

NATIONAL ASSEMBLY

OFFICIAL REPORT

Wednesday, 21st October 2015

The House met at 2.30 p.m.

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

PRAYERS

Hon. Speaker: Yes, the Leader of the Majority Party.

PAPERS LAID

Hon. A.B. Duale: Thank you, Hon. Speaker.

I beg to lay the following Papers on the Table of the House today, Wednesday, 21st October, 2015:-

The Report of the Auditor-General on the Financial Statement of the Constituencies Development Fund for the year ended 30th June, 2014 and the Certificate therein in respect of the following: Shinyalu Constituency, Webuye West Constituency, Tongaren Constituency, Mt. Elgon Constituency, Maragwa Constituency, Kiambu Town Constituency, Kandara Constituency, Mathira Constituency, Ruiru Constituency, Saboti Constituency, Wundanyi Constituency, Eldama Ravine Constituency, Kwanza Constituency, Baringo Central Constituency and Mogotio Constituency.

Thank you, Hon. Speaker.

Hon. Speaker: Very well. I hope the concerned Members will note that the Auditor-General has reported in respect to their constituencies.

Let us have the Chairperson of the Departmental Committee on Agriculture, Livestock and Cooperatives, Hon. Washiali.

Hon. Washiali: Thank you, Hon. Speaker.

On behalf of the Chairman of the Departmental Committee on Agriculture, Livestock and Cooperatives, I beg to lay the following Paper on the Table of the House today, Wednesday, 21st October 2015:-

The Report of the Departmental Committee on Agriculture, Livestock and Cooperatives on the visit to Japan for the talks on the Official Development Assistance for Economic Growth in Kenya, held from 4th to 8th October, 2014.

Thank you, Hon. Speaker.

Hon. Speaker: I can see Hon. Chachu Ganya burning to say something. It is important for us to appreciate that the meeting happened between 4th and 8th October, last year. We are getting the Report now on the Official Development Assistance for Economic Growth. Of course, we will be going to the next Order. What is it that Hon. Chachu Ganya wants to say?

Hon. Ganya: Hon. Speaker, on behalf of the Chair of the Departmental Committee on Environment and Natural Resources, I beg to lay the following Paper on the Table of the House today, Wednesday 21st October, 2015:-

The Report of the Departmental Committee on Environment and Natural Resources on its consideration of the Senate's Amendments to the Mining Bill, National Assembly Bill, No.9 of 2014.

Hon. Speaker: More worrying is the fact that out of a Committee with 28 Members, and I must express my surprise, only 14 of those Members have signed that Report. I am wondering where the other Members are. Are they the ones that are unable to sit anywhere in Nairobi? Are they those who require slightly different climatic conditions like the ones offered by our coastline?

The Report you have laid on the Table, Hon. Chachu is very important. I have gone through it but what surprises me is out of the 28 Members only 14 have signed. I wonder where the others are. Do they need to continue being members of that Committee or can we just decide as a House that they can go and do what they can feel is better placed to do if they cannot sit to consider that Report? This is a very important Report on the Mining Bill considering the Senate's Amendments. You have done a good job Hon. Chachu and your Chair, but surely, how come only 14 of your Members have signed that Report?

Hon. Ganya: Hon. Speaker, judging from the number of Bills and Motions we have passed as a Committee, and I wish my Chair who is out of the country was here to testify to that, this is a very active Committee. On this Bill, we had very many meetings with the Cabinet Secretary, the Senate Committee and many stakeholders. It is just that we were on recess on the day of signing and not very many Members were in Nairobi. However, I can assure you that this is a very active Committee.

Hon. Speaker: Very well. I do appreciate that the Committee has done a tremendous job in considering many Bills but I was just worried when I looked at the Report. It is a good Report but only half of the Members have signed it. It is a bit worrying. Maybe those who are here and are Members of that Committee should feel concerned that they have not appended their signatures on that Report.

Yes, the Leader of the Majority Party.

Hon. A.B. Duale: Hon. Speaker, through your direction, the Chair of Constituencies Development Fund (CDF) owes this House a serious explanation.

(Applause)

He knows what I am talking about. We met in the morning to agree on what the National Treasury is going to do in as far as the Kshs33 billion of Members is concerned. So, through you, if you can allow him, he can update us so that we know the status of the CDF and the discussion he had with the National Treasury. He represents us and he cannot just be there. Leadership must be provided. The CDF is very critical to Members and Hon. Lessonet owes this House an explanation.

Hon. Speaker: I can see Hon. Lessonet has placed his card to say something. Even as he makes his Statement, I want the following Committees to be ready. If you look at the back of the Supplementary Order Paper, you will find that the Departmental Committee on Administration and National Security, the Departmental Committee on Agriculture, Livestock and Cooperatives,

and the Departmental Committee on Finance, Planning and Trade in keeping with our recently introduced practice, must apprise the House on what it is that they are doing so that the House can decide on whether they are sleeping or working on the various businesses that have been referred to them. I do not see the Chair of the Departmental Committee on Agriculture, Livestock and Cooperatives, but I am assuming that Hon. Benjamin Washiali Jomo is a ranking Member and is willing to take the House through what they are doing.

Let us hear from Hon. Lessonet first.

STATEMENTS

UPDATE ON CDF DISBURSEMENT

Hon. Lessonet: Thank you, Hon. Speaker. I rise to appreciate the concerns of all of us Members and our Constituencies Development Funds Committees (CDFCs) that monies for the CDF for the 2015/2016 Financial Year to date have not been disbursed. We are very much in touch with the National Treasury in pursuit of these monies. A total of Kshs35 billion is the allocation for the 2015/2016 Financial Year. Like I have said, we are in touch with the National Treasury. They have appeared before our Committee to discuss this issue. They have given an undertaking that today they will remit Kshs2 billion to the CDF Board. Thereafter they will be able to remit another Kshs2 billion every week. So, probably on Tuesday, next week, I will be able to give an update of the Kshs2 billion they are telling us is on transit now from the Central Bank of Kenya (CBK) to our account.

The CDF Board on the other hand is equally ready to promptly disburse the Kshs2 billion to 88 constituencies so that next week when the next Kshs2 billion comes in, they will be able to disburse it to another 88 constituencies. We want to work together with the leadership of this House and the rest of us to make sure that the National Treasury complies with that requirement. By the time we closed the last financial year on 30th of June, 2015, they had succeeded to remit a total of Kshs31 billion out of Kshs33 billion allocated to the last financial year. This means that we carried forward arrears of Kshs2.3 billion to this financial year. We are on their toes to make sure they comply with the CDF Act of quarterly remittance.

Hon. Speaker, the National Treasury has insisted to us that they are facing serious cash flow problems but they have accepted that this week and thereafter, they will give priority to the CDF. So, we shall keep monitoring on a weekly basis to ensure that there is compliance.

I thank you, Hon. Speaker.

Hon. Speaker: Yes, Hon. Mahamud Maalim

Hon. (Eng.) Mahamud: Hon. Speaker, let me thank the Chairman for that good report. However, we are aware that there are constituencies that did not get their full disbursements for last year. Can we be assured that for the monies that will come, the first chance will be given to those constituencies that have balances from last year?

Hon. Speaker: Hon. Lessonet, are you able to give that undertaking? Is it within your remit to give that assurance that those constituencies--- You have just said that there were some arrears from the previous financial year. Those constituencies, unless for reasons which must be stated, should form the first charge.

Yes, Hon. Lessonet.

Hon. Lessonet: Hon. Speaker, the condition for the CDF Board to remit money is basically one that you must be having a balance of not more than Kshs10million in that CDF account. So, if those constituencies which did not receive full allocation for the last financial year have such balances or are meeting the condition that they do not have more than Kshs10 million in their accounts, it will be obvious that the CDF Board will give them priority in disbursement. As I say that, I want to thank Members because the 290 constituencies for this year have all submitted their projects and they have all been approved. They are just waiting for money.

Thank you, Hon. Speaker.

Hon. Speaker: Do I see Hon. Moses Injendi, Member for Malava?

Hon. Injendi: Thank you, Hon. Speaker. The Chairman is saying that he is going to remit the money to only 88 constituencies and yet we have 290 constituencies. Why will he remit money to only 88 constituencies and which are these constituencies?

Hon. Speaker: Is Hon. Lessonet in a position to begin that discussion because I am likely to cut it short? The way it has come, it is not one in which I expect Hon. Lessonet to have come here with a list. We also do not want to be told that certain constituencies have more than Kshs10 million in their accounts. There are those other conditions which are fixed by law. You are the people who passed the law. I do not want to encourage this debate in that direction. If you want we can have an informal meeting, a *Kamukunji*, to discuss that. This is the plenary of the House. It is not to discuss information from the Chair of the CDF.

Hon. Lessonet, I think you could provide that information even in writing to Members so that they know, and those who do not qualify must be told why they do not qualify. I think that is the long and short of what the Member is saying so that if you have more than Kshs10 million then you are sleeping on the job. The Leader of Majority Party has just tabled reports of the Auditor-General in respect to about 15 constituencies. Last week, several of them came up and I have been saying that Members need to look at those reports because where we are, Hon. Members, you must be careful on how you deal with the CDF. There are others who are eyeing your seats and those are some of the things they examine.

I think Hon. Lessonet can provide the information to Members so that we do not make this a debate.

Hon. Kombe: On a point of order, Hon. Speaker.

Hon. Speaker: Hon. Harrison Kombe, is it about the same matter?

Hon. Kombe: Thank you, Hon. Speaker. As he prepares the list to give the information, could he also include people with arrears? I have heard that some people have arrears. We are talking about the 2015/2016 Financial Year and not the 2014/2015 Financial Year.

Hon. Speaker: Very well, Hon. Lessonet, take notes of all those concerns.

Finally, let us have Hon. Sakwa Bunyasi, the Member for Nambale.

Hon. Bunyasi: Thank you, Hon. Speaker. First of all, I thank the Chairman for updating us but, I want to express a concern that given the fact that we have already lost a quarter, that rate of disbursement would delay the release of funds quite substantially into the year. For constituencies that might be ready, they may be held back. I have an experience from last year in which I would like to suggest that the Board finds ways of improving their responsiveness. It takes inordinately a long time to respond when they have comments on project lists submitted.

You will recall that last year, Members were concerned that they heard some concerns for the first time in the newspapers. I waited for almost the rest of the year and I never got

anything in writing in respect of my constituency. I had expected that they would say something but that communication did not come through. I just want to plead with them that with today's technology, they can be more responsive and much faster, otherwise we are eagerly looking forward to the disbursements.

Hon. Speaker: You are absolutely right, Hon. Bunyasi. Let us go to the normal business now.

Hon. Njuki: On a point of order, Hon. Speaker.

Hon. Speaker: The Member for Chuka/Igambang'ombe, you have just walked in and found this debate going on. Now, you want to say something about it. Hon. Members, this is not the business of the House. All these interruptions or interventions---

Hon. Njuki: Thank you, Hon. Speaker. I was following the debate from the lounge. There was a small issue that was not clarified by the CDF Chairman and I would like to seek a clarification on behalf of probably other Members who may not have been informed. There was the issue of Kshs500,000 in the 2014/15 Financial Year that was supposed to be taken away by the audit office. Apparently, some constituencies never remitted the same while others did and yet they have not had that money reversed. Equality sometimes brings serious acrimony in a country of diversities. Maybe, the Chairman can explain to those constituencies that had remitted the money but they have not got it back. Where has that money disappeared to?

Hon. Speaker: I do not want to say whether it is important or not. I can hear a suggestion from the Member for Endebess. Hon. Lessonet, just take notes because I will give you one last chance to respond.

Hon. (Ms.) Kipchoim: Thank you, Hon. Speaker. I also want to note that the issue of the CDF delay has caused us many problems. A constituency like Baringo South has many problems of insecurity and we cannot respond to these issues when we do not have money in our accounts. So, we want to look for a way out so that we get this money on time to assist us respond to the issues in our constituencies.

Hon. Speaker: Finally, I want to give the last chance to Hon. ole Sakuda, the Member for Kajiado West.

Hon. ole Sakuda: Thank you very much, Hon. Speaker. In addition to that, I just want to encourage the Chairman, Hon. Lessonet, to make sure that out of the 88 constituencies, Kajiado West is included because he knows that we have been waiting for almost six months to get our monies. It might be a good idea as he comes on Tuesday he informs Members how far he has gone with his Committee in terms of the Bill that he brought to this House earlier on so that we can know its stage in terms of input from Members.

Hon. Speaker: Finally, let us have Hon. Lessonet.

Hon. Lessonet: Hon. Speaker, I want to start with the Bill. The Bill has been sent to the Government Printer and we thank you for your approval. It has gone for printing and we expect it back this week. This means it has been published and should be ready for the First Reading anytime. We intend to hold a *Kamukunji* for all Members so that before we start debate on that Bill we all go through it clause by clause so that we appreciate the direction the Bill is taking us.

In terms of the audit fee that was raised by our friend from Chuka/Igambang'ombe Constituency, I will raise that matter with the CDF Board. However, I advise those constituencies which were in a hurry to pay the Auditor-General to make that claim with the Auditor-General because it is your constituency that made the payment to the Auditor-General. I thought the understanding at the beginning was that we do not pay because we agreed that it is

this House which appropriates money to the Auditor-General. We agreed that no constituency should pay any money to the Auditor-General. But, if you have paid then you can make your claim with the Auditor-General as I make arrangements to raise that matter with the CDF Board to help you in terms of following up.

Hon. Speaker, the CDF Board has promised prompt disbursement immediately we receive the money. This includes disbursement to Baringo South Constituency.

With those few remarks, I thank you.

Hon. Speaker: Very well. Hon. Members are accordingly informed. Going forward, I think it is important that the CDF Committee under the Chairmanship of Hon. Lessonet keeps updating Members because obviously disbursements have delayed. They are not being made in accordance with the laid down requirements of the Act.

Can we get an update from the Chairperson, Departmental Committee on Administration and National Security on various businesses that have been referred to your Committee, Hon. Asman Kamama.

Hon. Abongotum: Thank you very much, Hon. Speaker. On behalf of the Departmental Committee---

Hon. Speaker: You have 10 minutes.

PENDING BILL/PETITIONS BEFORE DEPARTMENTAL
COMMITTEE ON ADMINISTRATION AND NATIONAL SECURITY

Hon. Abongotum: I will stick to the 10 minutes.

On behalf of the Departmental Committee on Administration and National Security, I wish to brief the House on the pending business before our Committee. We have a total of eight petitions brought before the Committee. Petition No.1 is by one, Mr. Peter Katee on behalf of the Juhudi Community Support Centre. The subject is on the removal of Maj. (Rtd.) Mulu Shadrack Mutia as a Commissioner from the National Police Service Commission. This report came before the Committee on 8th October 2015. The matter is under consideration by the Committee and the report will be submitted to the House tomorrow Thursday, 22nd October 2015.

Petition No.2 is by Hon. Dido Rasso, MP, on behalf of the residents of Daka-Baricha Location. The subject is the revocation of the appointment of Mr. David Mulato as the Chief of Daka-Baricha Location in Saku Constituency. This report was received on 1st October 2015 and the matter is duly under consideration by the Committee. The report on the same will be submitted to the House within 60 days.

Petition No. 3 is by Hon. Matthew Lempurkel, the Member for Laikipia North Constituency, on behalf of the residents of Segera, Laikipia County. The subject is on urgent resolution of the abuse, torture and the land conflict cases in Segera, Laikipia County. The report was received by this Committee on 29th September 2015. The matter is under consideration by this Committee and the report on this matter will be submitted and tabled before the House within 60 days.

Petition No.4 is by residents of Kaseko Ward. It was about compensation for services rendered by the village managers. The report was received by the Committee on 6th August 2015 and the matter is under consideration by this Committee.

Petition No.5 is by Hon. Chrisantus Wamalwa, MP, on behalf of the residents of Mabonde Location. The subject is on the revocation of the appointment of the chief, Mabonde

Location. The report came before the Committee on 18th June 2015 and the matter is under consideration and a report will be submitted to this Committee within 21 days.

Petition No.6 is by Hon. Sammy Mwaita, MP for Baringo Central, on behalf of Mr. R.O. Abednego Etyiang'a. The subject is on the alleged intimidation and victimization through irregular transfer by the Principal Secretary for Interior and Co-ordination of National Government. The report came before the Committee on 21st July 2015. It has been adopted by the Committee and its awaiting tabling.

Hon. Speaker, I will still say something about this because the matter is before the High Court and just before I conclude I will tell you the status.

Petition No.7 is by Hon. Susan Musyoka, MP, on behalf of Mr. Raphael Kitavi on the reinstatement to public service and payment of dues. The report came before the Committee on 11th March 2015. It was adopted by the Committee and its awaiting tabling. We will table it tomorrow, 22nd October 2015.

Petition No.8 is by Hon. Alloys Leitoimaga, MP, on behalf of residents of Samburu North Constituency. He wanted to know the action taken towards recovery of illegal firearms within the North Rift region and specifically a village called "Lomerok". The report came before the Committee on 29th April 2015. It has been adopted by the Committee and it will be tabled tomorrow afternoon, 22nd October 2015. That is the last petition.

There is also one pending Bill; The National Police Service (Amendment) Bill (Senate Bill No.29 of 2014). The sponsor is the Senate and the report came before the Committee on 10th March 2015. The matter is under consideration by this Committee. The Committee was waiting for a report from the Budget and Appropriations Committee on whether it is a money Bill as per the requirement of Article 114 of the Constitution. A copy of the opinion by the Budget and Appropriations Committee dated 29th September 2015 has been forwarded to the Committee and a report on the Bill will be submitted to the House on Thursday, 29th October 2015.

Hon. Speaker, I just want to point out that as mentioned earlier on, the petition by Hon. Sammy Mwaita, on behalf of Mr. Abednego Etyiang'a on alleged intimidation and victimization is a matter that is before the High Court in Milimani. It is JR/Miscellaneous Civil Application No.202 of 2015. So, the matter is actually under the category of *sub judice*. So the petitioner has been advised to exhaust all judicial processes in addressing these prayers after which the Committee can handle the issue later.

Secondly, there is prepublication scrutiny of the proposed County Government (Amendment) Bill of 2015. The Committee invited the sponsor of the legislative proposal, Hon. Roba Duba, MP, on two occasions to consider the proposal but the MP was not available. The other report awaiting tabling is with regard to the investigation into alleged irregularities in the disbursement of funds to civil society groups by the NACADA. That report will be tabled before the House very soon.

The Report on the investigation into the Garissa University College terrorist attack, with the concurrence of your Office, will be tabled very soon.

Lastly, we want to just confirm to the House that we have reports submitted to the House in 2015; about 10 reports. I do not need to go through all of them but, we have tabled them in this House. So, we are just waiting for your direction whether we should debate or do otherwise. That is the report on the pending petitions and Bills submitted by the Committee on Administration and National Security.

Thank you, Hon. Speaker.

Hon. Speaker: Hon. Members, many of you paid attention to the Report by the Chair of the Departmental Committee on Administration and National Security. It must have become clear to you that the Committee having done well in certain respects, has fallen behind in others because the petition by Hon. Chrisantus Wamalwa has gone beyond the 60 days. There is one that was submitted by I think Hon. Lempurkel. There is another one that was submitted to the Committee sometime in June. In that respect, the Committee needs to pull up its socks.

Obviously, Members who brought the petitions have also gone into some deep slumber, among them Hon. Chrisantus Wamalwa. In their usual vigour, they have not raised those matters on the Floor of the House until the House Business Committee (HBC) came to their aid by requiring that we adopt this new procedure of ensuring that Committees apprise the House on various processes that are being undertaken.

It is commendable but, nevertheless, there is need for Committees to act within the speed that is required. When it comes to the last point that Hon. Asman Kamama raised with regard to the reports, that again goes to the HBC and the Clerk's Office is directed to ensure that those reports that the Committee has tabled are fast tracked for purposes of debate and adoption or resolution, one way or other.

Before I give you a chance to say something, Hon. Kamama, let me hear from Hon. Chrisantus Wamalwa. I think he has suddenly remembered his petition.

Hon. Wakhungu: Thank you, Hon. Speaker. On the contrary, because the Committee was dilly dallying, I had to go and see the Cabinet Secretary (CS) and my matter has already been resolved. The CS has acted. The said purported chief has already been kicked out and they have re-advertised the position. I thank CS Nkaissery for the job well done. The Committee was not aware that the petition has already been finalised.

Hon. Speaker: Then you needed to go and report to the Committee that the petition is no longer pending so that they make that kind of Report. There was also a petition by Hon. Lempurkel, the Member for Laikipia North. He is a famous Member. Is he around?

I think Hon. Chrisantus Wamalwa should have withdrawn his petition formally in the House so that the Committee becomes *functus*. Hon. Wamalwa, would you like to go on record as withdrawing that petition?

Hon. Wakhungu: Thank you, Hon. Speaker. The people of Kiminini have a lot of confidence in me. I was sharing with the Committee Chairman. He is, indeed, aware that it has been resolved. So, I want to officially go on record that I am withdrawing the petition that I had done about the purported chief of the people of Mabonde Location in Kiminini Constituency because it has already been resolved.

(Hon. Wakhungu's petition withdrawn)

Hon. Abongotum: Thank you, Hon. Speaker.

Hon. Wamalwa had shared with me that he had seen the CS and the matter is being settled amicably. It is only that he had not written officially to my Committee. So that matter is well settled. If he has withdrawn, then we will treat it as a non-issue at the moment.

For Hon. Lempurkel, we were consulting with my counterpart, the Chairman for the Departmental Committee on Lands. We only have not agreed on the date because it is about land and matters of security. We were to conclude and visit Laikipia North Constituency together

with my colleague, the Chairman for the Departmental Committee on Lands. Those two issues can be addressed that way.

Hon. Speaker: Can we hear from the larger than life Departmental Committee on Agriculture, Livestock and Cooperatives? There is a lot of business that is before that Committee. Let us have Hon. Benjamin Jomo Washiali, standing in for the famous Chair of the Committee.

PENDING PETITIONS/BILLS BEFORE
DEPARTMENTAL COMMITTEE ON LANDS

Hon. Washiali: Thank you, Hon. Speaker. First, I would like to register an apology from the substantive Chairman and Vice-Chair who are out of the country on official duties.

As a ranking Member, I want to give a report on behalf of the Departmental Committee on Agriculture, Livestock and Cooperatives pursuant to your Communication on 14th October. I wish to apprise the House on the business before the Committee as at 21st October 2015, which is today.

We have four pending Bills which have already gone through the First Reading. The first Bill is The Agriculture, Fisheries and Food Authority (Amendment) Bill, National Assembly Bill No.17 of 2015. It went through First Reading on 11th June, 2015. The Committee has already considered the Bill, has adopted it and the report is waiting for tabling. I think we will table it tomorrow, 22nd October 2015.

Secondly, under pending Bills, we also have the Seed and Plant Varieties (Amendment) Bill, 2015 which went through the First Reading on 27th August 2015. The Committee has already considered it and the report is ready to be adopted on Monday because the Committee will be having a meeting on that day. We will adopt the report and tabling will be done thereafter. If you allow, Hon. Speaker, it will be on Thursday of the same week.

Thirdly, we also have a pending Bill on the Warehousing Receipt System Bill, 2015 which went through the First Reading on 16th April 2015. The report writing is ongoing. The Bill requires radical changes and we may take a bit longer in tabling it.

Fourthly, we have a pending Bill, the Food Security Bill, 2015, which went through the First Reading on 7th October, 2015. This Bill is new. The Committee has commenced considering it and I am sure the report will be laid before this House soon.

Hon. Speaker, we also have legislative proposals which are at the prepublication scrutiny stage. We have two proposals on the Dairy Industry (Amendment) Bill, 2015 and on Tobacco Control (Amendment) Bill, 2015. I am happy to report that we have already considered and submitted the reports for the two proposed Bills.

We also have five pending petitions. We have a petition brought to us by Hon. Joyce Laboso on behalf of the representatives of milk farmers regarding the eminent privatization of the New Kenya Cooperative Creameries (KCC). The Committee has already considered the petition and adopted the report. It is awaiting tabling tomorrow in the afternoon session.

Hon. Speaker, we also have another petition brought to us by Hon. Esther Murugi on behalf of the Nyeri County coffee farmers with regard to the production and marketing of their coffee and payment of dues owed to them. The Committee has the petition and has adopted the report. It is waiting tabling and, with your permission we shall have the report tabled tomorrow in the afternoon session.

The third petition was brought to us by Hon. Kinyua Weru, on behalf of Mr. Joseph Gachagua, on the matter of the election of the chairperson of the Agricultural Society of Kenya (ASK). I am also happy to report that the report is ready and it is awaiting adoption by the Committee on Tuesday, 27 October 2015 which will be next week.

There is the fourth petition by Hon. Victor Munyaka who is also our Member, on behalf of the stakeholders of the Kenya Planters Cooperative Union (KPCU) regarding the removal of the Commissioner of Cooperatives. This is ongoing and we are waiting to meet the Principal Secretary (PS) for industrialisation who will be our final witness. Once we receive evidence from the PS, we will quickly write a report and have it tabled as soon as possible.

Last but not least, we have a petition by Hon. Bett Kipkirui on behalf of small-scale tea farmers from Bomet County regarding the alleged change of the management model of Kenya Tea Development Authority (KTDA) to Kenya Tea Development Agency (KTDA). The Committee commences to consider the petition tomorrow, Thursday, 22nd October, 2015 by meeting the petitioners. I am sure Hon. Bett Kirui has been notified and the representatives of the small-scale tea farmers from Bomet County.

Those are the five petitions that are still pending before this Committee. We have another investigative report on inquiry which we are yet to table on impoundment of alleged sub-standard fertiliser at the airport which was imported by the National Cereals and Produce Board (NCPB) and other private entities. The report is ready for adoption on Friday 23rd October 2015. Thereafter it will be written and tabled in this House. We also have pending reports on foreign visits. This is very important because every time Members of the Committee go out, we ask them to write reports when they come back. We have about four reports that are pending. One is the Inter-Ministerial Coordination Committee on the Organisation of Indian Ocean Rim Association (IORA) meeting in Mauritius which took place between 2nd and 4th of September, this year. The report is ready and we shall have it tabled on Tuesday, 22nd October 2015.

We also have another report from our Committee. This one is on Global Index Insurance Conference of the World Bank on financing of the agriculture sector at the Organisation for Economic Co-operation and Development (OECD) in Paris, France which took place between 14th and 17th September this year. I am happy to report that the report has been adopted and we will be tabling it in this House on 22nd which will be next Tuesday.

On foreign visits, we have Inspection Visit on Test Bench for Ocean Patrol Vessel in Freight Schiefen, Germany. There are members of our Committee who went to Germany and they have come up with a report which has been adopted and we intend to table it on Tuesday.

There is the last report that involved me going to Brazil to attend the 8th Session of the Food and Agriculture Organisation (FAO) Sub-Committee on Aquaculture which was held in Brasilia, Brazil between 5th and 9th. We have already written the report. It will be adopted on Monday and be tabled on 27th. There is another report that has already been tabled on the crisis in the sugar sector and it is awaiting debate and adoption.

Hon. Speaker: Very well. That is awaiting prioritisation by the HBC and it will be dealt with in due course.

Hon. Members, the importance of this is, whereas the Constitution places that honourable task of deliberating and resolving matters of concern to the people in terms of Article 95(2) through our own Committees, we must also live to what is expected of us.

I am aware that some of those petitions whose reports have not been tabled here were first read out in 2014. This is especially the petition by the Deputy Speaker and even the other

one by the Member for Nyeri town. Is Hon. Esther Murugi still in the House? Yes, even that one is an old petition. When a Committee takes longer than the 60 days--- Standing Order No.227 is very clear that you should table the Report within 60 calendar days. If there is need to seek for extension, you must bring your request to the House.

The Chairperson of the Departmental Committee on Justice and Legal Affairs has done that on a number of occasions. I thought he was setting a precedent so that other Committee Chairpersons can follow. If you think you are going to take longer than you expect, come to the House and seek for extension. You cannot just sit and assume it is business as usual because by the time you file the report, certain other things would have happened.

For instance, on what Hon. Chris Wamalwa has just disclosed, the Committee needs to be told: “Do not bother pursuing that matter because it has already been resolved one way or the other.” So, the Departmental Committee on Agriculture, Livestock and Cooperatives, please take note that many of the petitions that are with you, even though you want to table the reports tomorrow or next week, they are already outside the allowable time limits. You needed to get extension of time from the House to continue considering them. This is because it is the House that has created the committees and it is the House that can resolve to extend the time. It cannot be that the Committee extends time on its own volition. It must be the House.

So, those petitions that have gone beyond the 60 days before you table the report, you must come to the House and get the House to extend the time. Otherwise, you will be acting in vain. Please ensure that the reports are brought to the House. On the reports that have been brought, the HBC has resolved that they will always get priority on specific days so that they are adopted by the House. This will enable the Committee on Implementation chaired by Hon. Soipan to take up the matter on follow up. But they cannot follow up the matter when no report has been tabled, unless there is a Member who wants to contribute. Hon. Murugi, do you wish to comment something on your Petition?

Hon. (Ms.) Mathenge: Yes. Hon. Speaker. There was too much hullabaloo with that Committee because it did not avail a lot of time when it called people who were supposed to give evidence. So, that is why it took a lot of time but they kept me briefed on what was going on and that is why I have not raised the matter on the Floor of the House.

Thank you.

Hon. Speaker: Except that the Committee should have come to the House to seek for extension of time. Even as they kept you briefed, when they knew that they were going beyond the allowable 60 days under Standing Order No. 227, they needed to come and seek extension. But I am sure the ranking Member, Hon. Ben Washiali, will be able to brief the Chairman of the Committee and the Vice-Chairman. I think they are no longer interested in House business these days. They are more out than in the House. Is there any other Member whose petition is before that Committee? Is it Hon. Bett?

Hon. Victor Munyaka raised a petition about Kenya Planters Cooperative Union (KPCU). I know all those petitions that have been pending before that Committee for quite some time. However, since the Members have chosen to be absent, even equity does not reward the indolent. So, we take it that they have nothing useful.

Let us have Hon. Bett, the Member for Bomet East.

Hon. B.K. Bett: Hon. Speaker, I have been notified about the invitation of the petitioners and I am very sure that they will be there tomorrow to give the petition to the Committee.

Hon. Speaker: Very well. The last Chairperson to report on business is Hon. Benjamin Langat. The Chairman for the Departmental Committee on Finance, Planning and Trade.

Hon. Langat: Thank you very much, Hon. Speaker. From the outset, I wish to inform the House that since its composition in May 2013, the Departmental Committee on Finance, Planning and Trade has considered and passed a total of 22 Bills. These Bills are the Public Procurement and Asset Disposal Bill, 2013; the Retirement Benefits (Deputy President and Designated State Officers) Bill, 2013; the Value Added Tax (Amendment) Bill, 2013; the Insurance (Amendment) Bill, 2013; the Tax Appeals Tribunal, 2013; the Micro Finance (Amendment) Bill, 2013; the Capital Markets (Amendment) Bill, 2013; the Kenya Deposit Insurance (Amendment) Bill, 2013; the Insurance (Motor Vehicle Third Party Risks) (Amendment) Bill; the Scrap Metal Bill, 2014; the Business Registration Bill, 2014; the Securities and Investment Analysts Bill, 2014; the Central Bank of Kenya (Amendment) Bill; the County Governments (Amendment), Senate Bill and the Public Audit Bill, 2015. We consolidated both the Bill and the Presidential reservations

On the Public Procurement and Asset Disposal Bill, 2014, we also consolidated both the Bill and the Presidential reservations. The other Bills were the Special Economic Zone Bill, 2015; the Finance Bill, 2013; the Finance Bill, 2014; the Finance Bill, 2015 and the Excise Duty Bill which we had finalized. However, there is a Presidential Memorandum which this House and my Committee is supposed to address. Processing of the Bills accounted for 99 per cent of the Committee's time during the period.

Currently, the Committee is in the final stages of concluding the five Bills pending before it. Stakeholder consultation and compilation of reports has already been done. The Committee is scheduled to table the remaining reports tomorrow 22nd October 2015.

The five Bills which are pending before the Committee, as I have said include the Excise Duty Bill which the House had completed, but the President brought in reservations on the Bill. Although I will table the report, I wish to inform the House that the reservations of the President amount to reversing all the amendments which this House had passed initially. I will be raising a statement on that tomorrow.

We also have the Miscellaneous Fees and Levies Bill, 2015. This Bill has not been brought for the Second Reading but the Committee has engaged the stakeholders and compiled the report which I will table tomorrow. The Committee has also consolidated amendments and received comments on the same from the Treasury pursuant to Article 114 of the Constitution. I will be convening a meeting with my Committee to agree on the final amendments of the Bill for the Third Reading in time.

Hon. Speaker, we have the Betting, Lotteries and Gaming (Amendment) Bill, 2015. This Bill has not come for debate in the Second Reading but my Committee has done what we are supposed to do at that stage. We have engaged the stakeholders, we have compiled the report and I will be tabling it tomorrow. We have also consolidated the amendments which we have received from the stakeholders. I will be convening a meeting with my members to agree on the final amendments for the Third Reading in time.

Fourth is the Public Finance (Amendment) Bill, 2015. This Bill has not gone through the Second Reading. The Committee engaged stakeholders and compiled its report which should be tabled by tomorrow. This is one of the controversial Bills which the House will hear in the Second Reading. It is one of the Bills that want the Treasury to remove money from the Consolidated Fund assuming that Parliament has not passed the Budget. We will debate it when

the Bill comes for the Second Reading. We have consolidated the amendments and we are dealing with the Treasury to agree on the final amendments. I will convene a meeting to agree on the final amendments for this Bill when it comes for the Third Reading.

The Tax Procedure Bill, 2015 is yet to go for the Second Reading but we have done our bit as a Committee. We have engaged the stakeholders. We have compiled a report which I will table tomorrow. It is undergoing validation process through the Clerk's Office. I will also be convening a meeting to agree on the final amendment which will be moved on this Bill at the final stage.

On the issue of the prepublication scrutiny of the Bills that have been brought to my Committee, I wish to inform the House that the Committee has concluded prepublication scrutiny of the Public Procurement and Asset Disposal Bill, 2015 by Hon. Sakaja which we have already passed. We also finished the Retirement Benefits (Deputy President and Designated State Officers) Bill, 2015.

On the Constituencies Development Fund (Amendment) Bill 2013, we finished the prepublication scrutiny. We also finished the Securities and Investment Analysts Bill, 2013. We have also finalised the Pension Scheme (Amendment) Bill by Hon. Kangogo; the Salaries and Remuneration Commission (Amendment) Bill by Hon. Kangogo Bowen; the Revenue Division Bill, 2014 by Hon. Keynan; the Constitution of Kenya (Amendment) Bill, 2014 by Hon. Alfred Keter; the Value Added Tax (Amendment) Bill, 2014 by Hon. Wafula Wamunyinyi - the report was brought to your office; the Kenya Youth and Women Empowerment, Uwezo Fund Bill, 2014 by Hon. Kangongo - the report was given to your office and the Parliamentary Pensions (Amendment) Bill, 2014 by Hon. Wafula Wamunyinyi - the report was forwarded to your office.

The Parliamentary Pensions (Amendment) Bill, 2014 was finalised the other day because the Member was not available at the time we wanted to finalise it. However, we have finalized this Bill and the Report should be in your office. The Central Bank of Kenya (Amendment) Bill, 2014, which was moved by Hon. Kabando wa Kabando was passed but there was a Memorandum from the President on it. The other Bills that have been finalised are the Tobacco Control (Amendment) Bill, 2015 by Hon. Phillip Rotino; the Banking (Amendment) Bill, 2015 by Hon. Jude Njomo; the Inclusive Growth Coordination Authority Bill, 2015 by John Waluke and the Equalisation Fund Bill by Hon. David Pkosing.

On the issue of petitions, we have a pending petition by the Consumers Federation of Kenya (COFEK), which sought to operationalise the Consumer Protection Act and amend the Finance Act, 2012 that required a representation of consumers on every board. Sadly, this Bill is still pending before my Committee because it has a monster prayer. It will require amendments to many of the laws to be able to answer the prayer. Most of the boards have already been structured by laws passed in this House. I promise the House that within two weeks I should be able to finalise this petition and---

Hon. Speaker: Hon. Langat, your 10 minutes are up. What further business is pending? You have spent a lot of time telling us about the business which you have concluded. Let me give you one more minute.

Hon. Langat: Hon. Speaker, we still have the petition by Hon. Joseph M'eruaki on the excise duty remission of sorghum. We have largely finalised it and the prayer has already been answered through the Excise Duty Bill, which we passed. The petition on the privatisation of Muhoroni Sugar Factory by Hon. Justice Kemei is still pending. It came at a time when we were passing the privatisation approval. One of the prayers was answered through the privatisation

approval. We have a petition to provide for the establishment of a constitutional commission for innovations and inventions by Hon. Maj. (Rtd) Joel Kiprono Rop. That petition is still under consideration. We have a petition on images on the notes and coins by Mr. Mitamo Muchira---

Hon. Speaker: Hon. Langat, it appears like there is a lot of business pending before your Committee. Standing Order No.227 stipulates that where you think you are going to take more than the 60 days allocation, you need to come back to the House and give Members reasons as to why you need an extension of time. That petition by Justice Kemei is an old one. You need to come to the House with all of them and seek extension of time because it is not open-ended.

With regard to the Memorandum from the President remember, in terms of Standing Order No.154, you only have 21 days. It was referred to you on 6th October. The 21 days expire on 27th October. We should expect a report tomorrow at the latest, Hon. Langat.

Hon. Langat: Hon. Speaker, I stand guided on the question of petitions. I am also working very hard on the Presidential Memorandum. Tomorrow I will be requesting you to allow me to issue a statement on behalf of my Committee on that Memorandum. I will table the report by tomorrow.

Hon. Speaker: You are required to table a report and not to issue a statement. You can issue a statement anywhere anytime. The report must be in the House because after 21 days it will not be open for you to either issue a statement or table a report. This is so that the business will be on the Order Paper on Tuesday, next week. Is there any Member who has a petition before the Departmental Committee on Finance, Planning and Trade?

Yes, the Leader of the Majority Party.

Hon. A.B. Duale: Hon. Speaker, through your guidance, can we allow the Chairpersons of the Committees to table their status reports for the HBC to look at?

Secondly, in their reports, they should indicate the dates on which they are going to table their reports. That, again, will guide the House Business Committee. Tomorrow, 22nd October 2015, all the reports of the Departmental Committee on Agriculture, Livestock and Cooperatives will be tabled. We can check whether the Member who says that he is a standing Member in that committee is going to do what has gone into the HANSARD. As they give us the status reports, let us allow them to table those reports.

Hon. Speaker: We expect that the status reports which Chairpersons of Committees will be presenting will be factual. Once we get the report and sit in the HBC, we can see how to fast-track it. Where the Chairs of Committees request that certain reports be given priority then the HBC will be accordingly informed. I expect that what Hon. Benjamin Langat, Hon. Ben Washiali and Hon. Asman Kamama have presented is factual. I saw Hon. Asman Kamama and Hon. Washiali give their written reports to the Clerk-at-the-Table. I expect that Hon. Benjamin Langat, the Member for Ainamoi will also table their appraisal report so that it becomes part of the business of the House.

Hon. Members, before we move on to the next Order, I want to announce to the House that I am reorganising business. Before we go to business scheduled as Order No.8 on the Supplementary Order Paper, we will go to Order No.10, which is simple business. As I call for the next Order, that Order should be Order No.10, after which we shall go back to Order Nos.8, 9 and 11 in that order.

MOTION

THE NATIONAL DROUGHT MANAGEMENT AUTHORITY BILL

THAT, the Senate Amendments to the National Drought Management Authority Bill (National Assembly Bill No. 42 of 2013) be now considered.

(Hon. Ganya on 21.10.2015)

(Resumption of Debate interrupted on 21.10.2015 (Morning Sitting))

Hon. Speaker: This is the business appearing as Order No.10. It is the Motion on the National Drought Management Authority Bill (National Assembly Bill No.42 of 2013)

(Question put and agreed to)

PROCEDURAL MOTION

THE PARLIAMENTARY POWERS AND PRIVILEGES BILL

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

THAT, pursuant to the provisions of Standing Order 49(2)(a), this House resolves to rescind the decision made by the House on Wednesday, 14th October, 2015, (Morning Sitting) regarding the Question that “this House do agree with the Report of the Committee of the whole House on the Parliamentary Powers and Privileges Bill (National Assembly Bill No.35 of 2014)” and further pursuant to the provisions of Standing Order No.136 resolves to agree with the Committee of the whole House on the said report subject to re-committal of Clauses 34 and 37 of the Bill.

Hon. Speaker, this is a very straight forward matter. Following the direction you gave that the putting of the Question in Third Reading of this Bill be deferred and referred to the HBC, I would like to confirm that, indeed, the HBC sat this afternoon and agreed to schedule this Motion on the Supplementary Order Paper.

Hon. Speaker, in accordance with Standing Order No.136, I propose that the House agrees with the Committee of the whole House on the said report by re-committing Clauses 34 and 37 of the Bill. This will give this House an opportunity to rectify some of the missteps that occurred on Wednesday, 14th October 2015, during the Morning Sitting.

Further, if the House agrees with me, the amendments that we shall bring forthwith will seek to align the provisions of the Bill with Article 34(2) of the Constitution which provides for the freedom of the Media.

Sub-article (2) states as follows:-

The State shall not –

(b) penalise any person for any opinion or view or the content of any broadcast, publication or dissemination”.

To the extent that the Bill seeks to penalise the media is, in itself, inconsistent with the provisions of the Constitution. I would like to ask Hon. Chepkong’a to second.

Hon. Chepkong'a: Thank you, Hon. Speaker. I rise to second this Procedural Motion that has been brought by the Leader of the Majority Party, Hon. Aden Duale.

The Leader of the Majority Party has been very hawk-eyed in terms of looking at whether the business of the House is in consonance with the Constitution.

Article 3(1) of the Constitution, is very clear. It states:-

“Every person has an obligation to respect, uphold and defend this Constitution”.

As you know, Article 118 of the Constitution requires that this House facilitates public participation, involvement in legislative and other business of the House. It is no longer the preserve or the monopoly of this House to pass legislation without reference to the members of the public, including the media. Public participation is part of issues raised by the media that they think offends the Constitution. It has, therefore, come to the knowledge of the public which include the media that while this House was considering the Bill, it somehow derogated from the provisions of the Constitution in particular Articles 34 and 24 of the Constitution.

Hon. Speaker, Article 24 of the Constitution is very clear. It states in part:-

“--- any limitation by any legislation must be reasonable and justifiable in an open and democratic society ---”.

It has come to our knowledge that some of the provisions, as already been pointed out by the Leader of the Majority Party, in particular Clauses 34 and 37 of the Bill, appear to derogate from Articles 24 and 34 of the Constitution.

It is important that this House relooks at those clauses. This Bill is still within the House. The train has not left the station. Many people are saying that Parliament should reverse this Bill, but there is nothing to reverse as it is still being considered by this House. We are still within our mandate to consider this Bill. This is because we have heard what the public has said in terms of public participation as required by Article 118 of the Constitution.

The Constitution is very clear. It states under Article 124(1):-

“Each House of Parliament may establish committees and shall make Standing Orders for the orderly conduct of its proceedings, including the proceedings of its committees”.

As it has already been pointed out by the Leader of the Majority Party, Standing Order No.49(2)(a), states:-

“A Motion to rescind the decision on such a question may be moved with the permission of the Speaker”.

Therefore, it is within our power to regulate the manner in which we proceed with matters in this House. This House is very proactive. We are not reactionists. When we hear what the public is saying, we are very progressive in the manner in which we deal and dispatch with business. This is one way of dealing and dispatching with business in a manner that is acceptable to an open and democratic society, just like ours.

I rise to second that the Bill be re-committed to the House for reconsideration of Clauses 34 and 37.

Thank you, Hon. Speaker.

Hon. Speaker: Hon. Members, I am assuming that most of what has gone out will be best explained by Hon. Chepkong'a, if the House resolves in a manner it is being asked to.

(Question proposed)

Hon. Midiwo: Hon. Speaker, I rise to support the Procedural Motion. I would also like to thank you for guiding and rescuing us from making a mistake last week even though the noises have not quite subsided. We are still being blamed. I took my time, went back and looked at the proceedings that morning. I thought it was a very big mistake. To err cannot be permanent, but if you keep doing it, is where the problem is.

Hon. Speaker, I want to plead with members of your panel that on a matter like this one, if we pronounce ourselves one way or another, especially when the Mover of a Motion has said he or she is not interested, it requires a bit of thinking. This is one decision we have lived to regret for a while.

Hon. Speaker, you had expressed your sentiments about the contents of this Bill, both in Mombasa and during the parliamentary media breakfast. I thank you for that. I was very happy yesterday when His Excellency the President asked for wisdom when such Bills come here for debate. I plead with the Leader of the Majority Party, my friend Hon. Aden Duale, to help us heed the voice and call of the President. However, the President fell short of talking about the other bad Bills that have been coming here. The bad Bills that seem unconstitutional, which are out in the media, include the Kenya Defence Forces (Amendment) Bill and the Security Laws (Amendment) Bill. Let us discuss the Bills before they come here so that we do not collectively keep looking bad and looking up to the Speaker to guide us to do what we can do before it gets too bad. The President talked to us about it, but most of the bad Bills that come here originate from the Executive. We ask the Executive to follow the words and wisdom of their leader so that we are not entertained here with Bills that appear to contravene the Constitution.

Hon. Speaker, I support the Motion.

Hon. Speaker: Hon. Members, even as I put the Question, it is fair to explain that the proposal to repeal the Parliamentary Powers and Privileges Act was partly to align it with the constitutional reality of bicameralism. Indeed, that should have happened in the 10th Parliament. The 10th Parliament should have passed an amendment which would have recognised that there would be two Houses and two Powers and Privileges Committees of both Houses. As it is today, the Powers and Privileges Act, which is an old Act, still refers to the National Assembly. It has no reference to the other House.

It was only fair that the Parliamentary Service Commission (PSC) came up with the proposal to align the Act with the constitutional reality. Unfortunately, Hon. Keynan is an active member of the PSC and he agreed to carry the baby. I do not think whatever he said was really his own opinion except that he made it appear like it was his own Bill. It was not his Bill. The idea was just to bring the law in tandem with the constitutional realities of bicameralism.

Hon. Members, this is just a procedural Motion. If there is need for debate, it can come when we get to the next stage. The merits and demerits of the amendments can be debated then.

(Question put and agreed to)

Hon. Speaker: Next Order.

COMMITTEE OF THE WHOLE HOUSE

(Order for Committee read)

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

IN THE COMMITTEE

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

THE PARLIAMENTARY POWERS AND PRIVILEGES BILL

(Consideration of Re-committed Clauses 34 and 37)

The Temporary Deputy Chairman (Hon. Cheboi): Order, Members! We are going to deal with the two clauses that have been recommitted. Hon. Members, you must be very keen because the work of the Chair will simply be to arbitrate. Whichever way you decide will carry the day. So, you have to be very keen.

Hon. Members, I hope you have the proposed amendments which are in circulation. I believe Members must have picked copies so that they can acquaint themselves with the amendments.

Clause 34

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

(Hon. Chepkong'a consulted loudly)

Hon. A.B. Duale: Hon. Temporary Deputy Chairman, the Chairperson of the Departmental Committee on Justice and Legal Affairs is running another Committee of the whole House.

The Temporary Deputy Chairman (Hon. Cheboi): He is totally out of order. Proceed, Hon. Duale.

Hon. A.B. Duale: Hon. Temporary Deputy Chairman, I beg to move:-
THAT, Clause 34 of the Bill be deleted.

I seek the deletion of this clause because Article 34(2) of the Constitution provides for freedom of the media and their right not to be penalised for any opinion or view or the content of any broadcast, publication or dissemination. To the extent that this provision seeks to penalise the media, it is inconsistent with the Constitution.

It is a good day for me. If you remember that Wednesday morning, it was the first time in my life that I could not convince the members I command. Hon. Gumbo, Hon. Keynan and many other Members disagreed with me. The only interest I had was to say that the provision of Clause 34 of the Bill is in violation of the Constitution. I thank the Members of the National Assembly and the Speaker because we did something wrong but we remembered that we can make a correction. That is why the framers of the Standing Orders thought that the element of recommitment is so important. Members do not know how important recommitment is. If that was not

provided for in the Standing Orders, there would be no way of turning back the train. So, it is a good day for our country.

We must believe in an open society. I attended the Parliamentary Week when Parliament opened its gates to the public. We cannot have the choice of opening our gates for only one week in a whole year. As legislators, let us open all doors to the media, as a watchdog of the people, so that they can scrutinize us personally and our integrity. They should scrutinise the reports that Committees do in this House. They should scrutinise the offices that we hold and what goes on in this Chamber fundamentally for one reason: Because we represent the people of Kenya. The 349 of us here are the watchdog of the people out there. So, let us live by this progressive Constitution of transparency and accountable leadership where we open ourselves to the people of Kenya.

Thank you, Hon. Temporary Deputy Chairman.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Cheboi): I will give a chance to a few Members to speak because I think this is an extremely critical Bill and in any case, we are only dealing with two clauses. Let us have the Member for Seme.

Hon. (Prof.) Nyikal: Hon. Temporary Deputy Chairman, on Clause 34 on that day, I said that the operational words were “false” and I do not wish to withdraw that. The Press must be given the right to say anything that is happening but it should be true. If it is false, I still will stand with the position that in that case we really do not need to actually delete this clause.

Clause 34(a) says:-

“publishes any false or scandalous libel on Parliament, its committees or its proceedings”.

The only thing I may want to amend there---

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Nyikal, I really do not want you to go to the history. We are now dealing with a re-committal. It is either you support it today or you do not. Whatever you said then is part of the HANSARD. It is easily accessible.

Hon. (Prof.) Nyikal: Hon. Temporary Deputy Chairman, this is so important for this country and that those who think differently, even in minute detail, should also be heard because the majority will have their way but the minority should have their say. Therefore, I would have proposed a further amendment in sub-clause (a) which would say: “false and scandalous” because if we use the word “or” then it may mean that it can stand on its own.

The Temporary Deputy Chairman (Hon. Cheboi): Unfortunately, that is not on the tray. The proposal here is a deletion. You have made your point, Hon. Nyikal. You are perfectly in order. The only thing is I do not want a situation whereby you reopen the other amendment and you cannot even propose a further amendment when there is a deletion here. If the deletion is taken, then the only thing which you will be proposing is not to have it deleted, which is not going to be procedural in the first place.

So, speak to this Clause 34 which is a proposal for deletion. Please summarise. I have never seen you agitated before. I do not know what you took for medicine today.

Hon. (Prof.) Nyikal: As it is, I do not support because it includes the word “false”. Parliament is a very important institution.

The Temporary Deputy Chairman (Hon. Cheboi): This is a deletion.

Hon. (Prof.) Nyikal: Let me go to sub-clause (b). I have finished with sub-clause (a). My only problem with sub-clause (b) is that it says “speaks words” but again, if the words are false, which I would have if I had the opportunity and now I do not understand---

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?

Hon. A. B. Duale: Hon. Temporary Deputy Chairman, my point of order is that I have moved an amendment for deletion. So, Hon. Nyikal has only two choices; to say that he opposes and gives reasons and then waits for the Question to be put. If my amendment is carried, then you have no chance of proposing a further amendment.

Hon. (Prof.) Nyikal: The reasons he says may include what a Member in his own mind would have liked to do if the situation provided for that. I realise that as it is now and the mood in which this re-committal has been done is such that the only thing that we are expected to do is to go either way. Really what we must think is, is that information that can be printed whether, it is false or not?

The Temporary Deputy Chairman (Hon. Cheboi): Kindly wind up now. This is not the right time to debate.

Hon. (Prof.) Nyikal: I am winding up. We have correctly quoted Article 34(2) of the Constitution but we have also cleverly neglected to quote Article 34(1) which says “...does not extend to any expression specified in Article 33(2)” which says: “The right to freedom of expression does not extend to advocacy of hatred that constitutes ethnic incitement, vilification--”

The Temporary Deputy Chairman (Hon. Cheboi): What are you referring to?

Hon. (Prof.) Nyikal: Articles of the Constitution. I know history and the HANSARD will say that this day Hon. Nyikal was right but was alone.

The Temporary Deputy Chairman (Hon. Cheboi): We cannot know that yet because many more Members will be speaking and probably you are not even alone. So, I do not want you to put yourself in a corner which we cannot be able to verify now.

Hon. (Prof.) Nyikal: Hon. Temporary Deputy Chairman, at this point, I do not support.

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Members, I will give a chance to Members to speak but, kindly let us be brief because I want to give a chance to a reasonable number of Members. Let us be very brief. Let us start with the Member for Nakuru Town East. Do you want to speak to this one? It should be brief and to the point so that many Members can speak.

Hon. Gikaria: Hon. Temporary Deputy Chairman, protect me from Hon. Chrisantus Wamalwa. He is saying I am not ready.

The Temporary Deputy Chairman (Hon. Cheboi): Show us that you are ready. You really do not need to be protected on that.

Hon. Gikaria: The people of Nakuru Town East have a lot of faith in me and how I represent them.

I rise to support what the Leader of the Majority Party just said. In view of what happened just the other day about mileage, we were asking ourselves what happens now that our names are in newspapers that we just party but, the same Constitution provides that if false information is given, then there is an opportunity for correction. That is what we will be demanding; that whoever gives false information should be obliged to give a correction and an

apology. I am saying this because when we were discussing this, the argument was who determines what is false. Is it the same Parliament? With that, I support.

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

Hon. (Dr.) Simiyu: Thank you, Hon. Temporary Deputy Chairman. For once, I will support what the Leader of the Majority Party is saying which is very rare for me. While I support the amendment, we need to realise that this problem is not about Hon. Keynan or Hon. Gumbo. This is a Parliament leadership problem. The HANSARD will bear me out. I have stood about four times when Bills come to this House and asked the Speaker: Is this Bill really constitutional and the Speaker has always said “let the House decide” yet Standing Orders and the Constitution are very clear that the Speaker is the one who determines what is constitutional and what should come to the Floor of this House. So now lack of decision on constitutionality of Bills has come to haunt this House with this Bill.

The other issue is on Committee amendments. Usually, this House has shown lack of respect for Committee recommendations. Committees have recommended right from the beginning of this House that this Cabinet Secretary (CS) is not fit or this particular issue is not good but this House overturns it. Every time we have overturned a Committee’s recommendations, we have ended up in a bad state and that is what has happened with this Bill. The Committee had recommended deletion of this particular clause from the word go. So what the House is suffering from is our own past misbehaviour and that is what we are facing now.

The Temporary Deputy Chairman (Hon. Cheboi): Let us have the member for Nyeri.

Hon. (Ms.) Kanyua: Thank you, Hon. Temporary Deputy Chairman. I support the Leader of the Majority Party in the proposal to delete Clause 34. Freedom of the media is something that is celebrated. It is new in our Constitution and unfortunately by including this clause in the law, we join the list of countries that are the worst in the history of the world in attacking media freedom. There is no reason why Kenya should join a list with Iran and Egypt.

Hon. Temporary Deputy Chairman, these things matter internationally. Investors are looking at which country to invest in. The media is a big environment for investment. When we pass some of these laws, we land ourselves into so much trouble. Although the intentions are clear that we do not want a scandalous reporting of the National Assembly, that we do not want misreporting of Hon. Members of Parliament, I think those are matters that can be addressed in the Media Council’s code of conduct. Those are matters that can be addressed by defamation.

For today, to save ourselves and the country, we need to outrightly delete this clause and then pursue other ways of getting redress. This clause cannot survive in our laws as it is.

I support the deletion.

The Temporary Deputy Chairman (Hon. Cheboi): All right. Let us have Hon. Wamalwa. You have just removed your card and you were on the top.

Hon. Wakhungu: Thank you, Hon. Temporary Deputy Chairman. I rise to support the amendment. This clause is, indeed, unconstitutional. We ask ourselves: “How did it reach on the Floor of the House bearing in mind Standing Order No. 1 where the Hon. Speaker exercises discretion? Matters of constitutionality are supposed to be looked into.

As the Leader of the Majority Party has clearly put it, this clause violates Article 34 of the Constitution in terms of media freedom. When you go down to Sub-clause 2(a), it violates on the issue of penalising and also when it comes to the issue of exercising control on media reporting. The media plays a critical role as far as Article 35 of the Constitution is concerned.

Every Kenyan and citizen has a right to information. But again when you look at Article 35 and go further down, I want to address the fears of my friend Hon. (Prof.) Nyikal. The Constitution clearly states:-

“Every person has the right to the correction or deletion of untrue or misleading information that affects the person.”

In case a media reporting is not true, there is that provision for deletion. Therefore, I rise to support because this clause is unconstitutional. The media helps us to provide watchdog role on issues of oversight.

Hon. Temporary Deputy Chairman, you will agree with me that without the media, we will not know the issues of corruption that are happening in the Jubilee Government.

Therefore, we support.

Thank you.

The Temporary Deputy Chairman (Hon. Cheboi): Okay. Hon. Metito.

Hon. Katoo: Thank you, Hon. Temporary Deputy Chairman. I rise to support the Leader of the Majority Party in his amendment. I want to say that one of the main objectives of the media is to inform the public. As much as we are doing this, I would also urge the media not to misinform. If you look at what my colleague (Prof.) Nyikal has been saying - I just want to allay the fears. Reading from the same script with my colleague, Hon. Wamalwa if you look at Article 33(3), it states:-

“In the exercise of the right to freedom of expression, every person shall respect the rights and reputation of others.”

Therefore, as much as we move to delete that clause, it is good for the media in their normal duty of informing the public, to do so with the question of respecting the rights and the reputation of others. In this case, it is not only about Hon. Members of Parliament. Scandalous information, to put records correct, is not just about Hon. Members of Parliament, but members of the public. Therefore, I would also like to agree with the Hon. Member for Nyeri that maybe through the professional code of conduct and ethics, the media needs to come up very clean and try to do their work with decorum and without damaging reputation of people. As much as there is that allowance of seeking redress and deletion of misinformation, the damage that would have been done is so big so that it is not easy to undo it at times.

I support.

The Temporary Deputy Chairman (Hon. Cheboi): Okay. I begin to see Hon. Members of Parliament repeating themselves. I do not think we have too much of new ideas here. I am going to give chance to maybe one or two more Members and then see; if the mood is towards one direction, there will be absolutely no reason to proceed further.

Let us have Hon. Oburu Odinga.

Hon. (Dr.) Oginga: Thank you, Hon. Temporary Deputy Chairman for allowing me to express myself on this very important issue. I want to support this amendment. I support it because historically, our side is known to be the one protecting the Press. Today I am very happy that Hon. Duale used to support the freedom of the Press when he was with us here on this side.

The Temporary Deputy Chairman (Hon. Cheboi): I do not understand. I remember I was seated in this chair and Hon. Duale was still on this other side. I remember him seated on the seat which is designated for him.

But, what is your point of order Hon. Duale?

Hon. A.B. Duale: I do not want to contradict Hon. Oginga. He is my senior. He has served more than six terms; 16 years in this House. Now that he is claiming to be the one protecting the media, I also want to confirm and go on the HANSARD that I left the Orange Democratic Party (ODM) because of muzzling the media in 2009. One of the values that I believed in was free Press and free freedom. When I realized that they wanted to do that, I had to leave the party.

The Temporary Deputy Chairman (Hon. Cheboi): I do not think so. That cannot be a point of order, it is a point of argument. I am not going to allow that. Now, let us be very brief.

Hon. (Dr.) Oginga: Hon. Temporary Deputy Chairman, I do not accept the argument that the media cannot be punished if they publish false information. Historically as you know, the media has been given very heavy fines whenever they make defamatory or false reports about people. So, individuals have other avenues in law which protect the public and Hon. Members of Parliament also. I do not see why we should protect ourselves when the protection should be for the whole country and all members of public.

So, this clause is unconstitutional and we should not support it. This is the position of most of our people, particularly this side.

The Temporary Deputy Chairman (Hon. Cheboi): Okay. Let me give chance to Hon. Anami. Let us be true to ourselves, Hon. Members of Parliament. When the Committee sat last time, they had an option to make certain amendments which they refused. Yet I hear some Hon. Members of Parliament talking about the Hon. Speaker having failed on his part when we should be admitting that we made some decisions which were not right at that time. Let us be honest and proceed briefly.

Hon. Anami: Thank you, Hon. Temporary Deputy Chairman. The problem we have here is that we are trying to legislate everything. On some issues, especially on this issue of falsehood, scandal and other things, the Constitution is so clear and has a treatment already for it. When we try to put everything in every legislation we start contradicting ourselves. I want to support deletion and leave the issue of falsehood and scandal to be dealt with by the Constitution as it has provided and because the courts are available to deal with these issues.

Thank you.

The Temporary Deputy Chairman (Hon. Cheboi): Okay. I have given chance to two Hon. Members of Parliament from this side. Let me give chance to two Hon. Members from this other side.

We will start with Hon. Kenta.

(Hon. ole Kenta spoke off the record)

There is a problem with your card though it is reading here.

Hon. ole Kenta: Thank you, Hon. Temporary Deputy Chairman. I would also like to support the Leader of the Majority Party and my colleagues who have spoken before me. I think this was an oversight on our part because we are supposed to protect the Constitution and defend it. I believe that we have responsible journalists and they know what they are doing in their profession. The only people whom we should guard against are the quacks who are out there to tarnish people's names. We should not go to their level. We should actually defend the Constitution as much as we can.

I support it.

The Temporary Deputy Chairman (Hon. Cheboi): Let us have Hon. Chepkong'a.

Hon. Chepkong'a: Thank you, Hon. Temporary Deputy Chairman. I rise to support the Leader of the Majority Party that this clause be deleted for the following reasons: If we are seeking to protect our reputation, this is not the way to do it. We have the law on libel and defamation. That can be done through courts. So, we are over-legislating on a matter that is already provided for in other parts of the law.

Secondly, there is an English adage which says: "A fool does not change his mind." We are very wise people and there is nothing wrong with changing our minds. The only problem that happened is that Hon. Keynan called a Press conference and undertook to withdraw this. Unknown to us, he left it and there were a lot of issues that went on here and people forgot to delete it. So it went in by mistake. So, I must say---

Hon. (Dr.) Simiyu: On a point of order

The Temporary Deputy Chairman (Hon. Cheboi): What is your point of order, Hon. Member for Tongaren?

Hon. (Dr.) Simiyu: Sorry to interrupt my good friend Hon. Chepkong'a. Hon. Keynan did not utter falsehoods. So, is the Member in order to suggest that Hon. Keynan uttered falsehoods? Essentially, Hon. Keynan decided that he would go with the Committee to delete that particular clause. So, he did not contest the deletion of that clause. He was in agreement with the deletion of that clause. So, is the Hon. Member in order to imply that Hon. Keynan did not drop the amendment?

Hon. Chepkong'a: Thank you. I will not argue with him. You know there is lapse of memory occasionally and I acknowledge that it happens once in a while. Everybody knows that Hon. Keynan called a Press conference, so that is not denied.

The Temporary Deputy Chairman (Hon. Cheboi): You see Hon. Chepkong'a, the Hon. Member for Tongaren is seated next to a very senior medic and he is a medic himself. I can see he seems to disagree with you that he suffers from some memory lapse. Anyway, proceed and finalise your bit.

Hon. Chepkong'a: Hon. Temporary Deputy Chairman, I am advised by my doctor that there is no medicine for memory lapse.

(Laughter)

The Temporary Deputy Chairman (Hon. Cheboi): I seem to agree with this issue of memory lapse, not in terms of what you are saying. You know, it is the Hon. Speaker who spoke against this particular one and I think we have forgotten it somewhere but proceed.

Hon. Chepkong'a: Yes. You know the media has its way of regulating itself. That is accepted within the Constitution and so we must not meddle with it. We should leave it. That is why I support.

The Temporary Deputy Chairman (Hon. Cheboi): Okay. Hon. Members, I see there is quite a lot of interest in this one. I promise that in the next one which is of a similar nature, I will look out for those Members who did not speak to this particular one. So, Hon. Members we can dispense with this one.

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

(Clause 34 deleted)

Clause 37

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

THAT, the Bill be amended by deleting clause 37 and substituting therefor the following clause—

Officers of a House of Parliament to have powers of police officer.

37. (1) Every officer of a House of Parliament shall, for the purposes of this Act and of the application of the provisions of the criminal law, have all the powers and enjoy all the privileges of a police officer.

(2) In this section, “officer of a House of Parliament” means any officer acting within the precincts of Parliament under the orders of the Speaker.”

Hon. Temporary Deputy Chairman, just to give justification for Members to understand, this substitution is equivalent to what is currently in the National Assembly Powers and Privileges Act Cap. 6 Section 30. So, there is nothing new. We have just retained what we currently have in the law. The proposed amendment that I have brought in only seeks to empower the officers of the House to assist the Hon. Speaker or Chairpersons of committees or any other Member who is chairing a committee of the House in enforcing the rules of the House as per the Standing Orders.

These provisions mirror on what Section 30 of the current National Assembly Powers and Privileges Act Cap. 6 of the Laws of Kenya provides. These provisions enable the operation of the Office of the Serjeant-at-Arms within the Chamber of the House, the precincts of Parliament and Committees, when they are writing their reports in other parts of the country. So, last time we made a mistake. We substituted the functions of the Serjeant-at-Arms with those of the Clerk to the National Assembly and then removed it. Basically, we have retained what is currently in the National Assembly Powers and Privileges Act. It is a small matter.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Members, I am going to be giving only those Members who did not speak to the previous amendment. We will start with Hon. Wandayi. Will you want to speak to this one?

Hon. Wandayi: Hon. Temporary Deputy Chairman, I will endeavour to speak to this one even though my interest was on the other one. Having said that, I support the proposed amendment, in the sense that we need order in the House and in the precincts of the House and therefore conferring those powers to those officers takes us to that direction.

The Temporary Deputy Chairman (Hon. Cheboi): Okay. Hon. Rop, Member for Kipkelion West.

Hon. Rop: Thank you, Hon. Temporary Deputy Chairman. I also want to join my colleagues in supporting the Hon. Leader of the Majority Party on the deletion of Clause 37 and the subsequent insertion of this. Surely, we need officers who have no disparities in terms of work. Let them enjoy the same privileges.

I support.

Hon. Wetangula: Hon. Temporary Deputy Chairman, I support the deletion but I would like---

The Temporary Deputy Chairman (Hon. Cheboi): This one is deletion of---

Hon. Wetangula: A deletion of Section 37 and substitution thereof of the proposed amendment. I would like to get more clarity on this from the Mover on what they intend to achieve by this because we are likely to create a monster here if we are not careful.

The Temporary Deputy Chairman (Hon. Cheboi): Okay. Let us have Hon. Dennitah Ghati. You removed your card and so let us have Hon. Dennis Waweru.

Hon. Waweru: Thank you, Hon. Temporary Deputy Chairman. I fully support the amendment. As you are aware, we have had incidences here in the past where even managing proceedings was an issue. For the sake of the sensitivity of some of the issues that we deliberate, sometimes we need to have this kind of system where we enforce the Standing Orders of the House for orderly debate and deliberations in the House and committees. So, I fully support.

Thank you.

The Temporary Deputy Chairman (Hon. Cheboi): Let us have Hon. Arati from this other side. Member for Dagoretti North.

Hon. Simba: Thank you, Hon. Temporary Chairman. I want to oppose the deletion of that clause because we are going to turn this House into a police station. They are supposed to be serving us with summonses. You know very well the Hon. Speaker will misuse that opportunity. You remember what happened here when we were debating the Security Laws, where some Sergeant-at-Arms were sitting up there and voted with us. Therefore ---.

The Temporary Deputy Chairman (Hon. Cheboi): I do not need any prompting on that that you are out of order. When you talk about anybody other than a Member voting with you that is not right. So, you will not proceed in that manner Hon Arati.

Hon. Simba: Hon. Temporary Deputy Chairman, I do not know what you are talking about that I am out of order.

The Temporary Deputy Chairman (Hon. Cheboi): Well you are out of order and therefore I am going to give---

Hon. Simba: Out of order of what?

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Arati, you cannot go that direction. What is your point of order, Hon. Metito?

Hon. Katoo: Hon. Temporary Deputy Chairman, I wanted to bring to your attention that we are discussing something to do with order in the House. I wanted to ask you whether the Member for Dagoretti North is in order to say that the Speaker will misuse his powers. The Speaker is the head of this House and he is the one who brings order to this House. I believe that, that is what you had in mind by telling him that he should not proceed in that direction.

The Temporary Deputy Chairman (Hon. Cheboi): That was a different point but even yours is equally valid. However, since I have ruled him out of order, we will simply proceed. I will give a chance to two more Members. Let me give a chance to Hon. Nyamai.

Hon. (Ms.) R.K. Nyamai: Thank you, Hon. Temporary Deputy Chairman. I rise to support the amendment that has been suggested by the Leader of the Majority Party.

It is true that our Serjeant-at-Arm's Office needs to be given power so that at times, when the House becomes uncontrollable, we can have an opportunity to self-regulate. I support this amendment because these are the officers that we have with us every day. They are the officers

who fully understand the procedures of the House and are best suited to be given more powers to support the House.

My second point, Hon. Temporary Deputy Speaker---

The Temporary Deputy Chairman (Hon. Cheboi): Why do we not do with just the one point that you have given and save up time for the rest of the Members? Let us have the Member for Rabai. Hon. Barua, your card was mistakenly clicked here so I will give you an opportunity.

Hon. Mwamkale: Thank you, Hon. Temporary Deputy Chairman. I think that this substitution is very clear. These powers are only going to ensure that criminal activities within Parliament are controlled. Considering that Clause 37 (2) talks of the “precincts of Parliament”, we have visitors who come to our precincts and you never know what some of these visitors can do. If the officers have the powers of a police officer they will be effective in maintaining order.

The Temporary Deputy Chairman (Hon. Cheboi): Lastly, Hon. Barua.

Hon. Barua: Thank you, Hon. Temporary Deputy Chairman. I would like to support the Leader of the Majority Party in connection with the deletion of Clause 37.

The most significant change there was the confusion between the role of the Serjeant-at-Arms and the Clerk of the National Assembly. It is obvious that the work of those two offices is different. I remember one time in this House we had some trespassers in the Speaker’s Gallery. That strictly was supposed to be the work of the Serjeant-at-Arms. That office must be streamlined and strengthened.

Hon. Temporary Deputy Chairman, if you give me one more second I would like to say that in relation to the previous clause---

The Temporary Deputy Chairman (Hon. Cheboi): No. You will not speak to the other clause. It has been canvassed successfully. We will proceed.

*(Question, that the words 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 37 as amended agreed to)

Hon. Members we will dispense with this first before we proceed to the next Order. I ask the Mover to report to the House.

Hon. A.B. Duale: Hon. Temporary Deputy Chairman, I am standing in for the Mover. I am helping him. Hon. Keynan is out of the country on parliamentary business. However, I am standing in for him.

Hon. Temporary Deputy Chairman, I beg to move that the Committee doth report to the House its reconsideration of Clauses 34 and 37 of the Parliamentary Powers and Privileges Bill 2014 (National Assembly Bill No.35 of 2014) and its approval thereof with amendments.

(Question proposed)

(Question put and agreed to)

(The House resumed)

*[The Temporary Deputy Speaker
(Hon. Kajwang') in the Chair]*

REPORT AND THIRD READING

THE PARLIAMENTARY POWERS AND PRIVILEGES BILL

The Temporary Deputy Chairman (Hon. Kajwang'): Order, Member for Dagoretti! I am informed by the Leader of the Majority Party that you are a very friendly person to sit next to.

Hon. Cheboi: Hon. Temporary Deputy Speaker, I beg to report that a Committee of the whole House has reconsidered Clauses 34 and 37 of the Parliamentary Powers and Privileges Bill 2014 (National Assembly Bill No.35 of 2014) and approved the same with amendments.

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 also ask Hon. Ng'eno to second the Motion for agreement with the Report of the Committee of the whole House.

Hon. Kipyegon: Hon. Temporary Deputy Speaker, I second this Report. The amendments are very good for this House and the country.

(Question proposed)

(Question put and agreed to)

Hon. A.B. Duale: Hon. Temporary Deputy Speaker, I beg to move that the Parliamentary Powers and Privileges Bill 2014 (National Assembly No.35 of 2014) be now read the Third Time. I also request Hon. Ng'eno to second.

Hon. Kipyegon: I second.

(Question proposed)

The Temporary Deputy Speaker (Hon. Kajwang'): Member for Garissa Township, do you want to make a comment?

Hon. A.B. Duale: Thank you, Hon. Temporary Deputy Speaker. I just want one minute to go on record for the future generations so that when they come to this House they can read my statement in the HANSARD. Many years from now, maybe my son will come to Parliament, even though I do not encourage him to join politics.

The essence of what we are doing this afternoon is so fundamental to the progressive nature of the new Constitution. A time will come when the leadership of this House, the 349 Members of the National Assembly, its Committees, the Chamber, both within the precincts of Parliament and outside, must be ready for public scrutiny as individuals and as functionaries of Parliament.

You cannot have the cake and eat it. On Wednesday, that morning on 14th October 2015, I said that if you are not ready for public scrutiny, then your place is only one, to stay with your

family; your wife and your children. But the moment you step out of your house in the morning, and you are holding a public or an elective office, the choice is only one; that you must be ready at all times for public critique and scrutiny. The media is one of the biggest watchdogs that help the citizens of our country. It is not only in Kenya, but everywhere in the world. For my colleagues who raised the issue of false statements, we ask the media to report with a sense of responsibility. If that does not happen, then we have our robust reformed Judiciary, where as provided for in the Constitution, you can get redress.

I want to implore the Senate not to return Articles 27 and 34 of the Bill. My biggest worry is that, today the National Assembly has risen to the occasion. We have defended and guaranteed freedom of expression and freedom of thought. But I am sure this Bill is headed to the Senate. It is the Senate where you have the old mindset. It is where you have the elderly. I would like to urge the Senate, including the Leader of the Minority Party, Hon. Moses Wetangula, the Speaker of the Senate, my colleague the Leader of the Majority Party, and all the 67 senators not to return Clauses 27 and 34 of this Bill. I am sending them a warning. If they return---

You heard the voice of the His Excellency President yesterday. He was very categorical. The Senate is capable of sneaking in Clauses 27 and 34. I have the Mining Bill which they managed to sneak some other issues. If they return those clauses, then they must be ready as the President will apply the provision of Article 115 of the Constitution, and he will return it with a memorandum.

I would like to thank my colleagues of the National Assembly. I say thank you because we have rose to the occasion. I will talk to my colleagues from the Senate that they must follow suit. They should follow the good example set by the National Assembly.

Thank you.

The Temporary Deputy Speaker (Hon. Kajwang'): We should just give short comments.

Hon. Member for Kibwezi East.

Hon. (Ms.) Mbalu: Thank you, Hon. Temporary Deputy Speaker. I must remind hon. Makali just to know what leadership is.

I would like to commend the Leader of the Majority Party, who is in leadership for the good work he has done. I would also like to take this opportunity to say that the media should have freedom. The public should not be lured to the imagination that the President makes laws or he controls this Parliament. We are not doing this because of his statements. The House was ready to do what it has done.

The Temporary Deputy Speaker (Hon. Kajwang'): Let me give this opportunity to the Member for Seme, who believes he is entitled to make the statement because he is the voice of the minority which must have a say.

Hon. (Prof.) Nyikal: Thank you, Hon. Temporary Deputy Speaker. The majority has had its way; the minority has had their say. It is important and in a democracy, we all go with what the majority say. I still believe that in the Constitution that we have, there is a lot of caution as to when your freedom is being enjoyed, you do not infringe into the freedom of others.

I respect the Press a lot and I know they are very important. But public scrutiny does not really mean that you make false statements about people. In politics which we are all in, perception is a lot more important. Once a perception has been created, it becomes very difficult to come out and utilise the truth. We have complained in this House that there are some Cabinet

Secretaries (CSs), who were mentioned in corruption and have been cleared. We have been saying that they should go back to their offices. It has not happened because the perception that has been created is that they were false.

I would like to appeal that with the freedom, there is need for the Press to do as much investigative journalism as they do so that by the time they print it, it is true. I do not mind anything said about me because doing it is worse than not being said. If I did not do it and it is said, I think that infringes the Constitution.

The Temporary Deputy Speaker (Hon. Kajwang'): Member for Emurua Dikirr.

Hon. Kipyegon: Thank you, Hon. Temporary Deputy Speaker. I would like to comment briefly on this particular issue. It is very important that we recognise the fact that there is freedom of speech---

The Temporary Deputy Speaker (Hon. Kajwang'): Member for Emurua Dikirr, did you second this Bill in the Third Reading?

Hon. Kipyegon: Yes, Hon. Temporary Deputy Speaker. I would just like to make a comment.

The Temporary Deputy Speaker (Hon. Kajwang'): Go back to your Standing Orders. Once you have seconded it in the Third Reading---

Hon. Kipyegon: But the Leader of the Majority Party who was the Mover also spoke.

The Temporary Deputy Speaker (Hon. Kajwang'): Hon. Johana, what is the point of difference?

Hon. Kipyegon: I stand guided, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Kajwang'): Member for Kikuyu, I am not giving you the opportunity because you have spoken loud, but because the Leader of the Majority Party mentioned something about His Excellency the President, and I am sure you are excited to follow suit.

Hon. Ichung'wah: Thank you, Hon. Temporary Deputy Speaker. With all due respect, of course, when the Leader of the Majority Party mentions something to do with His Excellency the President, he does so in good light. This is because we believe in a President who means good for this country.

I stand to support the Motion that we re-commit these clauses. I also stand as a Member of the Powers and Privileges Committee---

The Temporary Deputy Speaker (Hon. Kajwang'): Hon. Ichung'wah that is where you go wrong. We have passed all that under the water. It is not about supporting or not supporting.

Hon. Ichung'wah: Hon. Temporary Deputy Speaker, I was in support only that I was held up somewhere. A lot has been said and you have heard what the Leader of the Majority Party has said of the Members in the other House. They have sought cheap publicity in trying to portray this House in bad light. I agree the House may have erred at some point during the Third Reading of this Bill. But if people go back to the records, it stands that the Committee of Powers and Privileges in our retreat in Mombasa chaired by none other than the Speaker of the National Assembly, had recommended that some of these clauses be deleted. The report is there for posterity. Our elder brothers in the other House of the elderly have not taken time to look at all the details that are in this Bill.

The Temporary Deputy Speaker (Hon. Kajwang'): Some of them are elder brothers but some of them could be junior brothers.

Hon. Ichung'wah: Hon. Temporary Deputy Speaker, of course, there are those who are our junior brothers but they are in the House of the elderly. Probably, birds that flock together tend to behave the same way. So even those who are younger in age might be behaving like those who are elderly in terms of age.

Hon. Temporary Deputy Speaker, age should come with wisdom and wise people should know before passing judgments on others, especially those who think we are their younger brothers. We agree many are elders, they are much elderly and some are old enough to be our grandfathers. They should know that a majority of Members in this House believe in the freedom of the media. The Jubilee Administration also believes in the freedom of the media. Besides that, there are very many other recommendations contained in the Report that was tabled before this House by the Member for Turkana County, Hon. Joyce Emanikor, like on the proposal to establish the office of an administrator of ethics and standards. Even the Mover of this Bill, Hon. Keynan, who is my Chair in the Public Investments Committee (PIC), objected to the establishment of this office. I want to tell Members of this House and Members of the other House that if indeed they want to stand with the people of this great country, I encourage them to read the Report of the Powers and Privileges Committee. This Bill will also affect Members in the Senate. They should read the Report and see if they can incorporate some of the other proposals like the establishment of an office of an administrator of ethics and standards, both for the National Assembly and the Senate. They will help this House since we have not recommitted that clause.

Hon. Temporary Deputy Chairman, I thank Members for their support to this Bill.

Thank you.

The Temporary Deputy Speaker (Hon. Kajwang'): Order, Members! I direct that this matter be placed in the Order Paper at the next suitable time for purposes of taking a vote.

Next Order.

COMMITTEE OF THE WHOLE HOUSE

(Order for Committee read)

*[The Temporary Deputy Speaker
(Hon. Kajwang') left the Chair]*

IN THE COMMITTEE

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

THE NATIONAL DROUGHT MANAGEMENT AUTHORITY BILL

(Consideration of Senate Amendments)

The Temporary Deputy Chairman (Hon. Kajwang'): Order, Members! This is a Committee of the whole House convened to consider Senate Amendments to the National

Drought Management Authority Bill (National Assembly Bill No. 42 of 2013) as passed by the Senate on Wednesday, 8th July 2015.

Clause 4

Senate Amendment

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

(2) The Authority shall establish offices in each county.

Members, I see requests on my console. I assume that you are in queue to speak to this amendment.

(Question of amendment proposed)

Hon. Ganya: Hon. Temporary Deputy Chairman, for guidance purposes, should I read the whole clause or just go the justification for the amendment?

The Temporary Deputy Chairman (Hon. Kajwang'): The Question proposed is to be approved. So, we proceed on the positive side of it. You do not have to go into details unless you are considering making submissions on the negative.

Hon. Ganya: Hon. Temporary Deputy Chairman, as a Committee we are not in agreement with the Senate and I want to give the reason. The National Drought Management Authority (NDMA) is to establish offices where appropriate according to us, but the Senate feels that these offices need to be established in each county. We reject this amendment because we feel there is no need to establish offices in non-drought-prone areas. The offices should be established where necessary, where we think drought is a problem. So, we reject this Senate Amendment.

The Temporary Deputy Chairman (Hon. Kajwang'): Members, you have heard the Mover of the Bill.

Member for Kitui Central!

Hon. Mulu: Thank you, Hon. Temporary Deputy Chairman. I also join the Mover of the Bill in saying no to this amendment. This is a national authority and it is going to be carrying out national duties. Its functions are national Government functions although they could be carried out at the county level. I do not see why the Authority should have an office in each of the 47 counties. So, it is important that we say no to this amendment.

Hon. Kipyegon: Hon. Temporary Deputy Chairman, I would also like to support my colleagues. This is an authority dealing with particular areas in the country. Establishing offices of the Authority in every county will be a waste of taxpayers' money. We will be running these offices in areas which are not going to be affected by drought. So, I support the Mover and oppose the Senate Amendment.

Thank you.

The Temporary Deputy Chairman (Hon. Kajwang'): Let us put it to vote. This Bill came from us and we had the opportunity to debate it. We have extensively debated it. We are just considering the Senate Amendments. I see Members requesting to speak. I do not know what is very pressing. I want to put it to Question and we live with our decision.

Member for Shinyalu, why are you edgy on your seat? Is there a pin on your seat?

Hon. Anami: No, Hon. Temporary Deputy Chairman. The spirit of this amendment is taking services closer to the people. I would like to support the Senate Amendment on the understanding that these offices are established progressively. When we talk of managing drought, we need to manage drought even where there is no drought. It does not mean semi-arid areas are the only ones which experience drought. So, I support the Senate Amendment on that understanding. Let us give opportunity to all counties to have initiatives and interventions that would prevent drought even where we do not have experiences of drought at the moment.

The Temporary Deputy Chairman (Hon. Kajwang'): We have heard voices from both the opposing and concurring sides. Member for Gichugu, are you in concurrence?

Hon. Barua: Thank you, Hon. Temporary Deputy Chairman. I would like to concur with the proposal of this House.

The Temporary Deputy Chairman (Hon. Kajwang'): Do you concur with the proposer?

Hon. Barua: I am a Member of that Committee and I agree with the views of the Committee that we reject the Senate Amendment to Clause 4, as the Mover has said.

I would like to comment on the issue of devolution, a progressive aspect that we all like, but let us not try to devolve everything. Drought is an environmental disaster. In counties, we have offices of the National Environment Management Authority (NEMA). The work of the National Drought Management Authority will be to raise the red flag in the case of disaster. When they raise the red flag, it is the responsibility of other institutions like the NEMA to go in and arrest whatever is happening. The notion that we have to devolve everything is wrong and I oppose the views of Hon. Anami. If we flow that trend, we might devolve everything, including crime.

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

(Clause 4 of Senate Amendments negatived)

The Temporary Deputy Chairman (Hon. Kajwang'): Hon. Members, you, therefore, realise that your decision takes you to Article 112(2)(b) of the Constitution which says:-

“If, after the originating House has reconsidered a Bill referred back to it under clause (1)(b), that House rejects the Bill as amended, the Bill shall be referred to a mediation committee under Article 113.”

Therefore, in keeping with the Standing Orders, even before we proceed, I urge the leadership of both Houses, in consultation with the sponsor of the Bill, to immediately pick a mediation team from the National Assembly. The others from the Senate will be advised through the Speaker's Office.

*Clause 8
Senate Amendment*

THAT, Clause 8 of the Bill be amended-
(a) in sub-clause (1) by inserting the following new paragraph immediately after paragraph (d)-

(da) one person who shall be nominated by the Council of County Governors.

(b) in sub-clause (5) by inserting the words “and (1)(da)” immediately after the words subsection (1)(d).

Hon. Ganya: Hon. Temporary Deputy Chairman, we concur with the Senate on this amendment. Basically, this is about the composition of the directors of the National Drought Management Authority. The feeling of the Senate is that we should have an additional member who will represent the Council of Governors on that board. This is a very good position of the Senate, because under our Constitution, disaster management is a shared function between the two levels of government, the national Government and the county governments. For that reason, we agree with the Senate.

The Temporary Deputy Chairman (Hon. Kajwang'): Let us have the Member for Seme.

Hon. (Prof.) Nyikal: Hon. Temporary Deputy Chairman, I rise to concur with the Mover that the amendment from the Senate to Clause 8 is really appropriate. Whereas I know that Schedule IV of our Constitution has stated the roles of the national Government and county governments, in reality, whatever is undertaken at any community level will, one way or another, affect the functions of county governments. In this particular case, this function is actually shared. It is important that there be a way of co-ordinating with county governments even if it is a function of the national Government.

I concur with the Senate.

The Temporary Deputy Chairman (Hon. Kajwang'): Member for Emuhaya.

Hon. (Dr.) Ottichilo: Thank you, Hon. Temporary Deputy Chairman. I also wish to support the amendment by the Senate and the concurrence by the Departmental Committee on Environment and Natural Resources.

Hon. Kipyegon: Hon. Temporary Deputy Chairman, I wish to oppose. Just as I said in plenary, I tend to think that the National Drought Management Authority is a function of the national Government, although we know that disasters normally affect both governments. We also agree that these are matters which happen in counties. We also have issues to do with security and we have never amalgamated the security of counties with that of the national Government. In a situation where there is a security matter, we sit together and discuss how to curb it, but the question of management of security lies with the national Government as provided for by the Constitution.

Instead of including members of county governments, it should be the obligation of the Senate to create an authority at the county governments level, which will look at matters of disasters. When there is a disaster to be managed, that is when the national authority and the county authority can have one meeting and pool their resources together to deal with the matter. On this one, we are mixing issues which, maybe, the Constitution does not provide for.

I oppose.

The Temporary Deputy Chairman (Hon. Kajwang'): I will put the Question. We have heard those who are concurring and also those who are opposing. Let us put it to the vote.

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

(Clause 8 of Senate Amendments agreed to)

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

The Temporary Deputy Chairman (Hon. Kajwang'): Member for North Horr, I can see you are on intervention. Do you want to move for reporting?

Hon. Ganya: Hon. Temporary Deputy Chairman, I beg to move that the Committee doth report to the House its consideration of the Senate Amendments to the National Drought Management Authority Bill (National Assembly Bill No.42 of 2013) and its approval thereof with amendments.

(Question proposed)

(Question put and agreed to)

(The House resumed)

*[The Temporary Deputy Speaker
(Hon. Kajwang') in the Chair]*

CONSIDERATION OF REPORT

The Temporary Deputy Speaker (Hon. Kajwang'): Member for Emuhaya, I understand that you are the Chair of this Committee. Shall I hear you?

Hon. (Dr.) Ottichilo: Thank you, Hon. Temporary Deputy Speaker. I beg to report that the Committee of the whole House has considered the Senate Amendments to the National Drought Management Authority Bill (National Assembly Bill No.42 of 2013) and approved the same with amendments.

Hon. Ganya: I beg to move that the House doth agree with the Committee in the said Report. I also request Hon. Barua to second the Motion for agreement with the Report of the Committee of the whole House.

Hon. Barua seconded.

(Question proposed)

The Temporary Deputy Speaker (Hon. Kajwang'): All right. Hon. Members of Parliament, I will order that this business appears at the most appropriate time that the Clerk will find, so that we can take a vote on the adoption of the Report. Thank you very much.

(Putting of the Question deferred)

Next Order.

BILL

Second Reading

THE COURT OF APPEAL
(ORGANIZATION AND ADMINISTRATION) BILL

(Hon. A.B. Duale on 15.10.2014)

(Resumption of Debate interrupted on 15.10.2015)

The Temporary Deputy Speaker (Hon. Kajwang'): Yes. This is a resumption of a debate which has been going on. My record shows that Hon. Nelson Gaichuhie, this is the Hon. Member for Subukia, had a balance of nine minutes. Are you in the Chamber, Hon. Member for Subukia? If he is not in the Chamber, we will go to the next speaker.

The Hon. Member for Emurua Dikirr.

Hon. Kipyegon: Thank you, Hon. Temporary Deputy Speaker. I have a feeling that I spoke to this Motion.

The Temporary Deputy Speaker (Hon. Kajwang'): Did you speak to it?

Hon. Kipyegon: I think so.

The Temporary Deputy Speaker (Hon. Kajwang'): Okay. That is very honest of you. You know it, I would have come to you.

There being no Hon. Member wishing to speak, I order that the Mover be called upon to reply. Hon. Mover!

(The Leader of the Majority Party was not in the House)

This is how you ruin good business when you are not in the House to do it. Where is the Mover of the Bill, the Leader of the Majority Party?

The Standing Orders provide that where the Mover does not avail himself or herself of the opportunity to reply, we deem that that reply was not necessary. Therefore, we will move to the Committee Stage of this Bill.

Next Order.

MOTION

THE MINING BILL

The Temporary Deputy Speaker (Hon. Kajwang'): Who is the Mover for this other one? Member for North Horr, are you there? Please, proceed.

Hon. Ganya: Hon. Temporary Deputy Speaker, as a Committee we are considering a Motion looking at the amendments by the Senate, as brought back to the National Assembly, on the Mining Bill.

There are a number of amendments proposed by the Senate. We concur with quite a number, but at the same time reject quite a number. I will briefly go clause by clause to state our position.

The first amendment is to Clause 4 which is basically on definitions. Here, the Senate was trying to bring a new definition for “community,” but we felt that definition is not holistic because it excludes people who are displaced. On that ground, we rejected that amendment.

Similarly under definitions, which are in Clause 4, the Senate brought a new definition for the Council of Governors (CoG).

The Temporary Deputy Speaker (Hon. Kajwang'): Hon. Member for North Horr, you are on the right track, but I have not heard you moving the Motion on HANSARD. Can you, first of all, look at Order 13 on the Order Paper and move it in the conventional manner?

Hon. Ganya: Thank you, Hon. Temporary Deputy Speaker. I stand guided.

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

THAT, the Senate Amendments to the Mining Bill (National Assembly Bill No. 9 of 2014) be now considered.

The Temporary Deputy Speaker (Hon. Kajwang'): All right, proceed.

Hon. Ganya: Hon. Temporary Deputy Speaker, as I mentioned earlier, we received quite a number of amendments from the Senate. We did not concur with quite a number of them; there are a few which we felt we should reject.

I will briefly go clause by clause stating our position.

The first clause that the Senate amended is Clause 4. This is largely on definitions. The first definition is the one on “community.” We felt that the new definition that the Senate provided is not holistic enough. This is because while it captures so many aspects of community, it excludes people who are displaced, and this is very important in the mining sector. On this ground, we rejected it.

Under the same Clause 4, the Senate did an amendment and brought in a new definition of the CoG. On this one, we felt their amendment was very good and it strengthened the amendments that were already on the Bill. We, therefore, agreed on this one.

Again, under Clause 4, the Senate had a new definition for “strategic minerals.” While the definition they provided was good enough, we felt that this was repetitive because the same definition was provided for under Clause 16 of the Bill. We did not see any reason for repetition. We rejected that amendment on that ground.

Under Clause 5, there was a new definition they provided for “guiding principles.” While the Bill captured “guiding principles” as provided for in the Constitution, the Senate came up with a good amendment and strengthened what was already there by ensuring principles under Chapter 6 of the Constitution are also tied to what was there before. We felt they added value and we agreed with the Senate amendment.

Clause 7 is on negotiations. Basically, there are two entities here: the Cabinet Secretary (CS) and the Mineral Rights Board (MRB). The Senate felt strongly that there should be firm negotiation between the CS and the MRB. We felt that the decision making, which they proposed, was not placed on any of the authorities. Therefore, there was no ultimate conclusive authority to make that decision. Moreover, we felt that MRB is an advisory body to the CS. In that matter, the executive authority of the Ministry lies with the Cabinet Secretary (CS). On that basis we rejected that amendment. Clause 9 is about the discovery of the minerals. We agreed with the Senate on this amendment, because all that the Senate wanted was that once an investor discovers a mineral and reports to the Ministry of Mining, the Ministry should give an acknowledgement in writing to ensure that the person who has discovered the mineral has the first right to mine that mineral at the appropriate time.

We felt that this was a good amendment which enables investors to have more say and confidence in the industry. Under Clause 16, the strategic mineral issue was revisited. We felt that this issue was already well canvassed under Clause 7, and on that ground we rejected it just to ensure there is no repetition.

Clause 20(4) is on fair compensation. It was basically about the issue of exercise of power by the Director of Mines. The issue was when to use these powers in terms of when they are doing reconnaissance or when they are trying to prospect for minerals, property or when land belonging to Kenyans is destroyed. We felt that it was appropriate for these people to have fair, prompt and full compensation. This is what was proposed by the Senate and we agreed with it as we felt it added value to what was there before in the Bill.

Clause 21 is still on fair compensation but this one is in reference to the Director of Geological Survey. It is to ensure that in exercise of their work or powers there is minimal damage done to land and property. When damage is done to land or property of Kenyans, it will ensure that there is prompt and full compensation to them. We felt that this amendment from the Senate was good and we agreed with it.

Clause 30 is about the composition of Mineral Rights Board. The Senate proposes that we should have a representative from the Council of Governors (CoG) on this Board. We strongly felt that even though minerals are largely a function of the national Government, it is critical to ensure that county governments are fully brought on board. This is because mining is not done in space. It is done on county land, which is largely community or public land. We felt having a representative from the CoG on this Board will ensure the interests of the counties are well safeguarded. Because of this we agreed with the Senate to have a representative from the CoG on this Board.

Clause 33(7) and (8) are about feedback on status of applications for large scale mining. The amendment by the Senate deletes the provision for review of the application rejected by the CS. It states that once the CS rejects an application, somebody has to go to the High Court. We felt that it is not necessary. There is need for an internal mechanism to review that decision made by the CS instead of rushing to the High Court. We feel that before one goes to court, which can be time consuming and expensive, we need to have an internal mechanism to review a decision that is made by the CS, and that is not desirable. On that ground we rejected this amendment by the Senate.

Clause 34 that was amended by the Senate is on mineral rights application. The Senate is very silent on the provisions regarding objections to applications for licences for reconnaissance and prospecting as well. We also felt that there was need for us to ensure protection of community rights. While they wanted to do away with the provision in particular for prospecting, they did not say what is going to happen in case of damage, or any problem that would result from that particular activity. We felt that it was essential for us to protect community land; on this ground we rejected that amendment from the Senate.

Clause 37 is on mineral rights on private land. The amendment from the Senate is specifically on issues of prospecting licences. It argues that they must be obtained without the consent of the owners, or the private land owners. The Constitution provides for this, and we felt that it is important that the consent of private owners is critical before the Government offers prospecting licences. On this ground we rejected it and we argued that if the State wants to have that piece of land, there are other mechanisms that the Government can use, including

compulsory acquisition of land in public interest. So, on that ground we rejected that amendment from the Senate.

Clause 38 which was amended by the Senate is on mineral rights in community land. The amendment prefers to use the word “unregistered” in reference to community land rather than the word “alienated”. We liked this amendment because it provides more clarity on the consent to be given by the National Land Commission (NLC) on issues of community land, in which they also have some role constitutionally. On this basis we felt that the word they used, “unregistered,” is what is in the Constitution and on that basis we agreed with the Senate.

Clause 40 was also amended by the Senate. It refers to conditions attaching to mineral rights. The amendments refer to specific sections of a particular law which is basically the Land Act and is in reference to compulsory acquisition of land. Section 40(c) argues that this law should address the issue regarding compulsory acquisition of land, which is in our Constitution. In fact, we need to have a universal law covering all aspects of compulsory acquisition of land by the State instead of having a section of one law pertaining to this. On this ground we rejected it.

While we felt it was good, we should not have a section of every law addressing the issue of compensation of land. We felt we need to have one law under which every issue to do with compulsory acquisition of land is addressed. On that ground we rejected Senate’s amendment to Clause 40 of the Mining Bill.

Clause 41 is another amendment that we considered, and which the Senate amended regarding tendering for mineral rights. On this amendment, the Senate argues that it is very important for the CS in making regulations to appreciate the uniqueness of procurement and tendering process for minerals. They felt that there are unique challenges that have to do with the mining sector and, therefore, the CS in making regulations needs to address the uniqueness of the procurement and tendering in relation to minerals. We felt this was not necessary as there are enough laws that can cater for this and the Senate’s intention was not clear on this particular amendment. On that basis, we felt that deleting of this aspect by the Senate was important for this Bill and we agreed with them.

This brings me to Clause 46, which is on employment and training of Kenyans. The Senate came up with a very good amendment, which we concurred with. The argument of the Senate was that investors should ensure that more and more Kenyans are hired and trained. Their argument was that investors should be enabled to bring into the country a good number of expatriates in proportion to their capital investment. We felt that the Cabinet Secretary, in making regulations, should not be bound by this provision. As a result, we agree with the Senate because it is a very good proposal to ensure that more Kenyans are trained, so that they can be employed in the mining sector.

Similarly, Clause 47 improves employment for Kenyans and locals. The amendment is to ensure that preference is given to locals as well as Kenyans in general before expatriates. We felt that, that amendment is good and we agreed with the Senate.

Clause 49 was also considered by the Senate. It is on local equity participation. In the amendment, the Senate tried to reduce the period within which holders of mining licences can operate; from four years to three years. We felt that reducing that period from four years to three years may not be very conducive, and is not investor-friendly. On that basis, we rejected the amendment because we need to attract more investors into this industry.

That brings me to Clause 50, which was also amended by the Senate. They wanted to insert the words “members of the community”. Their argument was that the amendment added

members of the community as additional preference by a holder of mineral rights in the conduct of prospective mining, processing, refining and treatment, operation, transport or any other dealing with mineral rights. On this amendment, the Committee agreed with the Senate, because we felt that giving more opportunities and more roles to the investors may encourage them to invest more in this sector.

Clause 51---

The Temporary Deputy Speaker (Hon. Kajwang'): Member for North Horr, do you require a glass of water?

Hon. Ganya: Yes I do, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Kajwang'): I order the orderlies to let you have some water.

Press the intervention button and proceed.

Hon. Ganya: Thank you, Hon. Temporary Deputy Speaker.

Clause 51 was also amended by the Senate. They wanted to have a new sub-clause (2), which reads:-

“The Cabinet Secretary shall not unreasonably withhold consent to assign, transfer, mortgage or trade a mineral right and shall inform an applicant of the decision within thirty days of receipt of an application to assign, transfer, mortgage or trade a mineral right.”

They further amended the same clause by inserting a new sub-section immediately after sub-section 8, which reads:-

“The Cabinet Secretary shall, in consultation with the Mineral Rights Board, prescribe criteria for the conditions required to be met by an applicant for an assignment, mortgage or trade in a mineral right.”

As a Committee, we rejected this amendment. This is informed by the fact that the timeframe given is too short for a regulator to carry out any meaningful due diligence on a prospective assignee, especially for large scale projects. Additionally, as a Committee, we considered that introduction of a new sub-clause to provide for such criteria of transferring mortgaging or assigning is already provided for in the Bill, and thus is not necessary.

The Senate also amended Clause 53, which we considered. It is about the role of the Kenya Revenue Authority and the work that the Cabinet Secretary (CS) has to do with them. The Senate wanted the CS to submit to the National Assembly and the Senate an analysis of the audited annual financial statements submitted under sub-clause (1). The Senate wanted audited financial statements to be submitted to both Houses of Parliament. The Committee agreed with the first amendment but we rejected the second one about audited accounts, because that is already the work of the Auditor-General and both Houses have a right to documents. We did not see any need for the CS to perform that role. It is already provided for in the Constitution for the Auditor-General to take care of.

That takes me to Clause 67, which was also amended by the Senate. This is to inform and consult on an ongoing basis with the national and county governments, authorities and communities about the reconnaissance operations that require physical entry into the land within their jurisdiction. We agree with this amendment from the Senate because it is really important for the two levels of government to consult and ensure that the mining, largely done by foreign investors, goes on smoothly. We felt that this will promote harmony and ensure smooth operations of the mining sector. We agreed with the Senate on that amendment.

The other amendment was to Clause 77. The amendment provides for the payment of the Ministry's expenditure specified in their programmes for prospecting operations, which is not expended during the term of prospecting licence in a manner that may be prescribed by regulations made under the Act and not by the Cabinet Secretary. We agree with this provisional amendment, because it just ensures clarity and smooth operations in terms of financial transactions.

The other amendment was to Clause 106. This was an amendment where the Senate added a new paragraph under paragraph (1) of Clause 106 sub-section (1) saying "such other information as the Cabinet Secretary may consider necessary". We agree with this amendment because it makes the provision for mining licences to contain any other information the Cabinet Secretary may require. It gives the CS the discretion to request other information. It was very evident from the work we were doing on the Bill that sometimes some very useful information is hidden from the Government by investors. We felt that the CS, as the executive in the Ministry, needs to have some power to get information when necessary.

Clause 117 was amended by the Senate.

The Senate wanted the word "Parliament" deleted. They wanted to ensure that both Houses of Parliament are consulted. Therefore, wherever the word "Parliament" was used, it was replaced it with "the National Assembly and the Senate". This was to ensure they are part of the decision making. They were ensuring that their part is well taken care of in the law. Since Parliament refers to both Houses, we agreed with them. We did not have much problem with that.

Hon. Temporary Deputy Speaker, Clause 120 was also amended by the Senate. We considered that clause as a Committee. The Senate wanted the word "Parliament" to be replaced with the words "National Assembly and the Senate". They wanted to ensure that when we refer to Parliament, we are not referring to the National Assembly, but referring to both Houses of Parliament, and we agreed with this.

Clause 149, which is the final clause is an amendment from the Senate, which requires that agreement related to large scale mining operations on terrestrial and marine areas shall be submitted for ratification by both the National Assembly and the Senate.

Hon. Temporary Deputy Speaker, I am sorry I have jumped some clauses.

Clause 120 is another amendment from the Senate which we considered. In this amendment, the Senate wanted to ensure that whenever the Bill refers to Parliament, it is very specific. Therefore, they replaced the word "Parliament" with "the National Assembly and the Senate".

In Clause 149, the Senate deleted sub-clause (3) and brought in the following new sub-clauses:-

(3) All immovable assets of the holder under the mining licence shall vest in the county government from the effective date of the surrender or termination of the licence upon payment of the book value of the assets by the county government.

(3A) Where the county government is unable to pay for the assets under subsection (3), the assets shall vest in the National Government from the effective date of the surrender or termination of the licence upon payment of the book value of the assets by the National Government.

Hon. Temporary Deputy Speaker, as a Committee we considered this amendment and rejected it. This proposal is unconstitutional. This is because Article 62(1)(f) and 62 (3) of our Constitution classify minerals as public land which vests on the national Government. The national Government decides to create a national mining corporation to participate in mining and mineral activities as it is in other nations such as Namibia, Democratic Republic of Congo and South Africa, among others.

It is important for the corporation to be equipped properly with assets to enable it carry out its functions. On this basis, we rejected that amendment.

In conclusion, we approved the Senate amendments to Clauses 4(b), 5, 9, 20, 21, 30, 38, 41, 46, 50, 51, 53(a), 67, 77, 106, 117, and 120.

We rejected quite a few which include Clauses 4(a), 4(c), 7, 16, 33, 34, 37, 40, 49, 51, 53(b), and 149.

I beg to move and would like to ask Hon. Barua, who is a member of the Committee, to second the Motion.

(Applause)

The Temporary Deputy Speaker (Hon. Kajwang'): Quite splendid work. A lot of work has gone into that. I would like to thank you so much, Hon. Member for North Horr. It is safe to trust difficult issues in the hands of seasoned legislators.

Hon. Member for Gichugu, I do not see you in my system. There you go.

Hon. Barua: Thank you, Hon. Temporary Deputy Speaker. I beg to second this report of the Committee as moved by Hon. Chachu. As a member of the Committee, I would like to say that a lot of work and consideration was put in as we analyzed the report from the Senate and arrived at these decisions. Some of the amendments rejected as presented by the Senate were based on some unrealistic targets. Sometimes the Senate gives quite tight timelines, which may not be practicable, and may in due course of time make it impossible for the various institutions to perform. The mining sector is growing in Kenya. Indeed, it is a new sector. It has a great promise for the economy of this nation.

As we considered the report from the Senate, we looked into several things. We considered fairness in doing business as far as mining and prospecting are concerned. We also considered the aspect of compensation. This is because communities, under whose land minerals lie deserve appropriate and commensurate compensation for the damage which results from mining activities.

As we considered this report, the benefits for communities were top on our agenda. It is important for us to ensure that communities benefit from the minerals accruing from their land.

In terms of organisation, one of the issues which came to light and led to some rejection of some articles was the mix-up between the roles of the Cabinet Secretary (CS), and the Mineral Rights Board. In some instances, the CS, as proposed by the Senate, was supposed to consult extensively on even some simple issues with the Mineral Rights Board. If that is allowed to stand, the responsibility as to who is in charge and who bears responsibility in terms of issues--- We were mainly concerned with the details. It is our opinion that the CS is in charge. Therefore, this consultation may end up diluting the responsibility of the CS. For this reason, we rejected some articles.

Hon. Temporary Deputy Speaker, some of the proposals made by the Senate were touching on definitions. I would like to tell the Senate that they should add value in their consideration of various Bills that go to them from this House, just as we do when we get Bills from the Senate.

The definition of “communities” in Clause 4 was found to be so narrow to the extent that it excluded some community members like my community who live in other areas. Clause 4(b), which was rejected defined “community” to mean people living in a ward or areas within which the minerals are situated, and who are affected by the exploration of the minerals or mining operations with respect to the minerals. If we, as a Committee, adopted that definition, the result would have been to exclude the people who may have been displaced. Therefore, we decided to reject the definition as passed by the Senate.

Clause 4(b) also refers to the Council of County Governors (CoG) as a new definition of the CoG. We accepted that definition. There is a trend from the Senate which must be countered before it goes far. In most Bills which have come from the Senate, the Senate tries to give itself some responsibilities like appointing responsibilities in various institutions so as to include their interests. As much as we agree as a Committee and a House that the CoG should be included in mining matters, the Senate should also desist from overloading national institutions with representatives of the CoG.

With those few remarks, I second the amendments as presented. Thank you, Hon. Temporary Deputy Speaker.

(Question proposed)

The Temporary Deputy Speaker (Hon. Kajwang'): Member for North Mugirango.

Hon. Geni: Thank you, Hon. Temporary Deputy Speaker, for giving me this opportunity to contribute to what my colleagues have moved on the Floor of the House. I rise to support the Senate amendments moved by Hon. Chachu and seconded by Hon. Barua Njogu. If you allow me, I can refer to two clauses which make me strongly support the amendments.

First, Clause 20 seeks to provide for compensation for damage as a result of the exercise of the powers of the Director of Mining. It is only fair that every Kenyan gets justice in terms of compensation. This clause is meant to promote that.

Second, Clause 21 seeks to provide for compensation for damage as a result of the exercise of powers of the Director of Geological Survey. If this is approved, the damage caused as a result of the exercise of the powers of the Director will be seriously minimised.

In a nutshell, if all these amendments are approved, the citizens of this country will always co-operate with the mining officials, and thus make it easy to run the sector.

I support the amendments. Thank you.

Hon. Moi: Thank you very much, Hon. Temporary Deputy Speaker, for the opportunity to contribute to this very important Motion. I agree with two of the amendments, but there is one which I oppose.

I wholeheartedly support the amendment to Clause 20, which advocates for fair, prompt and full compensation. It protects people whose land will be damaged. Clause 30 makes the governor a member of the Mineral Rights Board and excludes the Cabinet Secretary (CS) for Devolution and Planning. That is extremely wise because in many instances, especially in the history of this country, if all decisions are to be made in Nairobi, the people at the county level

will be excluded from any benefit that may arise from the extraction of minerals. It is better to have the governor on that Board because he is duly elected by the people of his county.

I do not agree with the Senate amendment to Clause 37. The clause provides that before we can prospect and mine we must seek the consent of the owner of that private land. However, the Senate amended that to say that we can only seek consent to mine and not to prospect. If we leave it that way, it means there will be so many intruders on private property, saying they have consent from the national Government to prospect without the consent of the private land owner. So, I oppose that amendment. The clause should stand as it was passed by the National Assembly. To prospect and mine, one must get consent from the private land owner. These Senate amendments are fair. The only clause I feel should not have been amended is Clause 37.

Thank you, Hon. Temporary Deputy Speaker, for giving me this opportunity.

Hon. A.O. Ahmed: Thank you, Hon. Temporary Deputy Speaker, for giving me this opportunity. This Bill is coming at the right time, a time when mining and prospects of minerals and mineral products are tremendously increasing in Kenya. It is important for us to have some laws to govern what the prospectors are doing, the compensation of communities, and make sure that roles of various institutions are very clear.

What we have been seeing in most instances is that companies come to prospect, and after some months, or a year, they just leave the communities in a lot of environmental degradation and the communities are not able to follow up, because they do not know where to go. In some cases, there are reports that since such prospecting started, there have been increase in diseases, both of human beings and animals in the affected areas.

I completely support the Senate amendments to this Bill, especially on matters of compensation to communities and making roles of various institutions very clear. This is something that should take a multi-sectoral approach. Governors need to have a role at the county level. The CS, the Director for Geology and the community should also have their roles. So, I support the amendments to the Bill.

I would urge the concerned State department to come up with regulations that will involve communities in mining operations. The regulations should make sure that the communities also participate. In most places where mining is going on, land is owned by the community. In such cases, it is important that the communities are prepared in advance.

Thank you for giving me this opportunity.

The Temporary Deputy Speaker (Hon. Kajwang'): Nominated Member, Hon. Abdinoor Ali.

Hon. Abdinoor: Thank you, Hon. Temporary Deputy Speaker, for giving me this chance. I rise to support the Senate amendments, specifically to three clauses.

In Clause 7, the Senate has removed powers from the CS and shared them between the Mineral Rights Board and the CS. The deletion of that amendment will ensure that the CS consults the Mineral Rights Board (MRB). In those consultations, the authority to decide should be given to either the MRB or the CS. The Senate has not given either of the authorities the power to decide. So, I concur with Hon. Chachu on that clause.

The second one is Clause 9 which talks about acknowledgement or a receipt or production of a report in the daily newspapers. As soon as the Cabinet Secretary receives information that somebody found a mineral or small mines in a place, he has to publish it in the papers and in the *Kenya Gazette*. That is a very important amendment.

The third one is Clause 33. They have removed the review in the process. We put this clause in the Mining Bill to avoid people running to court immediately after the decisions of the CS have been made. So, you make this provision so that, at least, there is a review. He writes to the CS to reconsider the rejection of a mining licence. The review also helps in cost cutting. It acts like arbitration. We have removed the mining tribunals that were in the old Act. That one is really helpful.

The other thing is compensation. We have fought and locked horns on this with the Senate. This compensation is very important for people who live in the mining areas. They need to be compensated when damage occurs in the mining zones.

The other one is the representation of the Council of Governors. All the mining in this country is taking place in specific counties like is Kwale and Kilifi. We need to have a representative from the CoG sitting in the right spot, so that once a decision is passed, they are well informed.

The other one which was very important for us as a community in the mining areas is the New Article 34 on the right of rejection by the communities. Communities can reject reconnaissance and prospecting licences for those who are doing reconnaissance and prospecting; communities have right to reject what they are doing on the ground.

The other one was Article 40; I totally agree with the amendments that were moved by Hon. Chachu.

With those few remarks, I support.

The Temporary Deputy Speaker (Hon. Kajwang'): There being no Member wishing to contribute to this matter, I order that the Mover be called upon to reply.

Hon. Ganya: Thank you, Hon. Temporary Deputy Speaker for this opportunity to respond to the debate on Mining Bill Motion. I appreciate my colleagues who have ably contributed to this Bill - Hon. Barua who seconded it, Hon. Moi, Hon. Geni, Hon. Abdinoor and Hon. Abdikadir Ore. I want to assure them that their input will be well taken care of as we consider our amendments in the Committee of the whole House in the near future. At this stage we cannot do much because these are amendments from the Senate. We can either agree or disagree. If we disagree we will go to mediation, but by and large, we have managed to ensure most of the concerns have been addressed somehow. If not, like any other Bill, if it goes through, we still have an opportunity after six months to amend what needs to be amended.

The mining sector is critical for the economy of this country to take off. It is a sector that is totally underexploited and underutilized. We know we have mineral reserves in many parts of this country like Kwale, Kitui and many other minerals that are available in this country. Due to lack of a very good enabling environment and good laws we have not been able to take advantage of this unique and growing sector.

It is for a reason that the Jubilee Government managed to merge so many Ministries together and came out with a brand new Ministry of Mining. I am sure they had a reason for it; I am sure that the information that is there shows that this country is well endowed with reserves but we need an enabling environment. A good policy and legislation is what will take this country forward in terms of attracting investors to invest in this country. If exploited, it should enable us to realize Vision 2030, and be able to develop the kind of infrastructure that we want to have in this country.

When you look at the kind of budget that is given to the Ministry of Mining, it is very minimal. It is like a department in the Ministry of Devolution and Planning, or a department in

the Office of the President, yet it is a fully-fledged Ministry; it is only that it does not have an enabling law or policy to enable it to realize its full potential.

Hon. Temporary Deputy Speaker, this is a very good law and as a Committee, when we were working on this Bill, we made extensive trips to many parts of the country and the world to benchmark and learn how the mining sector thrives. We had a team that went to Australia and another went to Tanzania. We also had consultants who were well versed with the mining industry, and were able to give us examples and good practices from many parts of the world, which we ensured were factored in and were well built into this Bill.

We appreciate the amendments of the Senate. In many instances, they added value. For instance, when we debated as a Committee we strongly felt that having a representative from the CoG on the Mineral Rights Board was the right thing to do. This mining is done in counties, on public and community land. We cannot argue that the county governments have no role to play in mining, although technically, mining is within the ambit of the national Government. We felt as the Constitution provides for, it is important for these two levels of Government to work in harmony and collaborate, co-ordinate and co-operate. Through this Bill and some provisions such as the one ensuring that a member of the CoG will sit on the Mineral Rights Board, we felt that, as a requirement of our Constitution, collaboration and co-operation within levels of Government will ensure smooth running of that sector, and smooth running of the business that will be done in the mining industry.

We also felt strongly that this Bill comes at the right time. When the law gives the community many powers over their land, they have powers to safeguard their interest through their county governments, the National Land Commission (NLC) and many other aspects of the Constitution. As pastoralist, and being a member of a pastoralist community representing them, I feel that this Bill is coming at the right time; I feel that there are enough safeguards in our Constitution and our laws to ensure good benefits from the minerals that will be discovered in the vast tracts of land that our people occupy.

I also felt that a representative from the CoG had to be on the Mineral Rights Board, because being duly elected by the people of those counties, they are better positioned to safeguard and protect their interests than the CS of the Ministry of Devolution and planning, or any other CS. Cabinet Secretaries represent the interests of the Executive, or the national Government, which appoints them.

We have also ensured that there is a good and enabling environment provided by this Bill to global investors, who want to invest in our country. Provisions that are in this Constitution are well thought through by both the National Assembly and the Senate, as well as the good practices we learnt, as I said, in Australia and Tanzania, where they have been mining gold and other minerals for quite some time. We also got consultants to ensure that we were informed by good practices elsewhere in the world. In that sense, we tried to tie many ends together to ensure that we had a good law.

With those few remarks, I beg to move.

The Temporary Deputy Speaker (Hon. Kajwang'): All right. I order that the business appearing as Order No.13 on the Order Paper, be printed on the Order Paper as soon as it is practicable by the Clerk's Office. It is so ordered.

Next Order.

COMMITTEE OF THE WHOLE HOUSE

(Consideration of the Senate Amendments to the Mining Bill)

For the reasons that I have given on Order No. 13, automatically the business appearing under Order No. 14 is deferred.

(Order No. 14 deferred)

BILLS

Second Reading

THE PETROLEUM (EXPLORATION, DEVELOPMENT AND PRODUCTION) BILL

The Temporary Deputy Speaker (Hon. Kajwang'): Leader of the Majority Party! He is not here? This Bill is deferred to another appropriate date.

(Bill deferred)

Next Order!

Second Reading

THE PROTECTION OF TRADITIONAL KNOWLEDGE AND TRADITIONAL CULTURAL EXPRESSIONS BILL

The Temporary Deputy Speaker (Ho. Kajwang'): Leader of the Majority Party! Who has the brief to prosecute this one? Similarly this Bill is deferred to the next appropriate time.

(Bill deferred)

Next Order!

Second Reading

THE FOREST CONSERVATION AND MANAGEMENT BILL

The Temporary Deputy Speaker (Hon. Kajwang'): Yes, Leader of Majority Party. This is the reason why the coalition to my right should always be in the Chamber to prosecute these things as they fall due, so that we use parliamentary time appropriately. Anyway this business is deferred to the next appropriate date.

Next Order!

MOTION

ESTABLISHMENT OF SELECT COMMITTEE
TO INQUIRE INTO CIPEV REPORT

THAT, aware that following the 2007 post-election violence, various state and non-state agencies carried out independent investigations, either on their own motion or in the exercise of their statutory functions; further aware that, some of those agencies, including the Commission appointed by the then President to inquire into the matters pertaining to the Post-Election Violence (The Waki Commission), either submitted or publicised their findings and/or reports, which are yet to be discussed by the National Assembly; cognisant of the fact that the matter of possible compromise and allegations of skewed investigations has been of concern to the people of Kenya, including allegations that some of the witnesses who testified before the Commission and other agencies may have been procured; recalling that Article 95 of the Constitution provides that the National Assembly deliberates on and resolves issues of concern to the people; further recalling that, in 2010, Parliament amended the Commission of Inquiry Act (CAP. 102) to accord the National Assembly an opportunity to receive and discuss such findings or reports; this House –

- (a) resolves to establish a select committee to inquire into and report on the allegations of the skewed and compromised investigations by the various state and non-state agencies on the matter of the 2007 Post Election Violence;
- (b) also resolves that the Committee elects its chairperson and vice-chairperson from amongst its Members;
- (c) further resolves that the Committee submits its report to the House within ninety (90) days, to inform the debate on the subsequent motion for noting the contents of the Report of the Commission of Inquiry into the post-election Violence (CIPEV) which was tabled in the House on 4th December 2008 ; and,
- (d) approves the appointment of the following Members to the Committee:-
 - 1. The Hon. Florence Kajuju, MP
 - 2. The Hon. Moses Cheboi, MP
 - 3. The Hon. Kimani Ichung'wah, MP
 - 4. The Hon. Alice Ng'ang'a, MP
 - 5. The Hon. David Ochieng, MP
 - 6. The Hon. Tom. J. Kajwang, MP
 - 7. The Hon. Boniface Otsiula, MP
 - 8. The Hon. Samuel Chepkong'a, MP
 - 9. The Hon. Mati Munuve, MP
 - 10. The Hon. David Gikaria, MP
 - 11. The Hon. Jimmy Angwenyi, MP
 - 12. The Hon. Abdulaziz Farah, MP
 - 13. The Hon. Mishu Mboko, MP

14. The Hon. Katoo ole Metito, MP

15. The Hon. Wilber Ottichillo, MP

(Hon. Chepkong'a on 14.10.2015)

(Resumption of Debate interrupted on 14.10.2015)

The Temporary Deputy Speaker (Hon. Kajwang): Was this resumption of debate or something like that? Well, I have looked at Paragraph (d) of this Motion and I see the Member for Ruaraka listed in it. I, therefore, consider that there is a conflict of interest, and because of that I order that this business also be deferred to the next available opportunity.

(Motion deferred)

ADJOURNMENT

The Temporary Deputy Speaker (Hon. Kajwang): Hon. Members, there being no other business and the time being 6.22 p.m., this House stands adjourned until Thursday, 22nd October 2015 at 2.30 p.m. It is so ordered.

The House rose at 6.22 p.m.