

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Thursday, 7<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

#### WITHDRAWAL OF AMENDMENTS FROM THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL

**Hon. Speaker:** Hon. Members, as you may be aware, the Statute Law (Miscellaneous Amendments) (No.2) Bill (National Assembly No.13 of 2018) was published on 10<sup>th</sup> April 2018, and is currently undergoing Second Reading. The Bill which is sponsored by the Leader of the Majority Party contains various amendments to 15 different statutes.

I wish to inform the house that I have received a letter from the Leader of the Majority Party requesting to withdraw proposed amendments to the Cooperative Societies Act, Cap. 490, the Sacco Societies Act No.14 of 2008 and the Statistics Act No.4 of 2006. I have acceded to this request which implies that the Bill will now undergo Second Reading and other stages without making reference to the withdrawn statutes. In this regard, I direct that the amendments relating to the said statutes be withdrawn from the Bill forthwith.

The House is accordingly informed.

### PETITION

#### AMENDMENT OF VARIOUS ARTICLES OF THE CONSTITUTION TO REMOVE TYPOGRAPHICAL ERRORS

**Hon. Speaker:** Hon. Members, this is Public Petition No.18 of 2019.

Hon. Members, as you are aware, Standing Order No. 225(2)(b) requires the Speaker to report to the House any petition, other than those presented through a Member. I, therefore, wish to convey to the House that my office has received a petition submitted by Mr. Dominic Ng'ang'a Mburu requesting that Parliament, pursuant to Articles 94(3) and (5), and 95 (2) and (3), considers amending various Articles of the Constitution of Kenya to remove errors appearing therein.

The citizen has submitted the Public Petition in exercise of his right to petition Parliament to consider any matter within its authority, including enacting or amending and repealing any legislation. The petitioner avers that the errors which are so glaring and too obvious could as well be corrected by Parliament via a single legislative instrument.

The petitioner, therefore, prays that, and I quote:

(a) The typographical errors as identified and any other errors therein, be considered and amended at the appropriate time pursuant to Article 94 (3) of the Constitution, and in the spirit of Articles 256 and 259 (8) of the Constitution to standardise, sanctify and enhance clarity to the text and content layout of the country's supreme law; and

(b) Makes any such other consideration that it shall deem just.

Pursuant to the provisions of Standing Order No.227, the Petition therefore stands committed to the Departmental Committee on Justice and Legal Affairs. The Committee is requested to consider the Petition and report its findings to the House and the petitioner in accordance with Standing Order No.227(2).

Before we proceed, allow me to recognise the presence in both the Speaker's Gallery and the Public Gallery of students from the following institutions:

1. Moi High School Kabarak, Rongai Constituency, Nakuru County;
2. Murera Secondary School, Juja Constituency, Kiambu County;
3. Vision Empowerment Training Institute, Kajiado East Constituency, Kajiado County;
4. Ossen High School, Baringo North Constituency, Baringo County;
5. Elite Schools Primary, Nyandarua West Constituency, Nyandarua County;
6. Tender Feet School, Dagoretti South Constituency, Nairobi County;
7. William Ngiro Gitau Secondary School, Githunguri Constituency, Kiambu County; and
8. Kimathi Primary School, South Kinangop Constituency, Nyandarua County.

*(Applause)*

They are welcome to observe the proceedings in the House.

Next Order.

### PAPERS LAID

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

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

- (1) Women Enterprise Fund.
- (2) Office of the Registrar of Political Parties.
- (3) Political Parties Fund.
- (4) The Tana and Athi Rivers Development Authority.
- (5) Dedan Kimathi University of Technology.
- (6) State Department for Broadcasting and Telecommunications.
- (7) Kisii University.
- (8) Rongo University.
- (9) South Nyanza Sugar Company Limited, and,
- (10) Imarisha Naivasha Trust.

**Hon. Speaker:** Let us move to the next Order.

**QUESTION BY PRIVATE NOTICE**

*Question No.QPN 009/2019*

**DELAYED PROCESSING OF BIRTH CERTIFICATES IN KILOME CONSTITUENCY**

**Hon. Speaker:** Let us have the Member for Kilome Constituency, Hon. Eng. Thaddeus Kithua. That is a Question by Private Notice. I know the Member for Kathiani wanted to add to it. He will ask the Question in the second round.

**ORDINARY QUESTIONS**

**Hon. Speaker:** The next Question is by the Member for Molo Constituency.

*Question No.055/2019*

**DEPLORABLE STATE OF NAKURU-NJORO-MOLO ROAD**

**Hon. Kuria Kimani** (Molo, JP): Thank you, Hon. Speaker for giving me a chance to ask Question No.055/2019.

(i) Is the Cabinet Secretary (CS) aware of the deplorable state of the Nakuru-Njoro-Molo Road, especially the stretch from Njoro to Molo?

(ii) Considering the importance of the said road as it is used as a by-pass by motorists avoiding the Nakuru-Salgaa-Sachang'wan-Total Road, and as the only tarmacked road linking Njoro, Molo, Kuresoi South and Kuresoi North constituencies, what measures is the Ministry putting in place to ensure that this road is repaired?

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

The next Question is by the Member for Kamukunji Constituency. The Member is absent.

Let us have Hon. Hassan.

*Question No.056/2019*

**PROTECTION OF EACC OFFICIALS AGAINST ATTACKS**

**Hon. Yusuf Hassan** (Kamukunji, JP): Thank you, Hon. Speaker. I rise to ask Question No.056/2019 directed to the Cabinet Secretary for Interior and Coordination of National Government.

(i) Is the Cabinet Secretary aware that on 28<sup>th</sup> November, 2018 at Kabete area of Nairobi City County, Ethics and Anti-Corruption Commission officials were attacked by police officers leading to the escape of suspects, PC Julius Oguma, Service No. 79715 and PC Charles Macharia, Service No. 95924, both from the Directorate of Criminal Investigations?

(ii) What actions has the Ministry taken to apprehend the above-named suspects and bring them to court or hand them over to the Ethics and Anti-Corruption Commission?

(iii) What steps has the Ministry taken to ensure such acts are not tolerated and that appropriate action is taken to protect EACC officials from such acts?

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

The next Question is by the Member for Mumias East Constituency.

*Question No.089/2019*

INVOLVEMENT OF KENYANS IN INTERNATIONAL DRUG TRAFFICKING

**Hon. Benjamin Washiali** (Mumias East, JP): Thank you, Hon. Speaker. I rise to ask Question No.089/2019 to the Office of the Director of Public Prosecutions.

(i) Could the Director of Public Prosecutions (DPP) confirm the claims of Kenyan personalities alleged to be engaged in international drug trafficking as well as having received bribes running into hundreds of thousands of dollars to frustrate the extradition of drug criminals?

(ii) Is he aware that the said Kenyan personalities are at the risk of indictment and prosecution in foreign countries?

(iii) Could the Office of the Director of Public Prosecutions provide the list of the Kenyan personalities and agencies involved in the above criminal activities and the measures the office is undertaking to bring this matter to a logical conclusion?

**Hon. Speaker:** The Question demands a written reply. It will be forwarded to the DPP to give Hon. Washiali a written reply as he requests.

The next Question is by the Member for Isiolo County.

*Question No.091/2019*

LOSS OF LIVESTOCK DUE TO DROUGHT IN ISIOLO COUNTY

**Hon. (Ms.) Rehema Jaldesa** (Isiolo CWR, JP): Thank you, Hon. Speaker. I rise to ask Question No.091/2019 to the Cabinet Secretary for Agriculture, Livestock, Fisheries and Irrigation.

(i) Is the Cabinet Secretary aware that most pastoralists from Isiolo County lost their livestock due to the most recent severe drought?

(ii) When will farmers be paid for the supply of livestock under the livestock take-off program?

**Hon. Speaker:** The Question is referred to the Departmental Committee on Agriculture and Livestock. Next Question is by the Member for Starehe.

*Question No.092/2019*

HARASSMENT OF MEMBERS OF THE PUBLIC BY POLICE OFFICERS

**Hon. Charles Njagua** (Starehe, JP): Thank you, Hon. Speaker. I rise to ask Question No.092/2019 directed to the Cabinet Secretary for Interior and Coordination of National Government.

(i) Is the Cabinet Secretary aware of arbitrary arrest, falsified touting charges, extortion and harassment of members of the public by police officers at the Country Bus Terminus, along Accra Road, Kirinyaga Road, OTC, Muthurwa and Nyamakima areas of Starehe Constituency in Nairobi City County on flimsy reasons?

(ii) What action has the Ministry taken to stop harassment of innocent members of the public by police officers who are arrested and detained in different police stations as far as Ruai and Kayole yet the arresting point is within the Central Business District?

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

Next is the Member for Igembe Central Constituency, Hon. Iringo.

*Question No.093/2019*

CLASSIFICATION AND MAINTENANCE OF ROADS IN MERU COUNTY

**Hon. Speaker:** The next Question is by the Member for Matayos, Hon. Odanga.

*Question No.094/2019*

STATUS OF CONSTRUCTION OF NACOSTI OFFICES

**Hon. Geoffrey Odanga** (Matayos, ODM): Thank you, Hon. Speaker. I rise to ask Question No.094/2019 directed to the CS for Education:

(i) What is the status of the Government-funded building projects at the National Commission on Science, Technology and Innovation (NACOSTI) offices, and how much money has been appropriated so far for the construction works?

(ii) Could the Cabinet Secretary explain what caused the delays to complete the said projects and the measures the Ministry has put in place to ensure that the projects are completed without further delay?

**Hon. Speaker:** The Question is referred to the Departmental Committee on Education and Research.

We will now go to the second round.

**QUESTION BY PRIVATE NOTICE**

**Hon. Speaker:** For the second time, we have a Question by Private Notice by the Member for Kilome.

DELAYS IN PROCESSING OF BIRTH CERTIFICATES IN KILOME CONSTITUENCY

*Question No.QPN 009/2019*

**Hon. Thuddeus Nzambia** (Kilome, WDM-K): Hon. Speaker, I beg to ask the Cabinet Secretary for Interior and Coordination of National Government:

(i) Is the CS aware of delays in processing of birth certificates for the residents of Kilome Constituency by the Kibwezi Births Registration Office in Makueni County?

(ii) Could the CS provide details and reasons for the delay in the processing of these certificates for the last one year?

(iii) What plans are in place to ensure that the students registering for their final Kenya Certificate of Primary Education (KCPE) and Kenya Certificate of Secondary Education (KCSE) examinations are issued with birth certificates within the set timelines noting they are only left with a week to complete registration?

Thank you, Hon. Speaker, for giving me the opportunity to ask my Question.

**Hon. Speaker:** I have seen a request by the Member for Kathiani. The issue he wants to raise is pertinent. So, I will allow him to say something about this matter.

**Hon. Robert Mbui** (Kathiani, WDM – K): Thank you, Hon. Speaker. I wish to add a supplementary Question on the same Question.

Could the CS and the Kenya National Examinations Council (KNEC) urgently extend the deadline that has been issued or drop this requirement, and the registries issuing birth certificates be enhanced in order to hasten the issuance of the same so as not to lock out many people and students from registration?

Thank you, Hon. Speaker.

**Hon. Speaker:** That is a pertinent Question given the date that the Member for Kilome has talked about. It is a Question by Private Notice. So, we expect the response to come possibly by next week. That is okay.

*Question No.093/2019*

#### CLASSIFICATION AND MAINTENANCE OF ROADS IN MERU COUNTY

The Question by the Member for Igembe Central is deferred to another date at his request through Hon. Rahim.

*(Question deferred)*

#### STATEMENT

We have a Statement by the Leader of the Majority Party.

#### BUSINESS FOR THE WEEK COMMENCING 12<sup>TH</sup> TO 14<sup>TH</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 on the week beginning Tuesday, 12<sup>th</sup> March 2019 on behalf of the House Business Committee.

The Committee met on Tuesday this week at the rise of the House to deliberate the business for consideration. The House is scheduled to have the Division of Revenue Bill, 2019 next week. If it will have been published, it will be read a First Time. We will also consider various committee reports, as well as the County Governments (Revenue Raising Process) Bill,

2018, Second Reading. I urge the Departmental Committee on Finance and National Planning to table its report on this Bill to enable the House to debate from an informed position.

The House will also consider the Senate amendments to the following National Assembly Bills in the Committee of the whole House, should we conclude the related Motions today:

- (i) The Physical Planning Bill (National Assembly Bill No. 34 of 2017);
- (ii) The Land Value Index Laws (Amendment) Bill (National Assembly Bill No. 3 of 2018); and
- (iii) The Kenya Roads Bill (National Assembly Bill No. 47 of 2017).

We expect the Select Committee on the National Government Constituencies Development Fund (NG-CDF) to submit its Report on the vetting of the NG-CDF Board members next week on Tuesday. This will ensure that the House concludes the appointment process within the statutory timelines.

On behalf of the HBC and in line with an earlier Communication you made to the House, I wish to remind Members that the National Assembly has been preparing to transition to the use of a paperless system in the Chamber. Currently, only a small fraction of Members have been taken through the paperless system. In this regard, short briefing sessions have been organised for the remaining Members to be familiarised with the system. It is envisaged that this system will be rolled out after the short recess in April 2019.

After we come back from the short recess, there will be no hard copies of Order Papers. Everything from Order Paper, reports, the Constitution and all other statutory documents will be in your Ipads. Please make sure that you go through the small training.

In accordance with the provisions of Standing Order 42A (5) and (6), I wish to convey that the following CSs are scheduled to appear before the Departmental Committees as follows:

The CS for Interior and Coordination of National Government will appear before the Departmental Committee on Administration and National Security on Tuesday, 12<sup>th</sup> March 2019 to answer Questions from Hon. Brighton Yegon; Question No.015/2019 from Hon. Catherine Waruguru; Question No. 028/2019 from Hon. William Kamket; Question No. 038/2019 from Hon. Rehema Jaldesa; Question No. 043/2019 from Hon. Dr. Otiende Amollo; Question No. 045/2019 from Hon. Robert Pukose; Question No. 046/2019 from Hon. Annie Wanjiku Kibeh and Question No. 052/2019 from Hon. John Olago Aluoch.

The CS for National Treasury and Planning will appear before the Departmental Committee on Finance and National Planning on Tuesday, 12<sup>th</sup> March 2019 to answer Question No. 039/2019 from Hon. Halima Mucheke; Question No. 047/2019 from Hon. Esther Passaris and Question No. 063/2019 from Hon. Owen Baya.

The CS for Labour and Social Protection will appear before the Departmental Committee on Labour and Social Welfare on Thursday, 14<sup>th</sup> March 2019 to answer Questions No. 054/2019 and 059/2019 from Hon. Samuel Atandi and Hon. Prof. Jacqueline Oduol respectively.

Finally, Hon. Speaker, the HBC will reconvene on Tuesday, 12<sup>th</sup> March 2019 at the rise of the House to consider the business for the coming week. I now wish to lay this Statement on the Table of the House.

**Hon. Speaker:** Next Order.

### SPECIAL MOTION

#### APPROVAL OF NOMINEES FOR APPOINTMENT TO THE NATIONAL POLICE SERVICE COMMISSION

THAT, this House adopts the Report of the Departmental Committee on Administration and National Security on the Vetting of Nominees for Appointment as Chairperson and Members to the National Police Service Commission, laid on the Table of House on Tuesday, 5<sup>th</sup> March 2019 and pursuant to the provisions of Article 250(2)(b) of the Constitution and Section 6(6) of the National Police Service Commission Act, approves the appointment of the following persons to the National Police Service Commission:

- |       |                               |   |              |
|-------|-------------------------------|---|--------------|
| (i)   | Mr. Eliud Ndung'u Kinuthia    | - | Chairperson. |
| (ii)  | Ms. Lilian Mutio Kiamba       | - | Member.      |
| (iii) | Mr. Eusebius Karuti Laibuta   | - | Member.      |
| (iv)  | Mr. Naphtaly Kipchirchir Rono | - | Member.      |
| (v)   | Dr. Alice Atieno Otswala      | - | Member, and, |
| (vi)  | Mr. John Tentemo Ole Moyaki   | - | Member.      |

*(Hon. Paul Koinange on 6.3.2019)*

*(Resumption of Debate interrupted on 6.3.2019 – Afternoon Sitting)*

**Hon. Speaker:** It is good to indicate which Members have contributed so far to this Motion so that they can excuse others. The Mover, Hon. Paul Koinange, Chair of the Committee; seconded by Hon. Waluke, Hon. Otiende Amollo, Hon. Rindikiri Murwithania, Hon. Junet Mohamed, Hon. Mabongah Mwambu, Hon. Katoo ole Metito, Hon. Chris Wamalwa, Hon. David Sankok, Hon. Daniel Maanzo, Hon. Cecily Mbarire, Hon. Godfrey Osotsi, Hon. Kanchory Memusi, Hon. Jimmy Angwenyi, Hon. Kimani Kuria, Hon. Martin Owino, Hon. Robert Mbui and the 18<sup>th</sup> one was Hon. Odhiambo Okoth.

Sorry, Hon. Members. Before we go to that Motion, allow me to permit the nominated Member, Hon. Dennitah Ghati, to make a Statement of the International Women's Day which I had already approved.

Hon. Dennitah Ghati, please.

## STATEMENT

### INTERNATIONAL WOMEN'S DAY 2019

**Hon. (Ms.) Dennitah Ghati** (Nominated, ODM): Thank you very much Hon. Speaker. I wish to make a Statement regarding the International Women's Day celebrated on 8<sup>th</sup> March every year, which is tomorrow. I am a Member of the Parliamentarians for Global Action and a Member of the Commonwealth Parliamentarians Association.

The International Women's Day is a global event and has been observed since the 1990s to celebrate the social, economic, cultural and political achievements of women, while calling for acceleration of gender parity across the world. The theme for 2019 is, "*Balance for Better*". It will also focus on this year's session of the Commission on the Status of Women 2019 Conference to be held next week in New York City, USA.



Women are first of all daughters and sisters. They are then wives and mothers and caregivers. They go through a lot to ensure children have food to eat. They even provide roofs over the children's heads and give them good education.

I, therefore, wish to commend women of this country for the many sacrifices that they make. Currently, women in Kenya comprise 56 per cent of the population, but continue to face challenges in economic, social and political empowerment. The situation is even worse for women with disabilities. I take this opportunity to celebrate the great women of Kenya who have worked so tirelessly to secure the freedoms that we enjoy today. For instance, Her Excellency Margret Kenyatta, Her Excellency Rachel Ruto, Hon. Phoebe Asiyo, Dr. Ida Odinga, Hon. Martha Karua, Commissioner Olive Mugenda, Prof. Wanjiku Kabira amongst so many other women of this country. These women have been trailblazers in the socio-political and economic spheres of our country and we salute them. I also wish to thank His Excellency the President for his support and recognition of female leaders.

I wish to conclude by reminding my fellow colleagues in this House that gender balance is not a women's issue. It is an economic issue. Everyone has an equal opportunity to play in forging gender parity.

Hon. Speaker, I call upon us to do our part in championing women's rights for women living with disabilities. We need to ensure that women are not left behind in the achievement of the Government's Big Four Agenda.

Thank you, Hon. Speaker.

**Hon. Speaker:** Very well-articulated, Hon. Dennitah Ghati.

**Hon. Opiyo Wandayi** (Ugunja, ODM): On a point of order, Hon. Speaker.

**Hon. Speaker:** Member for Ugunja, you have intervention.

**Hon. Opiyo Wandayi** (Ugunja, ODM): Hon. Speaker, I rise on a point of order under Standing Order No.85 pertaining to Order No.8.

We sat through this debate yesterday and from all the speakers, save for one, there was unanimity in approving the names.

Hon. Speaker, given that the mood of the House is apparent or clear, is it not possible for the Mover of the Motion to be now called upon to reply so that we can deal with other matters that are lined up for debate?

Thank you.

*(Resumption of Special Motion)*

APPROVAL OF NOMINEES FOR APPOINTMENT TO  
THE NATIONAL POLICE SERVICE COMMISSION

**Hon. Speaker:** Hon. Members, I have not been able to read the mood because the House appears unable to indicate a particular mood. The easiest way for us to gauge that mood is by putting the Question.

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

The mood has been sufficiently and clearly defined. Mover.

**Hon. Paul Koinange** (Kiambaa, JP): Thank you, Hon. Speaker.

In replying, I thank the Hon. Members who contributed to the Motion actively and passively. I also want to thank Members of the Committee for actively helping me to come up with the Report that we now have before the House.

For purposes of clarity sought by Hon. Members, let me assure you that the Committee did a thorough job to ensure that the nominees' composition met the parameters of the Constitution. In particular, let me assure my friend, Otiende Amollo that, indeed, the Committee ensured that the commission has an advocate of the High Court who is qualified to be appointed as judge and that nominee is none other than Naphtaly Rono who is an advocate of the High Court and has 17 years of work experience.

There was an issue with ranking in the police. There are 14 ranks in the police. The lowest rank in the Police Service is a constable while the highest is the Inspector-General. Any office from the eighth rank, which is Assistant Superintendent of Police upwards, is regarded as a senior rank. These officers are ideally in management positions.

Police officers from the ninth rank, which is Chief Inspector of Police downwards are ideally in charge of operations. They include the Officer Commanding Station (OCS) in the police station and other officers. Though they are regarded as junior police officers, they are the actual workers in the Police Service.

The list of nominees has two retired senior police officers, namely Lilian Mutio Kiamba and Eusebius Karuti Laibuta. Lilian retired as a Police Commissioner with the Kenya Police Service having served for over 30 years. Eusebius Laibuta retired as an Assistant Inspector-General with the Administration Police Service. The other three nominees are persons of integrity, that is, Eliud Kinuthia, and Dr. Alice Otieno Otswala who has worked for 36 years in the Public Service Commission. John Tentemo ole Moyaki is a person of integrity who has served the public with distinction for a period spanning over 19 years. He served in the county government and also in the banking sector.

If approved by this House and subsequently appointed by His Excellency the President, these nominees will join the National Police Service Commission at a time when the country is undertaking major police reforms. All the nominees promised to work towards ensuring that these reforms succeed.

The nominees promised to ensure that records are digitalised in order to get rid of ghost police officers. They promised to streamline police postings, transfers and promotions. This will also lead to activation of the much-needed police counselling. We have given money to the National Police Service to make sure that police officers are counselled so that they can be effective in their day-to-day work. We shall expect them to deal decisively with corruption that bedevils our police service, more so in the traffic department where police officers demand and collect bribes. We require them equally to deal with conflict of interest which has been a very big problem in the Police Service.

Hon. Speaker, I thank you. I beg to reply.

*(Question put and agreed to)*

**Hon. Speaker:** Next Order!

## MOTIONS

### SENATE AMENDMENTS TO THE PHYSICAL PLANNING BILL

**Hon. Speaker:** What is the position on this Chairperson, Departmental Committee on Lands?

**Hon. (Ms.) Rachael Nyamai** (Kitui South, JP): Thank you, Hon. Speaker. I rise to seek deferment of Motions Nos. 9 and 10 on the Order Paper. These two Bills were received by the Departmental Committee on Lands on 21<sup>st</sup> February 2019. This morning, the Committee has been looking at the Physical Planning Bill which has many clauses that have amendments from the Senate. In total, we have 84 amendments that have been brought this morning. We were able to handle 31 of them. So, we are still working on it. We would like to be careful because we are seeing that we are having some disagreements. So, we would like to have more time to look at it.

Regarding the Land Value Index Bill, we have finalised looking at the amendments but the Committee is yet to do the report which will be brought to the Floor of the House. Hon. Speaker, I hereby request you to give the Committee 21 days to finalise the two reports.

**Hon. Speaker:** Twenty one more days? Leader of the Majority Party.

**Hon. Aden Duale** (Garissa Township, JP): These Bills stuck in the Senate for over eight months. The Chair does not want these Bills to be used by the Government. There are no 21 days, it is just a matter of looking at the amendments of the Senate. If they disagree, which I also disagree as the Mover of the Bill, they need to bring a report next time, and we disagree, and form a mediation committee. It is as easy as that. You are not meeting stakeholders; you can only meet the Ministry. Hon. Junet is saying, unless Hon. Rachael goes to any status conference, which is already ongoing, I want her to take a maximum of 10 days.

**Hon. Speaker:** Hon. Nyamai, the proposal from the Leader of the Majority Party is that you take 10 days. Can we get some agreement?

**Hon. (Ms.) Rachael Nyamai** (Kitui South, JP): Hon. Speaker, I would like to start by saying that we are shocked by the amendments that we received from the Senate bearing in mind that we have been putting a lot of effort, calling stakeholders including the Ministry, National Land Commission and some many other stakeholders. The other thing which worries us is that the stakeholders that we met are the same stakeholders that the Senate met. I would like to request you, Hon. Speaker, to be kind and give us 14 days.

**Hon. Speaker:** That seems to be a good compromise. It is also fair when our committees are able to thoroughly scrutinise what has come from the Senate. As I directed, the House will only be considering the amendments from the Senate. It is fair and reasonable that we allow the Committee to extensively and carefully go through the proposed amendments from the Senate so that their advice to the plenary is one that is sound.

**Hon. Kipsengeret Koros** (Sigowet/Soin): On a point of order, Hon. Speaker.

**Hon. Speaker:** Is it that the Member wants to disagree? The Member for Soin/Sigowet, Hon. Koros, are you disagreeing with the request by the Chair of the Departmental Committee on Lands?

**Hon. Kipsengeret Koros** (Sigowet/Soin): I agree, Hon. Speaker, but I was requesting for reorganisation of the Order Paper so that we can discuss Motion No.13.

**Hon. Speaker:** We are not yet there. You are out of order. Resume your seat and stay cool. Do not be in a hurry.

At the request of the Chairperson of the Departmental Committee on Lands, the business appearing as Order Nos. 9 and 10 are deferred. They are taken out of the Order Paper, for a maximum of 14 days.

Next Order.

*(Motion deferred)*

SENATE AMENDMENTS TO THE LAND VALUE INDEX LAWS

THAT, the Senate amendments to the Land Value Index Laws (Amendment) Bill (National Assembly Bill No. 3 of 2018) be now considered.

*(Motion deferred)*

SENATE AMENDMENTS TO THE KENYA ROADS BILL

**Hon. David Pkosing** (Pokot South, JP): Thank you, Hon. Speaker. Again, this is a Bill from Senate which originated from us. They stayed with it for a long time. I am asking for a deferment of this Motion to next Tuesday. The reason is that we received it last week. My Committee has considered and therefore, our recommendations to the House are on the normal conveyor belt – of course the process is coming through the Clerk. I am asking for deferment to next week Tuesday.

Thank you.

**Hon. Speaker:** Hon. Pkosing, you are requesting to have this Motion deferred to next Tuesday. The House does not sit on Monday. You have not tabled the report so you will be taking Members by surprise. To be fair to Members, it is good that you table the report on Tuesday so that the House Business Committee can look at the report as well as other Members so that on Tuesday evening when the House rises, the HBC sits and then will allocate time, but your preference is early next week. Certainly, Tuesday may be a bit unfair to the general membership; possibly Wednesday next week.

Again, hon. Members, as you have heard, there is no debate. At the request of the Chairperson of the Departmental Committee on Transport, Public Works and Housing, the business appearing as Order No.11 is deferred to next week.

*(Motion deferred)*

**Hon. Speaker:** Next Order!

REPORT ON EXAMINATION OF FINANCIAL STATEMENTS OF THE  
INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION

THAT, this House adopts 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 for the year ended 30<sup>th</sup> June 2017, laid on the Table of House on Wednesday, 27<sup>th</sup> February 2019.

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

**Hon. Aden Duale** (Garissa Township, JP): Hon. Speaker, before we ask my good friend, the Chair of the Public Accounts Committee (PAC), to move this Motion, we need you to guide

the House. I am going to raise issues of constitutionality on some of the recommendations of the Committee.

In Report, the PAC has recommended that, *inter alia*, the commissioners, the Chief Executive Officer and the directors of the Independent Electoral and Boundaries Commission (IEBC) vacate office immediately upon adopting this Report. That is what the recommendations say.

The Report is in essence calling for the removal from office of the IEBC commissioners upon adoption of the Report by the House. Article 251 of the Constitution...

**Hon. Speaker:** Hon. Members, so that nobody gets excited unnecessarily, the Leader of the Majority Party rose on a point of order. A matter touching on the Constitution can be raised at any stage. Let him raise them then you will get your chance, do not worry; do not get excited. You are unnecessarily anxious. Let the Leader of the Majority Party prosecute his point of order then we can allow opinions.

**Hon. Aden Duale** (Garissa Township, JP): Hon. Speaker, I have read the Report and I am going to prosecute my argument. Article 251 of the Constitution provides for the procedure and grounds for removal from office of members of independent offices and constitutional commissions such as the IEBC. Such removal is initiated by a petition to the National Assembly setting out the grounds for the intended removal from office of a commissioner. Action starts if the Assembly is satisfied by the grounds in the petition. There must be gross violation of the Constitution. If the House is satisfied, it sends the same to the President, who in turn is required to form a tribunal to investigate the matter and make an appropriate report to the President. The tribunal will make a report to the President. The grounds for removal of a commissioner from office are as follows:

(a) serious violation of this Constitution or any other law, including a contravention of Chapter Six;

(b) gross misconduct, whether in the performance of the member's or office holder's functions or otherwise;

(c) physical or mental incapacity to perform the functions of office;

(d) incompetence; or

(e) bankruptcy.

By calling for removal of commissioners and officers from office through this Report in a manner not contemplated in the Constitution, more so Article 251, the PAC has, in my opinion, failed to appreciate the provisions of Article 251 of the Constitution, particularly the procedure set out thereof. Thus, any resolution by the House as proposed in this Report regarding the removal of the commissioners will be of no effect whatsoever. It will be of no effect even if we pass it because it contravenes the Constitution. The House will thus be acting in vain on this matter.

With respect to the members of staff of the IEBC, Section 11 of the Independent Electoral and Boundaries Commission Act of 2011, which this House has passed, empowers the commission to employ officers necessary for the performance of its functions. The removal from office of such officers is the prerogative of the IEBC. That power lies with the IEBC, their employer. The House is thus being called to pass a resolution on a matter which falls outside the mandate of this House.

Our Standing Orders, in particular Standing Order No.230, prescribe the form of a petition for the removal of a constitutional commission. It includes grounds for removal of such office holders, and the violations must be stated with precision.

I now invite myself to ask the following questions, which you must address: Did the Committee examine a petition under Article 251 of the Constitution and Standing Order No.230 and make a determination that there are grounds for removal of the IEBC commissioners? The answer is “No”. Did the Committee conduct quasi-judicial proceedings prior to arriving at the answers? The answer is “No”. Assuming that the recommendations were to stand and the Report adopted, the implication of this could be anyone to come up with allegations and remove officers from office tomorrow. I want to make it very clear that if we agree and adopt the Report, the implications are so grave. Anyone could file a petition for removal of commissioners tomorrow and we consider it as a House. The House cannot behave like that. The House cannot create a Report that would lay the ground for other people to bring a petition for removal of an independent commissioner from office and the same House deals with the matter. This could, in effect, turn the House into a House of petitioners, noting that petitions could be informed by Reports and judges as well. So, we will be the ones creating the ground for filing petitions and then becoming the judges. The Committee of this House could be considering the petition for removal of people from office.

The only person known to wear a hat of a prosecutor and a judge – you can ask any learned friend because I am not one even though I am a lawmaker in this House – are the owners of cattle dips where I come from. The owners of cattle dips in the village I come from once in a while petition against the management of a cattle dip to make a determination on which villager should be excluded from taking their cattle to the cattle dip. That way, they act as judges. That is only found amongst the people who deal with cows in my constituency.

In this regard, the findings of the Committee do not only offend the provisions of Article 251 of the Constitution but will, if adopted, also lead to an absurd, ridiculous, illogical, strange, odd and bizarre results that cannot be implemented. When you say that commissioner so-and-so must leave yet the appropriate procedure is found in Article 251, when this House adopts the Report, will the PAC go to the IEBC and remove the Chairman from office? No. The procedure of his removal is well contemplated in Article 251 of the Constitution.

It is on this basis that I invite you, as our Speaker, in accordance with the provisions of Standing Order No. 47(3) to find that the Report, in particular the findings of the Committee on pages 7 and 130, is inadmissible as it is contrary to the Constitution, more so Article 251, based on how commissioners of independent offices can be removed. This House cannot be used and shall not be used to violate a Constitution that each one of us swore to protect, defend and preserve.

I rest my case. I need a Communication from you before we continue with the debate of PAC.

**Hon. Jimmy Angwenyi** (Kitutu Chache North, JP): *(Off record)* Thank you, Hon. Speaker.

**Hon. Speaker:** Hon. Members, even if you are the father of the House, you are bound by the rules. You have been here long enough to know that there is nothing like what you are alluding to.

Hon. Members, due to the matter that has been raised, I can see the leadership on the Minority side wants to say a word. However, the first chance will go to the Chair of the PAC to, first, make some response. Before we do that, allow me to recognise students from the following institutions, who are in the Speaker’s Gallery: Peponi School of Ruiru Constituency, Kiambu County and Alliance Boys High School from Kikuyu Constituency, also from Kiambu County.

*(Applause)*

Hon. Wandayi.

**Hon. Opiyo Wandayi** (Ugunja, ODM): Hon. Speaker, I first wish to understand if I am required to proceed with moving the Motion or to respond to Hon. Duale's application.

**Hon. Speaker:** Hon. Wandayi, a matter touching on the Constitution or when it alleges it is a constitutional matter needs more. Remember that the Notice of Motion was given; you did it. If you look at Standing Order No.47, it is perfectly in order for a question of this nature to be raised at this point. That is so that we see whether to dispose of it or to allow for debate to commence.

**Hon. Opiyo Wandayi** (Ugunja, ODM): Hon. Speaker, if you indulge me, I will make two comments and then allow two Members of my Committee, starting with Hon. Junet, to make a comment.

**Hon. Speaker:** I do not have a problem allowing several Members to make comments. If you feel inadequately prepared for that, I will allow more.

**Hon. Opiyo Wandayi** (Ugunja, ODM): I will comment. As you know, I am ever adequately prepared in this House.

**Hon. Speaker:** Proceed, Hon. Wandayi.

**Hon. Opiyo Wandayi** (Ugunja, ODM): Then you will allow Hon. Junet, Hon. Otiende and Hon. Kimani Kuria to comment.

**Hon. Speaker:** Do not worry. Do not worry about it.

**Hon. Opiyo Wandayi** (Ugunja, ODM): First and foremost, ...

**Hon. Speaker:** Hon. Wandayi, remember you are now not chairing a PAC siting, where people catch you eye.

*(Laughter)*

You only catch mine at this point.

**Hon. Opiyo Wandayi** (Ugunja, ODM): I am properly guided, Hon. Speaker.

First and foremost, it must be understood that this House, under Article 95(4)(b) of the Constitution, appropriates funds for expenditure by the national Government and other State organs. Indeed, under 95(4)(c), the National Assembly exercises oversight over national revenue and its expenditure. Our Standing Orders, specifically Standing Order No.205, has gone further to give the mandate of overseeing national revenue and expenditure to the PAC.

Indeed, pursuant to this Standing Order, the PAC set out to examine the accounts of the Independent Electoral and Boundaries Commission (IEBC) for the Financial Year (FY) 2016/2017. Therefore, in the course of the examination, the Committee made specific findings. In respect of the findings, the Committee made specific recommendations. If one cares to read this Report, he will appreciate the fact that we have more than 50 recommendations. The two that Hon. Duale has alluded to are just two out of the 50 recommendations.

I want to go on record by pointing out that my Committee is alive to the provisions of Article 251 of the Constitution. The Committee did not in any single way purport to present a petition as contemplated under Article 251 of the Constitution. The Committee has simply come up with recommendations arising from the findings. It derived the findings from the submissions that were made by various witnesses in respect to the financial accounts of IEBC for the FY 2016/2017.

If I were allowed to move this Motion – I hope I will be allowed later – I would have demonstrated that in the course of examination of these accounts, the Committee established a litany of transgressions which ended up costing the taxpayers a lot of public money. There were also cases of violation of the Constitution. The Committee does not sit in a vacuum. In the course of examining public accounts, if it comes across cases of violation of the Constitution or any other law, it must pronounce itself on it. The Committee did so and it is in this Report. The Committee also came across cases of violation of the procurement laws and dereliction of duty on the part of public officers charged with the responsibility of managing the IEBC.

Therefore, I urge you that, as you make a determination on the matter as raised by Hon. Duale, you come to the conclusion that his application is not only frivolous but a blatant waste of time of this serious House. Also, that the Committee be allowed to continue to prosecute this Report so that the House, in its wisdom, can make a decision one way or another. Otherwise, any decision that will curtail the prosecution of this Report to its fullest possible extent would deny these Members an opportunity to pronounce themselves on a matter of serious national importance. I plead with you, Hon. Speaker.

Thank you.

*(Laughter)*

**Hon. Speaker:** Hon. Cheptumo.

**Hon. William Cheptumo** (Baringo North, JP): Thank you, Hon. Speaker. If there is an institution that should respect the Constitution, it is this House. Every Member of this House took oath to protect and uphold the Constitution.

I want to raise two issues which I believe will help you as you give directions on this matter. Article 251(1) of the Constitution speaks about situations where a commissioner can be removed from office. But, if you read Sub-article (3)... This is important for Members to note. Let me start with Sub-article (2). It states:

“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.”

This was raised by the Leader of the Majority Party that there was indeed, no petition filed by any person before the House. I want the Leader of the Majority Party and the House to listen. I want to raise an issue that they should understand.

Sub-article (3) say:

“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.”

The question here is: Which committee of the National Assembly shall consider the petition? Parliament operates through committees. I chair the Justice and Legal Affairs Committee. Hon. Speaker, you have not received any petition as the Speaker of this august House. You have not referred any petition to the Justice and Legal Affairs Committee and I confirm that I have not received a petition in my Committee. Even if there was any petition, it could not have been referred to the PAC.

So, any attempt to entertain the removal of a member of IEBC from office through the back door is unconstitutional and unprocedural. This is a House of records, procedure and traditions. As we discuss the issue of IEBC, let me take this chance to tell you that there is a challenge with IEBC. Shortly, as a committee, we will be tabling a Bill before this House to



establish a selection panel. But we cannot be desperate to the extent that we use illegal means to attempt to remove IEBC commissioners as much as there are challenges with the commission.

So, Hon. Speaker, I want you to be guided by the provisions of Article 251(3) that the National Assembly as referred in the Article is the Justice and Legal Affairs Committee which I chair. We have not received any petition.

Thank you.

**Hon. Speaker:** Very well. Let me get a Member of the Committee who is also versed with the matter that we have waded into. Member for Rarieda Constituency.

**Hon. (Dr.) Otiende Amollo** (Rarieda, ODM): Thank you, Hon. Speaker. I find the point of order by the Leader of the Majority Party very interesting. First, he started by raising a point of order then proceeded to go against Standing Order No. 80 by reading his point of order. That is not allowed.

*(Laughter)*

Secondly, he failed to mention that the Report has two categories; one in respect of the commissioners and the other in respect of the staff. However, he stood on a point of order as if the only persons recommended for removal are commissioners. It is important to make that distinction.

Thirdly, I welcome the sentiments by the Leader of the Majority Party. On three occasions, when I sought to raise constitutional issues on points of order, he was the first one to tell me that this House is not a court of law. That, on the issues of constitutionality I should go and raise them in the High Court. Today, he finds himself raising that very thing. I welcome that.

*(Laughter)*

I want to raise five legitimate issues that are important. As we make this deliberation and as you will retreat to consider this matter, we must start by asking ourselves: What is our role first, as Parliament but, specifically as the National Assembly?

In Article 95(2) of the Constitution, one of our fundamental duties is to deliberate on matters of concern to the country and resolve them. Outside of corruption, I know of no other matter that is of great concern to Kenyans more than the question of elections, who will conduct it and whether we will end up with the problems we have ended up with. Therefore, this is not just an issue for IEBC, it is an issue for Kenyans. As Members ventilate on this, we should remember... Let us put aside the IEBC commissioners. The issue that has been presented before you is: Are there any circumstances under which this august House can deliberate on a question of whether members of a commission or a holder of an independent office ought to vacate office or not? That is the real issue. If we go the way of stifling ourselves and self-restriction, we will enter turbulent waters ahead. We will restrict ourselves to a situation that, unless a Kenyan has courage to bring a petition before this House then we, as an august House that passed the name of that person or those persons, our hands are tied. It will be dangerous that we cannot discuss it. Specifically, while the Leader of the Majority Party has referred you to Article 251 appropriately, he has forgotten that there are other parts of the Constitution that speak to this matter.

Hon. Speaker, the point I want to persuade you with is that there is a distinction between actual process of removal and initiation of that process. Article 251 that both the Leader of the

Majority Party and the Chairman of the Justice and Legal Affairs Committee have spoken to speaks of “removal from office.” I invite you to look at the word in Article 251(1) which says: “A member of a commission (other than an ex officio member), or the holder of an independent office, may be removed from office only for—.”

The operating word is “removed” I invite you to distinguish that from “initiation of removal” that is in Article 95.

Article 95(5)(a) talks of the role of the National Assembly. It says:

“The National Assembly reviews the conduct in office of the President, the Deputy President and other State officers and initiates the process of removing them from office.” That is an important distinction.

(Applause)

What this Report is trying to do is not removing. When we pronounce ourselves on it today, the commissioners will not vacate office tomorrow but we will have complied with Article 95. We will have initiated the process. I do not think that there is anyone who is in doubt that we need to initiate that process. So, that distinction is important. We are initiating that process. After this House has pronounced itself on that matter, two things could happen. Either, the commissioners themselves will see that if Parliament that represents Kenyans can pronounce itself in such a manner, then it means that Kenyans have lost faith in us. So, let us vacate office voluntary. That is what the Report speaks to or, if they do not, then any Kenyan can petition this House or any Member and among other issues, this House will also use that Report. That is a different process that does not depend on us. It will come to us and if we are satisfied on what the lawyers call a *prima facie* basis, we will transmit it to the President who will appoint a tribunal to look into the merits. That will not be for us.

Thirdly, it is important to also bear in mind provisions of Article 73 of our Constitution. This is an Article that sometimes people overlook, yet it is very fundamental. It talks of State officers and their responsibility.

Article 73 (1) says:

“Authority assigned to a State officer –

(a) is a public trust to be exercised in a manner that –

(i) is consistent with the purposes and objects of the Constitution;

(ii) demonstrate respect for the people;

(iii) brings honour to the nation and dignity to the office; and

(iv) promotes public confidence in the integrity of the office.”

As long as the confidence and trust Kenyans have in you or any State officer is lost, you are no longer fit to hold that office. The question will be how we measure that confidence. Because the Constitution does not say how we measure it and because there is no legislation that says how we measure it, we must resort to the only other measures that we know. The only measure of knowing what the views of Kenyans are on any matter is in this House because we are the elected representatives. We cannot call all Kenyans. If this House passes a Motion that says we have lost public trust, then surely you have lost it. How then will we pass that kind of matter if we do not debate?

If the Leader of the Majority Party says you cannot even imagine that discussion, it is also important to note the provisions of Article 251. I was privileged to be among those who wrote this Constitution. We contemplated a situation where there is a commissioner who has

gone rogue or has done some wrong things. So, you individually identify them. It never contemplated a whole institution where everybody has gone rogue.

If you were to try it in respect of all commissioners, it will never come to an end because we know the processes that tribunals take. That is why this mode is better because it appeals to individuals. It is important to note that once the Report is moved, it does not purport that once it is adopted, then the commissioners are removed. It speaks to their conscience and impropriety so that they will individually vacate office as others have done before them. If they do not, then there is that possibility of a petition.

I am happy to note that in this Committee we have a number of lawyers and we discussed and debated these things. We did not bring them here lightly. I urge that as long as you find that there is that borderline possibility that we can discuss this Report... This Report has very many fundamental far reaching aspects that should be discussed. If anyone is in doubt, tell them what you have told me before - Go to court.

Thank you, Hon. Speaker.

*(Applause)*

**Hon. Speaker:** Hon. Keynan.

**Hon. Adan Keynan** (Eldas, JP): Hon. Speaker, I want to pick from where my good friend, Hon. Otiende Amollo has left. I just want to remind him that this is a House of records, procedures and traditions.

In the 11<sup>th</sup> Parliament, I can vividly remember when one Ouko, the Auditor-General had a similar issue initiated through the Departmental Committee on Finance and Planning. Hon. Otiende Amollo who had just retired from being the CEO of Ombudsman attempted to represent him. It is good to be factual because circumstances change. At that particular time, Otiende Amollo was fresh from being the immediate former CEO of Ombudsman. He realised that one of his friends had a problem with this very institution and today he is on the other side as a Member of Parliament participating in a similar process, but prosecuting in a manner that negates the very things that he said on that particular day. I will come with the facts at an opportune time.

This is a House of tradition and records; a House that is supposed to legislate through constitutional mechanism. If you want to use political gerrymandering – I have looked at the time when this purported audited report being referred to was done. There were seven commissioners. One of the commissioners is missing from the list. That tells the political connotation of this particular report.

I want to associate myself with the sentiments by the Chairman of the Justice and Legal Affairs Committee. The work of PAC is stipulated under Standing Order 205 and as a Departmental Committee stipulated under Standing Order No. 216, the framers of the current Constitution and the Standing Orders had in mind the role of each of the committees.

I have been a Chair of Public Investment Committee. I clearly participated in the drafting and framing of the current Standing Orders and some of the things that we removed were meant to avoid a situation where there will be duplication and jurisdictional conflict amongst committees. That has been sorted out. That is why the other day, when you ably ruled on the mandate of the Departmental Committee on Transport, Public Works and Housing and PIC, I said that the Speaker is alive to some of the challenges that we have had in the past.

This House in its own wisdom passed a law called the Fair Administrative Action Act, 2015. This as read with Article 50 clearly allows for a fair process in the removal of

commissioners, not any politically-driven process that will just come up one morning and say, “I do not want Muturi” or “I do not want Otiende” or any other person. This is why in our own wisdom we must be guided by the rules of this House.

Therefore, I disagree completely that it is not my work to vouch for retention of the current commission, but because this is the apex of any law-making organ of the Republic of Kenya, whatever we do must be devoid of partisan political interest of the day. That is why I stand to say what PAC wants to do is illogical, offends the Constitution and it is meant to sort out a problem through the back door.

Truly, if Hon. Otiende and other groups think otherwise, I challenge you to bring a petition through a formal procedure and that will enable the public to participate. The JLAC will be seized of this issue. The merits of that particular petition will be subjected to the Kenyan taxpayers and evidence will be laid before the Committee and Parliament will be in position to make an informed decision. In my opinion, I urge the Speaker not to accept this particular report in the format that it is in.

I want the Chair to answer this and if he does, then whatever they have done is devoid of politics. At the time when these procurement flaws were purportedly committed, there were seven commissioners. In your own wisdom you sanitised one and you were left with six. That is the first politics and it huge. I have the record. I want to say why it is unconstitutional. The spirit and letter of the Constitution must be devoid of any malicious and capricious approach and any attempt that offends the spirit of the Constitution.

As a former Chair of PIC, I understand the functions of PAC and PIC; I want to support other components of the Report that clearly conform to the very mandate of PAC. But anything that deviates from that particular process that is meant to circumvent and use this House as a rubberstamp to sort out something that is completely outside the mandate of PAC, I reject it. I beg that we remain alive to this process and our role as Members of Parliament.

I will be tabling the arguments by my good friend Otiende Amollo. It confirms word for word what I am saying. The only thing that has changed today is his level of political interest, his role as a Member of Parliament and more so, his desire to cure a serious national political problem through PAC. That we will not allow.

You said I am on a point of order.

**Hon. Speaker:** Hon. Keynan, I think Hon. Otiende Amollo has a right to raise some protestation.

**Hon. (Dr.) Otiende Amollo** (Rarieda, ODM): Hon. Speaker, first of all I am happy the Hon. Member said he will table the documents because there is no such thing as what he is talking about. I never made any such presentations, but I will wait for that day. However, is it in order for Hon. Keynan to impute improper motives on my part? That cannot be right!

**Hon. Speaker:** Yes. That is why I allowed you to raise that protestation. It is because you are perfectly entitled to it. Hon. Keynan.

**Hon. Adan Keynan** (Eldas, JP): Directly or indirectly, I may have made any... He is my good friend and so I withdraw that aspect.

As I conclude, Parliament cannot be both the prosecutor and the judge. Constitutionally there are roles for different entities. This Committee purports to lay the groundwork for a would-be petitioner, use the proceedings of the House because there is no other substance out there and later on use that to galvanise and dupe the Kenyan public. These are the very arguments that have been used in the past. The framers of the current Constitution were not fools! There are roles for Parliament and roles for different committees. I do not want to be forced again to say

something that I will be told to withdraw. I am glad that some of the framers of the current Constitution are in this House. Indeed, we are privileged but it will only matter when they guide us in accordance with the law not in accordance with partisan political interests of the day.

As I conclude, the role of the Commission and that of staff are completely separate. Basic administrative issues that fall within the purview of the electoral commission have been brought to the Public Accounts Committee which is completely ridiculous. So, it is because of this that I also want to join the seasoned, reasoned and guided Kenyans and legislators who are asking you to expunge the bits that will project this House in a very bad light and have the rest of the report separated from this. Please, allow any Kenyan who has serious issues with the Independent Electoral and Boundaries Commission (IEBC) and the individual commissioners mentioned to bring forth those issues.

In conclusion, I want the Chairman to tell us...

**Hon. Speaker:** You are saying, "in conclusion" for the third time now.

*(Laughter)*

**Hon. Adan Keynan** (Eldas, JP): It is juicy and I am used to political debate. We need clarification as to when this particular tender in court was allegedly executed. There were seven commissioners: one is clean but the other seven are guilty as found by PAC. I want to tell my good friend, Hon. Opiyo something. Remember there were issues in the last Parliament. I do not want to mention it. I want to see the true you. I know you used to protect fairness and stand for it. It should not be that now that your roles have changed, you no longer do that. Let us be fair at all times.

I submit that these provisions are unconstitutional and inconsistent with reason and logic. Therefore, the sooner we expunge them from the proceedings of the House, the better for us. I submit.

**Hon. Speaker:** Hon. Members, I will now urge that those speaking do not speak for more than three minutes because obviously the matters you are raising are not light. It is fair that we can have as many of you expressing yourselves as possible.

Hon. Members, I balance many things. You know what I am looking for; people with softer voices. So, let me hear the Hon. Member for Kiminini.

**Hon. (Dr.) Chris Wamalwa** (Kiminini, FORD-K): Thank you, Hon. Speaker. Indeed, this matter is weighty. When we talk of independent commissions there is a bigger meaning why they are called independent. Hon. Speaker, as you sit there remember you are the Chairman of the Parliamentary Service Commission (PSC) which is also independent. As you make your judgement, it must be objective. When you look at Article 251 of the Constitution, it has been clearly expressed that when you are removing anybody from an independent commission, it must come through a petition. That is the time this Parliament will have powers to look at the petition. If Parliament is satisfied as per Article 251, that is when we will forward it to the President to put a tribunal in place.

When I was listening to my friend Hon. Wandayi, there were many issues of procurement. Such matters are about the secretariat and not about the commissioners. We must also note that the current commission came into being just six months to elections and by then procurement had already been done.

I am humbly requesting you to look at this matter objectively and pull out the business on Public Accounts Committee from the Order Paper so that we can move to the business on PIC

which is a fundamental issue about the Jomo Kenyatta International Airport (JKIA) and the Kenya Airports Authority (KAA).

I thank you.

**Hon. Speaker:** Well, let me hear the Hon. Member for Nyeri Town. Hon. Members, just for avoidance of doubt, and I know I shocked one Member who came to see me yesterday, when you know you found several other people seated, please, be patient. Remember I always can tell you what time you walked in. I am saying this because of my good friend, Member for Homa Bay Town and the one for Igembe North. Please, relax because where you are seated, there are people who were there before you and they have made requests. So, Member for Nyando, do not raise your hand. Your request is there. Let us hear the Hon. Member for Nyeri Town.

**Hon. Ngunjiri Wambugu** (Nyeri Town, JP): Thank you, Hon. Speaker. I am very confused because when the Hon. Leader of the Majority Party stood up on a point of order on this Report, he introduced a constitutional issue. Unfortunately, since then what I am hearing are arguments derived from the Report about why we should not listen to the Report. Then what is essentially happening is that we are actually debating the Report without debating the Report.

This is worrying because it gives me the impression that there is a concerted effort in this House for us not to debate this Report. We are not fools. I am getting a very strong indication that people believe that if there is something wrong with this Report, we will not identify it. When I hear an argument that we should not debate the Report because it makes recommendations that are unconstitutional, when we get to debate the Report and we get to that argument, we shall deal with it.

Hon. Speaker, I have read this Report. It has a lot of recommendations, including initiating investigations. We are focused on one recommendation. From where I sit, I am reading the mood to be that we do not want to debate this Report for some reason that I am yet to understand. However, we are already debating the Report and we need to debate this Report. If there is something wrong with this Report, there are a lot of smart people in this House. We can amend it. We can reject it, or adopt it. There is no assumption. It does not mean that when a Report is tabled in this House we must accept it. No! We can reject the Report. We can accept the Report with amendments. The impression that was created by the Leader of the Majority Party is that this Report will have to go the way it is; there is no such agreement. When this Report is tabled here, we as Members of this House can discuss it. We will listen to all the issues that are raised and make a decision as a House. So, I would urge for us to then just move on to the Report and debate it.

Thank you, Hon. Speaker

**Hon. Speaker:** Well, I have heard somebody shout that I put the Question. When a matter of this nature is raised, there is no Question to be put. I will need to pronounce myself on the various points that have been raised. It means I will need to come and pronounce myself on the various points that have been raised. There is reference to the provisions of Article 95 with regard to oversight authority of this House both at the financial level as well as conduct. There is reference to the provisions of Article 73 by Hon. Otiende Amollo. You have raised issues to do with fair administrative action. I am yet to hear somebody addressing...either you did not listen to what the Leader of the Majority Party raised. Apart from the issues about Article 251, he raised issues about the disciplinary procedures available to independent commissions. It is good that we do not just get carried away by what appears to be fashionable. We need to get some of the nitty-gritty that is there. Member for Suna East.

**Hon. Junet Nuh** (Suna East, ODM): Thank you, Hon. Speaker. First, how did this matter find itself in Parliament? This matter came through an audit query. A Report that was presented by the Auditor-General - and I am a Member of PAC. The Committee exercised their mandate and came up with a Report. So, we have to confine ourselves to the constitutional issues raised by the Leader of the Majority Party, because we will have a chance to debate the whole Report.

What is before this House is not a petition, but a Report of the PAC of the National Assembly. So Article 251 has broken down how commissioners can be removed from office. In the end it says that a petitioner may represent a petition to Parliament to look at it. If it is satisfied, it can forward it to the President to form a tribunal. I do not want Members to send you in a fishing expedition.

The matter is very clear. I urge you to look at it in a manner that befits handling constitutionally. You cannot kill a Report of Parliament because a provision of the Constitution says that a petitioner may present a petition to Parliament. What happens if the petitioner does not present any petition and we have killed the Report, anticipating that somebody might bring a petition to Parliament to remove the commissioners?

The issue is that we have to look at the Report on its own merit, discuss it, make amendments, adjust it and do anything we feel like as a House. If we are going to kill this PAC Report because the provisions of the Constitution have said that, maybe, the commissioners will face double jeopardy, the House will have pronounced itself on the commissioners and a petitioner might bring a petition. We also have to look at the other side of the coin. What if no petitioner brings a petition to Parliament?

I want you to exercise that in your ruling. I want you to very clearly indicate how you are going to adjudicate between those two sides of the coin, whether a petitioner will bring a petition or not and how the Report will be conducted. In my view, the Report should be discussed. We cannot stop a process of Parliament because of anticipating something that is not within our boundary. I am a Member of that Committee...

**Hon. Speaker:** Member for Ndaragwa.

**Hon. Jeremiah Kioni** (Ndaragwa, JP): Thank you, Hon. Speaker for giving me an opportunity to speak to this issue. My understanding as to why we have independent and constitutional offices was because of where we came from under the old Constitution.

We have constitutional offices because we need to shield them a little more than it was, perhaps, under the old Constitution. I know there are many issues that have been raised by Members, including Article 73 and the rest. As you make your ruling, pay attention to Article 47 and 50 on the issues of fair hearing. It is important that when we are discussing commissioners of various constitutional commissions, we establish whether they have been given an opportunity to be heard. That whole process must be done. Hon. Washiali is saying the Sugar Report. I do not know what went through under it.

I know we need to ensure that every holder of public office has public trust. However, we have to be careful as Parliament so that we do not subject those commissioners to a process of making them lose public trust. In the past, we have suffered in this country because we put IEBC and other commissioners in a conveyor belt of wanting to get them out. In the process, as a nation, we lose trust in that institution.

This Report, with those kinds of recommendations, without going through Article 251 of the Constitution of dealing with that issue in a judicial manner, uses Parliament to help the public to start losing their trust. In other words, what I fear this Report is helping us to do is exactly what Hon. Otiende was saying we should not do. We are making the public lose their trust in

IEBC. They already have problems and so, we need to be very careful as we deal with issues relating to IEBC. I think we need to ensure that instead of looking for a shortcut to remove the commissioners, we allow Article 251 to operate. That can only be done under the Departmental Committee on Justice and Legal Affairs.

Thank you, Hon.

**Hon. Speaker:** I was about to announce that the general rule in the Chamber is only deviated from when it comes to the people who have priority. Therefore, let us have Member for Suba South.

**Hon. John Mbadi** (Suba South, ODM): Thank you, Hon. Speaker. I understand what you exactly mean. It has been implied that there are provisions in this PAC Report which violate the provisions of the Constitution. Therefore, debating it in its current form would jeopardise that.

I think from experience, we have had many Reports debated in the House, where Members feel certain provisions of law have been violated. You do not stop a debate on a Report by merely citing violation of either the Constitution or any statute. In my view, Members who are convinced so strongly that there are certain recommendations in the Report which would violate the provisions of the law would bring amendments to the Motion.

Motions are amended every day in this House. They should bring amendments and argue. The arguments I am listening to this afternoon would have come through amendments by a Member citing the exact provisions of the law that are violated. So, I want to start from that premise that in my view, I am very clear in my mind that debate on this Report should continue. As to whether there are provisions in it that require amendments, then this House can deal with them.

Hon. Speaker, allow me to address an issue which probably my other colleagues have also addressed themselves to. Allow me to add my voice on the issue of constitutionality, regarding the process as spelt out in Article 251 of the Constitution.

I concur with Hon. Otiende Amollo. My understanding is that Parliament can pronounce itself on State officers whom we oversee, including commissions regarding their competence, integrity and whether they should continue holding public offices. However, the process under Article 251 of the Constitution will still have to be followed. In my view, the fact that this House says that this person should not hold a public office does not make that State officer to vacate office the following day. Hon. Speaker, just give me one more minute. I just want to give one example. This House has recommended that certain Cabinet Secretaries previously known as ministers should not even hold...

**Hon. Speaker:** Observe the one minute.

**Hon. John Mbadi** (Suba South, ODM): I just wanted to say that we follow precedence in this House. There are cases where we have recommended removal from office or certain State officers to vacate office, but that will not make that person leave office because there is a procedure. The appointing authority must remove that person from office. This House can pronounce itself that so and so should leave office, but the process of removal from office must still be followed. Thank you, Hon. Speaker, for indulging me. I just want to say that we need to debate and those who think that there are provisions in this Report that require amendments, please bring the amendments.

**Hon. Speaker:** Hon. Members, address me only on the constitutional matters so that we can make a decision one way or the other. Let us have the Member for Tiaty.



**Hon. Kamket Kassait** (Tiaty, KANU): Thank you, Hon. Speaker. I do not agree with the Leader of the Majority Party in most cases but today, I agree with him for the first time.

**Hon. Junet Nuh** (Suba East, ODM): On a point of order, Hon. Speaker.

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

**Hon. Junet Nuh** (Suba East, ODM): Hon. Speaker, I want to draw your attention that the other day we just discussed issues which are very important in the Standing Orders of declaring interest in a matter. Before Hon. Kamket contributes to the IEBC Report, can he declare his interest in IEBC so that we do not have conflict here?

**Hon. Speaker:** Hon. Kamket, do you have any particular interest? If you have, declare it.

**Hon. Kamket Kassait** (Tiaty, KANU): Hon. Speaker, I have a very close relative working at the IEBC, but I am also the Member of Parliament for Tiaty Constituency. I have declared the interest. Can I proceed?

**Hon. Speaker:** Proceed.

**Hon. Kamket Kassait** (Tiaty, KANU): Hon. Speaker, I would like to draw the attention of the House to Standing Order No. 197 on the limitation of mandate of a select committee or any other committee of parliament. It reads as follows:

“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.”

Hon. Speaker, Standing Order No. 205(2) on the mandate of the PAC says:

“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.”

That is it. That is the function of PAC. There is no other function. What PAC has done is that it has overshot itself. What they have done is *ultra vires*. Therefore, by virtue of what the Leader of the Majority Party has raised, this House does not legislate or pass resolutions in vain. What the Leader of the Majority Party has done is to, as it is said in court, raise a preliminary objection to the points the PAC has done. Therefore, before we debate, we must dispose of this matter of overshooting the mandate by PAC. We have no issue debating the Report but, the issue is why did PAC go beyond its specific mandate? If there are issues of accounts, why did PAC not limit itself to the accounting officer only? Why did they have to bring the issue of commissioners? I rest my case.

**Hon. Speaker:** Member for Nyando.

**Hon. Jared Okelo** (Nyando, ODM): Hon. Speaker, I thank you. As for me, I would want to come with a hybrid argument of both matters of law and matters of fact. Even though we have been allowed to delve into a matter that is yet to be adopted as a motion before this House, allow me, therefore, to also reiterate some of the things that I have heard from my colleagues here.

The pleadings or recommendations of this Report that I have had a rare privilege of going through are actually based on solid ground. The commissioners together with members of the secretariat were actually summoned by PAC 12 times. It was not one time. It was not twice or thrice but 12 times! Each time, they were never convincing to PAC on matters presented before them. In line with Article 50 of our Constitution, no one should be condemned unheard. They were given an opportunity 12 times, but 12 times they were not convincing. I have heard certain arguments from the other side of the isle. We are engaging in malicious undertakings. Are we, therefore, saying that PAC is malicious and the commissioners are clean? That is the question

that we should be asking ourselves. If the commissioners are not clean, then why are we saying that those agitating for their vacation are malicious? These are fundamental questions that we have to look into.

The Supreme Court, which is the apex court in this country, harshly indicted IEBC of gross incompetence and no one wants to talk about this. If the apex court has already pronounced itself, who are we to defend them? Four out of seven commissioners have indicted the three who are still sitting pretty in office, and they have graciously resigned from their positions. Are we, therefore, saying that the three are so clean that the four who left were the ones who should have been indicted? I can see my time is running short. When we throw out this Report, the oversight committee, which is PAC, will not have a tooth to bite. So, we have to really move on a tight spot. We have to walk a tight rope even as we are yet to make a decision on this matter. Otherwise, the Auditor-General who relies on this Parliament with its...

**Hon. Speaker:** Hon. Members, we all appear to have moved away from the issues that were raised. When you start bringing to me issues about the Supreme Court... Just the other day, I saw some comments somebody saying that somebody is so qualified that he cannot be vetted by the House. Are these the views we are supposed to be taking? Let us see if we can address this issue of constitutionalism. The Member for Tiaty is very migratory. He has already left. It is also important to take on board some of the issues he has raised under Standing Order Nos. 197 and 205. Even as we address the House, let us address these issues and respond to what the Leader of the Majority Party has said. I do not want to be told about three or five commissioners or there are some who could be doing this or the other. I am not interested in that because it is not part of what I will be deciding on. Next is the Member for Saku.

Be brief please.

**Hon. Ali Rasso** (Saku, JP) : Thank you very much, Hon. Speaker. If Article 251 of the Constitution is violated, the Report is dead on arrival. Article 249(2)(a) and (b) of the Constitution says:

“The commissions and the holders of independent offices-

(a) are subject only to this Constitution and the law; and,

(b) are independent and not subject to direction or control by any person or authority.”

If Parliament overreaches or moves out of its way to give direction that is not given by the Constitution, then we would overreach and violate that Constitution.

Finally, from the start, the Committee wanted to remove the commissioners, secretariat and senior staff of the Independent Electoral and Boundaries Commission. The Report before Parliament is examination of the Report of the Auditor-General on the financial statements for the IEBC for the year ended 30<sup>th</sup> June 2017. That is the thrust of what is before this House. Public Accounts Committee should not move out of that set boundary. I believe they have not done justice and that is where the violation of Article 251 of the Constitution comes into force.

Thank you, Hon. Speaker.

**Hon. Speaker:** Very briefly, Member for Mandera North. If your microphone is not working and nobody is giving you space, let me give the opportunity to another Member.

**Hon. Major (Rtd.) Bashir S. Abdullaih** (Mandera North, JP): Thank you, Hon. Speaker. I want to address the mandate of the Committee which has been articulated. We already have the Departmental Committee on Justice and Legal Affairs which has confirmed that it has a Bill for establishment of a selection panel to recruit the four commissioners who left. What needs to be understood is that the PAC's mandate is accounts. Commissioners are not accounting

officers of IEBC. The accounting officers are known; the Chief Executive Officer (CEO) and the secretariat. From that point, it means they have delved into a mandate which is not their core business.

The centre of gravity of the entire Report starts and ends with removal of commissioners. All these other reports which are in the middle about procurement and other things are immaterial. Their target which is the centre of gravity is the ultimate removal of commissioners, which is not in their mandate. Why is PAC talking about that issue while the Departmental Committee on Justice and Legal Affairs oversees IEBC? Does it mean that if IEBC commissioners have failed to do their oversight role, they are culpable and should vacate office? The same can be said of Members of Parliament. We are supposed to oversee the Executive. We can see a lot of runaway corruption in ministries. Do we, as Members of Parliament, vacate office because we do not do our oversight role? You cannot vacate office because you have not done your role. The PAC's mandate is not removal of IEBC commissioners but to look at accounting and monetary issues.

Thank you, Hon. Speaker.

**Hon. Speaker:** Member for Seme.

**Hon. (Dr.) James Nyikal** (Seme, ODM): Thank you, Hon. Speaker. This is a very important issue which is before us. What the Leader of the Majority Party raised and the question before us is whether we should discuss this Report.

Any report can be amended or rejected. The point is not to go into the content and the substance of the Report to discuss whether we should go on with it. That is what is becoming apparent. If certain portions in the Report are unconstitutional or not in order, we shall be guided at that point. We have spent a lot of time discussing the content of the Report which is not the issue. You should guide that we go on with the Report and where it is necessary, guide us as you always do.

Thank you, Hon. Speaker.

**Hon. Speaker:** Member for Marakwet East.

**Hon. Kangogo Bowen** (Marakwet East, JP): I thank you, Hon. Speaker. The question here is the admissibility of this Report. My colleagues said that the Report has some issues of constitutionality. However, let us debate it and move on and then we amend it later by deleting those clauses. We said that this is a House of traditions. There were some cases before where admissibility of debate was ruled by the Speaker.

The issue raised by the Leader of the Majority Party is very important. It is an issue of constitutionalism. As much as Article 95 of the Constitution gives Members of Parliament power to deliberate on any issue of national importance, there is a procedure on how to go about it, which is provided for in the Constitution. If we deliberate that commissioners misappropriated money in the commission, the Constitution provides the procedure for removing them. It is not done through the PAC which is established under the provisions of the Standing Orders. The recommendation of the Committee is indirect petition to remove the commissioners. The procedure of removing the commissioners is provided for in the Constitution. I want us to look into the admissibility of the Report. Is it admissible that we continue debating this Report the way it is with all the constitutional issues in it? If it is not, please give us direction so that we can follow the traditions and rules of this House tomorrow.

Thank you, Hon. Speaker.

**Hon. Speaker:** Finally, Member for Molo.

**Hon. Kuria Kimani** (Molo, JP): I thank you, Hon. Speaker.

**Hon. Speaker:** Hon. Members, that is the end of the interventions. You must learn how to use the intervention buttons. It is over now. Some of you are beginning to press the intervention buttons. This is when you have remembered how it is done. Those who are pressing the intervention buttons are wasting their time. Let the Member for Molo make his contribution.

**Hon. Kuria Kimani** (Molo, JP): Hon. Speaker, this National Assembly has the PAC. Its mandate is to examine the books of accounts which are submitted to them by the Office of the Auditor-General. The IEBC is independent. The Committee went ahead and executed its roles, put in many days of work and then came up with a very good and long Report. Hours were spent by these Members of Parliament. We gave a fair hearing to both the secretariat and the commissioners and even went ahead and called witnesses who did business with IEBC. We made our Report and we have submitted it. We have started a conversation about why we should not debate that particular Report. With all honesty, there are ways of making sure that the Report is amended. It is the prerogative of the Hon. Speaker to either approve, reject or pass the Report with adjustments. So, at what point do we not allow the Committees of this Assembly not to execute the roles they are assigned to by the Standing Orders?

More importantly, the basis of the Report touches on the fundamental right to vote. It also touches on several issues such as the Procurement and Disposable Act and the behaviour and how members of these commissions ....

**Hon. Speaker:** To the best of my knowledge, there is no law known as Procurement and Disposable Act. It is called the Public Procurement and Assets Disposal Act of 2015. You were going to make people wonder what the disposables are.

Proceed, Hon. Kuria.

**Hon. Kuria Kimani** (Molo, JP): I stand guided, Hon. Speaker. I try to make myself a good student so that I can learn and stay in this House for many years like our senior Members have done.

So, we are looking at the issue of a Committee of the National Assembly that has taken its role and mandate and dedicated its time to do its work. Then the House starts debating whether we should look at what that Committee has done or not. The conversation and debate that has been happening this afternoon has been discussing the content of the Report. So, why would we not then ask the Chair of Public Accounts Committee to execute or table the Report and these issues will be raised? In any case, we are not forcing the House to adopt all the recommendations made. But there are fundamental issues we have raised that we feel should be given a fair hearing.

**Hon. Speaker:** Member for Homa Bay Town.

*(Loud consultations)*

When you tell me that you have spent many man-hours, you are not addressing the issue. I am not going to consider that in my ruling. All Committees spend many hours. Try to address me on the salient issues.

**Hon. Peter Kaluma** (Homa Bay Town, ODM): Thank you for giving me the opportunity. I beg to address you on one matter that my colleagues have not addressed you on, and that is the impact of Article 47 of the Constitution read together with the Fair Administrative Action Act. What would be the impact if we proceeded to debate the Report and possibly adopted it in its current form?

Hon. Speaker, I draw your attention to Articles 47 and 251 of the Constitution. I request Members to relive among ourselves the procedure for removal of commissioners. A committee may recommend. I do not know if PAC is right to recommend. But, Hon. Members, it will be very awkward if we recommended removal of commissioners. Article 251(2) of the Constitution requires a petition for removal to be launched. There is nothing wrong with a committee finding grounds for removal in its report. That is in order. But when we recommend removal, let us consider the provisions of Article 251(2) of the Constitution which says that, whoever wants to remove a commissioner, and the grounds may be from anywhere including the Report, the person has only one institution to petition - Parliament. Assume, as Parliament, we recommended in good debate that so and so be removed as a commissioner and then a petitioner, anchored on our findings which will be lawful, comes before us. Would we properly sit and be deemed to be fair and unbiased in treating the petition for removal? In fact, I see that gentleman going to the High Court in a judicial review action and saying the he cannot appear before the institution he is petitioned because it has already predetermined his removal. I see then the High Court blocking people we would otherwise love to remove. I say this with utmost respect. I am one person if you brought a petition or motion for removal of commissioners, I would support.

Secondly, and this is to debunk the presentation my brother Hon. Otiende Amollo made, in legal interpretation where we have specific provisions of law dealing with a matter, all general provisions stand superseded so that the provisions of Article 95...

**Hon. Speaker:** I add you two more minutes.

*(Laughter)*

You are now addressing the issues which we are dealing with. The rest was...

**Hon. Peter Kaluma** (Homa Bay Town, ODM): Hon. Speaker, the provisions of Article 95(5) as beautiful as they are, the provisions of Article 73 of the Constitution which Hon. Otiende Amollo referred the House to do not apply to the extent that we have Chapter Fifteen of the Constitution, and in Article 251 of the Constitution, we have specific provisions or provisions of no lesser law than the Constitution specific to the matter of removal. We must consider these as we go through that rigorous process.

The only point at which I disagree with the Leader of the Majority Party is how we treat a report of a Committee in which some parts are perfectly lawful and constitutional and in which only some parts are unconstitutional or may be deemed unlawful. The procedure of what happens in law, Hon. Speaker - and you served in the Judiciary for very long - what you do is severe the findings or recommendations in the Report which would contradict the law or the Constitution. You do that by way of amendment. You do not kill the whole Report. That is the extent to which I disagree with the Leader of the Majority Party. Otherwise, if there is a recommendation for removal, so that we do not find ourselves in an awkward position in future, we can severe them by amendment. If there are provisions which seem to suggest that the commissioners, contrary to Section 11(2)(a) of the Independent Electoral and Boundaries Commission Act are being blamed for procurement which are matters for the secretariat, we can also severe that by amendment. But we cannot go ahead to adopt a report which recommends wholesale removal.

Thank you, Hon. Speaker for the indulgence.

**Hon. Speaker:** Well spoken.

*(Hon. Jimmy Angwenyi spoke off record)*

**Hon. Speaker:** Is there anything more useful to add? Which one? Hon. Angwenyi, you have now known how to use the equipment. I have given you a chance on account of age only.

**Hon. Jimmy Angwenyi** (Kitutu Chache North, JP): Hon. Speaker, I thought the objective of the Leader of the Majority Party was that we do not want to waste time on something unconstitutional. But we have taken more time than we would have taken if it had been moved, discussed and amendments that have been recommended by Hon. Kaluma included. We would have done that.

**Hon. Speaker:** Hon. Members, I pronounce in the following order. The matters raised are weighty, given the issue of part of the recommendations. The issues about mandate have been canvassed. I would want to give a considered ruling on this so that I find whether to agree or disagree with any of the views expressed; agree or disagree with Hon. Junet and then give directions on how to proceed. It is not because we do not appreciate the man-hours spent by the Committee, I will be mindful of that in making the ruling that I will give next week.

For the time being, and to avoid a situation which could find us acting in vain, I order that the Report appearing as business No.12 on the Order Paper be deferred until such time as I will make that ruling, which is, as I promised, next week. We do not want a situation where we are calling the Public Accounts Committee and urging them to move with speed and then when they produce reports, they are not debated. I am mindful of what the HBC directed the PAC to do. It is for that reason that I will be making the ruling next week at the earliest opportune time.

For the time being, that business is deferred.

*(Motion deferred)*

Next Order!

PROGRESS REPORT ON THE INQUIRY INTO THE PROPOSED TAKEOVER  
OF JOMO KENYATTA INTERNATIONAL AIRPORT BY KENYA AIRWAYS

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

**Hon. Speaker:** Hon. Members, there are certain matters which touch on all Members of Parliament. There was scheduled a Commission meeting at 4:30 p.m. I know there are certain issues that many of you have been asking. What is your point of order, Hon. Duale?

**Hon. Aden Duale** (Garissa Township, JP): Hon. Speaker, today is the day you will make another solomonic ruling, not because I have any interest, but because I want to make sure that the proceedings of the august House and its committees are done well. The Public Investments Committee is asking for two things. One, that the matter be postponed until an inquiry is conducted and the House pronounces itself on the matter. Two, and more fundamental, is that the Auditor-General expedites investigations into the matter to establish adherence to the law, the risk the takeover entails and the procurement process to be followed.

The Constitution gives the functions of the Auditor-General. He looks at the accounts of the national and county governments, the accounts of all funds and authorities, the accounts of all courts, accounts of the National Assembly and the Senate. If you go to section 11(1) of the Public Audit Act, you will again see in his own Act his functions. The Auditor-General, in my own language, is a mortician. The Auditor-General's work is to deal with a post-mortem. The

Auditor-General deals with money spent. Is it spent prudently? The Auditor-General cannot audit a policy of Government. What is before this House is a policy of a purported merger between Kenya Airways and Kenya Airports Authority. There is no single public money spent. Let us be very clear. The procedure is that this policy will go to the Cabinet. The Cabinet will discuss and send to this House a sessional paper. This House will deal with a sessional paper to either agree with Government or disagree. We must follow the law. We cannot abuse our parliamentary privilege in committees.

I want you to give a chance to the Chair of PIC. From what I have just said, it is apparent that the Auditor-General is to investigate whether public funds have been used prudently and for the intended purpose. I want PIC to tell me the money that this House appropriated for this merger between KAA and KQ. The answer is that there is no money. What special forensic audit will the Auditor-General do for us not to discuss this matter?

Two, regarding the proposed takeover, it is clear that the expenditure of public funds has not arisen. There are no public funds lost. Forget about public funds which have been misused. There are people here who have worked as CEOs and accounting officers.

Three, at this stage, in my opinion, the question of audit by the Auditor-General does not arise and cannot be implied on the same. I am sure even if the Clerk of the National Assembly through you, Hon. Speaker, writes to the Auditor-General, the Auditor-General will write back and ask what he is going to audit. It is a policy document.

Similarly, the proposed takeover is a matter of policy of the national Government. The role of the Auditor-General is in the Constitution and his Act – the Public Audit Act – that this House has passed. The Auditor-General has no role in the matter as far as Government policy formulation is concerned. He cannot audit a Government policy formulation. Let us protect the integrity of this House. This House must be guided by the Constitution, the Standing Orders, and precedents, Communication of the Speaker and traditions of other jurisdictions. Tell me where an Auditor-General's function is to audit a national Government policy formulation.

Regarding the inquiry recommended by PIC, it is apparent that the proposed takeover is in the documents presented by Government. It is a proposal. So, there is nowhere an Auditor-General can be compelled by this House.

Finally, in any event, under the doctrine of separation of powers, the role of this House is representation, legislation, oversight and budget-making. As a House, when this merger takes place, when this House appropriates resources, it becomes the business of the committees of this House, including PIC and Departmental Committee on Transport, Public Works and Housing, to see whether the money spent on the merger was for the intended purpose. The House has no role neither does it participate in the formulation and implementation of Government policy, which falls within the domain of the Executive. If this House was to be involved at this stage, this could amount to a pre-emption of the takeover and apparent interference of the House in the business of the Executive. Our function is to appropriate budget. Once we appropriate resources for a road in Garissa to Wajir, it is this House to find out whether that money has been used for the intended purpose. I want you to rule that we are being forced by the PIC... I want him to go back and continue with investigations and bring a report. We cannot ask the Government to stop the process of a policy formulation of a merger at the initial stage because the Chair and the Committee of PIC are saying they are halting it. The Auditor-General has no single role to audit the national Government policy. What is before this House is something in vain.

As I finish, I have never said that we have a problem with the PIC Report. The only problem we had was on pages 7 and 130. Before we proceed to debate this, today is the day you

must guide the House. That is why you are our leader. We cannot go on a fishing expedition. Committees of this House must follow the law. I take time to read, research and consult the legal and other staff of Parliament. I ask for your guidance before we deal with the matter. It is too early, the Chair should go back and continue with his investigations. I think the Chair cannot purport to stop Government policy formulation, it is illegal and you cannot use the Auditor-General because he has no powers. I rest my case.

**Hon. Speaker:** Leader of the Minority Party.

**Hon. John Mbadi** (Suba South, ODM): Thank you, Hon. Temporary Deputy Speaker. I think this is a matter that is fundamental just like the previous one. Looking at the Constitution and based on what the Leader of the Majority Party has raised, Article 1, gives sovereign power to three arms of Government - Parliament, Executive and Judiciary. That particular Article of the Constitution says all sovereign power belongs to the people of Kenya and shall be exercised only in accordance with this Constitution.

So, all sovereign power belongs to the people of Kenya and the people of Kenya decided to delegate that power to three arms of Government. What was the rationale of delegating powers to three arms of Government and not consolidating the same under one arm of Government? It is because the people of Kenya do not want any arm of Government to interfere with another arm of Government. I am one person who does not believe that one arm of Government should be superior and overwrite any other arm of Government. We have previously argued in this House when Judiciary attempts to interfere with our powers of legislation and we have said, let the Judiciary wait until we finish legislating then it can pronounce itself on the constitutionality or otherwise of legislation or statutes that we generate from this House. In the same vein, we expect the Executive to implement the laws that we pass. Now, when it comes to implementing Government projects and coming up with Government policies, that work belongs to the Executive. The only way through which Parliament can interact with a policy document is if it comes to this House through a sessional paper.

*(Hon. Abdullswamad Nassir walked in the gangways)*

**Hon. Speaker:** The Chair of PIC, you are aware of Standing Order No. 106. Now I am finding it very difficult, I want to listen to the Leader of the Minority Party

**Hon. John Mbadi** (Suba South, ODM): To cut my argument short on that line is that the three arms of Government need to restrain themselves from going beyond the boundaries of the powers that are conferred to them. The Executive has a responsibility too. I do not think it will be right for us to sit in this House and start snooping around and asking what the Cabinet is discussing and start "injuncting", if I may use that word loosely, the Cabinet at the Cabinet level. Tomorrow, the Cabinet may decide that they want to do a major highway from Mombasa to Nairobi and Parliament without any reason at all, would write to the Executive or pass a resolution that the Executive should not develop the road. I think that is going beyond our boundaries. I know Article 95 of the Constitution talks about Parliament resolving issues of the constituency and special interest and the National Assembly deliberates on or resolves issue of concern to the people. But that must be tampered with clear constitutional provisions and the law. We cannot go around asking what is happening, in which institution and start to interfere with the work of arms of Government.

Finally, there is a point that Hon. Duale has raised. By the way he is right to say that the Auditor-General is not supposed to interrogate the Government policies. That is not the work of



the Auditor-General. It is clear that the Auditor-General is supposed to confine his or her work or that office must look at money appropriated and expended; the propriety of the same and efficiency and effectiveness of money - value for money. That is why in the Constitution, Parliament has been given the mandate to exercise oversight. But for National Assembly, we exercise oversight over national revenue. That is the entire national revenue and expenditure. It is the Senate that is given oversight role on money that is appropriated to the counties but for us, there is national revenue. I want to say that there is nothing wrong with PIC going about their work but I think it jumped the gun. There was no reason at all to bring a progress Report in this House. In my view, I would ask Hon. Abdullswamad, to complete whatever he is doing and bring to us a comprehensive report on this matter.

*(Hon. Rashid Kassim consulted loudly)*

Hon. Speaker, the Member for Wajir East should be taken for more induction. He is just shouting. This is a House of debate.

**Hon. Speaker:** Please, just relax. There is no need of raising your temperature. He is the Member for Wajir East?

**Hon. Members:** Yes.

**Hon. Speaker:** Member for Wajir East, just relax.

**Hon. John Mbadi** (Suba South, ODM): Let him relax. He is my friend and he belongs to my coalition. He should respect his leader.

I just want to conclude by saying that ...

*(Hon. Rashid Kassim spoke off record)*

**Hon. John Mbadi** (Suba South, ODM): You know you are inviting very serious reprimand. Let me finish by saying that as a matter of fact, my understanding is that progress report should only be brought where a committee was given timelines and is not able to complete its work within the timelines. We do not just decide on our own that we now want to do a progress report. What if the final finding contradicts the preliminary or the progress report? Are you going to ask the House to negate your Report? I want to ask Hon. Abdullswamad together with his Committee to go back with the Report, do a thorough work, complete it, and then do a thorough report to this House on what your findings are.

Thank you, Hon. Speaker.

**Hon. Speaker:** Hon. Members, since you have demanded that I continue taking these points of order, I will give you. But even as we deal with this, remember that the position of the Auditor-General is provided for in the Constitution in Article 229. It is in sub-article 4 where the various bodies he is supposed to audit are stated. More particularly, I would like to hear comments from a number of you who will be contributing particularly on sub-article 5 and 6 of Article 229. For avoidance of doubt, sub-article 5 says the Auditor-General may audit a report on the accounts of any entity that is funded from public funds. Now, I want to hear your views on sub-article 6 which states that an audit report shall confirm whether or not public money has been applied lawfully and in an effective way. This is the Constitution and it is devoid of politics and any emotions. So, even as you address me, speak to this, whether public money has been applied. So, when you address, please, also apply your mind to that so that we know whether where we are going is in the right direction. The Chair, Public Investments Committee, whom I

saw looking for the Constitution and he got it, now I am sure is prepared and wants to respond to these points of order that have been raised.

**Hon. Abdullswamad Nassir** (Mvita, ODM): Thank you, Hon. Speaker. First and foremost, I respect highly the opinions of both the Hon. Leader of the Majority Party and the Hon. Leader of the Minority Party. I respect our elderly and that is why even if he interjects in a disorderly manner, we will still be referring to you the Hon. Speaker. We will forgive him and so will the rest of Kenyans.

However, Hon. Speaker, I want us to understand the genesis of what transpired until we are here today. I would like Hon. Members to lend me their ears and look at this in a very comprehensive and approachable manner.

When we were going through the Reports for 2013/2014 all the way to 2016/2017 financial years, what transpired was that KQ had to pay KAA Kshs3.8 billion. The last time we had the CEO of KAA, that figure had reached Kshs5 billion - and that is on record. This is a House of tradition and records. It is a House that transcends what others have done and I see no other person who has been able to lead PIC in a progressive manner like you.

Hon. Speaker, you will recall when you were the Chair of PIC, and when you were interrogating the accounts of the Kenya Ports Authority (KPA) something came up with regard to the issue of procurement of cranes. Those were not in the audit at that time, but you did it. I would like the Hon. Leader of the Minority Party to kindly hear me out so that this is not seen to be political; so that if it is a constitutional issue, let it be raised, debated and concluded, based on the Constitution of Kenya, Standing Orders and Speaker's rulings.

Hon. Speaker, this did not even die there. When the former Minister for Agriculture, Hon. Kipruto arap Kirwa as well was in the Committee before you, you were able to rule on a number of issues and there is a particular statement that I would not want to mention, but it was very famous in the media at that time. That is the word "diminutive stature; I know you understand what I mean when I say that. This just goes to show that we have also done our research. This also applied when the Minister at that time was Prof. Anyang' Nyong'o and he was trying to deliberate on certain elements. We will not get into the nitty-gritties of it, but why did we feel that the Auditor-General should be included in this particular matter?

We, as a Committee, advised the management of KAA bearing in mind the magnitude of this whole issue and the emotions that are currently there. We advised them that it is prudent that they do not try and go ahead until all relevant stakeholders, including the Committee on Transport, Public Works and Housing, are aware of what is happening. I want to tell this House how it works when Government wants to do something regarding policy. The first thing that happens is that a sessional paper is presented to the Floor of this House. There is no sessional paper talking about a merger regarding KQ and KAA.

When a sessional paper is brought to this House, the representatives of the people of Kenya as enshrined in the Constitution of Kenya deliberate on that with respective parliamentary committees. In this instance, it would have been the Transport Committee. That has not happened until this day.

Hon. Speaker, I want to give examples. When the same KQ wanted a sovereign guarantee of over Kshs70 billion, that was brought here and the Hon. Leader of the Majority Party tabled a Paper that was deliberated in this House and the House approved through a sessional paper. When KQ wanted a cash bail of Kshs4 billion, it was brought to this House using the right procedures. I want to use the word "to guide" the leaders of this House on whether public money has already been used or not.

What caught the eye of this Committee was the rate at which this particular deal was being pushed. This deal was being pushed at speeds never seen before. You want to know the point at which we thought the Office of the Auditor General should come in, it is when they chose to appoint a transactional advisor who was appointed through restricted tendering. When we asked why they chose a transactional advisory through restricted tendering at a cost of Kshs150 million which the airport is liable for, the answer was that this has to be rushed as a matter of fact as per the minutes.

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

**Hon. Abdullswamad Nassir** (Mvita, ODM): I am already on a point of order. Hon. Duale! You spoke! Let us speak as well. Hon. Duale, I respect you but allow me as well. I am your junior in age and stature. Let me continue and explain what happened. You have raised this matter under Article 229(5) of the Constitution which says:

“The Auditor General may audit and report on the accounts of any entity that is funded from public funds”

The KAA is an entity that is funded by public funds. Whether or not an audit shall confirm whether or not public money has been applied lawfully, yes money has already been consumed. So, as to whether money was used or not, it is not even applicable. Money has been used. I appreciate the wisdom that the Hon. Leader of the Majority Party had because, with that wisdom, he is now in agreement with us that there is need for this Report.

On the issue as to whether there is need for a progress report, this House is meant to deliberate on issues affecting Kenyans. I want to say this and I know this is will be shut down by Members, had this Parliament deliberated on this matter before yesterday, we would have averted that strike.

Thank you very much.

**Hon. Speaker:** Let me hear the Chair of the Departmental Committee on Transport, Public works and Housing.

**Hon. David Pkosing** (Pokot South, JP): Thank you, Hon. Speaker. As you look forward to guide us - to which we trust your guidance - in this Report, may I draw your attention to the prayers of this Report.

I find it injurious to the Constitution and Parliament for a Committee to ask this House to adopt something we know is not practical. I have read their prayer No.1. They say, “Postpone everything until the Committee inquiry is concluded.” I have a problem with the word ‘committee’. The first question I have asked myself is: Which committee? This is PIC. Therefore, this means they are injuncting all other committees from doing their work, as provided for in Standing Order No.216 and Article 124 of the Constitution that creates committees of this House.

I find this unconstitutional. It is not in order or clear. I do not know who drew this recommendation. I am not blaming my colleague who asked for votes like me. I think the clerking and legislative part of this Committee has a problem. If they wanted to injunct other committees, there is also the Departmental Committee on Labour and Social Welfare. What if there are issues concerning labour? Have they been injuncted? Is this Committee asking the House to injunct all the other committees? I find that irrelevant. That is why we are calling for your leadership.

As we move forward, are we going to injunct Government policies? So, when the Government brings a policy, we injunct it and if tomorrow another one comes, we also injunct it! Where will the separation of power be? What is before us is a proposal. I want to speak about it

alongside what Members are saying on sessional papers. In my opinion and as the Chair of a Committee, the sessional paper will come. However, it will come when the consummation of marriage is real. At the moment, KQ has written a proposal which is before my Committee and we are looking at it. It has written to KAA, and they have not replied to state whether it is applicable or not and give other options.

So, a sessional paper will come to this House asking for what? So, once KAA replies agreeing or giving a proposal of the merger or disagreeing... If it is accepted by Cabinet, then that is how that document will find itself in this House - as a sessional paper giving birth to amendment of laws and consummation of marriage. There is nothing before us but only a proposal. As I conclude my presentation, what is the role of PIC according to Standing Order No. 206?

Last week, you ruled that they draw their mandate from audited accounts or special audits. This merger has not reached special audit. My colleague is talking about audited accounts showing that KQ owes KAA over Kshs3 billion. That debt has no relation with what is before us - on the proposed merger. They can proceed with their work but matters about a merger have not reached them. I am calling for your ruling to protect and demarcate functions of Committees, so that we can move forward. There will be no marriage between KQ and KAA without passing through this House.

The power of the Auditor-General is to audit KAA. What about KQ? Therefore, as a Chair of another strong Committee, it was in bad faith for my colleague to try to injunct us. Hon. Speaker, protect the committees alongside the Constitution in Article 124 which creates them.

**Hon. Speaker:** You know if debate in the Chamber was that once your Committee is mentioned you need to say something, then there will be no order in this place. We know you are the Chair of the Committee. Hon. Pkosing has raised the issue of demarcation of mandates. It is not in vain or an injunction. Of course, the issues of injunctions have also been mentioned by Hon. John Mbadi. This House has looked with a lot of disfavour to attempts by the Judiciary to injunct Parliament from debating. Hon. John Mbadi drew the parallel on whether we have now forgotten that we do not like being injuncted from doing our work. We want to injunct another area. This is another matter which again, is out here before you go to debate. Hon. Oundo.

**Hon. (Dr.) Wilberforce Oundo** (Funyula, ODM): Thank you, Hon. Speaker for giving me this opportunity to weigh in on this matter. I know it is an emotive matter that is of national interest and that is a given fact. Again, I stand from a point of view that, as Parliament, we are guided by laws and our Standing Orders.

Standing Order No.206 (7) (a) is very clear that:

“(7) Despite paragraph (6), the Public Investment Committee shall not examine any of the following-

(a) matters of major Government policy as distinct from business or commercial functions of the public investments.”

I have listened to the Chairs of PIC and the Departmental Committee on Transport, Public Works and Housing. I probably have two issues that beg a very major question. Has money been expended? If money has been expended in view of Article 209, has there been any evidence tendered in this House to confirm that public funds have been expended? Have those public funds been audited by the auditor as required by law?

So far, I have not seen anything presented here. Secondly, I am constrained to feel a bit let down by the Committee simply because hearsay, innuendos and public statements do not amount to Government policy. Hon. Speaker, we seek your guidance.

**Hon. Rashid Kassim** (Wajir East, WDM-K): On a point of information.

**Hon. Speaker:** Member for Wajir East, who do you want to inform? I have not yet given you the microphone. Hon. Oundo has already finished his contribution. So there is no one to inform and certainly you will not, unless I seek that information. Since, you want to say something, just make your contribution to this.

**Hon. Rashid Kassim** (Wajir East, WDM-K): Thank you, Hon. Speaker, for giving me an opportunity to make a comment. I am a Member of this Committee and I am enlightened to give certain background information regarding the work of PIC. Within the separation of powers, it is very clear that there is the Executive, Legislature and Judiciary. The House, through the Committee of PIC, has an oversight role on the State investments and, particularly, State corporations. This is quite clear.

Indeed, today, I am put off when I see the Leader of the Minority Party, who is supposed to oversee the Government speaking retrogressively on PIC. I am really disturbed for that matter. However, let me say clearly that PIC, in its conduct and operation, looked at those state agencies through its audit of the financial years 2013/14 and 2015/16. It realised, through its jurisdiction and adjudication that there was an intention by the Executive.

**Hon. Speaker:** You said: "Realised that there is an intention".

**Hon. Rashid Kassim** (Wajir East, WDM-K): There is an intention through a Cabinet memo cited as "C something A", which is quoted in this Report, which says they should expedite the resolution and the merger of KAA and KQ. Over the period, we realised KQ, in its performance as a private agency, has not been doing very well and it owes KAA Kshs3.8 billion. Surely, what the Government of Kenya has done, in its rationality, to invest heavily in KAA and the entire percentage of 85 per cent of the revenue is coming from JKIA... What rationale is there to fast-track the resolution and the handing over of JKIA to KQ? This is the basis under which PIC became suspicious and felt that there is need to look at this issue objectively through the Auditor-General. We recommended that there is serious interest by the Executive to rush this resolution. It took a period of only six months, even must faster than the number of flights KQ takes. It took six months to look at this matter. Already, they have spent Kshs150 million through a single source. Nearly 10 per cent of that money has already been spent. Are we not there to look at the expenditure of State agencies? We are here as an authority through our mandate.

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

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

**Hon. Aden Duale** (Garissa Township, JP): Hon. Speaker, I really have a lot of respect for Hon. Rashid, if he can sit down. It is a tradition that when a member is on his feet, you sit down.

**Hon. Speaker:** Just resume your seat. You will continue. Maybe it does not happen in Wajir, but here it happens.

**Hon. Aden Duale** (Garissa Township, JP): Hon. Speaker, first, we really want you to guide us that we do not discuss the Report. Secondly, we have no problem. Kshs150 million has been earmarked. It is the Auditor-General's function to come and report how the Kshs150 million has been spent. It is not PIC. Based on when he puts the Report to Parliament, then PIC will interrogate the Auditor-General on how much he has spent. A concept paper on a merger of two big companies with shareholders will not even take six months. It will take one year. As the Chair himself said, we have no problem. We want the process to continue. The Cabinet should send a sessional paper. Then that sessional paper will be interrogated by the Departmental

Committee on Transport, Public Works and Housing and then next year, 2019/2020, when the Auditor-General audits this process, then PIC will come in.

**Hon. Speaker:** Let the Member for Wajir East complete his contribution.

**Hon. Rashid Kassim** (Wajir East, WDM-K): Thank you, Hon. Speaker, for giving me more time to shed light on this.

**Hon. Speaker:** It is not more time. It is your time. It is still within the time you had.

**Hon. Rashid Kassim** (Wajir East, WDM-K): Let me say it here clearly that what makes us more curious on this project is that the Cabinet memo which approved the merger has not been availed to date.

**Hon. Speaker:** So, are you suggesting... Hon. Rashid, be careful because I will look at the words you are using. When you say you want to invest in curiosity, it becomes very difficult.

**Hon. Rashid Kassim** (Wajir East, WDM-K): What we are only trying to suggest is that we are here to protect the investment of the Republic of Kenya.

**Hon. Speaker:** I want you to continue but when you say that you want to invest in curiosity, it becomes very difficult.

**Hon. Rashid Kassim** (Wajir East, WDM-K): Thank you. As PIC, we are here to protect State investments which have gone on over the years through the audited reports of the Auditor-General.

*(Hon Alfred Keter spoke off record)*

**Hon. Speaker:** Hon. Keter, this is not Nandi Hills where you can shout like that! You just came in at 5.27 p.m. Hon. Keter, you cannot engage in a shouting match with me. You came here at 5.27 p.m. I told the others that I normally watch when people walk in. You walked in at exactly 5.27 p.m. It is now 5.35 p.m. When you come in and there is a Member who is making his contribution and you want to start shouting, it is unfair. Hon. Members, I will begin to be very strict with the Standing Orders. We cannot allow this. If you want to go and address the media or a public rally, that is perfect. But, please, when you are here, let us just... How will we hear what the Member is saying? Just hold your horses. Because you came at 5.27 p.m., maybe your chance to speak will be at about 7.00 p.m. because there are several others. Tomorrow, the House will not be sitting. You can contribute even on Tuesday. Hon. Keter, as much as you may think that you have a right to say what you want to say, here you have to be guided by rules and just abide by the rules. You will get a chance. If all these Members whom you found seated here have finished contributing, except the other Member who came after you and I do not want to mention the name of the Member, so, please, you will get a chance.

Proceed, Hon. Rashid.

**Hon. Rashid Kassim** (Wajir East, WDM-K): Let me conclude on this matter. It is on that view and through our process of examining KAA that we realised, as Members, that there is need for an audit query to be done by the Auditor-General on this matter and we wrote to the Auditor-General to do an expeditious assessment of this intervention. It is within the purview of PIC. So, we thought it wise as a recommendation of this Committee to halt the progress of this until the viability and economic aspect of this resolution is known to Kenyans. That is within the purview of PIC.

**Hon. Speaker:** Well, you have made your point. Let us hear the Member for Mumias East.

**Hon. Benjamin Washiali** (Mumias East, JP): Thank you, Hon. Speaker. I am usually not wordy and Hon. Oundo's contribution actually picked on exactly what I had wanted to contribute. The responsibilities of PIC have clearly been spelt out under Standing Order No. 206(6). They have also been given what they do not need to do in Standing Order No. 206(7). It is very clear. I am shocked because the new Constitution introduced bicameral houses and in the process, increased the number of committees in the National Assembly. In due course, it has caused a lot of confusion. There was a lot of excitement from Members to a level where there was confusion between the two Houses. You find the role of this House encroaching on the role of the other House, most specifically the Senate. Even in this House, the role of one Committee encroaches on the role of another Committee.

When a matter that was touching on dams - which we oversee as the Departmental Committee on Environment and Natural Resources - came before us, we said that the matter would be handled by the Departmental Committee on Agriculture and Livestock. That is what we want to encourage. Our committees should be courageous enough to leave out what they do not need to investigate under the Standing Orders and work on those issues that they have been allowed to investigate.

I said this in the House Business Committee and I want to repeat it. As you make a ruling on this, I ask you to request the Office of the Clerk to help us to differentiate the roles of each individual committee. I am aware that the Public Investments Committee invited the Kenya Airways to this House yet it is not their role. Can you give me time to finish my contribution?

*(Hon. Abdullswamad Nassir spoke off record)*

**Hon. Speaker:** What is it, Hon. Abdullswamad?

**Hon. Abdullswamad Nassir** (Mvita, ODM): Hon. Speaker, this is a House that upholds integrity. I challenge the Whip of the Majority Party to tell us the date which we invited the Kenya Airways. I challenge him to give us facts. This is a House of records. Committee sittings are recorded by the HANSARD. This Whip is reading the Standing Orders and very likely ignoring words that are in the same Standing Orders. I want to guide him, with your permission, Hon. Speaker.

**Hon. Speaker:** Hon. Abdullswamad, just hold on. You appeared agitated by the statement by the Majority Whip. Just a minute. When you stood, what you needed to ask is whether he was in order to mislead the House and then challenge him to produce evidence of when you invited Kenya Airways. When you start saying that you want to guide, I do not know who you are guiding. I could have ruled that he gives evidence of when you called or invited Kenya Airways.

Hon. Washiali, do you have evidence that PIC invited Kenya Airways?

**Hon. Benjamin Washiali** (Mumias East, JP): Thank you, Hon. Speaker for that guidance. The Kenya Airways and the Kenya Airports Authority are very close. I withdraw and say that they invited the KAA. My apologies, Chair of PIC. My point has been made. We require a lot of assistance from the Office of the Clerk to guide us when a committee of this House rightfully invites a witness to appear before it.

**Hon. Speaker:** Let us have Hon. Junet.

**Hon. Junet Nuh** (Suna East, ODM): Thank you, Hon. Speaker for giving me an opportunity to contribute on this matter.

I was a Member of PAC in the last Parliament and in this one. This is the first time I have seen an oversight committee like PAC and PIC doing a report on a feasibility study. What is before that committee is a feasibility study on whether a Government project is viable or not. I do not know how you can come up with a report on a feasibility study. The issue here is that the Committee has instructed the Auditor-General to come up with a report. Is the report on policy? What is the Auditor-General supposed to do? Is he supposed to do a fishing expedition in the Ministry of Transport, Infrastructure, Housing and Urban Development? They are saying that a transaction adviser was hired and paid Kshs150 million or 10 per cent of that. That money can only be audited by the Auditor-General when it has been spent. There is no money that has been fully spent by now.

There is a North Eastern Parliamentary Group meeting going on here.

*(Hon. Rashid Kassim and Hon. Mohamed Mohamud consulted loudly)*

**Hon. Speaker:** The two Members from Wajir, please, relax. I know both of you are in PIC. Wajir County is over-represented in that committee. That is something the Leader of the Majority Party and the Whip should address. There could be some incestuous relationship.

**Hon. Junet Nuh** (Suna East, ODM): Hon. Speaker, I also understand a bit of their language. They are discussing camel business. I do not know what it has to do with KAA.

Instead of sending the Auditor-General to audit, the Committee should have halted their investigations and told the Ministry to bring the policy and sessional papers so that they could look at them. This Committee does not understand its powers. They think the only power they have is to send the Auditor-General to investigate. They also have powers to ask for documents. They have powers to ask for policy and sessional papers. They have all kinds of power. They need serious legal advice. Their power is not limited to audited accounts only.

This is a very important committee of this Parliament. It belongs to and is chaired by the minority side. I expected them to do a better job than this. They have brought a progress report to Parliament.

Hon. Speaker, I would like to know whether this matter is properly before the House. Under Standing Order No.200, a progress report is first supposed to be taken to the Liaison Committee. I do not know whether this Report has been taken to that Committee or it was sneaked into the House. We need to investigate. We need to form some kind of *ad hoc* committee to investigate this matter. The Standing Orders say that we must take this progress report to the Liaison Committee. I am not the one saying that. This House is guided by the Standing Orders. Hon. Speaker, you are the custodian of the Standing Orders. That is why I am directing my matter to you.

This is a matter that is at policy stage. The Cabinet has just passed a policy paper. As a Member of Parliament, I have heard all that from the market, newspapers and the media. I have not even seen the policy paper. As Hon. Oundo said, if you now act on rumours, innuendos and bad talk, we will lose sight of the most important matter, which is to oversee the interests of the people of this republic. The Committee should take back this Report, demand that the Government provides them with policy or sessional papers and interrogate those papers. They can do it jointly with the Departmental Committee on Transport, Public Works and Housing and not table in this House a progress report. They should bring a report that contains all issues and enlighten us on how we should go about this matter. This is a progress report.



The Committee says that they have sent the Auditor-General to audit this matter. Why not wait for the Auditor-General to finish his work and then table a report? What is the hurry in tabling this progress report unless you are playing to the gallery or talking to quarters outside this House? It is on record. I have served on PAC for the last five years before and on this term. This Committee is investigating, overseeing and auditing a feasibility study report of the KAA. I do not know whether feasibility studies are part of the Auditor-General's report. Those are documents of institutions. They can even stop using it. Those are research documents. Do I spend a whole afternoon in this House discussing a research document on KAA and KQ?

Hon. Speaker, the provisions of Standing Order No.206 are what Hon. (Dr.) Oundo has alluded to. Standing Order No. 206 (7) says:

“Despite paragraph (6), the Public Investments Committee shall not examine any of the following-

(a) matters of major Government policy as distinct from business or commercial functions of the public investments”.

I agree that they can look at the business side of it, but this matter is still at the stage of policy. It has not moved to business. It is a proposition. Standing Orders are very clear that they cannot look into matters of policy. As the Minority Whip, I need to re-look at the constitution of that Committee. This is an embarrassment to the House. What we do here is what informs Kenyans outside there. Kenyans think that we legislate in vain. When you see a Somali man putting on a *kofia*, he has become old. That means his head is not functioning properly as required. I do not want to belabour the matter. I want you to rule on two issues. You should rule on whether this matter is properly before the House. You must give us your considered opinion and ruling on that in accordance with the Standing Orders and the Constitution. You should also rule on whether we need to wait for policy and sessional paper, so that we, as a House, can interrogate this matter wholesomely.

With those few remarks, I thank you for giving me an opportunity to contribute.

**Hon. Speaker:** This is not a debate. This started by way of a point of order. Some of these things are not good.

*(Loud consultations)*

Hon. Sankok.

**Hon. David ole Sankok** (Nominated, JP): Thank you very much, Hon. Speaker, for giving me this opportunity to contribute. We have three arms of Government, namely, the Legislative, Executive and Judiciary. Every arm of the Government has its specific roles. Our role in this House as the legislative arm of the Government is to make laws.

It beats logic for a committee of this House to go out there and purport to send the Auditor-General to audit policies, research papers, feasibility studies and come back and table that document in the House. The purported take over is not factual. Even if it were factual, the Departmental Committee on Labour and Social Welfare, which touches on labour issues should also have been involved. I am a Member of that Committee. The PIC decided that this is what they will oversee. They will have the right to sniff something that is happening in any policy of the Government. Some Members have become prophets or foreseers and they can foresee that this take over will happen and it will bring some negative issues. They have become sniffers. They can sniff some problem from miles away and expenditure of public fund. It is an

embarrassment to this House. That is why we do not need to discuss this matter. It does not deserve any merit for us to discuss it.

*(Hon. (Dr.) Chris Wamalwa and other Members raised their hands)*

Hon. Wamalwa, this is not where you come from. You are behaving as if you are in a public rally. Why are they raising their hands as if we are in a nursery school where children say “teacher”? I am addressing the Speaker. They should not raise their hands as if we are in a nursery school or kindergarten.

Thank you very much, Hon. Speaker.

**Hon. Speaker:** Hon. Members, let us also appreciate that there are other Members who have also been here in the House. As long as they have put their cards for intervention, I must see them. Member for Nambale.

**Hon. Sakwa Bunyasi** (Nambale, ANC): Thank you very much, Hon. Speaker. I have been waiting to give a comment on this. First of all, we should agree that the leadership of the House should not mislead the House.

One, this is not an issue about policy, but transaction. Policies that govern this include public and private laws, and other laws which have been passed. That is why the policy is amended. This is about transaction. Two, when you are dealing with a transaction, you are not even transacting from research documents. That is not the case. I think deliberate use of words of that nature, which have been repeated faithfully by the Member from Narok in good faith, are clearly misleading. We are not giving the impression to the country that we are talking about issues that originate from a research paper and feasibility study. We are at the level of a transaction. A transaction advisor is being appointed. We have gone beyond all those things that we are talking about. By the time we begin talking about transactions, you have already gone beyond feasibility studies and policies. The policy embeds all of this.

The heat of the moment and the mood of the House reminds me of the same heat and mood that we had when we were discussing mercury in the sugar. Members were afraid to discuss it. Finally, it led to what did not turn out to be anything useful. This pre-emptive and extreme fear must suggest something. That is the problem because we are in an environment in which billions of the taxpayers’ money get lost every day. We see it and yet we are now acting like we are a saintly State. This is surprising. It behoves us, as the representatives of the people, to sniff this out pre-emptively, so that we can possibly save Kenyans’ money. This, obviously, is a deal that did not go well and we will jump away from it. We will begin pointing fingers at individuals. We have the information. We are not being useful or helpful. We are blocking every step of the way. I am surprised. My expectation of the dividends of the handshake, and, indeed, they are there, did not include this. This is a great opportunity that we have to question carefully what is being done and the expressed intentions of the Government, so that we do not wait until it is a done deal. You will not find the money. It may be in Italy or New York. We know that is how it works.

We should not stand here on a high horse when we know clearly what we are trying to prevent something. We did this in at the end of the last Session. We had a progress report of what we had looked at, as we looked at additional issues which were not ready at that time. The idea of a progress report for the House is a great idea. However, to be afraid even to discuss it is a terrible message to the people who are watching us today. These are not good times. As you saw recently, the President is concerned. Everybody is concerned. What we are ready to do and

discuss vigorously is when there is finger pointing. Here is an opportunity for us to prevent, influence, and in any take over arrangements, make a decision. Many of you said that the Departmental Committee on Labour and Social Welfare was involved. Why did people go on strike? The Departmental Committee on Labour and Social Welfare must be consulted because they are affected. Labour is the most important asset in any of these institutions.

So, I do not believe my ears that this House, that has been very hard on issues of graft - and graft is not a single event, but a process - is now totally reluctant or afraid to be told to get the facts and even afraid to discuss them. We are losing a great opportunity. My plea is that irrespective of this particular Report, it would have been useful for this House to discuss and perhaps reject the recommendations that we feel would be premature by saying that it contains information that is known by some here because the script is common among various Members. They probably have a written narrative already. If they do, and the rest of us are following in darkness, then we are going to miss a great opportunity to save the country and the taxpayers the critical funds they have.

This is a filibuster; a process of preventing discussion of substantive issues by killing time. By the time we finish filibustering this evening, it means this thing would have passed. The filibuster being used now smacks, to me, of lack of interest for the country.

Hon. Speaker, that is according to me, Member for Nambale. I know what I am talking about.

**Hon. Speaker:** Member for North Horr.

**Hon. Chachu Ganya** (North Horr, FAP): Thank you, Hon. Speaker, for giving me an opportunity to contribute to this debate.

It is very sad, indeed. We have wasted the whole afternoon here. There is a rigorous process, under which business is conducted in this House. Even before business comes to the Floor of the House, it undergoes a rigorous process.

In committees, we have technical experts who advise. We have seasoned clerks, fiscal analysts and lawyers. With all those resources available to us, and eventually the reports that come to the Floor of the House are approved by the Office of the Hon. Speaker, we wonder how we get a progress report from oversight committees. I served in the Public Accounts Committee in the 10<sup>th</sup> and 11<sup>th</sup> Parliaments and we used to call them post-mortem committees. What was audited by the Auditor-General eventually came to us and we made some determinations. Here we are talking about a progress report. This is the first time I have heard of it. Sometimes when there are some issues of national concern and committees take a very long time to deliberate and deliver a report, the Speaker might demand for a progress report just for the nation to know what is going on.

We now have in the PAC Report recommendations that are unconstitutional, yet we have legal experts. As Parliament, under the Standing Orders, we are allowed to outsource experts if we do not have them in Parliament, so that by the time business comes to the Floor of the House, all issues have been sorted out and we are able to spend quality time to discuss them. This is not space for media issues, for sessional reporting or for people to get their *bonga* points. This is a House or Assembly of the people of Kenya. It is a House of representatives. We are supposed to debate and deliberate on issues of national concern and make resolutions to take this country forward.

Is it that as committees we no longer listen to the experts' advice or to the technical experts available to us in Parliament and do our own things and eventually bring our reports here and waste quality time of the House? If we have all these experts available to us, and there is due

process to be followed, I wonder how this report ended up on the Floor of this House and we have wasted the whole afternoon since 2.30 p.m. discussing whether we should debate the reports or not. There is something wrong with us as Members of Parliament that we do not listen or do not take the advice given us by the experts available to us or maybe, we are not getting quality advice anymore. I cannot say that because they are not here to defend themselves. This is a concern for me because I am a seasoned Member of this House. I am serving my third term. I have already been here for more than a decade and have served in very many committees and I know how business is conducted.

There are many times we wanted to deal with very juicy issues and current issues in PAC, but were told not to because it was not within our mandate. We were told not to go there and told that our mandate as spelt out in the Standing Orders is very clear and well defined. There are times when it calls for joint committees and there are other times when the Public Investments Committee and the Departmental Committee on Transport, Public Works and Housing can have a joint sitting if the issues concern them both of them. We have seen that before.

I want us to take a hard look at these issues. Maybe we need more refresher courses as Members of Parliament to understand our mandate. Maybe we are not taking the advice of the experts available to us, but I really wonder how a progress report finds its way to the Floor of the House and we waste the whole afternoon debating whether we should debate the report or not. How do we make unconstitutional recommendations when we have legal experts, and eventually the report goes to the Office of the Hon. Speaker for approval before it is given a green light to go to the House Business Committee for allotment of time before it comes to the Floor of the House?

These are weighty issues. If this is the path we are going to take, I am not sure whether we will be serving this nation. We sit in many committees and we have seen people give orders to the Executive by suspending projects as if we initiated them ourselves. That is the role of the Executive. We even vacate notices which we never gave in the first place. We are going by far, above and beyond our mandate, yet our mandates are very clear. We need to be advised.

Thank you, Hon. Speaker.

**Hon. Speaker:** Member for Kiminini. Hon. Wamalwa, as you contribute, in addition to what the Member for Nambale said about major Government policy in (7), could you also go beyond and talk about matters of day- to-day and how such matters relate to what he described as transaction.

**Hon. (Dr.) Chris Wamalwa** (Kiminini, FORD-K): Thank you, Hon. Speaker. I will try as much as possible to address as you have directed.

Standing Order No.206(6)(c), which establishes the PIC, says that, "Examine, in the context of autonomy and efficiency of public investments, whether the affairs of the public investments are being managed in accordance with sound financial or business principles and prudent commercial practices." That is very critical. The matter at hand qualifies that the PIC is examining something of principle. So, we agree that the mandate is correct.

Secondly, let me go to Standing Order No.206(7)(a), which the Member for Funyula applied out of context. When reading a matter, it is important to understand it in context. Let me read it again for the benefit of this House.

"Despite paragraph (6), the Public Investments Committee shall not examine any of the following-

(a) matters of major Government policy as distinct from business or commercial functions of public investments”.

The word used is distinct. What does it mean? We must understand the meaning of the word “distinct.” This is basic grammar. Let us not read things and make interpretations on the face value. The word is ‘distinct’.

Hon. Speaker, look at the High Court ruling as you make your judgement. The High Court decision on Petition No. 388 of 2016 invalidated Sections 40 and 42 of the Public Audit Act, which had barred the Auditor-General from looking at Government policy. The matter went to court and judgment was made. It is, indeed, important for the Leader of the Majority Party to know whatever section he was referring to was invalidated by the High Court. If you give me time, I am going to table the judgement. We should not come here for sideshows. This is a serious House. We must have respect for each other, so that we are able to debate objectively.

When Hon. Junet goes on public television and says that he is going to remove the Chair of PIC, it is lack of respect for a colleague. We need to respect each other. Let us not get excited. We should not get excited when we come here. The public is watching. He said he is going to pull him out of that Committee and put another person to chair because he has shown incompetence. That is lack of respect. If there is an issue about the Chair of the PIC or he wants to discuss him, he needs to bring a Motion here. We have gone to school properly. We are not here to show off, but we want to be objective when it comes to debating.

Hon. Speaker, you have been a Chair of PIC and it is not the first time a situation like this is happening whereby the matter goes to two committees. I remember with the SGR, a similar incident happened. In your ruling, you said that that matter was handled by the PIC and at the same time by the Departmental Committee on Transport, Public Works and Housing. If all the Committees handled the matter objectively, you are calling the same witnesses and they are giving similar information, common sense dictates that conclusion should be similar if you are not going to be skewed in your observations and recommendations.

So, it does not matter whether the Departmental Committee on Transport, Public Works and Housing and PIC are looking at this matter. If you are having similar witnesses, obviously, the conclusion of the report will be similar, if you are objective. Hon. Pkosing, who is my good friend, raised this matter and we discussed it. We agreed that it was an oversight and we were going to amend it because when a matter is before the Floor of the House, any committee has a right to deal with it. We have the Committee on Labour and Social Welfare because of the labour aspect and the Transport, Public Works and Housing Committee. When we discussed with Hon. Pkosing, we agreed very well that we were going to amend that particular section. That section was not in bad faith that the matter should only be under the PIC. I was very shocked when Pkosing, after we had agreed, with the excitement on the Floor, started disowning the fact that we had agreed that, that particular part was going to be amended.

This is not the first time that a matter is cutting across committees. A situation has happened before where the Speaker has ruled that we should have a joint committee as opposed to witnesses moving from one committee to the other. That can also be in the way forward. Interests are there on this matter. As we move on, Article 95 of the Constitution is very clear that this House can deliberate on any issue of importance and resolve the matter. As we speak, there was a strike at the JKIA and the cause of that strike is the issue of the takeover between KQ and KAA. The Secretary-General of the Kenya Aviation Workers Union (KAWU) mentioned it. Let us not come here with some excitement. We must speak objectively. We are the leaders of this country. We were elected by the people without sideshows. As you rule, if you deem it fit, the

two committees that are relevant can have a joint sitting. This is a progress report and there is nothing wrong with the progress report. When my Whip talks about the Liaison Committee, he interpreted from a wrong context and I want to correct him. The Liaison Committee says that a progress report should not come to the Floor until it goes to the Liaison Committee. The Liaison Committee is made of chairpersons of committees. When you are there, each chair gives a progress report on what their committee is doing. That is what happens.

**Hon. Junet Nuh** (Suna East, ODM): (*Inaudible*)

**Hon. (Dr.) Chris Wamalwa** (Kimini, FORD-K): No. This is a different report because when chairs meet under the Liaison Committee, which is chaired by the Deputy Speaker, every committee states their work plan and what they have achieved. That is how it is. That is why it says that you must go through the Liaison Committee. So, it was a wrong context because that kind of a report is totally different from this Report. Even the Leader of the Majority Party is agreeing with me to that extent.

As we move forward, let us respect each other. Nobody has a monopoly of knowledge. Everybody will add value, but when you come here and demean other people, that is totally out of order. We must respect each other, so that we can debate objectively for the benefit of this great country Kenya.

I thank you.

**Hon. Speaker**: Hon. Members, in fairness, since Hon. Wamalwa is to my left, once he finishes, you should not even be raising your hands. I should look whether there is somebody to the right, so that debate is balanced. Member for Ndaragwa.

**Hon. Jeremiah Kioni** (Ndaragwa, JP): Thank you, Hon. Speaker. Hon. Wamalwa is saying that we should not come here with excitement. I do not think there is anybody who has been more excited than he was when he was making his contribution.

Yesterday, I attended the devolution conference in Kirinyaga and we were together with the Chairman on the spot. When introductions were going on, the Governor for Murang'a was the one making recognitions. He recognised everybody else, but when he got to Members of Parliament, he introduced us as follows: Members of Parliament and former Members of Parliament present, can they stand. It was the only category. He grouped us together with former Members of Parliament, a clear demonstration of not just the contempt they have for us, but also the casual way they are handling issues. When I had opportunity to speak, I mentioned to them that, in my opinion as the Chairman of the Constitutional Implementation Oversight Committee (CIOOC), the National Assembly is a major stakeholder in devolution. Their continued holding of annual conferences across the country and making it clear to the nation that they have no room for the Members of the National Assembly, including the Speaker of the National Assembly, clearly demonstrates to us that they have a long way to go before they can completely understand how to enhance devolution in this country.

I do not want to use it as an opportunity to report, but they are complaining about many issues of functions and the rest. I pointed it out to them that of all those functions they are complaining about, if they had engaged the various chairpersons of the committees, they may have got ways of moving forward without looking for areas in the Constitution to amend. I am saying this because even as we discuss this issue, if we are not careful, we will look the way Senate is looking. They are all over and nowhere. They have now introduced a lot of confusion with the Solai issue. They have different recommendations on issues of the Solai Dam. We have different recommendations on the same. What happens at the end of it is that the people who elected us will start losing faith in us and trust in institutions that we are charged to oversee. This

afternoon, we have an opportunity to allow Kenyans to have trust and faith in this institution. We have had the issue that was before us before and now another issue that is calling on us to demonstrate that we respect institutions. Each institution must respect each other. We must remain within the confines of the Constitution and various laws that continue to guide us.

We should not be here to stall or stagnate the functioning of other institutions. Hon. Wamalwa read Standing Order 206 and he accused others of having read it piece meal while he went ahead to do the same. He read up to 206(7)(a) and he avoided reading (b) where PIC is clearly being required not to examine any of the following: (b) Matters of day to day administration of the Executive. What they are doing under this particular Report is trying to micromanage the Executive. When we do that, we are really not enhancing the respect of this institution. You directed us to talk a little bit on Article 229. Before we get there, the Public Audit Act of 2015 required the Auditor-General to report on issues of audit report in accordance with Article 229 of the Constitution. When you read Article 229 of the Constitution and you mentioned Article 229(6), you talked of an audit report. Clearly, what is before us is not an audit report. You may not want to call it a research report because it annoys Hon. Bunyasi or a research paper, but it falls within that neighbourhood. But it is important that you help us. What is eventually passed by this House will require the Implementation Committee to implement. I remember the Chair of the Implementation Committee saying that some of the recommendations are so difficult to implement that they are not making sense when they sit and debate those things.

As I conclude, it is important that we stop reading reports in the newspapers and rushing to the Floor of the House and start working on them. I know in the same devolution conference, they were still worried about a committee. I do not know whether it is in the House or the committee, but then it is reported to have stopped construction of dams in the country. We need to be a little bit careful so that we do not take this country into a spin. Kenyans, as Hon. Bunyasi has said, are a little bit scared of what is happening. We should not be adding into the scare. We should be giving them some confidence. Though there is some stealing, we are also in control and we can bring people to book when they steal in accordance with the law. I would want to ask that we do not get into the habit of intimidating other organs of the Government because in so doing, we do not help or add any value.

There is the concern of the speed with which this whole process is being moved. One of the other major concerns that we have as Parliament is that the Executive moves too slowly. So, when they show some speed, we should be happy. Once they move with speed in implementing a road that has been waiting for so long, I wish we can encourage them to have speed all over instead of being worried about the speed that they have. I think it is important, again, that we look at Article 73. When you talk about trust and acting for the good of the nation, it includes us sitting in this House.

Thank you, Hon. Speaker.

**Hon. Speaker:** Member for Wajir North.

**Hon. Ibrahim Ahmed** (Wajir North, ODM): Thank you, Hon. Speaker. It was prudent to go through the Report so that Members could contribute from an informed point of view. My brother, the Leader of the Majority Party, is setting very dangerous precedent of not discussing contents of reports, therefore, affecting contributions.

It is important to know that this issue was communicated by the Cabinet. The Executive is not slow. It was communicated by the Cabinet to KAA through the Principal Secretary, State Department of Transport on 29<sup>th</sup> May 2018. Of course, it is clear that the function of the

Departmental Committee includes oversight of day-to-day administration issues. Thereby, it would have come to the attention of our Committee on Transport, Public Works and Housing. However, there was hoarding of information, and what I can call intellectual dishonesty, by the agency itself to an extent that this only came to the attention of PIC while examining the audit reports of 2013/2014 all the way to 2016/2017. It is thereafter that the Committee developed interest on the matter. One of the key issues...

**Hon. Speaker:** You are suggesting that you were looking at the audit reports of 2013/2014 then you came across some reports by the Auditor-General about the communication by the PS in May 2018? The two do not add up. The audit you say you are dealing with is the one of 2013/2014. In the course of that audit, you came across the communication from the PS in the Department of Transport of May 2018.

**Hon. Ibrahim Ahmed** (Wajir North, ODM): What I am saying is that while we were doing the examination of this Report, while examining the witness, this issue cropped up. The first thing that cropped up was a debt of Kshs3.8 billion as at February 2019 that KQ owes. Thereafter, was the aspect of KAA taking over JKIA.

**Hon. Speaker:** What do you mean? I thought KAA still owned JKIA?

**Hon. Ibrahim Ahmed** (Wajir North, ODM): The JKIA to be taken over by KQ.

*(Loud consultations)*

I think it is just important that the disruption was minimised, so that I can rightfully make my contribution.

**Hon. Speaker:** Proceed. I was just drawing your attention that what you were saying is not correct.

**Hon. Ibrahim Ahmed** (Wajir North, ODM): It was a proposal where KQ was to take over JKIA. After this came to our attention, we decided to look at the process. We realised that this memo was communicated on 29<sup>th</sup> May 2018. After checking one of the board minutes, KQ was allegedly given a timeline of 28<sup>th</sup> December to finish the transaction. That is why we developed an interest. Another issue that cropped up during that time is that the board chairman was also the board chairman of a bank that is a shareholder in KQ. This is why we developed interest and looked at the process holistically.

**Hon. Speaker:** Honestly, I would encourage you, Members, to read the new Standing Orders. When you say that PIC was examining memos... Those are things that happen on a day-to-day basis. I do memos to the Clerk on a daily basis.

This is where you go wrong. You are the one who is putting yourself in trouble. When you say that...

**Hon. Ibrahim Ahmed** (Wajir North, ODM): Hon. Speaker, I said that we were examining audit reports. The memo was just a source of information that was tabled before the Committee. I do not know where the confusion is coming from. The PIC was interested in the efficiency of the public investment bit as provided for in Standing Order 206(6)(c) while on the other bit, the Committee on Transport, Public Works and Housing was also handling issues of operations and management. That way, this Committee has decided to table a report to allow them have a joint committee and carry out a holistic investigation. It will not be fair just to handle issues after money is lost. It is good to allow the right investigative committee to check on the issues at the right time.

One issue that has also cropped up...



**Hon. Speaker:** I quite hear you, but because next week the Procedure and House Rules Committee will be sitting, it may be important to make some suggestion that we create a committee called “Committee of Detection”, which will be detecting possible losses, the one which will be sniffing around because we still do not have that kind of committee. I am amenable to suggestions of creating committees which we will use. I do not know whether Members will sniff sufficiently or we shall use sniffer dogs. By the way, there is no harm in making the proposal.

**Hon. Ibrahim Ahmed** (Wajir North, ODM): Hon. Speaker, it is not about sniffer dogs. To the best of my understanding, we examine different reports. In the process of the examination, if JKIA is owed a debt of Kshs3.4 billion and it is the source of revenue for KAA, where 83 per cent of the revenue comes from JKIA, if the process is rushed by a person who is fair to both sides, definitely there is something interesting. If the issue has been detected by the committee and a report compiled and shared to allow a joint committee to carry out the investigation, there is nothing wrong with that. We stand guided on the matter. After all, I remember when we were doing these examinations, there was total contradiction of the Public Private Partnerships (PPP) Act. For example, Section 20 of the PPP Act is on matters that the contracting authority should access prior to PPP...

**Hon. Speaker:** Let us have the Member for Mwea.

**Hon. Josphat Kabinga** (Mwea, JP): Thank you, Hon. Speaker. I am one of the people who have been here from 2.30 p.m. and I have learnt a lot as a junior Member of this House from the two presentations that we have had today.

This issue has really touched me. We have talked about demonstrations at JKIA. I think part of it could be out of some of the politicisation of issues that we are noting now. I have come to understand that what is happening here is an idea that has been put forward and is being considered; one that is being pursued through a feasibility study. This is something that we all do in our professional areas. We encourage people to generate as many ideas as possible and more so, innovative ideas that can move institutions from one level to another. I, therefore, find it strange that we are discussing an issue or you are about to make a decision on an issue that has not been conceived. It is still at the conception stage. Once it is done, there will be a sessional paper to be generated. Out of that paper, we will have a chance to discuss it and see whether the intent is good for the country or not and we will make a decision.

Therefore, the expenditure that has been made to develop the concept is acceptable in the professional area. If we do not allow some expenditure on the development of concepts, then we shall never have innovative ideas in anything. We, therefore, invest in some of these ideas to push them to another level. I am aware that some of us come from civil societies. Much money is spent on development of concept papers because that is the engine of development, and without it, we can never move.

So, as I have been sitting and listening to our seniors contributing, I was asking myself a few questions. First, will this sessional paper ever come or it has been overtaken by events? My understanding is that it is not yet overtaken and so, it will still come and we shall have a chance to look at it.

Secondly, I was also asking myself: Has something been determined to move to the implementation stage of the idea? My understanding from the debate here is that nothing can happen before the sessional paper comes here. So, everything is safe. I do not know why we are getting agitated by the whole thing.

Thirdly, this is sensitive. When we put the cart before the horse, we create a situation out there. When employees at JKIA are talking about demonstrating because there is a merger, it could be because we have gone out of our own selves and depicted a picture that somebody somewhere might have implemented the merger. This has cost us a lot as at yesterday. It is upon us, as responsible people, to ensure that we do not cause some of this acrimony out there. It can be very expensive. This is a populist move where we are moving very fast to get credit and we do not need to. This credit will come if we do things in the right way.

Hon. Speaker, I think for this one, you have a very easy job which is to simply say that we wait until the Executive brings this paper for us to see what it is, so that PIC can pick it and move on. The Auditor-General should also wake up. This Kshs150 million being put into the concept development will be audited. Once he does that, in the next financial year, we will see whether the money was well spent or not.

Finally, this issue of conflict of interest as to who moves first as far as the House committees are concerned is something that needs to be looked at because it is the same thing we are seeing in the Senate. We see the Senate summoning the Cabinet Secretary for Interior and Coordination of National Government. When you think about the functions of the Senate, you do not see this Cabinet Secretary discussing such a matter when this is a function of the National Assembly. So, we are interfering and micromanaging the Executive and through this, we are distracting them from their daily work in the name of executing our work.

I am a new Member of this House and I want to urge our colleagues in PIC to withdraw this Report, so that as we go home, we know they will give it some time. The Report should be brought back some other time when the concept paper is complete and the sessional paper is brought to this House.

Thank you, Hon. Speaker.

**Hon. Speaker:** Member for Tongaren.

**Hon. (Dr.) Eseli Simiyu** (Tongaren, FORD-K): Thank you, Hon. Speaker. I have been sitting here from yesterday and wondering what the House is up to. Are we gagging ourselves deliberately? Remember as you make your bed, so shall you lie on it. So, we should not be gagging ourselves. Like yesterday, we ended up not debating Hon. Washiali's Motion on Adjournment because we anticipated today's Motion.

Yesterday, we just threw a few words here and there and could not debate since we anticipated it would be the content in today's Motion. After getting to the Motion today, we cannot get on with it. Earlier on, we failed to get on with the PAC Report. In fact, we put the Speaker in a very difficult position because he ruled previously that if anybody sees anything unconstitutional in anything, it should come out in debate.

Today, we have made the Speaker to take time and bring out a considered ruling. So, are we gagging ourselves? If we are, what are the reasons? That is why I concur with Hon. Bunyasi. What are we scared of? Is there something scaring us that we can now gag ourselves and end up not debating these matters? If something is against our beliefs, do we throw it out or amend it? We know that one of the best ways to deal with corruption is to pre-empt it.

Hon. Speaker, I am sure you were in this House when issues of Telkom Kenya and Mobitel came over. If they had been pre-empted, perhaps, we would not have ended up the way we did. I also regret that I was in the 10<sup>th</sup> Parliament when issues of the Rift Valley Railways (RVR) and the Kenya Railways came up and we failed to stop them. So, we ended up losing our metre gauge railway. As a House, I believe we should be more proactive. In that manner, we will be helping in the governance of this country.

Otherwise, if we keep on gagging ourselves, I do not know how far we will get. I agree entirely with whatever my immediate predecessor said about being innovative. Being innovative is good, but I can assure you an airline running an airport is not innovative. This is already being done elsewhere. So, it is no longer an innovation. Maybe, an innovation would be the airport running an airline.

However, I think this is an issue of whether PIC is trying to interfere with the day-to-day running of KQ. I do not think it is a day-to-day matter. It is more than day-to-day. I am getting worried that perhaps, we are gagging ourselves to the point where we will be unable to perform our oversight role anymore. That will be a very dangerous place for us to be. It is better we debate these things. If we find fault in them, we throw them out or amend them. Rather than putting brakes, so that we do not even talk about anything, we should debate. This is dangerous for this Parliament.

Thank you, Hon. Speaker.

**Hon. Speaker:** Member for Isiolo.

**Hon. (Ms.) Rehema Jaldesa** (Isiolo CWR, JP): Thank you, Hon. Speaker for giving me this opportunity. Actually, I was getting worried that you forgot the female gender in the House.

**Hon. Speaker:** No! Members are being given chances as they appear on the request list.

**Hon. (Ms.) Rehema Jaldesa** (Isiolo CWR, JP): Thank you, Hon. Speaker. I rise to contribute to this debate. As I do so, I want to assure you that as a first time Member, I have learnt quite a lot. I promise you that going forward I will be attending evening sessions because this is the time I think serious Members stay in the House to debate serious issues. Honestly, the two debates I have followed very closely today have enriched my knowledge.

I sit in the Departmental Committee on Transport, Public Works and Housing. The reason I decided to stay and contribute is because I do not know what we are discussing. As a Member of that Committee, we had opportunity to meet the two institutions, namely, KAA and KQ. We were able to interrogate the matter and we were given a document. So, we got an approval to go on a retreat for four days. I am sure the document must be a policy or proposal.

The main problem with this Report, in my view, is that PIC is acting prematurely. I looked at the Report tabled before us by the Committee and unless everything was not disclosed, it is a one-page document. In my view, it did not have any content. It was talking about takeover of KAA by KQ. Therefore, as a Committee, mandated to look at the operations and policies of the two organisations, I do not understand.

I have listened to what senior Members have said and the Vice-Chair of the PIC, who also happens to be a Member of the Departmental Committee on Transport, Public Works and Housing and I think there was a lot of confusion. You saw he had nothing to say. He did not have the content and facts. Therefore, this matter has been politicised both in this House and outside. I ran into Members who were caucusing and lobbying for this Report to be passed, not in the toilet, but at the Members' Lounge and the Chair of the PIC was amongst them.

*(Hon. Abdullswamad Nassir stood in his place)*

**Hon. Speaker:** Just a minute. Hon. Nassir, I thought she just said she saw Members lobbying, which is okay. There is nothing wrong with lobbying. You lobby each other for support. Hon. Nassir, I will give you a chance to say something including this.

**Hon. (Ms.) Rehema Jaldesa** (Isiolo CWR, JP): Thank you, Hon. Speaker. I saw Members lobbying and some of them are not even Members of the PIC or the Departmental

Committee on Transport, Public Works and Housing. I think that is the main problem. A perception has been created out there that the Departmental Committee on Transport, Public Works and Housing was either compromised or it lost time in following the issue.

It is good for us to say the truth. The truth is that the perception created is that the Departmental Committee on Transport, Public Works and Housing was either compromised or slept on the job and, therefore, PIC felt like running with the issue. In my view, we should be allowed to exercise our mandate and look at this document critically and bring a report to this House. After that, if there are issues of audit, then PIC can take them up according to the mandate given by the Standing Orders. Otherwise, I have seen the main problem of this House is creating rumours where none exist. It has been said in the media. The media seems to know much more than we do regarding this matter. Therefore, to restore the dignity of this House, I beg that you make a ruling that will allow us to have a retreat, which is supposed to start this evening until Sunday and we bring a good Report.

**Hon. Speaker:** Let us have Abdullswamad Sheriff.

**Hon. Abdullswamad Nassir** (Mvita, ODM): Hon. Speaker, you know my late father taught me never to argue with a woman, especially when I have...

**Hon. Speaker:** Hon. Nassir, why are you putting yourself in trouble? Here we have honourable and gracious ladies.

**Hon. Abdullswamad Nassir** (Mvita, ODM): The gracious lady, who is also my sister... Hon. Millie is also my sister from another father.

Hon. Speaker, I withdraw if that is offensive. I do now know whether the part of calling them my sisters is what is offensive. I stand here, having not had a meal today and I am told I was in the dining room. That is a bit wanting.

Going on, I know you will have to rule on this matter. When you will be ruling, I would like you to equally look at Standing Order No. 206(6)(c) which says: "Examine, in the context of the autonomy..." Autonomy means whether KAA was making this decision at an autonomous level or whether they were doing it on their own. Allow me to continue. Hon. Members, this is a House of procedures. One of the things that have already come through is that this is something that was not autonomous in nature.

Secondly, when you are making your ruling, I would like you to equally consider Standing Order No.206(7)(a) that says: "Matters of major Government policy as distinct from business or commercial functions of the public investments."

Hon. Wamalwa had put up this High Court decision and I would like to just read it as well. This was Petition No.388 of 2016. I would like to read the particular judgement, if you will allow me, Hon. Speaker. I am simply making reference. If need be, we will put that to you in writing.

**Hon. Speaker:** Will you table it?

**Hon. Abdullswamad Nassir** (Mvita, ODM): Yes. It will be sent to you in the next sitting.

*(Hon. Aden Duale spoke off record)*

**Hon. Abdullswamad Nassir** (Mvita, ODM): Hon. Duale has been talking about issues which he did not even table himself. Did you table any of the issues? This is a House where Members respect one another.

**Hon. Speaker:** Hon. Nassir, you do not need to make reference to that document since you do not have it.

**Hon. Abdullswamad Nassir** (Mvita, ODM): I actually have it, but I will table it in the next sitting.

**Hon. Speaker:** Whatever it is, it is governed by the Constitution. Do not worry about...

**Hon. Abdullswamad Nassir** (Mvita, ODM): Hon. Speaker, all we are asking is that when you are making your ruling, not only for this particular one, but for purposes of future use... It must not only be for PIC, but any other committee that wishes to come up with a progress report. The issue of progress reports was brought about through precedent. The Departmental Committees on Trade, Industry and Co-operative and that of Agriculture and Livestock had a joint investigation on the issue of sugar. A progress report was brought because of public interest. I do not want this to be a debate. However, it is better for you to judge and give a ruling that in future progress reports should be brought in a particular manner.

**Hon. Speaker:** You have one minute, so that we can give Hon. Junet another one minute before we wind up.

**Hon. Aden Duale** (Garissa Township, JP): Hon. Speaker, this is a House of records and I think on the issue of sugar, there was a Communication from the Speaker that they bring a progress report. I want to go on the HANSARD. What I quoted this afternoon is Article 229(4) of the Constitution on the functions of the Auditor-General. Secondly, I also quoted Section 11(1) of the Public Audit Act 2015. If he has a contrary view that there is a matter before court, this House will ask the Member to table the living cases before court. He cannot just read from *WhatsApp* messages on his phone. The Speaker must look at the document and the signature and say it is admissible. We have no problem with what we are discussing or what we have raised. There is nothing we are hiding. I am not acting for anybody, but where we feel a committee of the House or an individual Member is unprocedurally outside the Standing Orders, the Constitution, the traditions of the House, or even Communication of the Speaker...

I was just telling my Whip that every time you make a Communication, I file it in my office. I use that communication for future reference. So, the matter we have raised is weighty and we are only saying that the Committee must do its work within the confines of the Standing Orders and the Constitution. You cannot do things because you have found them in the *Star*, the *Nation Daily*, *The Standard* or FM stations. This was a very good afternoon because we have raised serious constitutional issues on both Motions and I am sure your Communication, either way, will be used by parliaments to come. I am happy we are about to reach 7.00 p.m., which is the time for the closure of the House.

**Hon. Speaker:** Hon. Junet, you have about two minutes.

**Hon. Junet Nuh** (Suba East, ODM): Hon. Speaker, with your indulgence, I wanted to put to your attention the issue of the High Court ruling that the Chairman is referring to. The issue of that ruling, the way I understand it, is policy that has already been formulated, done and implemented in terms of what the Auditor-General has been allowed to audit. However, here we are discussing policy, which is in its formulation and which is in concept. In fact, people are seducing each other now. The KAA and KQ are not even married. So, how do we send the Auditor-General to go and audit a marriage that has not happened? They are people who are still in seduction stage and talking to each other: They are asking: "Can we marry each other." Let us be serious. No pre-wedding has happened.

The High Court ruling is not applicable to the matter we are discussing today. Secondly, as a House, we have been accused that we are hiding graft. There is no corruption matter before

us. Nothing has been stolen in this marriage of KQ and JKIA. What we are interrogating as the representatives of the people of this country is whether the issue that has been investigated by our committee is factual or not. Now we have left the matter with you so that you can do a considered ruling on whether the matter was before this House today in accordance with the law, Constitution and Standing Orders. Thank you.

**Hon. Speaker:** Hon. Members, today has been a great day where we have debated quite a number of issues including pre-weddings and people in various stages of seduction. Hon. Members, perhaps one may not appreciate, but it is this kind of debate that will help the House to be better because when we get these kinds of conflicts - and I thank the Member for Ndaragwa - happening every now and then we must make a decision one way or the other. When a matter involves something specific, we should also tell the staff which committee will handle it. The Member for Wajir North suggested the possibility of creating a new committee to deal with those issues if it is within our constitutional mandate to do so. Nobody should sit idle and witness public resources being wasted.

I will make another communication on this in the course of next week. We will work on them simultaneously so that both committees can move forward one way or another. It is not necessary for there to be conflict. The communication will need to be made.

#### ADJOURNMENT

**Hon. Speaker:** Hon. Members, the time is 7.00 O'clock. The House stands adjourned until Tuesday, 12<sup>th</sup> March 2019, at 2.30 p.m.

The House rose at 7.00 p.m.