

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Thursday, 6<sup>th</sup> December 2018

The House met at 2.30 p.m.

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

### PRAYERS

### COMMUNICATION FROM THE CHAIR

**Hon. Speaker:** Hon. Members, I have a number of communications to make. I will start with the simpler one.

#### GUIDANCE ON CONSIDERATION OF THREE SENATE BILLS

As you may recall, on 27<sup>th</sup> November 2018, I conveyed to the House a Message from the Senate regarding the Food Security Bill (Senate Bill No.12 of 2017), the County Statistics Bill (Senate Bill No.9 of 2018) and the Salaries and Remuneration Commission (Amendment) Bill (Senate Bill No.12 of 2018). Just as a reminder, the Food Security Bill seeks to give effect to Articles 21, 43 (1)(c) and 53 (1)(c) of the Constitution on the freedom from hunger, the right to adequate food of acceptable quality, the right of every child to basic nutrition, and to provide a framework and mechanism for the national and county governments to fulfil their obligations in relation to food security.

Further, the County Statistics Bill (Senate Bill No.9 of 2018) seeks to provide a framework for the collection, compilation, analysis and dissemination of statistical information and to establish a county statistics office, while the Salaries and Remuneration Commission (Amendment) Bill (Senate Bill No.12 of 2018) seeks to amend the Salaries and Remuneration Commission Act to provide for notification of the expiry of terms of Commissioners and to provide for the timelines for the filling of vacancies in the Commission upon expiry of their terms.

Following the First Reading of the three Bills on 28<sup>th</sup> November 2018, I forwarded the Bills to the technical offices pursuant to Standing Order No.143(2) which provides that -

“Following First Reading, the Speaker shall, within reasonable time, pronounce his or her opinion contemplated under Article 114(2) of the Constitution.”

Now, therefore, having received a brief on the matter from the relevant offices of Parliament, I have made the following determination on the three Senate Bills:

- (1) The County Statistics Bill (Senate Bill No.9 of 2018) and the Salaries and Remuneration Commission (Amendment) Bill (Senate Bill No.12 of 2018) do not fall within the meaning of

“Money Bills.” As such, they may proceed for the Second Reading in the same manner as a Bill originating in the National Assembly as provided for under Standing Order No.143(3). These Bills therefore stand referred to the Departmental Committee on Finance and National Planning for consideration;

- (2) The Food Security Bill (Senate Bill No.12 of 2017) is a “Money Bill” within the meaning of Article 114 of the Constitution. It, therefore, stands referred to the Budget and Appropriations Committee for consideration and advice on the manner in which the House ought to proceed with this Bill, pursuant to provisions of Articles 109(5) and 114 of the Constitution, as read together with Standing Order No.143.

The House is thus accordingly guided.

Can the Members make their way in? I thought you had already signed in. You are just standing. Please, make your way in. Hon. Members, do you find it difficult to sit even for 10 minutes?

#### RESPONSIBILITY FOR STATEMENT OF FACT

Hon. Members, the second Communication regards responsibility for statement of facts.

On Wednesday, 21<sup>st</sup> November 2018, the Vice-Chairperson of the Departmental Committee on Administration and National Security, Hon. Waluke, raised a concern regarding the non-attendance of Committee meetings by the Cabinet Secretary for the Ministry of Interior and Coordination of National Government.

In his remarks, the Vice-Chairperson alleged that as a result of this lapse, there were over 60 Questions still awaiting replies from the Ministry. However, from the records, it has been confirmed that this particular Cabinet Secretary has appeared before the said Committee to answer questions from Members on three separate occasions.

In fact, the Committee has had 38 Questions referred to it, of which 17 have been responded to, 11 scheduled for reply and 10 awaiting scheduling with the Ministry. For further clarification, the Cabinet Secretary for the Ministry of Interior and Coordination of National Government has not honoured only four invitations for Committee meetings, and each time, he has requested in writing for rescheduling of the meetings to a later date.

From the foregoing, therefore, it becomes apparent that the information stated in the House by the Vice-Chairperson of the Departmental Committee on Administration and National Security was inaccurate, and may have painted the Cabinet Secretary in a bad light. It is, therefore, incumbent upon you, when raising such matters in the House, to ensure the accuracy of your remarks, especially in light of provisions of Standing Order No.91 regarding responsibility for the accuracy of any facts made in the House. It is one of the circumstances covered by the provisions of Standing Order No.107 on disorderly conduct to peddle around untruths.

I hope the Vice-Chair of the Committee will find it necessary to make the correction. We have the facts and the record. That inaccuracy should prick his conscience.

Hon. Members making your way into the Chamber, please, do so quickly.

#### MANDATES OF BUDGET AND APPROPRIATIONS COMMITTEE AND DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING

Hon. Members, this third Communication relates to the mandates of the Budget and Appropriations Committee and the Departmental Committee on Finance and Planning.

Hon. Members, you may recall that on Tuesday, 4<sup>th</sup> December 2018, the Member for Kitui Central Constituency, Hon. Makali Mulu, rose on a point of order seeking my guidance on the mandate of the Budget and Appropriations Committee and that of the Departmental Committee on Finance and National Planning, with particular reference to coordination and processing of key aspects of the Budget.

In his submission, Hon. Makali referred to various Articles of the Constitution, the Public Finance Management Act (No. 18 of 2012), and in particular, Section 39 of the said Act, and the National Assembly Standing Order Nos.207 and 216. He postulated that the guidance given to the House by the Budget and Appropriations Committee in scrutinizing and approving the Government's fiscal framework includes the purview of projected revenue and revenue-raising measures such as taxation, loans and grants that are introduced through the Finance Bill.

Consequently, he observed that any additional revenue raising measures or tax incentives introduced after the passage of the Appropriations Bill should be deemed as having a distorting effect on the fiscal framework already approved by the House through the Budget and Appropriations Committee.

I will give the Members a chance to make their way in. You can even sit there. That place is not harmful. There are certain Hon. Members who find the very back as the most suitable area to sit.

*(Hon. Members walked into the Chamber)*

It is in this regard, and on account of these concerns, that the Member for Kitui Central Constituency sought guidance and clarification on the following three broad areas:

- (1) What aspects of taxation and revenue are shared between the Budget and Appropriations Committee and the Departmental Committee on Finance and National Planning? How can those shared aspects be processed in an efficient, effective and amicable manner to ensure that the fiscal framework represents the true facts?
- (2) Which of the two Committees is charged with the responsibility of assessing the implications of Members' proposed amendments to the Finance Bill?
- (3) Is there a distinction between tax policy and tax revenue raising measures in the Finance Bill? If so, which Committee is charged with the responsibility of addressing them?

I undertook to issue a Communication to guide the Member and the House on the matters raised by Hon. Makali Mulu, which I hereby do.

Hon. Members, please, make your way quickly into the Chamber.

This is not the first time that this august House has had to address matters of the mandate of Committees. Those among you who served in the 11<sup>th</sup> Parliament may recall that in December 2013, several Members sought guidance on the apparent conflict of mandates between the Public Accounts Committee and the Public Investments Committee on one hand and the Departmental Committees on the other. Additionally, it is not the first time either that the mandate of the Budget and Appropriations Committee has come into focus in this House.

You may, in this regard, recall that in May 2015, the then Member for Gem, the Hon. Jakoyo Midiwo, rose on a point of order and raised several issues regarding the place of the recommendations of Departmental Committees regarding Budget Estimates for line Ministries

and Departments in the Report of the Budget and Appropriations Committee. The ruling made by the Chair in both instances helped in addressing the issues raised at the time.

As you are all aware, this august House relies primarily on the existing legal framework and established practice in addressing issues of this nature in a bid to ensure that the eventual solution is practical and sustainable. I therefore wish to commence my Communication today by highlighting the mandate and responsibilities of the two Committees regarding what Hon. Makali Mulu sought guidance on.

To begin with, the mandate of the Budget and Appropriations Committee as provided for in Standing Order 207 entails the following:

- (i) to investigate, inquire into and report on all matters related to coordination, control and monitoring of the national budget;
- (ii) to discuss and review the estimates and make recommendations to the House;
- (iii) to examine the Budget Policy Statement presented to the House;
- (iv) to examine Bills related to the national budget, including Appropriations Bills; and
- (v) to evaluate tax estimates, economic and budgetary policies and programmes with direct budget outlays.

Based on these areas of mandate, the Budget and Appropriations Committee has been identified by this House as the ‘relevant Committee of the Assembly’ referred to in Article 114 of the Constitution. Thus, the Budget and Appropriations Committee is further mandated by the Constitution:

- (i) under Article 114(2) to guide the Speaker in determining the action to be taken on a Motion that makes provision for a matter listed in the definition of a ‘Money Bill’; and
- (ii) Under Article 221(4) to discuss and review Estimates of Revenue and Expenditure of the national Government and make its recommendations to the National Assembly. These recommendations, upon approval by the House, become the basis of the Appropriations Bill. This role is also provided for in Section 39(2) of the Public Finance Management Act, 2012. Further, Clause 6 of the same Article 221 provides, and I quote, “when the estimates of national government expenditure, and the estimates of expenditure for the Judiciary and Parliament have been approved by the National Assembly, they shall be included in an Appropriation Bill, which shall be introduced into the National Assembly to authorise the withdrawal from the Consolidated Fund of the money needed for the expenditure, and for the appropriation of that money for the purposes mentioned in the Bill”

Hon. Members, I resume my seat to allow Members to make their way in.

*(Hon. Members walked into the Chamber)*

Please do so quickly. You can register your presence later.

Hon. Members, on the other hand, the mandate of the Departmental Committee on Finance and National Planning as provided for by the National Assembly Standing Order 216, and to single out subjects related to matters raised by the Hon. Makali Mulu, include, but not limited to investigating, inquiring into, and reporting on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries and departments; studying the programme and policy objectives of Ministries and departments and the effectiveness of the implementation; and, making reports and recommendations to the House as often as possible, including recommendation of proposed legislation. Consequently, the Second

Schedule of the same Standing Orders further provides on the mandate encompassing the following:

- (i) Public finance and monetary policies;
- (ii) Public debt;
- (iii) Financial institutions (excluding those in securities exchange);
- (iv) Investment and divestiture policies;
- (v) Pricing policies;
- (vi) Banking;
- (vii) Insurance;
- (viii) Population;
- (ix) Revenue policies including taxation;
- (x) National planning and development.

Further, Standing Order 245 mandates the Departmental Committee on Finance and National Planning to introduce to the National Assembly the Finance Bill in the form submitted as a legislative proposal by the Cabinet Secretary, together with the report of the Committee on the Bill.

Having highlighted the mandates of the two Committees, I now wish to observe as follows:

First, you will recall that the Sessional Committee on Fiscal Analysis and Appropriation was established by a resolution of this House in 2005, which was by itself a historic resolve that eventually led to the establishment of the Budget Committee through the Fiscal Management Act of 2009 and finally the re-establishment of the Budget and Appropriations Committee by the Public Finance Management (PFM) Act of 2012. It is thus observed that the Budget and Appropriations Committee is the only Committee having additional functions through legislation. The Budget and Appropriations Committee has a wider mandate when it comes to budget matters as follows:

- (a) Providing general direction on budget matters:

The Budget and Appropriations Committee as provided for in the PFM Act 2012 as well as the Standing Orders of National Assembly is required to provide recommendation on the overall macro-economic framework expected to guide the annual Budget as well as in the medium term. The Committee is expected to do this through a review of the Budget Policy Statement (BPS) and the medium-term Debt Strategy Papers which are laid in this House annually. In doing so, the Committee enables the Assembly to set ceilings on the overall fiscal framework as well as ceilings on expenditure. Departmental Committees, on their part, review the BPS pertaining to their respective line Ministries and Departments, and submit their recommendations to the Budget and Appropriations Committee for review and consolidation.

- (b) Providing direction on the vertical and horizontal distribution of nationally-raised resources:

The PFM Act 2012 and the National Assembly Standing Orders mandate the Budget and Appropriations Committee to review the Division of Revenue Bill as well as the County Allocation of Revenue Bill, and propose to the House the level of resources to allocate horizontally (that is, at the national level) and vertically (that is, between the two levels of government). The intent and spirit of designating this role to the Budget and Appropriations Committee is premised on the fact that as the Committee gives recommendation on the overall direction of the budget, it also resolves and guides on the overall resource envelope that is to be raised both domestically as well as externally.

- (c) Examining Bills related to the National Budget including Appropriation Bills:

The function to examine bills related to the National Budget including Appropriation Bills is provided for in National Assembly Standing Order 207(3)(d). The Budget and Appropriations Committee has always reviewed Appropriation Bills. However, other budget related bills are reviewed and scrutinized by the Departmental Committee on Finance and National Planning. This includes the Finance Bill that is introduced in the National Assembly every year.

(d) Evaluating tax estimates, economic and budgetary policies and programmes with direct budgetary outlays:

The Budget and Appropriations Committee is expected to review the overall resource envelope that is expected to identify total revenues as per each category of sources. Hence, upon the submission of the BPS by the Cabinet Secretary for National Treasury, the Budget and Appropriations Committee reviews the macro framework especially the financing proposals and policies that are expected to underpin the realization of all the resources. The Committee is also expected to review the Estimates of Revenue that are submitted within the overall Estimates and propose any necessary amendments.

It is important to note that this is not a review of the individual measures but a review of the Estimates, that is, the total absolute amounts. This is a major departure between the role of the Budget and Appropriations Committee regarding revenues and that of the Finance and National Planning Committee. While the former looks at the absolute overall amounts, the latter looks at each and every measure; that is, proposals to tax and not to tax.

(e) Examining Estimates of Expenditure and carry out monitoring of overall expenditure:

The review of Estimates of Expenditure is a function that the Budget and Appropriations Committee performs annually. The review is done in consultation with other Departmental Committees, and culminates in recommendation to the House by way of reports. The Committee also reviews the in-year reports on budgets and if necessary, submits recommendations, which in turn forms the basis of Supplementary Estimates.

The Members standing at the entrance, please, make your way in quickly.

*(The Members walked into the Chamber)*

As earlier alluded, the role and mandate of the Departmental Committee on Finance and National Planning is outlined in the Second Schedule of the National Assembly Standing Orders. The Committee of Finance and National Planning performs several roles as listed earlier in this Communication. The specific roles that seem to have issues related to the roles of the Budget and Appropriations Committee are as follows:

(i) Revenue policies, including taxation:

Specific Bills related to the Budget, such as the Appropriations Bills and Supplementary Appropriations Bills, are by statute expected to be reviewed by the Budget and Appropriations Committee.

(ii) Public finance, monetary policies, banking, insurance and public debt

National Assembly Standing Order 232 (6) mandates the Budget and Appropriations Committee with the task of consideration of the debt management strategy. This is a matter which has a bearing on the role of the Departmental Committee on Finance and Planning concerning public debt.

Hon. Members, in consideration of the foregoing, I wish to correspond to the three issues of inquiry from Hon. Dr. Makali Muli as follows:

(1) Regarding the inquiry as to what aspects of taxation and revenue are shared between the Budget and Appropriations Committee, and the Departmental Committee on Finance and National Planning, it is not advisable to attempt to segment taxation or revenue into different categories for purposes of legislation since taxation and revenue matters are extensively broad and intrinsically linked.

Consequently, the question as to which aspects of taxation and revenue are shared by the two Committees can only be addressed by future comprehensive revenues of the Standing Orders, following intensive consultations and research. In the meantime, however, the Budget and Appropriations Committee ought to confine itself to evaluating the overall Estimates of Revenue and Expenditure whereas the Departmental Committee on Finance and National Planning ought to focus on the revenue raising measures portfolio.

(2) Regarding the inquiry on which of the two Committees is charged with the responsibility of assessing the implications of Members' proposed amendments to the Finance Bill, the Departmental Committee on Finance and National Planning is mandated, under Standing Order 245 (1), to introduce to the House the Finance Bill in the form in which the Bill was submitted as a legislative proposal by the Cabinet Secretary for the National Treasury, together with the report of the Committee on the Bill as a Departmental Committee would be expected to do. By practice, a Committee to which a Bill is charged, or which introduces a Bill, and which additionally reports on the Bill, is typically expected to be the same Committee that handles any amendments to the same Bill. Consequently, amendments to the Finance Bill are under the purview of the Departmental Committee on Finance and National Planning.

However, this arrangement notwithstanding, Standing Order 245(2) requires the Departmental Committee on Finance and Planning to ensure that its recommendations to the Finance Bill and, by interpretation, any proposed amendment by Members on revenue matters on the Finance Bill or any other Bill are in such a manner that the total amount of revenue raised is consistent with the approved fiscal framework.

The Departmental Committee on Finance and National Planning is, therefore, obligated to ensure that any amendment to the taxation proposals and revenue matters in the Finance Bill do not negatively impact the macro economic and fiscal framework. It might thus be necessary for the Finance Committee to ensure that any amendment to the Finance Bill is accompanied by a statement on the financial implications of the amendments before it can be considered by the House.

(3) Regarding the third and final inquiry on whether there is a distinction between tax policy and tax revenue raising measures in the Finance Bill, it is my considered view that the two issues are invariably and inextricably intertwined. They cannot be separated, whether for legislative or implementation purposes.

Regarding the second part of this inquiry, namely, which Committee is charged with the responsibility of addressing tax policy and tax revenue raising measures, the Departmental Committee on Finance and National Planning retains this mandate based on the reasons highlighted herein.

Hon. Members, in conclusion, it may be argued that there are valid concerns when it comes to the specific differentiation of the mandate of the Budget and Appropriations Committee vis-à-vis the Departmental Committee on Finance and National Planning. In particular, the key areas of apparent overlap involve the evaluation of Budget-related Bills and the analysis of public debt.

Nevertheless, the minor areas of apparent overlap should not constitute a reason for inability, delay or inefficiency of either of the two Committees in carrying out its respective roles and responsibilities. Should the issues recur or worsen with time, as it could happen, it might then become imperative for this august House to consider reviewing the Standing Orders to define and segregate in order to address all areas of concern regarding the mandates of these two Committees, based on what obtains in other jurisdictions and more particularly, in the United States of America, the American Congress and the Germany's Bundestag.

Such a review, however, should be undertaken only after a comprehensive and extensive research and consultations amongst all key stakeholders.

The Member and, indeed, the House, are accordingly guided.

Hon. Members, there is a final Communication, but it will come later because it relates to what we are likely to be doing in the next two months.

Next Order.

### PAPERS LAID

**Hon. Aden Duale** (Garissa Township, JP): Hon. Speaker, I beg to lay the following Papers on the Table of the House:

The Protocol to amend the Convention on offences and certain other acts committed on Board an Aircraft (Montreal Protocol 2014) from the Office of the Attorney General and Department of Justice.

Report of the Auditor General on Financial Statement of Off-Grid Solar Access Project for Underserved Counties from the State Department for Energy for the 10 months period ended 30<sup>th</sup> June 2018.

Annual Report and Financial Statements for the Kenya Tourism Board for the Financial Year ended 30<sup>th</sup> June 2016.

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

The Reports of the Auditor-General on the Financial Statements in respect of the following Institutions for the year ended 30<sup>th</sup> June 2017 and the certificates therein:

- (i) The Kenya Forestry Research Institute;
- (ii) The Kenya Utalii College; and
- (iii) The Tourism Regulatory Authority.

Thank you, Hon. Speaker.

**Hon. Speaker:** The Chairperson, Departmental Committee on Lands.

**Hon. (Ms.) Rachael Nyamai** (Kitui South, JP): Hon. Speaker, I beg to lay the following Papers on the Table of the House:

Reports of the Departmental Committee on Lands on its consideration of the Petitions regarding:

(i) Alleged irregular allocation of Land L.R. 11379/3 presented by Hon. George Theuri, MP, on behalf the residents of Mowlem Ward; and,

(ii) Members of Mt. Kenya Forest Squatters and residents of Meru regarding excision of Mt. Kenya Forest pursuant to Legal Notices No.68,75 and 117/1977 measuring 384 hectares for settlement of squatters.

Thank you, Hon. Speaker.



**Hon. Speaker:** Member, Kenya Delegation to the Commonwealth Women Parliamentarians (CWP) East Africa Sub-region Sensitization Workshop. Hon. Janet Sitienei, Member for Turbo. That Member is in breach of Standing Order No.103.

**Hon. (Ms.) Janet Sitienei** (Turbo, Independent): Hon. Speaker, I beg to lay the following Paper on the Table of the House:

Report of Parliament of Kenya Delegation to the Commonwealth Women Parliamentarians (CWP) East African Sub-region Sensitization Workshop held at Golden Tulip Hotel, Kampala Uganda from 21<sup>st</sup> – 26<sup>th</sup> July 2018.

**Hon. Speaker:** Member, Delegation to the Commonwealth Parliamentary Association (CPA), Hon. Dr. Makali Mulu who is also the regional representative.

**Hon. Makali Mulu** (Kitui Central, WDM-K): Hon. Speaker, I beg to lay the following Paper on the Table of the House:

Report of Parliament of Kenya Delegation to the 49<sup>th</sup> Commonwealth Parliamentary Association (CPA) Africa region Conference held in Gaborone, Botswana from 13<sup>th</sup> -22<sup>nd</sup> August 2018.

Thank you, Hon. Speaker.

**Hon. Speaker:** Member, Delegation to the Inter-Parliamentary Union (IPU), Hon. Wangwe Emmanuel, Member for Navakholo.

**Hon. Emmanuel Wangwe** (Navakholo, JP): Hon. Speaker, I beg to lay the following Paper on the Table of the House:

Report of the 139<sup>th</sup> Assembly of the Inter-Parliamentary Union (IPU) and related meetings held in Geneva, Switzerland from 14<sup>th</sup> -18<sup>th</sup> October 2018.

Thank you, Hon. Speaker.

**Hon. Speaker:** Chairperson, Departmental Committee on Sports, Culture and Tourism. Hon. Korei, are you there? Proceed.

**Hon. Korei ole Lemein** (Narok South, JP): Hon. Speaker, I beg to lay the following Paper on the Table of the House:

Report of the Departmental Committee on Sports, Culture and Tourism on the Conservation Caucus Summit 2018 held in Washington DC, USA from 21<sup>st</sup> -28<sup>th</sup> September 2018.

Thank you, Hon. Speaker.

**Hon. Speaker:** Chairperson, Departmental Committee on Transport, Public Works and Housing to lay several Papers. Hon. Pkosing.

**Hon. David Pkosing** (Pokot South, JP): Hon. Speaker, I beg to lay the following Papers on the Table of the House:

The Reports of the Departmental Committee on Transport, Public Works and Housing on:

56<sup>th</sup> National Association of State Contractors Licensing Agencies (NASCLA) Annual Conference held in Nashville, Tennessee, USA from 27<sup>th</sup> - 30<sup>th</sup> August, 2018.

13<sup>th</sup> Air Navigation Conference held in Montreal, Canada from 9<sup>th</sup> - 15<sup>th</sup> October, 2018.

International Building and Construction (SAIE) Conference and Exhibition Held in Bologna, Italy from 15<sup>th</sup> – 20<sup>th</sup> October 2018.

International Civil Aviation Organization (ICAO) Regional Seminar held in Johannesburg, South Africa from 8<sup>th</sup> - 14<sup>th</sup> April 2018; and

International Civil Aviation Organization (ICAO) Regional Facilitation (FAL) Seminar held in Dakar, Senegal from 5<sup>th</sup> to 8<sup>th</sup> March 2018.

Thank you, Hon. Speaker.

**Hon. Speaker:** Chair, Departmental Committee on Energy, Hon. Pukose.

**Hon. (Dr.) Robert Pukose** (Endebess, JP): Hon. Speaker, I beg to lay the following Papers on the Table of the House:

The Reports of the Departmental Committee on Energy on:

Power outages in Moyale Constituency since January 2018 by Hon. Qalicha Gufu Wario, MP, Member for Moyale Constituency.

Compensation of flood Victims by Kenya Electricity Generating Company (KenGen) in a Petition by Hon. Ali Wario Guyo, MP, Member for Garsen Constituency on behalf of residents of Garsen;

Massive Power disconnections by Kenya Power Ltd in Shirakalu Village, West Butso Ward Navakholo Constituency by Mr. Vincent Muthuku Okoti; and,

The Petition by Messrs Pius Omolo and Agoi Vedell on behalf of oil marketers in the country regarding licensing of oil marketing companies by Energy Regulatory Commission (ERC).

Thank you, Hon. Speaker.

**Hon. Speaker:** Next Order!

### QUESTION BY PRIVATE NOTICE

**Hon. Speaker:** The first Question is by Nominated Member, Hon. Wilson Sossion.

*Question No.296/2018*

#### UNJUST TREATMENT OF EMPLOYEES BY SAFARICOM

**Hon. Wilson Sossion** (Nominated, ODM): Hon. Speaker, I rise to ask the Cabinet Secretary for Labour and Social Protection the following Question:

(a) Is the Cabinet Secretary aware that Safaricom PLC has been discouraging and preventing its employees from joining workers' unions of their choice contrary to the provisions of Article 41 of the Constitution?

(b) Is the Cabinet Secretary further aware that the said company has un-procedurally terminated employment of several of its workers who have fallen sick as a result of long working hours in a hazardous environment at call centres?

(c) What steps is the Ministry taking to ensure that the company stops unjust treatment of employees and that it does not prevent them from joining workers' unions?

**Hon. Speaker:** I am sure the House knows that Hon. Sossion is a key recognised trade unionist in this country leading a very vibrant union. I hear the Member for Endebess suggesting that perhaps he is looking for clients from Safaricom. That is what the Member for Endebess is suggesting. However, Hon. Sossion, I am sure that is not what you are doing. The Question is referred to the Departmental Committee on Labour and Social Welfare, but as you know what is likely to happen later in the day, this is something for record.

Next Question is by Nominated Member, Hon. Godfrey Osotsi.

**ORDINARY QUESTIONS**

*Question No 186/2018*

**MECHANISMS TO ENSURE SAFETY OF HEALTH PERSONNEL AND PATIENTS**

**Hon. Godfrey Osotsi** (Nominated, ANC): Hon. Speaker, I rise to ask the Cabinet Secretary for Interior and Coordination of National Government the following Question:

- a) Is the Cabinet Secretary aware that on 23<sup>rd</sup> June 2018, Mrs. Anne Omoche, a nurse at Emuhaya Sub County Hospital, was unlawfully arrested, assaulted and detained at Luanda Police Station?
- b) What mechanisms has the Ministry put in place to ensure safety of health personnel on night duty, and patients in health facilities at night?
- c) Are there plans by the Ministry to compensate Mrs. Anne Omoche for the unlawful arrest and injuries suffered?

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

Next is the Member for Mathare Constituency, Hon. Anthony Oluoch.

*Question No.213/2018*

**STEPS TO PREVENT IRREGULAR ALLOCATION OF SCHOOL LAND**

**Hon. Anthony Oluoch** (Mathare, ODM): I rise to ask the following Question to the Cabinet Secretary for Lands and Physical Planning:

- a) What steps is the ministry taking to safeguard public lands for schools in Mathare Constituency from irregular allocation to private developers?
- b) What plans has the ministry, in conjunction with the National Land Commission, put in place to ensure that all public schools in the country, and in particular Mathare Constituency, are issued with title deeds?

**Hon. Speaker:** The Question is referred to the Departmental Committee on Lands.  
Next Question is by the Member for Suna West, Hon. Masara.

*Question No.246/2018*

**SENSITIZATION OF SAFETY PROCEDURES DURING MINING**

**Hon. Peter Masara** (Suna West, Independent): Hon. Speaker, I rise to ask the Cabinet Secretary for Petroleum and Mining the following Question:

- a) Is the Cabinet Secretary aware that in the late 2017, eight artisanal miners from Suna West Constituency lost their lives as a result of collapse of mines during the mining process?
- b) What measures is the ministry putting in place to ensure that miners are sensitized on the safety procedures during mining processes?
- c) Could the ministry consider compensating families of persons who lost their lives as a result of collapsed mines?

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

Next is the Member for Kapenguria, Hon. Moroto.

*Question No.281/2018*

MEASURES TO MITIGATE AGAINST ENVIRONMENTAL  
DEGRADATION AT NAROSIROSI EXCAVATION SITE

**Hon. Samuel Moroto** (Kapenguria, JP): Hon. Speaker, I stand to ask the Cabinet Secretary for Petroleum and Mining the following Question:

- a) Could the Cabinet Secretary explain the criteria used to identify burrow pits at Narosirosi to excavate ballast by a Chinese firm and whether an Environmental Impact Assessment was conducted before commencement of the activity?
- b) Is the Cabinet Secretary aware that land parcel reference number 4140/9 where the excavation is taking place is not available for allocation and that excavating ballast on it contravenes the provisions of the National Land Commission Act?
- c) What measures has the Ministry put in place to mitigate against environmental degradation occasioned by the excavation?

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

The next one is by the Nominated Member, Hon. (Prof.) Oduol.

*Question No.282/2018*

STATUS OF IMPLEMENTATION OF USHANGA KENYA INITIATIVE

**Hon. (Prof.) Jacqueline Oduol** (Nominated, ODM): Hon. Speaker, I rise to ask the Cabinet Secretary for Wildlife and Tourism the following Question:

- a) Could the Cabinet Secretary provide the status of the implementation of the Ushanga Kenya Initiative for empowering pastoralist women and youth to be implemented in the seven targeted counties?
- b) Could the Cabinet Secretary provide a breakdown of the activities implemented so far and the amount disbursed for each activity to date?

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

Next Question is by the Member for Keiyo North, Hon. (Dr.) James Murgor.

*Question No. 286/2018*

COMPENSATION FOR PEOPLE AFFECTED BY EXPANSION OF ITEN-BUGAR ROAD

**Hon. James Murgor** (Keiyo North, JP): Hon. Speaker, I wish to ask the Cabinet Secretary for Transport, Infrastructure, Housing and Urban Development the following Question:

- a) Is the Cabinet Secretary aware that the expansion and rehabilitation of a 12 kilometre Iten-Bugar Road to bitumen standards was completed in December 2016 and that persons affected by expansion of the road have not been compensated to date?
- b) What measures is the Ministry putting in place to ensure that those affected by the project are compensated, and when will the compensation be effected?

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

Finally, we have a Question from the Member for Funyula, Hon. (Dr.) Wilberforce Ojiambo Oundo.

*Question No.287/2018*

DISCIPLINARY ACTION TAKEN AGAINST POLICE OFFICERS AT SIO PORT

**Hon. (Dr.) Wilberforce Oundo** (Funyula, ODM): Thank you, Hon. Speaker. I rise to ask Question 287/2018 directed to the Cabinet Secretary for Interior and Co-ordination of the National Government.

a) Could the Cabinet Secretary explain the disciplinary action taken by the Inspector-General of Police against police officers at Sio Port Police Station who used live bullets and lobbied teargas canisters at innocent women on 22<sup>nd</sup>, 23<sup>rd</sup> and 24<sup>th</sup> November 2018?

b) Is the Cabinet Secretary further aware that the police officers in Samia Sub-County have been erecting illegal roadblocks that they use to solicit bribes from motorists?

Thank you, Hon. Speaker.

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

Hon. Members, that is the end of Question Time. As you noticed, Order No. 7 is Questions and Statements. We are not yet through. I want to inform the House that today being the last sitting day of this Second Session, all those Questions, including the ones which you have just asked, and the Petitions which have not been dealt with will lapse by operation of law. Therefore, the Members who have Questions that are pending are advised to visit the Table Office as soon as the House resumes so as to get their Questions prioritised and given new numbers because they cannot go bearing the number of the year 2018. The new ones will bear the number of the year 2019. This is an advice.

Member for Suba North.

**PERSONAL STATEMENT**

REMARKS BY THE LEADER OF MAJORITY PARTY

**Hon. (Ms.) Odhiambo-Mabona** (Suba North, ODM): Thank you, Hon. Speaker for giving me the opportunity to contribute. I rise under Standing Order No. 84 to give a Personal Statement. I wish to go on record in relation to issues that were raised about me by the Leader of the Majority Party, Hon. Aden Duale, on 15<sup>th</sup> November 2018 during the Morning and Afternoon Sittings while discussing the Statute Law (Miscellaneous Amendment) Bill, and specifically in relation to the Children Act (No.8 of 2001). His comments form part of the parliamentary record.

Even though I have clarified the same to Hon. Duale, I wish that my position to also form the record for avoidance of doubt.

The Leader of the Majority Party, Hon. Duale, made the following remarks:

“On a point of order, Hon. Temporary Deputy Chairman, I ask Hon. Kaluma to stop what he is doing. I want to go on record and be on the HANSARD. I want anybody to challenge me here that we cannot legislate for our own individual gain. Let me finish. Hon. Millie Odhiambo, the purported owner of the amendments, runs an institution called the CRADLE. I want anybody to oppose me. On that basis, Hon. Millie Odhiambo, whether she is here or not, is making laws for her own business and this House cannot be used. So, Hon. Temporary Deputy Chairman, I want you to put the Question and we will oppose all her amendments.”

He further stated as follows in response to Hon. (Dr.) Nyikal’s attempts to move amendments on my behalf given that I was away on parliamentary duties out of the country. He said:

“You either say it is your amendment, we look at the Order Paper, or it is not. There is nowhere in the procedure where you and Millie can be shareholders in an amendment. You can only be shareholders in Children’s homes”.

It is my understanding that these utterances portrayed me, based on the calls I have received in relation to the same, as a dishonest person, lacking in integrity and seeking to benefit from the cause of vulnerable and disadvantaged children. I wish to set the record straight that the proposed amendments were informed by the fact that there is a comprehensive Bill in relation to the Children Act that is pending with the Office of the Attorney-General that would deal with these issues comprehensively. Further, I did not wish to see a situation where one organisation, the Child Welfare Society of Kenya, was granted monopoly to deal with adoptions as monopolies often lead to abuse. That is a position I still hold.

For clarity, I was raised by a mother who was passionate about children’s issues. She worked as a children’s officer with Child Welfare Society of Kenya. She worked for years placing bright needy children to schools such as Starehe Boys Centre. She took several matters to court for family mediation and resolution for the sake of the children. Even though my mother was widowed early with eight children, our house became a haven for vulnerable children and widows. She died on her knees surrounded by women whom she was hosting from her church. She was still committed to work for the society. I am an apple that did not fall far from the tree.

My mother was not rich materially but I have inherited the best from her – a passion for the protection of children and women. I have dedicated my legal work largely to public service. My Masters in Law from New York University is in public service law. There are very few lawyers in this country with that specialised degree, including Justice Patrick Kiage.

I, together with other Christian lawyers, including Mr. Victor Kamau, Ms. Anne Nyambura Makome, my late cousin, Mr. Eric Ogwang and others, started offering *pro bono* services for children in the mid-1990s. When we got overwhelmed, we founded the CRADLE. Now, 8<sup>th</sup> December this year marks 20 years since the launch of the organisation. It started working by offering legal representation and psycho-social support to children who are sexually abused. It has assisted thousands of children through the offices it has held in Nairobi, Garissa, Turkana, Kwale, Mombasa, Eldoret, Kisumu and Mbita Point. Based on the cases we dealt with at the legal aid clinics, we realised gaps in laws and lobbied for them. I have seen the passage of several laws. Some were sponsored by me upon joining Parliament. These laws include the Criminal Law (Amendment Act) 2013, the constitutional provisions relating to children, the

Sexual Offences Act, the Counter Trafficking in Persons Act, the Children Act, the Female Genital Mutilation (FGM) Act, and the Victim Protection Act, amongst several others.

The organisation has done awareness programmes and monitoring of compliance with international human rights convention. It undertook pioneering work on trafficking in children that we passionately seek to deal with in this House. Because I cannot state all the work that the organisation has done in 20 years, I will table a dated version of the work it does. I wish to state very categorically that I am indeed a proud founder of the CRADLE. It is a feather in my cap as we have significantly transformed lives. Nonetheless, it is not my business. It is a public entity as a Non-Governmental Organisation (NGO) by law. I ceased to work there as the Director upon joining Parliament, even though I still offer some advisory role as a founding trustee. It has a management board and secretariat that are competitively hired. I have never desired to own a children's home. My expertise is in law. The CRADLE has never, to the best of my knowledge, information and belief, been an adoption agency and does not intend to be one now or in the future. It is not in competition with the Child Welfare Society of Kenya as their mandates are very different.

I declare that before I joined Parliament, I was a member of the adoption committee of the Child Welfare Society of Kenya because of my legal expertise. It is an organisation I hold in high esteem, due to the noble work it does. I disagreed with them on their approach to adoption and I still do. That does not change my view of them and does not warrant imputing improper motive on my character. I founded the Parliamentary Caucus on Children since I joined Parliament and I am still the Chair of the same. I will still continue being passionate about children until God takes me home.

Thank you, Hon. Speaker. Merry Christmas to Members.

*(Hon. (Ms.) Odhiambo-Mabona tabled the document)*

**Hon. Speaker:** Hon. Duale.

**Hon Aden Duale** (Garissa Township, JP): Hon. Speaker, you need to check whether the document is admissible as per parliamentary practice. A Member cannot just table a document. It can be a *Mwakenya* or a very seditious document planning to overthrow the legally elected Government of President Uhuru Kenyatta. So, the Hon. Speaker must say it is admissible before it is accepted.

## STATEMENT

### FIRST BUSINESS OF THE HOUSE IN 2019

Hon. Speaker, pursuant to the provisions of Standing Order No.42A, I rise to give Statement on behalf of the House Business Committee that met on Tuesday this week.

I wish to remind Members that the House is scheduled to proceed on a long recess commencing tomorrow in accordance with the Calendar of the House. As a result, the House Business Committee will schedule upon its first sitting next year when the Constitution of Kenya (Amendment) Bill of 2018 and the gender principle Bill will come for debate. That will be the first sitting of the House Business Committee when we resume as per our Calendar.

I appreciate all Members for the good work and the bipartisan approach they took towards legislation business throughout this Session. It is my hope the Members will come back

next year more rejuvenated and ready to perform their role as stipulated under Article 95 of the Constitution.

Merry Christmas and Happy New Year.

**Hon. Speaker:** The Member engaging the Member for Suba North may have been inspired by the Personal Statement.

Hon. Members, I have examined the document. It may be of interest to Members. It is a mini profile. It contains aspects of their philosophy, history, programmes and such like material. It is useful for Members who may wish to understand the organisation CRADLEO.

### COMMUNICATION FROM THE CHAIR

#### GUIDE ON COMMITTEE ACTIVITIES AND END OF THE SECOND SESSION

**Hon. Speaker:** Hon. Members, as you are aware, at the rise of the Sitting today, the House is scheduled to proceed on a long recess up to Tuesday, 12<sup>th</sup> February 2019 at 2.30 p.m. as per the Calendar of the House as already stated by the Leader of the Majority Party, in what marks the conclusion of the Second Session of the National Assembly in the 12<sup>th</sup> Parliament. I wish to commend the House for the diligence and commitment to the business of the House throughout the Session. The last two months have been exceptional.

The Session saw the House transact key business. Quite notable too is the early mastery of parliamentary procedures and practices among first time legislators as we approached the end of the Session. I want to encourage those that have yet to come to terms with the practices and procedures of the House to pay keener interest to what happens in the House. We have also benefited immensely from the long serving Members of the House. You have, as a House, made tremendous contribution to the governance of our country be it in plenary, in committees or across the constituencies you represent.

As is our tradition, Committee activities will hereafter stand suspended from 11<sup>th</sup> December 2018 until Monday, 4<sup>th</sup> February 2019 being the first week of February 2019 except Public Accounts Committee and Public Investments Committees whose sittings shall stand suspended until Monday, 28<sup>th</sup> January 2019 in recognition of the nature of their mandates.

The suspension is to allow you to spend valuable time with your families, those who have, during the holiday season and also attend to your constituents. In addition, this will give the staff of Parliament an opportunity to take their annual leave and also begin preparations for the next Session.

Hon. Members, I wish you a happy, safe and restful festive season, and a prosperous New Year, 2019.

Let us move to the next Order.

### BILL

#### NATIONAL YOUTH SERVICE BILL

### CONSIDERATION OF REPORT AND THIRD READING

**Hon. Speaker:** Hon. Members, let us transact this business. It is important. You concluded business on this Bill. What remains is to put the Question.



*(Question put and agreed to)*

Let us have the Mover.

**Hon Aden Duale** (Garissa Township, JP): Hon. Speaker, I beg to move that the National Youth Service Bill, National Assembly Bill No.26 of 2018 be now read a Third Time.

I request Hon. Ali Wario, Member for Bura and the Chair of the Departmental Committee on Labour and Social Welfare to second.

**Hon. Speaker:** Hon. Wario.

**Hon. Ali Wario** (Bura, JP): Hon. Speaker, I beg to second.

*(Question proposed)*

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

**Hon. Speaker:** That is the desire of the House.

*(Question put and agreed to)*

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

## **BILL**

### *Second Reading*

#### THE COUNTY ALLOCATION OF REVENUE (AMENDMENT) BILL

*Hon. Kimani Ichungw'ah on 6.12.2018)*

*(Debate concluded on 6.12.2018 - Morning Sitting)*

**Hon. Speaker:** Hon. Members, the County Allocation of Revenue (Amendment) Bill, Senate Bill No.29 of 2018 debate was concluded in the morning. What is left is for me to put the Question.

*(Question put and agreed to)*

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

Hon. Members, before the House goes to Committee of the whole House, I plead with the House that it may be desirable that as many of you as are present remain present to conclude this business and the next one.

As you know, the next one entails your decision on approval of the nominees for appointment as the Vice Chair and the Members of the Public Service Commission. I will urge

you, please do not leave. This being the last day, I will only urge that we conclude everything procedurally.

Thank you very much, Hon. Members.

### COMMITTEE OF THE WHOLE HOUSE

*(Order for Committee read)*

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

### IN THE COMMITTEE

*(The Temporary Deputy Chairman  
(Hon. Christopher Omulele) took the Chair)*

THE COUNTY ALLOCATION OF REVENUE (AMENDMENT) BILL  
*(Clauses 2 and 3 agreed to)*

*(Title agreed to)*

*(Clause 1 agreed to)*

**Hon. Kimani Ichung'wah** (Kikuyu, JP): Hon. Chairman, I beg to move that the Committee doth report to the House its consideration of the County Allocation of Revenue (Amendment) Bill and its approval thereof without amendments.

I wish to ask Hon. Kimaru to second.

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): That does not need to be seconded.

*(Question proposed)*

*(Question put and agreed to)*

*(The House resumed)*

*[The Temporary Deputy Chairman  
(Hon. (Ms.) Jessica Mbalu) in the Chair]*

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Order Members!

### REPORT AND THIRD READING

THE COUNTY ALLOCATION OF REVENUE (AMENDMENT) BILL

**Hon. Christopher Omulele** (Luanda, ODM): Hon. Temporary Deputy Speaker, I beg to report that a Committee of the whole House has considered the County Allocation of Revenue (Amendment) Bill and approved the same without amendment.

**Hon. Kimani Ichung'wah** (Kikuyu, JP): Hon. Temporary Deputy Speaker, I beg to move that the House do agree with the Committee in the said Report. I request Hon. Kimaru to second the Motion for agreement with the Report of the Committee of the whole House.

**Hon. Peter Kimaru** (Mathioya, JP): Hon. Temporary Deputy Speaker, I second.

*(Question proposed)*

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): We do not have the requisite number. Can we have the Quorum Bell rung?

*(Quorum Bell was rung)*

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): I can now confirm that we have the requisite number for the purpose of putting the Question.

*(Question put and agreed to)*

**Hon. Kimani Ichung'wah** (Kikuyu, JP): Hon. Temporary Deputy Speaker, I beg to move that the County Allocation of Revenue (Amendment) Bill, be now read the Third Time. I request Hon. Waititu, Member for Juja to second.

*(Hon. Francis Waititu spoke off record)*

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): You are not on record. Go on record as seconding.

**Hon. Francis Waititu** (Juja, JP): Hon. Temporary Deputy Speaker, I second.

*(Question proposed)*

*(Question put and agreed to)*

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

## MOTIONS

### REPORT ON VETTING OF NOMINEES FOR APPOINTMENT AS VICE CHAIRPERSON AND MEMBERS OF PUBLIC SERVICE COMMISSION

THAT, taking into consideration the findings of the Departmental Committee on Administration and National Security in their Report on the Vetting of the Nominees for appointment as Vice-Chairperson and Members of the Public Service Commission, laid on the Table of the House on Tuesday, 4<sup>th</sup> December 2018, and pursuant to the provisions of Article 233(2) of the Constitution and Sections 3 and 5 of Public Appointments (Parliamentary Approval) Act, 2011 this House approves the appointment of the following to the Public Service Commission:

- |                                 |   |                   |
|---------------------------------|---|-------------------|
| (i) Ms. Charity Seleina Kisotu  | - | Vice-Chairperson; |
| (ii) Dr. Joyce K. Nyambuti      | - | Member;           |
| (iii) Dr. Mary C. Mwiandi       | - | Member;           |
| (iv) Dr. Reuben K. Chirchir     | - | Member;           |
| (v) Amb. Patrick Simiyu Wamoto  | - | Member;           |
| (vi) Amb. Salma A. Ahmed        | - | Member;           |
| (vii) Mr. Andrew N. Muriuki     | - | Member; and,      |
| (viii) Ms. Joan Odhiambo Otieno | - | Member.           |

*(Hon. Paul Koinange on 6.12.2018)*

*(Resumption of Debate interrupted on 6.12. 2018 - Morning Sitting)*

**Hon. Aden Duale** (Garissa Township, JP): On a point of order, Hon. Temporary Deputy Speaker. I rise under Standing Order 95 to move – since this matter was debated exhaustively in the morning – that, the Mover be now called to reply.

*(Loud consultations)*

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Order! Order, hon. Members! I put the Question that the Mover be called upon to reply.

*(Question, that the Mover be called upon to reply, put and agreed to)*

**Hon. Paul Koinange** (Kiambaa, JP): Hon. Temporary Deputy Speaker, I beg to reply.

First of all, I want to thank hon. Members for their contribution. I want them to know that my Committee has listened to all their submissions and their concerns have been taken into account by the Committee. I also want to thank the Members of my Committee for the many hours they have put in this work to make sure that we vetted all the nominees.

In conclusion, I thank hon. Members again for their contribution. We will make sure that what they have submitted is done by the Public Service Commission.

With those remarks, I reply.

*(Question put and agreed to)*

#### ADOPTION OF THE FOURTH REPORT OF SPECIAL FUNDS ACCOUNTS COMMITTEE

**Hon Erastus Nzioka** (Mbooni, Independent): Hon. Temporary Deputy Speaker, on behalf of the Chairperson of the Special Funds Accounts Committee I beg to move the following Motion:

THAT, this House adopts the Fourth Report of the Special Funds Accounts Committee on Audited Financial Statements for the Kenya Roads Board Fund for the Year ended June 2017, laid on the Table of the House on Tuesday, 4<sup>th</sup> December 2018.

Hon. Temporary Deputy Speaker, the Special Funds Accounts Committee (SFAC) is amongst the three watchdog Committees of the 12<sup>th</sup> Parliament responsible for examination of

audit reports of the Auditor-General on the following Special Funds to ensure probity, efficiency and effectiveness in application of public funds –

(i) The Equalisation Fund;

*(Loud consultations)*

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Order! Order, Hon. Members! Order, Hon. Ichung'wa! The Members who are consulting, please, can you do so in low tones? The Mover of the Motion on adoption of the Report shall be heard in silence.

**Hon Erastus Nzioka** (Mbooni, Independent): Thank you, Hon. Temporary Deputy Speaker. The Special Funds are: -

(ii) the Political Parties Fund;

(iii) the Judiciary Fund;

(iv) the National Government Constituencies Development Fund (NG-CDF); and,

(v) such other Funds established by law as the Speaker may direct.

Examination of audited accounts of the Kenya Roads Board Fund (KRBF) is amongst the mandates of the Committee as provided under the National Assembly Standing Order No.205A. This is in line with Article 95(4)(c) of the Constitution of Kenya, 2010, which stipulates oversight over national revenues and their expenditure as amongst the roles of the National Assembly. Further, Article 229(8) of the Constitution of Kenya, 2010 provides that within three months after receiving an audit report, Parliament shall consider the report and take appropriate action.

Hon. Temporary Deputy Speaker, the Report of the Auditor-General on the Financial Statements of KRBF for the year ended June, 2017 was tabled in the House on 20<sup>th</sup> April, 2018 and was referred the SFAC for examination to ascertain whether public funds were utilised in a lawful, authorised, efficient and effective manner for the benefit of Kenyans.

The KRBF is established under Section 31 of the Kenya Roads Board Act, 1999 to receive all proceeds from the Road Maintenance Levy Fund and other sources and allocate the monies to various road agencies and county governments, based on the criterion set by the Kenya Roads Board (KRB). The Fund is administered by the KRB, which is a statutory body established by the Kenya Roads Board Act No.7 of 1999, in accordance with Chapter 446 of the State Corporations Act. The Board manages the Road Maintenance Levy Fund, which has grown from Kshs7 billion in Financial Year 2002/2003 to Kshs63 billion in Financial Year 2017/2018 and is projected to grow to Kshs68 billion in Financial Year 2018/2019.

The current levy to the Fund is Kshs18 per litre of diesel or petrol, with an annual yield of Kshs63 billion, which includes a sum of Kshs10 billion from the Road Annuity Fund (RAF). The RAF was created under the Public Finance Management Regulations, 2015 and is administered by the Principal Secretary, State Department for Infrastructure.

The general development and tarmacking of roads is funded by the Exchequer through the Kenya National Highways Authority (KeNHA), Kenya Rural Roads Authority (KeRRA) and the Kenya Urban Roads Authority (KURA).

Pursuant to the section 6 of the Kenya Roads Board Act, the allocation of funds under the Act is as follows:

1. Kenya National Highways Authority (KeNHA) – 40 per cent.
2. Kenya Rural Roads Authority (KeRRA) – 21.8 per cent.
3. Kenya Urban Roads Authority (KURA) – 10.2 per cent.

4. Kenya Wildlife Service (KWS) – 1 per cent.
5. County Governments – 15 per cent.
6. Kenya Roads Board operations – 2 per cent.
7. Kenya Roads Board/Cabinet Secretary priority projects – 10 per cent.

The Special Funds Accounts Committee invited the Executive Director KRB being the administrator of the Fund who appeared before it on 21<sup>st</sup> June 2018. During examination of the Report of the Auditor-General on Financial Statements of KRB Fund for the Financial Year ended June 2017, the Committee observed that the audited financial statements of the Fund were unqualified as per the opinion of the Auditor-General. This indicated that the financial statements were presented fairly in all material aspects of the financial position of the Fund as at 30<sup>th</sup> June 2017. The KRB had complied with the international public sector accounting standards and KRB Act, 1999. The Committee further observed that KRB Fund had grown to Kshs63 billion in Financial Year 2017/18 and was projected to reach Kshs68 billion in the Financial Year 2018/19.

The Committee noted that the KRB had made proposals for the review of the allocation criteria as contained in the amendments to Kenya Roads Bill, 2017 as follows:

1. KeNHA currently at 40 per cent proposed allocation is 35 per cent.
2. KeRRA currently at 21.8 per cent proposed allocation is 28 per cent.
3. KURA currently at 10.2 per cent proposed allocation is 10 per cent.
4. KWS stands at 1 per cent.
5. County governments stand at 15 per cent and proposed allocation is 16 per cent.
6. KRB operations stands at 2 per cent
7. KRB/Cabinet Secretary priority projects has been 10 per cent and proposed allocation is 7 per cent, out of which 1 per cent shall be for materials development and 1 per cent for research and training.

The Committee made the following recommendations arising from the observations and findings during examination of the audited financial statements of the fund:

The Committee observed that the KRB Fund disburses money received as per the set criteria and that the financial statements for institutions that receive the monies are audited and reported separately from those of the Fund.

The Committee further observed that Reports of the Auditor-General for the following State agencies that receive funding from KRB Fund - KeNHA 40 per cent, KeRRA 21.8 per cent, KURA 10.2 per cent and KWS 1 per cent are examined by the Public Investments Committee (PIC) of the National Assembly while those allocated to county governments at 15 per cent are examined by the respective committee of the Senate.

The Committee recommends that the respective Committees of Parliament mandated to examine audited financial statements for institutions that receive monies from the KRB Fund ensure timely examination of the Reports of the Auditor-General, to ensure accountability of the funds. The Committee observed that there was lack of adequate information on category of roads under each Government agency, given the fact that various agencies including county governments are involved in implementation of road projects. This posed a challenge of overlap of functions with regard to identification of implementing agency of those projects, especially in constituencies.

The Committee recommends that the Board provides a status report of the current roads classification in the country, the agency involved in the maintenance of these roads and the allocations of funds made to these agencies in the Financial Year 2018/19 towards

implementation of the roads projects. This Report should be submitted to the National Assembly within three months of adoption of the Report.

The Committee observed that KRB did not have adequate information on utilisation of the 10 per cent allocation to priority projects by the Cabinet Secretary. The Committee recommends that the proposals made to the Cabinet Secretary on priority projects be availed to the KRB to enhance transparency and accountability.

Hon. Temporary Deputy Speaker, as I conclude allow me thank your office and that of the Clerk of the National Assembly for the support accorded during consideration of the Report. May I also extend Committee's appreciation to the Office of the Auditor-General and the National Treasury for the complementary role they continue to play in oversight over public funds. Finally, I acknowledge with gratitude the Office of the Executive Director of KRB for availing the required information which enabled the Committee to finalise this Report on time.

Hon. Temporary Deputy Speaker, I beg to move and request Hon. Marwa Maisori to send the Report. Thank you.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Thank you, Member for Mbooni for moving. I call upon Hon. Marwa for seconding.

**Hon. Marwa Kitayama** (Kuria East, JP): Thank you, Hon. Temporary Deputy Speaker. I rise to second this Report. It is important that at the earliest possible opportunity the country gets to know how these percentages which have been forwarded by KRB to the relevant Departments of KeRRA, KURA, KeNHA and the county governments are utilised because it is the elephant in the room.

I want to acknowledge that, indeed, KRB has done their work well. We went through their books and did not find many things amiss. We just want to appreciate that continuously there has been improvement in the allocation of funds raised, especially the amounts allocated to our roads. Indeed, it is evident that our roads in almost every part of this country have improved because they are maintained and new roads are being constructed.

Thank you, Hon. Temporary Deputy Speaker, I second.

*(Question proposed)*

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): I see no interest to speak on this and this calls for me to put the Question. Hon. Members, I see you are contented with the Report and, therefore, I call upon the Mover to reply. He can Move and then reply that the House has no issues.

**Hon. Erastus Nzioka** (Mbooni, Independent): Thank you, Hon. Temporary Deputy Speaker. My understanding is that Members have gone through the Report and, as we were informed by the Auditor-General, the Report was unqualified as per their opinion and there were no issues. I think the Members also realised there were no issues and that is why they are ready to adopt it.

Hon. Temporary Deputy Speaker, I beg to reply.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): This is a sign that Members have already looked at the Report and they are contented with it. All the Reports are available. Hon. Members, guided by our own Standing Orders, we will not be able to put the Question to the Motion on the Fourth Report on Audited Financial Statements for the Kenya Roads Board Fund for the year ended 30<sup>th</sup> June 2017. So, I do order that the Question be put at

the right time as it will be indicated in our Order Paper in the next sitting that will be given by the HBC.

Next Order!

## BILL

### *Second Reading*

#### THE INSURANCE (AMENDMENT) BILL

Let us have the Chairperson of the Departmental Committee on Finance and National Planning. The Chairperson is not in the House. I am sure he was guided by the fact that Members did not appreciate Order No. 12. I thank the Members. You pick the Report from Room 9, read and you can make use of it. So, I do order that Order No. 13 be...

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

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): The Vice Chair is there. Now when I call the Chair, I mean if you are the Vice Chair you are equal. *Badala ya Musa ni Hussein.*

**Hon. Isaac Ndirangu** (Roysambu, JP): Hon. Temporary Deputy Speaker, when I checked last, my Chair was around. However, as you have stated, I think he did not imagine that we would go through the Orders so fast.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Are you authorised to do that?

**Hon. Isaac Ndirangu** (Roysambu, JP): I have capacity, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Do you want to move or have you consulted the Chair?

**Hon. Isaac Ndirangu** (Roysambu, JP): I want to move.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Have you been authorised?

**Hon. Isaac Ndirangu** (Roysambu, JP): I have capacity, unless there are different instructions.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): You know you are the one who told the House that the last time you checked, the Chair was present. Being the Vice Chair, you know you have the capacity and authority. Go ahead and move.

**Hon. Isaac Ndirangu** (Roysambu, JP): Hon. Temporary Deputy Speaker, I beg to move that the Insurance (Amendment) Bill (National Assembly No. 21 of 2018) be read a Second Time.

Our Committee went through this Bill up to public participation. We interviewed and had a chance to speak to Kenyans from all walks of life and particularly the most important stakeholders, that is, the Association of Insurance Brokers of Kenya, Bima Intermediaries Association of Kenya, Britam Holdings PLC, APA Insurance Limited and many other underwriters, brokers, attorneys and legal experts. We took time to go through their petitions and also to hear what they had to say about this Bill. I wish to inform the House that this Bill was submitted to the Cabinet Secretary for the National Treasury and Planning in line with the proposals announced in the Budget from 2018/2019.



The principal object of the Bill is to amend the Insurance Act to address the adverse selection and high costs of loss assessment related to traditional indemnity-based agriculture insurance by providing for index-based insurance as an alternative with intention to reduce hazard, adverse selection, underwriting and claim assessment costs while speeding up claim settlements.

In addition, the Bill seeks to amend the Act by introducing legal provisions creating offences on insurance fraud. These include penalties intended to address the problem of insurance fraud that continue to be a major challenge to the stability of the...

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Member for Roysambu.

**Hon. Isaac Ndirangu** (Roysambu, JP): Yes, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): We have an intervention by the Member for Seme. Could we get his intervention? Member for Roysambu, resume your seat.

### QUORUM

**Hon. (Dr.) James Nyikal** (Seme, ODM): Hon. Temporary Deputy Speaker, I want to bring your attention to the fact that we do not quorum in the House.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): The Hon. Member was moving the Bill and Hon. Nyikal rose on a point of order. That is in the Standing Orders. So, I order the Quorum Bell to be rung.

Hon. Members, when the Quorum Bell is being rung, you cannot walk out of the Chamber unless you are the Whip. If you do it, I will declare you out of order. Serjeant-at-Arms should always ensure that Members follow procedures.

*(The Quorum Bell was rung)*

### ADJOURNMENT

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Order, Hon. Members. Pursuant to Standing Order No.35(2)(a), the House is not properly constituted for purposes of transacting business. I, therefore, order that we adjourn the House. Before adjournment, I have a reminder. Pursuant to the provisions of Standing Order No. 28(3) which relates to the Calendar of the National Assembly, the Speaker notified that upon the rise of the House today at the appointed time, which has been dictated by the circumstances, we will resume this House on Tuesday, 12<sup>th</sup> February 2019 at 2.30 p.m. The House stands adjourned. I thank you all.

The House rose at 4.40 p.m.