

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Thursday, 14<sup>th</sup> March 2019

The House met at 2.30 p.m.

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

### PRAYERS

### COMMUNICATION FROM THE CHAIR

#### DELEGATION FROM PARLIAMENT OF MALAWI

**Hon. Speaker:** Hon. Members, I wish to recognise a delegation from the Parliament of Malawi seated in the Speaker's Gallery. The delegation comprises of the following:

1. Hon. Werani Chilenga - Member and Leader of Delegation, and
2. Hon. Alex Maja - Member.

The delegation is accompanied by a team from the International Conservation Caucus Foundation (ICCF) who include:

1. Mr. David Baron - ICCF Chairperson.
2. Ms. Jill Barasa - ICCF Programme Officer, and
3. Ms. Agnes Mosiani- ICCF Country Director, Kenya.

The delegation is in the country attending the United Nations Environment Assembly (UNEA) being held in Nairobi. They are also meeting to exchange views with our Kenyan Parliamentary Conservation Caucus chaired by the Member for North Horr, Francis Chachu Ganya. The delegation is welcome to observe the proceedings of the National Assembly this afternoon.

I thank you, Hon. Members.

### PAPERS LAID

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

Performance Audit Report on Provision of Housing to Prison Officers in Kenya from the Office of the Auditor General;

Report on the Special Audit of the Receipts and Disbursements of the Eurobond proceeds in the Consolidated Fund from the National Treasury;

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

- (i) Embakasi Central.
- (ii) Starehe.
- (iii) Manyatta, and

(iv)North Imenti.

## NOTICE OF MOTION

### MEASURES TO BRIDGE TRADE DEFICIT IN KENYA

**Hon. John Waluke** (Sirisia, JP): Hon. Speaker, I beg to give notice of the following Motion:

THAT, aware that Kenya's trade deficit has been on the increase in the past few years with the Financial Year 2016/2017 deficit being estimated at Kshs1.1 trillion; noting that the deficit is mainly attributable to the exports worth Kshs594 billion against imports amounting to Kshs1.7 trillion, driven mainly by the more than doubling of food and machinery imports amid slow-moving exports; concerned that the widening deficit has continued to pile pressure on the shilling against other global currencies such as the dollar; alarmed that the high demand for the dollar to fund imports has been forcing the Central Bank of Kenya (CBK) to intervene, depleting foreign exchange reserves even as the country continues to incur foreign debts; cognisant that the rising imports amplified by flat exports portend a difficult operating environment for local enterprises and farmers thereby denying Kenyans employment opportunities when locals lose out to foreign manufacturers and farmers; notwithstanding the effects of protectionism policies which contribute towards affecting local industries and farms abilities to compete in international markets; this House resolves that the Government urgently puts in place measures to bridge the huge trade deficit including by providing incentives to potential investors and farmers, supporting local production through promotion and protection of local industries and implementing competitive export promotion strategies.

Thank you, Hon. Speaker.

**Hon. Speaker:** Well, that is your Motion. It is expected that you have to prepare slightly better than that when moving it because you need people to understand and follow you when moving a Motion. I approved it because it is a very good Motion. Hon. Waluke, while moving it, you need to bring material which will inform the House. It is a good Motion.

Next Order.

## ORDINARY QUESTIONS

**Hon. Speaker:** Hon. Members, the Question by the Member for Funyula, Hon. (Dr.) Wilberforce Ojiambo Oundo and the Question by the Member for Suna West, Hon. Peter Francis Masara, are deferred on the Members' requests. Therefore, those two Questions are taken out of the Order Paper and deferred to such time that they will be present.

*Question No. 113/2019*

### DISCIPLINARY ACTION FOR POLICE MISCONDUCT IN FUNYULA CONSTITUENCY

*(Question deferred)*

*Question No. 115/2019*

## SENSITISATION OF MINERS ON SAFETY PROCEDURES

*(Question deferred)*

So, we start with the Question by the Member for Bomachoge Borabu.

*(Hon. Junet Mohamed stood in his place)*

I said Suna West, not Suna East.

*Question No.114/2019*

## POLICY GUIDELINES FOR BUYING TEA FROM TEA FARMERS

**Hon. (Prof.) Zadoc Ogutu** (Bomachoge Borabu, Independent): Thank you, Hon. Speaker. I rise to ask Question No.114 of 2019 to the Cabinet Secretary for Agriculture, Livestock, Fisheries and Irrigation:

(i) Could the Cabinet Secretary provide existing policy guidelines regarding buying of tea leaves from farmers by tea factories, and in particular by the Mara Tea factory located at the border of Kisii and Narok counties?

(ii) What steps is the Ministry taking to ensure that the numerous challenges faced by tea farmers are addressed?

Thank you, Hon. Speaker.

**Hon. Speaker:** The Question is referred to the Departmental Committee on Agriculture and Livestock to schedule the time when the Cabinet Secretary will appear to respond.

Hon. Members, before we move to the next Question, allow me to recognise the presence of students and pupils from the following institutions:

In the Speaker's Gallery-

1. Al-Hikma Academy, Embakasi East Constituency, Nairobi County, and
2. Mwiki Primary School, Ruiru Constituency, Kiambu County.

In the Public Gallery-

1. Tenderfeet Primary School, Dagoretti South Constituency, Nairobi County.
2. Oloserien Primary School, Narok North Constituency, Narok County.
3. Kasala Secondary School, Kitui South Constituency, Kitui County, and
4. Thuita Primary School, Githunguri Constituency, Kiambu County.

They are all welcome to observe proceedings in the National Assembly this afternoon.

Hon. Members, the next Question is by the Member for Gilgil.

*Question No.116/2019*

## PROGRESS REPORT ON INVESTIGATION INTO ASSAULT CASE OF HON. PAULINE MAINA

**Hon. (Ms.) Martha Wangari** (Gilgil, JP): Thank you, Hon. Speaker. I rise to ask Question No.116 of 2019 to the Cabinet Secretary for Interior and Coordination of National Government:

(i) Is the Cabinet Secretary aware that one Hon. Pauline Maina, of Identification Card Number 24640362, a Member of Nyeri County Assembly, was physically assaulted and injured in Arusha, Tanzania, on 9<sup>th</sup> May 2018 by a fellow male Member of the County Assembly of Nyeri representing Kirimukuyu Ward?

(ii) Could the Cabinet Secretary give a progress report by the investigating agencies regarding the incident and state what action the police have taken to apprehend and prosecute the suspect in the assault incident?

Thank you, Hon. Speaker.

**Hon. Speaker:** It is referred to the Departmental Committee on Administration and National Security to schedule the appearance of the Cabinet Secretary. The next Question is by the Member for Kamukunji, Hon. Yusuf Hassan.

*Question No.117/2019*

STATUS OF INVESTIGATIONS INTO FIRE INCIDENTS AT GIKOMBA MARKET

**Hon. Yusuf Hassan** (Kamukunji, JP): Thank you, Hon. Speaker. I stand to ask Question No.117 of 2019 directed to the Cabinet Secretary for Interior and Coordination of National Government. Gikomba Market in Pumwani Ward in my constituency of Kamukunji has been frequently hit by outbreaks of fire:

(i) What was the outcome of an investigation on the fire in Gikomba Market that destroyed goods and properties worth millions of shillings in Kamukunji Constituency on 28<sup>th</sup> June 2018, and when is that investigation report going to be made public?

(ii) How many people have been arrested, questioned or brought to book in relation to the outbreak of the fire and the subsequent fires that have destroyed large parts of the market?

(iii) What measures is the Ministry, and in particular the National Police Service, putting in place to provide safety and protection to traders, customers and properties in Gikomba Market, and in particular the issue of fire safety?

Thank you, Hon. Speaker.

**Hon. Speaker:** Similarly, it is referred to the Departmental Committee on Administration and National Security to prioritise the appearance of the Cabinet Secretary to respond. The final Question is by Nominated Member, Hon. David ole Sankok.

*Question No.118/2019*

INSPECTION OF VEHICLES AWAY FROM THE ROAD TO STOP INCONVENIENCING MOTORISTS ALONG THE LIMURU-MAI MAHIU ROAD

**Hon. David ole Sankok** (Nominated, JP): Hon. Speaker, my Question No.118 of 2019 goes to the Cabinet Secretary for Interior and Coordination of National Government:

(i) Can the Cabinet Secretary confirm that there are at least five police roadblocks in a stretch of 9 kilometres along the Limuru-Mai Mahiu Road inconveniencing motorists as well as leading to road accidents and traffic snarl-ups?

(ii) Could the Ministry consider having enough parking lots along the road to ensure that vehicles stopped for inspection by the police are parked and inspected away from the road?

Thank you very much, Hon. Speaker.

**Hon. Speaker:** Similarly, it is referred to the Departmental Committee on Administration and National Security to prioritise the appearance of the Cabinet Secretary.

Hon. Members, there is supposed to be a Statement sought by Hon. (Capt.) (Rtd.) Didmus Wekesa Barasa Mutua.

## STATEMENTS

### PROLIFERATION OF FAKE CURRENCY SCAM

**Hon. Didmus Barasa** (Kimilili, JP): Hon. Speaker, pursuant to Standing Order 44(2)(c), I wish to request for a Statement from the Chairperson of the Departmental Committee on Administration and National Security regarding the proliferation of fake currency scam, commonly referred to as “wash wash”, in Kenya.

Currently, there have been increased cases of production of fake currencies in the country where a gang is operating a fake currency racket popularly known as “wash wash” and the same group appears to be highly connected and above the law. The gang is swindling millions of shillings from unsuspecting Kenyans under the pretext that they can double their currency.

Hon. Speaker, media reports indicate that security agencies have recovered fake Kenyan and foreign currencies worth billions of shillings in a residential house linked to one of the suspects that was recently charged in court for impersonating His Excellency the President.

Consequently, innocent hardworking Kenyans continue to fall prey to the scheme and their plea for justice seems not to be heard. I am concerned that the Directorate of Criminal Investigations is yet to investigate this thriving business, which is destroying the livelihoods of Kenyans and impacting negatively on the Kenya’s economy.

Hon. Speaker, it is against this background that I wish to seek a Statement from the Chairman, Departmental Committee on Administration and National Security, on the following:

- (i) Measures that the Ministry of Interior and Coordination of National Government has taken to investigate these illegal activities.
- (ii) Number of suspects arrested and prosecuted with regard to the production of fake currency.
- (iii) Measures taken to curb this illegal business.

**Hon. Speaker:** Very well, you said there is something called “wash wash.” or is it “wash wash”?

**Hon. Didmus Barasa** (Kimilili, JP): Yes, Hon. Speaker. Fake currency is called “wash wash” coined from the word “washing” such that you wash and then it doubles.

**Hon. Speaker:** Well, he has put the statement in quotes. Let us have the Hon. Leader of the Majority Party.

### BUSINESS FOR THE WEEK COMMENCING 19<sup>TH</sup> TO 21<sup>ST</sup> MARCH 2019

**Hon. Aden Duale** (Garissa Township, JP): Hon. Speaker, pursuant to the provisions of Standing Order No.44(2)(a), I rise to give a Statement on the business appearing before the

House for the week beginning Tuesday, 19<sup>th</sup> March 2019 on behalf of the House Business Committee.

Hon. Speaker, the Committee met on Tuesday this week at the rise of the House to prioritise the business for consideration. Next week, the House is scheduled to consider the Report of the Committee on Appointments on the Vetting of the Nominee for Appointment as the Cabinet Secretary for the Ministry of Education.

Thereafter, we will consider in Committee of the whole House the County Governments (Amendment)(No.2) Bill (Senate Bill No.7 of 2017) and the Public Finance Management (Amendment) Bill (National Assembly Bill No.51 of 2017).

Hon. Speaker, we will also consider various committee reports throughout the week including:

(i) The Report of the Departmental Committee on Communication, Information and Innovation on Inquiry into Legislative and Regulatory Gaps Affecting Competition in the Telecommunications Sub-sector.

(ii) The Report of the Departmental Committee on Defence and Foreign Relations on a Meeting to Promote and Popularise the Ratification of the Protocol on the Free Movement of Persons and its Implementation Roadmap, among many others.

(iii) The Report of the Departmental Committee on Transport, Public Works and Housing on the Ratification of the Revised Constitution of the African Civil Aviation Commission, if not concluded this week.

Hon. Speaker, Committee Chairpersons considering Senate Amendments to various Bills including the Departmental Committee on Lands, Departmental Committee on Agriculture and Livestock and the Departmental Committee on Transport, Public Works and Housing are encouraged to table their reports on these Bills to enable the House debate from an informed position. Similarly, those Committees with pending treaties, agreements and protocols should expedite their considerations and table their reports.

Hon. Speaker, in accordance with the provisions of Standing Order 42(A)(5) and (6), I wish to convey that the following Cabinet Secretaries are scheduled to appear before the departmental committees as follows:

1. The Cabinet Secretary for the National Treasury and Planning will appear before the Departmental Committee on Finance and National Planning on Tuesday, 19<sup>th</sup> March 2019 to answer Question No.039/2019 from Hon. Halima Mucheke; Question No.047/2019 from Hon. Esther Passaris; Question No.063/2019 from Hon. Owen Baya; Question No.075/2019 from Hon. Gabriel Kago, and Question No.079/2019 from Hon. Michael Muchira.

2. The Cabinet Secretary for Health will appear before the Committee on Health on Thursday, 21<sup>st</sup> March 2019 to answer Questions No.050/2019 and No.062/2019 from Hon. Joshua Chepyegon Kandie and Hon. Anthony Tom Oluoch, respectively.

3. The Cabinet Secretary for Interior and Coordination of National Government will appear before the Committee on Administration and National Security on Tuesday, 26<sup>th</sup> March 2019 to answer Question No. 049/2019 from Hon. Capt. Ruweida Obo; Question No.056/2019 from Hon. Yusuf Hassan; Question No.069/2019 from Hon. Joshua Chepyegon Kandie; Question No.070/2019 from Hon. Joseph Tonui and Question No.092/2019 from Hon. Charles Njagua Kanyi.

Finally, Hon. Speaker, the House Business Committee will reconvene on Tuesday, 19<sup>th</sup> March 2019 at the rise of the House to consider the business for the coming week.

I now wish to lay the Statement on the Table of the House. I thank you.

*(Hon. Aden Duale laid the Document on the Table)*

**Hon. Robert Mbui** (Kathiani, WDM-K): On a point of order, Hon. Speaker.

**Hon. Speaker:** Hon. Member for Kathiani, what is your point of order?

**Hon. Robert Mbui** (Kathiani, WDM-K): Hon. Speaker, we have the same point of order with the Members. You gave a ruling yesterday on the issue of dressing in this House and how Members are supposed to dress. One of the issues that we agreed on is the religious bit and how we, as gentlemen, should dress.

On the head gear of religious leaders, we can see that we have Muslims who can wear head gear. My question is: Can Hon. Didmus Barasa, who is not a Nigerian, wear the attire he has won and the head gear in the House?

**Hon. Speaker:** Hon. Didmus Barasa, you just read a request for a Statement here. I did not see you in that head gear. You can use that when you appear on television shows, but here you are bringing another dimension. These are some of the issues that I was referring to in yesterday's Communication. So, you must remove that head gear when you are in the Chamber. You can wear it out there and in public *barazas*.

There is no debate. Hon. Barasa, you will have to either withdraw from the Chamber or remove it. We do not want people now to begin telling us this is from this sect. Next thing we will be told is that this one has become a village elder and is supposed to be dressed in a particular way. This is going to be a bit difficult.

So, Hon. Members, I am trying to allow Members to come in. Hon. Mlolwa, Member for Voi, please, make your way in because I have a long Communication.

Hon. Angwenyi, why are you scaring the gracious lady?

## COMMUNICATION FROM THE CHAIR

### ADMISSIBILITY OF RECOMMENDATIONS OF PAC REPORT ON THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION

**Hon. Speaker:** Hon. Members, this Communication relates to the question of admissibility of the recommendations of the Report of the Public Accounts Committee on its examination of the Report of the Auditor-General on the Financial Statements for the Independent Electoral and Boundaries Commission (IEBC) for the year ended 30<sup>th</sup> June 2017.

Hon. Members, you will recall that on Thursday 7<sup>th</sup> March 2019 and before debate on the Motion for the adoption of the Report of the Public Accounts Committee (PAC) on its examination of the Report of the Auditor-General on the Financial Statements of the Independent Electoral and Boundaries Commission (IEBC) for the year ended 30<sup>th</sup> June 2017, the Leader of the Majority Party, Hon. Aden Duale, rose on a point of order seeking direction from the Speaker on the admissibility of one of the recommendations in the Report. His point of order relates to the General Recommendation No.3 of the Report, and for clarity, I quote-

“To that end, the commissioners, Chief Executive Officer and the directors who were involved in the unlawful procurement should vacate office immediately upon adoption of this Report to allow for much needed reforms to be effected to restore public confidence in the Independent Electoral and Boundaries Commission”

Hon. Members, according to the Leader of the Majority Party, since the recommendation seeks the removal from office of the IEBC commissioners and staff, it expressly flouts the provisions of Article 251 of the Constitution of Kenya on the procedure for the removal of a member of a Constitutional commission and Article 236 of the Constitution, which guarantees public officers protection in the exercise of their duties. It was, therefore, his view that the House should not proceed to make a determination on the impugned recommendation.

Hon. Members, at the time the matter was raised by the Member, you will also recall that no less than 19 interventions from other Members of the House both in support or opposition to the points raised by the Leader of the Majority Party were recorded. In the ensuing debate, the Leader of the Minority Party, Hon. John Mbadi, the Minority Party Whip, Hon. Junet Mohamed, the Chairperson of the PAC, Hon. Opiyo Wandayi, the Chairperson of the Justice and Legal Affairs Committee, Hon. William Cheptumo, Hon. Otiende Amollo, Hon. Adan Keynan, Hon. (Dr.) Chrisantus Wamalwa, Hon. Ngunjiri Wambugu, Hon. Jeremiah Kioni, Hon. William Kamket, Hon. Jared Okello, Hon. Dido Rasso, Hon. Bashir Sheikh, Hon. (Dr.) James Nyikal, Hon. Kangogo Bowen, Hon. Kimani Kuria, Hon. Peter Kaluma and Hon. Jimmy Nuru Ang'wenyi canvassed various points of view.

Hon. Members, at the close of the debate, I undertook to give a considered ruling on the matter raised and to guide the House on the important question of the consideration of the Report containing the said recommendation. From the point raised by the Leader of the Majority Party and the ensuing debate, I have isolated the following issues as requiring determination:

1. The extent of the mandate of PAC under Standing Order 205 of the National Assembly Standing Orders as read together with Standing Order 197 on the limitation of the mandate of committees.
2. Whether a question on the constitutionality of a recommendation of the House should be left for determination by the House through a vote or potential amendment.
3. The extent of the mandate of the House to review the conduct in office of a State officer and initiate their removal from office under Article 95 of the Constitution *vis-à-vis* the removal procedure under Article 251 of the Constitution.
4. The extent to which the House or its committees may delve into disciplinary matters of staff of a constitutional commission or an independent office.
5. Whether the findings and recommendations contained in the Report by PAC concerning the Auditor-General's Examination of the Financial Statements for the Independent Electoral and Boundaries Commission are admissible.

Hon. Members, on the first issue, the Public Audit Act of 2015 and the Standing Orders provide adequate guidance on the scope of the mandate of PAC and the limits of its exercise of such mandate. Standing Order 205(2) states, and I quote:

“(2) The Public Accounts Committee shall be responsible for the examination of the accounts showing the appropriations of the sum voted by the House to meet the public expenditure and of such other accounts laid before the House as the Committee may think fit.”

A clear reading of the Standing Order and the Public Audit Act reveals that the primary role of PAC is that of interrogating the accounts of expenditure of public funds appropriated by the House. The examination of public accounts by the Committee is informed by reports tabled by the Office of the Auditor-General on the use of public funds. Necessarily, the work of the Committee, therefore, includes holding to account any public officer, and in particular, to ensure prudent use of funds appropriated by Parliament, and to clarify any queries raised by the Office of the Auditor-General pertaining to such use or otherwise. Where the Committee, after



affording all concerned parties an opportunity to be heard, is of the view that the queries raised by the Auditor General have not been explained to its satisfaction, it recommends to the House appropriate remedial measures in accordance with the law.

Hon. Members, Standing Order 197 limits the deliberations of a committee of the House to only the matters falling under its mandate, unless the mandate is extended by a resolution of the House. The Standing Order provides, and I quote:

“(1) The deliberations of a select committee shall be confined to the mandate of the committee and any extension or limitation of that mandate as may be directed by the Assembly and, in the case of a select committee on a Bill, to the Bill committed to it and relevant amendments.

(2) In the exercise of its functions, a select committee may not consider any matter that is not contemplated within the mandate of the National Assembly under the Constitution.”

The import of Standing Order 197 is not to curtail the deliberation of any matters of concern noted by a committee. The essence of this rule is to prevent a committee from misdirecting its efforts to the detriment of its core work. In relation to the work of PAC, consideration of the day-to-day administration of public bodies would clearly be a misdirection of effort. The key test in determining whether the findings and recommendations of the Committee in the instant case fall within the mandate of the Committee would be the extent to which they address or seek to address any unresolved audit queries raised by the Office of the Attorney-General in accordance with the law.

In this regard, and addressing myself to the point raised by the Leader of the Majority Party, a finding or recommendation by PAC in the Report tabled before the House which expressly falls outside the mandate of the Committee would be inadmissible. This dispenses with the first issue.

Hon. Members, in prosecuting his point of order, the Leader of the Majority Party, while urging the Chair to determine the admissibility of the recommendations of the Motion on the Report before the House could proceed to debate it, did refer to the provisions of Standing Order No.47(3). The Standing Order provides, and I quote:

“(3) If the Speaker is of the opinion that any proposed Motion—

- (a) is one which infringes, or the debate on which is likely to infringe, any of these Standing Orders;
- (b) is contrary to the Constitution or an Act of Parliament, without expressly proposing appropriate amendment to the Constitution or the Act of Parliament;
- (c) is too long;
- (d) is framed in terms which are inconsistent with the dignity of the House;
- (e) contains or implies allegations which the Speaker is not satisfied that the Mover can substantiate; or
- (f) calls for the commitment of public funds for which no provision is made in the Annual Estimates as adopted by the National Assembly, the Speaker may direct either that, the Motion is inadmissible, or that notice of it cannot be given without such alteration as the Speaker may approve or that the motion be referred to the relevant committee of the Assembly, pursuant to Article 114(2) of the Constitution.”

Hon. Members, ideally, therefore, before any business comes to the House, it is approved by the Speaker on the basis of its constitutionality, among the other criteria for admissibility.

Standing Order No. 47(3) is an extension of the requirement placed on the Speaker under Articles 3 and 10 of the Constitution to respect, uphold and defend the Constitution.

Hon. Members, the question that arises now is whether the Motion by the Chairperson of PAC, Hon. Opiyo Wandayi, having been approved and the Report of the Committee having been tabled, the Chair can consider the issue of the constitutionality of the findings and recommendations of the Report. You will recall that I have previously guided the House that notwithstanding the approval of any business by the Chair under the Standing Orders, the issue of constitutionality can be raised by a Member at any stage of consideration of any business by the House. The only condition such a request would have to meet is that it must be specific in order to capacitate the Chair to revisit the issue with precision and to cure a procedural or constitutional anomaly.

Hon. Members, let me resume my Chair to allow the Members to make their way in. Please, do it quickly.

*(Several Hon. Members walked into the Chamber)*

The Members making their way, please, make your way quickly. If you are coming in, please, make your way into the Chamber quickly. Hon. Members, I continue. In this respect, the Chair has had the occasion to re-look at the arguments advanced by the Leader of the Majority Party and noted that he, indeed, raises a constitutional issue which should, ideally, be dispensed with before the House proceeds with the consideration of a Report with the risk of making a resolution in vain.

Hon. Members, you will also recall that following the request, various Members of the House urged that the Report be allowed to proceed to debate and that any anomaly or otherwise be left for the House to decide. I am fully cognisant of the fact that the decisions of this House are expressed with the endorsement of the votes of a majority of the Members. Whereas I hold no vote, the Constitution and the Standing Orders of this House oblige me to address any questions of unconstitutionality at any time and not fold my arms and preside over deliberations.

I agree that the possibility exists of the required majority of Members voting against the recommendation in issue or a Member proposing an amendment to expunge the recommendation with the support of the required majority. But what if neither of the two events come to pass? I think the House would stand indicted not just because of the untenable recommendation being adopted, but also for the failure on my part to act to arrest a patently incongruous outcome. It is therefore, my considered opinion that a question on the constitutionality or otherwise of business ought not be left to a vote by the House or potential amendment, but should be resolved by the Speaker once raised.

Hon. Members, the point raised by the Leader of the Majority Party and the interventions by other Members thereafter crystallised the third issue of the mandate of the House with regard to the removal from office of State and public officers under the Constitution pursuant to the provisions of Articles 95 and 251 of the Constitution. Article 95 of the Constitution outlines the role of the National Assembly with regard to the issue at hand as follows, and I quote:

“(2) The National Assembly deliberates on and resolves issues of concern to the people.

(5) The National Assembly—

(a) reviews the conduct in office of the President, the Deputy President and other State officers and initiates the process of removing them from office; and

(b) exercises oversight of State organs.”

On its part, Article 251 of the Constitution provides a specific procedure for the removal from office of a member of a constitutional commission or the holder of an independent office. The Article provides in Clauses (2) and (3), and I quote:

“(2) A person desiring the removal of a member of a commission or of a holder of an independent office on any ground specified in clause (1) may present a petition to the National Assembly setting out the alleged facts constituting that ground.

(3) The National Assembly shall consider the petition and, if it is satisfied that it discloses a ground under clause (1), shall send the petition to the President.”

Hon. Members, the bone of contention, as discerned from the submissions made by Members with regard to the point raised by the Leader of the Majority Party is whether the removal of a member of a constitutional commission, in this case the IEBC, can be legally initiated through a resolution of the House. On this matter, I am constrained to agree with the view that the only procedure that the Constitution envisages for the initiation of the removal of a member of a constitutional commission or holder of an independent office is through a petition to the House in accordance with Article 251 of the Constitution. As ably noted in the submissions by Hon. Kaluma, the provisions of Article 95(5) are couched in general terms whereas those of Article 251 are specific to a particular class of State officers. Indeed, as Members are aware, the House only initiates the removal from office of the President, the Deputy President and a Cabinet Secretary through a Motion filed by any Member under the specific provisions of Articles 144 and 145 through to Article 150 and Article 152 of the Constitution, respectively.

Hon. Members, conversely, specific provisions of the Constitution provide removal procedures peculiar to other State officers. Members will note that the Constitution provides specific methods of removal from office of other State officers as follows:

- a) Members of Parliament may only vacate office in specific circumstances including recall under Article 103 and upon determination by court by declaring the seat vacant under Article 105(1)(b) of the Constitution.
- b) Judges and magistrates may only be removed from office via a petition lodged with the Judicial Service Commission under Articles 168 and 172(1)(c) of the Constitution.
- c) The Secretary to the Cabinet is appointed with the approval of Parliament, but may only be dismissed by the President under Article 154 of the Constitution.
- d) The Director of Public Prosecutions is appointed with the approval of Parliament, but his or her removal may only be initiated via a petition lodged with the Public Service Commission under Article 158 of the Constitution.
- e) A county governor may only be removed from office in line with a procedure prescribed by legislation enacted pursuant to Article 181 of the Constitution.

Hon. Members, if the House were to be persuaded by the argument that it does rely on Article 95(5) generally to initiate the removal of IEBC commissioners, the House must also convince itself that the same argument would hold in the event any committee of this House were to table a report recommending the removal of the President, the Deputy President, Cabinet Minister, Judge, Member of Parliament, governor or the Director of Public Prosecutions in similar fashion.

This would clearly be illogical and procedurally untenable. In addition, Section 10 of the Independent Electoral and Boundaries Commission Act, 2011 provides the procedure for the removal of the Chief Executive Officer, which can only be done by the Commission on, among other grounds, gross misconduct by the officer. Section 31 of the same law gives power to the

Commission to prescribe regulations for termination of appointment of officers of the Commission. The employment of such officers may also be governed by the relevant employment laws including the Employment Act on dismissal of employees. In this regard, the Committee's recommendation relating to the removal of staff offends the provisions of Sections 10 and 35 of the IEBC Act and the relevant regulations in respect of other senior staff of the IEBC.

The argument that Article 95(5) provides an avenue for the initiation of the removal of a member of a constitutional commission also patently fails with regard to the procedural safeguards afforded to State and public officers in the exercise of their public duties. As was noted in the ensuing debate on the point raised by the Leader of the Majority Party, the procedure set out under Article 251 of the Constitution grants the House a specific role to play in the process of the removal of a member of a constitutional commission or holder of an independent office. Under Article 251 (3), the House must determine whether a petition discloses any ground for removal before transmitting the petition to the President recommending the establishment of a tribunal to investigate the facts. The role of the House in the processing of a petition for removal, therefore, does not result in a final determination of the matter.

All the specific methods of removal from office outlined in the Constitution grant a fair hearing to the affected State officers who are given prior notice of the case for their removal, a fair opportunity to answer it, and the opportunity to present their own case. This mirrors the rights to fair administrative action and fair hearing as set out in Articles 47 and 50 of the Constitution and the protection of public officers as outlined in Article 236 of the Constitution. It is, therefore, my considered opinion that the mandate of the House to review the conduct in office of a member of a constitutional commission or a holder of an independent office may only be done in accordance with Article 251 of the Constitution when it considers a petition filed for the removal of the affected State officer, specifically stating the grounds upon which it is proposed the holder of the office be removed.

I commend the work of the Committee in their interrogation and presentation of grave allegations attributable to the commissioners and staff of the IEBC. However, the Committee has proceeded to utilise that information to propose the removal from office of the Commissioners and staff in an entirely untenable manner.

I shall now address myself to the admissibility of the findings and recommendations in the Report tabled by the Public Accounts Committee. As you will recall, the point raised by the Leader of the Majority Party, though directed at one of the recommendations of the Report, in essence sought that I declare the findings and recommendations on pages 7 and 130 of the Report as inadmissible in their entirety. As I have noted in this Communication, a finding or recommendation would only be inadmissible if it addresses itself to a matter outside the mandate of the Committee or if it offends the provisions of Standing Order No.47(3).

I have perused the Report of the Committee at the cited pages. From the perusal, I note that the second paragraph of General Recommendation No.3 accords with the concern raised by the Leader of the Majority Party that the Report recommends the removal of the members and staff of a constitutional commission in manner not contemplated by the Constitution. Apart from a portion of this recommendation and the section of the Report titled "Basis for Committee Recommendations for Vacation of Office" which, on the face of it, is intended to explain the thinking behind the recommendation, a cursory glance at the other recommendations of the Report does not reveal any relation to the concern raised by the Leader of the Majority Party and several other Members. I note that the General Recommendations and Section 4.0 of the Report

on the “Basis for Committee Recommendations for Vacation of Office” are replicated both at the beginning and at the end of the Report.

Hon. Members, in summary, it is, therefore, my considered finding:

- 1) THAT, a question on the constitutionality or otherwise of business ought not to be left to a vote by the House or addressed by an amendment which is also subject to a vote, but should be addressed by the Speaker once raised at any point.
- 2) THAT, the mandate of the House to review the conduct in office of a member of a constitutional commission or a holder of an independent office may only be exercised in accordance with Article 251 of the Constitution when it considers a petition duly filed for the removal of the affected State officer.
- 3) THAT, a finding or recommendation by the Public Accounts Committee in the Report tabled before the House which expressly falls outside the mandate of the Committee, or one that offends the provisions of Articles 47 or 251 and Section 10 of the IEBC Act, 2011, would be inadmissible.
- 4) THAT, the words “To that end, the Commissioners, Chief Executive Officer and the Directors who were involved in the unlawful procurement should vacate office immediately upon adoption of this Report to allow for much needed reforms to be effected to restore public confidence in the Independent Electoral and Boundaries Commission” in General Recommendation No.3 appearing on pages 4 and 127 of the Report, in so far as it relates to the IEBC commissioners, are inadmissible. This is because the text is recommending a mode of removal from office of constitutional office holders in a manner that is not contemplated by the Constitution;
- 5) THAT, Sections 4.0 and 34.0 of the Report relating to “Basis for Committee Recommendations for Vacation of Office” appearing on pages 6, 7, 129 and 130 of the Report, in so far as it relates to the IEBC commissioners, are also inadmissible.
- 6) THAT, the second sub-paragraph of paragraph 3 of the General Recommendation No.3, appearing on Page 4, which states: “To that end, the....., Chief Executive Officer and the Directors (emphasis on staff) who were involved in the unlawful procurement should vacate office immediately upon adoption of this Report to allow for much needed reforms to be effected to restore public confidence in the IEBC” is also inadmissible. This is because, while this section is supported by admissible observations of the Committee, the recommendation proposes the removal from office of staff of a constitutional commission in a manner that is neither contemplated by the Constitution nor supported by the relevant statute providing for the manner of vacation of office of such staff and governing their discipline.
- 7) THAT, the observations and findings of the Committee with respect to the staff of the Commission having been found to be admissible, I will now expect the Chairperson of the Public Accounts Committee to take into account this Communication and move the Motion for the adoption of the Report in an appropriately amended form pursuant to Standing Order No.48 dealing with Amendment of Notice of Motion.
- 8) THAT, the cited text of General Recommendation No.3 and Sections 4.0 and 34.0 of the Report, having been found to be offensive to the Constitution and, therefore, inadmissible for debate by the House, are forthwith expunged from the Report. The House shall make no reference to either text in its consideration of the Report.

As I conclude, may I clarify that expunging the offensive parts of the Report is not to mean that the entire Report is discredited. As a matter of fact, the rest of the Report is admissible

and will proceed to consideration by the House upon re-scheduling by the House Business Committee. The Committee has duly executed its mandate and carried out the task of taking evidence and compiling their Report. That is an accomplishment worth of credit by this House.

The House is there accordingly guided. Thank you.

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

**Hon. Speaker:** Hon. Mbadi, what is your point of order?

**Hon. John Mbadi** (Suba South, ODM): Hon. Speaker, obviously, I cannot challenge your ruling. Having listened to your ruling, and considering what was in the Report, if it was a human being, I would have said that the heart, kidney and liver have been removed. The Report is basically a skeleton. I was just wondering if we can ask the Chair to withdraw it and go and reconstruct it; do some surgery. I do not think it is going to be of value for the House to debate it because the whole Report is now mutilated. I request the Chair of the Committee to withdraw the Report. We are going to be confused. We do not know which sections we will be referring to and which ones we should not refer to. Your ruling was also very long. Some of us have the ability to understand what you asked to be expunged, but many of us would not even have followed what should be expunged and they will be ruled out of order every minute they start talking because they will be referring to sections that have been expunged. This Report is precedent-setting, but has remained a shell without substance. In fact, there is no meat in it.

**Hon. Speaker:** Hon. Members, it is good I allow more comments, particularly from Hon. Wandayi. Let me explain that the net effect is that the recommendation purporting to suggest that the Commissioners will vacate office upon adoption of this Report is expunged. The recommendation that staff could also vacate office is also expunged. Some of the text in so far as it suggests that they will be leaving office is also removed, but to the extent that the Committee has noted and made observations and findings touching on those members of staff is admissible. The findings and observations are admissible. Therefore, they can be used in implementation of the Report. That is the distinction. The method of removing officers serving in other offices is provided for by the respective statutes that established those offices. In this case, the IEBC Act of 2011 provides a mechanism of recruitment, discipline and dismissal of staff members. So, to the extent that this Committee has made quite some critical and serious findings and observations, whoever the implementing authority is can take the Report and act on it. I do not think the soul, as Hon. John Mbadi said, is gone. It is not. In any event, this House also must act constitutionally. The net effect of what I am saying in regard to the commissioners is that nobody here is saying that the Commissioners have not committed any crimes, but the Constitution provides for the mechanism for their removal from office. The proper mechanism would be to bring a petition. Were we to adopt the Report in this form in regard to the Commissioners - it says that they should vacate office - who would enforce that recommendation? There is nobody to enforce it. Even if you took it to whoever, they will ask if a tribunal has been set up in the first place, pursuant to a petition having been considered by the House. If we adopt it this way and then purport to bring a petition to the same House that has already condemned the Commissioners, is the person not going to suffer double jeopardy? The same minds that would have expressed themselves on this matter being expected to consider a petition, there is a danger of the person, whoever it shall be, going to court. You can almost see, for sure, the court asking why he is going to the same place.

We are avoiding a situation whereby the House is also meant to act in vain. This ruling does not absolve anybody of any wrongdoing that they may have been found to have done. Therefore, there is still a lot of substance in the Report. I recommend Members to read it, not just

the recommendations. We have a problem of taking the easier option or route of going to the back page and reading the recommendations and then forming an opinion of opposing or supporting. Please, read the Report. It is very detailed and fair.

Hon. Junet.

**Hon. Junet Nuh** (Suna East, ODM): Hon. Speaker, first, I want to thank you for guiding the House in accordance with the Constitution. As a Member of the Committee, I have a suggestion. Because the Report before us is like a body which has lost its kidneys, eyes and ears, I request that the Committee withdraws it and brings back another Report that conforms with your ruling and guidance. We can even re-look at the recommendations, so that it is brought back with those that are in conformity with the Constitution. If the Committee cannot recommend vacation of office of Commissioners and staff members, it may recommend investigations to be done by the relevant agencies, like the Ethics and Anti-Corruption Commission (EACC) and the Directorate of Criminal Investigation (DCI) and come up with some kind of solution.

If we debate the Report after your ruling on its constitutionality, we will be debating a dead body. There is nothing to debate in the Report. We shall not attend a burial, *matanga*, to discuss a dead body. This Report is dead. You have only not announced its burial day. What I was expecting from your Communication was the burial date. That is why I want the Committee to re-look at it. The matter is dead.

**Hon. Speaker:** Hon. Members, let us also appreciate that the Report also contains other recommendations, not just this one. Let us not focus on one recommendation. We are asking that the due process be followed.

Hon. Kangogo Bowen.

**Hon. Kangogo Bowen** (Marakwet East, JP): Thank you, Hon. Speaker for your guidance and direction on this Motion. We are a House of records. The ruling you have given will go a long way to chairs and Members of the various committees who have become mischievous in their report writing. Yesterday, you ruled against a Report that was mischievously brought to this House concerning a doctor. Yes, there is a problem. There were two reports over which the Speaker ruled yesterday.

**Hon. Speaker:** Just a minute. Are we dealing with that? Hon. Kangogo, can we dispose of this one? We cannot be doing this and the other.

**Hon. Kangogo Bowen** (Marakwet East, JP): Thank you, Hon. Speaker.

I am saying that it is important that this Committee, led by the Chair, who is my friend, withdraws this Report from the House. They can go back as a Committee so that they write their report again in conformity with your ruling.

**Hon. Speaker:** Members, why are you avoiding to deal with the real issue? Hon. Junet just alluded to it; the appropriate recommendation. The Report is still a property of the House. You can make those amendments to make those recommendations. Why withdraw it? The Committee has spent a lot of time. It is not just about this. We are just saying that we should conform to the Constitution. That can be done through an amendment because debate on the Report has not commenced.

I need to allow the Chair of the Committee to speak to it.

**Hon. Opiyo Wandayi** (Ugunja, ODM): Hon. Speaker, I wish to thank you for the very wise ruling you have given. As I have said time and again, the Public Accounts Committee had done its part in presenting this Report to the House. As you rightfully said, this Report is now a property of the House, to be dealt with in the manner the House deems fit. Your ruling is part of that work of the House.

Unlike most Members in this House, I happen to understand that Report like the back of my hand. As you have rightfully said, that Report has a lot more other recommendations and findings other than the two or so that have been addressed in your ruling. I will be seeking two things: One, that the Office of the Clerk makes enough copies of your ruling so that we can go through it and understand it. Two, upon understanding your ruling, I will be seeking to convince my Committee Members, if we can be allowed to bring further amendments to some specific recommendations that have been left intact.

I want to give an example. I am happy that you have found no fault with our findings and observations; not even one. You have found fault only with some of the recommendations which offend some sections of the Constitution. Some of the recommendations you have made point to asking the relevant investigating agencies, the EACC and the DCI, to carry out further investigations with a view to prosecuting persons who will be found culpable. I will be seeking to make further amendments to give proper and specific timelines for those investigations by the DCI and the EACC, so that those officers, be they Commissioners or members of staff, who have been found culpable, can be dealt with according to the law in the quickest way possible.

Otherwise, I am happy with the ruling and I thank you.

**Hon. Speaker:** Sufficient copies will be made by the Office of the Clerk. Hon. Kimani Ichung'wah, what is it? I thought Hon. Wandayi is almost closing the matter. I suspect what Hon. Wandayi will be requesting the House Business Committee is not to reschedule the debate immediately. You said you need to have a meeting with the Members of your Committee to look through and make those other specific recommendations. You were saying something almost similar to what Hon. Junet, who is your Member, also suggested. It looks like you could be of the same mind frame. In fact, I think I am attracted even to the suggestion about timelines of investigations. It is important if those agencies who actually have the capacity to investigate are also given timelines, so that it does not become open-ended.

**Hon. Kimani Ichung'wah** (Kikuyu, JP): Thank you, Hon. Speaker. I think your ruling is Solomonic. Article 47 of our Constitution gives everybody, including those Commissioners and staff the right to fair administrative action. That ruling speaks to that.

But I was taken aback by what both the Leader of the Minority Party and the Whip of the Minority Party said. They are not ordinary Members of this House. These are the Chairman and Director of Elections of the Orange Democratic Party (ODM). The Chairman of the PAC also happens to be a ranking member within the ODM Party. If you listened to John Mbadi speak as the Leader of the Minority Party, he spoke to the heart, the kidneys and all other vital organs of the body of this Report. The same language is what the Whip of the Minority Party, who is also the Director of Elections of the ODM spoke about - key organs. He also spoke about the body being dead. It was not lost on me that, maybe the ODM, as a political party, was trying to use the Chair of PAC to advance a political agenda.

**Hon. T.J. Kajwang':** On a point of order.

**Hon. Speaker:** Let us hear the point of order from Hon. Kajwang'.

**Hon. T. J. Kajwang'** (Ruaraka, ODM): I rise to acknowledge the Member for Kikuyu as a man who is gifted in what he knows best, but if we go the direction we are going, we are going to do two things: We are either going to debate a Report which has not been moved or we are going to throw poison into something which we do not know because it has not been moved. We have not discussed it with fairness of mind. Is it in order that, we as Members of the plenary, proceed the way we are when the Chair has already given what I think is a reasonable course of action to take? Should we proceed the way we are going? Are we not going to destroy something



which is very important? Remember that PAC is a watchdog committee. In fact, it is a constitutional committee of this House. If we are going to waste public funds and then come back and throw it in the face of the *wananchi* out there, is this really right to be done by Members of the Assembly? This is where we should stop and then go the direction that the Chair has sought.

**Hon. Speaker:** Hon. Members, I think I do not even require further comments on this. In any event, it is my Communication. The comments that have come through, more particularly from the Chair of the Committee, appear to be quite positive. I agree with Hon. T.J. Kajwang' that we do not deal with this matter here in plenary. As he rightly observed, we could throw some poison in it. You know Hon. Kimani Ichung'wah had already started. I was going to stop him when he started the issue of "this one is chairman of this and that one the director of that". The House would start looking at that matter which has not been moved in the context of "chairman, director of this and director of the other".

No further comments on this. Let us give the Committee time. The Chair has requested that the Communication be circulated so that they will know how to move forward when they meet as a Committee failing of which, as I have already directed, debate will proceed with those recommendations and some of the texts expunged in the manner I have indicated in the Communication. In fact, there should be no debate on the ruling because I think we are getting into unnecessary issues.

Let us move to the next Order. Hon. Members, you are not reading your Standing Orders. Hon. Keynan, a ranking Member, is just walking out because he does not know at what point of the debate we are in. That is why he was making his way out. Being a ranking Member of the House, he looked at the Order Paper from his mobile phone.

### SPECIAL MOTION

#### APPROVAL OF NOMINEES FOR APPOINTMENT TO THE NATIONAL GOVERNMENT CONSTITUENCIES DEVELOPMENT BOARD

THAT, taking into consideration the findings of the Select Committee on the National Government Constituencies Development Fund in its Report on the Vetting of Nominees for Appointment as members of the National Government Constituencies Development Fund Board, laid on the Table of House on Tuesday, 12<sup>th</sup> March 2019 and, pursuant to Section 15(1)(e) of the National Government Constituencies Development Fund Act, 2015 and Section 8(1) of Public Appointments (Parliamentary Approval) Act, 2011, approves the appointment of the following persons to the National Government Constituencies Development Fund Board:

- (i) Mr. Robert Nyariki Momanyi Masese.
- (ii) Ms. Irene C. Masit.
- (iii) Mr. Abdiaziz Bulle Yarrow.
- (iv) Ms. Isabel Nyambura Waiyaki.
- (v) Ms. Maria Lekoloto.
- (vi) Hon. Peter Edick Omondi Anyanga, and,
- (vii) Mr. George Kasatua ole Meshuko.

*(Hon. Maoka Maore on 13.3. 2019)*

*(Debate concluded on 13.3.2019)*

*(Hon. Adan Keynan walked along the gangways)*

**Hon. Speaker:** Hon. Members, debate on this Motion was concluded yesterday and what remains is for the Question to be put. I ascertain that there is quorum.

*(Question put and agreed to)*

**Hon. (Ms.) Odhiambo-Mabona** (Suba North, ODM): On a point of order, Hon. Speaker.

**Hon. Speaker:** What is your point of order, Hon. Odhiambo Akoth?

**Hon. (Ms.) Odhiambo-Mabona** (Suba North, ODM): Thank you, Hon. Speaker. I apologise for raising this point of order. I should have seen you earlier on this. Unfortunately, because of our duties as Members of Parliament, I was following up a case of a man who was supposedly killed by his 23 year old girlfriend. I was assisting the wife to go and take the post-mortem. However, fortunately or unfortunately, the man has resurrected in his home in Rangwe one hour ago. I have just come from Chiromo Mortuary.

I wanted to propose a Motion of adjournment of the House on a matter of national interest. Because I am late, I want to put it on notice that I will bring it next week because the women out there will not be happy with us, as women in this House, if I do not raise it.

*(Hon. Memusi ole Kanchory walked to the Dispatch Box.)*

**Hon. Speaker:** Hon. Memusi, surely, you are walking with bottles of water. It is like you are already in Kajiado Central. You know, you are not one of the shortest members of this house. Hon. Millie Odhiambo is raising a number of issues including people resurrecting.

Let us first hear Hon. Odhiambo.

**Hon. (Ms.) Odhiambo-Mabona** (Suba North, ODM): Thank you, Hon. Speaker. The man has resurrected in Rangwe Constituency. So, we are happy that he has resurrected. If, indeed, he is a live, I will urge the police to take serious action against him because the wife created drama with a six month old child in my office because the husband was supposed to be dead.

**Hon. Speaker:** Hon. Millie, now you are likely to cause an embarrassment to some people who were not in the Chamber. You were saying that you had an issue that you would have wanted to raise. Whenever you have that you always do.

**Hon. (Ms.) Odhiambo-Mabona** (Suba North, ODM): Thank you, Hon. Speaker. I am sorry. I will go back to the issue. The issue of concern to me and which I wanted to bring next week is because women will not forgive us if we do not raise it today. This is because there is an issue of reproductive interest for women. This matter has even been reported by the British Broadcasting Corporation (BBC). It is on sanitary towels and it is affecting women...

**Hon. Speaker:** No! No! Hon. Millie, you cannot pretend to be explaining why you are late then proceed to prosecute the issue. If you are late, you are late notwithstanding that you have been at Chiromo Mortuary or wherever. You are just saying that you are late. However, I

know that is a matter you will be able to raise properly. To be prosecuting it today having stated that there was some woman somewhere who was doing this or the other is not proper.

Let us proceed to the next Order.

## BILL

### *Second Reading*

#### THE DIVISION OF REVENUE BILL

**Hon. Speaker:** Let us have the Chairperson, Budget and Appropriations Committee.

**Hon. Kimani Ichung'wah** (Kikuyu, JP): Thank you, Hon. Speaker.

**Hon. Aden Duale** (Garissa Township, JP): On a point of order, Hon. Speaker.

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

**Hon. Aden Duale** (Garissa Township, JP): Hon. Speaker, the Member for Kikuyu was accusing Hon. Junet of not being a surgeon but a quack. He is now acting outside the Standing Orders. When a Bill is referred to a committee after the First Reading, the Committee must table its Report on the Bill. Up to now, the Chairperson has not tabled a Report. He is out of order. How do we debate? He cannot use the Budget Policy Statement (BPS) Report. This is the Division of Revenue Bill. It is an important Bill that divides revenue between the two levels of government. So, is the Hon. Chairperson, Budget and Appropriations Committee in order? He thought we are busy with your Solomonic communication and Millie Odhiambo's explanation of a boyfriend and girlfriend mortuary issue. Some of us are alert. We listen. Ask the Member to table the Report before we go to the Second Reading of the Division of Revenue Bill. Without that, I ask you to rearrange the order of business on the Order Paper and stand it down.

**Hon. Speaker:** The Chairperson, Budget and Appropriations Committee, where is the Report?

**Hon. Kimani Ichung'wah** (Kikuyu, JP): Thank you, Hon. Speaker. The Leader of the Majority Party is aware that the precursor to the Division of Revenue Bill is the BPS Report. We tabled a Report of the BPS. It is the one that gives rise to the Division of Revenue Bill.

The Leader of the Majority Party is also aware of the tight timelines that I indicated yesterday that we have with the Division of Revenue Bill. I articulated the reasons yesterday. It is a fact that we tabled a BPS Report which gave rise to the Division of Revenue Bill. Everything is as contained in the Division of Revenue Bill, as it were in the BPS Report that was tabled last month. Therefore, I beg your indulgence, so that we can proceed.

**Hon. Speaker:** Hon. Ichung'wah, in terms of the law and our own Standing Orders, the resolution of the House on the BPS is not the only one that gives rise to the Division of Revenue Bill. Indeed, when the resolution goes to the National Treasury, it incorporates the estimates that are expected to come later. Hon. Junet, do you want to pronounce yourself on this?

**Hon. Junet Nuh** (Suna East, ODM): Thank you, Hon. Speaker. The Chairperson, Budget and Appropriations Committee is my friend, but he cannot get away with this one. The BPS is a policy statement that we discuss to inform the Treasury on how to go about the estimates.

What is before us is a Bill just like any other Bill. It is only that its name is "Division of Revenue Bill". So, we need the Committee's Report that has been subjected to public participation. Anything short of that, there is no Division of Revenue Bill that will be passed in this House. This is a House of procedure and rules. It is clear in our Standing Orders that every

Bill at the Second Reading must be accompanied by a Report of the Committee. The Chairperson, Budget and Appropriations Committee sometimes behaves like he is part of Treasury. He thinks that he is the Deputy Minister for Finance.

Let him do his parliamentary work. I am told he has a small office in Treasury nowadays. You must give us a Report of the Committee. I am told that when the Cabinet Secretary is writing statements at the Directorate of Criminal Investigation, you are the one holding brief. I am not sure, you can confirm. He must give this House a Committee Report so that it can inform us what the public has said about this. Public participation is a constitutional requirement in all Bills now. Therefore, Hon. Chair you have now failed in your duties. Initially, I thought you will become the Deputy President of your friend in 2022. Now I am reducing you to an MP for Kikuyu.

Thank you, Hon. Speaker.

**Hon. Speaker:** Well, Hon. Junet is raising the issue of public participation, which is a constitutional and mandatory requirement in our legislative work. Whatever the nature or extent of participation is what would inform the Report. If for instance, somebody were to argue that what the Division of Revenue Bill contains is not sufficient in the manner that it proposes to do the vertical allocations, then the Committee will have a Report to explain to the House. For now, Hon. Ichung'wah, we will stand down this business for your Committee to do what they are supposed to do once the Bill is referred to a committee.

*(Applause)*

We now move to the next order.

## MOTION

### SENATE AMENDMENTS TO THE KENYA ROADS BILL

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

THAT, the Senate amendments to the Kenya Roads Bill (National Assembly Bill No. 47 of 2017) be now considered.

I want to thank the Chair of the Departmental Committee on Transport, Public Works and Housing because, at least, he has tabled the Report, unlike his colleague, the Chair of the Budget and Appropriations Committee. We must thank Hon. Pkosing because he has tabled the Report. Hon. Ichung'wah decided not to table and used a shortcut. We must be precise to procedures.

By way of introduction, the Speaker received a message from the Senate regarding the passage of the Kenya Roads Bill 2017, which originated from the National Assembly. This Bill was passed by the Senate on 14<sup>th</sup> of February 2019, with amendments and his amendments currently stand committed to the Departmental Committee on Transport, Public Works and Housing.

We passed this Bill around March 2018 and it is coming back to us now. The Senate stuck with that Bill for one year. Now, they want to tell us that they want to be the upper House. For you to be the Upper House, you must earn it.

Hon. Speaker, I want to go to where we will reject most of the amendments. I concur with the Committee on these rejections. Article 112(1)(b) of the Constitution provides that if the House passes an ordinary Bill concerning counties and the second House passes the Bill in an

amended form, it shall be referred to the originating House. That is why the Bill is here. It is against the premise of Article 112 of the Constitution that I beg to move that the House through the Departmental Committee on Transport, Public Works and Housing considers the Senate Amendments.

We sat with the Ministry and the Committee and realised that most of the amendments by the Senate are unconstitutional. I will say it and I am sure the Chair will say it too. To start with, the Committee relied on the provisions of Articles 95 and 96 of the Constitution which provide for the roles of the National Assembly.

Further, the Committee was guided by the Fourth Schedule of the Constitution which provides for the distribution of functions between the national Government and county governments. The Senate overlooked one provision of the Constitution and that is the Fourth Schedule. If you look at the Fourth Schedule, it is clear about the functions between the national and the county governments. The Senate just decided that they can swipe things... That is why when the President returned a memorandum on the Health Laws most of the amendments they had brought in are constitutional. We will go one by one. In the first place, they overlooked the Fourth Schedule which clearly demarcates the function of the national Government and that of the county government. The Committee has proposed a rejection of the Senate amendments which go against the Constitution. For instance, the Committee has rejected the amendments that the Cabinet Secretary shall consult with the Council of Governors (CoG) in regulation-making. It is illegal.

The Statutory Instrument Act, allows only the Cabinet Secretary to bring regulations to this House, not even to the Senate. Why should the Cabinet Secretary consult CoG? It is not provided for in the Statutory Instrument Act. So, I support the Chair. That is illegal and this rejection is guided by paragraph 18 (1) of the Fourth Schedule of the Constitution, which expressly provides that construction and operation of national trunk roads as well as the standards for the construction and maintenance of roads by counties is a function to be performed by the national Government.

There is no way a county government can be part of standardisation of roads. There is no way a county government or the Senate can decide on how road construction and operations are done. The regulatory-making process allows for public participation stage during which time the CoG will attend that public participation. So, if they want to take part in the regulation-making authority, let them appear before the Committee of Hon. Gladys Boss Shollei, who is the Chair of delegated legislation. Hon. Cabinet Secretary Macharia, we are telling you as a House that speaks with authority, you have no business consulting CoG. They can be consulted at the Intergovernmental Budget and Economic Council (IBEC) which is chaired by the Deputy President, but no Cabinet Secretary will consult them.

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

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

The Committee also rejected the said amendments to include two officers serving in the office of the county Senator as members of the Constituency Roads Committee. That is ridiculous. Since the 10<sup>th</sup> Parliament, the Constituency Roads Committee was a function of Members of Parliament of the National Assembly. This is what we call squatting. The

Constitution is very clear. If you are a Senator, your functions are very clear. I even saw the Cabinet Secretary in charge of the Ministry of Interior and Coordination of National Government, Dr. Fred Matiang'i asking for advisory opinion from the Attorney-General on whether some Cabinet Secretaries should appear before the Senate.

I will support that the Cabinet Secretaries in charge of Foreign Affairs, Interior and Coordination of National Government, Defence, Education outside ECD, Energy, DPP, EACC, have no business going to the Senate. Those are not county functions. So, they want two of their staff at the Senator's office to be Members. It is ridiculous. We have rejected that and the Chair has rejected it too.

The Committee also recommends that we agree with some of the amendments, but let me go to where we disagree with them. It is important to know that considering Senate's amendments on a Bill shall be guided by the procedure set out in Standing Order Nos. 146 and 147. There are a number of issues which are unconstitutional and the Chair will give them. For example, we agreed with them, in conformity with the Constitution, to amend Clause 4 of the Bill to include county road agencies to be governed by guiding principles. They can use the money they get from the national government to have their own agencies to run their roads. And it is the business of a Senator to go and monitor and evaluate, and they have been given Kshs500 million to be divided among 47 Senators. They can as well go and buy people *mandazi* and meet elders, as we build schools and hospitals. If you look at Senate amendment to Clause 56 of the Bill, which removes county roads from the ambit of roads in respect to which the CS may impose road user charges, the Committee agrees with the Senate that the imposition of road user charges on county roads may not be sustainable.

There is also a very outrageous amendment by the Senate. They want to differentiate between a road and a road reserve. They are saying the road reserves belong to counties. They can put their billboards or kiosks. If you go to my constituency, a lot of people's properties were destroyed because they built it on road reserves. So, they were waiting for Kenya National Highways Authority (KeNHA) to destroy the properties and now the land belongs to the county government where they can put up some kiosks and earn some little revenue, which means again the local revenue does not even end up in the national kitty. We are saying road reserves belong to the agencies that run the roads in our country, so that if they want to build a road they are the ones to discuss with Kenya Power, the water people, the fibre optic people to remove their lines from the road. So, road reserves must be protected. Most of these amendments, and I really want to urge the Senate, are unconstitutional. We have nothing against them but we must tell them where they go wrong.

These procedures are set out very clearly in Standing Orders 146, 147, and 148 of the National Assembly Standing Orders. It is also important to note that the moment we reject, there will be a likelihood of formation of a mediation committee which could guide both Houses in coming up with an agreed version of the Bill. I have agreed on this Bill I will be the leader of that mediation team and the Chair of transport so that that on the other side I ask the leadership to be on the mediation, so that at the end of the day we agree and this Bill is passed.

I beg to move and ask Hon. Pkosing, the Chair of Transport, Public Works and Housing Committee to second. I told you to forget about Kenya Airways (KQ); you deal with the Senate amendments. I told him until the Speaker makes another Solomonic communication on what we raised last Thursday, nobody should touch KQ.

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

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Hon. Pkosing.

**Hon. David Pkosing** (Pokot South, JP): Thank you, Hon. Temporary Deputy Speaker for giving me this opportunity to second my Leader of the Majority Party. Before I delve into this Bill, I would want to say in moving that as I walk on the corridors Members have been asking me about their next tranche for repairing roads, our normal Kenya Rural Roads Authority (KeRRA) money. Therefore, I would like to announce that it is on the way to your constituencies, Members. By 21<sup>st</sup> you will get it in your local offices, that is the regional office. So, that is being done. KeRRA is very efficient. That is timely Members because you will also be going for recess and you will have a lot of time to proceed.

I want to thank my Committee for looking at these amendments very critically. Most of these amendments from the Senate are unconstitutional as the Leader of the Majority Party said. My responsibility, therefore, is to go to the details so that Members can appreciate. Let me start what the Leader of the Majority Party said. They attempted, unconstitutionally, to amend the Third Schedule of the Bill. So, what did they say? They said that the constituency roads committee shall comprise of the following:

- (a) Two members from respective NG-CDF committee.
- (b) Two officers serving in the office of the county Senator.
- (c) CEC member for roads, and
- (d) Representative from Kenya National Roads Authority.

That is already unconstitutional. It goes against Articles 95 and 96 of the Constitution, the sovereignty of the Houses. There is the Senate under Article 96 and the National Assembly under Article 95. So, what is being attempted through this backdoor is to amend those two Articles of the Constitution, which is illegal, by trying to merge the two Houses. Where will the Senate be and where will the National Assembly be? That was the mischievous part of it. That is unconstitutional.

Two, the Senate suggested the membership of the committee that is in Clause 17(3). The constituency roads committee shall designate two of the members appointed under Section 2A, that is from the NG-CDF office, to be the Chair and from the office of the Senator to be the vice-chair. That is unconstitutional. They even went on to suggest that two officers from the office of the Senator be part of procurement. My Committee found this very unconstitutional and a way of trying to amend the Constitution from the back door by merging the Houses. What is the reason for the Senate? This is a dangerous trend if we were to adopt it, because then they will ask to be members of NG-CDF. They will even ask to be members of my Committee. It is trying to fuse both Houses through the back door. So, my Committee rejected that.

They also attempted to amend Clause 2. They reduced the definition of public roads and we rejected that. They left out thoroughfares and other uses of roads. We rejected that. Clause 4 which is on guiding principles, we agreed with them, as the Leader of the Majority Party said, because they brought in the county authorities. Remember in this Bill, the National Assembly was so fair to even create agencies at the county level. This is where they should have introduced an amendment to oversee the agencies. We would have helped them. That was going to be very effective, but they refused and they left it out. So, on that we agreed.

On Clause 9, we disagreed with them in terms of composition of the board. We had agreed as a House that we do not need to concentrate boards with a lot of these bodies like Law Society Kenya (LSK). They brought back LSK and my Committee rejected that. It should not be the way forward, because LSK will be everywhere. Why do you bring LSK to a roads board? This is about engineers. With due respect to lawyers here, where is law here? The wisdom of the House was that we should not go that direction. We rejected.

Clause 9 talks about road standards. What happened is that Senate in their wisdom introduced consultation with the Council of Governors. We rejected. Reason being, this is against the Fourth Schedule of the Constitution. Standards of roads, according to the Constitution, are the responsibility of the national Government. So, where do governors come in? Governors have been provided with two opportunities of consultations: one at IBEC and one at the Summit chaired by the President. That is where they should concentrate. I do not know whether they do not raise their issues there and now they want to muscle the National Assembly. I think that was unconstitutional and we rejected.

Hon. Temporary Deputy Speaker, they also attempted to amend Clause 10 of our Bill, which is talking about classification of national Trunk Roads and county roads. They attempted to bring in the issue of consulting counties. Consultation without law and procedure is one way of saying that projects will not be done.

In that spirit, my Committee rejected it. They went on to attempt to amend Clause 12, which is talking about the establishment of Kenya National Highways Authority. The same is replicated in Clause 14 and 17 in terms of agencies. We rejected this because they brought in the LSK into Kenya Urban Roads Authority (KURA), KeRRA and KeNHA. We felt that they were just coming to fill the numbers. We do not want this organisation to be dominated by lawyers.

The thinking of the Committee is that they have their functions. So, when they are given their functions and they leave them and come to other people's offices, will they be working? We do not think so and therefore my Committee rejected. We ask that the House agrees with us.

They also attempted to amend Clause 20 of the Bill, which talks about the Boards of the Kenya National Secondary Roads Authority that I have explained. They touched on Clause 44 which is talking about powers to enter into and alter positions of people. They brought in the aspect of consultation with counties and we rejected.

They amended Clause 47 on powers to take over and we rejected the aspect of consultation because we felt that it would cause delay.

When it came to Clause 52, on the county roads and bridges, we agreed with the Senate amendment.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Hon. Pkosing, you have one minute.

**Hon. David Pkosing** (Pokot South, JP): I thought I had 30 minutes? So, I have one minute? That is right. I agree because we have made it the property of the House. Our Report is on the Floor to guide Members. I think we are in agreement that we will reject these amendments and go for mediation.

However, let me conclude by saying something. During the last Parliament, I raised an issue about mediation. According to the Constitution, a mediation committee shall have equal numbers from the House. The National Assembly's numbers compared to the Senate's numbers are much higher. The criteria should have been based on equity such that if we have five Members from the National Assembly, we have two Members from the Senate. Alternatively, a Bill originates from the National Assembly, we get more Members from here but if it originates from the Senate, we have more Members from the Senate so that we progress.

Can you imagine a Bill so important such as this one and we disagree at the mediation level and then it dies? This Bill was introduced in Parliament in 2015. How can it die just because of the mediation team? This is something we need to look at as a House as we move forward and amend the Constitution.

With those many remarks, I beg to second.



**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Thank you for seconding, Member for Pokot South.

*(Question proposed)*

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Hon. Members, I have 15 requests from Members who are interested in speaking to the Senate amendments. The first will go to the Member for Suna East, who is also the Minority Whip.

**Hon. Junet Nuh** (Suna East, ODM): Thank you, Hon. Temporary Deputy Speaker. I wish to oppose these amendments. This is a classic case of a Bill that will automatically go to mediation. It looks like the Senators, who believe that they are the upper House of Parliament, have not looked into these issues properly. They have contravened the Constitution over and over again and, in this one, they have done so in a manner that looks like they have not even consulted their legal experts.

The Fourth Schedule is very clear. It divides the functions between the county governments and the national Government. Article 69 is very clear that the Senate deals with matters concerning county governments. When you want to take up functions of the national Government yet your role is to oversee county government functions, what business is that?

For example, they have brought amendment to provide for two members of staff from the Senate offices to sit in the Constituency Roads Development Committee. What business does the Senate office have in a Constituency Development Committee? Constituencies are in the National Assembly and Senators sit in the Senate.

So, what business do the two people they want nominated have to do with the constituency? It just shows that you lack an understanding of the Constitution. It just shows that these people want to come and get things which do not belong to them. They can form County Road Development Committees and get their funding from the county governments, if they wish. It can happen just the way the national Government funds the Constituencies Road Development Fund. They went further to say trunk roads belong to the national Government but the road reserve belongs to the county governments. How do you separate the two? It is like what happened in Migingo where Ugandans say that Migingo belongs to Uganda Government but the water belongs to Kenya and so they can fish. How do you separate a road reserve from a road? By the time you want to do the road and expand it, you do not even know what acreage of land you will get from a reserve. You may make the entire reserve to be part of the road.

These are amendments that this House must reject. We must have serious people in that mediation team so that the Senators can be told that they have crossed the boundary. So, the issues that have been raised by the Chair of the Transport, Public Works and Housing Committee are all valid. They are now saying that before the Cabinet Secretary for Transport brings regulations to this House, he must consult the governors and the county government.

Hon. Temporary Deputy Speaker, the Statutory Instruments Act is very clear. It has given the mandate to do regulations to the CS. He is to bring them to this House so that the Committee on Delegated Legislation can look at them and bring them to this House for approval. So, where is that mind from when there is a law in place on how regulations must be done? I do not know what the Legal Department of the Senate is doing, if they can allow Senators to discuss these kinds of amendments.

Hon. Temporary Deputy Speaker, I do not want to belabour the matter, but I urge this House to reject these amendments. They must go to a mediation committee and we must get

them back when they are in conformity with the Constitution and relevant statutes. If any Bill or a proposed amendment to a Bill contravenes the Constitution, Members of this House ask the Hon. Speaker to make a ruling, like what he did today. What we expect him to do on the Kenya Airports Authority (KAA) and the Jomo Kenyatta International Airport (JKIA) issues... In the case of the Senate, it looks like nobody is concerned whether these amendments are in conformity with the Constitution or not. They were just passed in the Senate and forwarded to the National Assembly for concurrence. So, we reject them so that they can go for mediation and they are brought back when they are in conformity with the Constitution.

Thank you so much.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Very well, Member for Suna East.

Hon. Members, I have 13 requests from Members who want to speak to these amendments. Let us have the Member for Kitui Central, Hon. (Dr.) Makali Mulu.

**Hon. Makali Mulu** (Kitui Central, WDM-K): Thank you, Hon. Temporary Deputy Speaker for giving me this opportunity. I have looked at the proposed amendments. I must say that, in addition to the more substantive amendments, there are also amendments to do with editorials. For example, in the Bill they are saying we replace the Kenya Rural Roads Authority with the Kenya National Secondary Roads Authority which is a new terminology we are adopting. I do not have a problem with this because it aligned to the Bill.

Another issue is in Clause 102, where they are saying, since we will have new authorities, we need a transition arrangement. Therefore, before the new authorities come into being, they are saying that the existing authorities like KeNHA, KeRRA and KURA will have to be in place to ensure that things are moving on. They should not stop their activities without transition arrangements. So, I have no problem with such amendments proposed to align with the spirit of the Bill.

However, I have serious problems with some of the proposals. I want to join my colleagues in talking about some of these substantial amendments. For example, when we talk about consulting the CoG on road matters when we know very clearly that there are national Government and county governments' functions, it complicates matters and implementation will not take place.

My proposal is that, if they want to be consulted, they should participate in a public participation forum so that they can give their input and we move on. The second issue is about having two officers from the Senators' offices joining the board. I think these Senators must be joking. What they are forgetting is that, the NG-CDF Board Members are gazetted officers. Meaning, they can take responsibility on behalf of the Government. These people we recruit in our constitutional offices or Senators' offices are just temporary employees on contract for two or three years. How do you add them to such a serious board, which will make serious decisions?

I think they need to get their heads together. I object this idea of getting temporary employees to sit in such a serious board. I think the Senators should have seen that this proposal cannot be sold to anybody. I think there is a misplaced proposal where they are talking about the same two officers in the Senators' offices sitting in a procurement committee. These days, looking at the Public Procurement Act and Asset Disposal Act, things have changed. It is the Chief Executive Officer (CEO) who appoints people to sit in that committee. You cannot appoint people, unless you want to contradict the law.

Some of these proposed amendments do not make sense. I agree with those who are saying they are unconstitutional. On this basis, we need to reject such kinds of amendments and only approve those which are editorial in terms of trying to align them with the language.

With those many remarks, I support rejection of these amendments.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Well said, Hon. (Dr.) Makali Mulu. Hon. Members, the Floor goes to the Member for West Mugirango.

**Hon. Vincent Kemosi** (West Mugirango, FORD-K): Thank you, Hon. Temporary Deputy Speaker for giving me an opportunity. I rise to oppose the amendments. The reason being as a Member of the Departmental Committee on Transport, Public Works and Housing, we sat down and interrogated the amendments as put forward by the Senate.

I also agree that most amendments are unconstitutional such that, you wonder whether the Committee sat down and interrogated the Bill, before they proposed them. If you look at Clause 102, particularly where they have proposed quite a good number of persons to sit in the Constituency Roads Committee, you will find that is unconstitutional. We have two defined systems of Government, that is the national Government and county governments.

The Constituency Roads Committee we are talking about is a national Government functions. Currently, we have four members who serve in the Constituency Roads Committee who are not ordinary employees of the Member of Parliament. They are members of the NG-CDF and are gazetted. Why is the Senate proposing the two officers from the Senators' offices who should serve in the Constituency Roads Committee? Under which forum are they proposed to sit? The Constituency Roads Committee is not a function of the county government. If the counties want to form their own committees, they are at liberty to do so. They have enough funds which go to roads.

The counties receive a lot of money for the Kenya Roads Board (KRB) in form of a grant. Members of Parliament have never interfered nor do they have intention of interfering or being included in those committees. Why should they want to be included in our committees? I oppose this. If you look further at the Bill, you will find they have proposed the County Executive Committee (CEC) to sit in the Constituency Roads Committee. If you look at part (g), you will find all these members who have been proposed so that they wither down the influence of the NG-CDF members in the Constituency Roads Committee.

Finally, if the Senators were genuine enough in proposing all these amendments, then where is the County Woman Representative (CWR) because she is also a leader? Therefore, I support. We need to have a mediation committee and very serious members who can take the Senators head on.

Thank you, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Very well, Member for South Mugirango. Next is the Member for Ol Kalou, Hon. Kiaraho Njuguna.

**Hon. David Kiaraho** (Ol Kalou, JP): Thank you, Hon. Temporary Deputy Speaker. On the outset, I would like to totally reject these proposed amendments. I happen to serve in the Departmental Committee on Transport, Public Works and Housing. Therefore, I think these proposed amendments before us are a big joke.

Looking at some of them, in my own view, they clearly show some very serious issues. There is either lack of seriousness, vested interest or people who are trying to seek relevance from the Senate Committee which dealt with this Bill. If you look at some of the proposals these people have come up with, you can clearly see they are meant to serve the interest of some of these Members. A good example is when they say that they want two of their members to be in

the National Government Constituencies Development Fund Committee. The big question I have is: For what purpose? What value is it going to add and what role are they going to play? As you know very well, most of the Senators have been trying to seek relevance in their respective counties. I think one way they feel they get that relevance is by sticking to some of these committees through what we are now deliberating on. As far as I am concerned, this is totally unacceptable.

The other issue I would want to point out is it appears that the Senators are serving the interests of most of the governors. As we all know, most governors are having problems in terms of implementation of various projects in their respective counties. We all agree as Members of this House that one of the very key and sensitive area in our respective constituencies is when you come to the road works. Already there is quite a bit of money which has been going to the various counties and we can all attest to the fact that most governors have failed to actually implement some of these projects. To me, what they are trying to bring through the back door is a very dangerous thing and in some areas, some of the proposals they are coming up with like they want to be in charge of what we call the road reserves... For God's sake, if at all we are to allow that, this will start bringing a lot of conflicts between an agency like KeNHA and the various governors.

An agency like KeNHA has its own standards and principles on how they manage the various trunk roads but for some interest, you find in some county there is a certain governor, probably who wants to appease his voters. He wants to put some structures on the road reserve which is against the law.

I feel we should look at some of these things in a very critical way. Some of the proposals which have come up before us like when they say they want a member from LSK to sit in that particular panel, my question is: For what purpose? I think this is something we need to look at very critically and I think as our Chair mentioned in his statement, when we go to the mediation team, we should not allow this appeal just to die a natural death simply because some people have come up with some proposals which are impossible and which are not for the interest of what this Bill was intended to do at the outset.

As we move forward, let us have a very clear mind that we should not allow this Bill to die a natural death. I hope that the mediation team will be sober enough to make sure we come up with feasible solutions so that we can foster the whole thing ahead as the initial intended purpose.

With those many remarks, thank you, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Hon. Member, you are on record as opposing.

**Hon. David Kiaraho** (Ol Kalou, JP): Yes, I am on record as opposing. Thank you.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Hon. Members, this is a House of debate. I give the Floor to the Member for Kiminini. Even as I give the Floor to him, can I get another Member who is opposing? You can put your card on intervention. Let us have the Member for Kiminini, Hon. Chris Wamalwa.

**Hon. (Dr.) Chris Wamalwa** (Kiminini, FORD-K): Thank you, Hon. Temporary Deputy Speaker. At the outset, I rise to oppose the amendment. This Bill originated from the National Assembly. It then went to the Senate, where it has stayed for more than a year. Now the Senate is bringing it back with some outrageous and unconstitutional amendments. For instance, if you talk about the roads board which is composed of members who do not come from the Member of Parliament's office, but they come from the Constituencies Development Fund Committee

office, the two are totally different. Of course, we know very well that when you speak to such a Bill we only speak to the amendments and I am speaking to the amendments. I want the Senate to know that it is not the MP's office. They come from the CDFC office. There is a difference between a CDFC office and the MP's office. Maybe they were not aware. The CDFC members are actually gazetted and there is a clear framework as per the NG-CDF Act on how they are elected.

We have representation of the disabled, youth and women. There is a clear framework and so you cannot do a comparative analysis and say that the same thing should apply to the Senate that two people from the Senator's office should sit in that committee. That is totally wrong. These are officers who have actually been gazetted and there is no way we are going to allow people who have been handpicked to go and sit in this committee. The rivalry that has been happening between the National Assembly and the Senate must come to an end. That is why we should have a referendum so that one can be an upper house and the functions must be very clear.

As many others have suggested, the Fourth Schedule is very clear. It has outlined the specific functions of the national Government and the county governments. We just passed the issue of money to be given to the Senate so that they can use it for monitoring and evaluation. Let them concentrate on that. Articles 95 and 96 of the Constitution are clear on what the Senate is supposed to do. It is supposed to follow up on issues to do with the counties. They have nothing to do with these roads.

When the Leader of the Majority Party mentioned about the national highways, that is a responsibility of the national Government. That is why the NG-CDF was amended. It is not just CDF. It is called NG-CDF because it is supposed to look at the functions of the national Government as outlined in the Fourth Schedule of the Constitution. Some of the amendments that the Senate has put across are dead on arrival. I am humbly requesting the Hon. Members who are here to reject them. We do not have to waste time on this. Let us go to mediation and as we go to mediation, it is high time changed our Standing Orders. This is because when you talk of representation, it must be proportionate.

We have 349 Members of Parliament in this House. The "lower House" has 67 Members. When it comes to proportional representation, we cannot be equal. If it is five, we should have three and they have two. That is the principle of equity. There is no way we can be equal. As we move forward in the mediation committee, we should be able to resolve this matter once and for all. We know very well that within three months if the mediation committee will not have resolved the matter, the Bill dies. You can imagine going back again to public participation and starting this Bill afresh. They want to overwork the National Assembly. We call upon our colleagues in the other House, we should respect each other. Let them follow their lane and we follow ours.

I know we have checks and balances but at times it is actually being driven by rivalry. I think it is the attitude of rivalry. We should come here and legislate for the benefit of the public and not the benefit of whichever House.

So, I am humbly requesting my colleagues to reject this so that we do not waste much time and we go to mediation. I thank you, Hon. Temporary Deputy Speaker. I reject the Senate amendments.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Is there any Member who is opposing? Member for Kwanza, I see you on intervention.

**Hon. Kassait Kamket** (Tiaty, KANU): On a point of order, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Hon. Kamket, what is out of order? Please quote your Standing Orders because I had referred to the Member for Kwanza who was on intervention but he wants to contribute. Yes, Hon. Kamket.

**Hon. Kassait Kamket** (Tiaty, KANU): Hon. Temporary Deputy Speaker, with utmost respect to the Chair, could you just allow the Members to contribute without soliciting who is opposing and who is supporting.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Hon. Kamket, you are totally out of order. I can tell you are not anywhere near to speak to this. I have nine requests and so you are somewhere within the nine requests. This is a House of debate. You will catch the Speaker's eye. We are non-partisan. Let us have the Nominated Member, Hon. Sankok David. He is next on my request list.

**Hon. David ole Sankok** (Nominated, JP): Thank you very much, Hon. Temporary Deputy Speaker. The Speaker has all the right to balance regions, counties, gender and persons with disabilities. Thank you for giving me this opportunity to contribute. As far as this matter is concerned, I am independent because I do not have a constituency office. I am very independent when contributing to this particular debate.

From the outset, I totally oppose the backdoor amendments that are not in line with our Constitution. According to the Fourth Schedule, the Senate is supposed to oversee the county governments. The county governments have several functions as outlined in the Fourth Schedule which the Senate is supposed to oversee. If they have failed in their duty of overseeing the functions of the county governments, they should tell Kenyans so that we introduce an amendment in the referendum to send them home and disband the Senate.

The reasons why they are trying to get additional functions for themselves is because their functions are also performed by Members of County Assemblies (MCAs). It was a mistake by the drafters of our Constitution to have the Senate in place because we now have two arms of Government overseeing one institution - the county governments. Governors do not know if they are answerable to MCAs or the Senate.

These amendments were ill-informed. Nominated Members have their own personal offices. Officers that work in our personal offices are people we choose. They are not competitively recruited like the rest. The NG-CDF office competitively recruits its officers who are gazetted. It is totally different from the personal office of a Senator or a Member of Parliament. We should differentiate between public functions and personal offices. If there is an officer we should include in this committee then it should be the Office of the Women's Representatives. This is not the personal office of the Women's Representative, but the National Government Affirmative Action Fund offices at the county level. Introducing Senate officers to sit on this committee is ill-informed and wrong.

I am 100 per cent sure that most Members will oppose these amendments and the Bill will go to mediation. It is high time we had proper representation in the mediation or arbitration process. We are given slots depending on the ratio of representation in the National Assembly and the Senate. It is also good for Members of this House to realise that the Senate is not performing its functions and mandate. They no longer know their mandate. They have not read the Constitution properly. When we go to the referendum - if it actually comes to pass - this House should draft a question on how to disband the Senate so that we remain with the National Assembly overseeing the national Government and the county assemblies overseeing the county

governments. One House, which is the lower House, is just hanging and has nowhere it belongs. We oversee the national Government. County assemblies oversee county governments. What does the Senate oversee? I have seen them summoning Cabinet Secretaries who are supposed to be overseen by the national Government. I do not really know what questions they ask them. What do they oversee? The functions of the national Government are very specific and are overseen by the National Assembly.

We allocate funds. We are the ones who know how much we have given to a ministry. When we inquire about the use of those funds, we have the information. We have passed the Budget and allocated funds. When they ask questions on the use of the funds by the national Government, where do they get that information? Is it hearsay or rumours? During tea-time, we allow them to listen to our conversations and they hear rumours on how much we gave to specific ministries.

I totally oppose these amendments.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Let us have the Member for Mandera North, Hon. Abdullahi Sheikh.

Member for Kwanza, you always feel like you are so special in this House. Allow the Speaker to give you the chance to speak. When you catch my eye or when your request reaches me, you will do it. You should not just keep making noise. I have been watching you. You are not very far from here. I notice you.

**Hon. Major (Rtd.) Bashir S. Abdullahi** (Mandera North, JP): Thank you, Hon. Temporary Deputy Speaker. I will be very brief.

From the outset, I oppose these amendments from the Senate. These amendments are just a matter of being in competition or rivaling the National Assembly. Critically looking at all the amendments, the Senate is overstepping its mandate. What is the core mandate of the Senate? Theirs is to protect devolution and oversee the counties. Why are they getting involved in matters which do not fall under their purview? These are things which are national in nature. Looking at the composition of the Roads Board at the constituency level, they propose that there should be two members from Senator's office and two from the NG-CDF office. The NG-CDF offices are based and structured in the constituencies. Do we even have Senator's offices in the constituencies? We do not. There are no offices for Senators in the constituencies. Where would they name these persons from? Do they have offices? Do they envisage creating those offices in their own estimation after passing this Bill?

When they say that there should be two members from the Senate and two from the NG-CDF, what is the rationale? The whole idea boils down to being in competition with MPs in their respective constituencies. The amendments serve the egos of the Senators who are trying to find relevance in the affairs of national matters. They look like they are in the upper House but they are not. They see the National Assembly as a lower House. They are trying to imitate the National Assembly. They are unable to perform their functions properly. During elections, most of the Senators behave as if they are the running mates of the governors. When a governor of their choice comes into power, they decide that they will not oversee him or look into affairs of the county because they were buddies during elections. That is the problem.

On trying to summon Cabinet Secretaries, the only CS they need to summon at any one time, in my estimation, are the one in charge of devolution because he will deal with matters of counties and the one for National Treasury because of issues to do with release of funds. Sometimes they summon the CS for Education, CS for Interior and Coordination of National Government and even the one for Defence. What role do they play?

So, I see the amendments to be unconstitutional or not grounded in law and all they want is to be relevant so that they can be seen to be busy. The running of affairs of KeRRA as it is at the constituency level is going on very well without any hitch or complaints from various stakeholders. How did this issue reach the Senate? Was there a complaint that they wanted to restructure it? Were there shortcomings? I do not believe. The idea is being relevant and that they do not have much work to do at counties and that they should not meddle with work and affairs of Members of Parliament in constituencies. It boils down to saying that they want to be above the National Assembly.

I oppose the amendments and ask the Senate to keep to its mandate of safeguarding and protecting devolution. Let them critically oversee county governments without saying that they were buddies during elections.

Thank you, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Member for Sirisia, Hon. Koyi Waluke. He is not in the House. I then move to the Member for Kwanza, Hon. Wanyonyi. Remember you had risen on an intervention and you had indicated otherwise.

**Hon. Ferdinand Wanyonyi** (Kwanza, FORD-K): Hon. Temporary Deputy Speaker, I am very patient and very loyal to this House. I am not impatient as such. That is my character.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Thank you. I know you are serving your second term. You have done very well.

**Hon. Ferdinand Wanyonyi** (Kwanza, FORD-K): Hon. Richard Tong’i knows that I am very patient and focused.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Very well. We note you are very patient. We follow the procedures of the House and now you caught the eye of the Hon. Temporary Deputy Speaker. Carry on now.

**Hon. Ferdinand Wanyonyi** (Kwanza, FORD-K): Thank you, Hon. Temporary Deputy Speaker for the opportunity.

At the outset, I take this opportunity to reject this amendment. It looks like a joke to me. It does not have the seriousness it deserves. Somebody was seeking relevance and has vested interests in the whole thing. I remember debating the Bill sometime in 2018. It has taken a long time and I thought when it was brought back here it would have serious implication. What I see here is lack of the seriousness it deserves.

I respect the Senate as our colleagues and we should not to talk to them, but let us work with them. I do not like the tone my colleagues have used. These are our colleagues and let us speak to them with all the respect they deserve.

But, there is so much out there at the constituencies. I expect our colleagues in the Senate to oversee as they are supposed to. One, they should look at devolved functions apart from road network in constituencies and oversee them. They are supposed to summon governors. I do not know if they have fear of calling the governors before them. I do not see them calling the governors these days. Governors are supposed to be investigated, but Senate is not doing that. This is a very simple little thing. They are supposed to oversee the road network that the Members of the County Assemblies do in the constituencies. That is what they are supposed to do. As it is today, the oversight role of our colleagues in Senate is clear cut for them. But on the amendments of introducing two members, what are they going to do? Do they have vested interests or is it out of jealousy?



They believe that Members of the National Assembly make money and that is not true. We oversee and they should do the same thing in the running of county governments. We have many things happening in counties and they are supposed to oversee that.

Members of the NG-CDF are members of the Roads Board and that is very clear. We work with KeRRA. They are supposed to work with another authority. What are they going to do? What interest do they have in this one? As far as I am concerned, and without wasting much time on this, let us go for mediation right away. As three or four Members have mentioned, the mediation team should be proportional to the number of people we represent. They are 67 including the nominated Senators; therefore, the ratio should be 1:3. They should go for mediation. People out there are not interested in what we are talking about here; they are interested in seeing us render services.

With those few remarks, I ask our colleagues to be serious and let them not have vested interests and agree with whatever will come up in the mediation committee. The ratio should be 1:3 so that we complete this; failure to which the Bill will expire and people will ask us what we have done. I totally reject the amendment from the Senate.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Next on my request list is the Member for Samburu North, Hon. Lentoimaga.

**Hon. Alois Lentoimaga** (Samburu North, JP): Thank you, Hon. Temporary Deputy Speaker for giving me this opportunity. I just want to echo the voice of my colleagues who have already opposed the amendments. I totally oppose them because they are not in good faith, according to me, going by what we know the role of the Senate is.

Article 96 of the Constitution provides that the Senate represents counties and serves to protect the interest of the counties. There is a lot to be done in counties. After the promulgation of the Constitution and when we started implementing it right from 2013, the Government devolved most of the roads that were mentioned in the Constitution. In fact, counties went and demanded that some of the roads be devolved faster than they were supposed to be done.

Actually, their hands are full. The Senate has a lot of work to do. The national Government is only in the road committee in the constituency and handles very few roads. In my constituency, in one financial year, we can only manage four roads out of the many that are in the county. Counties have many roads: Class D, E and below including lanes and access roads. Therefore, there is a lot of work there for Senators to oversee. So, they have a lot to do if they want to do oversight. Secondly, Article 95 says that the National Assembly represents the people of the constituencies and special interests. The way they want to change these roads committees, specifically wanting to include two officers from the Senator's office in the roads committee is not good. The roads committee which is managed by KeRRA is called the Constituency Roads Committee. It is not a county roads committee. So, the request or the amendment is misplaced. It is unconstitutional as well as outrageous. After all, what the constituency roads committee manages is very little money. I do not know whether it is different from where I come from. In my constituency, the constituency roads committee, which comprises the constituency's NG-CDF members, manages peanuts. It is hardly Kshs20 million. Why look for Kshs20 million and the county has more than Kshs1 billion that is meant for roads? Why not go for that one?

After all, KeRRA does a lot of work. In fact, they are so efficient. They are managed well. From the beginning, from the time before they advertise the roads which they do without interference by the Member of Parliament, they bring auditors to verify the road first; to look at the roads to determine whether they should be graded or murramed. The auditors from the national Government go there early. After a contract is awarded for a particular road, they go

back to ascertain that, indeed, the money was utilised efficiently. For the counties, like where I come from, nobody knows what goes on after awarding contracts. In fact, in the first place, they do not even care about conflict of interest. It is the officials of the county governments whose companies are awarded contracts most of the time. There is a lot to be overseen if the Senators were really serious. They should have gone out there and made sure that the award of contracts is done efficiently and in accordance with the procurement law and the Public Finance Management (PFM) Act, instead of including themselves in the management of the roads committees that are done by KeRRA.

Again, the highways are done by the national Government. So, they are not part of the county governments. In my humble view, these are just vested interests. The senators want to have relevance. Maybe, the senators want to get something out of those small roads. They want to get some money, maybe. They want to be involved in contracts. At the same time, the constituencies are so many compared to the counties. How will they manage a county that has more than six or seven constituencies? Where can they get officers to be in the committees of the seven or eight constituencies? For example, Nairobi has 17 constituencies. They will be overwhelmed. That is besides the work of the county.

In my view, these amendments are wrong. They are not supposed to be there. Senators are very busy people. There is a lot of work to be done if they want to make themselves relevant. I think it is just a matter of competition. If we allow this thing to go on, it means they will bring some official to be members of the NG-CDF next time. That will be the next argument. Like my colleagues have said, the constituency roads committee is not comprised of officials from the offices of Members of Parliament. These are officials who are selected through public participation in every constituency and location. Members of the public sit down and agree to nominate one person, specifically based on gender, disability and youth. So, by bringing this amendment, the Senators want to bring somebody they have employed to sit in those committees like a personal assistant in their offices. That is not acceptable. They should just continue overseeing the county governments. If they want to have their own officials to work in any office, let them approach their respective governors and get those officials in their offices employed there, or go through the county assemblies so that they can get slots in whatever positions to make their people busy, if they are not busy.

With those few remarks, I oppose. We will go to mediation and make sure their amendments are shot down and rejected outrightly.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Very well, Member for Samburu North. The Floor goes to the Member for Navakholo, Hon. Wangwe Emmanuel.

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

At the outset, allow me to join my colleagues in rejecting the proposed amendments. I vehemently oppose these proposed amendments by the Senate by the following few reasons that I want to lay bare.

I served in the 11<sup>th</sup> Parliament as a Member of the Departmental Committee on Transport, Public Works and Housing, which is part of the Committee that initiated this process. I remember very well what we deliberated on it. This is not part of what we went through. This is unconstitutional. Article 96 of the Constitution gives us the limitations to what the Senate is supposed to do. It also goes further to explain what it entails in Article 107 through to 113.

If you look at what they are proposing, it does not lie in that range. Therefore, just by virtue of it being unconstitutional, it must be rejected; it must be rejected absolutely and it should

be done away with. In fact, as we contribute, we should be counting the time so that we vote out these amendments and go for mediation and close this chapter.

What is also surprising me is that they are making proposals that the accountant in charge of the various constituencies becomes the Authority to Incur Expenditure (AIE) holder and yet, we know very well the structure that operates down in the constituencies with respect to the regional management of KeRRA, which will be named otherwise. That will bring a fight in administration. It will bring confusion between the regional manager and the staff. We do not want to cause confusion by introducing that kind of arrangement before the House.

The Senate has gone ahead to make a proposal that they would want to nominate two people from their offices. I want to cite an example of my own county. We are 12 sub-counties. I am pretty sure that my Senator does not have 24 members of staff to engage. Why are we debating an issue which we just know it is not practical? That is an example from my county. It means he would have to borrow a leaf from somewhere else so that he is able to accommodate staff. Who are the people that he is going to bring on board and yet, they will not be members of his office? He does not have the capacity to employ such people. This proposal is not implementable. On that note, it should die on arrival, so that we have a proper document that we can rely on and which is practical to implement, so that we can move on.

When you look at the way they have detailed the document before us, it is not proper with respect to the way they have cited the examples in terms of the operationalisation of the two officers who are going to be nominated by the Senator. This is not the substantive Senator, but his representative. We do not want to delegate the noble roles of our staff through the offices of the Senators. That delegation is bound to be abused and control what is not theirs. On that note, it is important that I urge my colleagues to reject this Bill as it is. Let us go for mediation. During mediation, I urge the chairperson of this committee to put his feet down. This is a wrong proposal which, as legislators and leaders, we should not accept.

Thank you. I oppose.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Very well. Let us have the Member for Sotik Constituency, Hon. Koskei Kipkoech. He is the next one on the request list.

**Hon. Dominic Koskei** (Sotik, JP): Thank you, Hon. Temporary Deputy Speaker. First, I want to echo what Members have said in opposing the amendments from the Senate. I sit in the Committee on Transport, Public Works and Housing and I am an engineer by profession.

The Bill that has been brought forth by the Senate was not done in good faith. When you look at the amendments to the Bill, the Senate took their time, sat down and thought of introducing members from the office of the Senator to join the CRC. That was done in bad faith. I do not know what the Senate was thinking. At the end of the day, they have killed the Bill. When you look at it, the amendment goes beyond the mandate of the Senate. The Senate's mandate is specifically to protect the interests of counties. What role do they have in proposing some members from the office of the Senator to the CRC? This is not in good faith.

When you look at the other proposed amendments to the Bill that take care of other factors in the Bill, the Senate did not do well. The Bill has a lot of amendments to be considered, but I do not know the Senate's intentions. I would rather the status quo remains if we cannot agree with most of these amendments. I tend to think that there is another force – I do not know from where – that wants to intentionally kill this Bill. I hope that the mediation team will look at this Bill critically.

However, let us be hopeful because there are several gains in the Bill like the standardisation board. If you look at how counties use their money for roads, most of it is a public relations exercise. I want to single out – I do not know if it is right to single out a county – what happened in Machakos County, as an example. Is it possible to do an asphalt road in three months? What standards did they follow? Where was it captured in the provisions of the engineer? That was worrying and it is not possible from studies that have been done over a long period of time. There was no use of new technology. They used the old technology to do a road in three months. This was a waste of public money. Introduction of a standardisation board, that cuts across the national Government and county governments' roads will ensure that standards are adhered to. That will guarantee use of public money rightfully.

When the Bill is introduced in this manner and the intention is probably to kill it so that we do not have the standardisation board in place, it defeats logic. This Bill has been there for a while. It seems the intention is not to have it in place. The Bill has also looked at other aspects like introduction of members to the boards of KeRRA, KURA and other authorities managing roads in this country. That is good. When you check the intention of the Senate, now that we going to mediation, it is not to have this Bill in place. I urge Senators to reconsider their stand as we go to mediation and look at the larger picture.

With those remarks, I join my colleagues in rejecting the Senate amendments.

Thank you.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Are you on record opposing or rejecting the amendments?

**Hon. Dominic Koskei** (Sotik, JP): I am on record opposing the amendments, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Very well. Hon. Members, again, we are debating the Senate amendments to the Kenya Roads Bill (National Assembly Bill No. 47 of 2017).

Let us have, Hon. Tong'i Nyagaka, Member for Nyaribari Chache.

**Hon. Richard Tong'i** (Nyaribari Chache, JP): Thank you, Hon. Temporary Deputy Speaker for giving me the opportunity to contribute to this Bill. However, I was waiting for the next business on the Order Paper.

I want to agree with my colleagues who have spoken ahead of me on the Senate and its functions...

*(Hon. Mulyungi gesticulated to the Temporary Deputy Speaker)*

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Order! I must respond to this Member. Hon. Mulyungi, we do not throw hands in the House. I can tell what you are trying to communicate to the Temporary Deputy Speaker. She is so clear in her mind. In this House, you can sit anywhere on the right or the left of the Speaker's Chair. It does not matter which side of the political divide you are in. I go by the requests on the system console. I understand where you are coming from, but you are not far on the list, Hon. Member for Mwingi Central. In fact, you will be the next one. You can get ready.

Proceed, Hon. Tong'i.

**Hon. Richard Tong'i** (Nyaribari Chache, JP): Thank you, Hon. Temporary Deputy Speaker for ensuring that there is order in the House. That is why we appreciate your services.

In principle, we do not oppose the idea of being overseen and getting many people to look into what is good for the country. However, as we do that, we need to be careful not to cause confusion. As they say, “everybody’s business becomes nobody’s business.” If we allow many people into the jam, we are only going to cause confusion. The confusion will not be good for the county and it is not what we desire to have. Roads are a function of both the national Government and county governments. We agreed that there are roads that are done by the county governments and those that are done by the national Government. It perturbs me when I hear the Senate recommending that the rural roads should be surrendered to the counties. My question would be: What happens when the Government wants to expand those roads? Will they have to seek clearance from the counties before they commence? This is the kind of confusion we want to mitigate by ensuring that such kinds of things are not allowed.

I agree with what has been said by my colleagues. It makes sense. The Senate proposes to recommend their people to the board and yet, they have few staff serving in the counties. For example, in my county, Kisii County, there are nine constituencies. Where are they going to get the personnel who will be sitting in these boards? What will happen when we have meetings happening at the same time? This is a serious function and we do not want to take chances and cause any confusion with it. We want to have systems that are working clearly. As I said in the beginning, that which everybody claims becomes everybody’s business and, therefore, nobody’s business. We do not want to get into that situation.

Without repeating what my colleagues have said, I support.

Thank you.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Very well. The Member for Mwingi Central, Hon. Mulyungi Mutemi.

**Hon. Gideon Mulyungi** (Mwingi Central, WDM-K): Thank you, Hon. Temporary Deputy Speaker. I rise to oppose this Bill. I want to join my colleagues in acknowledging that we must maintain a distinction between Members of the National Assembly and Members of the Senate. Article 96 of the Constitution is very clear. We should adhere to the rule of law. The Senate must oversee the counties. It appears like Senators have failed in their duties because since we came to this Parliament, I have never seen one governor being summoned by the Senate to answer audit queries and yet, there is a lot of theft in the counties. Now Senators want to rein in on the mandate of the Members of the National Assembly. We know very well that Members of Parliament are involved in KeRRA roads and, therefore, the Senators want to sneak in these amendments so that they can find space in the management of roads which are under Members of Parliament. The Bill on the Floor of the House is very clear on the distinction of which roads are managed by the county governments and which roads are managed by the national Government. Members of Parliament fall under the national Government. The roads which are managed by Members of Parliament are not many. In my constituency, I only have three roads. But there are more than 100 feeder roads which are managed by the county assembly.

This Bill and the amendments that have been made by the Senate, if you read between the lines, what these amendments are trying to do is to make the county governments godfathers and super powers in the management of roads. Therefore, we cannot support this amendment because we would not be fully involved in the management of roads.

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

*(The Temporary Deputy Speaker  
(Hon. (Ms.) Soipan Tuya) took the Chair)*

Roads are the backbone of infrastructure and economic growth and, therefore, it is not something we should play around with. What the Senators are trying to do is an abuse of legislative powers. Luckily enough, the amendments must come to this House. Were it not done that way, then they would have gotten away with those amendments and included themselves in the running of the affairs of roads.

In the current Roads Act, our NG-CDF Members are the ones who sit in the roads committees. The Senators now want to bring their members to the committee so that they can manage the roads themselves. They also want to bring in the governors. Some of us do not work very closely with the governors because we also want to be governors. I want to be the next governor of Kitui County. So, bringing my governor to rein on my road then it means that I will not do anything. Therefore, we must separate the powers of the governors and the powers of Members of Parliament. The Member for Garissa, who is my neighbour, wants me to be the Governor of Kitui County. So, when the Governor of Kitui County becomes a member of the roads committee, I will not do any road.

**Hon. Aden Duale** (Garissa Township, JP): On a point of order, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): What is out of order, the Leader of the Majority Party? I thought Hon. Mulyungi is being very honest.

**Hon. Aden Duale** (Garissa Township, JP): No, he is not. I want you to ask him to withdraw and apologise because Hon. Charity Ngilu was my colleague in the 10<sup>th</sup> Parliament and up to now, he has not measured to her standards. When the time comes and he will measure, I will decide. I am not a voter in Kitui but I have some influence. But as of today, Hon. Charity Ngilu is ahead of him. Can he withdraw? I have not endorsed him.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): But Hon. Leader of the Majority Party, he could just be asking for your vote in anticipation that your position might change.

**Hon. Aden Duale** (Garissa Township, JP): No! He is trying to carry out a fake opinion poll and I do not want to be part of it. This man is short but dangerous!

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Hon. Mulyungi, continue with the debate.

**Hon. Gideon Mulyungi** (Mwingi Central, WDM-K): What the Leader of the Majority Party does not know is that he has no capacity to decide who will become the next governor of Kitui County. He never decided whether I should come to this House.

County governments want to be godfathers. The Senate wants to bring the county government to the roads and, therefore, we should vehemently oppose these amendments so that we can continue managing KeRRA roads the way we have been doing. I think we have been doing so very well. I do not see any problem but this will bring a lot of conflict of interest.

There is also an amendment where the LSK is being brought on board. The LSK has no business in infrastructure. They make laws. I sit in the Committee on Transport, Public Works and Housing. We looked at this and we decided that we should expunge the LSK from the board. There is also an amendment which says that when you are doing roads, and you want to access water, you must consult the governor. I do not think that is acceptable because KeRRA roads are under the national Government. The Constitution is very clear that if we have to consult the

governor and you are not in terms with him or her, you will never do any roads. That is because he or she will never allow you to access water. Therefore, I strongly oppose this amendment and recommend that we mediate with the Senate. If mediation fails, then the Bill should die and we continue with what we have been doing.

Therefore, I oppose.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Member for Kipipiri.

**Hon. Amos Kimunya** (Kipipiri, JP): Thank you, Hon. Temporary Deputy Speaker. I want to recognise the efforts that have been put here by the Senate but, unfortunately, it seems like running on a treadmill. That is putting a lot of effort with no movement. I join my colleagues in finding that most of these amendments are superfluous, unnecessary and should be rejected in totality. I want to just look at some of the things. When in Clause 7 they say that they want to include the CoG, already, we had provided for the Intergovernmental Relations Technical Committee within the Bill. But now they want to bring in CoG. The last time I checked, I do not believe that CoG was formed with the mandate of sitting on boards and providing advice on standards of roads, which is what they are attempting to do in Clause 9. That, when the CS is deciding on the standards of roads, he or she should consult the CoG. When does CoG become road engineers to determine road standards?

When you look at all the other amendments that they are introducing in Clauses 17, 20, bringing in LSK, you wonder what the legal issues are to do with roads. They have not even thought about the numbers. They say two people nominated by the following two institutions, but then they say add another institution. Now you have two people nominated by three institutions. How do we even start figuring out which of the two we will take and which one to leave out? Soon, we will also be asking accountants and architects and all these different people to join.

In Clause 44, when you want to get wayleave and sort out what happens, that you need to consult the relevant county government. That already happens anyway as a matter of planning and the approvals. When you put it in law, we are shooting ourselves in the foot.

There are several issues. You need to look at them in the context in which the Senate may be introducing them. The way I look at it is that we have an idle House that is looking for relevance. When the Senate was set up in 2010, it was very clear its mandate was to represent the interest of counties. Senators do not represent people. They represent counties. Members of the National Assembly represent the people and issues to do with the people. When we see Senators come to constituencies and they want to say: I am the one who has done this road. We went to the Senate and the President and we were given a road, it is sad. They have no way of showing it because the CRC is controlled by the Members of the National Assembly. So, they are trying to sneak in a way of knowing what we are doing so that when they are out there, they can go and get some false mileage that they are the ones doing the roads and not the Member of the National Assembly.

It is also very clear that some of the Senators want to become governors. Much as the Member for Mwingi has declared, a number of those Senators are looking for a situation where they are trying to create for themselves a future through meddling in the roads governance. I will not be long.

I just want to make sure that it is put on record that I am one of the people who are very dissatisfied with the workings of the Senate and the meddling they are doing with the work of the national government. At an appropriate time, we will need to revisit whether we actually need the Senate or not, and if we need it, what role we should give it so that we do not end up

duplicating work and making Kenyans suffer double-jeopardy appearing before committees of the National Assembly and the Senate on the same issue. I believe it is very clear that we should just reject these things and go to the next step. I do not even need to go through all the other clauses that have issues.

With those remarks, I beg to oppose.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Member for Mogotio.

**Hon. Daniel Tuitoek** (Mogotio, JP): Thank you, Hon. Speaker. Under Standing Order 95, I would like you to call upon the Mover to reply, since most of us agree that this Motion needs to be brought to an end.

Thank you.

**Hon. Members:** Yes.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Order, Members. I will proceed to put the Question on the Motion raised by the Member for Mogotio on calling the Mover to reply.

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

Leader of the Majority Party.

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

*(Question put and negatived)*

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Next Order! Order Members! You will realise that under Order No. 11, we were supposed to go into the Committee of the whole House on two Bills. The first one has not been debated as you all know and, therefore, it is stepped down. The second one has been defeated.

*(Consideration of Committee of the whole House deferred)*

So, we move on to Order No. 12.

## MOTIONS

### REPORT ON ALLEGED IRREGULAR SPECIALIST RECOGNITION OF DR. SONI BY THE KENYA MEDICAL PRACTITIONERS AND DENTISTS BOARD

THAT, this House adopts the Report of the Departmental Committee on Health on alleged irregular specialist recognition of Dr. Samira Soni by the Kenya Medical Practitioners and Dentists Board, laid on the Table of the House on Wednesday, 17<sup>th</sup> October 2018.

*(Hon. (Ms.) Sabina Chege on 12.3.2019)*

*(Resumption of Debate interrupted on 13.3.2019)*



**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Chair of of the Departmental Committee on Health. Yes, Leader of the Majority Party, do you have a brief?

**Hon. Aden Duale** (Garissa Township, JP): Yes, I have a brief. The Chair is in Murang'a on a national issue. The House has debated this matter. I really want to thank all the Members who contributed immensely on the Health Committee Report.

Hon. Temporary Deputy Speaker, before we move on, I thought we were to go to the Committee of the whole House on the Senate amendments.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): We just defeated that, Leader of the Majority Party. You are the only one who supported it. Everybody else was against it.

**Hon. Aden Duale** (Garissa Township, JP): Sorry. We will go for mediation. I got confused.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): You are right, Leader of the Majority Party. It is actually committed to mediation.

**Hon. Aden Duale** (Garissa Township, JP): So, from here we go to mediation. So, Chair of Transport, Public Works and Housing Committee, you have no business now. I will find you in the mediation.

As I reply on behalf of the Chair of the Health Committee, Hon. Sabina Chege, this was a matter that was covered for two sittings and I am sure the recommendation given by this Committee will go a long way in helping the KMPDB on the way forward. I am sure the board will take into consideration the concerns of this House. We have a sitting Member of this House who lost one of his sight because of the hospital run Dr. Soni; where we are told a governor in this country lost his eyesight because of the hospital that is run by Dr. Samira Soni... So, it is not only about herself, but also the proprietor of that hospital. So, we must protect Kenyans' lives. So, the medical board, the Ministry of Health and all other regulating institutions must take up this matter and get this report. The Committee on Implementation must write to the Ministry and the board. And the Clerk must write, after the adoption of this report, that it will not be business as usual for Dr. Samira and her medical facility in Westlands, so that each and every professional in our country must adhere to accountability and ethics of the profession that they practise, and that the patients that go through their hospitals and clinics must be accorded the highest health safety standards.

I beg to reply.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Hon. Members, I shall defer the putting of the Question on this one until such other time when it comes up on the Order Paper.

*(Putting of the Question deferred)*

Next Order

REPORT ON INQUIRY INTO THE KENYA-SOMALIA BORDER SECURITISATION PROJECT

THAT, this House adopts the Report of the Departmental Committee on Defence and Foreign Relations on the Inquiry into the Kenya-Somalia Border

Securitisation Project, laid on the Table of the House on Tuesday, November 20, 2018.

*(Hon. Major (Rtd.) Bashir S. Abdullaih on 12.3.2019)*

*(Resumption of Debate interrupted on 13.3.2019)*

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Hon. Members, we are resuming debate on this Motion and Hon. Tong’i was on the Floor prosecuting an amendment.

So, let us have Hon. Tong’i

**Hon. Richard Tong’i** (Nyaribari Chache, JP): Thank you, Hon. Temporary Deputy Speaker. I want to continue from where I stopped yesterday. We are moving an amendment as follows:

“By deleting the word “adopts” appearing after the expression “that this House” and substituting therefore with the word “notes”. By deleting the words “inquiry into” after the word “foreign relations” and substituting therefore with the word “status”.

I further move to amend the title of the Report; “Report on the Inquiry into the Status, Viability, Efficacy and Implementation of the Kenya-Somalia Border Securitisation Project” and substituting therefore with the new title “Report on the Status of Kenya...”

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Hon. Tong’i, which amendment are you talking about?

**Hon. Richard Tong’i** (Nyaribari Chache, JP): I am talking about the amendment on Motion 13. There is a further amendment on the same which is stating the same thing, but because you can change that without changing the title to read the same message...

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): So, you are saying the substance of the amendment affects the title?

**Hon. Richard Tong’i** (Nyaribari Chache, JP): Yes, the content remains the same but the wordings have to change.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): So, you want to do it hand in hand with the other one. I think it is in order. Go on.

**Hon. Richard Tong’i** (Nyaribari Chache, JP): So, the new Title will read: “Report on the Status of the Kenya-Somalia Border Securitisation Project.”

I ask my colleague Hon. Charles Kilonzo to second.

**Hon. Charles Kilonzo** (Yatta, Independent): Thank you, Hon. Temporary Deputy Speaker. I wish to second those two amendments as they appear in the proposed Motion. As I do so, because this matter came up yesterday, this Committee does not only need to respond to petitions or Questions from Hon. Members, it can act on its own. We all know that the Government has been doing the fencing project in the border between Kenya and Somalia. We felt that it is necessary that I state it because the Hon. Leader of the Majority Party did raise the issue and said no question was put forward. The new Standing Order No.216 (5) (h) states thus;

“The functions of a Departmental Committee shall be to-

(h) make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;”

Members of the Committee felt that such a project cannot proceed without the Committee playing its role of oversight. On that basis, the Committee engaged the various ministries concerned and one of the key issues that concerned the Committee is that of wars worldwide,

which is not good. So, we needed to know the justification, why we must have a wall on the Kenya-Somalia side and not on the side of Ethiopia, Sudan, Uganda or Tanzania.

When we met the various ministries, it was made very clear to us that it is not that they want war, but it was for purposes of security. It was necessary to deal with issues of terrorism. The Committee held meetings with the CS, Defence, Ministry of Public Service and Ministry of Youth on the same issue. Later on, the Committee visited and had meetings with the public in Mandera and at no time did the Committee get any objection whether from MPs of that region or the public.

Hon. Temporary Deputy Speaker, Members were also very concerned that it would be very expensive to do a wall all the way from the border. We were told that it is still in design stage. In some areas, they will use technology rather than do physical barriers. That aside, after the visit... I saw today the media was giving a wrong impression of what is happening. I want to be very clear and for the benefit of Hon. Members, we need to know what is being done on the ground. It is not just about the wall and the fence.

If you look at your Report on page 30, it is very clear there are a lot of activities. I will be very particular if Members can go there. The infrastructure being implemented include: International borderline survey which means surveyors have been engaged to demarcate the border between the two countries; construction of the fence. This can be a wall, chain link or otherwise. There is going to be construction of all-weather patrol roads, anti-vehicular trench excavation, rehabilitation of airstrips and local access roads. Also, there are projects to benefit the community. There is going to be an undertaking of socio-economic activities that will enhance the living standards of the local community.

Hon. Temporary Deputy Speaker, on page 33, the figures involved are alarming, but for a good purpose. There is going to be construction of border command headquarters in Wajir and works are ongoing. There is going to be construction of another command headquarters and forward operating bays in Wajir, operation cells in Mandera, rehabilitation of Liboi and Hulugo airstrips, fabrication of fencing materials are ongoing, sinking of boreholes and so on. There will be many activities which are involved. The Committee felt that for a project of this nature, it is only fair that this House is put in the know. This is one of the mandates of this Committee.

However, on the visit to Mandera, one issue came up which has been noted by our Committee. We noted among all observations that there is need for the Government to open up the Kenya-Somalia border. This will lead to an improvement in revenue collection when the movement of people and goods is regulated. On that basis, our Committee recommended that the border should be reopened. That is in recommendation number two.

With those remarks, I second those amendments

*(Question of the first part of the amendment,  
that the words to be left out be left out, proposed)*

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): I have a total of five requests. Let us start with the Member for Mosop, Hon. Tuwei Kipkurui. You seem to be surprised!

**Hon. Vincent Tuwei** (Mosop, JP): Thank you, Hon. Temporary Deputy Speaker. As a Member of the Departmental Committee on Defence and Foreign Relations, I do not have much to say. However, I support the proposed amendments and also add that the securitisation...

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Hon. Tuwei, and all other Members, for now, you have to confine yourselves to the amendment. That does not deny you the opportunity afterwards to contribute to the Motion as amended.

**Hon. Vincent Tuwei** (Mosop, JP): Thank you, Hon. Temporary Deputy Speaker. I support the proposed amendments that have been presented by the Vice-Chair, Hon. Tong'i.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): That is in order. Hon. Kelvin Wanyonyi.

**Hon. Ferdinand Wanyonyi** (Kwanza, FORD-K): Thank you, Hon. Temporary Deputy Speaker. I am not a Member of this Committee. I agree and support the proposed amendments. I also want to contribute to the main Report if it is allowed.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Not now! You only support the amendment and then hold your horses until we have the amended version. Then you will contribute. I have other Members who want to speak to the amendment. Hon. Abdullahi Sheikh. Hon. Lentoimaga.

**Hon. Alois Lentoimaga** (Samburu North, JP): Thank you, Hon. Temporary Deputy Speaker. I support the amendment because I know the kind of challenges Mandera, Wajir, Garissa and the entire North Eastern Region face. There are security challenges, loss of livelihoods and incursions from Somalia.

I happened to have worked there during the fall of Siad Barre. I know how people came with heavy machinery running away from the war in Somalia. I support this amendment because this is a critical undertaking by the Government, to ensure we secure our borders strongly. I think this would have been done long time ago and not just now. We are very late. In the last Parliament, I was a Member of the Departmental Committee on Administration and National Security. I think this is the initiative of our late Minister Gen. Nkaissery, because it was started during his time.

However, when I read the daily newspaper yesterday, I think the media has become very vocal and elaborate and, sometimes, mislead Kenyans. I am not saying that I know a lot about the expenditure, but I know we can use as much resources as possible to secure that part of Kenya. That is because in the event there is any kind of invasion into this country, definitely, almost 90 per cent will come through the border between us and Somalia.

That is because the border is porous and long - almost over 800 kilometers in length. There is a lot of attraction to Kenya by people who do not have good intentions. First of all, they want to come here because of the war across, become Kenyan citizens, relocate to other parts of world and the exit point is Kenya. They also come here for business. All kinds of contraband goods can come through that border.

I support this amendment. However, I request the Committee to be on the lookout and ensure that resources are utilised properly for the purpose of securing the country from incursions from outside. So long as this is a very strong deterrent undertaking, we need something that can stop those with ill intentions from harming us. In the last Parliament, we said they can dig a trench or build a wall. It does not have to be 800 kilometers long. It can be at a particular place which is frequented by those who come with bad intentions to Kenya. It can also be 100 kilometers and specifically along the areas that are notorious for entry of terrorists like *Al Shabaab*.

Hon. Temporary Deputy Speaker, I support and I look forward to contributing during debate on the amended Motion. Thank you.

*[The Temporary Deputy Speaker  
(Hon. (Ms.) Soipan Tuya) left the Chair]*

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

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Hon. Members, we are debating the proposed amendments to the Motion. Let us have the Member for Mandera North to contribute to the amendment.

**Hon. Major (Rtd.) Bashir S. Abdullahi** (Mandera North, JP): Thank you, Hon. Temporary Deputy Speaker. I want to support the amendment. It is critical that the House be seized of the matter that, as a Committee, we wanted the House to be informed of what is happening or what the Ministry of Defence is doing with regard to the border securitisation project.

Therefore, as a Committee, on our own volition, we felt we need to look at what is happening and bring information to the House in terms of status. It is not an inquiry. It is very critical that the amendment as it is, reflects the intention of the Committee when we were delivering this Report. We went to check on the project and now we are informing the House on what we found. This is not a matter of the Committee or the ministry asking for any approval.

Thank you, Hon. Temporary Deputy Speaker. I support the amendments.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): The Member for Kitui Rural, Hon. Mboni David.

**Hon. David Mboni** (Kitui Rural, CCU): Thank you, Hon. Temporary Deputy Speaker. I wanted to contribute to the main Motion, but I support the amendment.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): However, that does not deny you the chance to speak to the main debate. The Member for Kitui West, Hon. (Ms.) Edith Nyenze.

**Hon. (Ms.) Edith Nyenze** (Kitui West, WDM-K): Thank you, Hon. Temporary Deputy Speaker. I also stand to support the amendments as proposed. I have noticed that they visited the area and what they are reporting is what they saw. This is very commendable. Therefore, I support and congratulate them.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): For record purposes, the amendment is by the Member for Nyaribari Chache Constituency, Hon. Richard Tong'i, MP. The other Member who has sent his request is the Member for Kwanza, Hon. Wanyonyi Kelvin. Do you want to speak to the amendment? Actually, my record says that you have already spoken to them and our Standing Orders do not allow us to speak twice.

Next is the Member for Lagdera, Hon. Garane Hire.

**Hon. Mohamed Hire** (Lagdera, KANU): Thank you, Hon. Temporary Deputy Speaker. I also support the amendments but I wanted to speak to the main debate. I support the amendments.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Hon. Members, just for record purposes, guidance and direction, even if you speak to the proposed amendments, you can still get a chance to speak to the main motion. You have both rights. The other Member requesting to speak to this amendment is the Member for Kajiado South, Hon. ole Metito Judah.

**Hon. Katoo ole Metito** (Kajiado South, JP): Thank you, Hon. Speaker. I will also speak on the amendments. As has been said by the Mover, the main issue is even to change the title of

the Report from being an inquiry to reporting on the status of the project. As a Committee, on our own motion, and as required by the Standing Orders, we decided to update the House on the progress of this project. It is good to change the title, and wherever the word ‘inquiry’ appears in the Report to “the status of the Kenya-Somalia Border Securitisation Project”. This is because what has been done is a progress Report.

It is also good for the House to know that this undertaking was done in September last year by the Committee. So, the status of the project we are reporting on is six months old from September last year. Maybe, a lot of ground has been covered from that time. It is good to note that the Report was tabled on 20<sup>th</sup> November, 2018. So, this progress Report is six months old. I am sure a lot of ground has been covered within those six months. As we said yesterday, this Motion is not seeking any approval from the House. That is why we brought the amendment. Instead of asking the House to adopt it, we changed it for the House to note. This is because it is for information purposes. We are informing the House that work is being done on the project.

It is also good to put the record straight because, in the Report, there was tabulation of money spent on the project. It is good for Members to read that table very well and see that since 2015, that project has been allocated money on an annual basis. There are columns showing how much has been allocated, how much money has been spent, how much money has not been spent and the total amount. The total amount is what was allocated. From 2015 to date, Kshs3.9 billion has been allocated to that project. However, the Report shows very clearly that out of the Kshs3.9 billion allocated, Kshs1.7 billion has been spent. During yesterday’s debate, some Members who had not read the schedule properly misinterpreted it. The media published that misinterpretation in today’s newspapers, especially *The Standard*. They said that Kshs3.9 billion has been spent. That is not the case. That is what has been allocated, but Kshs1.7 billion has been spent.

It is also good to inform the House that the project is divided into three sections: the southern, the northern and the central sections. That is explained clearly in the Report. One section is 165 kilometres; another one is 105 kilometres and the other one is 445 kilometres, bringing the total distance to 700 kilometres. In each section, several works were being done. In some section, it was bush clearing; in another section, it was fencing and in yet another section, it was digging of the trenches. The work that has been done using the Kshs1.7 billion is probably the 13.3 kilometres of the fence that has been completed. On another section of 50 kilometres or so, bush clearing has been done. In another section, several ditches have been dug, and that is part of the whole project. That is how the expenditure has been broken down.

Finally, there is a misconception, probably, because of the wording being used – the wall. From a layman’s point of view, including the media, everyone is looking at a wall. From a layman’s point of view, we need to have a brick wall. I think the concept was not understood correctly from the start. They are just using the word “wall” but, in the project, they say it comprises of a fence, concrete bricks, digging of ditches and bush clearing. The whole project is being called “the wall”. However, from the layman’s point of view, a wall is supposed to be constructed using bricks and concrete. That is not the case. Because we will come back to the main Report if the House agrees with the amendments, we will explain even these sections. The section of 445 kilometres, which is the longest, has the smallest budget because of the terrain in that area. You may find a section which covers a short distance, but the terrain occasions a high cost.

Therefore, we just want the House to agree with the Committee that this is a progressive report for information purposes. It is not an inquiry. That is why we have brought this

amendment. Again, it is good for the House to note that this was as at September last year. We are now six months down the line. A lot of ground has been covered since then.

With those remarks, I support the amendments.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Hon. Members, the amendment is for the House to note. It was moved procedurally. There is no other Member requesting to speak to the amendment, but I am not in a position to put the Question to the proposed amendment because the House is not properly constituted for the same. I, therefore, direct that the Question on the proposed amendment to the Report on inquiry into the Kenya-Somalia Border Securitisation Project be deferred to the next Sitting.

*(Putting of the Question deferred)*

Hon. Members, since we have to dispose of the amendment before we speak to the Motion, I direct that debate on the Motion listed as Order No.13 on the Inquiry into the Kenya-Somalia Border Securitisation Project be deferred.

*(Motion deferred)*

Next Order!

RATIFICATION OF REVISED CONSTITUTION OF  
AFRICAN CIVIL AVIATION COMMISSION

THAT, this House adopts the Report of Departmental Committee on Transport, Public Works and Housing on its consideration of the Revised Constitution of the African Civil Aviation Commission (AFCAC) for Ratification, laid on the Table of House on Tuesday, March 12, 2019, and pursuant to section 8 of the Treaty Making and Ratification Act, 2012 approves the Ratification of the Revised Constitution of the African Civil Aviation Commission.

**Hon. (Ms.) Cecily Mbarire** (Nominated, JP): Hon. Temporary Deputy Speaker, it looks like the Committee is not prepared. Even the Chairman is not here. Therefore, I would like to request that we move this particular Order to the next Sitting.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Thank you, the Deputy Whip of the Majority Party, Hon. Cecily Mbarire, for that communication.

Hon. Members, the Chairperson of the Departmental Committee on Transport, Public Works and Housing is not in the House. Therefore, the Motion listed as Order No.14 is stood down as requested by Hon. Cecily Mbarire.

*(Motion deferred)*

Next Order!

INQUIRY INTO LEGISLATIVE AND REGULATORY GAPS AFFECTING COMPETITION IN THE  
TELECOMMUNICATIONS SUB-SECTOR

THAT, this House adopts the Report of the Departmental Committee on Communication, Information and Innovation on the Inquiry into Legislative and Regulatory Gaps affecting Competition in the Telecommunications Sub-Sector, laid on the Table of House on Tuesday, 5<sup>th</sup> March 2019.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Let us have the Chairperson of the Departmental Committee on Communication, Information and Innovation. Let us have Hon. Cecily Mbarire, the Deputy Majority Whip.

**Hon. (Ms.) Cecily Mbarire** (Nominated, JP): Hon. Temporary Deputy Speaker, the same fate applies to this particular Motion. The Chair of the Committee is not here.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Very well. Following the communication from the Deputy Majority Whip of the House that the Chairperson of the Departmental Committee on Communication, Information and Innovation is not in the House, I order that Order No.15 be stood down.

*(Motion deferred)*

REPORT ON MEETING TO PROMOTE AND POPULARISE THE RATIFICATION OF THE PROTOCOL ON THE  
FREE MOVEMENT OF PERSONS AND ITS IMPLEMENTATION ROADMAP

THAT, this House notes the Report of the Departmental Committee on Defence and Foreign Relations on a Meeting with the Member States and Secretaries of the Economic Community of West African States and East African Community to Promote and Popularise the Ratification of the Protocol on the Free Movement of Persons and its Implementation Roadmap, laid on the Table of the House on Wednesday, 21<sup>st</sup> November 2018.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): I call upon the Chairperson of the Departmental Committee on Defence and Foreign Relations. Let us have the Deputy Majority Whip, Hon. Cecily Mbarire.

**Hon. (Ms.) Cecily Mbarire** (Nominated, JP): Hon. Temporary Deputy Speaker, I wish that this Motion is stood down just like the others as the Chair of the Committee is not here.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Very well. The Chair of the Committee is not in the House. We are guided by Standing Orders No.13, 14 and 15. The same applies to Order No.16. I, therefore, order that Order No.16 be stood down.

*(Motion deferred)*

**ADJOURNMENT**

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Hon. Members, this brings us to the end of the business on the Order Paper today, Thursday, 14<sup>th</sup> March 2019.

There being no other business on our Order Paper, and the time being 6.22 p.m...

*(Several Hon. Members stood in their places)*



Order Members! Members for Kaiti, Mbooni and Kitui, you stand guided that this is a House of rules and procedures. When the Speaker is upstanding, you are required not to be upstanding.

Hon. Members, the time being 6.22 p.m., this House stands adjourned until Tuesday, 19<sup>th</sup> March 2019, at 2.30 p.m.

The House rose at 6.22 p.m.