

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Tuesday, 23<sup>rd</sup> June 2015

The House met at 2.30 p.m.

*[The Deputy Speaker (Hon. (Dr.) Laboso in the Chair)]*

### PRAYERS

### PAPERS LAID

**Hon. A.B. Duale:** Hon. Deputy Speaker, I beg to lay the following Papers on the Table of the House:-

The Office of the Controller of Budget Third Quarter County Governments Budget Implementation Review Report for the 2014/2015 Financial Year.

The Annual Report and Financial Statements of the Salaries and Remuneration Commission for the 2013/2014 Financial Year.

The Annual Report and Financial Statements of the University of Nairobi for the year ended 30<sup>th</sup> June 2014.

The Annual Report and Financial Statements of the Transition Authority for the year ended 30<sup>th</sup> June 2014.

The Annual Report and Financial Statements of the Kenya National Bureau of Statistics for the year ended 30<sup>th</sup> June 2014.

The Report of the Auditor-General on the Financial Statements of the Kenya School of Monetary Studies for the year ended 30<sup>th</sup> June 2014 and the Certificate of the Auditor-General therein.

The Annual Report and Financial Statements of Kenya Reinsurance Corporation Limited for the year ended 31<sup>st</sup> December 2014

Thank you, Hon. Deputy Speaker.

**Hon. Deputy Speaker:** Chair of the Budget and Appropriations Committee.

**Hon. Musyimi:** Hon. Deputy Speaker, we have been meeting all morning. The necessary documentation is not yet ready. I request that you allow us to do it by 4.35 p.m. when, hopefully, the documents will be ready. We have done all that we could this morning. We are still waiting for some communication from the National Treasury; they are yet to get to us. So, there is a bit of work to be done to perfect the documentation.

Thank you, Hon. Deputy Speaker.

**Hon. Deputy Speaker:** Because of the importance of that document, we will allow you to Table it when you are able to do so.

**Hon. Musyimi:** I am much obliged, Hon. Deputy Speaker.

**Hon. Deputy Speaker:** Hon. Chanzu, are you on a Notice of Motion?

**Hon. Chanzu:** No, Hon. Deputy Speaker.

## STATEMENT

### GUIDELINES ON YOUTH EMPLOYMENT SOUGHT

**Hon. Nyamweya:** Hon. Deputy Speaker, the concern that I want to raise is about the National Youth Service (NYS). I come from Kisii County, where we have had issues of youth being employed by the NYS. The idea of creating jobs for the youth is good but there is no criterion for employing the youth. For example, in Kisii County, the youth being employed are from Kitutu North, Kitutu Chache and Bonchari. Those of us from other parts of the county are in the dark; we do not know what is happening. It is, therefore, important that a policy guideline is provided in order for us not to guess what is happening on the ground. We need to understand what the national Government is achieving, so that we can support the idea of helping the youth to get jobs. As you are aware, we do not have jobs for the youth. Job opportunities are very scarce. Therefore, we would like to have equity. The youth should be employed from all the constituencies.

**Hon. Deputy Speaker:** You have made your point, Hon. Nyamweya.

**Hon. Nyamweya:** Thank you, Hon. Deputy Speaker.

**Hon. Deputy Speaker:** Hon. Members, you will remember that we now have a new system of prosecuting Statements. I would like to ask you to use the channels of writing a statement request, or question, and presenting it to the relevant office. It shall then be prosecuted for the Cabinet Secretary (CS) herself to come and give us answers to the questions raised. With respect to the issue of criteria, I would not want us to debate it at this point because we will want the CS to give us the full criteria.

Are you on a point of order, Hon. Wandayi? Please, hon. Members, let us not go into this matter. Let us allow the process that we have adopted in this House to take its course. What is it, Hon. Wandayi?

**Hon. Wandayi:** I rise on a point of order, Hon. Deputy Speaker. I have been prompted by Hon. Nyamweya's sentiments. I intend to move an adjournment tomorrow to discuss the matter of the NYS. Without pre-empting debate, the issue that I want to raise is the fact that the NYS is currently embroiled in a very serious circus, which if not addressed by this House---

**Hon. Deputy Speaker:** Hon. Wandayi, I was trying to see whether you are on the same point that has been raised by Hon. Nyamweya. I have given my guidance on that one.

**Hon. Wandayi:** Hon. Deputy Speaker, they are related.

**Hon. Deputy Speaker:** Hon. Wandayi, if they are related, they will be addressed when the CS comes to respond. That was the reason why we stopped the "drama", I may use those words on the Floor of the House. We are agreed on the process to be followed. So, let that process take place. All the questions or concerns that you may be having can be addressed then.

Next Order!

Hon. Members, we are very blessed today to have very many visitors in our galleries. In the Speaker's Gallery, we have pupils from Uthiru Genesis Primary School from Kikuyu Constituency, Kiambu County. In the Public Gallery we have pupils from Thimago Boarding Primary School from North Mugirango Constituency, Nyamira County; students from Kerwa

Secondary School from Kikuyu Constituency, Kiambu County, and pupils from Mumbuni Boys High School from Machakos Town Constituency, Machakos County.

They are all welcome to the National Assembly.

Hon. Members, before we proceed to the next Order, I have a communication.

### COMMUNICATION FROM THE CHAIR

#### GUIDANCE ON CONSIDERATION OF PRESIDENTIAL MEMORANDA ON BILLS

Hon. Members, you will recall that on Tuesday, 16<sup>th</sup> June 2015 the Chair issued a guide on the manner of considering Presidential Memoranda on Bills concerning county governments. Article 115 of the Constitution requires that any amendment to the President's recommendations, or a total rejection of the recommendation, should be supported by a vote of at least two-thirds of the Members of the National Assembly. In the consideration of Presidential Memoranda, the Constitution provides for three possible outcomes from Parliament:-

1. Parliament may amend the Bill, in light of the President's reservations and recommendations.
2. Parliament may pass the Bill a second time without amendments. This requires a simple majority in both Houses.
3. Parliament may pass the Bill with amendments that do not fully accommodate the President's reservations and recommendations.

The first and the third outcomes require a vote supported by at least two-thirds of the membership of the National Assembly – that is 234 Members. During Committee of the whole House, any amendment that may involve deletion, insertion or substitution of any of the words proposed by the President, or a total rejection of any of the President's reservations and recommendation should be subjected to the two-thirds majority rule.

Hon. Members, there is a Supplementary Order Paper, which you should have been presented with. We are now moving to the Supplementary Order Paper.

### PROCEDURAL MOTION

#### REDUCTION OF PUBLICATION PERIOD

**Hon. Musyimi:** Hon. Deputy Speaker, I beg to move the following Procedural Motion:-

THAT, notwithstanding the provisions of Standing Order No.120, this House resolves to reduce the publication period of the Appropriation Bill (National Assembly Bill No.32 of 2015) from seven days to six days.

Hon. Speaker, this matter is fairly straightforward. We need to pass this Bill and forward it to the President for assent not later than 27<sup>th</sup> June 2015. Time is not on our side. We have taken long to discuss the Bill, as a committee, partly because it came to us late. We have burned the midnight oil and done all we can to make sure that we are within the constitutional timeframe. As I said earlier, we still do not have certain information. We are still waiting for it

from the National Treasury. It will really help if this House shortens the period; so that we can put this matter behind us by Sunday this week.

I beg to move and request the Leader of the Majority Party to second.

Thank you, Hon. Deputy Speaker.

**Hon. A.B. Duale:** Hon. Deputy Speaker, this is a very straightforward matter. We have dealt with the Budget Estimates, both for revenue and expenditure. Our colleagues in the Senate are dealing with the County Revenue Allocation Bill, which I hope they will bring to the National Assembly as soon as possible.

Regarding the Appropriation Bill, the law is very clear on the deadline given to the National Assembly. The date is specifically 27<sup>th</sup> June, which is next Saturday. So, we felt that we should reduce the publication period of the Bill. The Budget and Appropriations Committee Chair will consult the National Treasury and his Committee tomorrow. Without anticipating its discussion, the House Business Committee (HBC) will tomorrow prioritise the Bill for the second and final reading before Thursday. So, this is a straightforward matter that we need to dispose of, so that we can remain with the Finance Bill – which we have to pass within 90 days from the date the Cabinet Secretary presented the Budget highlights to this House. It is a straightforward matter; we will remain with only the Finance Bill, for which we have 90 days from the date the Cabinet Secretary for the National Treasury presented the Budget Estimates.

I beg to second.

**The Deputy Speaker:** Order, Hon. Members! Order, Hon. Mbadi, a senior Member!

*(Question proposed)*

*(Question put and agreed to)*

Next Order!

## **BILL**

### *First Reading*

#### THE APPROPRIATION BILL

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

Next Order!

## **COMMITTEE OF THE WHOLE HOUSE**

*(Order for Committee read)*

*[The Deputy Speaker (Hon. (Dr.) Laboso)*

*left the Chair]*

## IN THE COMMITTEE

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

### AMENDMENTS RECOMMENDED BY H.E. THE PRESIDENT TO THE PUBLIC AUDIT BILL

**The Temporary Deputy Chairman** (Hon. Cheboi): Order, Hon. Members! We are now going to deal with the amendments recommended by His Excellency the President to the Public Audit Bill, National Assembly Bill No.38 of 2014. Hon. Members, you are aware that the guide on how we will be handling this matter has just been communicated by the Deputy Speaker. Therefore, we will proceed in that manner.

I can see a few Members on points of order. Hon. Mulu, what is out of order? We have not even started.

**Hon. Mulu:** On a point of order, Hon. Temporary Deputy Chairman. Thank you for giving me a chance.

I would like to get a guideline on a matter which I think is important to this Bill. This is the issue of the presidential amendments. The law requires that we get, at least two-thirds, to either amend or reject the proposals.

The reason I seek your guidance is that, in terms of the procedure, are we not then required to make sure that at the time we start debating this particular item, we have two-thirds of the Members in the House?

**The Temporary Deputy Chairman** (Hon. Cheboi): Not at all, Hon. Mulu.

**Hon. Mulu:** If that is not the case, Hon. Temporary Deputy Chairman---

**The Temporary Deputy Chairman** (Hon. Cheboi): No! No! You have sought a guideline on that particular one. The best time you should have sought a better guideline---

**Hon. Mulu:** Can you allow me to qualify my statement?

**The Temporary Deputy Chairman** (Hon. Cheboi): Order, Hon. Mulu! You have sought a guideline and this is something that we can quickly dispose of. It would have been better handled when the Deputy Speaker issued the guideline. The only thing which I can tell you is that there is absolutely no reason why we should require two-thirds at this point in time. We are at the debating stage and, therefore, there should be no requirement for two-thirds at this point in time. If you decide, as Members, that you want to change the particular proposals by the President, then you will require the two-thirds majority, which is 233 Members or thereabout. That is the position, Hon. Mulu. What we need to do now is to quickly proceed. If there will be any need for anybody to move an amendment that is when we will establish whether we have the requisite quorum.

Hon. Mulu, let me hear if there is anything else that is not clear to you. We are not going to take a lot of time on this because we want to proceed.

**Hon. Mulu:** Hon. Temporary Deputy Chairman, I will be very brief on this matter. This is a very important matter to this House. Unless we are saying that any amendment by the

President after the House has done the necessary legislation cannot be challenged - which will be running away from our responsibility - I wanted to raise this issue when the Deputy Speaker was on the Chair, but I did not get the chance. As you know, the Deputy Speaker's Communication is normally not challenged; raising a point of order when the Deputy Speaker has just given a statement is very tricky to us, as Members of Parliament. This is a very important requirement. If we are serious in terms of making laws, and ensuring that our power to make laws is not taken away by the President, this is a matter which needs to be addressed properly.

*(Loud consultation)*

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. Mulu, unfortunately or fortunately, we are dealing with the Constitution. That is what the Constitution states. As to the pros and cons of that, that is not up to us today. If anybody has a major issue, they simply need to amend the Constitution. That is the position. As long as we are debating and agreeing with the recommendations from the President, we only require a simple majority. That is why I do not agree with you totally when you say that there is nothing that we can do. There is something that you can do for as long as you can raise the numbers. It is as straight as that. I am going to only entertain one more point of order from Hon. Ochieng. That will be the end of it. We really want to go to the substantive bit.

**Hon. Ochieng:** On a point of order, Hon. Temporary Deputy Chairman. Thank you for entertaining me on this.

Following the ruling, which I do not intend to challenge at all, the issue that keeps arising is what happens in cases where the referrals by the President, on their face, are not constitutional? What happens where the referrals by the President do not meet the requirements of the Constitution? For example, the Office of the Auditor-General is one of the independent offices that are governed by very clear provisions in the law. This office should not take directions in doing what they are supposed to do. They are not supposed to be directed by anybody.

**Hon. A.B. Duale:** On a point of order, Hon. Temporary Deputy Chairman.

**Hon. Ochieng:** Hon. Temporary Deputy Chairman, I am on a point of order.

**The Temporary Deputy Chairman** (Hon. Cheboi): Please proceed and finalise. I am listening to you.

**Hon. Ochieng:** In Moi University, we were taught manners.

**The Temporary Deputy Chairman** (Hon. Cheboi): I am listening to you now. You are totally out of order, hon. Ochieng. I have given you the Floor and you cannot use it to---

**Hon. Ochieng:** Thank you, hon. Temporary Deputy Chairman.

My point is: Why would we proceed with a fact when we know very well that even after passing the law, anybody can go to court and bring it to an end? This is the problem I have. This Parliament should not act in vain.

**The Temporary Deputy Chairman** (Hon. Cheboi): Whether we do things constitutionally or otherwise, it is not totally out of order for any citizen to go to court. However, what I am saying is that we are simply following the Constitution. If there is an issue, raise the two-thirds and it will be amended. It is as easy as that. Hon. Members, our hands are tied.

**Hon. Ochieng:** Hon. Temporary Deputy Chairman, that is not my point.

**The Temporary Deputy Chairman** (Hon. Cheboi): What is the point?

**Hon. Ochieng:** I am not talking about two-thirds. I want to make this very clear. I am talking about what you, as the Chair, would entertain in terms of whether what is being debated meets the threshold of the same Constitution you are saying we must follow.

**The Temporary Deputy Chairman** (Hon. Cheboi): At this particular point in time, that one will be entertained by the court. It will make a determination on whether these issues are constitutional or otherwise.

Before I give a chance to the Leader of the Majority Party, let me give a chance to the Minority Whip, so that he can sum it up. I think it is proper that way. That will be the end. I am only entertaining two Members and then we proceed. I am not giving the chance to the Chairman but the Minority Whip. Proceed, Minority Whip.

**Hon. Wakhungu:** Thank you, hon. Temporary Deputy Chairman. I am looking at Article 94(1) of the Constitution, which says that legislative authority is actually vested in Parliament. Last week when we were debating the Retirement Benefits (Deputy President and Designated State Officers) Bill, there was a clause on which we were unanimous. We did not have numbers. In the spirit on the way forward, and so that we do not allow the Executive to play a legislative role--- This is because many a times when Memoranda come from His Excellency the President, it becomes very difficult for us to debate because we rarely have two-thirds. Unless we develop a mechanism and we discuss everything in advance we must have the two-thirds majority; it is an exercise in futility. We are wasting time. Even if we decide otherwise, we are not going to do anything. For now we do not have the two-thirds majority in this House. This is my humble request.

**The Temporary Deputy Chairman** (Hon. Cheboi): That is a handicap that is there. The issue is that we have three options. The Deputy Speaker gave them to us - passing it, amending it or rejecting it. The only issue is that for whatever we do, there are consequences in terms of the numbers. If we are passing it, we need a simple majority. If we are rejecting or amending it, we need a two-thirds majority. On specific issues like this one which also needs the Senate, we would need the concurrence of the Senate. Hon. Members, let us not take a lot of time on this. I can see hon. Mbadi is very interested in speaking to it. I do not think I will give you time. I am going to give the Leader of the Majority Party, and we will have to proceed. I know hon. Members want to be heard. Most of you have been heard.

**Hon. A.B. Duale:** Hon. Temporary Deputy Chairman, the matter before us is as clear as day and night. Article 115(1) to 115(6) of the Constitution with the subheading "Presidential Assent and Referral," gives us all the scenarios. So, there is nothing unconstitutional. Secondly, when the Speaker says from the Chair that he has received a Memorandum from the President, it takes the House three weeks to discuss it. The function of the Whips is to read the Memorandum of the President and rally their troops. If they are very few, you can ask another group to donate some of its Members. If you attain the 232 Members, then you can disagree with His Excellency the President.

Finally, this goes to my good friend, Hon. Ochieng, the process is well in the spirit and the letter of the Constitution. Both Houses of Parliament have the legislative authority. Once the President assents to any law, it is the function of the Judiciary either to annul it in totality or piecemeal. So, as we pass laws here, including this one, anybody who is in this House, or

listening to me, can go to court. So, Hon. Ochieng, do not deny that this is the function of the Judiciary.

Hon. Temporary Deputy Chairman, we have very heavy business. Let us dispose of this matter.

**The Temporary Deputy Chairman** (Hon. Cheboi): You will not guide me on that particular one. However, as I have indicated, we are proceeding to the presidential amendments.

*Clause 4*

**The Temporary Deputy Chairman** (Hon. Cheboi): Let us have the Leader of the Majority Party.

**Hon. A.B. Duale:** Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 4 (2) of the Bill be amended by deleting the existing sub-clause and substituting therefor the following new sub-clause:-

It reads that the office shall---

**The Temporary Deputy Chairman** (Hon. Cheboi): Leader of the Majority Party, since the Members already have the specifics from the President, we will proceed very fast if you simply move it.

**Hon. A.B. Duale:** Yes, I am just moving from the Order Paper.

**The Temporary Deputy Chairman** (Hon. Cheboi): Okay. Just proceed without having to read though.

**Hon. A.B. Duale:** Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 4(2) of the Bill be amended by deleting the existing sub-clause and substituting therefor the following new sub-clause:-

(2) The Office shall comprise the Auditor-General as its statutory head and all other staff appointed by the Auditor-General as may be delegated in accordance with Article 234 (5) of the Constitution.

Hon. Temporary Deputy Chairman, Article 234(5) of the Constitution basically talks about the Public Service Commission delegating its authority to another office.

I beg to move.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Hon. Cheboi): I will give two Members a chance to speak on it and then we will make a decision. Let us start with hon. Gumbo. I actually should have started with hon. Mbadi, because he was ahead of you. After you, I will give the chance to hon. Mbadi.

**Hon. (Eng.) Gumbo:** Hon. Temporary Deputy Chairman, I rise to oppose this amendment. We spoke about it last week. The President should have been advised not to propose this amendment. Article 252 (1)(c) of our Constitution says: "Each commission and each holder of an independent shall recruit its own staff."

I have no idea whatsoever why we are ignoring this clear provision of the Constitution. There is a precedent here. Previously, we passed the Independent Electoral and Boundaries Commission (IEBC) Act. In that Act, the IEBC actually recruits their own staff. So, I do not



understand why we subject the recruitment of the staff of Auditor-General's Office to the Public Service Commission.

Hon. Temporary Deputy Chairman, I oppose.

**The Temporary Deputy Chairman** (Hon. Cheboi): I will give the chance to hon. M'eruaki and then come to hon. Mbadi, so that we can balance. I will give a chance to two Members from both sides. Hon. Mbadi will be the last one on the left. Hon. M'eruaki, do you want to speak to this? Your name is on top of the list. As this side prepares itself, Hon. Mbadi you can proceed.

**Hon. Ng'ongo:** Thank you, hon. Temporary Deputy Chairman. I oppose this amendment. I will oppose all the amendments for two reasons. The first reason why I will oppose all the amendments is that it is important for this House to realise that the legislative authority---

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. Mbadi, you are treading on a very dangerous ground. This is because if you say you are opposing all of them, then surely I will not give you any other opportunity because your opinion will already be known. I would rather you oppose this specific one, so that you get an opportunity to speak on another one.

**Hon. Ng'ongo:** No. You can give me a chance, so that I explain what I am opposing. That is also allowed.

The reason why I oppose this amendment is that this House needs to realise that legislative power and authority rests in Parliament. Actually, the veto power given to the Executive through the presidency is supposed to be used carefully, selectively, and only when it is very necessary. We see a trend which this House should be awake to; the presidency, through some advisors, is legislating for this House. What they do is to sit in State House and decide what they do not want. They do not even want to engage with Parliament because they know the threshold is so high, they go and advise the President to change, alter and mutilate all the laws that we have made in this House. This is not acceptable and this House will live to regret surrendering its legislative authority to the Executive.

Hon. Temporary Deputy Chairman, finally, the reason I am opposing this specific amendment is the need to realize that, more so the Jubilee Administration--- I want to urge my friend, Hon. Duale - I came with him to Parliament and we have been very good friends, except when he decides to over-support the Government. I want to tell him that this zeal and excitement by the Jubilee Administration to kill independent offices and commissions will not augur well for this country. We resisted the attempt to make the Office of the Auditor-General subordinate to the Executive.

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. Mbadi, I think that you have already stated your position.

**Hon. Ng'ongo:** I have not finished. I do not know why today you are so much in a hurry.

**The Temporary Deputy Chairman** (Hon. Cheboi): I am not in a hurry at all, Hon. Mbadi. What I am doing is appreciating that this is Committee of the whole House and not ordinary debate, where we allocate every Member five or 10 minutes.

**Hon. Ng'ongo:** Can you give me 30 seconds to conclude?

**The Temporary Deputy Chairman** (Hon. Cheboi): Okay, 30 seconds. I am not interested in you talking about when you came with the Leader of Majority Party to this Parliament, because that I know. It is a matter of public---

**Hon. Ng'ongo:** History is also important, Hon. Temporary Deputy Chairman.

**The Temporary Deputy Chairman** (Hon. Cheboi): I have quite a lot of history, but I am not putting myself in that position.

**Hon. Ng'ongo:** I am just reminding him that I went through some difficult and trying times with him.

Hon. Temporary Deputy Chairman, in a nutshell, what I am saying is that the Office of the Auditor-General needs to be given space to work independently without interference from any other office. We are seeing a deliberate attempt to suppress, intimidate and blackmail this office even through threats to officers working in the Office of the Auditor-General. If we lose the Office of the Auditor-General, especially after losing the Ethics and Anti-Corruption Commission (EACC)--- There is even an attempt to remove the Director of Public Prosecutions (DPP) and send him home; we are going to lose the independence of institutions.

Thank you.

**The Temporary Deputy Chairman** (Hon. Cheboi): Okay, your 30 seconds are over. I will probably give Hon. Katoo ole Metito, who also came to Parliament with yours truly.

**Hon. Katoo:** Thank you, Hon. Temporary Deputy Chairman. Of course, I came to this House long before Hon. Mbadi joined it, but he is a very good friend of mine.

I just want to, very briefly, support this amendment and say that if you look at what Article 234(5) says, the Public Service Commission (PSC) may delegate in writing, with or without conditions, any of its functions and powers under this Article to anyone or more of its members, or to any officer or body or authority in the public service. Therefore in terms of recruiting staff to the Office of the Auditor General, the PSC may delegate that function and the Auditor-General can recruit independently. That is just what it is saying. There is nothing sinister about it.

**The Temporary Deputy Chairman** (Hon. Cheboi): I will give the last person and I think that should be, for purposes of gender, Hon. Kajuju. She seems to have some history.

**Hon. (Ms.) Kajuju:** Hon. Temporary Deputy Chairman, I am not a new comer as the Leader of the Majority Party said, because I have a history with the Chairman and that is what he is referring to.

**The Temporary Deputy Chairman** (Hon. Cheboi): That is a very bad admission, but proceed Hon. Kajuju.

*(Laughter)*

**Hon. (Ms.) Kajuju:** Thank you, Hon. Temporary Deputy Chairman. I support the amendment as presented to us by His Excellency the President and say that we cannot dwell on allegations. What has been submitted by my senior, Hon. Mbadi, are just mere allegations that we are reading in newspapers. Whatever allegation - you and I read in law school - is made must be proven.

To proceed to the point, I support this amendment and say that the Auditor-General must be in a position to use the powers that have been bestowed upon him.

**Hon. Wakhungu:** On a point of order, Hon. Temporary Deputy Chairman.

**The Temporary Deputy Chairman** (Hon. Cheboi): Order! Hon. Wamalwa, do you have a point of order? I can see you have put an intervention.

**Hon. Wakhungu:** I have a point of order. I want to mention what is out of order.

**The Temporary Deputy Chairman** (Hon. Cheboi): Do not respond to anybody else other than myself.

**Hon. Wakhungu:** I want the Leader of the Majority Party to listen. It has been the practice that for any amendment, you need to give the import of it, so that Members can understand.

**The Temporary Deputy Chairman** (Hon. Cheboi): That he did.

**Hon. Wakhungu:** Give me time; let me qualify it. When you look at the Presidents' amendment, it says the Bill be amended by deleting the existing sub-clause and substituting another. It is important when he is moving to give a brief of the existing sub-clause that is being deleted, then from there he mentions the one that is incoming in and qualifies it. It is important that we do not allow him, as he moves, to give some substandard information. It is critical that the import is understood by Members.

**The Temporary Deputy Chairman** (Hon. Cheboi): That point should be noted.

**Hon. Wakhungu:** Because you have given me a chance, Hon. Temporary Deputy Speaker---

**The Temporary Deputy Chairman** (Hon. Cheboi): No, it was a point of order. I hope the Leader of Majority Party has noted that particular one. He should qualify it.

Proceed and finalize, so that I put the Question.

**Hon. (Ms.) Kajuju:** Thank you, Hon. Temporary Deputy Chairman. I think this is a wrong time for that point of order to have arisen, with due respect.

**The Temporary Deputy Chairman** (Hon. Cheboi): It is not up to you.

**Hon. (Ms.) Kajuju:** I can read your mind, Hon. Temporary Deputy Chairman.

**Hon. Ng'ongo:** On a point of order, Hon. Temporary Deputy Chairman.

**The Temporary Deputy Chairman** (Hon. Cheboi): You are actually out of order.

**Hon. (Ms.) Kajuju:** Before I was rudely interrupted, I was saying the Auditor-General must be in a position to use the powers that have been bestowed upon his office before he claims extra powers. What the President has done is not against any known jurisprudence. Therefore, I support this amendment as it has been brought to this House.

**The Temporary Deputy Chairman** (Hon. Cheboi): Now, hon. Members, it is up to you to make a decision one way or the other. Ordinarily, we give a chance to one or two Members, but we have given chances to four Members. You can see even Hon. Jakoyo, who has just arrived, wants to speak. I will not allow that and I will put the Question.

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

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

*(Clause 4 as amended agreed to)*

Clause 8

**The Temporary Deputy Chairman** (Hon. Cheboi): Let us have the Leader of the Majority Party. Let us go in the direction that Member for Kiminini stated, rather than even going through in terms of reading; just give a gist of the particular amendment in brief.

*(Hon. (Ms.) Kajuju consulted Hon. Midiwo)*

**Hon. A.B. Duale:** Hon. Temporary Deputy Chairman, what Hon. Kajuju is doing is out of order. She is talking to her other historical friend, Hon. Washington.

**The Temporary Deputy Chairman** (Hon. Cheboi): There is something today about Hon. Kajuju. Proceed.

**Hon. A.B. Duale:** Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 8 of the Bill be amended by deleting paragraphs (a), (b), (c), (d), (h) and (j) and substituting therefor the following:-

Administrative  
powers of the  
office of the  
Auditor-  
General

- (a) develop an organization structure and staffing establishment for the office of the Auditor-General, subject to Article 234(5) of the Constitution;
- (b) subject to Article 234 (5) of the Constitution, recruit and promote qualified and competent staff to perform the office's functions;
- (c) subject to Article 234 (5) of the Constitution, exercise disciplinary control over staff;
- (d) subject to Article 234 (5) of the Constitution, develop human resource of the office;
- (e) subject to Articles 230 (4) (b) and 234 of the Constitution, determine the remuneration and benefits of each member of staff;
- (f) in addition to what is provided for under any other relevant law, develop and maintain a code of conduct and ethics for the office, specific to auditing, guided by the international code of practice, and code of ethics issued by the International Organization of Supreme Audit Institutions and in consultation with the Public Service Commission and the National Treasury;

Hon. Temporary Deputy Chairman, the intention of this clause is to provide extra powers to the Auditor-General in exercise of his functions. This includes the practice to have oversight on appointments, promotions, exercising of disciplinary matters, control and development, determination of remuneration and benefit for staff. The only change that the President returned this with was to subject this to, if Members go through, Article 234(5) and he can borrow delegated authority from the PSC. They will give it to him, so that he also acts within the law in the Public Service Act, Article 234(5) and Article 230(4), which is basically on the Salaries and Remuneration Commission in terms of looking at the benefits. There are no powers that he is losing as he decides on the above parameters.

When it comes to recruitment and appointment he will do it, but within Article 234(5) of the Constitution on the Public Service Commission. The Constitution delegates to him those powers and when it comes to benefits, he goes back to Article 230(4). It is a very clear thing; the

independence is still with the Auditor-General, but within the many institutions created by the Constitution. When it comes to promotion and appointment, he uses delegated authority given to him by the Constitution under Article 234(5).

With regard to benefits, he exercises the delegated authority in consultation with the Salaries and Remuneration Commission (SRC), which is another independent institution.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Hon. Cheboi): Very well. What I will do is give a chance to two Members on the left of the Speaker's Chair and another two on the right of the Speaker's Chair. I will try as much as possible to follow the order of requests. At the top, I see the name of the hon. Member for North Horr.

**Hon. Ganya:** Thank you, Hon. Temporary Chairman. I really want you to indulge me on this. If there is a constitutional aspect or a constitutional question on any amendment, including this one, the history of this House has always been that the constitutional question is dealt with before we continue with any debate. It does not matter whether it is a Bill, a Motion or an amendment by H.E the President; that has been the history of this House. We do not make laws in futility. There is no point for us to pass a law here knowing very well that a Kenyan will go to court and the law will then be deemed unconstitutional. That has been the history of this House, and it will judge you harshly. Let us deal with the constitutional question in this Bill before we continue.

**The Temporary Deputy Chairman** (Hon. Cheboi): Now, the treatment to any constitutional problem is under the Constitution itself and the courts. This has to be very clear Hon. Ganya. I am very clear in my mind. If I were to give you a comparative study on this particular one, the South African Constitution provides guidance in dealing with constitutionality, or otherwise, in Parliament. In our case, it is the Constitution that we are following. If there will be any issue, we will have two choices: On one hand, we can amend or even reject, and on the other hand we can let any aggrieved party go to a constitutional court for interpretation.

At this point in time, it will be very difficult for us to resolve those particular issues. This is because whatever you will be stating as unconstitutional will be your opinion, which has to be qualified elsewhere. That is the position. I sympathise with your position very much. Unfortunately, the Constitution ties our hands. You have a choice to---

**Hon. Ganya:** Hon. Temporary Deputy Chairman---

**The Temporary Deputy Chairman** (Hon. Cheboi): Let us not argue about this. This is a ruling that was made by the Speaker and I am only reiterating it from a point of knowledge. I am not about to start discussing the constitutionality or otherwise of the amendments that are brought here. I am not in that position. We will simply go by our Constitution. As I have said, if there is anybody who will be aggrieved, we will have two choices. As Parliament the Constitution, or allow the courts to interpret it.

Let us leave it at that Hon. Ganya. I see your point and there are also other options, including the amendment of the Constitution itself, if there are issues that we really need to capture. We might take a long time on it and I am not going to make any other different decision.

**Hon. Ganya:** Hon. Temporary Deputy Chairman, as the Chairman, you have a duty to guide the House.

**The Temporary Deputy Chairman** (Hon. Cheboi): That is what I have just done, Hon. Ganya.

**Hon. Ganya:** I oppose that amendment

**The Temporary Deputy Chairman** (Hon. Cheboi): It is fine. Your opposition is perfectly in order, but I have just given the guidance. Let us have Hon. Kangogo, Member for Marakwet East.

**Hon. Bowen:** Thank you, Hon. Temporary Deputy Chairman. I stand to support the amendment. The Office of the Auditor-General, being an independent office, needs to be given the chance to recruit its own people because of the specialised nature of its work. We also need to ensure that this office is working. We are now almost calling for legalisation of corruption in this country. As much as we are trying to strengthen this Office of the Auditor-General, we want to see results. We have seen some manipulated audited books, and we will not allow this to go on. If that practice goes on, I will bring a Bill in this House to legalise corruption in this country.

I support.

**The Temporary Deputy Chairman** (Hon. Cheboi): Let us have the Member for Tongaren.

*(Hon. Midiwo spoke off record)*

Hon. Midiwo, I am just following the list here. I can tell you what number you are. You have just walked in. You are a very senior and seasoned Member.

**Hon. (Dr.) Simiyu:** Thank you, Hon. Temporary Deputy Chairman. I oppose---

**Hon. Midiwo:** On a point of order, hon. Temporary Deputy Chairman.

**The Temporary Deputy Chairman** (Hon. Cheboi): I can see you have a point of order. Hon. Eseli, let us hear the point of order from the Member for Gem.

**Hon. Midiwo:** On a point of order, Hon. Temporary Deputy Chairman. You are within your right to say the things you are saying, but some of them are wrong. I have just walked in. I happen to be the Leader of this side when I sit here. When an amendment is being moved and I request a chance, I do not think you are right to tell me I am far down the list. I know I could be far down the list, but you need to hear my opinion.

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. Midiwo, what the Standing Orders recognise is the Leader of the Majority Party and the Leader of the Minority Party. Sometimes I forget that you are the deputy.

*(Laughter)*

Of course, when I remember, I very quickly capture you. That is why you have the position. I see the position now. I have said that you came in late as a Member for Gem Constituency. However, as the Deputy Leader of Minority Party, it makes a lot of sense that you get an opportunity to speak. Your point has been taken. Therefore, you will have an opportunity. Do you still want to proceed? Let me give hon. Member for Tongaren a chance. I will give you

an opportunity, because I have just remembered that, and you know that you are a senior Member.

*(Laughter)*

**Hon. (Dr.) Simiyu:** Thank you, Hon. Temporary Deputy Chairman for this chance. I wish to oppose this amendment. The Jubilee Administration has received a lot of accolades for the fight against corruption so far. These amendments fly in the face of all that anti-corruption fight; if we reduce the independence of the Auditor-General's Office, then we will be tampering with one of the best mechanisms to fight corruption. Right now, the Public Accounts Committee (PAC) is current. What we will be looking at is current. If this office does not have its independence, we do not know what kind of material we will get from it. I oppose this amendment totally because it is contrary to what the Jubilee Administration is telling us about fighting corruption. This amendment does not fight corruption at all; it enhances it.

**The Temporary Deputy Chairman** (Hon. Cheboi): Before I come to you, Hon. Midiwo, it will be better you be the last one on this matter. Let me give a chance to hon. Member for Chuka/Igambang'ombe, Hon. Njuki.

**Hon. Njuki:** Hon. Temporary Deputy Chairman, I was queuing to give my input on Clause 11. I am queuing to contribute to Clause 11. In this particular case, I support the amendment.

**The Temporary Deputy Chairman** (Hon. Cheboi): Let us have the Deputy Leader of the Minority Party, not the Member for Gem Constituency. You know you wear two hats, hon. Midiwo. I am now recognising you on the basis of the first one.

Proceed.

**Hon. Midiwo:** Hon. Temporary Deputy Chairman, you realise that since morning you have called me several names. I do not know when the list will end.

**The Temporary Deputy Chairman** (Hon. Cheboi): We are a bit forgetful both of us, because we did not have a session in the morning. Proceed, Hon. Midiwo. You are a seasoned Member of this House.

**Hon. Midiwo:** I thank you for recognising that I am senior and seasoned.

I want to take the opportunity to raise a very fundamental issue. Sometimes we make mistakes with bravado that beats logic. This particular amendment, and the one before it--- Our basis of opposition is the same. I want to plead with the Leader of Majority Party, who was in the last Parliament. When hon. Kibaki, former President, tried to make an amendment when we were here---You were still a mono then, hon. Kajuju. You were not even a mono because you were not here. You were in primary school and now you are in secondary school. We had the County Government Act. The President---

**The Temporary Deputy Chairman** (Hon. Cheboi): I am not interrupting you; I wanted you to be more specific. At what point was it? Do you remember the time, because that could have a consequence?

**Hon. Midiwo:** Yes. I remember it was towards the end of the last Parliament. There was a Bill brought to Parliament by the former Minister, Hon. Musalia Mudavadi.

Hon. Temporary Deputy Chairman, what is disturbing me, and why we are opposing this, is that it is important so that we can hear each other. It is not even the content as in this particular

amendment. Nothing is wrong with the amendment, but two things are fundamentally flawed with the process. If you read Article 94, the President cannot make the law. He cannot bring that law here. As a member of the Speaker's Panel, you have a duty to address yourself to this. We know that the Deputy Speaker gave a ruling on this, but it was wrong. What we are doing is that you can draft a Bill, bring it here and have a counter Bill which says the opposite from State House, as long as you do not change the object; the President can pass that Bill, as long as he has the numbers.

Imagine a scenario where the President does not have the majority in Parliament. This issue must be addressed. It is not good to oppose for the sake of opposition. Article 94 of the Constitution gives the responsibility of law making to this House. The President cannot change a verb or comma. He can only say that he agrees or disagrees. The process we are engaged in on taxpayers' money is wonderful. I wonder if good lawyers--- I have heard my friend Hon. Kajuju, talk. When she talks like that, and knows that she is misleading this nation on taxpayers' money, we should even question. There is no way you can--- Let me finish.

**Hon. (Ms.) Kajuju:** Hon. Temporary Deputy Chairman, I said that when you are looking at the law, you interpret it according to your understanding. You can never misguide either the House or a court when it comes to interpretation of the law. According to my interpretation, that is the right position. If the Hon. Member were a student of law, I would tell him that he should have spoken only about misleading the House. I still believe that you will agree with me that I did not mislead the House. Our President cannot mislead this House.

**Hon. Midiwo:** Hon. Temporary Deputy Chairman, as I conclude---

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. Jakoyo, what you are saying is perfectly within your right to say, but we are guided by the Constitution. I have said that a few times this afternoon. For somebody like you, Hon. Midiwo, we must all take credit or the flak if there is a problem with the Constitution. I am sure that Hon. Jakoyo was a very happy supporter of the Constitution, 2010, just as many of the Members here were. If there is something that needs to be amended, it should be amended. However, at this point in time, we will pursue it on the basis of the Constitution.

**Hon. Midiwo:** Hon. Temporary Deputy Chairman, I agree with you. I will surprise you. I expect you to change nothing. It is more interesting that all---

**The Temporary Deputy Chairman** (Hon. Cheboi): You know what happened, Hon. Jakoyo? You were speaking to the Leader of the Majority Party. I thought you were convincing him on some specifics like saying, "Take it back".

Proceed.

**Hon. Midiwo:** I used my sister as an example. If I offended you, I apologise and withdraw.

It is interesting that all the Jubilee lawyers in Parliament and the Executive can think the same. On 18<sup>th</sup> December 2014, Members of this House went low. From right where you are seated, an hon. Member kicked me on my face because we were not listening to one another. We were refusing to listen to each other. This is what is happening, only that people are not seeing the effect.

The reason why this particular amendment is before the House is because some people in the Executive felt tickled when we looked at the activities in the Office of the President and the



Independent Electoral and Boundaries Commission (IEBC). You cannot change a law because of that kind of activity. We have a responsibility.

As I conclude, let me just tell my friend, Hon. A.B. Duale, that circumstances change. We have been to court. If the position of the Chairman was right, the court would never have nullified the draconian law that we fought over here on 18<sup>th</sup> December 2014. If we had listened to one another--- How is it that this part can say that we want to support the law when we think that we are breaking Article 94? This is what these people are saying. I even beg you not to make a ruling because the decision of Jubilee is to push things down the throats of Kenyans. This may work now, but I can tell you and promise that this is one that we shall take to court. I can also predict the results of it because it is not the right thing. I oppose.

**The Temporary Deputy Chairman** (Hon. Cheboi): I have listened to you, Hon. Jakoyo, and for sure I am not going to make the ruling. I am only going to allow you, as the Members of this House, to make that particular decision.

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

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

*(Clause 8 as amended agreed to)*

*(Several Members stood up in their places)*

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. Members, I see Members are standing but they do not meet the threshold.

Hon. Members, you must see the logic. It will be of no use for the Chairman to rule that the “Nays” have it when he can obviously see that there are no numbers. So, let us proceed.

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. A.B. Duale, Clause 11 is a new clause. So, we will proceed with Clause 16. However, I would like to hear the gracious lady from Suba, that is Hon. Millie Odhiambo-Mabona. What is your point of order?

**Hon. (Ms.) Odhiambo-Mabona**: Thank you, Hon. Temporary Deputy Chairman. For clarity, if you are talking of Suba, you must say “Suba North” because Hon. Mbadi comes from Suba South.

**The Temporary Deputy Chairman** (Hon. Cheboi): Okay; I thought you were in charge of both Subas.

Proceed anyway. I can see that the Chairman has stepped out.

**Hon. (Ms.) Odhiambo-Mabona**: Thank you, Hon. Temporary Deputy Chairman. I want to raise an issue which is the same as Hon. Jakoyo’s, but is seeking a different direction from the Chairman. Since we are living in a digital era, I was not here but I listened to Hon. Mbadi. He raised the same issue that I raised last week. As I was listening to you when I was coming here, I noticed that you were in a hurry, which is not a bad thing. However, when we are raising serious issues, I would want to seek your patience, so that you listen to us. It does not matter how many times we say it, but one time you will have to listen.

There is a very serious---

**The Temporary Deputy Chairman** (Hon. Cheboi): I am listening to you, but I do not want you to use the sentence which you have just used and said, "One time you must listen." I am already listening.

**Hon. (Ms.) Odhiambo-Mabona:** As a gracious lady, I withdraw and apologise. I will proceed to make my point.

**The Temporary Deputy Chairman** (Hon. Cheboi): Proceed.

**Hon. (Ms.) Odhiambo-Mabona:** Thank you, Hon. Temporary Deputy Chairman. The concern I want to raise is that I want to call on you to make a ruling on this issue. We have very clear roles under the doctrine of separation of powers. A growing concern which I raised last week, and which other Members have raised, is that we now have legislation by the Executive through the back door.

Hon. Temporary Deputy Chairman, I was listening to Hon. A.B. Duale as I was coming here and he spoke very well about the role of the Whips. Since Jubilee has the tyranny of numbers, there is absolutely nothing to stop it from persuading, first, its Members and even all of us to pass the law *ab initio*. When you have a situation where we have come into the House, we have persuaded one another across the House. For a law to pass, it means that we have persuaded one another both in Jubilee and in CORD, and then the President gives a very long list of amendments. That is legislation through the back door. I had requested last week that you give us direction. The direction that I want to seek is how that veto power of the presidency can be exercised.

Secondly, to what extent must it be exercised? I am very serious about this. For instance, if we have all passed a law and the President exercises the veto power over the entire law, will that be legal? Will it be procedural? I do not want to go to the issue of the Constitution, because I listened to you carefully and you said that you do not want to make a ruling on the Constitution. I am, therefore calling on your good office to make a ruling on the procedure.

It does not stop us from proceeding as we are doing, but it will help posterity. As we conduct this procedure, I know, for instance, that the whole House can pass a law and the President can amend the entire law. Then we should change our system and let the President come here and pass law.

**The Temporary Deputy Chairman** (Hon. Cheboi): Very well. I have given you an opportunity. First, a ruling was made on 16<sup>th</sup> June. Just before you came in, Hon. Millie, the Deputy Speaker issued another guideline on how we were going to proceed. I do not want to go to the details of what she said, but I will refer you, Hon. Millie, because you are a seasoned lawyer, to the presidential assent and referral under Article 115 of the Constitution. Whatever you might be saying will probably make a lot of sense, but the Constitution says something else. This is the Constitution that was voted for by the people of this country. It is something that I do not want to delve further into. It has been raised by three different Members.

I have repeated exactly the same thing because I am very patient this afternoon, especially with you, Hon. Millie. I am in a situation where I want to ask the Leader of the Majority to proceed. You do not have to respond to this particular one. Be brief and proceed to prosecute your case. We are on Clause 16.

**Hon. A.B. Duale:** Hon. Temporary Deputy Chairman, in the reading of Article 115 on presidential assent and referral, there is nothing unconstitutional. The three arms of the

Government, namely the Judiciary, Legislature and Executive, must counter-check one each other. The Kenyan people asked for Article 115 to check the legislative powers of Parliament. When the President does that under Article 115, Kenyans have recourse through the Judiciary to again check the presidency and the Executive. So, there is no way Parliament will be given excessive authority, or absolute power, in its legislative work.

So, Article 115 was introduced for the Executive, and in this case the presidency, to check the excesses of the parliamentary legislative powers. This happens in every jurisdiction, for instance in the United States of America (USA), whether you talk of the minority or the majority.

Secondly, the Judiciary provides a fall back mechanism to the Kenyan people. My good friend, Hon. Millie Odhiambo-Mabona and her team, are in a referendum drive. Please, include Article 115 in your proposals and amend it. If you do not do it, you can go to the Supreme Court, which is the only body which is mandated to interpret the Constitution to the people of Kenya. These are the five great men and the two ladies of the Supreme Court.

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. Duale, you have made your point. Let us also look at this thing as a larger picture. When I was last in a constitutional class--- This will serve to increase the history for myself and some of the Members of this House. Even the courts themselves make law, and Hon. Millie will agree with me on this. They create precedent which, in most cases, is followed. The Executive also occasionally delves into law making. The issue is that the circumstances should be looked into. This is the law that we have and we must pursue it in that particular manner.

I want to proceed and have the Leader of the Majority Party proceeding with Clause 16, and then I will give an opportunity to the Leader of the Minority Party, who also wants to speak to this.

**Hon. A.B. Duale:** Hon. Temporary Deputy Chairman, Hon. Jakoyo is not here. He said that we must talk to one another, but every time I talk to Hon. Jakoyo, they say that he is a Jubilee mole. How do I deal with Hon. Jakoyo? I hope Hon. Oburu is here. We deal with Hon. Jakoyo in parliamentary matters. He is a leader like me, but when I talk to him, he is called a mole and a serious caucus is called.

### *Clause 16*

Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 16 of the Bill be amended in sub-clause (1) by inserting the expression “and 234(5)” immediately after expression “230”.

This again is very clear and I can explain it. It is not the President alone, but even the Auditor-General is supposed to be checked by this House. In this scenario, the President is saying that we want the Auditor-General to be checked by the Constitution as provided under Article 234(5). He should consult other independent colleagues like the Public Service Commission (PSC). It is a small issue of checking the Auditor-General.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Hon. Cheboi): Okay. We will have Hon. Nyenze, the Leader of the Minority Party. I am giving you a chance in that capacity because in terms of the listing, you can only qualify in that capacity.

**Hon. Nyenze:** Thank you, Hon. Moses. You are like the Moses in the Bible. I oppose this amendment to Clause 16(1) because we are limiting the powers of the Auditor-General. The Leader of the Majority Party should listen to what I am saying because I have listened to him.

**An Hon. Member:** He is consulting.

**Hon. Nyenze:** Thank you, Hon. Temporary Deputy Chairman. He should consult without pointing this way.

**The Temporary Deputy Chairman** (Hon. Cheboi): Please, proceed, so that we can move quickly.

**Hon. Nyenze:** Hon. Temporary Deputy Chairman, I wish to revisit what Hon. Millie said. It is the duty of the National Assembly to make laws.

**Hon. A.B. Duale:** On a point of order, Hon. Temporary Deputy Chairman.

**Hon. Nyenze:** Hon. Temporary Deputy Chairman, protect me because you have given me a chance.

**The Temporary Deputy Chairman** (Hon. Cheboi): Allow him to finalise. Finalise, please. Let us allow the Leader of the Minority Party to finalise, please.

**Hon. Nyenze:** Hon. Temporary Deputy Chairman, I have the Floor; so, let me finalise. I started by saying that I oppose the amendment. It is our duty to make laws. If the President brings back very many amendments and this House, by the majority, passes them, later on we will find ourselves in a very awkward position.

**The Temporary Deputy Chairman** (Hon. Cheboi): I do not want you to create a situation where there are many points of order. Please, just finalise and be specific to Clause 16.

**Hon. Nyenze:** Hon. Temporary Deputy Chairman, these independent offices should be given the independence that they are given in the Constitution. These amendments are trying to limit the powers of the Auditor-General. We do not want Clause 16(1) to be inserted, because it is like the Auditor-General will not be independent. He will be controlled by a certain power.

**The Temporary Deputy Chairman** (Hon. Cheboi): Let us stop there. I gave you the leeway because I did not want Hon. Millie Odhiambo-Mabona to accuse me of being in a hurry. Ordinarily, I am in a hurry. I did not want to be accused, this afternoon, of being in a hurry. It is my nature to be in a hurry.

Let us have Hon. Langat, the Chairperson of the Committee to give us his views. Please, let us restrict ourselves to Clause 16.

**Hon. Langat:** Thank you, Hon. Temporary Deputy Chairman for giving me this opportunity, just as you have given it to the Leaders of the majority and minority parties.

We looked at these amendments in the Committee and disagreed with the proposal by the President. If you look at that proposal by the President, it will go against Chapter 15 of the Constitution. We are making a law for posterity. Chapter 15 talks about commissions and independent offices. Amongst the commissions listed are the Parliamentary Service Commission (PSC), Judicial Service Commission (JSC), Commission on Revenue Allocation (CRA), Public Service Commission, and the Salaries and Remuneration Commission (SRC). The independent

offices mentioned there are the offices of the Auditor-General and the Controller of Budget. This is under Article 248 of the Constitution.

Article 252(1)(c) of the Constitution talks about the general functions and powers. It says, among other things:

“Each commission and each holder of the independent office –  
(c) shall recruit its own staff.”

It is like saying today that we will tell Parliament to seek approval of the Public Service Commission to employ its own staff. That will be saying that one commission or independent office is bigger than the other, yet all of them are the same under Article 248.

**The Temporary Deputy Chairman** (Hon. Cheboi): Let me give a chance to Hon. Serut.

**Hon. A.B. Duale:** On a point of order, Hon. Temporary Deputy Chairman.

**The Temporary Deputy Chairman** (Hon. Cheboi): What is your point of order Hon. Duale? We are making good progress.

**Hon. A.B. Duale:** On a point of order, Hon. Temporary Deputy Chairman. My good friend, the Member for Ainamoi, who served with me in the last Parliament, is misleading this House and the nation. The Public Service Commission, as an independent institution, is the custodian of human resource policy in our country. If you read Article 234(5) which is the basis of the amendment by the President--- With your permission I want to read it out for all the Members; it says:

“The Commission may delegate, in writing, with or without conditions,  
any of its functions and powers under this Article to any one or more of its  
members, or to any officer, body or authority in the public service”

If you allow me, Hon. Temporary Deputy Chairman---

**The Temporary Deputy Chairman** (Hon. Cheboi): We really need to make progress. I had given you the opportunity to move and you raised a point of order. You cannot take any more time.

**Hon. A.B. Duale:** Article 234 (5) implies that even the PSC, as an independent body, will still use Article 234. There is no independence.

**The Temporary Deputy Chairman** (Hon. Cheboi): Order, Hon. Kaluma. He is on a point of order. Allow him to finish and then I will give you the opportunity.

**Hon. A.B. Duale:** Nobody is controlling any of these independent institutions. They must use the law and Constitution in recruiting. You cannot say you have the powers as an institution and then you go and recruit from your village.

**The Temporary Deputy Chairman** (Hon. Cheboi): You have made your point. You cannot use that point to argue. Hon. Members, I see a series of intervention requests. Among the top ones is Hon. Abdullswamad Nassir. You have a point of order? Then proceed.

**Hon. Serut:** (*Inaudible*)

**The Temporary Deputy Chairman** (Hon. Cheboi): Order, Hon. Serut! Just relax completely. Let us have Hon. Abdullswamad. He is on a point of order. Hon. Serut, I had given you an opportunity to speak, which I might deny you now if you become unnecessarily unruly. I still hold to the promise that I am going to give you the opportunity, but allow Hon. Nassir to raise a point of order. Hon. Serut, you are a very senior member of this House. You were here in 2002 and even earlier. Proceed, Hon. Nassir.

**Hon. Nassir:** Thank you very much, Hon. Temporary Deputy Chairman. I had raised a point of order much earlier in reference to the Leader of the Majority Party quoting Article 115 and using it to say that the President has a right to make legislation in this country. I would like to read the same Article he has quoted; it says:

“Within fourteen days after receipt of a Bill, the President shall -

- (a) assent to the Bill, or,
- (b) refer the Bill back to Parliament for reconsideration by Parliament, noting any reservations that the President has concerning the Bill.”

**Hon. A. B. Duale:** (*Inaudible*)

**Hon. Nassir:** My good brother has a habit of interfering when people are talking. I have my copy of the Constitution.

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. Nassir, you lose out when you start exchanging words with other Members. You have the Floor all to yourself.

**Hon. Nassir:** You will have to protect me.

**The Temporary Deputy Chairman** (Hon. Cheboi): You are totally protected.

**Hon. Nassir:** Article 115 (2) states:

“If the President refers the Bill back for reconsideration, Parliament may, following the appropriate procedures under this part-

- (a) amend the Bill in light of the President’s reservations; or
- (b) pass the Bill a second time without amendments.”

Article 115 (3) states:

“If Parliament amends the Bill fully accommodating the President’s reservations, the appropriate Speaker shall re-submit it to the President for assent.”

Article 115 (4) states:

“Parliament, after consideration of the President’s reservations may pass the Bill a second time, without amendment, or with amendments that do not fully accommodate the President’s reservations by a vote supported-

- (a) by two-thirds of members of the National Assembly; and
- (b) two-thirds of the delegations in the Senate, if it is a Bill that requires the approval of the Senate.”

**The Temporary Deputy Chairman** (Hon. Cheboi): I hope after your reading it, nobody else will raise this specific one because we have dealt with it several times.

**Hon. Nassir:** One thing is very clear, and this is something we will definitely consider. I hope that the leadership of the Coalition for Reforms and Democracy (CORD) will be taking this to the Supreme Court for interpretation, so that this country is not misled by the likes of the Leader of the Majority Party. It is very unfortunate.

**The Temporary Deputy Chairman** (Hon. Cheboi): Where does the Leader of the Majority Party come in, in this particular one?

**Hon. Nassir:** We went to school and learnt English as much as he did. There is nowhere in Article 115 that talks about the President making legislation. I am saying this for one reason; we are creating a trend that is going to bring havoc to this country. This is the way tyrants are born. We come up with legislation and after we have done it, when it goes to State House, they

decide that the legislation is not right and they change it. A group of people sit down and overrule every elected Member of Parliament.

**The Temporary Deputy Chairman** (Hon. Cheboi): I am giving an opportunity to Hon. Serut. Prosecute your case.

**Hon. Serut:** Thank you very much, Hon. Temporary Deputy Chairman for giving me this opportunity. I stand here to oppose this particular amendment. It talks of the right procedure. Before every issue that requires two-thirds majority is put to vote, the procedural way is that the House must ensure that we have more than two-thirds of Members in attendance.

Hon. Temporary Deputy Chairman, in this case, we do not have a two-thirds majority in the House.

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. Serut, how do you know that we do not have two-thirds majority?

**Hon. Serut:** Hon. Temporary Deputy Chairman, can I finish? I am trying to put across the point because I am an independent Member. Therefore, allow me to speak. I am very independent minded. The issue of you putting the matter to vote should not arise because even if the Nays have the day, it will still negate the whole process. We are not here to rubberstamp whatever is referred to this House. This thing should go back to the substantive Speaker to make a proper ruling on whether we should proceed or not.

**Hon. Gikaria:** On a point of order, Hon. Temporary Deputy Chairman.

**The Temporary Deputy Chairman** (Hon. Cheboi): What is it, Member for Nakuru Town East? That will be the last point of order on this matter. We have to proceed in the normal way that we do our business

**Hon. Gikaria:** Hon. Temporary Deputy Chairman, early last week, the substantive Speaker that Hon. Serut is talking about gave a ruling and a communication about this Article. He communicated clearly about the procedure that we are supposed to follow while dealing with reservations from the President on any Bill. I do not know why other people are raising the issue of whether it is constitutional. It is purely constitutional. As Hon. Nassir had said, he should have read the whole Article to the bottom to understand it.

**Hon. Nassir:** --- (*Off-record*)

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. Nassir, you have had your opportunity to speak!

**Hon. Gikaria:** Hon. Nassir was asking Hon. Duale to have some courtesy. I am also asking Hon. Nassir to have some courtesy as I speak. I have a copy of the Communication of the Speaker to this House. It is only right that we follow the due process and either reject or accept the proposals.

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. Members, you will make the decision. I will put it this way; this is a situation where the numbers have the say and not the voice. Many Members feel that I should have made a ruling one way or the other but it is the numbers that make the difference. I have checked on the numbers and established that we are not two-thirds of the membership of the House. In fact, to be clear, we are only 74. That means you cannot negate the President's amendments. That is the position.

**Hon. (Prof.) Nyikal:** On a point of order, Hon. Temporary Deputy Chairman. As Kenyans, we should conduct our affairs in the interest of the nation. Let us look at the ruling to the effect that we can go on without two-thirds. The effect of the ruling is that those who have a

majority in the House can at any time, by absenting themselves, make sure that all things brought to this House by the President passes.

**The Temporary Deputy Chairman** (Hon. Cheboi): Order! Hon. (Prof.) Nyikal, I am looking at both sides of the House. I do not see---

**Hon. (Prof.) Nyikal:** Hon. Temporary Deputy Chairman, let me execute my point. All that the majority have to do to ensure that a Motion like this one goes through is absenting themselves. Since we are not going to count, every time the Ayes have it, it is ruled that there are no two-thirds in the House. With that alone---

**The Temporary Deputy Chairman** (Hon. Cheboi): Order! Hon. Nyikal, let me be clearer. Out of the 74 hon. Members present in the House, I want you to look at it generally. You realise that one side of the House is more populated than the other. You impute that some Members have absented themselves deliberately so that we do not raise the mandatory two-thirds membership, but I can see that one side of the House is a little more packed than the other. Hon. Members, we are not making progress. Therefore, all points of order are overruled.

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

*(Clause 16 as amended agreed to)*

**Hon. Kaluma:** On a point of order, Hon. Temporary Deputy Chairman. Is it in order for the House to proceed, knowing that we are wasting time doing nothing? If it is really the case that there is nothing we can do in terms of amending what the President has referred to this House, through the particular Communication from the Chair – which I personally disagree with, as a lawyer – then, considering the business before us is really wasting time. I am concerned because you are presiding over a process that is wasting public time and resources, and doing nothing.

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. Kaluma, I see your point but as I said before, it is not that we are unable to do anything. It is only unfortunate that we do not have the numbers in the House to do something. Let us put it this way; if you look at the ruling by the Speaker---

*(Hon. Kaluma withdrew from the Chamber)*

**The Temporary Deputy Chairman** (Hon. Cheboi): It seems that Hon. Kaluma does not want a response from me. Let us proceed.

**Hon. (Eng.) Gumbo:** On a point of order, Hon. Temporary Deputy Chairman.

**The Temporary Deputy Chairman** (Hon. Cheboi): What is it, Hon. Gumbo?

*(Several hon. Members withdrew from the Chamber)*

Hon. Members, those of your retreating, kindly, do so quietly so that those remaining can proceed.



**Hon. (Eng.) Gumbo:** Hon. Temporary Deputy Chairman, in our Constitution, we have provisions which cover public servants and State officers.

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. Gumbo, which specific Article are you looking at?

**Hon. (Eng.) Gumbo:** Hon. Temporary Deputy Speaker, the contention is on Chapters 14 and 15.

**The Temporary Deputy Chairman** (Hon. Cheboi): Which Article specifically? Are we talking about the President's proposed amendments?

**Hon. (Eng.) Gumbo:** Yes. It is important that as we debate, we distinguish the provisions of the Constitution that apply to State officers, like us, from those that apply to public servants. It is my understanding---

*(Hon. Langat consulted Hon. Kabando wa Kabando loudly)*

**The Temporary Deputy Chairman** (Hon. Cheboi): Order, Hon. Langat and Hon. Kabando wa Kabando! Kindly, resume your seats. I understand the situation that the Member for Mukurweini is facing, as it is in the public domain.

Let us proceed.

**Hon. (Eng.) Gumbo:** Hon. Temporary Deputy Chairman, I do not understand why State officers like us should not be answerable to the Public Service Commission (PSC). The provisions of Chapter 15 are very clear.

**Hon. Gikaria:---** *(Off-record)*

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. Gumbo, prosecute your case. Do not listen to Hon. Gikaria, as that is his nature.

**Hon. (Eng.) Gumbo:** Hon. Temporary Deputy Chairman, if we proceed the way we are, then one might ask: Why are we, for instance, as State officers, not answerable to the Public Service Commission (PSC)? So, I am convinced that going the way we are, we are exposing ourselves. Chapter 15 of the Constitution is so clear on the provisions that govern commissions and independent offices.

**The Temporary Deputy Chairman** (Hon. Cheboi): The sole problem I have with your issue is that you rose on a point of order, but you would have done very well by getting an opportunity and opposing the amendment with reason. So, why do you not allow the Leader of the Majority Party to move the amendment and then I give you an opportunity to oppose it if you have to? It would make more sense. I do not want you to get entangled.

**Hon. (Eng.) Gumbo:** Okay. Thank you.

**The Temporary Deputy Chairman** (Hon. Cheboi): Let us have the Leader of the Majority Party.

**Hon. A.B. Duale:** Hon. Temporary Deputy Chairman, I beg to move---

**Hon. (Ms.) Odhiambo-Mabona:** On a point of order, Hon. Temporary Deputy Chairman.

**Hon. A.B. Duale:** I am only moving the amendment. What is out of order?

**Hon. (Ms.) Odhiambo-Mabona:** It is a procedural matter.

*Clause 19*

**Hon. A.B. Duale:** What is procedural? Is it how I move? Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 19 (2) of the Bill be amended by:-

- (a) inserting the words “review and” immediately after the words “year for”; and
- (b) deleting the words “with the Cabinet Secretary’s comments”

Hon. Temporary Deputy Chairman, if you allow me--- I am even happy that a member of the Parliamentary Service Commission, Hon. Keynan, has just walked in. I want Hon. Gumbo to listen to me. The Parliamentary Service Commission is answerable to the Salaries and Remuneration Commission (SRC). What we are saying is that under Article 234(5), the Auditor-General’s independence and powers cannot be absolute. He must act within the confines of the provision of Article 234(5) of the Constitution. What does it say? He borrows the expertise of the Public Service Commission (PSC) in recruiting staff.

I was a Member in the last Parliament when we were forming the Office of the Auditor-General. There is nowhere we gave the Auditor-General a blank cheque to go and recruit staff the way he wants. Both the national and county governments recruit staff using the procedures provided by PSC. Where an entity is independent, then the fall-back is the provision of Article 234(5) of the Constitution. Some of us are not lawyers, but we read the law.

So, Clause 19 is very clear. The Cabinet Secretary (CS) is the custodian of regulations and the budget. Parliament and, more so, the National Assembly, has the powers to do a review. If the members of the Budget and Appropriations Committee - and the Chairperson is here – feel that independent institutions are not being given enough resources, then it will review what the CS for the National Treasury has presented. This year, the CS gave them more resources. So, this is very clear.

**The Temporary Deputy Chairman** (Hon. Cheboi): Let us not take too much time on it. I can see Hon. Gumbo’s name is on top of the list. Do you want to speak to this, Hon. Gumbo?

*(Question of the amendment proposed)*

**Hon. (Eng.) Gumbo:** *(Inaudible)*

**Hon. (Ms.) Odhiambo-Mabona:** On a point of order, Hon. Temporary Deputy Chairman.

**The Temporary Deputy Chairman** (Hon. Cheboi): What is your point of order, Hon. Millie Odhiambo?

**Hon. (Ms.) Odhiambo-Mabona:** Thank you, Hon. Temporary Deputy Chairman, for indulging me. My point of order is on an issue of procedure.

**The Temporary Deputy Chairman** (Hon. Cheboi): Raise it.

**Hon. (Ms.) Odhiambo-Mabona:** I would like to request that when you retreat as the Speaker’s Panel, kindly look at the procedure of voting on a Presidential Memorandum; that is, when the President refers matters back to Parliament. The reason I am saying that is because if it is about you visually determining that there are no numbers, then there is really no reason why you should put the Question. It should be automatic. So, you need---

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. Millie, if you heard me, I gave you the exact number of Members who were in the House as 74.

**Hon. (Ms.) Odhiambo-Mabona:** Hon. Temporary Deputy Chairman, you are not listening to what I am raising.

**The Temporary Deputy Chairman** (Hon. Cheboi): What is it that you want me to listen to? What is it that you are raising?

**Hon. (Ms.) Odhiambo-Mabona:** I am not disputing the numbers. What I am saying - and I do not think it is something that you can adequately respond to now - is that you direct the House for future operations--- There is a lot of confusion. I saw it last week and I am seeing it this week. Please, just re-look at the procedure because I know the two-thirds requirement is constitutional and we must have it. However, how we are going to proceed in the House with those numbers is not clear. The way it has been done here is a bit blurry. From what you have said, what you should do is not to put the Question at all because there are no numbers. There must be a clear way, which is not apparent right now. So, please, retreat as a panel and consider it.

**The Temporary Deputy Chairman** (Hon. Cheboi): Once there is a retreat, your sentiments will fully be considered. It would not be right for anybody not to take seriously the sentiments of the Member for Suba.

Let us proceed. You are raising points of order when I can give you an opportunity to contribute. Let us have the Member for Mukurweini. Is yours a point of order?

**Hon. Kabando wa Kabando:** Hon. Temporary Deputy Chairman, it is not a point of order.

**The Temporary Deputy Chairman** (Hon. Cheboi): Do you want to contribute?

**Hon. Kabando wa Kabando:** Yes.

**The Temporary Deputy Chairman** (Hon. Cheboi): If you want to contribute, I will give you the opportunity. Give me a minute to hear a point of order from the Member for Nakuru Town East and then, I will come back to you right away.

**Hon. Gikaria:** Thank you, Hon. Temporary Deputy Chairman. My only comment is this: Is Hon. Millie in order to mislead the House regarding your calling for a vote? I am raising this because when the Speaker gave his Communication last week, he said: "If you agree with the President, it will be simple majority." That is what we are doing here. So, you have to call for a vote.

**The Temporary Deputy Chairman** (Hon. Cheboi): You are very right, but Hon. Millie was also perfectly in order, especially on the bit where she says that we should re-look at the way we proceed. That can be done.

**Hon. Gikaria:** So, am I also right?

**The Temporary Deputy Chairman** (Hon. Cheboi): You are also perfectly in order.

**Hon. Gikaria:** Thank you.

**The Temporary Deputy Chairman** (Hon. Cheboi): We are all moving in the same direction. Hon. Millie has raised a very pertinent issue that we need to re-look at how we are going to handle those kinds of matters. They are fairly new and they can be improved. You are all perfectly in order.

Let us hear the Member for Mukurweini and then we will proceed in the manner that we have been doing since we started this afternoon.

**Hon. Kabando wa Kabando:** Hon. Temporary Deputy Chairman, I want to raise three issues. One, although lately I have not been in agreement with the Leader of the Majority Party,

the issues he has raised are very pertinent and I want to support them very strongly. Whether a commission is independent or not, it cannot be absolutely autonomous in a state that is democratic and has checks and balances for its operations. Therefore, the Auditor-General's Office is subject to the public service principles and guidelines. Otherwise, it will run amok. Therefore, we cannot purport to read articles of the Constitution exclusively without inter-linking them with other articles of the same document. Even when you talk about the county governments, we have a system and we have even created attendant laws in order to operationalise the county governments' linkages with the national Government. So, we cannot create islands. Therefore, creating one institution and saying it has absolute powers in its staff recruitment processes would be very dangerous for this country. It cannot happen. It is not provided for.

Number two, is the question of the inter-linkages. I have been wondering aloud about this observation that Members, including my good friend from Suba, Hon. Millie Odhiambo, have raised. I invite you to note that there is no obligation that, at any given time, there must be the requisite number of two-thirds in order to debate and make a decision. The requirement---

**Hon. (Ms.) Odhiambo-Mabona:** (*Inaudible*)

**Hon. Kabando wa Kabando:** Let me finish. I know you are--- The requirement is that--- That has been raised by other people.

**Hon. (Ms.) Odhiambo-Mabona:** (*Inaudible*)

**Hon. Kabando wa Kabando:** Excuse me! It is not you. Stop heckling! It is not about you. It is about other people. I apologize.

The requisite number can only be required to reverse. If you are reversing the Presidential Memorandum, it is incumbent on not only this side of the House but individual Members of Parliament, who are interested to reverse that decision, to whip ourselves to come.

Finally, Hon. Temporary Deputy Chairman, the last observation for the Majority Leader is this – and I have consulted with the Chairman of the Departmental Committee on Finance, Planning and Trade and the Vice-Chairperson of the Budget and Appropriations Committee, Madam Mary Emase here - there appears to be some *lacuna* in terms of the legislative processing and enriching of documents that appear here. In this country we have, for the first time in this new dispensation, employed so many legislative advisors. There are legislative advisors in the Deputy President's Office, legislative advisors in Harambee House and legislative advisors in State House. When are those people going to work with this House because we are institutions of democracy so that we do not have the kind of embarrassments that we are experiencing every day?

**The Temporary Deputy Chairman** (Hon. Cheboi): Now, you were doing very well but you have gone out of---

**Hon. Kabando wa Kabando:** Let me conclude.

**The Temporary Deputy Chairman** (Hon. Cheboi): I have been listening to you, Hon. Member for Mukurweini. If you realise, I was very patient with you even when you were raising issues that were extraneous to this particular clause. I listened to you because I thought it was good for purposes of enriching the issues of procedure but now, when you bring the last one of advisors and so forth---

**Hon. Kabando wa Kabando:** Please, Hon. Temporary Deputy Chairman, hear it because it is representative. There are people in this country who have been employed and are

drawing huge salaries from public coffers and they are supposed to enrich the legislative agenda of this House - and the Chairmen of the Committees are easily available. There needs to be a bridge.

**The Temporary Deputy Chairman** (Hon. Cheboi): That is fine, Hon. Member for Mukurweini. Let us make the decision.

**Hon. Kabando wa Kabando:** Hon. Temporary Deputy Chairman, we are going to audit them. We will ask for their names and what they are earning. Otherwise, there is a space and they are wasting public resources.

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

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

*(Clause 19 as amended agreed to)*

#### *Clause 66*

**The Temporary Deputy Chairman** (Hon. Cheboi): Now, we will be moving a little bit faster. Hon. Duale, you have to be very brief.

**Hon. A.B. Duale:** Hon. Temporary Chairman, I will be very brief but I have advice, with your permission, to Hon. Kabando that in case you lose the next election, you might be appointed as an advisor. Do not be very hard on advisors.

**The Temporary Deputy Chairman** (Hon. Cheboi): No! Let us proceed, please.

**Hon. A.B. Duale:** Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 66 of the Bill be amended by deleting the words "Auditor-General" immediately after the word "The" and substitute therefor the words "Cabinet Secretary responsible for matters relating to finance".

Hon. Temporary Deputy Chairman, this is very clear. This one should not raise debate. Any implementation of an Act of Parliament is done by a Cabinet Secretary (CS). Subsidiary legislation, including regulations, if you read the Statutory Instruments Act, the powers are with the CS. We cannot legislate where one section of an Act of Parliament contravenes another Act. We are saying that the Auditor-General can do his regulations but he has no powers to send them to Parliament. It is only the CS for Finance who will do that.

This is very clear in the Statutory Instruments Act. This should not create a debate. Advisors are good people.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Hon. Cheboi): I will give two Members, one from this side and another from the other. I will start with the Member for Teso South, Hon. Emaase.

**Hon. (Ms.) Otucho:** Thank you, Hon. Temporary Deputy Chairman, though I wanted to contribute to the previous clause. What I would like to say, as a Member of the Departmental

Committee on Finance, Planning and Trade, is that we rejected these amendments because they are not good. They are touching on the independence of the Office of Auditor-General. The import of these amendments is that they are seeking to reduce or limit the powers and scope of the Office of the Auditor-General. I wanted to comment on the previous clause. I must mention that when you look at--- Before I come to that one---

**The Temporary Deputy Chairman** (Hon. Cheboi): I want you to be specific to Clause 66. Please, do not go to the other ones which we have handled.

**Hon. (Ms.) Otucho:** My contribution was to the previous clause and my position is I oppose the amendments. Although I know that we do not have the numbers, I oppose the amendments.

**The Temporary Deputy Chairman** (Hon. Cheboi): That is perfect. I will give Hon. Gumbo the Floor. Let me see if there is somebody else. Hon. Gumbo, you have been speaking a lot this afternoon. Actually, there is nobody from your side and so, I will give you the chance to speak.

**Hon. (Eng.) Gumbo:** Hon. Temporary Deputy Chairman, I believe I have been enriching the Bill. I rise to oppose this amendment. Really, the essence of the Office of the Auditor-General, like all accountability bodies, is to try to make that Office as independent as possible.

The essence of this amendment is actually to make the CS responsible for finance to prepare regulations. This is a contradiction. It is a contradiction in the sense that the National Treasury, which is headed by the CS for Finance, is one of the entities being audited by the Auditor-General. So, I do not understand how an entity which is being audited by the Auditor-General will make the same regulations that will govern its own auditing. Honestly, I would wish that my good friend, Hon. Duale, could listen to me. This is a contradiction and a big one. Much as I know that the regulations will come to this House, it is wrong to make an auditee, in this case the National Treasury, to be responsible for making regulations that will govern how they are audited. How then are we going to ensure the independence of the Office of the Auditor-General?

So, I oppose very strongly.

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

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

*(Clause 66 as amended agreed to)*

*New Clause 11A*

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. Members, we will be dealing with the New Clause 11A and New Clause 40A.

**Hon. A.B. Duale:** I do not want to have issues with my very good friend, the Chairman of the Public Accounts Committee (PAC), but he has to live with Article 115. We have no choice. I beg to move:-

THAT, the following new clause be inserted immediately after Clause 11 of the Bill.

Acting  
Auditor-  
General

11A.(1) Where:-

- (a) the office of the Auditor-General becomes vacant;
- (b) the Auditor-General has been suspended in accordance with the Constitution;
- (c) the appointment of a person as Auditor-General is pending; or the Auditor-General is, for any reason unable to perform
- (d) the function of his or her office, then, until a person is appointed to and has assumed the functions of that office in accordance with Section 11 above, or until the Auditor-General has resumed the performance of those functions, the Public Service Commission shall recommend the most senior officer in the office of the Auditor-General to the President to designate such a person as the acting Auditor-General.

(2) A person designated under subsection (1) shall meet the minimum qualifications for appointment to the office of the Auditor-General and shall serve for a period not exceeding ninety days.

(3) When acting in terms of subsection (1), the acting Auditor-General shall have all the powers of the Auditor-General.

This is a long thing. This is a result of a vacancy in the Office of the Auditor-General, in case he is suspended in accordance with the Constitution and the process is initiated by this House, in a situation where the appointment of the Auditor-General is pending or where he is unable to perform.

There is a serious *lacuna* in the Constitution on how that kind of a situation should be addressed. I do not know why my good friend, the Chairman of the Departmental Committee on Finance, Planning and Trade, who is a very thorough man, did not anticipate this. This is why Article 115 is good because the President is solving it.

How do we resolve that *lacuna*? The President has accordingly introduced a new Subsection 11 where he says, very clearly again, within the confines of the Constitution, that he has given that power to the Public Service Commission as the body that has the files and is in charge to look at it. If you leave that to any other institution, they might bring a junior person. The Public Service Commission will look at the files and appoint the most senior officer in the Auditor-General's Office and then send the name to the President. But a timeline has been given. That person can only act within three months to give time to Parliament to do the due process of recruiting the new Auditor-General.

This was a *lacuna* in case something happens to the office-holder of the Office of the Auditor-General.

Hon. Temporary Deputy Chairman, the holders of that office should be qualified Kenyans. Tomorrow, our colleagues might be in the Government. The word 'shall' is futuristic. The elections are termed on five years and this is futuristic. So, the Member is right that it shall be. I beg to move. This is a very clear matter and we can put the Question.

*(Question of the clause proposed)*

*(New clause read the First Time)*

*(Question, that the new clause be read a Second Time, proposed)*

**The Temporary Deputy Chairman** (Hon. Cheboi): I want you to go to Clause 40, but let us finalise this Clause 11A on its own first. We can quickly dispense of that. I will give a chance to the Member for Chuka/Igambang'ombe Constituency quickly. I want to give a chance to many Members on this, but they should be brief and straight to the point.

**Hon. Langat:** On a point of order, Hon. Temporary Deputy Chairman.

**The Temporary Deputy Chairman** (Hon. Cheboi): What is it, Hon. Langat? I can see you have a point of order.

**Hon. Langat:** Hon. Temporary Deputy Chairman, in terms of procedure, we had agreed. If you look at the Resolution of the House which is on the Order Paper, in a Bill, it is the Leader of the Majority Party, the Leader of the Minority Party and the Chairperson of that Committee who should go first. We have considered this as a Committee, unless in future, we do not give this business to the Committee.

**The Temporary Deputy Chairman** (Hon. Cheboi): Okay, Hon. Langat, you will get an opportunity. Do not worry. Let me give a chance to the Member for Chuka/Igambang'ombe Constituency. I will give a chance to one Member from this other side and then I will come to you, Hon. Langat, the very hard working Chairman of the Departmental Committee on Finance, Planning and Trade. You deserve a special position on that so that you can speak. Member for Chuka/Igambang'ombe, it has to be brief.

**Hon. Njuki:** Hon. Temporary Deputy Chairman, I listened to Members complain about Article 115. It is as if the President is supposed to rubber-stamp what we discuss in this House. The introduction of a new clause shows that Article 115 is critical in ensuring that he enriches what may have emanated from this House.

I support this amendment for two reasons. Unlike the other clauses which we were trying to discuss, this is a succession or a transition clause. What should happen if that very important office of the Auditor-General fell vacant is critical. Giving the mandate to the Public Service Commission to appoint the person who should take over from the Auditor-General gives merit rather than allowing prejudiced appointment of probably junior staff to hold the position for a few days. This gives credibility to the transition period.

Secondly, it allows institutional memory now that they will pick the senior-most member of the audit team. It allows the institution to have a good transition whereby whatever was happening can be carried through in the three months and then we can have an interview to appoint a substantive auditor-general.

**The Temporary Deputy Chairman** (Hon. Cheboi): Very well. That would be it, Hon. Member for Chuka/Igambang'ombe Constituency. I will give an opportunity to Hon. Langat.

**Hon. Langat:** Thank you, Hon. Temporary Deputy Chairman. If we were to follow that process, it would be very good. I will be shedding some more light because we have considered



it at length in the Committee. First of all, part of this clause was there initially in the Bill which was introduced in the House. But it was defeated through some amendments. However, the version which came from the President is slightly different from what originally came to the House to the extent that it is also giving the Public Service Commission powers to appoint the senior-most auditor.

Under Clause 15 of this Bill, there is the Senior Deputy Auditor-General whose roles have been specified there. When we considered this in the Committee, we said that instead of all these stories which give another person powers to select another person, since the Senior Deputy Auditor-General deputises the Auditor-General, we should only add another function to the Senior Deputy Auditor-General under Clause 15 and say that he should act in the absence of the Auditor-General. That will cover the lacuna. If you look at what has been provided there, it looks like somebody fears something. They want to do something in three months and then appoint somebody else. It is suspicious the way it is presented.

**The Temporary Deputy Chairman** (Hon. Cheboi): Okay. Let me give a chance to Hon. Gumbo and then to another one more Member. Let us be brief, Hon. Gumbo.

**Hon. (Eng.) Gumbo:** Hon. Temporary Deputy Chairman, I had proposed an amendment which was very much along these lines, but for some reasons, it was defeated. I am surprised that the only difference is that unlike what the President has proposed, I was not including the Public Service Commission. Like my good friend, Hon. Benjamin Langat has said, if you look at Clause 15 of this Bill, it clearly provides for the Senior Deputy Auditor-General, who is the deputy of the Auditor-General, to act in his absence. I do not understand why somebody advised the President to use so many words to describe something so simple. The Senior Deputy Auditor-General is the senior-most after the Auditor-General, anyway. So, why use so many words to describe just one person?

I support only to the extent I am not sure whether the inclusion of the Public Service Commission should be there. Otherwise, I support.

**The Temporary Deputy Chairman** (Hon. Cheboi): Let us have Hon. Nakara in brief.

**Hon. Nakara:** Hon. Temporary Deputy Chairman, we need to take care of the transition. When the Auditor-General is not there, what next? This is very important.

*(Question, that the new clause be read  
a Second Time, put and agreed to)*

*(The new clause was read a Second Time)*

*(Question, that the new clause be added to  
the Bill, put and agreed to)*

**The Temporary Deputy Chairman** (Hon. Cheboi): Let us move on to Clause 40(A).

*New Clause 40(A)*

**Hon. A.B. Duale:** Hon. Temporary Deputy Chairman, I beg to move:-

THAT, the following New Clause 40(A) be inserted immediately after Clause 40.

Auditor-General  
not to question  
Government  
policy objective.

40A. Notwithstanding the provisions of this Act, in an examination under this Act, the Auditor-General shall not question the merits of a policy objective of the national government or county government or any other public entity.

Hon. Temporary Deputy Chairman, you told me to explain to the Members. Here, I am speaking as a representative of the President and not as a Member for Garissa Town. I am speaking for the President. So, you should give me more time.

That is a very clear amendment. The Auditor-General deals with books of accounts. He audits. He does not deal with the objective and policy. For example, the Auditor-General has no business with the manifesto of any coalition in Government. He deals with books in terms of who has misused money that is appropriated and voted by the National Assembly. So, the Auditor-General will go to the county governments, look at their books of accounts and say Kenyans in that county did not get value for their money. He will do the same for the national Government. But he cannot, for example, deal with the introduction of laptops and the Standard Gauge Railway. Those are policy objectives. So, if he goes that route, then he is a squatter.

*(Question of the new clause proposed)*

*(New clause read the First Time)*

*(Question, that the new clause be read  
a Second Time, proposed)*

**The Temporary Deputy Chairman** (Hon. Cheboi): I do not know why the Member for Kiharu Constituency is speaking to himself as he walks, but I will give the opportunity to the Member for Butula, Hon. Onyura.

**Hon. Onyura:** Thank you, Hon. Temporary Deputy Chairman. I rise to oppose. If there is anything that should be totally opposed in all these amendments, it is this one. How can we, after giving so many powers and putting into this Bill very high qualification requirements of the Auditor-General and a very rigorous system of appointing him or her, come and say that he or she cannot have an opinion on issues of policy? Suppose it is faulty policies that are making an entity not viable or having loopholes that are being taken advantage of, how can we stop him or her from dealing with that?

Hon. Temporary Deputy Chairman, I totally oppose this and in the spirit I have observed, I oppose all the other amendments on this section.

**The Temporary Deputy Chairman** (Hon. Cheboi): That is fine. If we can agree, I will give more Members a chance to speak. However, it is on one condition that you really do not have to go out of your way to speak for two minutes. We can reserve that for an ordinary day of debate. I thought it is good if the Chair is last. However, it is better if he wishes to be the first. Now let us have the Chair of the Committee.

**Hon. Langat:** Thank you very much, hon. Temporary Deputy Chairman. This is the only amendment which we agreed on with the President. Government policy is like a manifesto of that government. For example, we cannot have the Auditor-General come and say that the laptop project should not be implemented. That is a policy of the Government. The only thing the Auditor can do is to question expenditure and whether people got value for money or not. However, he or she cannot say that this or that policy should or should not be implemented. That is the role of the people of Kenya because they are the ones who elected that Government with its manifesto and policy objectives. That is the best practice. It is not only in Kenya.

**The Temporary Deputy Chairman** (Hon. Cheboi): Let us have the Member for Funyula Constituency.

**Hon. (Dr.) Nyongesa:** Thank you, Hon. Temporary Deputy Chairman. I oppose this amendment because we know that all actions come from policy. If you are going to look at documents just in terms of numbers or expenditures without really looking at whether the policy objectives are really being fulfilled through those expenditures, then you will not be doing any merit in terms of auditing.

For example, today we have the laptop project, which has been a major flagship project for---

*(Loud consultations)*

**The Temporary Deputy Chairman** (Hon. Cheboi): Order! Allow hon. Otuoma to finalise his contribution.

**Hon. (Dr.) Nyongesa:** That laptop project really ran into a lot of issues just because the policies that were put forward were all wrong. It allowed people who had evil objectives to come forward and try to do procurement. So, if you are an auditor and you already see that a policy was formulated without proper thought or benefit to the public, you can also give an opinion and say: "Yes, the objectives of these policies were wrong because they never achieved what was intended for the public." It has happened in so many other jurisdictions and so many other things in Government. We have seen many parastatals in this country that were started with the objective of generating revenue for Government. However, instead of them generating revenue for Government, most of them are being bailed out every other day. There is no revenue coming from them. You cannot say that, that Government expenditure is justified because of policy.

Thank you, hon. Temporary Deputy Chairman.

**The Temporary Deputy Chairman** (Hon. Cheboi): Let us have the Member for Samburu North Constituency.

**Hon. Lentoimaga:** Hon. Temporary Deputy Chairman, I wish to support this amendment because policies are derived from manifestos. When we sell manifestos to our people, they accept and elect a Government or a party. If the Auditor-General questions policies of that particular Government, it means he is against that Government. We need to support it so that we can implement it.

**The Temporary Deputy Chairman** (Hon. Cheboi): Let me give a chance to the Member for Bomet Central Constituency. I will still probably give a chance to two more Members to speak in brief.

Let us have the Member for Bomet Central Constituency.

Hon. Members are very excited contributing to this. I see many requests. That surprises me but let us proceed.

**Hon. Tonui:** Thank you, hon. Temporary Deputy Chairman. First of all, I was in the list of points of order. My concern is that we are considering recommendations made by the President while the Constitution talks of reservations. I do not believe the two are the same. We are now handing over the role of legislation to the Presidency, which I believe is very wrong.

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. Tonui, that is water under the bridge.

**Hon. Tonui:** So, I believe with what we are proceeding to do here, we have given out our powers to legislate to another institution, which is wrong.

Thank you.

**The Temporary Deputy Chairman** (Hon. Cheboi): That is water under the bridge. Let us proceed. We had made a decision on that. I am looking at Members who have probably not spoken. Let us start with Member for Kiharu.

**Hon. Kang'ata:** Thank you, hon. Temporary Deputy Chairman. The reason why I support this amendment - and I would like to draw the attention of hon. Members to this - is that we have seen auditors coming to Constituencies Development Fund (CDF) offices and telling us that we should not do *boda boda* training. Then you wonder: *Boda boda* training is a decision that is made by the CDF Committee as a policy issue. The issue of an auditor coming to tell you not to do this and that policy is very wrong. They should be restricted to the issues of numbers. So, hon. Members, as you debate this issue remember how I see auditors extending their powers when they come to us and, in particular on the issue of *boda boda* training.

Thank you.

**The Temporary Deputy Chairman** (Hon. Cheboi): That was very good. You did it very quickly. I will still come to that direction. I can see many Members on this other side. Let us have the Member for Borabu, Hon. Onyancha.

**Hon. Omagwa:** Hon. Temporary Deputy Chairman, I am Member for Bomachoge Borabu Constituency, not just Borabu. There is a Member for Borabu Constituency as well. I support this amendment. We all know that governments come into place because they have manifestos and objectives they want to achieve. We cannot give this responsibility to the Auditor-General. His role is to audit public expenditure. If in so doing he can also audit policy, that will be good enough. However, we cannot have him audit policy from the outset. That will derail the programmes of any government.

**The Temporary Deputy Chairman** (Hon. Cheboi): Let us have hon. Nyamai.

**Hon. (Ms.) R.K. Nyamai:** Thank you, hon. Temporary Deputy Chairman. I rise to support this amendment because of the fact that policies are drawn from interactions with the community. If we give the Auditor-General the authority to question the interactions with the communities and knowing very well that they do not have the time to do it, then it means that we will not make progress.

I support the amendment. Thank you, hon. Temporary Deputy Chairman.

**The Temporary Deputy Chairman** (Hon. Cheboi): Let us have hon. Gumbo. Let us be as brief as the rest have been. We do not need to take too long so that I can give more Members a chance.

**Hon. (Eng.) Gumbo:** I am a bit surprised that most Members who have contributed do not actually understand this amendment. It does not talk about Government policy but about policy objective. There is a difference between a policy and a policy objective. These days, auditing is not about financials. We look at value for money and performance. Performance is about the impact public spending has on the people. So, how do we deny the Auditor-General the power to question the policy objective and not policy? The policy is covered in the manifesto. The policy objective is about how you deploy the resources.

So, I oppose.

**The Temporary Deputy Chairman** (Hon. Cheboi): You have made your point. We will go to hon. Jude Njomo.

**Hon. Njomo:** Thank you, hon. Temporary Deputy Chairman. The people who have the right to audit the policy objectives are the people of Kenya. When political parties go out there and do their campaigns, they sell their policies to the public. When the public audits these objectives and they find that they are right, then they vote in the Government. The work of the Auditor-General is clearly defined as that of looking into the accounts of the different bodies that are under the Constitution, our courts, our county governments and the rest. However, auditing policies is the work of the public. If the Government does not implement its policies properly, then the same public will vote the Government out. So, I support.

**The Temporary Deputy Chairman** (Hon. Cheboi): Let us have the Member for Narok West Constituency.

**Hon. ole Ntutu:** Thank you, hon. Temporary Deputy Chairman. I support this amendment. I want to remind hon. Members that the roles of the Auditor-General are very clear which are to audit the accounts of the national and county governments. So, where does the policy come in? Basically, Members should give us examples of what they are talking about and what are they opposing? The Constitution is very clear. You must tell us why you are opposing this. This is because we are not dealing with a policy. The Auditor-General only deals with the accounts of expenditure of the national Government or the county governments.

I support this amendment.

**Hon. Gikaria:** Thank you, Hon. Temporary Deputy Chairman. I want to be very brief. I want to draw the attention of Hon. Gumbo to Clauses 33, 34 and 35 of the same Bill which talk about what he has just said. It is not fair for an Auditor-General to be given an opportunity to audit policy objectives. It will be wrong and it cannot help in any way.

**The Temporary Deputy Chairman** (Hon. Cheboi): Alright, Hon. Dalmas Otieno.

**Hon. Anyango:** Hon. Temporary Deputy Chairman, I support this amendment. I can give you several cases where I have been in conflict with auditors. At one time when I was privatising the Kenya Airways, they said that for a loan that was guaranteed by the Government to be written off and for the Government to pay it, I needed to go back to the House after the House approved the guarantees. I asked them where it was written and they told me it was a policy matter based on sound accounting principles. I said if it was not in the law, I would go ahead and I did and they could not criticise it.

In my Constituencies Development Fund (CDF), auditors came and told me how I should distribute my bursary allocations between university, secondary and technical colleges. I said: "As a policy, we know where we have a serious gap in the constituency and where we should direct our support. The policy is that we go for university, select engineering, architecture and so

on, as a policy in this constituency approved by the entire leadership of this constituency.” They started saying that I should not do that.

I wondered where auditors get those policy contributions. The question should be, if the policy is clear, then the auditor has no issue about merits or demerits which belong to the leadership that is determining the policy. So I support this amendment.

**The Temporary Deputy Chairman** (Hon. Cheboi): Very well. Let me give the Hon. Member for Kibwezi West the Floor. I am trying to be generous, if Members are going to speak very briefly. Hon. Patrick Musimba.

**Hon. Musimba:** Thank you, Hon. Temporary Deputy Chairman. I simply want to say this: The reason why we bequeath the Auditor-General the role of looking at the books of accounts is to ensure that an entity is indeed a going concern in the next financial year.

Looking at the policy objectives, so long as they are clearly spelt out, ours is to find out whether we are regressing or progressing. Are we achieving it or not? My stand is opposing the amendment because it does not give us the length and breadth of whether we are a going concern unit in the next financial year.

*Question, that the new clause be read  
a Second Time, put and agreed to)*

*(The new clause was read a Second Time)*

*(Question, that the new clause be added to  
the Bill, put and agreed to)*

**The Temporary Deputy Chairman** (Hon. Cheboi): That now marks the end. I therefore call upon the Mover to report.

**Hon. A.B. Duale:** Hon. Temporary Deputy Speaker, I beg to move that the Committee doth report to the House its consideration of the President’s Amendments to the Public Audit Bill, National Assembly Bill No.38 of 2014 and its approval thereof without amendments.

*(Question proposed)*

*(Question put and agreed to)*

*(The House resumed)*

*[The Temporary Deputy Speaker  
(Hon. (Ms.) Shebesh) in the Chair]*

**Hon. Cheboi:** Thank you, Hon. Temporary Deputy Speaker. I beg to report that the Committee of the whole House has considered the President’s Amendment to the Public Audit Bill, National Assembly Bill No. 38 of 2014 and approved the same without amendments.

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): Mover of the Bill.

**Hon. A.B. Duale:** Hon. Temporary Deputy Speaker, I beg to move that the House doth agree with the Committee in the said Report.

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

**Hon. ole Ntutu:** I second.

*(Question proposed)*

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): Are there any comments? Hon. Gumbo.

**Hon. (Eng.) Gumbo:** Hon. Temporary Deputy Speaker, of course I appreciate what the House has done this afternoon, but I am still of the opinion that it was not in vain that the Constitution, under Article 252, provided for commissions and independent offices to be in charge of recruiting their own staff. I think we, as a House today, seem to be legislating at cross-purposes because in this very same House we have given the Independent Electoral and Boundaries Commission (IEBC) the powers to recruit their own staff, our own Parliamentary Service Commission recruits their own staff and I do not see any merit whatsoever for the Auditor-General to be subjected to the Public Service Commission in recruiting their own staff. I am also concerned that one of the principal auditee that the Auditor-General looks at, who is the Cabinet Secretary in charge of Finance, is being given the task of preparing regulations. In my humble view and I have said it before, this is a major conflict. The Auditor-General should be allowed so that we reinforce the independence of that office. The Auditor-General should be allowed to prepare regulations governing their own work which shall be approved by this House.

I oppose.

**Hon. A.B. Duale:** Hon. Temporary Deputy Speaker, I want to make it very clear that the three arms of Government; the Judiciary, the Executive and the Legislature, in their functions, check each other. The Legislature's function of legislative process, of making laws, is well stipulated in the Standing Orders and in the Constitution. The excess powers of the Legislature, both in the plenary and its committees, is checked by Article 115 on the Presidential Assent and Referral. The excesses of the Executive and the Legislature are also checked by an institution called the Judiciary that interprets law passed by Parliament and given assent by the Executive and more importantly has the powers to annul any legislation. So the President used Article 115 in totality in making sure that the excesses and the interests of the public, are taken care of.

Finally, there is no independent institution that has absolute independence. This must come out very clearly. Independent institutions cannot have the absolute powers to manage. That is why the National Assembly, the Senate and the Judiciary have the powers to check absolute independence of those institutions. As we pass this law, I hope the Auditor-General and his officers will make sure that Kenyans get value for the Kshs258 billion we have sent to the counties and the many billions we have given to the national Government.

Thank you.

*(Question put and agreed to)*

## MOTION

NINETEENTH REPORT OF  
PUBLIC INVESTMENTS COMMITTEE

**Hon. Keynan:** Thank you, Hon. Temporary Deputy Speaker. I beg to move the following Motion:-

THAT, this House adopts the Nineteenth Report of the Public Investments Committee (PIC) on the Audited Financial Statements of State Corporations (Volume I & II), laid on the Table of the House on Tuesday, 31<sup>st</sup> March 2015.

I decided to sacrifice this day even when I know that at this time, because of fasting, I ought to be somewhere. At the outset, I want to repeat that the Public Investments Committee (PIC) under Standing Order No. 206 has the following mandate, just for the record.

The PIC is a select committee designated as the Public Investments Committee for the examination of the working of public investments. Secondly, PIC has its membership including the Chairman. Therefore, the functions which I want to emphasise are:-

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

In this particular Report----

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): Hon. Chairman, I want to interrupt you a bit so that I can give the opportunity to the Chairman of Budget and Appropriations Committee to lay some Papers.

PAPER LAID

**Hon. Musyimi:** Much obliged, Hon. Temporary Deputy Speaker. I apologise to my brother, Hon. Keynan. This is important because of the appropriations for next year. However, I beg to lay the following Paper on the Table of the House today, Tuesday, 23<sup>rd</sup> June, 2015:- The Report of the Budget and Appropriations Committee on the Second Supplementary Budget for 2014/2015.

NOTICE OF MOTION

SECOND SUPPLEMENTARY BUDGET FOR 2014/2015

**Hon. Musyimi:** With your kind permission, Hon. Temporary Deputy Speaker, I beg to give notice of the following Motion:-

THAT, this House adopts the Report of the Budget and Appropriations Committee on the Second Supplementary Budget for 2014/2015 laid on the Table of the House on Tuesday, 23<sup>rd</sup> June, 2015.

I thank you and Hon. Keynan too.



**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): Hon. Keynan, let me just clarify. Had you moved the Motion as it is written on the Order Paper?

**Hon. Keynan:** Yes, I did.

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): Did you move it exactly as it is on the Order Paper?

**Hon. Keynan:** Yes, I did but for avoidance of doubt, I can repeat.

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

THAT, this House adopts the Nineteenth Report of the Public Investments Committee on the Audited Financial Statements of State Corporations (Volume I & II), laid on the Table of the House on Tuesday, 31<sup>st</sup> March 2015.

That is just for avoidance of doubt, but I did the same.

I do not want to repeat the issues that I have said. The Committee held 136 sittings in which the Committee examined audited accounts of over 72 State corporations.

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): Sorry, who is asking for opportunity to raise a point of order? I have three requests here. Is it Hon. Onyancha?

**Hon. Omagwa:** Yes.

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

**Hon. Omagwa:** Hon. Temporary Deputy Speaker, did you hear the Mover of this Motion saying that this House will “adapt”? What we are doing here is adopting this Motion. These are his intentions, but he is asking us to “adapt”, which is different.

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): Go ahead, Hon. Keynan.

**Hon. Keynan:** With due respect, first of all, I immensely respect my good brother here. I know your background. I also know the words that are missing in your upbringing in English. Therefore, I do not want to be taken back on the issue of semantics, let us deal with serious issues. We have a Motion before the House and you know where you are and where I am. You know that I have been here for quite some time. Let me move with the issue because that is totally immaterial.

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): Go ahead, Hon. Keynan.

**Hon. Keynan:** Let us be very serious because this is a very serious Report and I want us to deal with the issues before us. I said, and I want to go on record that this Report is unprecedented in the sense that this is the first time, since the framers of the current and past Standing Orders came up with a Committee called PIC, that it has come up with audited accounts of 72 State corporations in a single report. In the Tenth Parliament, which I had a privilege of being Member, and you were there too, PIC did reports on 27 parastatals for the whole term of five years. The previous one did 39. I want to say I am very proud of the Members, the secretariat and everybody who participated in this. We have in a single volume the reports that were audited. What we are trying to do is to clear the backlog just like Hon. Khalwale did in the last Parliament on PAC. That is why they are dealing today with current issues. As a result of these 136 sittings - and it is not an easy job to participate in 136 sittings - the accounts of the following State corporations are up-to-date:-

- 1) National Oil Corporation
- 2) Kenya Rural Roads Board Authority
- 3) Kenya Roads Board
- 4) Kenya National Highways Authority

- 5) Kenya Airports Authority
- 6) Kenya Civil aviation Authority
- 7) Kenya Plant Health Inspectorate Services
- 8) National Housing Corporation
- 9) Higher Education Loans Board
- 10) Kenya Tourism Development Corporation
- 11) National Social Security Fund
- 12) Kenya Industrial Research Development Institute
- 13) Cotton Development Authority
- 14) Nursing Council of Kenya
- 15) Kenya Ports Authority
- 16) Kenya Railways Corporation
- 17) Kenya Power and Lighting Company
- 18) Central Bank of Kenya

I want to emphasise something on the Central Bank of Kenya. This is the first time the audited accounts of Central Bank of Kenya are coming before this House. It is unprecedented because in the past, there were special institutions: Central Bank of Kenya, Kenya Revenue Authority, Kenya Power and Lighting. Those are institutions that used to be operated through roadside presidential directives. Courtesy of the current Constitution, this is the first time the accounts of Central Bank of Kenya will be debated in this House.

The other institutions are:

- 19) Ewaso Nyiro North Development Authority
- 20) Kenya Petroleum Refineries Limited (It has serious challenges presently)
- 21) Kenya Electricity Generating Company
- 22) Nzoia Sugar Company
- 23) Agro-Chemical and Food Company.

I am sure many Members will be hearing some of the names for the first time though these parastatals have been in our statutes for the last 40 years.

- 24) Kenya Forest Service
- 25) Kenya Wildlife Service
- 26) Kenyatta National Hospital
- 27) Kenya Seed Company
- 28) Kenya Maritime Authority
- 29) Kenya Marine and Fisheries Research Institute
- 30) Kenya Ferry Service Limited
- 31) Coast Development Authority
- 32) Coast Water Service Board
- 33) Kenya Medical Research Institute
- 34) National Hospital Insurance Fund
- 35) National Water, Conservation and Pipeline Corporation
- 36) Tea Board of Kenya
- 37) National Authority for Campaign Against Alcohol and Drug Abuse
- 38) Northern Water Service Board
- 39) Kenya Reinsurance Corporation

- 40) Moi Teaching and Referral Hospital
- 41) Kenya National Examinations Council
- 42) Kenya Electricity Transmission Company
- 43) Kenya Medical Supplies Agency
- 44) National AIDS Control Council
- 45) Kenya Medical Training College
- 46) Kenya Dairy Board
- 47) National Irrigation Board
- 48) Agricultural Finance Corporation
- 49) Sugar Development Fund
- 50) Kenya Sugar Board
- 51) Local Authority Provident Fund
- 52) National Cereals and Produce Board
- 53) Tana and Athi River Development Authority( TARDA)
- 54) Kenya National Library Services (KNLS)
- 55) Commission for Higher Education (CHE)
- 56) Kenya Forestry Research Institute (KFRI)
- 57) National Environment Management Authority (NEMA)
- 58) Geothermal Development Company (GDC)
- 59) Coffee Research Foundation (CRF)
- 60) Bomas of Kenya
- 61) Kenya Film Classification Board (KFCB)
- 62) Kenyatta International Convention Centre (KICC)
- 63) Public Complaints Committee on Environment (PCCE)
- 64) National Construction Authority (NCA)
- 65) National Cohesion and Integration Commission (NCIC)
- 66) Energy Regulatory Commission (ERC)
- 67) Embu University College
- 68) Kenya Institute of Curriculum Development
- 69) Information and Communications Technology Authority (ICTA)
- 70) Kenya Nuclear Electricity Board
- 71) National Environment Trust Fund (NETF)
- 72) Taita Taveta University College.

Hon. Temporary Deputy Speaker, these are 72 State institutions. We did this in an overdrive way in order to clear the backlog so that for those who will be there in the 12<sup>th</sup> Parliament, their work will be easy. They will clear with audit accounts which come on a yearly basis. Some of these accounts date back to 1988. You can imagine the dynamics that have taken place from 1988 to date. Therefore, for those who are there and those expected to respond to some of the queries and even understanding the scope of the issues at hand was quite challenging. These are historical documented issues and they can only be cleared through involvement of Parliament. This is why this stage is critical.

During this period, the Committee also undertook inspection tours of a number of facilities including the Moi Teaching and Referral Hospital (MTRH), Kenya Seed Company Limited (KSCL), Nzoia Sugar Company Limited, Kenya Maritime Authority (KMA), Kenya

Ferry Services Limited (KFSL), Coast Development Authority (CDA), Kenya Ports Authority (KPA) and finally Kenya Marine and Fisheries Research Institute (KMFRI). These visits enabled us to see some of the activities that these organisations engage in, in their respective locations. They were also necessitated by the need to ascertain various issues arising from the audit. Therefore, the visits enabled the Committee to get information first hand.

This Report is divided into two sections: Volume I contains the Report and Volume II contains the minutes and HANSARD Report. Both are before the House. It is inquiring into whether or not the affairs of public investments were being managed in accordance with sound business principles and prudent commercial practice. The Committee heard and received both oral and written submissions from the Executives of various State corporations and other relevant witnesses. Therefore, the recommendations on issues raised by the Office of the Auditor-General were interrogated. On different paragraphs, documents and notes received by the Committee form the basis of the Committee's observations and recommendations as outlined in the Report and can be obtained in the HANSARD Reports of the Committee available in the Parliament library.

If these observations and recommendations are taken into account and implemented, they will enhance accountability, effectiveness, transparency, efficiency, prudent management and profitability of State corporations and public investments as a whole sector. In interrogating this, the Committee made the following observations and recommendations:

In examining the audited accounts of State corporations, the Committee's primary approach was to elicit background information as to why particular course of action was or was not taken keeping in mind the relevant financial management principles and regulations. This is the foundation of the Committee's observations and recommendations.

The Committee observed with concern that several State corporations continue to operate under financial constraints occasioned by mismanagement or imprudent commercial management. In addition, some State corporations continually breach the National Treasury guidelines on investment of surplus funds and without authority or approval of the budget and other management on guidelines on remuneration and salary increment for both staff and the board. Further, the Committee has continually taken great exception to the low pace at which the Government has implemented the recommendations of this House arising from various reports. In the civilised world, a House of Parliament or the Legislature is the first arm of Government. Therefore, the recommendations originating from this House must be taken seriously by all arms of Government otherwise this House will be reduced to just a mere conveyor belt. That is not what the current Constitution under Article 95 envisages.

The Committee was also concerned by the slow pace at which the Ministry of Land, Housing and Urban Development and the National Land Commission (NLC) have taken to have illegal allocations of corporations' land revoked to enable these corporations make proper use of their land. It is historical that institutions like KSCL, KPA, Kenya Airports Authority (KAA), Kenya Medical Training College (KMTC) and many other State institutions have been affected by serious land grabbing which has persisted for the last two or three decades. These issues must be fixed once and for all so that these institutions are given the capacity to productively use the land that rightfully belongs to them. This issue has not been handled comprehensively by these two relevant Government agencies and particularly Ministry of Land, Housing and Urban Development and the NLC. It is one thing that is seriously affecting the profitability and the

productivity of some of these key Government investments. They are not dumping grounds. They are not institutions which we allocate funds and they are not expected to generate funds to support other Government ventures. It is high time we turned around some of these organisations. There is one notable organisation that has been turned around because of prudent financial management and it is the National Oil Corporation of Kenya. It was one of the worst loss making entities 10 years ago. Today, it is at the top simply because of not only measures that have been put in place to turn it around but also having management that is responsive to the demands of that institution.

It is also noteworthy that most audit reservations relate to non-adherence of the following issues: Audit is a complex issue. It is a very dynamic and complex issue. Therefore, when we analysed all the audit issues raised over the years, we were in a position to cluster and come up with the following topical issues that all the auditors over the years have raised issues of concern: The first one is the procurement procedures. They have been abused and flouted over the years. Every year, the Auditor-General's report shows how the procurement procedure pursuant to the Public Procurement and Disposal Act of 2005 have been flouted by different State corporations.

The other bit that has been abused is variations of tender awards. Tenders are awarded with the sole objective of later on varying them. Therefore, tender variation has become an entrepreneurship on its own. This has created serious audit issues. The other issue is the slow pace of the recovery of imprest. It has become a business on its own. Executives of different organisations have abused that facility. They have used it as a cash cow. Therefore, it is one of the issues that the auditors have raised over the years. Imprest is supposed to serve on emergency basis, something that cannot be done in a very long time. They are supposed to clear within 24 hours after one has used that facility. You will realise that some of these imprests have been outstanding for the last two or three decades, and the individuals who took them have either died or are old and completely in a different state.

The other bit that the auditors have raised, which has been abused, is non-maintenance of a fixed asset register. One of the entities that we had a privilege to look at its accounts was Telkom Kenya. This House adopted a report and even after going through serious privatisation, to date, nobody has access to the fixed asset register of Telkom Kenya. This gave an opportunity to the usual cartels to take advantage of that lacuna and benefit immensely.

Once upon a time, we used to have a giant organisation called the Kenya Posts and Telecommunication Corporation (KPTC) that gave birth to Telkom Kenya, Postal Corporation of Kenya, the Communication Commission of Kenya and the Communication Bilateral Authority. To date, none of these off springs of the KPTC is functioning effectively as expected. This is because privatisation was not properly done and accountability was not applied in the process of privatizing. Today, we have a collapsing former giant called "Telkom Kenya". This is because somebody somewhere did not apply the rule of law.

The other bit that the auditors have raised is the issue of stalled projects. Projects are initiated without plans and proper road maps. A project is initiated without a budget simply because it is prudent or you are in a hurry to make a quick kill. You initiate a project, you create a lacuna and within a very short time, it is stalled. If you go around this country, you will realise that there are projects worth billions of shillings if not trillions that have stalled. This is a waste

of opportunities, investments and taxpayers' money. This is one of the issues that the auditors have raised that must be brought to an end.

Our regulations and laws demand that before you commence a project, it must be supported by a feasibility study, a budgetary provision and a proper road map that will guide that project to its logical conclusion. This is one of the issues we realised is not being applied.

The other aspect concerns long-term loans. There has been confusion on who guarantees some of these long-term loans. Some key Government institutions like Nzoia Sugar Company, Mumias Sugar Company and Kenya Airways have suffered simply because they have got involved in long-term loans that they were not prepared to service. This is one of the issues that the auditors have also raised and we hope that in the near future this menace can be brought to an end.

In the past, it was fashionable to go round and get a loan guaranteed by the Treasury. This practice has increased our national debt and it must be brought to an end.

Hon. Temporary Deputy Speaker, I would now like to talk about receiving unqualified reports of previous periods of audit queries that have not been resolved. I want to go on record that the Office of the Auditor-General has also been infiltrated by crooks and cartels. Without casting doubt on the independence of that Office, we have noted over the last two years that, today, you see an entity with serious audit issues dating back to ten years and then out of the blues, you are told that this audit has disappeared. If you ask about the issue, you are told that they are only in their files. We noted that that is fraud. This is corruption of the highest order and the Office of the Auditor-General must be put on notice that this Legislature, and by extension, the Public Investments Committee will not entertain that approach. Audit issues that are raised must be sorted out amicably. Once an audit report has been tabled before this House, the onus lies with Parliament to sort out those audit issues through the laid down procedures. We noted that this happened to a number of institutions and we have asked the Auditor-General to provide answers.

We have had a session with him, we are still engaging with him and we hope that the hunter is not going to become the hunted. This is a serious issue that we have noted. It has happened to an institution like the National Social Security Fund (NSSF). We all know that the NSSF has had serious issues but out of the blues, this year, we were told that the books of the NSSF are clean. Nobody will believe this because there are cases and many issues of land dating back to the last two decades. The cases pending in court and the audit issues total to billions of taxpayers' money and yet somebody has the audacity to come and tell us that they have cleared their books. How? The same person says that this is just for the books, but they have all the audit issues in their files.

The Kenyan taxpayer does not have the opportunity to interrogate what is kept in a file in the Auditor-General's Office. The Kenyan taxpayer has the opportunity to interrogate issues before this House and issues that are within the domain of their elected representatives. This bit is lacking. Very soon, we will be documenting how that menace can be brought to an end. It is something that started recently and I hope it is not part of the new found tricks on circumventing the rule of law.

The other issue that we have realised concerns conflict of interest. Prudence demands that whenever one has an interest, whether direct or indirect, that individual or entity must put it on record. In our case as Legislators, Standing Order No.90 requires that where you have an

interest on anything - it can be social, economic, financial or business - you should put it on record. It is prudence. The same has not been applied and the Auditor-General has flagged this. Therefore, this has seriously compromised on the independence, the profitability, the functioning and the integrity of some of these key institutions. If we strictly comply with the current reformist Constitution, some of these menaces can be brought to an end.

Hon. Temporary Deputy Speaker, the other thing that we have also realised is the non-compliance with international accounting standards. Kenya is not a pariah neither is it a failed State nor a banana republic. There are rules and international practices. On the face of it, we realized that accountants are not only trained to handle the Kenyan scenario but they are also trained on internationally acceptable financial practices.

I am not an Accountant, but from my basic understanding of accounts, it is just like Mathematics. The formula applied in a mathematical theory, whether you are in Kenya, the United Kingdom or the United States of America still remains the same, but you can apply shortcuts. We have also realised that some of these organizations have completely deviated from applying some of these internationally accepted financial standards. We feel that this is an abuse of the process. Therefore, the Auditor-General has flagged this and we hope that this issue is brought to an end.

Hon. Temporary Deputy Speaker, the other issue I would like to raise relates to weak financial positions. I am privileged to have been in the last Parliament where we created very many *quasi* parastatals. The moment a department is turned into a parastatal, it is left to stand on its own.

For the first three years, because they are not prepared to manage that independence and legally functioning institution, they throw all the rules out of the window. If you visit them, they tell you that those are some of their teething problems, they were struggling and they are new, but that does not allow one to circumvent the due process of law. Therefore, before you even legislate the existence of a new entity, the institution concerned - whether it is the parent Ministry or any other Government agency - must have the audacity to pause and say, "I am in the process of creating this new creature". Therefore, put in place all the requisite managerial, financial, technical and human resource facilities for that entity to take off and function properly. This has not been done. If you go back to the history of almost all the new organisations, you will find that they have had serious challenges in the first five years.

The other bit that we have noted which the Auditor-General has also raised is the issue of investments in non-performing organizations. Some institutions with sound financial bases have used this trick and have invested in weak private institutions.

If you look at the history of almost all the collapsed banks, you will realise that there are billions of shillings belonging to taxpayers that have been invested in those organisations, not because of the desire to generate value for money or profit for them, but because of the desire to serve the interest of the cartels and those who have been at the helm. This is why, today, if you ask for the books of Euro Bank, Trust Bank or any of the banks that have wound up, you will realise that your money, investments and your kid's investments are there. It will be very difficult to recover such lost monies because those who were tasked with those responsibilities did not apply prudence, seek the guidance of the Treasury and follow the law. In the process, we have lost billions of shillings through such investments.

Hon. Temporary Deputy Speaker, another issue we realised is the non-payment of statutory deductions which are mandatory. These include NSSF deductions, retirement and medical benefits. Once your employer does not make proper returns of these statutory deductions and you retire, you are told that your employer has not submitted those amounts. Where do you go? You have been working in the public service or in a State corporation for over 60 years but when your time to retire comes and you go to the NSSF, you are told that your former employer has not been submitting the deductions. We are lucky that we do not have the culture of many incidents of suicide. If that was the trend, we would have had many of our old citizens killing themselves. This menace must be fixed once and for all so that retirement is not equivalent to being condemned to life imprisonment. This has happened simply because some of those organisations did not apply or follow their own procedures.

The other issue relates to delay in the constitution of boards. Even under the Jubilee Government, some of the parastatals have remained without functioning boards for the last three years. Why would the appointing authority wait and allow an organisation to function without a board which is the highest organ? I would like to say that individuals and cartels take advantage of that lacuna to mismanage those parastatals.

We have witnessed organisations without a functioning board and a substantive Chief Executive Officer for two or even three years. How will such an organisation, enterprise or public investment function without proper oversight? This has been the trend. If I give you the list you will be surprised. Several parastatals have operated without these key oversight groups. Hon. Temporary Deputy Speaker, I would like to talk about payment of board allowances which has also been abused. Payment to board members is regulated through an Act, subsidiary legislation or regulations by the Treasury. This has not been followed. Board members of different organisations just sit and say that they would be paid Kshs50,000 or Kshs100,000 allowance. They would come the following month and say that because of inflation, they would have their allowances increased. That has been the trend. This must be managed and brought into conformity with the law so that all Government parastatals, regardless of whether they are in Class A, B, C or D, have a consistent and predictable mechanism of earning their allowances. This has also been lacking. It is one of the areas where the auditors have noted has been abused. The other issue concerns budgetary control. These entities are not creatures on their own because they have been created by a statute and law. The budget-making process must be fair, predictable and based on the law. We have had instances where organisations come up with all sorts of projects and do all sorts of things without having any regard for the budgetary allocation. This is why we have very many stalled projects. This is one area that has really been abused.

Hon. Temporary Deputy Speaker, illegal allocation of corporation land was another issue of concern to the Committee. Today, the illegal allocation of land rightfully belonging to some of these entities can total to even trillions of shillings. I want to go on record and appeal to His Excellency the President and the Deputy President to go and chase these individuals who have corruptly allocated themselves land belonging to some of these key institutions.

On the face of it, we want to industrialise and develop. How do you develop when the very facilities like the Kenya Ports Authority (KPA), Kenya Airports Authority (KAA), Kenya Marine Institute, Kenya Railways Corporation (KRC) and Kenya Meat Commission (KMC) illegally allocate land? KMC is one of the oldest commissions but today, even the piece of land where the facility is located is owned by a land grabber. How do you expect an investor to invest



in such an organisation? We have allocated this organization a lot of money, year in year out, but it has not taken off. The reason is that even the management knows that the organisation and its location belong to somebody else. It is time to carry out a national audit of all the pieces of land illegally allocated to some of these individuals and repossess them so that the 40 million taxpayers can benefit from these pieces of land instead of these individuals.

The other matter is about ownership. The ownership of some of these corporations is doubtful. On the face of it, an institution like the Kenya Seed Company (KSC) is a national institution. To date, there is no evidence to show who owns the company. Is it owned by private individuals or taxpayers? This is simply because the way the process of privatisation was carried out was dubious. Today, if you go to the Office of the Registrar of Companies nobody will tell you that so and so is the rightful owner of KSC and it is because of this that the Auditor-General has raised a number of issues. I want to go into specific issues.

On imprest, an institution like the National Water Conservation and Pipeline Corporation (NWCPC) has been notorious in the issuance of imprest that has not been accounted for. We still have millions of shillings belonging to that organization in the form of imprest that is still outstanding. The other organisation that has been notorious in this regard is Coast Development Authority (CDA). They have millions of shillings in unaccounted for imprest. The other organisation is the Kenya Medical Research Institute (KEMRI) which also has thousands of shillings in undeclared imprest.

On the issue of unqualified accounts, the Committee observed that some organisations which had audit queries for the previous years are the Kenya Roads Board (KRB), the Nursing Council of Kenya (NCK), the Kenya Industrial Research Development Institute (KIRDI), the Kenya Electricity Transmission Company (KETRACO) and the Local Authority Provident Fund (LAP Fund).

The LAP Fund is a mysterious organisation. Though created through a statute law passed by this House, if not checked, that organisation is going to create a very serious institutional challenge between the national Government and the county governments. We promised, as Members of the PIC, that very soon we will be bringing an update report on the functions, mandate, activities and investments of this creature called “LAP Fund”. To date, it is one of the organisations that have operated without an effective and properly constituted board and other institutional mechanisms.

Hon. Temporary Deputy Speaker, outsourcing of audit services is another issue I would like to talk about because it has become generic and has been abused. Auditing is a noble profession. However, the bottom-line is profit-making and business. We have asked the Auditor-General to bring to an end the practice where an organisation, which is 100 per cent owned by taxpayers is audited by private auditors, and year in year out, they bring clean books after investing not billions but trillions of shillings. Some of the notorious institutions in that engage in this practice are the Geothermal Development Company (GDC), the Kenya Power Company (KPC), the Kenya Electricity Generating Company (KenGen), the Central Bank of Kenya (CBK), the Kenya Revenue Authority (KRA) and the National Bank of Kenya (NBK). It is no wonder they have serious challenges.

Hon. Temporary Deputy Speaker, these institutions must be brought under the ambit of the National Audit Office. We can no longer trust private auditors to audit these institutions and bring clean books year in, year out. Let us look at it this way. As an entity, if we advertise for the

services of an auditor, an audit firm applies, goes through the tendering process and we award them the contract, will such auditors have the audacity to question their employer? That is why the auditing of these entities must return to the Office of the Auditor-General.

Currently, the Office of the Auditor-General has the institutional capacity required to do the job. It also has the human resource that is required to do the job. Therefore, they must audit these institutions. We said that we will no longer look at any report generated by an externally-sourced auditor. The accounts of these institutions must be audited by the Auditor-General which is an independent office that is trusted, financed and supported by taxpayers. The reason why the framers of the current Constitution decided to have the Office of the Auditor-General as one of the independent offices was to guard against any interference. Since the Office of the Auditor-General enjoys autonomy, why should it not be used effectively to guard the interests of taxpayers?

Hon. Temporary Deputy Speaker, the other issue we have noted is the appointment of auditors by State corporations. Some State corporations have refused to submit their accounts to the Office of the Auditor-General and this is unacceptable. This is the first time the Audit Report of the Central Bank of Kenya (CBK) has found its way into this august House. We used to interrogate them on this matter. What happened is that the CBK used to lump themselves together with small departments within the National Treasury. They used to say that, structurally, they were part of the National Treasury but, operationally, they were an independent institution. That is why today the Audit Report of the CBK is right before us for the first time since the formation of the CBK. Hon. Members can apply their creative minds to speculate why that was not done.

Hon. Temporary Deputy Speaker, while the Government has substantial shareholding in organisations like the National Bank of Kenya (NBK), the Kenya Petroleum Refineries and Telkom Kenya, these organizations have refused to submit their books of accounts to the Office of the Auditor-General for review. That is why we are reminding them that we are now under a different constitutional dispensation and they must accept that reality. It is no longer like in the old days when, through a roadside declaration, the CBK would be exempted from the provisions of the State Corporations Act. The Kenya Power and Lighting Company (KPLC), because it had a politically-appointed Chief Executive Officer would be exempted from the provisions of the State Corporations Act. The same would apply to the KRA. That era is gone and this country is no longer governed through roadside declarations. It is high time that the managements and the CEOs of these institutions submitted themselves to the rule of law. That is the only thing that will save them. That is why we have made a decision to invite these organizations to submit themselves to the rule of law. We have the constitutionally-driven independent Office of the Auditor-General.

Hon. Temporary Deputy Speaker, the other issue that we have noted is that of conflict of interest in constitutional boards which I have already alluded to. The Kenya Plant Health Inspectorate Services (KEPHIS) has stayed for a long time without a Board. The Managing Director, whose term was about to expire, used every opportunity to remind the parent Ministry that he had been without a Board. Do you know what happened eventually? His term came to an end without a Board being established. The only letter that he got instructed him to hand over to a senior manager. How do you run critical institutions like that? No wonder Kenya has become a gateway of ivory.

We have had cases of our elephants being killed and ivory smuggled out of the country. The KEPHIS is entrusted to be at our ports of entry. How is it supposed to do that without a properly structured management and Board? I commend the Chief Executive Officer for constantly reminding the parent Ministry that they did not have a Board in place as his term was about to expire. Such things should not be allowed to happen to any institution.

Another organization that has operated without a Board for quite some time is the Bomas of Kenya. Such a thing should not be allowed to happen. There are a number of organisations that have not complied with the international financial reporting standards. One of them is the Kenya Civil Aviation Authority (KCAA). This Authority is notorious. The other culprit is KEPHIS.

The Vice-Chairman of my Committee is a seasoned accountant. The internationally accepted financial reporting standards are not Kenyan oriented. If the Vice-Chairman of my Committee, today, was to seek employment with the International Monetary Fund (IMF), he will apply the same internationally accepted financial reporting standards. This has been lacking in some of these organisations.

Hon. Temporary Deputy Speaker, the Committee also observed that some of the State corporations had audit queries on weak financial positions. When you realise that an organisation is insolvent, the first thing that an audit office or the concerned Ministry is supposed to do is to either have it put under receivership or inject a bit of capital to enable it function. Some of the organisations that have had this problem include the National Oil Corporation (NOC) before it was turned around; the National Housing Corporation (NHC) to which I had the privilege of being member of its Board; the Cotton Development Authority (CDA); the Kenya Railways Corporation (KRC); the Ewaso Nyiro North Development Authority and the Kenya National Examinations Council (KNEC). These organisations had very weak financial positions that interfered with their performance.

We also realised that the management of some organisations believed that they were operating in their own jungle environment. Any organization that is a creation of the Laws of Kenya – be it through a Statute or a subsidiary legislation or regulation – is expected to comply with the law. It was not until some of the organizations were audited by the Auditor-General that they realize that they had been doing the wrong things. They did not know the right things to be done. Some of them did not even expect the Auditor-General to raise the queries that they, as management, were expected to respond to.

Hon. Temporary Deputy Speaker, I want to emphasize on the issue of illegal acquisition of State corporation land, as I conclude, so that other Members can have opportunity to contribute. The Kenyatta National Hospital (KNH), which is the only serious referral hospital in the East and Central Africa region, the Horn of Africa and South of the Sahara, has had to grapple with serious land grabbing issues. Even if the Government of Kenya wanted to inject more funds into KNH for its expansion, the hospital has no land because all its empty parcels of land have been grabbed by cartels. Those cartels are known and they are documented.

In fact, part of the land that has been grabbed from the KNH is under serious construction. Some of the skyscrapers that you see in Upper Hill area will soon be re-possessed. We want the grabbers to be on notice that the ownership of the skyscrapers that they are putting up around KNH will eventually revert to the taxpayers because we need a modern medical facility that will take care of the health needs of the people of Kenya.

We cannot move the KNH from where it is to another place. We pride ourselves and say that Kenya is an investment, communication and infrastructural hub. We also say that it is an economic giant when the only expansion land available to the Kenya Airports Authority (KAA) has been grabbed by individuals known and documented in the Report. Where else do we have land that was set aside in the 1970s for the expansion of the Jomo Kenyatta International Airport (JKIA)?

**Hon. Kipyegon:** On a point of order, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): What is out of order, Hon. Kipyegon?

**Hon. Kipyegon:** I know I will disappoint my Chairperson because I belong to that Committee. However, as a very serious Committee---

**An hon. Member:** (*Inaudible*)

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): What is it?

**Hon. Kipyegon:** Relax! I am on a point of order. I want the Chairperson to name the persons if that is the direction we have to go as a country. It is only this House that can name and shame the land grabbers so that we do not just say, "some people" and we leave the Report like that. We have to name and deal with them. I hope the Chairperson will do that.

**Hon. Keynan:** Thank you, Hon. Temporary Deputy Speaker. I appreciate Hon. Ng'eno because he is an active Member of the Committee. This is a voluminous Report and it is itemised. I want to urge him to read the section dealing with KAA and he will get all the names. I also want to urge each and every Member present here to read the Report because we have itemised all the names of the land grabbers because what I am doing is just a summary. I have only one hour to conclude a 400-page Report and I want to take the shortest time so that the Seconder can also get an opportunity to contribute.

If we say Kenya is an agricultural country---

**Hon. F.K Wanyonyi:** On a point of order, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): Honestly, why can you not allow him to finish?

**Hon. Keynan:** Hon. Temporary Deputy Speaker, Kenya is an agricultural country and we have farmers. The operations of an organisation like the Agricultural Development Corporation (ADC) have literally been ground to a halt because of this menace of land grabbing. I want to urge Kenyans and in particular their able representatives, to read the section of the Report on ADC.

**Hon. F.K Wanyonyi:** On a point of order, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): Hon. Keynan, there are points of order. Let me take the first one from the Hon. Ferdinand.

**Hon. F.K Wanyonyi:** Hon. Temporary Deputy Speaker, I want to agree with Hon. Ng'eno although he is a Member of the Committee while I am not. The Chairman is doing very well in terms of moving the Report. However, not everybody will have access to the Report. Members of the public are listening to the debate and it is only in order that we hear those names. It is important for us to know the names other than cover them up. I want those names to be mentioned.

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): That point has already been canvassed by another Member.

Yes, Hon. Manson Nyamweya.

**Hon. Nyamweya:** Hon. Temporary Deputy Speaker, thank you. I request the Mover to either substantiate the allegations he has made or he withdraws them. That is the procedure in the House. You either substantiate the allegations by naming the persons or you withdraw and you do not read what you are reading. That is the procedure in the House.

Thank you.

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): Hon. Keynan, the points of order are all the same and you have heard them.

**Hon. Keynan:** Hon. Temporary Deputy Speaker, I want you to check who owns Nyali Water Wells, Changamwe Reservoirs and Shanzu Landlords. This Report was tabled on 31st March. This was meant to give the Members an opportunity to go through it. I have one hour to summarise an over 400-page Report. So, I want to urge Members to let me conclude because the work of the Chairperson is not to act as a parrot for Members who have had an opportunity to read the Report. Allow me to do what I am supposed to do. If anything is not clear in the process of debating this, please come and seek our guidance.

State corporations, enterprises or *quasi* Government institutions, as they are called, are supposed to complement the efforts of any Government in generating revenue. I know Hon. Nyamweya is a seasoned accountant and he will accept this. Most of these institutions have only been receiving money from the Government and yet they have had, if anything, very little to contribute to the national coffers. It is because of this that I want to go on record and support the reforms being undertaken in the parastatals sector. The sooner this comes to this House, the better for everybody. The number of entities that the PIC has to deal with is over 360 and they are all audited. Most of them only exist on paper. So, the reforms initiated by the Jubilee Government is a commendable initiative, but that initiative must be fast-tracked so that it does not just remain on paper for the Kenyan taxpayers to see the benefit of the reforms being undertaken in this sector.

With those remarks, I beg to move and ask the Hon. (Dr.) Paul Otuoma to second.

**Hon. (Dr.) Nyongesa:** Thank you, Hon. Temporary Deputy Speaker for giving me this opportunity to second this Report that is before this House. As it has been eloquently put by our Chairman, it has not been an easy task to audit reports of 72 parastatals dating back to more than 25 years ago. That brings into question the efficiency of some of these audit reports that we get, especially if they take more than 25 years to be brought before this House to be adopted. I think some of the reports are even older than some Members of this House. I am saying this because these *quasi* Government bodies are formed to try and improve efficiency in terms of delivery of Government services to the public.

The sectors that these parastatals are supposed to cater for are key to our economy. That is all the way from production to agriculture as it has been put. For example, the ADC is supposed to give us quality seeds and quality animals while the AFC is supposed to help the agricultural sector move forward. Those are some of the sectors that are supposed to be helped by these parastatals.

The other major sector is the telecommunications sector. We have talked about the former KPTC that was supposed to be reformed into Telkom Kenya to help this country. As you go through these Reports, you will see whether these objectives were clearly realised or these have been just avenues for waste of public funds.

Hon. Temporary Deputy Speaker, another major sector is the energy sector where we have the GDC that is supposed to contribute substantially to the energy sector in this country.

The other sector is financial sector where we have the NSSF where a lot of money from the public sector, that is the pensioners' investments, has been going. We looked at how that money is being invested. The other major sector is infrastructure that is concerned with roads. Those are the main parastatals that we have covered.

We have given an example of the NSSF in the financial years that we have looked at. On procurement, the Fund contracted Mugoya Construction Company, whose history is very well known in this country, to complete Phase II of Nyayo Estate in Embakasi at more than Kshs.324,000,355 million without any collateral security. The Fund was not able to recover this money. This happened in the last five years between 2008 and 2011. This is the case and yet the history of Mugoya, as a company in this country, is well documented. In the process, the public lost over Kshs300 million and, so far, nobody has been held accountable.

I hope this Report, as it is tabled in this Parliament, will help this country recover some of this money from these individuals. The same case applies with the National Water Corporation Company that lost some money between 2008 to 2012 Financial Year. Through irregular procurement methods the water company also advanced a contractor more than Kshs48 million without any collateral. This contractor never did anything and yet the public procurement law that was supposed to guide the process has been in place since 2005.

Hon. Temporary Deputy Speaker, the other issue is with regard to budgetary controls. Although it is very clear how public funds should be utilised, that is in terms of what has been approved in this House, you will find that some of these bodies have gone ahead to spend money that has not even been approved by this House. This is the case and yet nobody is held to account although it is very clear, under the law, as to who can appropriate public funds for usage. You will also find some parastatals that have gone ahead to use public funds on unbudgeted Recurrent Expenditures. As I speak, the Treasury and the Kenya Ferry Services (KFS) are notorious for this.

When it comes to statutory deductions, the Chair covered that area very well. Another area that is very dangerous is where public funds have been committed on parcels of lands whose ownership is in doubt. In cases where those people have been sued because the land did not belong to them since due diligence on land acquisition was not done, you will find that either those properties are demolished or forfeited because they are on land that does not belong to these State corporations.

Another point I want to touch on concerns variation of tender amounts. This is where people tender and within a short period they come up with variations that are approved irregularly especially after the tender process has been completed. In this case some people will be disqualified on the basis of what they had tendered for. Those who had been awarded the tender on the basis of what they had quoted make variations which are accepted without going through the tendering process that is stipulated under the law. I, again, hope that this Report will help to sort out that issue.

Another major problem we have seen in this Report is in the area of stalled projects. One of the major problems that I saw here is where Government bodies are hoodwinked into undertaking projects they have not prepared or even done feasibility studies. One big example is the Nzoia Sugar Company which has a debt of Kshs8 billion; a loan that was guaranteed by the

Government. They started a project in which they spent almost Kshs3 billion and then it stalled. They are now left shouldering that debt. We are told here that the sugarcane sector is collapsing or is not doing well and yet it is those people who were making decisions that committed the taxpayers and the innocent farmers in Nzoia to business ventures that were not viable or prudently thought.

We should not lose focus that *quasi* Government bodies are created to improve efficiency and make sure that the Government gets value for money otherwise there is no need to create them especially if they make Kenyans suffer.

Another point that the Chair has talked about concerns lack of boards to guide some of these parastatals. This is where the management makes very irrational decisions and invests huge sums of public money without due process. This is because the boards do not exist. This is the case and yet the law is very clear on the kind of expenditure that requires the board's approval. You will find some parastatals without boards going ahead and spending public money. Some say that since there is no board they will continue with a board whose term has expired to make decisions which are null and void in law.

Hon. Temporary Deputy Speaker, the other problem is with regard to simple bookkeeping or reconciliation. An example is the NSSF which was holding Kshs6.3 billion in the 2008/2009 Financial Year in a suspense account and yet we know of very many pensioners who have not been paid this money. The idea here is that no proper books of accounts that have been kept.

Having said that, I beg to second this Motion.

*(Question proposed)*

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): Hon. Member for Mvita.

**Hon. Nassir:** Thank you very much, Hon. Temporary Deputy Speaker. I speak as a Member of the PIC. This is a 342-page document. This document was done after 136 sittings and for a historic 72 Government institutions whose audit reports we examined.

I want to thank, first of all, my 26 colleagues and the clerical staff for doing an excellent job under our able leadership of our Chair who has moved this Motion. I urge our colleagues in the National Assembly to pass this Report. I know Members have been saying that the in-depth and the content of this Report be given out immediately but I advise all of us, 349 Members including the Speaker, to read each and every page of this document and digest it.

We have done our constitutional obligation. Now, the ball is in the court of this Chamber and ultimately the Government. To round it off, you will see in this Report how the word "imprest" has been misused by CEOs and board directors. You will see how year in, year out some organisations had unqualified accounts. Some of these parastatals have been funded by taxpayers from 2008. Some of these organizations went against the Public Audit Act of 2003. They were audited by private firms despite the law saying otherwise regarding specific audit issues. You will also see how institutions like Telkom Kenya, the Kenya Petroleum Refineries, the Central Bank of Kenya and the National Bank of Kenya opted to bypass the Auditor-General. Today, we know the fate of some of these organisations that we have mentioned. God forbid, if the Central Bank of Kenya was not part and parcel of the Treasury and was not getting money from the Treasury, it could as well be broke today.

In this Report, we will see how Board members violated procurement processes and acted in conflict of interest. Some of them were lawyers for the same organisations that they were meant to be Board members. So, there were inner dealings going on in some of these organisations. Some of these organisations have been run without boards for years thus putting the organisations' day-to-day work and that of Kenyans at risk. These organisations have been run on weak financial positions thus putting the taxpayer at the risk of losing a lot of money. The Kenya Railways Corporation and the Nzoia Sugar Company incurred massive losses. None of this could be detected due to lack of financial reports.

Hon. Temporary Deputy Speaker, we will see procurement processes that were flawed on page 342 of this Report. Tender amounts were varied in some of these reports that we have put together for those 72 institutions. There were no budget controls and all of a sudden, institutions had to pay millions of shillings in legal and insurance fees. In some cases the boards exaggerated the amounts that had to be paid to them. All these are in this Report that I am urging my fellow Members to read and adopt.

It is also sad that some of these organisations failed to remit employees' statutory deductions like the Pay-As-You-Earn (PAYE), the NSSF contribution, the National Hospital Insurance Fund (NHIF) contribution and bank loans. The Auditor-General was put aside and previous regimes turned a blind eye to what was going on. I would not be surprised that the taxpayer's money was probably used to develop others. Some of these organisations have ended up building in areas where land ownership is in dispute.

In this Report, we will see how land has been grabbed. In the 342-page document, we have done our part by including, through proper forensic investigations, names of those who were allocated the said pieces of land. We are recommending that this House adopts this Report, so that an institution like the KNH does not lose out on expansion because of lack of land.

We will also see how stalled projects have ended up as white elephants. The NHC tried to do something in Kibera without a board and eventually, all those projects stalled.

In 1996, the Higher Education Loans Board (HELB) tried to do something without a proper feasibility study.

In the process, more than Kshs38.5 million was lost. Losses were also incurred in Moi Teaching and Referral Hospital (MTRH).

Our recommendations say that the benchmark and the target that should be included in the performance contract of any Chief Executive Officer or board member who wants to take any position should be to ensure that audited reports by the Auditor-General are passed by this National Assembly. Needless to say, we need to urge the appointing authority, that is the Executive, to ensure that these boards do not pass their timelines and put Kenyans' livelihood and needs at risk.

As a proud Member of the PIC, I urge with a lot of eagerness, that the other Members adopt this Report. They should not only adopt it but ensure that the Government implements and works on the recommendations.

Thank you very much.

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): I now give the Floor to Hon. Beatrice Nyaga of Tharaka Nithi County.

**Hon. (Ms.) B.N. Nyaga:** Thank you, Hon. Temporary Deputy Speaker for giving me this opportunity to support this Report. I am a member of this Committee. I thank my colleagues and



our able Chair for the good job we have done. We have interrogated 72 corporations and we have realised that they have done an injustice to this country. I do not think if most of them know the procedures. Procurement procedures and rules are there. These are supposed to be followed and seen to be working. The financial regulations are also there but nobody follows them. The CEOs of those parastatals do whatever they want like giving advances and loans to themselves. They also give money without consulting anyone, not even their mother ministries. Surely, you wonder what they are doing to this country.

The Central Bank of Kenya (CBK) is an entity that is supposed to give directions to other financial institutions. However, you will find that they do not even follow the Auditor-General's regulations. They only consult their own auditors wherever they think about. It is very sad. We want to see the corporations doing the right things so that Kenyans can get value for their money. We need this money to develop Kenya. We need finances so that we can build schools for our children and equip our health institutions and take care of our people. This is because healthy people are able to work for our country and make us develop and progress. However, if we have these CEOs who do not care and do not follow the rules of the country, we will go down the drain.

As a Committee, we request and recommend that this Report should be adopted so that those people can be held accountable, be responsible and also answer to the Kenyan people according to the laws and regulations of this country.

I support the Report and we want to see it being implemented as soon as possible.

Thank you, hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): I now give the Floor to Hon. Wamalwa.

**Hon. Wakhungu:** Thank you, Hon. Temporary Deputy Speaker. I rise to support this Report and congratulate the Committee for the work well done.

It is historic that 72 corporations have been covered. In many other jurisdictions, State corporations play a very critical role as far employment of any country is concerned and as far as the GDP is concerned. This country can only achieve Vision 2030 if all the parastatals play their critical role.

A lot has been said but I want to talk about the issue of the Auditor-General. The Auditor-General, as outlined in the Constitution, is supposed to be an independent body. If you go to some parastatals, you will find that the auditor could not access some of the public documents. This violates the Public Audit Acts of 2003. So, it becomes very hard for an auditor to evaluate and audit accounts so that he can advise and give a clean bill of health.

Hon. Temporary Deputy Speaker, it is, indeed, important that these parastatals should give out the information and financial statements to the Auditor-General for purposes of accountability. You will find some parastatals do not have an assets register. How do you go to a parastatal and the asset register is not there, or if it is there, it is outdated? Some of the surprising things when we went around looking at these State corporations are that some of them have land and yet they do not have title deeds.

There were scandals, for example, the scandal with the Kenya Aviation Authority. From the records we saw, there were issues with the KCAA with regard to Weston Hotel on Langata Road. The land changed hands to another person then to another person. So, corruption is rampant in many State corporations.

Hon. Temporary Deputy Speaker, boards were missing in some corporations and yet a board is the highest decision-making body in any parastatal. How do you make decisions if the board is not in place? You will find that the management making decisions and yet there is no one to oversee it.

In some situations, you will find that the chair of the board is there but there are no board members. So, you wonder who he or she is chairing. This is ridiculous. It seems like there is a conspiracy to loot and engage in corruption.

We have seen many parastatals changing names, for example, the Cotton Board of Kenya. There is also the case of a plot in Riverside that was sold being undervalued. The asset register is not there but the plot was transferred at a throw away price.

We had an issue concerning the KEPHIS land in Kitale. The land that was used for research was grabbed by powerful individuals and transferred to other people. So, it is important that as we look at these parastatals, we should know whether they are adding value or they are just there to waste taxpayers' money.

I want to agree with the Jubilee Government when it comes to the issue of integration of parastatals. There are some parastatals that exist but do not add value. They are just there as a vehicle for looting. I want to give an example of the NSSF. This is a very dangerous parastatal. It has issues to do with tenders.

On evaluation, there are two critical areas; the financial aspect and the technical aspect. The people who do the technical evaluation are not supposed to look at the financial aspect. You wonder how someone who looked at the technical bit is the same person who looks at the financial bit and informs the bidder to make variations in the financial quotations. This violates the law and it is important that this time we call upon the Public Procurement Board to be on the lookout and scrutinize all procurement processes because this is where we have corruption.

The GDC plays a very critical role as far as generation of electricity is concerned and we are told that it is supposed to produce the cheapest power. When we examined its accounts, we realized that they were audited by a private firm, which is allowed by the law. The private firm gave the GDC accounts a clean bill of health. The Auditor-General also gave the GDC books of account a clean bill of health.

If you look at the GDC books of account further on page 72, you will realise that the Report shows that the African Bank, gave them money for purposes of procuring drilling rigs. We were told that two rigs were procured and they saved money but they went back to the donor and the donor told them to go and procure the third rig using the same conditionality. In a situation whereby donors are coming in, they should not come with their conditions. It does not mean that their conditions will make us circumvent the laws that exist in this country. However, with regard to GDC, if they were told to go and procure the third rig using the same conditions--- As a way forward, I want to state that development partners should not give us conditions. The procurement process must follow the provisions of the Constitution, especially Article 227. That provision allows for competition so that we can have as many bidders as possible. That way, Kenyans will get value for their money.

If you look at some parastatals, you will realise that they are missing a policy on imprest. You will find that an MD has used imprest, but he has stayed for almost one year without surrendering it. This is very critical when it comes to time-value of money. If people overstay

with imprest and in one way or the other they do not surrender it, they must be surcharged. This is because they are wasting Government's resources. Imprest could be a source of corruption.

The other issue I wanted to talk about is on the Tenants Purchase System (TPS). This is in connection with the houses that the NSSF has been putting up. You will realise that the arrears are too high. One wonders what mechanism they have put in place in order to recover the accruals. If you look at their suspense account, you will find Kshs82 billion. That means that they are busy receiving but they are not getting the critical details of the people who are bringing in the money. So, if we consider time-value for money, are they really going to benefit? I am happy that we have a new parastatal - the Unclaimed Financial Assets Authority. Maybe, it will be able to add value as far as these issues are concerned.

Concerning matters of statutory deductions, we have been asked, "*Kulipa ushuru ni nini?*" This is for the purpose of being independent so that we do not go out there and rely on other people. Many of these parastatals do not submit statutory deductions, for example, the NSSF and the NHIF. They do not even submit PAYE. In fact, some of the figures are not accessible.

As my Chairman put it, the Government has pumped a lot of money into Nzoia Sugar Company to pay farmers' debts. However, if you go to the ground, you will realise that the farmers have not been paid. It is high time these parastatals subscribed to the internationally acceptable accounting principles. This is because the principles of accounting they have in place are wanting. Take the example of how they treat depreciation. You will find in many organizations that the method used to depreciate assets is not outlined anywhere. This is a source of corruption. For many years now, parastatals have been a source of corruption. It is, indeed, important that financial standards be put in place.

Procurement is very critical and we have just passed a law on this. Parastatals must abide by the rules and regulations outlined in our written laws and the Constitution. I urge this honorable House to pass this Report. It is a good Report and it is going to set pace. For those corrupt CEOs, I want to tell them that their days are numbered.

I support the Motion.

**The Temporary Deputy Speaker** (Hon.(Ms.) Shebesh): Yes, Hon. Onesmus Njuki.

**Hon. Njuki:** Thank you, Hon. Temporary Deputy Speaker. In the interest of time, I will try to be as brief as possible. I am a Member of this Committee that has done a very good job. I would like to commend my colleagues for having burnt the midnight oil to do what has not been achieved by very many Parliaments in very many years.

One of the reasons this Committee has been able to deal with very many parastatals is because it discovered there is a certain category of parastatals that were not being audited. It was an assumed rule that we only audit parastatals that have got more than 50 per cent Government investment.

I want to commend my Chairman for this time going beyond that because we audit any parastatal that has got a shilling or an iota of investment by the Kenyan taxpayers, be it 1 per cent or 49 per cent. That is why that scope has increased and it has seen organisations like Kenya Power Company (KPC) and many others that were not being audited before, now being in this bracket of audit.

A lot has been said about what happens in the Office of the Auditor-General, and why most of the time he says that they use the private auditors to do these jobs. There is need for us to

look on how we can increase the funding to the Auditor-General because most of the time he complains that he did not have enough personnel and resources to cover all those organisations that should have been covered.

One of the biggest issues, even as the auditors use the private auditors, is the fact that the PIC is like a postmortem body. Most of the time, we unearth very serious issues or malpractices in these parastatals. However, what usually happens with these reports? Are they implemented? What do the bodies that are mandated with ensuring that the money is recovered do? I do not know whether it is the role of the Committee on Implementation of this House.

We have had recommendations in the past because this is not the first Report. We have recommended prosecution and recovery and this has not been implemented several years later. Ethics and Anti-Corruption Commission (EACC) is one of those bodies that I do not know whom they take the instructions from because we have made some recommendations. A very good example is the maize imported by a company that even had people who were still in Government offices. Even with a court order in place, that issue was left unattended to and that company still went untouched.

The National Cereals and Produce Board (NCPB) is an organisation that deals with taxpayer's money. Kenyans have lost money despite the fact that the PIC spent a lot of time and money to get these facts and come up with recommendations. So, we need to see how the recommendations can be implemented conclusively. Otherwise, it is going to be a waste of time to come up with good reports which are not acted upon.

On the other hand, the issue of the irregular transfer of shares by parastatals to private owners has been critical but it has not stopped. Although this may not be in this Report which we are yet to pass, most of the time Government officers collude on behalf of the Government to lose some shares that the Government holds in key parastatals in this country. That reduces the power of the Government in these board meetings because the power in them is dependent on the percentage ownership or shareholding by the Government. That is why the golden rule should be utilised whereby as long as we have investments in parastatals irrespective of whether we are the majority shareholding or not, the Government should be allowed the golden chance to sit in those parastatals boards so that they can make decisions on behalf of Kenyans who have invested in the parastatals.

Hon. Temporary Deputy Speaker, with those few remarks, I recommend the adoption of this Report so that we can stop having white elephant projects that are normally a sign that very many parastatals are not well managed.

Thank you.

### ADJOURNMENT

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): Hon. Members, the time being 6.30 p.m. this House stands adjourned until Wednesday, 24<sup>th</sup> June, 2015, at 9.30 a.m.

The House rose at 6.30 p.m.