Mwaura, MP.
31. Hon. James Gakuya, MP.
32. Hon. James Lusweti, MP.

33. Hon. Jared Opiyo, MP.
34. Hon. Jonathan Lati Lelelit, MP.
35. Hon. Joseph Limo, MP.
36. Hon. Stephen KK Kinyanjui, MP.
37. Hon. (Dr.) Makali Mulu, MP.
38. Hon. Moses Kuria, MP.
39. Hon. Charles Muriuki, MP.
40. Hon. (Dr.) Eseli Simiyu, MP.
41. Hon. Omar Mwinyi, MP.
42. Hon. Omondi George, MP.
43. Hon. Patrick ole Ntutu, MP.
44. Hon. Peter Weru Kinyua, MP.
45. Hon. (Ms.) Priscilla Nyokabi, MP.
46. Hon. Richard Tong'i, MP.
47. Hon. Samuel Gichigi, MP.
48. Hon. (Ms.) Shukra Hussein Gure, MP.
49. Hon. Sylverse Lisamula Anami, MP.
50. Hon. Suleiman Murunga Kasuti, MP.
51. Hon. (Ms.) Tiyah Galgallo, MP.

**Hon. Mirenga:** My name is not in that list.

**Hon. A.B. Duale:** Hon. Speaker, please, talk to Hon. Obura. His name is not on the list. There are other better forums for him to ask about that, and not in the Chamber. You can come closer to the Leader of the Minority Party and ask why your name is not on the list.

**Hon. Mirenga:** Why is it not there?

**Hon. A.B. Duale:** Because you misbehaved!

Hon. Speaker, from the list we received this morning from both Whips, the Majority Whip of the Jubilee Coalition, Hon. Katoo ole Metito, did not make any changes. There are a few changes from the other coalition. Very good reasons were given why those changes were made and they are in line with the Standing Orders.

This afternoon, I have tabled very important documents, including the Budget Policy Statement (BPS). This is a Committee that has an urgent matter. With your indulgence, I hope they can do their elections tomorrow and elect the chair and the vice-chair, so that they can start the budget-making process, which begins with the tabling of the BPS which we did this afternoon. It has a deadline of 15<sup>th</sup> February 2016. The Cabinet Secretary for National Treasury submitted it to the National Assembly on Friday.

I am sure the men and women who served in this Committee, just like any other Committee, have done very well and we are happy with their work. Whether you are the Leader of the Majority Party, Leader of the Minority Party or Chair of a Committee, it is important to note that it is a privilege that has been given to you by your colleagues in this House. Anybody in this House can serve in any Committee and leadership position. Those who are in the Budget and Appropriations Committee are equal to the task as those who are in the Departmental Committees on Transport, Public Works and Housing, Energy, Communication and Information, Public Accounts and Public Investments.

Because of the urgency of the matter, we decided to have a Supplementary Order Paper to include the reconstitution of the Committee. We cannot have the BPS and all the medium term

documents tabled before the House today and wait for the Committee. It is the largest Committee of 51 Members. They did good work and they can go ahead to reduce themselves into sub-committees to make sure the budget-making process is on track and that the Division of Revenue Bill will not be contentious as it used to be. They should make sure that the Budget will be allocated to the right ministries that will add value to the lives of our people.

With those many remarks, I would like to ask the Leader of the Minority Party, who sat with me in the Committee on Selection this morning, where the Committee unanimously adopted the list to second this Motion.

**Hon. Speaker:** Hon. Francis Mwanzia Nyenze.

**Hon. Nyenze:** Thank you, Hon. Speaker. I rise to second this Motion. Over the last three years, the Budget and Appropriations Committee, one of the largest Committees in this House, has done a commendable job. Budgeting is not a very easy thing because it is allocation of resources to very many deserving cases. It is very difficult to balance so that everybody gets satisfied.

Hon. Speaker, it is good to renew these Members' contracts in that Committee because they have institutional memory. They understand what was there before and what is happening. Considering that we have only 17 months to the general elections and their working life is like 12 months before Parliament is dissolved, I would urge the House to consider that and appeal to Members of the Budget and Appropriations Committee to continue doing a good job and make sure they allocate more money to the institutions that fight corruption like Ethics and Anti-Corruption Commission (EACC), the Director of Public Prosecutions (DPP), the Criminal Investigation Department and the Police. More money should be allocated to fight those vices and those institutions should be given more powers.

Last but not least, the Budget and Appropriations Committee under the able leadership of Hon. Mutava Musyimi, - the President who never was or was shy to become - should allocate money to county governments because that is where development is taking place.

With those few remarks, I support the Motion.

**Hon. Speaker:** Are you supporting or seconding? Put it on record.

**Hon. Nyenze:** I second the Motion.

**Hon. Speaker:** For avoidance of doubt, the Motion is on the reconstitution of the Budget and Appropriations Committee, Motion No.11. It is important that I read each name because records will require that every name is on the HANSARD so that the approval is in relation to each and every name.

*(Question proposed)*

**Hon. Speaker:** Hon. Midiwo.

**Hon. Midiwo:** Thank you, Hon. Speaker. I rise to oppose the Motion for many reasons. I have said here before that the Budget and Appropriations Committee had been espousing wanting behaviour toward the budget-making process. We promised ourselves a *Kamukunji* to sort out those irregular things the Budget and Appropriations Committee was doing, particularly its Members. Many of them are good Members.

This Committee has flaws. Last week, I submitted an amendment. The intention of the amendment was that before we reconstitute, I wanted to make the Budget and Appropriations Committee a committee of chairs of Departmental Committees. My reasoning then was that the



chairs would come with Committee proposals to the Budget and Appropriations Committee and would discuss the ceilings. If there were any differences, they would go back to the Committees to stop and prevent the Members of the Budget and Appropriations Committee allocating themselves monies in their constituencies and leaving the rest out.

*(Applause)*

I was then told that my amendment had to be accompanied by signatures. I have since collected the 50 signatures. The Budget and Appropriations Committee has usurped the powers of the other Committees and it has taken away the powers of the Departmental Committee on Finance, Planning and Trade. But the worst one is where Members of the Committee allocate their constituencies money and disguise it as part of the budget process. That cannot be. I have raised this issue for the third time.

I want to urge this House to reject this list. If we are to go with the 51 Member Committee, let it be a list of totally new Members; Members who have not participated in those irregularities.

*(Loud consultations)*

I did not want to disparage my colleagues in public, but it has been admitted and you gave direction that before we talk about ourselves here, it would have been better to talk about these issues in a *Kamukunji*. Corruption is corruption. We cannot be talking about the Eurobond and not talking about corruption in here. We cannot be talking about the National Youth Service (NYS) and there is corruption in the House. I reject the list.

Hon. Members, I plead with you. Going into an election year, I can tell you that the sky will be the limit for these Members who seem to have the powers to disguise things to go in their coalition. I want things to come to my constituency. Everybody here wants things to go to their constituencies. I urge total rejection until we agree on a way forward about the constitution of the Budget and Appropriations Committee.

I reject.

**Hon. A. B. Duale:** On a point of order, Hon. Speaker.

**Hon. Speaker:** The Leader of the Majority Party, you have already moved the Motion. Unless you have a real point of order, I cannot give you the chance. If somebody is in opposition or in support, for the time being, it is important that you acquaint yourself with the functions of each committee. Most of you are just busy now shaking hands. If you ask him the functions of the Budget and Appropriations Committee, he will not tell you.

Go and read Section 25 of the Public Finance Management Act. Look at the functions of this Committee. Those provisions of Section 25 are actually replicated in our own Standing Orders. Look at Standing Order Nos. 207 and 232 with regard to the processes that this Committee has to engage in. It is also fair for you, Hon. Members, even as you criticise one another. As you know very well, Article 122 of the Constitution is very clear that the Speaker has no vote. Even as you make your decisions, what it means is that depending on how you vote, if you believe that the membership of this Committee deserves rejection, obviously you just vote and the next thing is I will be the one to give direction. This is because we have the Budget

Policy Statement (BPS), which has just been laid. I will give you direction as to how we proceed depending on how you vote.

Every Departmental Committee is required to have a look at that BPS starting today and appear before the Budget and Appropriations Committee to give input on what you will have discussed. Those views or whatever it is will be taken into account by that Committee, which will bring a Report here, which you will vote on as a resolution. The Cabinet Secretary (CS) of the National Treasury is enjoined, not to vary the resolution that you pass here.

It looks like you want to debate.

**Hon. Members:** Yes.

**Hon. A.B. Duale:** On a point of order, Hon. Speaker.

**Hon. Speaker:** Hon. Members, let us allow as many of you as possible. Leader of the Majority Party, you have already moved. You do not have a right. Procedurally, having moved, you cannot. I am the one who has just been speaking. There cannot be a point of order on the Speaker.

*(Laughter)*

Do you have a point of order on what Hon. Midiwo has said? Very well.

**Hon. A.B. Duale:** Hon. Speaker, I am a very senior Member and so, there is no point of order on you. I have two issues. This is a very healthy debate. First, Hon. Jakoyo has made a serious allegation which, I think, he needs to substantiate. The issue is on the membership of the Budget and Appropriations Committee, who are our own colleagues. This happened even in the last Session.

Hon. Speaker, I will indulge you to order Hon. Jakoyo to either withdraw or table evidence showing each and every member of the Budget and Appropriations Committee is involved, so that as we go forward and debate and decide on the reconstitution, we know what is at stake.

Secondly, the other one is also in order. Hon. Jakoyo is in order to collect signatures in anticipation of amending the Standing Orders within the provision of Standing Order Nos. 262 and 263 subtitled, "Amendments to Standing Orders." After he collects signatures and puts the Motion, Standing Order 263(4) says:-

"The Procedure and House Rules Committee shall, within twenty one days of the receipt of a request under paragraph (3), consider the request and table a report in the House containing the amendments proposed in the request and the recommendations of the Committee on each such proposal."

This House has a say on that.

Hon. Speaker, if you approve that today, we will have 21 days from today and if the House agrees, we will come back and reconstitute. As I have said, the leadership of this House is also Members of Parliament. They are not super-human beings. That does not happen. The Chair got the privilege through voting of our Members here. So, when you say that you want all committee chairs to be members of the Budget and Appropriations Committee, that must be done through an amendment to the Standing Orders, which is a long process and which, ultimately, this House has to approve. Coming back to it, this is a House of records. Hon. Jakoyo must provide evidence on where the Budget and Appropriations Committee members have gained.

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

**Hon. Speaker:** Unfortunately, the only person who was on a point of order was the Leader of the Majority Party. He has challenged Hon. Midiwo to table evidence. The only logical thing for me to do at this point is to require Hon. Midiwo to substantiate his statement.

Before I do so, Hon. Members, allow me to welcome, in the Speaker's Gallery, students from Mang'u High School, Juja Constituency, Kiambu County and, in the Public Gallery, students from Machau Secondary School from Machakos County. You are welcome to observe the proceedings of the National Assembly and see how Members deliberate on issues.

Hon. Midiwo.

**Hon. Midiwo:** I thank you Hon. Speaker. What Hon. Duale has done is in parliamentary parlance called "filibustering". He is trying to deny Members a chance to debate. Last year, we deliberated here and I still have a chance to pull the HANSARD and the copies of the Budget where this Committee allocated themselves Kshs3 billion for public hearing. That money was disguised to go to their constituencies. If Hon. Duale wants to have selective memory; he supported me then. I will prove to him tomorrow, which is the next day's sitting, with the HANSARD. You are on the HANSARD. I will produce it. The Standing Orders allow me to do so.

**Hon. Speaker:** Hon. Duale and Hon. Midiwo, you cannot respond to each other across the aisles.

**Hon. Midiwo:** I am sorry, Hon. Speaker.

**Hon. Speaker:** Speak through me and then through me, it will get to him.

**Hon. Midiwo:** Hon. Speaker, I profoundly apologise since I am the more civilised of the two. I profusely apologise.

*(Laughter)*

The evidence Hon. Duale is asking me to produce is even with the former Budget and Appropriations Committee itself. As it is, there is no Budget and Appropriations Committee. We will still have to approve the Members whose names have been mentioned to become members of the Budget and Appropriations Committee.

As we speak, there is no Budget and Appropriations Committee. So, there is no point denying Members a chance to debate the credibility of members. This House approves the members. The meaning of "approve" is that we must check your integrity and credibility. We do not have confidence in this particular Budget and Appropriations Committee. Every time they bring a Budget here, we complain. We have been complaining for the last two years. Hon. Duale, you have always been on my side. Let the devil not steal you. You know what I am talking about.

*(Laughter)*

**Hon. Speaker:** Hon. Midiwo, you rose to provide some substantiation. You claimed that if you are given time – which the House can – you would produce the HANSARD of a similar debate on the Report of the Budget and Appropriations Committee. Therefore, you do not need to argue. You are now debating the Motion.

**Hon. Midiwo:** Hon. Speaker, he further said that I had said--- Listening is a virtue. I said that my intention was to make the Budget and Appropriations Committee a committee of

chairmen of Departmental Committees, but not all committees. That gives you about 12 or 13 members. I was saying so because of what is happening today. When the Departmental Committee on Finance, Planning and Trade tried to recommend amendments to the Finance Bill, the Budget and Appropriations Committee rejected those recommendations. Why does that kind of thing happen? What is the mandate of the Departmental Committee on Finance, Planning and Trade? We know that these are committees of the House, and are provided for in Standing Orders. However, we are saying that there is something which is not functionally correct. There is a loophole which gives powers to the members of the Budget and Appropriations Committee to allocate themselves money and leave the 300 of us without monies in our constituencies. That is what we are protesting. We will not allow it. Therefore, if I am given time, I will provide the HANSARD tomorrow because I have been on this issue three years in a row.

I thank you, Hon. Speaker.

**Hon. Speaker:** Let us hear a point of order from Hon. Chepkong'a.

**Hon. Chepkong'a:** Thank you, Hon. Speaker. I do not ordinarily agree with Hon. Jakoyo Midiwo.

**Hon. Speaker:** You do not ordinarily agree with him?

**Hon. Chepkong'a:** Yes! But today, I totally agree with him, Hon. Speaker.

*(Applause)*

Hon. Speaker, this is part of the recanted evidence. We discussed this matter last year and agreed that there was a problem with the Budget and Appropriations Committee. Even the Leader of the Majority Party agreed that there was a problem with the Budget and Appropriations Committee. I am an honest man. When something is wrong, I do not agree. In fact, it pricks my conscience. What Hon. Jakoyo Midiwo has stated is something that we stated last time. I spoke to the Chairman of the Budget and Appropriations Committee and agreed that we give Kshs1 billion to Independent Electoral and Boundaries Commission (IEBC). However, they removed everything. In fact, it took me to come and threaten them in this House that if they do not give money to the IEBC, they should forget about development in this country because we will burn this country in 2017. That was the only time that the President intervened and gave Kshs500 million to IEBC. What is the point of having a Budget and Appropriations Committee in whose work the President intervenes? We would rather have the President being in charge of the Budget and Appropriations Committee.

*(Laughter)*

We are not against anybody but this is something that we discussed and agreed on as the leadership of this House. We want to be fair to everybody. When we make certain requests, we should be listened. I am not a young man; I am a young tuck. People must listen to the young tucks. We are not in mid-life crisis. We are young people who are sharp in mind. Let us be fair to all of us. I would like to tell the Leader of the Majority Party, Hon. A.B. Duale that I also have the capacity to lose my temper, but I control myself because we all represent constituencies. I was elected by the people of Ainabkoi Constituency. I sit here because I was voted in. I am not anybody's sycophant. I stand here as an independent person, representing the people of Ainabkoi Constituency. I do not even need to be the Chair of Departmental Committee on Justice and

Legal Affairs to speak in this House. Some of us have worked in the Government. We know what it means to be in the Government. We must have order in the manner we conduct our affairs. I have been budgeting in my own organisation. Therefore, I would like to request that we have a time out on this matter and reconsider it. There is no point of fighting around here. The request that we have just made is that we defer this matter. Let us sit down so that we can all agree. Let us not have a fight here.

I thank you, Hon. Speaker.

**Hon. Speaker:** Hon. Members, Hon. Chepkong'a is a man who likes following rules. As you know, Hon. Chepkong'a, in parliamentary practice, we do not have "time out" like in football and basketball. You know that you are supposed to move adjournment of debate. Time out is a language that is unknown to parliamentary practice.

Hon. Members, the House can still vote on this Motion, one way or the other. If you reject it, you can only bring it back after six months, unless the House, sooner or later, resolves to rescind that decision. Those are your own rules. I am not creating them.

Hon. John Mbadi!

**Hon. Ng'ongo:** Thank you, Hon. Speaker. I hope the House will be orderly enough to listen to the debate. First of all, let me take this opportunity to say that when debating this matter, all of us need to be sober and listen to each other. I listened to Hon. Jakoyo while opposing the Motion. There is one interesting thing with this submission. First, Hon. Jakoyo has said that the Budget and Appropriations Committee has previously usurped the powers of other committees.

I want to take this House to Article 221(4) of the Constitution, which creates the Budget and Appropriations Committee. It says:-

"221(4) Before the National Assembly considers the estimates of revenue and expenditure, a committee of the Assembly shall discuss and review the estimates and make recommendations to the Assembly."

If the Budget and Appropriations Committee made recommendations it did not bring to the National Assembly, then it over-stepped its mandate. However, the estimate proposals were brought to this House. I listened carefully. I wanted to hear Hon. Jakoyo say that the Budget and Appropriations Committee passed some recommendations without bringing them to the National Assembly. Every work of the Budget and Appropriations Committee has been passed by this House. Therefore, you cannot even indicate that the Budget and Appropriations Committee has allocated money because it has no powers to do so. Such power rests with the National Assembly. Let us face facts. I know that Hon. Jakoyo has talked about the Budget and Appropriations Committee undermining the responsibility and role of the Departmental Committee on Finance, Planning and Trade. That would not be right. I guess that he is referring to money Bills. It is the Constitution that gave the Budget and Appropriations Committee the mandate to review all the money Bills. Therefore, if the Budget and Appropriations Committee has made its recommendations and the House does not agree with them, then the House is at liberty to reject those proposals.

Finally, I want to talk about the elephant in the room. The elephant in the room is that it is being alleged that members of the Budget and Appropriations Committee had their constituencies benefit from allocation of resources in a particular year. Hon. Speaker, let us face facts. Let us not condemn others and we do the same things, because the truth must be told. Hon. Members of this House sit in various committees. We know and I know that just the other day,

the Departmental Committee on Environment and Natural Resources allocated itself money for the National Youth Service (NYS) programmes and we know it.

*(Applause)*

Hon. Speaker, those monies are spent on constituencies. Hon. Jakoyo is a member of the Catering and Health Club Committee and he has been eating food free of charge. We need, therefore, to compute all the money that he has “eaten” since he became a member of the Catering and Health Club Committee and pay back because that is a practical game.

*(Laughter)*

In addition, we know of Members of Parliament here who are even supplying goods to Parliament. You cannot stand up. Hon. Obura is shouting here and he connived with Waiguru and they went and started using NYS money anyhow in Kondele!

So, let us not pretend---

**Hon. Speaker:** There is a point of order from Hon. Nyamweya. What is your point of order?

**Hon. Nyamweya:** On a point of order. Thank you Hon. Speaker---

*(Loud consultations)*

**Hon. Speaker:** He is on a point of order. Hon. Ken Obura Mirenga, Hon. Manson Nyamweya is on a point of order. You cannot, therefore, purport also to rise in your place to claim a point of order.

**Hon. Nyamweya:** Hon. Speaker, I want to rise under Standing Order No.96 that allows us to adjourn this meeting so that the leadership can consult for the sake of the budget-making process. Let us get time so that both sides of the House can come up with the names they want. We cannot personalize this issue. The issue has been raised before. We were to have a *Kamukunji* here but it never took place. Some Members have decided to take us for a ride by bringing the same names knowing very well that, if we do not pass these names today, the debate can only come after six months. So, the best option for us is to use Standing Order No. 96 and adjourn debate. The House can adjourn debate and be convened again to discuss this matter.

With those few remarks, I support. Thank you. Let us adjourn debate.

**Hon. Speaker:** Hon. Nyamweya, of course, I understand you to be standing under Standing Order No. 96. You need a seconder. Hon. Nyamweya moves that the debate be adjourned. Who is your seconder? Yes. Hon. Gladys Wanga?

**Hon. (Ms.) Nyasuna:** Hon. Speaker, given the magnitude of the issue that we are addressing here today, and given the mood of the House, it is important that this debate---

*(Loud consultations)*

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

**Hon. (Ms.) Nyasuna:** I would like to second.

**Hon. Speaker:** You are seconding?

**Hon. (Ms.) Nyasuna:** I would like to second.

**Hon. Speaker:** Order, Members! Hon. Olum and Hon. (Eng.) Gumbo, take your seats. Hon. Gumbo freeze!

Hon. Members, Hon. Nyamweya stood in his place and claimed to move that debate on this Motion be adjourned under Standing Order No. 96.

**Hon. Members:** No! No!

**Hon. Speaker:** You have no business shouting. Nothing has been said yet. I want to give you an opportunity to make decision. Hon. Duale, if you speak like that--- I thought you had several people following you behind. They will think that is the way business is transacted.

Hon. Members, Hon. Nyamweya has been seconded by Hon. Gladys Wanga. Therefore, without taking any more time, I will put the Question.

*(Loud consultations)*

Hon. Members, do not tell me now until I put the Question.

*(Question proposed)*

**Hon. Speaker:** Let us have Hon. Linturi. Serjeant-at-Arms!

**Hon. Linturi:** Hon. Speaker, consultations are too loud and I am afraid I may not be heard.

**Hon. Speaker:** Hon. Members, take your seats. I am about to announce to you now that if Members do not want to sit, I will direct the Serjeant-at-Arms to withdraw each and every one of you, who will not be seated. We cannot transact business this way. I hope all of you are aware of the consequences of you being escorted out by the Serjeant-at-Arms. We must listen to one another.

**Hon. Linturi:** Thank you, Hon. Speaker. At the outset, I would like to oppose this Motion. The Committee that we are reconstituting is very important for this House and the country. When you look at the current composition of Parliament, you realize that parliamentary business is done through committees. One of the major functions of Parliament is that of appropriation of funds. If Parliament has to appropriate funds, there is that requirement to have a committee and Parliament must be in a position to either vote for or against the reports that are brought to this House by this Committee.

When you look at what Article 221 of the Constitution provides and the matters that have just been raised by the few Members who have just spoken, I want the House to consider the enormity of this matter as we debate this Motion. When you look at Article 221(4)(5) – and I want to bring it to the attention of this House – it reads as follows:-

“(4) Before the National Assembly considers the estimates of revenue and expenditure, a committee of the Assembly shall discuss and review the estimates and make recommendations to the Assembly.

(5) In discussing and reviewing estimates, the committee shall seek representations from the public and the recommendations shall be taken into account when the committee makes its recommendations to the National Assembly”

Hon. Speaker, let me explain further. What this means is that the public and various committees of Parliament speak through this Committee. It is not expected that, at any particular time, when there is public participation, the recommendations that come from the public to the Committee are just wished away.

I am yet to see a situation where when Members go out to collect information from the public regarding the budget estimates, their recommendations are taken into account. I remember, as a Member who sat in the Departmental Committee on Energy, we made recommendations to the Budget and Appropriations Committee with the aim of reallocating some money within the Budget to fund an item which was not in the Budget Estimates, and which the Committee thought was necessary. However, our recommendation was not captured. That left us wondering whether it was important to continue doing business as usual.

I do not have a personal problem with this Committee but, in carrying out its mandate, it has let this House down once or twice. I would like to refer to one particular instance when this Committee came with recommendations to appropriate money for payment of the Anglo-Leasing fraud that took place some time back. In its wisdom, the Committee thought that it was necessary for us to pay, but Parliament rejected the recommendation. Despite Parliament's rejection of that recommendation, we eventually paid. I do not know what happened. An argument was brought to the House on that particular day; that it was necessary for us to honour court judgments. There are many court judgments that have not been honoured by the Government. We are still waiting to see if the Government will honour them.

Therefore, for the purpose of restoring confidence amongst the Members of this House and members of the public, and ensuring that public participation – as a process that is enshrined in our Constitution in Article 10 – is taken seriously, it is important to have a Committee that takes the opinions of Members of Parliament and the public seriously. It is the Committee that is in charge of public funds.

For that reason, I oppose.

**Hon. Speaker:** Hon. Members, is the mood in the House indicating that I put the Question? Hon. Members, it looks clear to me that Members appreciate the enormity of this Motion. Everybody seems to be aware of the work done by the Budget and Appropriations Committee as provided for in our Standing Orders 232(2), which is a replica of what is in Section 25 of the Public Finance Management (PFM) Act, 2012. There is no difference.

What is your point of order, Hon. Kaluma?

**Hon. Kaluma:** Thank you, Hon. Speaker for indulging me. Let me also thank my brothers and sisters for their indulgence. The Motion we are discussing is grave in terms of what is coming from the Chair, considering the role of the Budget and Appropriations Committee. I have watched the Leader of the Majority Party seek substantiation from Hon. Jakoyo on a matter that the Chair has ruled should be substantiated tomorrow. The substantiation is very serious, in my view, in determining whether the proposed membership ought to serve in this Committee or not. Would I be in order to seek your direction that we defer further debate or decision on this matter up to such a time that Hon. Jakoyo will substantiate the allegations that he has made?

**Hon. Speaker:** Fortunately, with regard to the procedure on a matter of this nature, even if Hon. Jakoyo Midiwo were to be allowed time to bring substantiation it would not, in itself, be a ground for us not to make a decision one way or the other. It is with regard to the issue of the allegation about the Members of the previous Committee. The allegation was that Members of the previous Committee had allocated themselves monies to go to their constituencies. We can



allow Hon. Jakoyo to substantiate that matter. If he substantiates, it will be perfect. If he does not, then in the normal way, he will be required to withdraw and apologise to the House. But, with regard to the business before the House, we do not need to adjourn because the Motion for Adjournment has already been defeated by the House. I cannot go against the ruling or the decision of the House.

Hon. Members, I want this to be understood. In terms of Standing Order No.232, which establishes the purpose and the manner in which the Budget Policy Statement and its content shall be presented, once it is tabled, as it has been tabled by the Leader of the Majority Party today, it is committed to the Budget and Appropriations Committee as well as to each of the Departmental Committees. It is for that reason that Standing Order No.232(5) clearly says that in considering the BPS, the Budget and Appropriations Committee shall consult each Departmental Committee and table a report containing its recommendations on the statement to the House for consideration. The Budget and Appropriations Committee is enjoined and obligated to consult each Departmental Committee.

This paragraph is similar to what is contained in the PFM Act of 2012. Of course, as Members, you are at liberty to make correction. The BPS is not exactly the Budget Estimates that are presented by the Cabinet Secretary (CS) in mid-June of each year. The estimates will be presented after the CS for the National Treasury has considered the resolution of this House.

Hon. Members, now that we are all clear about this matter, let me put the Question.

*(Applause)*

Hon. Members, in the Supplementary Order Paper, Motion No. 11 relates to reconstitution of the Budget and Appropriations Committee.

*(Question put and negatived)*

*(Several Members stood up in their places)*

**Hon. Members:** Division! Division!

*(Loud consultations)*

**Hon. Speaker:** Order, Members! Those of you who stood---

*(Loud consultations)*

Order, Members!

**Hon. Ochieng:** But Hon. Speaker---

**Hon. Speaker:** Order, Hon. Ochieng! You cannot argue all the time.

Hon. Members, those of you who stood up in their places claiming for a Division, you have the numbers. I, therefore, order that the Division Bell be rung for 10 minutes.

*(The Division Bell was rung)*

**Hon. Speaker:** Order, Members! Stop the Bell.

*(Loud consultations)*

Order, Members! Resume your seats. Hon. Members, I hope there are no Members in the convenience rooms behind the Speaker. Just confirm that there are no Members in there. I order that the Bars be drawn!

Order, Members! Even though I am required to put the Question, this time I will not read through all the 51 names for the convenience of the House.

I am aware that there are some Members who do not have their cards. Hon. T.J. Kajwang' is one of them. Hon. Members without cards or with malfunctioning cards, please approach the Civil Servants' Bench.

*(Loud consultations)*

Are all those Hon. Members standing the ones without cards or with malfunctioning cards? Hon. Maweu, you do not have a card? Please just come to the Civil Servants' Bench, Hon. Elmi. Hon. Members, I do not understand what all those who are walking intend to do.

*(Hon. Masadia walked along the gangway)*

Hon. Agoi, you do not have a card? Then why are you going that way? This is the place to approach. Just come straight to the Civil Servants' Bench.

*(Loud consultations)*

Hon. Members with cards, can you please log out? Hon. Amina Abdalla, you have not logged out. Hon. Members, you may log in now.

Hon. Members, may I have your attention. I want to remind you of the Question.

*(Question put and the House divided)*

*(Question negated by 133 votes to 62)*

**AYES:** Ms. Abdalla, Messrs. Nanok, Aden, ole Sakuda, Farah, Musyimi, Nakara, Dr. Shaban, Messrs. Bady, Gaichuhie, G.W. Omondi, Ferdinard Waititu, Ganya, Were, Njagagua, ole Ntutu, Ms. Tobiko, Mr. Katoo, Ms. Kanyua, Messrs. Osman, Sambu, Melly, Kabando wa Kabando, Dr. Pukose, Ms. Mumo, Messrs. Washiali, Saney, Chepkong'a, Gichigi, Ms. Tuya, Messrs. Ichung'wah, Anami, Mukwe, Bitok, Kasuti, A. B. Duale, Mulu, Kamanda, Eng. Ngare, Messrs. Wambugu, Kamau, Ms. Otucho, Mr. Cheptumo, Ms. A. W. Ng'ang'a, Ms. Mbalu, Ms. F.I. Ali, Messrs. Ng'ongo, K.K. Kinyanjui, Abdinoor, J.K. Chege, Elmi, Kinyua, Manje, Masadia, Maweu, Ms. Mitaru, Messrs. Nooru, Tong'i, Francis Waititu, Waweru, Abass, and Ms. Nyasuna.

**NOES:** Dr. Simiyu, Messrs. Midiwo, Mwamkale, ole Kenta, Oyoo, Wandayi, Mohamed Abass, Nassir, Ms. Chae, Messrs. Lentoimaga, Mwadime, Simba, Ms. B. N. Nyaga, Messrs. Momanyi, Andayi, Kangara, B. K. Bett, Bishop R. Mutua, Otsiula, Ms. Ngetich, Ms. Mbarire,

Messrs. Gimose, Wakhungu, Nakuleu, Ms. Ombaka, Messrs. Omulele, Kubai Iringo, Anyango, Maanzo, Sitati, Bowen, Ochieng, Losiakou, Ms. Ghati, Ms. Kedogo, Messrs. Moindi, Lagat, Busienei, Wangwe, Dr. Kibunguchy, Ms. Mathenge, Ms. Kajuju, Messrs. Nderitu, Nyenze, Outa, Odanga, Ogalo, Theuri, Ogolla, Mwanyoha, Ms. Chepkwony, Prof. Sambili, Messrs. Macharia, Ekomwa, Murgor, Ms. Teiya, Messrs. Angwenyi, Olum, Omagwa, Kihagi, Serut, Waiganjo, J. M. Nyaga, Koyi, Naicca, J. K. Ng'ang'a, Muthari, Ndiege, Ms. Lay, Ms. Emanikor, (Dr.) Laboso, Messrs. Murungi, Mirenga, Okoth, Moi, Aramat, Ms. Leshoomo, Mr. Nyamweya, Ms. Keraa, Ms. Mbugua, Ms. Munene, Messrs. Robi, Onyura, Ms. Odhiambo-Mabona, Messrs. Linturi, Mohamed Abdi, Cheboi, Chea, Ms. Ibren, Eng. Gumbo, Messrs. Barua, Njuki, Nyongesa, Musimba, Rotino, Akujah, Ms. Amolo, Messrs. Makenga, Mbui, Bunyasi, Koech, Ndiritu, Arama, Ogari, Mule, Ms. Sunjeev, Messrs. Mwadeghu, Bosire, Wetangula, Musau, Wamunyinyi, Dr. Ottichilo, Ms. W. K. Njuguna, Messrs. Chanzu, Abdi, Opore, Ms. Kering, Messrs. J.K. Bett, Karani, Kisang, Letimalo, Ms. Muia, Messrs. Ngikor, Serem, Shinali, Wekesa, P.E.O Anyanga, Kajwang', Kaluma, Mlolwa, Muluvi, Shimbwa and Ms. Kipchoim.

**ABSENTION:** None.

**Hon. Speaker:** Hon. Members, I wish to make the following observation that the number of 30 Members without cards is too large thus frustrating our efforts to do electronic voting. I would like to encourage those who may have misplaced their cards, as I am told that Members do not lose their cards but they misplace them, to make efforts to retrieve them from wherever they may be so that, in future, we do not take too much time voting. The intention of having electronic voting was to make work more efficient.

The doors may now be opened and the Bars drawn.

Following the result of this Division, I wish to guide the House as follows with regard to the BPS. The BPS was laid on the Table of the House pursuant to Standing Order No.232(1), and Section 25(2) of the Public Finance Management Act. For avoidance of doubt, the two provisions require the Cabinet Secretary in charge of the National Treasury to submit the BPS by 15<sup>th</sup> of February every year. The National Treasury has never observed the requirements of the law as today is the first sitting day after 15<sup>th</sup> February.

Standing Order No.232(4) requires that upon being laid on the Table of the House, the BPS shall stand committed to each Departmental Committee for deliberations according to their respective mandates. The BPS is accordingly committed to each Departmental Committee. However, given that the House has voted not to reconstitute the Budget and Appropriations Committee, the Committees are, therefore, required to make their recommendations. Hon. Members, this is important because in your own Standing Orders, you have created Standing Order No.217, the Liaison Committee, which is a Committee chaired by the Deputy Speaker of the National Assembly and comprises also among others, the first Chairperson of the Speaker's Panel as the Vice-Chair of that Committee and the chairpersons of all other committees of the National Assembly.

My direction is derived from the authority given by Standing Order No.1, where in appropriate cases, where the Standing Orders do not make provision the Speaker is given the authority to give directions for convenience of the House and for carrying out the functions of the House easily. I, therefore, direct that in the meantime or in the interim period, since the consideration of the BPS is time bound, that the House must resolve itself within 14 days as contained in Section 25 (7) of the Public Finance Management Act and our own Standing Order No.232. The House should resolve itself within the period provided. I direct that the functions,

for the time being performed by the Budget and Appropriations Committee would be taken over by the Liaison Committee of this House.

*(Applause)*

In the meantime, unless the House acts in accordance with Standing Order No.49(2) which permits the House to rescind its decisions, the functions of the Budget and Appropriations Committee will be performed by the Liaison Committee. Departmental Committees will, therefore, present their reports before the Liaison Committee of the House which will bring a Report relating to the BPS to the House for debate and adoption.

*(Applause)*

Hon. Members, we cannot afford to have a vacuum in the House. This means that starting tomorrow the Liaison Committee will begin considering the BPS. The Departmental Committees will also consider the BPS relating to their respective mandates. The House expects the Liaison Committee to table a Report not later than 1<sup>st</sup> March, 2016 for consideration.

It is accordingly ordered!

*(Hon. Ng'ongo stood up in his place)*

**Hon. Speaker:** Hon. Mbadi, is your point of order related to the direction I have given?

**Hon. Ng'ongo:** Thank you, Hon. Speaker. I respect your ruling but I am worried because Kenya is a multi-party democracy. Your ruling has basically handed over the budget process to the Jubilee side of this House.

*(Loud consultations)*

At times, I would urge my colleagues that if they have a problem with say Hon. Mbadi, I am ready to leave but have CORD's voice in the budget-making process. I request that the matter is re-looked into because the budget-making process is such an important exercise that cannot be left to one side of the House.

Thank you, Hon. Speaker.

*(Loud consultations)*

**Hon. Speaker:** Order, Members! The point you have made, Hon. Mbadi, is noted but for the time being, we cannot operate in a vacuum. We must have something. The Departmental Committees will deliberate on their respective mandates and give the Liaison Committee their reports.

Let us move on to the next Order.

## MOTION

### ADOPTION OF PAC REPORT ON SPECIAL AUDIT REPORT OF JSC

THAT, this House adopts the Report of the Public Accounts Committee on the Special Audit Report of the Judicial Service Commission (JSC) and the Judiciary of May, 2014, laid on the Table of the House on Tuesday, 7<sup>th</sup> July, 2015, subject to;

(i) deletion of recommendation number 2 appearing on page 136 of the Report;

(ii) deletion of recommendation number 4 appearing on page 136 of the Report, and substituting therefor with the following –

“The various Commissioners of the Judicial Service Commission must take personal responsibility for allowances paid to them for attending meetings that were convened without the knowledge and approval of the Chief Justice. An audit of all such meetings should be undertaken and the responsible Commissioners surcharged”;

(iii) deletion of recommendation number 5 appearing on page 136 of the Report”;

(iv) deletion of recommendation number 19 on page 139 of the report, and substitution thereof with the following:-

“The security upgrades implemented by Mr. Simiyu Werunga, a security consultant and contractor, should be subjected to detailed audit by an independent security consultant, working jointly with relevant departments of the Government, and any sums paid over and above fair market value be claimed from the consultant/contractor”;

(v) insertion of the following words immediately after the words “Administration Committee of the JSC” appearing in the recommendation number 20 on page 139 of the Report:

“Commissioners Smokin Wanjala, Mohammed Warsame, Ahmednassir Abdullahi, Rev. Samuel Kobia, Christine Mango and Emily Ominde”; and

(vi) insertion of new recommendation number 23 on page 140 of the Report as follows:-

“23. That the Judicial Service Commission forthwith desists from interfering with the financial administrative and operational functions of the Judiciary; and further that National Assembly through the Departmental Committee on Justice and Legal Affairs, undertakes an urgent review of the Judicial Service Act 2011 to address through statute, the unlawful encroachment of the Judicial Service Commission into the administration of the Judiciary which falls outside of its mandate under Article 172 of the Constitution of Kenya”.

*Hon. (Eng.) Gumbo on 11.2.2016)*

*(Resumption of Debate interrupted on 11.2.2016)*

*(Several Members withdrew from the Chamber)*

**Hon. Speaker:** Order, Members! Order, Members! Those of you withdrawing---

*(Hon. A.B. Duale, Hon. Ng'ongo and Hon. Okoth consulted loudly)*

The Leader of the Majority Party and Hon. John Mbadi, is it not possible for you to consult in low tones? Hon. Ken Okoth, please call whoever it is so that the House can transact business. Hon. Members, we are in business. Can you call the business? Just repeat.

Hon. Members, the following Members according to the records have contributed to this Motion as amended. They are Hon. James Nyikal, Member for Seme; Hon. Christopher Omulele; Hon. Makali Mulu and Hon. Sakwa Bunyasi. So, any other Member is at liberty to contribute. The first shot will go to Hon. Manson Nyamweya.

**Hon. Nyamweya:** Thank you, Hon. Speaker for giving me a chance to support this Motion as amended. If we look at what happened in the Judiciary, we will find that the money they were given was voted by the National Assembly. They did not have a structure on how to spend the Kshs16 billion they were given. Out of the Kshs16 billion they got, they were supposed to use Kshs1.3billion in a month and they were supposed to use Kshs44 million in a single day.

As Parliament that carries out the budget process we need to check when we are voting monies to various ministries whether those ministries have the ability to spend the money and what the money we have allocated them will do. That is the challenge that came up. The Judiciary got so much money that they did not know what to do. They went on a spending spree. They started buying things they did not require and started leasing premises or space they did not require. They went ahead to buy second hand furniture and they spent a lot of money.

If you look at all these issues, you will find that the challenge which is facing this country is that ministries are being allocated money without scrutinising whether they have the ability to use those funds. That is why we have issues at the National Youth Service (NYS). Scrutiny was not done to confirm that it could use the money. They even had to lease a new space for the Court of Appeal and money was paid before the premises were completed. They did this and yet they did not analyse and understand whether they actually needed extra space or not. So, Parliament must really play an oversight role to ensure that as we allocate funds to various ministries and activities, we should know whether those ministries have the ability to use those funds or not. If they do not have the ability, those funds should be given to other ministries which can use them in a more productive manner. If you look through this system, you will see irregular payments in the purchase of the Chief Justice's house. They were allocated a lot of money and they had to spend it. There was no clear thought out plan. There was no procurement plan to be followed. Therefore, it is upon this National Assembly to assist the Government on how they use the money.

As Parliament scrutinised the budget making-process, it found that the money given to the Judiciary may not have been used because they were not prepared. The issue here is they were not prepared. They did not have the right manpower, the right human resource and the correct training. There was no procurement plan and yet Parliament went ahead to allocate Kshs16 billion. As much as we blame the corruption which took place in the Judiciary, Parliament is also to take blame because we are giving money to ministries which are ill equipped and ill prepared. They are the same issues we are talking about in the NYS. The money given out to these ministries had never been given before. For example, the Judiciary was getting

only Kshs3 billion. That money was increased by Kshs13 billion. They were surviving on the Kshs3 billion budget. So, we need to re-examine our role as the National Assembly. As we prepare the next Budget, we should ensure that ministries confirm to this House that they have the ability and have put in place structures to use the funds. If we do not do that we will allocate money to various ministries and it will not be spent. Therefore, it will be allocated elsewhere, or if it is spent it will be spent wrongly.

As the National Assembly, we need to operate above board when scrutinising the Budget. Fortunately, we have budget committees in all the ministries. The chairs of these committees need to be more active and more involved. They must ensure that they scrutinise the Budget before it is presented to us. If it is on agriculture, they have to confirm that the Ministry of Agriculture, Livestock and Fisheries wants that money and they know exactly where it is going. Do they have a procurement plan? Do they have the correct manpower? If it is roads and infrastructure, the Ministry needs to be very clear from the word go. Corruption will go on unless we, as Parliament, come together to assist the country. There are two issues here; either the money is not properly spent because there is no ability to audit it or it is not spent because there is no ability to spend. As a Parliament, we have a bigger role to play. As much as you can blame the people outside there that they are stealing this money, it is us who allocate them. As we move on, let us be more vigilant as the National Assembly so that from the first stage of making the Budget, we are able to know what is happening in the ministries.

With those few remarks, I support. Thank you, Hon. Speaker.

**Hon. Speaker:** Let us now have Hon. Amina Abdalla.

**Hon. (Ms.) Abdalla:** Thank you, Hon. Speaker. I wish to begin by congratulating Hon. Gumbo for producing the Report from an extremely messy process and having it tabled in the House. I am also happy that the many concerns that I had on the recommendations have been cured by the amendments. The only recommendation that I still have an issue with its wording has been overtaken by events. This is the one that is ordering the Director of Public Prosecutions (DPP) to commence investigations. Parliament needs to ensure that we do not make recommendations that imply that we do not respect the rule of law that requires investigations to be carried out prior to prosecuting individuals.

The amount of lobbying on matters canvassed in this Report actually pushed me to go and read this Report page by page. I must confess that this is the first PAC Report that I have read from page one to the end because I was perturbed that a Commission with 11 members, eight of whom are senior lawyers in this town, could be hoodwinked by one individual. I, therefore, concluded that that individual must be a fall guy. Having said that and given the fact that the DPP has already taken the recommendations by this Committee and instituted prosecution, let me stop there because that matter is now *sub judice*.

What has perturbed me is that the threshold for integrity of public office holders is very low that you can have a Report like this and people do not get shocked. You have to steal and be caught in your House with Kshs200 million for people to get shocked. I am really concerned and shocked at what the Committee heard about these goings-on in the JSC. It was full of accusations and counter accusations, many of which have not been concluded. So, I am wondering, should I believe the accusations wholly or should I not? This is an extremely damaging Report. If we were living in a civilised society, no member of the JSC who served in this JSC during the period under review should be holding that office anymore.

We must accept that our standards are low and that is why the matters are remaining as they are and these individuals are serving under the current JSC. I do not like giving recommendations to others when a lot of what has happened to the JSC is something that we, as a House, can resolve. I sat in the Committee that midwived the JSC Bill. I also sat in the Committee that vetted the first members of the JSC. I sat in the Departmental Committee on Justice and Legal Affairs that increased the budget of the JSC from Kshs3 billion to Kshs16 billion. As a House, we bear some responsibility of the reckless embezzlement of public funds that has taken place in the JSC. I am not in the habit of accusing and not coming up with solutions. I really want the Chair of the PAC to listen. Hon. Chepkong'a is not here. We must solve what is within our powers to solve.

The JSC has a structural problem. We cannot have five judges and seven lawyers in the JSC who have personal interests in personal development. For now, we have three members of the JSC who are interested in becoming the next Chief Justice. How do you then expect that JSC to handle its matters in an impartial manner?

Hon. Speaker, my recommendation to Hon. Chepkong'a is that if we want the JSC to be representative, we must reduce the number of lawyers in its membership. We must have representation of the non-lawyer staff of the Judiciary being represented. We must deal with the anomaly that I, as an individual, feel that the Chief Justice, as the Head of the Judiciary, should not be brought to Parliament to be asked questions on small administrative matters. We should change the law such that somebody else can come and answer to those administrative matters.

We have now lumped up his judicial responsibilities with administration and we have to bring him down to the level of asking him: "Why did you pay allowances?" Therefore, the JSC Act must be amended. We must re-consider having the Chief Justice as the Head of the JSC. We must re-consider the fact that we have two judges from the Supreme Court and a judge of the Court of Appeal in the JSC. We have too many lawyers. It is my contention that that is the reason the JSC has the highest number of court cases against it by its staff. It is because they have the understanding that since they are members of the JSC, no court case against them can ever see the light of the day. Ours would be to reconstitute statute wisely; the membership of the JSC so that we do not have individuals who promote themselves and kill their opposition or to malign others so that they can get positions.

On the issue of the amounts of money that we have given to the JSC, in the 2012/2013 Financial Year, we increased their budget by 500 per cent. We, as a House, must readdress the issue that the Government insists – that we should move from incremental budgeting to project-based budgeting. It is clear that any time you give funding for projects through project-based budgeting, the issue of corruption crops up. Unless we address the structural problems and streamline the budgeting process to ensure that we do not give money to an institution which does not have the capacity to absorb it, we should not be blaming those institutions.

It is my contention that we have to move the JSC from their ivory tower-cum-mother of impunity that this Report has indicated. This Report shows that the JSC needs reconstitution. Hon. Chepkong'a's Committee tried the tribunal way and they were taught the lesson that has already been learnt by the staff working under the JSC – that you will never win a case against the JSC or a law firm that is represented by a member of the Law Society of Kenya (LSK) that has ever served in the JSC. We should then move with speed to amend the JSC Act. Even the presence of the Attorney-General in the JSC is an anomaly because under the Executive, he is



the Cabinet Secretary responsible for matters relating to the Judiciary for the Executive. He should, therefore, be questioned how he could sit there and let all this madness go on.

I thank Hon. Gumbo for a great job well done and tell Hon. Chepkong'a that I, as an individual, and all those who spent days trying to think naively that giving funds to an institution would result in a stronger Judiciary where everyone would be expected to have fair administration of justice, have been proven wrong. In fact, the Report by Hon. Gumbo says that the war between the Chief Registrar and the JSC began once the Judiciary's budget was increased. The war is about controlling procurement, and not about improving the judicial systems in Kenya.

I look forward to Hon. Chepkong'a bringing an amendment to stop any member of the LSK sitting in the JSC from practising in court, so that we can reduce the number of lawyers in the JSC. It is not just lawyers and judges who serve in the Judiciary. We should also have non-judicial staff represented in the JSC. We should review the entire composition of the JSC and the funding going to the Judiciary.

With those many remarks, I support the Report.

**Hon. Speaker:** Hon. Amina Abdalla, the composition of the JSC is partly provided for in the Constitution. You may, therefore, have to also think of amending the particular article of the Constitution that provides for the LSK. Do you want to comment on that bit?

**Hon. (Ms.) Abdalla:** Yes, Hon. Speaker. Whereas the Constitution has those provisions, the JSC Act can twit with what exactly they can or cannot do. What is not fair is that we have a member of the JSC who brings us amendments which eventually haunt us. One of the amendments was that we should not vet members of the JSC because some of them come through an election process. One of the things is that we have a report which tells us that a member of the JSC was caught by the Committee lying. That person ended up being re-elected by their constituent institution to the JSC and yet a report of this House, which is going to be passed, says that the person has a habit of lying under oath. Those are the kind of changes that need to be looked into.

Thank you, Hon. Speaker.

**Hon. Speaker:** Yes, Hon. John Mbadi.

**Hon. Ng'ongo:** Thank you, Hon. Speaker, for giving me the opportunity to contribute to the Report on the audit of the Judiciary. My colleagues have spoken about this Report. I want to put it on record that I attended over 90 per cent of the meetings during which witnesses appeared and testified on this case.

I want to start by indicting Parliament. This debate has come at a time when we have just defeated the Motion on the reconstitution of the Budget and Appropriations Committee. Parliament needs to take the budget-making process seriously. If you look at the areas where we have had high level suspicion of corruption or actual corruption, you will realise the Government agencies, ministries and departments which received unusually large budgetary allocation are the culprits. I will give examples of the National Youth Service (NYS), the Judiciary and the Ministry of Health, which I know my Committee is on. I do not want to go into the details.

My colleagues have spoken to the fact that in the 2010/2011 Financial Year, we had a budget allocation of only Kshs3 billion. In the 2011/2012 Financial Year, the allocation increased to Kshs9 billion. In the 2012/2013 Financial Year, the figure shot to Kshs 16 billion.

When you give such huge sums of money to an institution without, first, ascertaining that it has set up structures and institutions with the capacity to manage those resources, you expose

those resources to corruption. Because I do not have much time to go into the details of this Report, I want to say that what we witnessed is a case of open theft of public funds. There is no two way about it. I will tell you for a fact that the officers who were charged with the responsibility of managing public funds at the Judiciary, led by the Chief Registrar, were on a mission to loot the resources from public coffers and divert them to unknown use. Why do I say so? Right from the constitution of the tender committee, the Chief Registrar of the Judiciary who is allowed by law and the Constitution to set up the tender committee ensured that the committee was not competent enough and did not follow the laid down procedure in terms of the legal framework and the Public Procurement and Disposal Act 2005. For example, the Directorate of Finance which was acting also as the secretary to the tender committee was represented by junior officers and yet there were senior officers qualified to represent the directorate. The reason being, someone wanted compliant officers to sit in the tender committee and make sure that the tenders were skewed to benefit that individual. By the way, this was not the work of the JSC. This was the responsibility of the Chief Registrar of the Judiciary.

That is why sometimes I think that maybe some of my colleagues did not follow through the investigation of this matter. They were wrong when they thought that the Chief Registrar of the Judiciary probably was an innocent officer working in this Department of Government. The Chief Registrar was very clear when she appeared before us. She first said that the Constitution gives her the mandate to manage the Judiciary fund exclusively and she was only answerable to Parliament, Public Procurement Oversight Authority (PPOA) and the National Treasury. She said that she had no any other office to be answerable to including the JSC. So, she was telling us in a nutshell no one else should be asked anything that happened with regard to the accountability of the Judiciary funds. However, when it came to impropriety and financial mismanagement, she turned round and was trying to explain how she was being frustrated, how there was a sub-committee of the JSC that was interfering with her work, but without providing evidence.

Hon. Speaker, the tender committee approved expenditure even without budgetary allocation, something that is unheard of in Government ministries. In fact, it is not only budgetary allocation. Even if you do not have Exchequer issues, the financial regulation does not allow the tender committee to proceed with the tender until it ascertains that money has been released by the Treasury for the same.

It is laughable that when we were investigating this matter, we realised that the Judiciary did not even have a prequalified list of suppliers. Goods running into millions were being ordered through telephone calls. It is shocking. Someone just sits in the Judiciary, makes telephone calls and asks you to go and do a prefabricated house in Bomet or wherever. That was the order of the day in the Judiciary. You can look for some documents and even the contracts may not be found and yet millions of money was released.

Take the case of the Elgon Place where initially, Kshs70 million was spent and up to the time we were investigating this matter, and I believe probably even today, the space has not been utilised. The Kshs70 million was sunk and yet the place is not being used. It is lying there idle because of an improper decision made by some officers.

In the tender document, the space that was tendered for was 34 square feet. Finally, an agreement was done for 47 square feet without even going back to the tender. We know very well what the Public Procurement and Disposal Act says about tender variation.

Someone just sits somewhere and decides that now I need more and probably your guess is as good as mine why this would happen. In Rahimtulla, for example, some second hand furniture which was bought from PricewaterHouseCoopers (PwC) was bought through direct procurement. This is something that is not acceptable. In fact, direct procurement has a provision but with clearly defined parameters. The reasons which would result into direct procurement are spelt out if that is the only supplier for those items. Can you tell me that there can only be one supplier of furniture and it is second-hand? As a matter of fact, the furniture is even second hand.

A deposit of six months was made in advance to a vendor. When we rent our houses, I have never heard of a deposit for six months. Probably the highest I have heard is about two months. Six months is giving resources of Government irregularly, illegally and contrary to the requirements of the Public Finance Management (PFM) Act.

The Containerized Data Centre is another one. Logically, in any institution, whether private or public, you require that the user departments are the ones to initiate the transaction. They are supposed to define what they want. They are supposed to inform the procurement department or any other approving authority that we need this, but for the containerized data there was no request from the user department. Someone just decided that it was necessary and Kshs106 million was spent on that. The vendor even charged Kshs18 million for the three-year warranty. We have all got involved where warranty is required. The question is: Do you, again, pay for a warranty? When I buy, I expect a guarantee from you that whatever I am buying will serve me for some time. Do I, again, pay you for the same?

Excuse me, Hon. Speaker, for one minute. There was change even in the Clerks of the Committee, but we have contradicted ourselves. We are complaining that the Chief Justice and the JSC allowed the Chief Registrar of the Judiciary to do illegal things. However, when they act now, we say: "They are interfering". In my view I think the JSC needs to rein more on the Chief Registrar of the Judiciary so that---

**Hon. Speaker:** Let us have Hon. Joseph Manje.

**Hon. Manje:** Thank you, Hon. Speaker, for giving me this chance to also contribute to this Motion. From the outset, I would like to say that this is a very good document that can go far to mitigate the corruption that we have in the country. This is a situation where the institution that we expected to fight corruption finds itself in a very awkward situation where corruption is taking place right at the centre of the same institution.

I tend to think that when the institution was given this money, it did not have good structures to manage the money. This is because the budget was increased within a very short time. Initially, the budget was about Kshs3 billion. It was increased to Kshs9 billion and then Kshs16 billion. This was done within a very short time without equivalent capacity building the institution. I think the Chief Justice found himself with a lot of money in the institution without good structures to manage the money. The Chief Registrar of the Judiciary was doing procurement by phone. This was terrible. It is the height of corruption that can ever take place in any institution.

In this Report, you will find that the Chief Registrar had a single signatory account and I think that is not acceptable in a public institution. There are some issues that need thorough investigation. There is this procurement situation in the Government where we say Government to Government tendering should not undergo certain procedure of the law. We found that the Chief Registrar of the Judiciary used the Jomo Kenyatta University of Agriculture and Technology Enterprises Services Limited (JKUATES) as a Government institution.

When we went further, we realised that the JKUAT had entered into another agreement with Align architects. The JKUAT was getting only 5 per cent of the proceeds. It then means that this was purely a private organisation and not the university's enterprise organisation as they wanted us to believe. The Chief Registrar and the Judiciary purchased a house that was not properly valued. The official residence of the Chief Justice was bought at Kshs300 million yet there was no valuation. When we visited the house, we realised that it was not worth that much. It was actually being renovated. At that particular time, they were removing the infrastructure and trying to change it. I do not think the Chief Justice is using the house even now. That means the Judiciary is not a well thought out institution.

We also visited some of the installations that were done. We realised that the Chief Registrar spent about Kshs188 million to do the fittings at Elgon Place yet it is not in use. This is wasted money. They also paid rent for two years yet the house was not in use. We are saying that the institution that is charged with the responsibility of fighting corruption in this county found itself in a very awkward situation, where corruption was taking place. We can use this case as a measure of how far we are, as a country, in the fight against corruption. No wonder corruption is taking place at the national and county levels of the Government countrywide.

We also found that the Chief Registrar went ahead and procured leases that were not properly advertised. The advertised areas were different from what was leased, meaning that there was no justification for paying in some areas. We also realised that there was an institution where rent was based on future rates. For instance, there was a negotiated payment for rent in a particular area, but it was paid based on rent of 1<sup>st</sup> July, 2017, a year that is yet to come.

There is also the issue of second-hand items that were purchased by the Judiciary. It is not proper for a Government institution to purchase second-hand furniture. In this particular case, the institution that was mandated to undertake the valuation valued the assets at Kshs32 million, but the Judiciary bought them at Kshs59 million. This means that a difference of Kshs27 million was pocketed by some people. This is not acceptable in this country. This is how deep we have sunk as a country in terms of corruption.

We lost about Kshs2.2 billion in the Judiciary. A sum of Kshs2.2 billion cannot be well accounted for by the Chief Justice. The Judiciary, as the custodian of the law in this country, does not respect the law. Who else can respect the law? Kenyans are asking themselves what alternatives they have other than refusing to pay tax if the Report is not implemented. If people pay tax, but the money is not put into proper use, and the custodian of the law breaks the law, then Kenyans are left with very few alternatives.

Another example I would like to cite in this Report are the prefabricated court rooms that were distributed across the country within a very short time. If you go to Bomet, you will find that they paid about Kshs81 million for prefabricated court rooms, but even before the work was 75 per cent complete, another contractor was given a contract to construct a permanent law court facility at a cost of Kshs688 million. Imagine what this means. Even before the first project was complete, another project was commissioned for the same purpose. When we called the Chief Justice to appear before the Committee to explain the issues that nobody else could have explained, he declined. No wonder, thereafter, he sent receipts to show that he refunded some of the money. We had asked him to appear before the Committee to explain why he had not occupied the house that was bought for him and instead he continued to pay rent. That is a question which only he can answer.

Therefore, as I support this Report, I would like to ask the Committee on Implementation to ensure that the Report is properly implemented, so that our country can change from being corrupt to a good country. I urge those who are corrupt to understand that corruption is stealing. When you engage in corruption, you actually steal from Kenyans. We should collectively ensure that public money is directed to where it is supposed to go. Otherwise, our country will remain impoverished. We will take a long time to grow.

With those remarks, I beg to support.

**Hon. Speaker:** Hon. Jessica Mbalu!

**Hon. (Ms.) Mbalu:** Thank you, Hon. Speaker, for giving me this chance to add my voice to the debate on the Report of PAC.

The Judiciary is one of the arms of the Government that has preached the theory of separation of powers. As a country, we have given the Judiciary three important ingredients of judicial independence, namely, a fair process of judicial appointment, adequate funding and control mechanism as well as respect and support. It is, therefore, saddening that this Report has unearthed massive scandals of looting, coupled with irregular recruitment of staff and failure to comply with the Procurement and Disposal Act.

Millions of shillings have been lost. Numerous sections of the Public Finance Management Act have been violated and most Kenyans' hope of judicial transformation has been betrayed. Some of the findings of the PAC include weak leadership and poor governance structures in the Judiciary and poor work relations between the three wings of the Judiciary, namely, the Chief Justice, the Chief Registrar and the Judicial Service Commission (JSC). There were strained working relations between the Chief Justice and the Chief Registrar. The findings were that the two offices were not working in harmony. The duties of the Chief Registrar could be performed by the JSC. The findings of the PAC are that the provisions of the Public Procurement and Disposal Act have not been adhered to to-date. This could be as a result of ignorance, commission or abuse of office. Kenyans would not want to see inefficiencies in the running of the Judiciary. When we gave the Judiciary sufficient funds and a control mechanism, we expected reforms to be implemented. This country has been saddened by the loss of control in the Judiciary.

Members of the PAC have said much about the transformation framework that has been ignored by the Judiciary. This boils down to the dissatisfaction of most Kenyans. The Judiciary is one arm of the Government where we least expected public matters to be handled in such a manner. We do not appreciate them.

Hon. Speaker, there are actions that we found not to be in line with the Public Procurement and Disposal Act. On Pages 113 to 119 of the Report, it is clear that the Act was violated. Some bills were paid fraudulently. Among the wrong decisions that were made were the renting of office space at the Elgon Place, Mayfair Centre and Rahimtulla Towers. This is a clear indication that the laws were not followed. There was no indication of caring about following the laws that are passed in this Parliament. We found that, either through ignorance or involvement, the Judicial Service Commission (JSC) committed crimes. I am sure the recommendations by the Public Accounts Committee (PAC) are going to be followed.

In future, we want to recommend that every department of the Judiciary should take up its position as the organ that is being watched by Kenyans. We give the Judiciary enough funding and we feel that, in future, we should reduce its budget because we have not seen value for the money that we have given them. The Chief Registrar of the Judiciary (CRJ) and members

of the JSC never performed their duties as expected. As per the recommendations by the Committee, they should be answerable in law. They should tell the country where our money is, why the procurement process was not followed, why some bills were paid without the right documentation, why some laws were not followed and why some officers worked for their personal benefit.

The Report has many findings including payment of allowances to individuals who were not supposed to be paid. The findings were shocking. A lot of money was looted. It was a scandal. As much as we want to fight corruption in this country, irregular recruitments were one of the findings that were very alarming to the PAC. Competence was not considered in the process of recruiting staff. Some members of staff were appointed and lifted from other offices. The institution was ran like a kitchen. There was no discipline. There was no adherence to any Act or law in all the activities including the interconnection between the Judiciary, the Chief Justice (CJ) and the JSC. A lot of money was looted. Most of the JSC Commissioners, as per the findings of the Report, benefitted in questionable ways. We inquired into why some procedures and laws were not followed and why this kind of ignorance was displayed.

The Judiciary is a key organ of the State as the third arm of the Government, which is hinged in the theory of separation of powers. Indeed, the role of the Judiciary has featured in many thoughts of philosophers and scholars and it is a shame for such findings to be made on such an institution. It is a shame for the CJ, CRJ and Commissioners of the JSC not to act in the expected and respected way, which is by following the law.

Some of the findings are very alarming. When you fail to adhere to the provisions of the Public Procurement and Disposal Act, then we are staring at corruption. We rush to the Judiciary when we have any dispute. If the Judiciary is the most corrupt institution, then where are we headed to, as a country? We call upon the members of the Judiciary, CRJ and CJ to be answerable for their actions, face the law and explain to this country why some things happened. This is a detailed Report which any Member in this House should read. As a country, we have been in the limelight on matters of corruption. If corruption cannot be controlled from the Judiciary, then where else do we expect our country to go?

The principles of recruitment should have been followed as dictated by Article 172(2) of the Constitution which requires transparency and competitiveness. This was lacking. As the third arm of the Government, the JSC cannot treat it like a kitchen. We expect the least acts of corruption and violation of the law in the Judiciary.

**Hon. Speaker:** Hon. Members, I am informed that the interest of a number of you that have put requests is to contribute to the next Motion. However, I am told Hon. Julius Melly wishes to contribute to this Motion.

**Hon. Melly:** Thank you, Hon. Speaker, for giving me this opportunity. I rise to support this Motion. I thank the Committee Members who deliberated and came up with a comprehensive Report, especially on the running of the Judiciary.

This Report is very detailed and it took us time to put it together. We visited several installations and institutions in various parts of this country. This country lost billions of shillings because of poor procurement procedures and non-adherence to the rule of law. You will realise that even the prefabricated court houses that were built cost more than even permanent court buildings. There are structures in various parts of this country which are constructed in form of law courts that cost more than a well-constructed court building. Employment procedures in the recruitment of personnel were not adhered to. We have a lot of documentary evidence where

members of the JSC drew allowances not because they had attended meetings, but because it was the order of the day.

Parliament gave the Judiciary a lot of money with the intention of enabling it to dispense justice and to reform it. However, the Judiciary became a cash cow. There are cases where senior members of staff of the Judiciary, who were not supposed to draw allowances equivalent to that of Commissioners, were drawing the same allowances. In fact, in the recommendations, such officers need to be surcharged. There are also instances where valuation reports were not adhered to.

On the purchase of the CJ's residence, the valuer gave a different report, but the purchase price was different. We have cases where Commissioners formed sub-committees and wanted to run the activities of the Judiciary without due regard of the administrator of the Judiciary. In that case, you will realise that Commissioners made decisions and pushed them down the throat of the administrator against the law.

This Report, if well executed, will, first of all, make sure that the judicial system in this country is brought to order. Use of money in various sectors of the Government needs to be diligent. The officers who are in-charge should be taken into account. There are instances where an officer fails to return imprest to the tune of over Kshs10 million and nothing is done. This needs to be followed.

The other issue is on procuring of ICT programmes which stalled. This is one of the issues that we need to follow-up. We should not sit back as public resources are plundered. Our part, as Members of Parliament, is to appropriate money in this House. It is not good - and that is why we are taking blame as Parliament - to appropriate money three or four times to an institution that cannot absorb it. Initially, the budget for the Judiciary was Kshs3 billion, but in two years it shot to Kshs16 billion. In fact, there was low capacity to absorb that budget. This is going to be a pointer to us when we are appropriating money and we should not give a lot of resources to institutions that cannot absorb the funds.

With those remarks, I support.

**Hon. Speaker:** Hon. Onyura.

**Hon. Onyura:** Thank you, Hon. Speaker, for allowing me to contribute to this Motion, which I support. Reading through the Report, you come across certain sections that are really depressing in terms of the kind of wastage of resources. Flouting of rules, particularly procurement rules and misuse of office by officers of an institution like the Judiciary which is expected to play a very important role not just in economic development, but also in the fight against corruption and the stability of the country, is very unfortunate.

From the Report, the matter arose after there were some wrangles between some officers in the Judiciary. Perhaps, it is good this happened because it has allowed us to engage the services of the Auditor-General to audit the Judiciary and also the PAC to investigate the goings on at the Judiciary. I want to commend the PAC for doing a very good job. It is a very detailed report and I hope that even those in the Judiciary who are keen and interested in improving and helping the Judiciary will look at it and flag out the loopholes and the serious structural weaknesses, so that they can then help to improve the Judiciary.

I know that what we are seeing in this Report is fairly similar to what we will see in other Government institutions, namely, very weak and poor procurement processes, poor controls and very weak governance structures. All these need to be strengthened. We should do whatever it takes as Parliament to ensure that the Judiciary is strengthened. Already, through the provision

of funds which rose from Kshs3 billion in the previous year to Kshs16 billion in the year that we are discussing, that was already an indication that Parliament means well to strengthen the Judiciary.

I support the recommendation that those who are mentioned in this Report should be investigated as individuals and then held responsible rather than just lumping everybody together in a group. They should be held personally responsible. The State organs that are charged with investigations should do their work, namely, the Criminal Investigations Department (CID) and the Ethics and Anti-Corruption Commission (EACC). I hope that this time, they will do their work properly as is expected, so that the appropriate action is taken against those who are found culpable. If that does not happen, then we will be looking at such reports with various accusations and allegations and nothing happens and it is business as usual. That will be doing injustice to this country and the taxpayers.

I also notice an issue that we should give top priority. The issue of human resource development within the Judiciary is highlighted in the Report as one of the very weak areas. The Judiciary is not like a factory or plant that has machinery. It depends on the people. They should have the best human resource development systems. However, from this Report, you find that the systems are fairly weak when it comes to issues of recruitment, human resource policies, promotions, deployment and other benefits. This area should be given serious consideration and focus, so that we can have the best brains in the Judiciary. Also, they should be given an opportunity for continues development. I found that to be very weak. In fact, it looks like there are areas of unnecessary overlap between various offices. This is an indication that, perhaps, in terms of the structure, the reporting relationships and job descriptions need clear attention.

There is a whole litany of underlying irregularities in several pages. There are all manner of irregularities from procurement, leases, purchases and in nearly every transaction. This is a very worrying situation and we call upon those who are responsible, the leadership and the whole country to take this Report seriously and take appropriate action.

Hon. Speaker, with those comments, I support the Motion.

**Hon. Speaker:** Do I get the sense that the Mover be called upon to reply?

Mover!

**Hon. (Eng.) Gumbo:** Thank you, Hon. Speaker. First of all, let me start by thanking all my colleagues who have contributed to this Motion, particularly those who proposed useful amendments that have enriched the Motion. I also want to thank the Members of my Committee. As you notice, this was a very voluminous Report. It took a lot of effort from all the Members of the Committee and I do not take it for granted.

In particular, I wish to thank Hon. James Nyikal, my neighbour; Hon. Christopher Omulele, Hon. Makali Mulu, Hon. Manson Nyamweya, Hon. Sakwa Bunyasi, Hon. Amina Abdalla, Hon. John Mbadi, Hon. John Manje, Hon. Jessica Mbalu, Hon. Melly and Hon. Onyura for their useful contribution.

We noticed one area as a point of weakness and this is important because, as a country, we are facing a situation where both the Chief Justice and the Deputy Chief Justice are soon going to vacate their offices. In the Report under observation, you notice that immediately the Judiciary was reconstituted, we had a situation where the Chief Justice, the Deputy Chief Justice and the Chief Registrar of the Judiciary were outsiders from within the ranks of the Judiciary. The fact that we brought completely new people to lead the Judiciary also presented problems with regard to the organisational dynamics of the Judiciary. The idea was to try to revamp the



Judiciary, but I am of the opinion that much as the Judiciary was bad, even if you took a class of students who are all 'E' students, you still will end up with a number one. Similarly, if you take a class of 'A' students, you will still end up with the best.

My request, particularly to the Justice and Legal Affairs Committee is that as we look into the upcoming appointments, let us, please, try also to give a chance to insiders. There are people who have served in the Judiciary for years. Seeing that only outsiders come to lead the Judiciary is not good for the morale. It cannot be possible that among the more than 140 Judges within the Judiciary at the moment, we cannot find somebody who can either be Chief Justice or Deputy Chief Justice. If we feel that outsiders are going to come in with new ideas, let us also try to remember that every human being wants to grow. But if you only bring in outsiders, for example, Hon. (Dr.) Willy Mutunga, Hon. Nancy Baraza and Gladys Shollei--- We had a situation where the entire leadership of the Judiciary was placed in the hands of outsiders. This, in itself, was a problem with regard to how the issues that we have come across came by.

As a country, we also have to rethink the issue of public servants doing business with the Government. When you look through this Report, one of the issues that come across is the vested interest of people who are working within the Judiciary. It may be a difficult call, but this came from the Ndegwa Commission which allowed civil servants to also be doing business. As a country, we must now ask ourselves how much we have gained from allowing this latitude. I wish to, once again, reiterate that some of what we have seen is not good for us as a country. We would have made strides, as a country, and a difference in moving forward if we could learn from these mistakes, correct them and collectively decide that we do not want our country to be run in this way.

Lastly, as the PAC, we are very concerned by the amounts of money that are being allocated to ministries, departments and agencies, which in truth, do not have the capacity to absorb that money. We have seen it in so many ministries. In the Report, you will clearly see that the Judiciary had a problem. Their problem seemed to be looking for what to do with the money that they had. The Judiciary, in a short period of time, found itself with a flood of cash that it did not have an immediate need for and they were just scrounging around looking for what to do with the money. Parliament has been given the role to appropriate money. Let us now be very strict in forcing ministries, departments and agencies to explain to us the programmes on which they want to spend the money that we are allocating to them. Otherwise, if we do not do that, we are going to end up with situations where we are starving needy sections of our country and giving too much money to sections of the country which do not need it.

With those few remarks, I thank all the Members who are here today. I kindly request you to pass this Motion, so that we can have a turning point with regard to how we deal with issues affecting our country.

I beg to move.

**Hon. Speaker:** Hon. Members, I will put the Question with regard to the Motion as amended. That is what the Mover began by saying. I have confirmed that we have the necessary quorum.

*(Question of the Motion as amended put and agreed to)*

*Resolved accordingly:*

THAT, this House adopts the Report of the Public Accounts Committee on the Special Audit Report of the Judicial Service Commission (JSC) and the Judiciary of May, 2014, laid on the Table of the House on Tuesday, 7th July, 2015, subject to;

(i) deletion of recommendation number 2 appearing on Page 136 of the Report;

(ii) deletion of recommendation number 4 appearing on page 136 of the Report, and substituting therefor with the following –

“The various Commissioners of the Judicial Service Commission must take personal responsibility for allowances paid to them for attending meetings that were convened without the knowledge and approval of the Chief Justice. An audit of all such meetings should be undertaken and the responsible Commissioners surcharged”;

(iii) deletion of recommendation number 5 appearing on Page 136 of the Report”;

(iv) deletion of recommendation number 19 on Page 139 of the Report, and substitution thereof with the following:-

“The security upgrades implemented by Mr. Simiyu Werunga, a security consultant and contractor, should be subjected to detailed audit by an independent security consultant, working jointly with relevant departments of the Government, and any sums paid over and above fair market value be claimed from the consultant/contractor”;

(v) insertion of the following words immediately after the words “Administration Committee of the JSC” appearing in the recommendation number 20 on Page 139 of the Report:

“Commissioners Smokin Wanjala, Mohammed Warsame, Ahmednassir Abdullahi, Rev. Samuel Kobia, Christine Mango and Emily Ominde”;

(vi) insertion of new recommendation number 23 on page 140 of the Report as follows:-

“23. That the Judicial Service Commission forthwith desists from interfering with the financial administrative and operational functions of the Judiciary; and further that National Assembly through the Departmental Committee on Justice and Legal Affairs, undertakes an urgent review of the Judicial Service Act 2011 to address through statute, the unlawful encroachment of the Judicial Service Commission into the administration of the Judiciary which falls outside of its mandate under Article 172 of the Constitution of Kenya”;

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

**Hon. Speaker:** Hon. Members, just like we did with the Report that we have just adopted, for purposes of convenience of the House, since there are some proposed amendments, I would direct that when the Mover moves and is seconded, so that the House will have Members contributing to the Motion knowing what it is exactly, we will ask for the amendments to be moved. There are two proposed amendments by Hon. Washiali and Hon. Ichung'wah. After

seconding, we will move in the direction that the first of those amendments be moved, so that then the House can express itself on the proposed amendments and make a decision one way or the other. Thereafter, we will go to the next proposed amendment, debate it and make a decision one way or the other. The same rule will apply in terms of contributions to the proposed amendments. That should be borne in mind.

I have in mind the Member for Seme who was worried last week that he would be excluded. Those who will contribute to the amendments will still retain their right to contribute to the Motion either as amended or in its original form, depending on how the House decides to proceed. The Chairman of the Departmental Committee on Agriculture, Livestock and Co-operatives, proceed.

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

THAT, this House adopts the Report of the Departmental Committee on Agriculture, Livestock and Co-operatives on the crisis facing the sugar industry in Kenya, laid on the Table of the House on Thursday, 12<sup>th</sup> March 2015.

Hon. Speaker, this Report arises from the Petition by the Western Development Initiative Association on the imminent collapse of the sugar industry in Western Kenya. The Committee, out of its wisdom, while investigating the issue raised by the Petitioner, undertook a sample investigation into the status of the sugar industry in Kenya with a view of finding a lasting solution and making recommendations to salvage the industry and save losses incurred by over 6 million Kenyans across the country who are eking their livelihoods out of the sugar sector.

The terms of reference of the Committees' investigation are as follows:

- (i) Investigate and inquire into the current status of sugar industry in the country.
- (ii) Investigate and inquire into the issues of cheap imports of smuggled sugar into the country.
- (iii) Investigate and inquire into the alleged export by Mumias Sugar Company between 2006 and 2012.
- (iv) Look into the sugar market which has contributed to the crisis faced by the sector and report the findings of the Committee to the House.

The Committee identified the challenges which the sugar industry is facing as follows:-

First and foremost, the sugar industry is faced with high cost of production. This gives room for smuggling of sugar from outside markets and this dumps sugar into this country.

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

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

Hon. Temporary Deputy Speaker, low productivity is another issue that we realised. Soil degradation and demoralisation of farmers, insufficient extension services and inefficiency in sugarcane harvesting are the other issues.

Due to the high cost of production, small-scale farmers do not enjoy the benefits of economies of scale. The other issue is the danger of the land system where sub-division of small holders thrive thus diminishing the land available for farming. We also observed the issue of the management of outgrower institutions where millers are forced to take up sugarcane

development initiatives themselves. The Committee also observed the issue of mismanagement of milling factories leading to inefficiency of the institutions. There was also cheap sugar and unregulated sugar imports into the country, failure to enforce legislation on licencing of millers and importers leading to the licencing of too many millers in close proximity in disregard to the law and the capacity that is already established by the existing mills. There was also inefficiency by the Kenya Revenue Authority (KRA) and other security agencies in stopping smuggling of sugar through the border posts and entries.

Allow me to enumerate the various findings of the Committee. The first issue is the presence of cheap and unregulated sugar in the local market. The Committee established that huge quantities of sugar are entering into the market, which is unregulated and untaxed. There are issues of illegal sugar coming into the country. It is illegal in the sense that we have a COMESA quota which is supposed to fill the gap between sugar production and consumption deficit in this country. However, sometimes, the regulators issue licences or permits to importers at the wrong time when there is a lot of sugar in the market. On the other hand, they do not make follow up after issuing licences. Sometimes, these licences are misused. If an importer is allowed to import 10,000 metric tonnes of sugar, he imports two or three times that amount. The 200,000 metric tonnes that should be imported to supplement local production as per the consumption level is overdone and it floods the market. That is with regard to the sugar that is imported legally as per the COMESA rules of trade. It is misused because it is not guided properly.

The other issue is illegal sugar that people bring in and declare it as rice or sometimes as fertilizer. The KRA officials collude with importers, so that they do not identify these commodities and proper taxes are not paid. It becomes very difficult for the local sugar to compete with sugar which has not been taxed. The production cost of sugar in the countries of origin is very low and so, locally produced sugar cannot compete with imported sugar. In the last six years, the country has consumed approximately 335,000 metric tonnes of sugar according to the Kenya Bureau of Statistics (KBS) statistics.

The other issue is the misuse of industrial sugar which is brought in without taxation. The sugar is supposed to be for industries. It is brought in without proper taxes being paid and it is repackaged and used as table sugar. If you go to our Five Star hotels, you will find the repackaged industrial sugar. This is another difficult area which requires to be checked in terms of over flooding our market. The other issue is that the regulator, namely, the Kenya Sugar Board (KSB), has not followed the proper channel of regulating importers. After issuing certificates, KSB's mandate would be to follow up, see how much sugar has been brought in and whether what has been brought in is in accordance to the permit that they issued. There is lack of coordination between the KRA and the KSB, which issues permits. In the process, the businessmen find a loophole that enables them to use the permits for more than three years to import the same quantities of sugar.

The other issue is sugarcane poaching as a result of the regulator not checking the regulations when they issue permits or licences to build mills. Mills are supposed to be built within certain proximities. They do not follow the rules. Before they issue permits to millers, they should check development of their cane before the nuclear estates. This has skewed the distribution of raw materials because of the proximity of the millers. That tempts the millers to poach sugarcane while they have not given farmers loans to develop cane. They only come and start harvesting cane that has been developed by other millers through their loans or their nucleus. That also brought a lot of problems in the sugar sector.

I have talked about the repackaging and contraband in the sugar sector, which is also found substantially in the amount of illegal sugar that is imported and repackaged in the local brands, bags and sealed identity evading the surveillance of the people who are supposed to check the identities. The other issue is about floating sugar import licences. Several companies, for example, the Rising Star, which have been licensed to import sugar were found to be importing sugar beyond the approved quantities. They have denied the KSB access to their godowns or warehouses to verify whether the quantities in stock are what the KSB has licensed.

The other issue is compromising of customer safety. When KRA impounds sugar for one reason or the other, they just auction it without calling in the Kenya Bureau of Standards (KEBS) to find out whether it is fit for human consumption. When KRA auctions instead of destroying the impounded sugar, it still ends up flooding the market and reducing the capacity for the local market to absorb that sugar. So, the disadvantage of impounded sugar is that, first, it compromises the consumers' safety in a sense that it has not been verified by KEBS and secondly, it saturates the market because of the release of sugar by the KRA.

The other issue that we have identified in the sugar sector is illegal entry points in terms of porous borders like in North Eastern, Western and Nyanza regions. Sometimes, it happens in areas like in Shimoni, which is not a gazetted entry point. The KRA officials and police officers watch as sugar is being brought in without duty being paid.

The Commissioner of Customs came before the Committee. When asked him why they could not verify the containers that bring in sugar which is declared as rice, they claimed that they have no capacity to do so, which is not satisfactory because scanning machines have been purchased for them to do the same job.

Hon. Temporary Deputy Speaker, they said that they cannot check and verify 100 per cent the commodities that are being declared. I have talked about the KSB, which does not follow proper mechanism in licensing of millers and enforcing importation rules. They also have a problem of manpower at every entry point. We also have inspectors from the KSB.

The other issue is the Sugar Development Levy Fund (SDLF), which the KSB is supposed to be disbursing for sugarcane development. The cane development scheme is against its own regulations and the KSB disburses money to millers without cane development. Sometimes a miller may not even have land on which to plant cane in the nuclear areas to sustain their own farms, but they are given money for cane development. It is, therefore, difficult to confirm where such millers take the money meant for cane development.

The final issue is on inter-regional trade and the rules of origin. Sometimes you find that even in the Common Market for Eastern and Southern Africa (COMESA) or the East Africa Community (EAC), countries like Uganda and Rwanda have no regulatory institutions which can sit with the KSB or the Agriculture, Fisheries and Food Authority (AFFA), which are regulatory bodies in our case, to develop rules of engagement. That is why you find that there is a tug-of-war between Kenya and Uganda in terms of sugar. We sometimes suspect that Uganda has no sufficient sugar to export to Kenya. They repackage transit sugar and export it back to this country. They have nobody to engage with in regulating such issues.

The other issue which I have mentioned is about the diminishing land size because of lack of land good policies. Land is being subdivided every now and then. Sugarcane farming is diminishing in this country. It is becoming difficult for farmers to enjoy economies of scale in this sense. Another thing we have noticed is the need to modernise sugar factories. Some factories sometimes perform very poorly. Most of the Government-owned sugar millers have

been obsolete for many years. We have recommended fast-tracking of the privatisation of the five Government-owned sugar mills.

The last issue is on farm inputs like fertilisers. Every sugar miller imports their own fertilisers and sells it to the farmers at very exorbitant prices. We thought that there should be some kind of mechanism for ensuring bulk procurement of items like fertiliser and farm machinery.

The Committee recommendations are as follows :-

- (i) That the Government establishes a permanent inter-agency enforcement unit on sugar trade to enhance Government's capacity to scrutinise, verify and monitor cross-border sugar trade in addition to setting up a border patrol unit to eradicate sugar smuggling into this country. The units should be drawn from institutions like the Kenya Ports Authority (KPA), the Ministry of Health, the AFFA – which is a regulatory body; KEBS, the Kenya Police Service and the KRA.
- (ii) The KRA officers be investigated and appropriate action taken against officers who clear sugar dealers without regular permits from the regulator. Any company that imports sugar without a permit from the regulator should be banned from importing sugar into this country anymore.
- (iii) The Reinforcement of repackaging of unregulated sugar to ensure consumer safety and that KEBS be held responsible for failure of preventing abuse of seal, which is supposed to be in their safe custody. The standard measures for safety of goods in the country have consistently been abused. Their seal is stolen and everything is stamped as having been inspected by the KEBs. How the stamps get out of their custody and are misused by others is yet to be questioned.
- (iv) Relevant laws and regulations governing sugar imports and exports should be amended to provide for high accountability and public health standards for repackaging of sugar and for stiffer penalties for the offenders. The Government should cancel import licences for the following companies which have used industrial sugar as table sugar by repackaging it: Kenafric Industries, Czarnikow East Africa Limited, Stuntwave Limited, Mshale Commodities and Rising Star Commodities.

We found that these companies are repackaging industrial sugar for the purpose of table sugar.

- (v) The Government implements the Sugar Industry Strategic Agenda for increased competitiveness and reduction in consumer prices. There is need to lower production costs, improve extension services among the farmers to reduce and eventually eliminate the incentive to smuggled sugar into the country. When we control our prices and reduce the cost of production, obviously, the price of sugar will come down and this will stop the temptations of illegal importation of sugar across the borders.
- (vi) The national Government in collaboration with the county governments should provide mechanisms for coordinated infrastructure development to avoid duplication of responsibility by different bodies mandated to maintain roads.

Hon. Temporary Deputy Speaker, Sometimes, farmers carry the burden of maintaining roads when it is the SDLF, KeRRA and the CDF which are supposed to maintain these roads. This seems to be uncoordinated. Therefore, we recommend that the two levels of Government, namely, the national and county governments, should coordinate and develop infrastructure for cane farmers.

- (vii) The national Government should implement the National Land Policy to mitigate further land sub-division to improve productivity.
- (viii) Fertiliser subsidy be implemented by bulk procurement of other farm inputs and capacity utilisation which should be done by the sugar directorate.
- (ix) Investigations should be carried out on Mumias Sugar Company and its agents, the KRA and all importers, the agents who purported to have imported or exported sugar from Mumias Sugar Company for the period between 2006 and 2012 and appropriate action taken against them.
- (x) The KRA should be held responsible for the loss of Value Added Tax (VAT) amounting to Kshs577 million for fictitious exportation of sugar by the Mumias Sugar Company.
- (xi) Any officer from the Board and management of Mumias Sugar and KRA responsible for fictitious exportation of sugar between 2006/2012 be held responsible for abuse of procedures and abuse of office.
- (xii) The national Government introduces landing certificates for all transit sugar as confirmation of physical existence to stop any dumping of sugar into the local market.
- (xiii) The Government should consider offering tax breaks to encourage new investors into the sugar industry. Additionally, a duty waiver for the sugar industry farm inputs and farm machinery will go a long way towards reducing the high cost of sugar production in this country.
- (xiv) That, KPMG having provided a disclaimer as to the accuracy of the Draft Factual finding Report, Mumias Sugar Company avails with immediate effect the final KPMG Report to the National Assembly. However, the Committee took cognisance of the same KPMG Report.
- (xv) Officers from Mumias Sugar Company and the KRA who abused import and export procedures with regard to import permit requirements in the importation of 10,000 metric tonnes of sugar in 2012 from Sudan be held accountable for their misdeeds.

Mumias Sugar Company is supposed to produce sugar and how it ended up importing 10,000 metric tonnes of sugar in 2012 is questionable while it should have been producing sugar and promoting sugarcane farmers through buying canes from them. They stopped producing and bought sugar like ordinary traders from the outside market. They are competitors in the market. That is disastrous. Finally.

- (xvi) That Delloite & Touche audit firm be held responsible for misleading the Government, other shareholders and public on the state of affairs in Mumias Sugar Company during the period of their engagement as auditors.

Hon. Temporary Deputy Speaker, Mumias Sugar Company has been having a lot of liquidity problems, but this has been covered up by fake audit reports which have been misleading. The audit firm must be held responsible. Delloite & Touche is an international

reputable organisation, but how they colluded with the management of Mumias Sugar Company to produce fake reports is something that needs to be investigated.

With those remarks, I beg to move. I call upon Hon. Wanyonyi, a Member of the Committee, to second.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Proceed, Hon. Wanyonyi.

**Hon. F.K. Wanyonyi:** Hon. Temporary Deputy Speaker, I rise to second the Report ably presented by our able Chairman. He has made a number of observations which, in my view, are accurate. That is what we have discussed in the Committee.

First and foremost, this Report is long overdue. All the over the world, people are very anxious, particularly in Western Kenya, where the sugar industry has been in a crisis for quite some time. As ably presented by the Chairman, our observations include the fact that this country has been importing a lot of sugar, which is not supposed to be on the table in Kenyan households. Some of it is industrial sugar, which is repacked, brought in and competes with table sugar.

Secondly, apart from this sugar competing with the local sugar, we have established that the Kenya Government has been losing a lot of revenue in terms of taxation. Some of the importers are unscrupulous who evade taxation.

We have also observed that the wrangling in Western Kenya is as a result of the KSB licensing factories within certain zones. It has been found that the KSB has been issuing licences to millers who are very close to each other, either out of greed or out of reasons best known to them. We shall discuss this matter in detail. That is why we have been having problems in Western Kenya. Factories fight among themselves just because some licences have been given to factories that are not supposed to have been licenced. There is a lot of infighting between factories in Western Kenya because of improper way of licencing those factories.

Thirdly, for a factory to be licenced, it must prove its effort to have its own nucleus of farms or at least get some farmers to produce cane for the factory. However, because the factories are just licenced, they start encroaching on other factories' farms. That has brought a lot of infighting which has caused loss of business in the region. Therefore, cane poaching is one of the reasons we found to have plunged the sugar industry into crisis.

There are challenges that were mentioned by my Chairperson, one of which is the repeated planting of sugarcane year in, year out. The soil gets degenerated and, therefore, production is very low. As the Chairperson of the Committee mentioned, farmers are demoralised because they are supposed to be given extension services by the millers, but some of the farmers do the work on their own. So, production has been going down year in, year out. The cost of production is also high. Because of population pressure, you will find that a small farm of about 40 acres has been subdivided into six or more portions. Therefore, economies of scale cannot be applied and production has been going down.

The other problem is cheap imports. Some people import cheap sugar which is repackaged to conceal the identity of the country of origin. The imported sugar competes with our locally produced sugar and the Government loses in taxation. The other problem that we have is in terms of declaration. There are some entry points through which sugar comes into the country and the KRA, the Kenya Ports Authority (KPA) and the police are aware. A visit by the Committee to Shimoni at the Coast found that sugar from outside passes through that point. The Customs Department, the police and the KSB are aware of that entry point. Sugar coming into the country through Shimoni is the cause of the crisis we have been having.



The other problem is lack of coordination. We found out there is no coordination between the KSB, KRA and the KEBs. It is a situation in which one hand does not know what the other hand is doing and yet these are all Government agencies. No agency knows what the other agency knows. In fact, on our visit to Mombasa, we wanted to inspect one of the warehouses managed and supervised by the police, but we were not able to get in. When we went back the following day, we were denied entry. This means that most of these crises are done in the clear view of Government officials. That is why I have said there is no coordination between KRA, KEBS and KSB.

The other issue that I want to talk about is the miscellaneous licences which, of course, have caused a lot of problems in our area. Without due regard to the local production, licensed people are importing sugar in this country irregularly which is supposed to compete with our local sugar. I know, for sure, that sometimes they have to check whether we have enough stocks or not, but we get licensed sugar by some of the people that the Chairman has mentioned. They import sugar without due regard to what is happening locally. Therefore, that is one of the reasons why there is that crisis.

Lastly, and not least, is the issue of the Sugar Development Levy Fund (SDLF). We called in the CEO to explain how this money was disbursed. We did not get satisfactory answers because money was given out without a proper plan. They could not say which particular schemes the funds had developed. The money was just given out. Funds from the SDLF were given out without any proper plan. Again, that has been one of the causes of the crisis in the region. I also want to mention the destruction of the imported sugar. The destruction of impounded sugar is not properly done because some people have interests. Therefore, instead of destroying the sugar in public, some of the interested parties get the same sugar and it is re-circulated to the public.

Those are some of the few reasons why we have this crisis in the sugar sector in Western Kenya. I second the Motion. I believe the Report is going to assist us to sort out some of the problems in the sugar industry.

I second.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): You second, but in future speak to the Report and not to other issues.

*(Question proposed)*

Hon. Members, I have some amendments by two Members. Before then, can I give a chance to one Member to comment? Hon. Chris Wamalwa.

**Hon. Wakhungu:** Thank you, Hon. Temporary Deputy Speaker. This is an important Report, but I think there was a ruling that we do the amendments first before we debate. I was here to contribute.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): The Member wants to speak on the amendments, which is fine and okay. We are all ready. Hon. Members, we have two amendments and the first one is from Hon. Kimani Ichung'wah.

**Hon. Ichung'wah:** Thank you, Hon. Temporary Deputy Speaker. I have consulted with the Chair of the Committee and being a Member of the Committee, the provisions of the amendment that I had are adequately catered for in the body and text of the actual Report. Hon.

Washiali's amendments have also covered the specific areas that I had interest in. After consultation with the Chair, we, therefore, agreed that I withdraw those amendments.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Hon. Members, the amendments by Hon. Ichung'wah remain dropped. Hon. Members because this is a House of procedures and rules, the other amendments will be carried to the next sitting.

*(Hon. Ichung'wah's amendment withdrawn)*

### ADJOURNMENT

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Hon. Members, the time being 6.30 p.m. this House stands adjourned until Wednesday, 17<sup>th</sup> February 2016 at 9.30 a.m.

The House rose at 6.30 p.m.