

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Thursday, 28<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

#### APPOINTMENT OF MEMBERS TO MEDIATION COMMITTEES

**Hon. Speaker:** Hon. Members, this Communication relates to the appointment of Members to the mediation committees on various Bills.

Hon. Members, the decision that the House will make this afternoon under Order Nos.8, 9 and 10 is rejection of several of the Senate's amendments to the Land Value Index Laws (Amendment) Bill (National Assembly Bill No.3 of 2018), the Physical Planning Bill (National Assembly Bill No.34 of 2017) and the Irrigation Bill (National Assembly Bill No.46 of 2017).

You will recall that on Thursday, 14<sup>th</sup> March 2019, the House also rejected the Motion for consideration of the Senate's amendments to the Kenya Roads Bill (National Assembly Bill No.47 of 2017). Further, on the same day, I notified the House of the decision of the Senate to reject most of the National Assembly's amendments to the Warehouse Receipt System Bill (Senate Bill No.10 of 2017). The effect of these decisions is that the five Bills will now stand referred to mediation committees appointed by the Speakers of both Houses of Parliament in accordance with the provisions of Articles 112 and 113 of the Constitution.

Consequently, having consulted the leaderships of the majority and minority parties in the House, I hereby appoint the following Members to represent the National Assembly in the respective mediation committees:

- (1) Mediation Committee on the Kenya Roads Bill (National Assembly Bill No.47 of 2017):
  - (a) Hon. Aden Duale, EGH, MP.
  - (b) Hon. Junet Mohamed, MP.
  - (c) Hon. Cecily Mbarire, MP.
  - (d) Hon. David Pkosing, MP, and
  - (e) Hon. Thomas J. Kajwang', MP.
- (2) Mediation Committee on the Warehouse Receipt System Bill (Senate Bill No.10 of 2017):
  - (a) Hon. Aden Duale, EGH, MP.
  - (b) Hon. Robert Mbui, MP.
  - (c) Hon. Adan Ali Haji, MP.
  - (d) Hon. (Dr.) John Mutunga, MP, and

- (e) Hon. Ferdinand Wanyonyi, MP.
- (3) Mediation Committee on the Land Value Index Laws (Amendment) Bill (National Assembly No.3 of 2018) and the Physical Planning Bill (National Assembly Bill No.34 of 2017)
  - (a) Hon. Aden Duale, EGH, MP.
  - (b) Hon. John Mbadi, EGH, MP.
  - (c) Hon. (Dr.) Rachael Nyamai, MP.
  - (d) Hon. Caleb Kositany, MP, and
  - (e) Hon. Mishi Mboko, MP.
- (4) Mediation Committee on the Irrigation Bill (National Assembly Bill No.46 of 2017)
  - (a) Hon. Aden Duale, EGH, MP.
  - (b) Hon. (Dr.) Chris Wamalwa, MP.
  - (c) Hon. Josphat Wachira Kabinga, MP.
  - (d) Hon. Daniel Tuitoek Kamuren, MP, and
  - (e) Hon. Florence Mutua, MP.

Hon. Members, in attempting to develop versions of the Land Value Index Laws (Amendment) Bill and the Physical Planning Bill, the Mediation Committee is encouraged to hear the expert input of Hon. (Dr.) Wilberforce Oundo, MP whose professional expertise and experience as a PhD holder in Land Economics will definitely be useful in the mediation process. The Member will not form part of the membership of the Committee but will participate as an expert on land economics and physical planning. I am confident he will render his valuable professional services at no cost.

In addition, the mediation committees are reminded that they must conclude their respective tasks within 30 days as contemplated under Article 113 (4) of the Constitution. May I, however, hasten to add that the Committees dealing with the Warehouse Receipt System Bill (Senate Bill No.10 of 2017) and the Irrigation Bill (National Assembly Bill No.46 of 2017) are encouraged to expedite the process of mediation since the two Bills are of vital budgetary implication on the 2018/2019 Budget, which is now entering its fourth quarter. In this regard, the Committees, when fully constituted, should plan to finalise and submit their mediated versions of the two Bills soonest, preferably before the commencement of the short recess of the National Assembly.

## MESSAGE

### STATE OF THE NATION ADDRESS BY THE PRESIDENT OF THE REPUBLIC OF KENYA

**Hon. Speaker:** Hon. Members, Standing Order No.42(1) relating to messages from the President provides that, “The Speaker shall read to the House any message from the President delivered to the Speaker for communication to the House”. In this regard, I, therefore, wish to inform the House that I have received a Message from His Excellency the President, dated 7<sup>th</sup> March 2019, conveying that he intends to deliver the State of the Nation Address to Parliament on Thursday, 4<sup>th</sup> April 2019, pursuant to Article 132 (1) of the Constitution.

The said Article 132 (1) (b) and (c) of the Constitution states:

“(1) The President shall –

(b) address a special sitting of Parliament once every year and may address Parliament at any other time; and

(c) once every year –

(i) report, in an address to the nation, on all the measures taken and the progress achieved in the realisation of national values referred to in Article 10;

(ii) publish in the Gazette the details of the measures and progress under subparagraph (1); and

(iii) submit a report for debate in the National Assembly on the progress made in fulfilling the international obligations of the Republic.”

Pursuant to Standing Order No.22(2) of the National Assembly Standing Orders, therefore, I wish to notify all Members that a Special Joint Sitting of Parliament will take place on Thursday, 4<sup>th</sup> April 2019 at 2.30 p.m. in the National Assembly Main Chamber, Parliament Buildings. I am aware that the offices of the Clerks of the Houses of Parliament have since commenced preparations for the day and official invitations have already been sent out in the usual manner.

### PETITION

#### LAND AREA RECTIFICATION FOR ISEMBE/ NDOLELI ATHIRU RUUJINE 2554

**Hon. Kubai Iringo** (Igembe Central, JP): Thank you, Hon. Speaker for giving me this opportunity to present this Petition. This is Public Petition No.32 of 2019.

I, the undersigned, on behalf of Mr. John Bernard Nthuku and his family, draw the attention of the Ho use to the following:

THAT, Mr. John Bernard Nthuku of Identity Card Number 0002067 is the *bona fide* and registered owner of the entire parcel of land referenced as Igembe/Ndoleli Athiru Ruujine 2554, which he acquired during adjudication of the said land;

THAT, in view of his rightful ownership of the said parcel of land, Mr. Nthuku has been in occupation of the land since the adjudication was done and has further fenced it with a combination of a live fence and barbed wire as defined by its true boundaries;

THAT, the computed area of the land is 2.36 hectares but the ground measurements of the land are, however, bigger than the scaled distances from the Registry Index Map of the Meru North Land Registry;

THAT, six parcels of land referenced as 10028, 13280, 10200, 10924, 3076 and 8762 appear on the area map as being subdivided within the land owned and occupied by Mr. Nthuku but they do not in reality exist on the ground;

THAT, the owners of these fraudulent subdivisions within Mr. Nthuku's land are unknown to Mr. Nthuku;

THAT, efforts have been made to have the Office of the Registrar of Lands in Meru North investigate the fraud and rectify the situation but to no avail; and

THAT, the issues in respect of which this Petition is made are not pending before any court, or any constitutional or legal body.

Therefore, your humble petitioner prays that the National Assembly, through the Departmental Committee on Land:

- (1) Compels the Office of the Registrar of Lands to rectify the subdivision anomaly so as to ensure that Mr. John Bernard Nthuku does not lose any part of his land registered as Igembe/ Ndoileli Athiru Ruujine 2554; and
- (2) Makes any other order or direction that it deems fit in the circumstances of the matter.

Your petitioners will every pray.

**Hon. Speaker:** I will not allow debates or comments. Suffice it to say, your first prayer is veering into a very dangerous area. You pray that the National Assembly compels. You are putting the House in a very precarious situation because that is a petition. The Committee will make whatever findings, send them to the petitioner and table the Report for comments not for adoption. Our legal department should be very careful with some of these prayers because you are putting the House in a situation it should not be in. The House can resolve something but in petitions, the House cannot compel. Fortunately, the Chair of the Departmental Committee on Lands is here.

We should be very careful when making recommendations of that nature. How do we enforce them? We are not a court of law. It is very dangerous. The legal department has not done its work properly. The Office of the Clerk is directed to ensure that in future, we do not have petitions couched in that kind of language. The Petition is referred to the Departmental Committee on Lands.

Let us move to the 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 and Resolutions adopted by the East African Legislative Assembly (EALA) at the 4<sup>th</sup> Meeting of the 2<sup>nd</sup> Session of the 4<sup>th</sup> Assembly held at the House of Representatives in Zanzibar, United Republic of Tanzania from 17<sup>th</sup> February 2019 to 9<sup>th</sup> March 2019.

The Delivery of Community-Based Sentences (The Case of Community Service Orders in Kenya) from the National Crime Research Centre.

National Government Budget Implementation Review Report for the First Half of the 2018/2019 Financial Year from the Office of the Controller of Budget.

Report to Parliament on All New Loans Contracted by the Government of Kenya from 1<sup>st</sup> July 2018 to 31<sup>st</sup> December 2018 from the National Treasury and Planning.

State of the Judiciary and Administration of Justice Report (SOJAR) for the 2017/2018 Financial Year from the Judiciary.

Annual Reports and Financial Statements of the following institutions for the 2017/2018 Financial Year:

- (a) Office of the Controller of Budget.
- (b) Kibabii University, and
- (c) Ministry of Education.

**Hon. Speaker:** Let us have the Chairperson of the Departmental Committee on Justice and Legal Affairs.

**Hon. William Cheptumo** (Baringo North, JP): Hon. Speaker, Hon. Speaker, I beg to lay the following Papers on the Table of the House:

Reports of the Departmental Committee on Justice and Legal Affairs on:

- (i) Specialised Training Data Analysis and Management in Election Administration in the United States of America, Mid-Term Election Observation Mission in Maryland, United States of America from 5<sup>th</sup> to 9<sup>th</sup> of November 2018.
- (ii) Attendance to the 41<sup>st</sup> International Association of Commercial Administrators (ICA) annual conference held in Chattel, North Carolina, United States of America from 6<sup>th</sup> to 10<sup>th</sup> May 2018.
- (iii) Election Conflict Resolution training by the International Centre for Parliamentary Studies (ICPS) held at London, United Kingdom from 21<sup>st</sup> to 25<sup>th</sup> January 2019.
- (iv) Attendance to the International Bar Association (IBA) annual conference held from 7<sup>th</sup> to 12<sup>th</sup> October 2018 in Rome, Italy.
- (v) The Report of the Committee on the consideration of the Office of the County Attorney Bill (Senate Bill No. 3 of 2018)

Thank you, Hon. Speaker.

**Hon. Speaker:** Next Order.

### ORDINARY QUESTIONS

*Question No.132/2019*

#### PAYMENT OF GOODS SUPPLIED TO PRISONS IN MOMBASA

**Hon. Speaker:** Order, Members. The first Question was to be by the Member for Kisauni, Hon. Mbogo Ali Menza. He has written to express his inability to be present and requested that the Question be deferred, which I hereby do.

*(Question deferred)*

Next Question, Member for Kuria East, Hon. Marwa Maisori.

*Question No.158/2019*

#### STALLED AIRSTRIPS PROJECTS IN MIGORI COUNTY

**Hon. Marwa Kitayama** (Kuria East, JP): Hon. Speaker, I rise to ask the Cabinet Secretary for Transport, Infrastructure, Housing and Urban Development the following Question:

(i) Could the Cabinet Secretary explain why the construction of the Migori Airstrip runaway extension project has stalled despite being allocated funds in the Financial Years 2015/2016, 2016/2017, 2017/2018?

(ii) Could the Cabinet Secretary further explain why the construction works at the Kehancha-Kendege Airstrip remain incomplete?

(iii) What steps is the Ministry taking to ensure the above two projects are completed, including fencing of the Kehancha-Kendege Airstrip?

**Hon. Speaker:** The Question is referred to the Departmental Committee on Transport, Public Works and Housing. It will be responded to before that Committee. The next Question is by the Member for Mwingi Central, Hon. Gideon Mutemi Mulyungi.

*Question No.160/2019*

ISSUANCE OF TITLE DEEDS WITH ERRORS

**Hon. Gideon Mulyungi** (Mwingi Central, WDM-K): Hon. Speaker, I rise to ask the Cabinet Secretary for Lands and Physical Planning the following Question:

(i) Is the Cabinet Secretary aware that land owners in Mwingi Central Constituency and in particular the Coal Basin area of Mui, Enziu and Endui Locations of Mwingi Central Constituency are being issued title deeds with inconsistencies and errors on actual acreage?

(ii) Could the Cabinet Secretary undertake to ensure that the said title deeds are corrected and, further, consider taking the necessary disciplinary action against public officials responsible for the inconsistencies and errors?

**Hon. Speaker:** Very well. The Question to be replied before the Departmental Committee on Lands.

**Hon. Speaker:** Before we proceed, allow me to recognise visitors, students and pupils from the following institutions in the Speaker's Gallery: Ruai Junior Centre in Kasarani Constituency, Nairobi County; members of the Green Congress Party of Kenya who come from all constituencies from all counties and are led by their party leader who is Hon. Martin Ogindo; Chesta Teachers Training College in Sigor Constituency, West Pokot County; Gatugi Primary School, Kangema Constituency, Murang'a County, and; Oshwal Academy, Nyali Constituency, Mombasa County. They are all welcome to observe the proceedings of the National Assembly.

The next Question is by the Member for Samburu North, Hon. Alois Lentoimaga.

*Question No.161/2019*

MURDER OF NJAMERIN LENANYOKIE IN MORIJO MARKET

**Hon. Alois Lentoimaga** (Samburu North, JP): Hon. Speaker, I rise to ask the Cabinet Secretary for Interior and Coordination of National Government the following Question:

(i) Is the Cabinet Secretary aware that on 24<sup>th</sup> February 2019, a minor, one Njamerin Lenanyokie, a class five pupil aged 12 years, was brutally killed by bandits in Moriyo Market in Samburu North Constituency and no suspects have been apprehended to date?

(ii) If yes, what action is the Ministry taking to ensure that the culprits are arrested and prosecuted?

(iii) What measures is the Ministry putting in place to ensure that security in Samburu North Constituency is enhanced, in particular for the young school going girls?

**Hon. Speaker:** Question to be responded to before the Departmental Committee on Administration and National Security. The next Question is by the Member for Laikipia West, Hon. Patrick Mariru.

*Question No.162/2019*

MEASURES TO ENSURE PERSONS REGISTERED UNDER THE CASH TRANSFER PROGRAMME IN  
IGWAMITI LOCATION BENEFIT

**Hon. Patrick Mariru** (Laikipia West, JP): Thank you, Hon. Speaker, I rise to ask the Cabinet Secretary for Labour and Social Protection the following Question:

(i) Is the Cabinet Secretary aware that data for older persons registered under the Older Persons Cash Transfer Programme in Igwamiti Location, Laikipia West Constituency in November 2018 is yet to be captured by the system and therefore these persons are unable to enroll and benefit from the programme?

(ii) If yes, what action is the Ministry taking to ensure that older persons in the area who have not been enrolled into the programme are duly registered and paid accordingly, including arrears since November 2018?

**Hon. Speaker:** Question to be responded to before the Departmental Committee on Labour and Social Welfare. The next Question is by the Member for Kikuyu.

*Question No.164/2019*

STATUS OF KISUMU KANYAKWAR HOUSING PROJECT

**Hon. Kimani Ichung'wah** (Kikuyu, JP): Hon. Speaker, I rise to ask the Cabinet Secretary for Transport, Infrastructure, Housing and Urban Development the following Question: Could the Cabinet Secretary:

(i) State how the contract for the Kisumu Kanyakwar Housing Project Phase II, a Design-Build-Operate-and-Transfer model, was procured and awarded?  
Give details of the contract period and sum and further clarify how much of the contract sum has been paid so far?

(ii) Provide the current status of the project, and the efforts made to complete it?

(iii) Explain whether the Ministry or the National Housing Corporation have been involved in any arbitration process with the contractors regarding the said project and state measures the Cabinet Secretary has put in place to ensure that any such arbitration process safeguards public interest above the profit motives of the contractors?

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

We will first go to a Statement by Hon. Rahab Mukami, Member for Nyeri County.

**STATEMENT**

AIR CRASH INVOLVING ETHIOPIAN AIRLINES ET302

**Hon. (Ms.) Rahab Mukami** (Nyeri CWR, JP): Thank you, Hon. Speaker. I rise to issue a Statement on the recent air crash involving Ethiopian Airlines ET302.

Pursuant to Standing Order No. 44(2)(c)...

*(Hon. Jimmy Angwenyi spoke off record)*

**Hon. Speaker:** What do you mean? Hon. Angwenyi, how can you say put her on. How? How?

*(Laughter)*

Proceed, Hon. Mukami.

**Hon. (Ms.) Rahab Mukami** (Nyeri CWR, JP): Thank you, Hon. Speaker.

Pursuant to Standing Order No.44(2)(c), I wish to request for a statement from the Chairperson, Departmental Committee on Transport, Public works and Housing regarding the recent crash involving the Ethiopian Airlines ET302 which occurred on Sunday 10<sup>th</sup> March 2019. The plane crashed en route to Nairobi where 157 lives were lost, among which more than 30 were Kenyans. On behalf of the people of Nyeri County and on my own behalf, I would like to send my deepest and sincere condolences to the families of Kenyans and the countries whose people lost their lives in the devastating air accident. In Nyeri County, we lost two people whom we will be burying tomorrow.

The technology involved and the crash raises many questions on the quality of the Boeing 737 Max 8 aircraft and consequently a need for re-inspection to assure the country's airspace and Kenyan people of their safety.

It is against this background that I seek a Statement from the Chairperson of the Departmental Committee on Transport, Public works and Housing regarding:

(i) The measures the Government is putting in place to assure Kenyans of their safety while using Boeing 737 Max 8 jets, and

(ii) The plans, if any, for compensation of the families of the deceased who are Kenyans.

Thank you.

**Hon. Speaker:** Well, it is obvious, this Statement is referred to the Chairperson of the Departmental Committee on Transport, Public works and Housing.

The Hon. Godfrey Atieno Osotsi.

## PERSONAL STATEMENT

### ALLEGED DISMISSAL FROM AMANI NATIONAL CONGRESS

**Hon. Godfrey Osotsi** (Nominated, ANC): Thank you, Hon. Speaker. I rise to make a personal statement.

Pursuant to Standing Order No.84, I wish to make a personal statement with regard to my alleged dismissal from Amani National Congress (ANC). I wish to set the record straight and put issues surrounding this matter to rest. I received a letter dated 20<sup>th</sup> March 2019 purporting to expel me from ANC party. Additionally, the Office of the Registrar of political Parties was directed to initiate the process of invalidating my position as a Nominated Member of Parliament. The resultant misinformation has been used to discredit me and bring my reputation to disrepute. In fact, contrary to provisions of the Political Parties Act, and in outright violation of the party constitution, on 12<sup>th</sup> October 2017, there was unprocedural and unlawful attempt to replace me as the Secretary-General of ANC Party by a clique of persons posing as the National Executive Committee (NEC). Members of the party and my supporters, in exercise of their constitutional right to seek justice, successfully petitioned the Political Parties Dispute Tribunal (PPDT) which ruled on 13<sup>th</sup> April 2018 that the attempted replacement of Hon. Godfrey Osotsi



as the Secretary General was null and void, as it was a contravention of the law and the constitution of the party. These persons have since filed an appeal at the High Court, of which the court is yet to make a ruling. The failed attempt of my removal from the party triggered a series of sustained malicious acts of blackmail, intimidation and cajoling directed at my person, and my supporters.

I believe that the real reason behind all these intrigues disguised as “party discipline” is motivated by those forces against divergent opinion, my belief in democratic tenets, rule of law and my strong political stand on matters of national importance, particularly the National Super Alliance (NASA) coalition politics, including my consistent and unwavering support of the handshake between his Excellency the President, Uhuru Kenyatta and the NASA Leader, Raila Odinga

Finally, I wish to reiterate that I will not be intimidated by those bending the party constitution and circumventing the law to suit their narrow selfish interests. Though there has been an attempt to impugn my character and disrupt the carriage of my duties as an MP, I will remain strong, believing that justice is on my side. I wish to end by stating that ANC party shall not be hijacked by people who do not share the vision of the founders of the party. To this end, I will, in the near future, commence processes to restore sanity, the rule of law and democracy in the party.

Thank you.

**Hon. Speaker:** Hon. Members, that is a personal statement. It does not elicit any debate.

The next statement will be issued by Hon. Julius Melly, the Chairperson of the Departmental Committee on Education and Research under Standing Order No.90.

## POINT OF ORDER

### DECLARATION OF INTEREST DURING A COMMITTEE SITTING

**Hon. Julius Melly** (Tinderet, JP): Thank you, Hon. Speaker. I wish to issue a Statement on declaration of interest during a committee sitting in accordance with Standing Order No.90 of the National Assembly.

The Departmental Committee on Education and Research held a meeting with officials from the Kenya National Union of Teachers (KNUT) and the Kenya Union of Post Primary Education Teachers (KUPPET) on 26<sup>th</sup> March 2019. The Committee had invited the unionists to present their views on the Petition on delocalisation policy and its impact on teachers. During the preliminaries, I drew the attention of Members to Standing Order No.90 on declaration of interest in regard to the issue on the Committee’s agenda. I requested Members who may have conflict of interest over the matters before the Committee to declare their interest. Three Hon. Members declared that they had interest in the matters before that Committee by virtue of being members of KNUT and KUPPET respectively. I reiterated to the members that they should be conscious of the conflict of interest during Committee deliberations. During discussions, I had to interrupt debate to remind members on the conflict of interest aspect which was coming out every other time during the discussion. I emphasised the point that Members were first and foremost participating and speaking to the matters under deliberation as Members of the Departmental Committee on Education and Research and not as union representatives.

Arising from the above discourse, I wish to seek your guidance over the following:

1. A clear interpretation of Standing Order 90 and what it entails and how it can be reinforced;
2. Whether a Member who declares conflict of interest should be allowed to participate fully in the ensuing discussion of the Committee or whether the said Member should excuse himself or herself from the said Committee deliberations;
3. If a Member who declared conflict of interest should take part in the vetting process of a nominee for appointment to a public office.

I thank you, Hon. Speaker.

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

**Hon. Aden Duale** (Garissa Township, JP): Thank you, Hon. Speaker. I also rise on a point of order pursuant to Standing Order 83 concerning matters of conflict of interest by Members of this House with regard to participation of Members in Committees. It is, indeed, unfortunate that these matters keep occurring despite the fact that on 26<sup>th</sup> July 2018 you guided this House on the manner in which Members should conduct themselves in terms of declaration of interest. Just to jog the memory of these Members, allow me to refer to your ruling delivered on 26<sup>th</sup> July 2018 in which you guided the House as follows regarding issues of declaration of interest and I quote:

“It is therefore incumbent upon every chairperson to ensure that prior to the commencement of every meeting, Members declare their interest in any matter falling within the agenda items of that particular sitting. At no time may you be seen as advancing a personal interest. Failure to disclose an interest creates a presumption that any contribution made to a matter under consideration by the House or a committee, however relevant, advances your interest as a Member.”

*(Hon. Maina Kamanda stood in the gangway)*

Hon. Speaker, the Chairman of the cohesion committee is standing between me and you. That is against the Standing Orders.

That is what the Speaker said on 26<sup>th</sup> July 2018. I do not want to reiterate what the law says, or indeed Standing Order 90, as these provisions on declaration of interest are well within the knowledge of Members. However, I am here today raising this point of order in support of the Chair of the Education Committee on matters of conflict of interest and it is clear evidence that Members have decided not to be guided by your communication, the law and the Standing Orders on conflict of interest. Let me make it very clear: The communication of the Speaker, and even previous Speakers, becomes part of the sets of laws that the House will always refer to. Just recently the Member for Kikuyu, Hon. Kimani Ichung’wah, rose on a point of order in relation to the Member for Mathioya, Hon. Peter Kihara, who proposed amendments to the Insurance Bill, 2018 relating to insurance brokers when he himself owns an insurance brokerage. We have since forgiven the Member.

The issue of conflict of interest is, however, real and still in existence and this calls for this House to rethink whether Standing Order 90 is effective as it is as Members continue to breach it. I will give examples. A case in point is Hon. Wilson Sossion who is a Member of the Education and Labour Committees yet he is the Secretary-General of KNUT; Hon. Omboko Milemba, who is the former Chair of KUPPET, is also a member of both committees. Allow me to pose a question: Should Members who are trade unionists participate in the Departmental Committee on Labour and Social Welfare when it is considering employees’ or workers’ matters

or vetting members to the Teachers Service Commission (TSC)? Should the Secretary-General of KNUT participate in the Departmental Committee on Education when, for instance, the TSC is appearing before that Committee? The Standing Orders are very clear, in particular Standing Order 90, on what personal interests are. It provides that personal interests include pecuniary interest, proprietary interest, personal relationship and business relationships.

To bring this point home, I am aware that the Departmental Committee on Education and Research held a meeting with union officials from KNUT and KUPPET on 26<sup>th</sup> March 2019. The Committee had invited the unionists to present their views to a petition on the delocalisation policy and its impact on teachers. During the meeting, the Chairperson of the Committee, Hon. Melly, had to keep interrupting the Members to remind them of the import of Standing Order 90. I am told, however, that Members had declared interest at the commencement of that meeting. What appears is that despite the provision of Standing Order 90, Members continue to participate on matters where due to their current or former engagements before becoming Members of Parliament, there is a likelihood of conflict of interest. There exists no right in law for a Member to sit in a particular committee. Membership to a committee is, therefore, not a right. Indeed, Members are nominated by their political parties to committees. It is perhaps time for us to rethink the composition of committees where there is an apparent and real likelihood of conflict of interest. In this regard, I wish to seek your guidance again over the following:

1. An interpretation of Standing Order 90, including the manner in which Members are to declare interest and in what form the declaration should be made, and
2. Whether a Member who declares conflict of interest should be allowed to participate fully in the ensuing discussion of the committee or whether the said Member should excuse himself or herself from the committee deliberations.

Finally, the Constitution is very clear in Article 122 on voting in Parliament. If you look at Article 122(3), it says: "A Member shall not vote on any question in which the Member has a pecuniary interest." So the matter I am raising is in the Constitution. Just to jog the memory of Members of this House, about two months ago when the new AG of the US was being vetted by the US Senate, and the system in the judiciary committee is that every Member is given five minutes to ask questions, and I was watching, when it came to one of the senators, I cannot remember his name, he said: "Mr. Chairman, I am not going to ask questions because I served with the nominee in a law firm 15 years ago. So, I want to declare my interest that I will not ask the nominee questions and I will not participate in the vetting."

We have no problem. We have asked Members to indicate which committee they want to be on. That was based on the expertise they would give to the committee. So we have got a very good system. Most of the Members who have a medical background are in the health committee; lawyers are in the Justice and Legal Affairs Committee; and trade unionists can be in the labour committee. What we are saying is, when it comes to the TSC CEO appearing before the education committee, then the representatives of teachers in Kenya must also declare their interest because they sit with the same organisation to negotiate for the interests of teachers.

So, we have no problem with Members being in committees where they offer very good advice based on their academic background or expertise. However, where we feel that there is a business interest, we need to protect the integrity of the Committee and Parliament. I think, Hon. Speaker, you need to give guidance on the interpretation of Standing Order No.90. We need to know what form the declaration of interest should take and who declares the conflict of interest and at what stage it should be allowed.

I rest my case, Hon. Speaker

**Hon. Speaker:** Order, Hon. Members! Order, Godfrey Atieno Osotsi!

*(Laughter)*

You have made a personal statement and you want to cause lack of quorum in the House. Hon. Members, I can see there are quite a number of interventions and so there is interest by various Members who want to give input. However, I can see we run the risk of not being able to obey Article 121 of the Constitution, in that we may not transact... You know transaction of business, especially in decision-making... I see the Hon. Member for Limuru taking off.

*(Several Members walked into the Chamber)*

Please, just take your seats. Do not run away.

Hon. Members, I have indicated that I have seen from my screen a lot of interest. It means Members wish to contribute. So, even as I make my ruling, I will also have received input from a number of you. However, for me to do that, I have to rearrange business because the rate at which this side has become virtually empty, including that corner where those who do not like contributing sit, is alarming.

*(Laughter)*

Therefore, for the convenience of the House, I will rearrange business so that we come back when we clear with the putting of the Questions. It is important. We have already alluded to the fact of mediation committees being formed. So, Hon. Members, I therefore rearrange business so that we will come back to this as well as the Statement by the Hon. Leader of the Majority Party on the business before the House next week. So, I will call on the Clerk-at-the-Table to proceed.

Next Order.

## CONSIDERATION OF REPORTS OF COMMITTEE OF THE WHOLE HOUSE

THE SENATE AMENDMENTS TO THE LAND VALUE INDEX LAWS (AMENDMENT) BILL

**Hon. Speaker:** Hon. Members, debate on this Motion was concluded yesterday and what remained was for the Question to be put, which I hereby do.

*(Question put and agreed to)*

Next Order

THE SENATE AMENDMENTS TO THE PHYSICAL PLANNING BILL

**Hon. Speaker:** Similarly, Hon. Members, already this House had concluded on this matter. So, once you make a decision one way or the other, especially if you are in agreement with the Report of the Committee of the whole House, the matter goes straight to the mediation committee.

*(Question put and agreed to)*

Next Order.

THE SENATE AMENDMENTS TO THE IRRIGATION BILL

**Hon. Speaker:** Hon. Members, you concluded debate in the Committee of the whole House on this and what remained was for me to put the Question, which I hereby do.

*(Question put and agreed to)*

*(Resumption of Debate on Point of Order raised by Hon. Julius Melly)*

Hon. Members, we now revert to that matter which was raised by the Leader of the Majority Party. I see the Leader of the Minority Party. He obviously takes precedence. You just have to look at Article 108, is that not it?

**Hon. John Mbadi** (Suba South, ODM): Yes. Thank you, Hon. Speaker. I listened carefully to the point of order that was raised by Hon. Melly on behalf, I think, of his Committee. He raised his concerns regarding Standing Order No. 90, which the Leader of the Majority Party has ably expounded and asked even more from the Hon. Speaker to make a ruling on.

First, I think this issue of conflict of interest is a matter that needs to be dealt with because even if you look at our Standing Orders, it is not very clear on what happens after declaration of interest. Standing Order No. 90 just requires a Member who wishes to speak on any matter in which the Member has a personal interest to first declare that interest. What is required of a Member is to declare interest then you go ahead to speak. The Standing Order does not limit the Member on what to say or what not to say. On the constitutional provision that Hon. Duale raised, a Member is only required not to vote on a question in which the Member has a pecuniary interest.

Hon. Speaker, pecuniary interest is pecuniary interest; it is not any other interest. You could have other interests but if it is not pecuniary interest nothing stops you from voting on a matter that you have any other interest. So, the issue before us is really confusing so to speak: that if a Member has an interest on a matter and has declared it so what happens? According to the Standing Orders, you are allowed to speak on that matter even after declaring interest. Actually, it says when you want to speak, you should not even declare that interest if you do not want to speak. So, when you want to speak is when you declare interest. So, the Standing Orders recognise that a Member who has an interest on a matter would speak on the matter. This is because if you do not want to speak, certainly you would not be required to declare interest.

Hon. Speaker, something that I find interesting, and maybe the Chair of the Committee, Hon. Melly, would have elaborated more on, is: What is this interest? This is because sometimes, we say Members are having personal interests when they do not. Like the examples given about trade union officials, like Hon. Omboko Milemba, Hon. Sossion who is the Secretary General of KNUT and Hon. Tom Odege. When does an interest become personal? The main reason why the Orange Democratic Movement nominated Sossion was to represent teachers. So, if he represents them, he has to speak for them. That is why we even put him in the Departmental Committee on

Education and Research because he understands, and we thought he would enrich Committee deliberations on matters education.

So, I think we are deficient of information as to how these Members made the work of the Committee difficult by participating in these meetings. If the interest is talking about teachers, I think that is exactly why Hon. Sossion is here, to speak about their issues.

Hon. Speaker, one of the outstanding reasons why Hon. Omboko Milemba won, and probably there are many other reasons, is because he has been in KUPPET and through this he earned exposure by speaking for teachers. If he comes to the Floor of the House to represent teachers and he does not speak, then teachers will say they brought him here and he is doing nothing. Therefore, he will run the risk of losing his seat. Unless it is defined clearly how these Members have been misusing their membership of the Committee, to further promote their personal interests, it is not clear to me how they went there to protect their interests.

Finally, to me what has been abused is where we go to Committees to protect our personal interests and when Members speak for the Executive. In fact, as far as I am concerned any Member asking an Executive official a question, however discomforting it is, that is representation and what we expect is oversight. It is the duty of the Chair of the Committee to manage the Member trying to go out of that representation. As I agree with the Leader of the Majority Party that sometimes our Members may abuse their privileges, but again we need to be very clear so that we do not stop these Members from doing the work they came here to do.

Hon. Speaker, with those many comments, I just want to state that you have a very tricky work ahead of you. Hon. Speaker, I can see you are being interrupted, but I want you to get my concern, that Standing Order No. 90 talks of a Member declaring interest only when he wants to speak.

This means, if you just go there and sit, even if you are a Member of the Departmental Committee on Education and Research, nothing forces you to declare your interest, until when you want to speak. Therefore, why is it a requirement that when you want to speak, you are required to declare that interest? It is so that everybody knows that this person either has a lot of information or is likely to speak in a manner that is supposed to show some kind of interest that he has. But, personal interest is difficult to define here. We need to know what this personal interest is.

I know the Standing Order has attempted to talk about pecuniary interests *etcetera*. When *Mhe*. Omboko Milemba goes to ask why teachers are being transferred, certainly it is not him being transferred, and he cannot be transferred to Migori. So, what is personal there, I do not see because he is representing teachers. Even, Mbadi can ask because I have a brother or a sister who is a teacher. Is that personal interest? If I am representing my electorate then all of us will have interest because we have electorate who are teachers. To me, the Chair of the Committee needs to explain what his problem was, because there seems to be one but it has not come out very clearly.

Thank you, Hon. Speaker.

**Hon. Speaker:** Hon. Members, this is not business. It can be important but if it is not business, I am entitled to put closure. The other business is the Public Accounts Committee (PAC) Report and we want to hear from Hon. Wandayi because this is serious business. This is not business because these are matters of provisions of Article 122(3) of the Constitution specific to pecuniary interests. This is not just in the Standing Orders, you must also read the Constitution. If you are a unionist and you receive some stipends from the union, and the matter being discussed is about the union...Maybe the Chair did not come out clearly, as Hon. Mbadi

has just said. If you are a unionist and your union is appearing before a Committee, then Hon. Omboko Milemba cannot be accused of any pecuniary interests.

Indeed, you gave a very good example about Hon. Omboko Milemba because he is a former teacher. But our Standing Orders have gone on to extrapolate Article 122 of the Constitution to include matters that one may have had some association with in the past. Like you could have been a partner in a law firm, like Hon. T.J. Kajwang' and that law firm is invited and without declaring that you have interest, you just appear there and you want to defend to the hilt the interest of that law firm. There are many examples, but it is good to hear, so that we do not lose this particular aspect, which was raised by Hon. John Mbadi. Can I hear, Hon. Melly.

**Hon. Julius Melly** (Tinderet, JP): Thank you, Hon. Speaker. I want to laud what Hon. Duale has said. I want to tell Hon. Mbadi that issues concerning personal interests are quite clear. The interest I am talking about is when you have deliberations in a Committee and union officials are supposed to make their representation. But, an instance occurs where one of the Committee Members wants to present information on their behalf, which is wrong.

I want Hon. Mbadi to get this clearly, for instance, you may realise that one of the officials presenting is not as articulate as you want and you take his position to put the points across. I believe, as an Hon. Member, you are only supposed to listen but not to take that position to tell us what the officials wanted to say.

There are also instances when some information within the purview of the Committee is privileged, but because of your position you use it to the advantage of the body you represent. That, in effect is very wrong and I think is against the Standing Orders.

Hon. Mbadi, I hope this is very clear. Thank you.

**Hon. Speaker:** Let me hear from Hon. Odhiambo Akoth Millie Mabona.

**Hon. (Ms.) Odhiambo -Mabona** (Suba South, ODM): Yes, Hon. Speaker, Grace Akoth 'geza geza'. Thank you, Hon. Speaker for giving me this opportunity. I just wanted to clarify to Hon. Angwenyi that Millie is a brand, so he must say it well.

Having said this, I think I am very passionate about this issue because in this House, I have been accused when talking about children issues of having personal interest. Yet, the people who accuse me are likely to have more personal interest than me because I do not have a child. I have never given birth, but they have children. So, they have more personal interest than me on children issues.

Hon. Speaker, I would want to urge that even as you are making that decision, we look at other provisions of the Constitution. What the Chair of the Committee is saying is not even an issue of conflict of interest. It is an issue where the Chair of the Committee must be in charge of his Committee and tell the Members who are out of order and throw them out if he needs to. It is not an issue of conflict of interest. There are certain issues that have arisen that we must look at. I want to agree with Hon. Mbadi that when you are talking about interest, what is it? I have given you the example of where I am told that as a person who worked in the Children's sector, I have a personal interest when I do not have a child. There is this case where people are talking about lowering the children's age of consent in sexual matters to 16. A parent has more personal interests than me on that issue.

Having said that Hon. Speaker, I want to give an example because I heard one of the Members alluding to the fact that he should not be in those committees. I was in the Departmental Committee on Agriculture and Livestock in the last Parliament. I do not know anything to do with agriculture and fisheries. Because Mbita people are farmers and fishermen, I had to learn about fishing and agriculture. I do not know about a goat and cow. I did not grow up

in a very rural setting. However, I learnt about goats, cows and fish because that is what I represent. When I stand here, there is no day that passes without talking about fish, goats and cows but I have no expertise on them. I have that personal interest because those are my constituents. Therefore, I do not know how you expect a Member who has joined Parliament with the interest of teachers to sit in the Departmental Committee on Agriculture and Livestock or Members Services and Facilities Committee. All Members here at some point have very personal interests. If it is not for your constituents, it is for your profession. I have interest in every law as a lawyer because it affects me in my profession.

I want to encourage that even as we are looking at that, it is an issue where we should also look at Article 73(2) of the Constitution that talks about responsibility of leadership which is the challenge we are facing. Members need to behave even when they are in those Committees. There is also the application of Bill of Rights which is Article 20 of the Constitution. When we are interpreting the Bill of Rights, we must take into account the values that underlie an open and democratic society based on human dignity, equality, equity and freedom. Sorry, Hon. Speaker because I do not know how to read my handwriting. Based on that, we must balance disciplines against a higher thing which is Bill of Rights. We cannot deny you human rights. When I joined Parliament as a nominated Member, I came to represent women, children, marginalised communities and persons with disabilities. Even though I represent people in Suba North, I still represent marginalised groups because that is what brought me into this House in the first place. Even as you are making the ruling, let us not take away Members' rights. Hon. Duale is always talking about livestock. Does he have a personal interest or it is the interest of his constituents? Thank you.

**Hon. Speaker:** The same Constitution you are referring to also gives you a very good example in Article 116 when you are making laws. I am sure Hon. Millie Odhiambo knows that you should not pass laws which will have financial implications to benefit you. That is a very good example. As a House, you are prohibited from doing it. If you pass a law about salaries and benefits here in the House, it cannot benefit you. It will have to benefit other future Parliaments. That is a very good example from which we can borrow. Hon. Ichung'wah.

**Hon. Kimani Ichung'wah** (Kikuyu, JP): Thank you, Hon. Speaker. I want to pick up from where you have stopped in relation to the provisions of issues that would affect us, as Members of Parliament. When Standing Order No.90 talks about pecuniary interest, it is informed by that provision in the Constitution. The provisions in Article 122(3) of the Constitution that the Leader of the Majority Party alluded to say that a Member shall not vote on any matter in which he has a pecuniary interest. The Leader of the Minority Party, Hon. John Mbadi, misled this House by purporting that Hon. Omboko is elected to represent teachers. He was not elected to represent teachers or any profession in this House. He also alluded to the fact that Hon. Sossion represents the interest of teachers. I am talking about Hon. Omboko because he was mentioned in relation to the issue of teachers.

Hon. Omboko was elected by the public in his constituency to represent all professions but not just teachers. If we look at the provisions of these Standing Orders to the exclusion of what is provided for in the Constitution, then we will not get it right. Article 122(3) of the Constitution is clear that a Member shall not vote on any question in which he has a pecuniary interest. As you rightly said, the Standing Order goes further to expound that personal interests will include pecuniary interest, proprietary interest, personal relationships and business relationships. When I rose on a point of order about three weeks ago in relation to the issue of the Member for Mathioya, Hon. Kimaru, I stated that because he had both pecuniary and proprietary



interests in insurance brokerage business in this country. The same thing goes for Members of Parliament who are trade unionists. Hon. Sossion whom the Leader of the Minority party has spoken at length about representing the interest of teachers has a pecuniary interest in matters to do with TSC and teachers unions in this country. Therefore, as much as the Standing Orders allow him as the Leader of the Minority said to speak, if you read it together with Article 122(3) of the Constitution, it bars him from voting on such a matter.

As the Leader of the Majority Party asked, you need to expound to us when one speaks on a matter. For instance, we will debate Hon. Opiyo Wandayi's Independent Electoral and Boundaries Commission (IEBC) Bill. The Member for Tiaty, Hon. Kamket, declared an interest during the deliberations because his wife works in IEBC. We declare those interests because it is a matter that is touching on expenditure of public funds by IEBC. For instance, if a person whom a Member is related to is mentioned in a report, will that Member vote on that particular aspect? When I rose on a point of order in relation to Hon. Kimaru, I did it based on what is provided for both in the Standing Orders and Article 122(3) of the Constitution. I knew that Hon. Kimaru has pecuniary interest and proprietary interest in insurance brokerage and we were going to the Committee of the whole House where he was proposing amendments. Was he then rightfully going to vote for those amendments? Those are questions because committee deliberations as the Chair of the Departmental Committee on Education and Research, Hon. Melly, Member for Tinderet said, he will deliberate in Committees and make decisions. By the time we adopt reports of committees, we are voting. For instance, would Hon. Sossion and Hon. Omboko be voting by adopting reports of those committees at the committee stage? When that report comes to this House for adoption where we will vote, shall we exclude such Members from voting?

We must also look at the moral and ethical aspects of what informs Standing Order No. 90. There is an example that the Leader of the Majority Party has given in relation to a Senator in the United States of America Senate and the one you have given using the example of Hon. T.J. Kajwang' of a law firm where you served. Then as Members of Parliament, we must be called to another higher moral and ethical standing. We should not allow ourselves to be seen like we are using this House or committees to further our personal or business interests or those of our relations like the example I have given for the Member for Tiaty or that of the Member for Mathioya who attempted to use this House to introduce amendments that were going to further his personal business. Therefore, he had both proprietary and pecuniary interests. If you look at the meaning of pecuniary and proprietary interest, you will understand why the Constitution only speaks about pecuniary interest. You have pecuniary interest in anything that you have proprietary interests. The Constitution is very clear.

Hon. Speaker, even as you look at this issue, let us be informed by what is principally provided for in the Constitution and expounded further by the Standing Orders. In my humble submission, I do not think it is right for people to sit in Committees where they are seen to advance interests they have pecuniary interests in. Thank you.

**Hon. Speaker:** Hon. Members, even as you address this issue, you are perfectly entitled to defend the interests of your constituents. If your constituents are involved in the fishing industry, you are perfectly entitled to stand here or anywhere to defend their interest. Those are their interests. In fact, you could even from the party point of view, and this is the practice the world over, propose certain matters for which you will ask the party to allow you to deal with the interests of your constituents. That is perfectly in order. But, of course, if you say you began your career on a particular law firm, and you must sit in the Committee to defend it, obviously you will be breaching Article 73 of the Constitution.

Hon. Wamalwa.

**Hon. (Dr.) Chris Wamalwa** (Kiminini, FORD-K): Thank you, Hon. Speaker. I want to try as much as possible to operationalise the term “pecuniary interest” for purposes of easy understanding.

Standing Order No.90 is derived from Article 122 of the Constitution. Declaration of interest in this case is based on bias. If you are likely to be biased, unfair or skewed, for instance, the law firm you indicated, and if you are listening to a petition and observations ....

**Hon. Speaker:** That was just an example. Hon. T.J. has not stood to defend any particular law firm.

**Hon. (Dr.) Chris Wamalwa** (Kiminini, FORD-K): Absolutely, Hon. Speaker. If it is a petition you are listening to, you are supposed to give an objective judgment or decision based on the observations. In this case, if a petition is being presented in which you have pecuniary interests that will affect your decision so that you are unfair, skewed or biased, then you need to step aside. It happens even in courts. When a magistrate or a judge is listening to a matter and they are related to the person petitioning and that is likely to affect their decision so that you are biased, they disqualify themselves. So, in that context, Parliament is a bit different. We are in Committees because of our interest or expertise. Today, when we were talking about the mediation committee, you indicated that Hon. Ounda, because of his expertise in land economics, he will add value. In that case, he will add value without bias but in a situation where he is likely to be biased, the issue of pecuniary interest comes in and goes on. There is nothing wrong if Hon. Sossion in that case, if I got the Chair right, it is about the delocalisation policy. Somebody had come to give a presentation and in that case it was KNUT. Hon. Sossion is the Secretary-General of KNUT and is a Member of Parliament. Personally, I do not see anything wrong because he is still the Secretary-General of KNUT, for him to give some clarification on an issue because he understands it better.

**Hon. Speaker:** Hon. Wamalwa, I will give you more time. Are you suggesting that Hon. Sossion when KNUT is invited to come and make a presentation, instead of sitting as a Member of the Committee, he moves to become a witness? Did he become a witness? I want you to distinguish one thing. The KNUT is represented by some people and it is entitled to indicate to Parliament when it receives the invitation that on the issues they have been invited to present, their best foot forward or the best mouth piece is a Member of the Committee and therefore they request that he does not sit with you as a colleagues and he is allowed on that day so that he is seen in his true colours. That is a different thing. On the other hand, it is also very useful that KNUT could still come with whomever, make a presentation, then in the deliberations of the Committee, Hon. Sossion can come up to offer his expertise to his colleagues only as colleagues. Those are two different situations. Was he a Member of the Committee or was he a witness?

The matter has been reported to me in writing that he took over. This is the issue. He thought that the person presenting was not coming out properly so he took over but he did not go to the witness side to respond to the issues. We must distinguish that.

It is still your chance.

**Hon. (Dr.) Chris Wamalwa** (Kiminini, FORD-K): Hon. Speaker, in that context, what Hon. Sossion was supposed to have done then is to declare that he was going to the Committee not as Member of the Committee, but going to present on behalf of KNUT because he is the Secretary-General. He should have distinguished that and became a witness. I do not see any problem with that because he is the Secretary-General, he is the spokesperson. He should have gone to the Committee not as a Member of the Committee but to present on behalf of KNUT. By

the time they are writing the Report, he will also excuse himself not to be there because he is biased in a certain way. If he is in the decision-making, he is likely to be biased, unfair or skewed. I do not see any problem for him to tell the Committee that he is appearing before it not as its Member but as the Secretary-General in the witness box and make a presentation so that in case of any question, he will clarify it. I do not see any problem with that so long as full disclosure has been given.

If he sat as a Member of the Committee, he has no business again to help the witnesses because they are incapacitated. He should have informed them beforehand that he would be appearing as a Member of the Committee and he would cross examine them or ask questions. He should not be the one answering questions. There must be a distinction. I do not see any problem for the Member of the Departmental Committee on Labour and Social Welfare being in the Departmental Committee on Education and Research because they have the expertise. When they are writing a report, Hon. Melly, who has done very well as a Chair, might seek expertise of the Members of the Committee. He may ask Hon. Sossion for the best way forward in handling a petition.

Thank you, Hon. Speaker.

**Hon. Speaker:** On union matters generally, if as a Member of the Committee and that is another point raised by Hon. Melly... If you are a Member of a Committee and you call the people you oversee before you to give you information and later you use it in your other union matters, surely it will be fair... At that time you are breaching the Standing Orders, are you not? I hear you, Hon. Wamalwa. You have raised valuable points, which is why this matter should not be blurred. Somebody just explained it very well. That is why I said this matter should be raised here in the plenary. It should not be a matter that is discussed only in the offices. Even when it was raised, I am aware that Hon. Omboko Milemba sits in that Committee but there is no complaint against him. It means that there is something that we need to address and this is the issue. How is it that there was no complaint? Hon. Omboko Milemba is the immediate former Chairman of KUPPET. I thought that this matter should be brought here so that people can air their views.

Limit yourself to three minutes, Hon. Pkosing.

**Hon. David Pkosing** (Pokot South, JP): Thank you, Hon. Speaker. I will limit myself. This is a very important question particularly for us, Chairs. If you are to go the way Hon. Millie is suggesting, that we use strictly Standing Orders, it will appear like we are demeaning our own colleagues before witnesses. If you go to Standing Orders and you want to throw your own colleague out, throwing out a Member from the Floor of the House and throwing him out of the Committee is different. On the Floor, we are all colleagues but in committees, there are witnesses. They will lose value. They will feel that they are demeaned. That is why you need to guide us.

My addition to what honourable colleagues have said is that there are two ways of analysing interest, in my view. One, somebody like Sossion is showing very positive interest on the other side but there might also be another person or another honourable Member who has extreme negative interest on the same witness before you. When you are making your ruling, you may want to also pursue that angle that: What about if an Hon. Member who is a member of the Committee has serious negative interest about the witnesses who appears before the Committee and raising it might also look like an interest? He is using the Committee maybe to demean a witness before you.

In the same way, therefore, as you rule my own suggestion is that if somebody has an interest, you declare that person a witness whether negative or positive. Later, they can appear and state why they have serious negative interest on the matter. Maybe, it might help the Committee to deliberate. If you go that way, that Hon. Member in that Committee should not participate in further deliberations until a ruling is made. They can become a Member of Parliament representing interests whether negative or positive but not to use the Committee to advance his own personal interest, pecuniary or political.

I thank you for this but look at it and make them witnesses if it is possible, but they will not see the deliberations of the Committee until the end.

Thank you.

**Hon. Speaker:** Hon. Members, even if you have a negative view about a witness appearing before you, that is a matter for the Chair to determine so that whether it is negative or not, the cardinal rule is to treat every person appearing before the Committee or before the House with the utmost respect and decorum. That is basic. You may have very negative views about a person but you will also say it in a manner that shows dignity, both to your office and also to the witness. You may have very negative views about persons but it does not mean when they appear before you, you start abusing them. If that happens, the Chairperson is under obligation to rule the Member out of order and have him thrown out and report the matter to the Speaker.

Hon. Kemosi.

**Hon. Vincent Kemosi** (West Mugirango, FORD-K): Thank you, Hon. Speaker, for this opportunity. I also rise to submit on the issue of conflict of interest. The legal definition of conflict of interest is a situation in which a person has a duty to more than one person or organisation but cannot do justice to actual or potentially adverse interests of both parties.

In this particular aspect, we are aware that the Departmental Committee on Education and Research has a wide mandate to deal with a wide range of matters. Specifically, when it comes to the interests of teachers, the issue of delocalisation of teachers as well as pay and other interests of teachers, Hon. Sossion has already pronounced himself. On this particular aspect, he cannot sit in the Committee as a Member of the Education Committee and when the union appears before that particular Committee he is allowed to advance the issues pertaining to the union. He either decides to sit in the Committee as a Member of the Committee or he can appear in the Committee as an official of the union. He cannot appear in both because the Committee essentially assists the union or any other witness to arrive at a particular decision. Hon. Sossion cannot appear in the Committee to try to advance interest of the union which is a witness in that particular aspect.

However, I do not agree with the Chairman that Hon. Sossion should be removed from the Committee because the Committee does not specifically deal with the issue of interest of teachers. The other day, they were vetting the nominee for the position of Cabinet Secretary for Education. They have been dealing with different issues but when it comes to the interest of teachers, he has to declare interest. He should be allowed to sit in the Committee as a member. That is his right as a Member of Parliament in this House.

Thank you.

**Hon. Speaker:** Hon. Kioni.

**Hon. Jeremiah Kioni** (Ndaragwa, JP): Thank you, Hon. Speaker. I remember I had a petition that I introduced in this Parliament during the last Session on the issue of hardship allowance. I thought Hon. Sossion would have been vibrant to help me out but I realised that there are some interests that surround the issue of payment of hardship allowances. There are

areas that if it is taken away, you lose votes, if it is paid elsewhere... Those kinds of things. This House has some form of interest that we need to deal with.

We occupy a privileged position. One of the things that the Constitution is trying to stop us from doing is using our privileged position to confer on ourselves financial gain or even institutions that we represent to confer on them some financial gain. I think I am not wrong to say that Hon. Sossion is still the Secretary General of KNUT. He must be earning a salary.

If he is earning a salary and the matters that are being discussed have something to do with the benefits that may accrue to KNUT, it could easily qualify to be pecuniary interest.

Two, if he is seated in a committee and the subject that is before the Committee is KNUT, he has to be a witness. I do not think there are two things. He will have to just be a witness; he cannot be a committee member when his organisation is under scrutiny. He is really a witness. If he sat as a committee member, he could easily become a nuisance because the institution that is paying him the other way is under scrutiny. That is another aspect that we have to deal with.

Three, the Chairman will find himself in a difficult position. If he was to deal with Sossion, the way a chairperson should, he should first throw him out. That would embarrass the Secretary-General of the KNUT before his employers. Two, it is the issue of trying to balance to ensure that the dignity of this House is not lost. We must, as Members of Parliament, do the best to ensure we do not lower the dignity of this institution that we sit in and the offices that we hold.

My final take on this is that it will be important for Sossion, I mean "Hon. Sossion"--- I am struggling somehow, and I do not know why I am struggling with this. If he sat when we were vetting the CS, I hope he did not sit as a Member of the Committee on Appointment, even if he was to take part in that debate. If I were the Secretary-General of KNUT, I will be very happy to have a CS who would agree to my philosophy, thinking or ideology. The position that Sossion is holding is beyond personal interest. I think we are confusing it with other positions. He is holding a position that is very crucial to this nation and it is benefitting him financially. He can easily use his position in the Committee to confer other interests that should not be there.

Finally, Standing Order No.90 leaves us hanging because it only requires you to declare interest. Maybe this is an opportunity for us to look at it and say what else one can or cannot do once one has declared interest. It is important we make sure we enhance the integrity of this House in all that we do in our Committee. That is as per Article 73 of the Constitution.

Thank you, Hon. Speaker.

**Hon. Speaker:** We appear to have said enough but, let me hear the Member for Emuhaya.

**Hon. Omboko Milemba** (Emuhaya, ANC): Thank you, Hon. Speaker. I am a Member of the Departmental Committee on Education and Research. I have seen you enquiring a little bit more even on what has just happened.

First, I think both Hon. Sossion and I were not in the witness box. In all cases, there were representatives of the unions who were speaking for the unions. We remained as Members of the Committee and the Chair, who is here, guided us very clearly that we were to declare interest as per Standing Order No.90. He guided us further that once interest is declared one may speak on the matter and not necessarily appear like supporting or pushing the agenda of the unions which were presenting their issues. That is what we did.

I also want you to look at the history of Parliament and trade unions, when you will be looking at this matter. That is because I do not think Hon. Sossion and I are the first trade unionists in this House. Trade unionists were there from the beginning - in 1952 - during the

state of emergency. They were the ones who, at one point, took over the leadership of the political movements in the absence of political parties. If look at the histories of Standing Orders, you will find that the first Standing Orders of this House were sponsored by a trade union movement that was based in Germany. Therefore, the trade union movement and Parliament are compatible.

I wanted to say that pecuniary interest, which you have referred to, is a matter where there is reasonable likelihood of appreciable financial loss or gain to a person. In the matter that we were dealing with, it concerned delocalisation. Delocalisation does not have any financial benefit to me as an individual or Hon. Sossion. Delocalisation concerns the public. If my sentiments were put there, it was not a personal interest, but an interest of the public which I represent.

Hon. Speaker, my coming to Parliament is basically, among other things, representation. In this case, I would like you to also look at cases where we have Hon. Members who might be affected by this. Today, you have actually asked one of the committees that will be mediating between us and the Senate to also listen to one of the Members whom I also find contributing to this House very well. The Hon. Member seems, or I believe is an authority in matters of land economics. That is why, possibly, you were referring to that mediation team to also listen to him as an expert.

With regard to education, I may be having some extra expertise. Sitting in such a Committee would actually benefit that Committee immensely, not otherwise. I know of committees in this House where we have experts. An instance is the Departmental Committee on Justice and Legal Affairs. That is where we have lawyers who have repute, like Hon. T. J. When he talks, I listen with my third ear. It is because an expert in that area is making a contribution on issues in that area. Even the Budget and Appropriations Committee - unfortunately, Hon. Ichung'wah is now out--- That Committee takes people who have mastery of issues on finance and economics, like the Leader of the Minority Party here. Remember, even the Leader of the Minority Party is also an accountant who, possibly, belongs to the body of certified accountants.

*(An Hon. Member spoke off record)*

Thank you very much. Therefore, this is what Parliament should enhance. It should not gag experts in particular areas for one reason or another.

In this case, I want to submit that it all rests on our Chair to provide leadership within the Committee. If he told me "you are out of order, Hon. Omboko", I would oblige. I have three options, either declare interest according to Standing Order No.90 or speak; to keep quiet continuously, or to appear as a witness, which I can do in this instance. The fourth option is to follow the orders as directed by the Chair of that Committee. I do not know if the Chairman is reporting very strongly that he was unable to conduct the meeting.

Without much ado, when you retreat to check it, this is a matter over which you will look at who the experts are in this House and which committees they are in. If at all we are promoting experts in this House to serve in particular committees, say, agriculture, economics and so on---

Thank you, Hon. Speaker. I rest my case.

**Hon. Speaker:** Therefore, there is something like "trade unionism expertise".

But more importantly, Hon. Omboko, you said you listen with your third ear when Hon. T. J. speaks. Now, let me hear the Hon. T. J. so that you can use your third ear.

(Laughter)

**Hon. T. J. Kajwang'** (Ruaraka, ODM): Hon. Speaker, I will be very brief on this because just as you had guided us this is not business. We have taken a lot of time to go round what business is and we are overrating this thing called "personal interest" or "conflict of interest". If we have to go the way we are going we will not speak in this Assembly. The Constitution says that this is a debating Chamber and there is freedom of speech. This is why we have put able people as Chairs of Committees so that they can administer them. This is not an issue which we should be speaking in plenary. This is about the organisation of a Chairman and his charisma.

If I am, for example, speaking or advancing something for which I have an interest, pecuniary or otherwise, he should be able to shut me down and tell me that I am. For example, I am a member of that law firm, I have done a fee note and I am likely to get some pecuniary gain. Therefore, he should shut me. We are loading you with so many things. We should be asking you issues of jurisprudence that will turn the moments of this country and not issues which chairpersons are entitled to do as part of management of their committees.

I have listened to my friends, Hon. Omboko, the Leader of the Minority party and the Leader of the Majority party. They have defined what this pecuniary interest is; it must be something that you will have financial gain. There must be some money or personal interest that comes with it. If I speak about the Law Society of Kenya (LSK), it is because I have an interest in them for being a member. I might as well not speak about anything legal. Everything in law and legislation here concerns members of the LSK.

I have understood what the Member for Kiminini has said. Of course, if a member comes as a witness and, for example, he is the Secretary of TSC and he sits and gets sworn-in to give evidence, he cannot then, remove his buttocks and sit on the other side and say that he is a special member for this or that. It cannot work.

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

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

**Hon. Aden Duale** (Garissa Township, JP): Hon. Speaker, I do not want to interrupt my good friend. We were with him in Berlin. The use of the word "buttocks" is unparliamentary. He needs to withdraw it or rephrase it. He cannot describe another member of parliament as having removed his buttocks.

**Hon. T.J. Kajwang'** (Ruaraka, ODM): How can a fact of life be unparliamentary? Unless the Leader of the Majority Party is indisposed.

Hon. Speaker, I have said that, as a Member, you cannot turn again and say that you are a Nominated Member and participate in the same discussion. It cannot be. You may be well instructed by the TSC or by another employer to come and present as a witness before a committee. If you come to present as a witness, you will give the evidence. You will be interrogated and then go. You cannot continue to participate. I am aware of this because in the profession I come from, even when I have to give up my mind, I have to reflect on whether I am going to take a case or not. I must be sure that I am not seized of documents or information that I have got, by way of privilege to affect my judgement on a particular issue concerning a client. That is what judges and magistrates also do. If they are in a position of privilege in which they have certain crucial information that will affect their judgement on a particular issue, they recuse themselves.

So, we are holding you on this and asking too much of you. This is an issue that is in the province of the chairpersons and they should be men enough and women enough to make judgements in their committees.

Thank you.

**Hon. Speaker:** We should end it at that point. I do not want it to appear like it is only about the teaching profession. We all have gone through the hands of teachers. We should make a decision on this without much ado. The Leader of the Majority party, give your statement.

**Hon. Aden Duale** (Garissa Township, JP): Hon. Speaker, we want an interpretation of “pecuniary interest.” You will define that for us. The chairpersons should take their positions.

## STATEMENT

### BUSINESS FOR THE WEEK COMMENCING 2<sup>ND</sup> APRIL, 2019

Hon. Speaker, pursuant to the provisions of Standing Order No.44 (2)(a), I rise to give a Statement on the business that will appear before the House during the week beginning Tuesday 2<sup>nd</sup> April, 2019.

The following Committee Reports are scheduled for debate next week, should we not conclude them today:

(i) Reports of the Committee on Regional Integration and Budgetary Proposals for the East African Community (EAC) for the Financial Year (FY) 2017/2018 and the FY 2018/2019;

(ii) Report of the Departmental Committee on Communication, Information and Innovation on the Inquiry into Legislative and Regulatory Gaps affecting Competition in the Telecommunications Sub-Sector; and,

(iii) Report of the Kenyan Delegation to the Sessions of the African Caribbean and Pacific Parliamentary Assembly and the African Caribbean, Pacific and European Union (ACP-EU) Joint Parliamentary Assembly.

It is also expected that the Joint Committee of Parliament comprising the National Assembly Departmental Committee on Administration and National Security; and the Senate Standing Committee on National Security, Defence and Foreign Relations, will table their Reports on the consideration of the nominee for appointed as the Inspector-General of the National Police Service by Tuesday 2<sup>nd</sup> April, 2019. Thereafter, the House will consider the Report on Wednesday to be within the stipulated timelines.

We will also consider the following Bills at the Second Reading:

(i) The County Statistics Bill (Senate Bill No.9 of 2018), and

(ii) The Nuclear Regulatory Bill (National Assembly Bill No.27 of 2018)

On Thursday next week, His Excellency the President will address a joint sitting of both Houses of Parliament in the National Assembly Chambers. The House will, thereafter, adjourn for a short recess, in accordance with the Calendar of the House.

In accordance with the provisions of Standing Order No.42A (5)(6), I wish to convey that the Cabinet Secretary (CS) for Industries Trade and Cooperatives will appear before the Committee on Trade, Industries and Cooperatives on Tuesday 2<sup>nd</sup> April, 2019 to answer Question No.098 from Hon. Jude Njomo, MP.

The House Business Committee (HBC) will convene on Tuesday 2<sup>nd</sup> at the rise of the House to consider business for the coming week.

I lay this Statement on the Table of the House.



Thank you.

*(Hon. A.B. Duale laid the document on the Table)*

**Hon. Speaker:** Next Order.

## MOTION

### ADOPTION OF REPORT ON FINANCIAL STATEMENTS OF IEBC

**Hon. Speaker:** Hon. Members, the Chairperson of the Public Accounts Committee (PAC) is to move this Motion, but the debate will be considered excluding the parts that were expunged, following the Speaker's ruling. Reference to them will be like referring to that which is dead; you cannot resurrect it. I believe the House is accordingly guided. You do not have to raise matters to do with chasing everybody out of office because doing so would be spending time unwisely. The Committee has given indication that they want to move the Motion for good measure. They want to make reference to their observations, which will be important for the House to note.

You may proceed, Hon. Wandayi.

**Hon. OpiyoWandayi** (Ugunja, ODM): Hon. Speaker, I beg to move the following Motion.

THAT, this House adopts the Report of the PAC on its examination of the Report of the Auditor-General on the Financial Statements of the Independent Electoral and Boundaries Commission (IEBC) for the year ended 30<sup>th</sup> June, 2017, laid on the Table of House on Wednesday, 27<sup>th</sup> February, 2019.

I am moving this Report in its current form after considering the removal of some parts, in accordance with the ruling of the Speaker, as contained in notice one in the Order Paper. I will be brief. This Report speaks for itself. I just want to reiterate a few points.

First, is to underscore the role of the National Assembly. As I mentioned earlier on when this Report was first tabled, under Article 95(4)(b), the National Assembly appropriates funds for expenditure by the National Assembly and other state organs.

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

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

In paragraph (c), the National Assembly exercises oversight over national revenue and its expenditure. Standing Order 205(2) of the National Assembly is very clear in as far as the mandate of the PAC is concerned. That Standing Order provides that PAC shall be responsible for the examination of the accounts showing the appropriations of the sum voted by the House to meet public expenditure and of such other accounts laid before the House as the committee may think fit.

Pursuant to this Standing Order and the relevant provision of the Constitution, my Committee undertook the task of examining the accounts of IEBC for the 2016/2017 Financial Year. I must also point out that the reason this Report appears special is that in the year under review - the following financial year - is when the elections of 2017 were held. Therefore, the Auditor-General, in his wisdom in undertaking the audit of IEBC for FY 2016/2017, went beyond and got into the FY 2017/2018 because this Report covers up to and including the time of the repeat presidential election of 26<sup>th</sup> October, 2017. Therefore, it is a Special Report.

I know this Report has ruffled feathers. This Report has stepped, as it were, on very sensitive toes. In my experience in this House – this is now my seventh year – I have come to realise one thing: That any time you see a Report of the House coming here, being debated and being adopted or otherwise rejected without much acrimony or controversy, then perhaps that Report has not touched on the nerves of the issues at hand. I can now attest to that. Therefore, I am not surprised that this particular Report of PAC on IEBC has generated the kind of controversy it has. I am not surprised at all. I want to thank my Committee members for the resilience they have exhibited. I now know for sure that operating within PAC is not a walk in the park. It is not. My Committee members have worked very courageously in the face of a lot of challenges, including blackmail and intimidation.

In summary, when we went through these accounts of the IEBC, a number of issues came out very clearly; a number of issues were established and I want to mention them in passing, very briefly. One was the blatant violation of the Constitution by the commissioners and officers of the IEBC who were given the task to run the Commission. I want to take you to the Constitution. Article 227(1) says:

“When a state organ or any other public entity contracts for goods or services, it shall do so in accordance with a system that is fair, equitable, transparent, competitive and cost effective.”

You may want to refer to the provisions of the Public Procurement and Asset Disposal Act, particularly Section 102 that deals with restricted tendering and Section 103 that deals with direct procurement. You will agree with me that following our observations and findings, more than 90 per cent of procurement of critical goods and services by IEBC during the period under review was done in a manner that contravenes not only the Constitution but also the Public Procurement and Asset Disposal Act as it then was. There was a clear pattern for the procurement of these goods and services to be done purportedly under Sections 102 and 103 of the Act. Those two sections provide very clearly circumstances under which a procuring entity can resort to either restricted tendering or direct procurement. Our close examination and scrutiny of these procurement activities revealed to us that the use of those particular sections of the Act was not justifiable. You can go on and on.

There is also the question of wastage of public funds, because once you go direct procurement or restricted tendering, you deny the public the advantage of ensuring that it gets value for its money because you reduce competition in a sense and that really jeopardises the public. We are talking about procurement values running into billions of shillings. I also want to

illustrate another aspect of wastage of public funds. If you look at the procurement of an item which was then referred to as ‘security seals’, you will find that IEBC procured 3.7 million of them in March, 2017 for use in the elections of August, 2017. It is interesting to note that even though IEBC procured 3.7 million security seals, the supplier was able to supply only 2 million seals. That means IEBC was supposed to have had a deficit of 1.7 million seals. When the elections were nearing, it became apparent that this supplier was unable to supply the balance of 1.7 million seals. So, what happens? To our consternation, IEBC proceeded to engage another supplier through direct procurement, without even attempting to cancel the previous contract with the first supplier. But even to our further consternation, this second supplier was not contracted to supply the balance of 1.7 million seals. This time round, this supplier was contracted to supply only 500,000 seals. But the IEBC proceeded to conduct the elections with 2.5 million seals against the original 3.7 million seals that it had procured. That means, therefore, that it did not need the initial 3.7 million seals. The procurement of 3.7 million seals was exaggerated, and the numbers inflated for reasons which we do not know.

More importantly, the first supplier who failed to deliver 1.7 million seals went ahead to deliver these seals this time round after the elections and the IEBC went ahead and received them. As we speak, the 1.7 million seals that were delivered after the elections are lying somewhere in a warehouse of the IEBC in Nairobi. They have no idea what to do with them or how to treat those security seals. They are telling us that even though they have received them, they have not acknowledged - some very peculiar terminologies - and that they have not paid for them. What will happen eventually is that this supplier will go to court and ensure that he is paid this money plus interest and it will happen. That is just one demonstration of wastage of public funds. I would like to rush and conclude.

We have recommended that this supplier who failed to supply the security seals on time and in full be blacklisted by the IEBC. The supplier is Ms. Far East Limited. My Committee worked very diligently and was basing its recommendations on the observations and findings. Where we found culpability, we said so without mincing words. If we look at the IEBC Act, Section 11(a), I am sure Hon. Kaluma will be interested in this, it states that for the effective performance of the functions of the Commission, the chairperson and members of the Commission shall perform their functions in accordance with the Constitution and in particular shall be responsible for the formulation of policy and strategy of the Commission and oversight.

In Part B, it says that the Secretariat shall perform the day to day administrative functions of the Commission and implement the policies and strategies formulated by the Commission. What this section of the Act presupposes is that the Commission shall not meddle in the affairs of the Secretariat. Likewise, the Secretariat shall not meddle in the affairs of the Commission. Their roles are clearly defined and there is a clear boundary.

If you look at the minutes and, we had to struggle to get them, you will find that when the commissioners and Secretariat appeared before us, they were very reluctant to avail them. However, the Committee compelled them and eventually when we laid our hands on these minutes of the plenary meetings of the IEBC for the entire period of 2017, we were shocked. If you look at, for instance, the minutes of the 175<sup>th</sup> Special Plenary Meeting of the IEBC held on 31<sup>st</sup> March, 2017, and I want to read some excerpts here, they say:

“Min15.1.4. Following deliberations, the presentation by the Secretariat was noted and it was resolved that the Secretariat be allowed to continue with the procurement of the Kenya

Integrated Electoral Management System (KIEMS). This resolution was supported by Mr. Wafula Chebukati, Mrs. Consolata Maina, Dr. Roselyn Akombe and Mrs. Margaret Mwachanya.

Min.15.1.5. There was dissent to this resolution by Prof. Abdi Guliye, Mr. Boya Molu and Dr. Paul Kurgat for the following reasons:

- (a) There is no value for tax payer's money.
- (b) Ms. Safran Identity and Security did not have the technical capacity to deliver especially on results transmission.
- (c) Lack of market survey could not allow one to make an informed decision.
- (d) Not satisfied with the evaluation report by the Secretariat."

This is the meeting that gave the IEBC Secretariat the go ahead to procure the KIEMS from Safran Morpho. It is clear from these minutes that the commissioners not only got involved in the procurement process, but indeed, went further and voted. The question we kept asking was: Assuming those who voted against this procurement were more than those who voted for it, would we have gone ahead to procure the KIEMS from Safran Morpho? The answer is obviously "No". Therefore, the conclusion one can derive from this is that the commissioners actively got involved in the procurement process. That is contrary to the provisions of the requirement of Section 11(a) of the IEBC Act.

As I conclude, there was the issue of conflict of interest and that has been canvassed at length this afternoon in this House. If you look at the Leadership and Integrity Act Section 16 and the Public Officer Ethics Act Section 12, the matter of conflict of interest is very clear. Just for avoidance of doubt, under Section 16(1) of the Leadership and Integrity Act, a State officer or a public officer shall use the best efforts to avoid being in a situation where personal interests conflict or appear to conflict with the State officer's or public officer's official duties. Subsection 3 states:

"A State officer or a public officer whose personal interest conflict with their official duties shall declare their personal interest to the public entity or the commission."

I want to stop at that.

Hon. Temporary Deputy Speaker, it was established that the Chairperson of the IEBC, Mr. Wafula Chebukati, despite being a founding partner of a specific law firm - even though by the time he was coming to the Commission as Chairperson, he had purportedly resigned from that law firm - did not make any effort to declare either to his fellow commissioners or the Secretariat of the IEBC that he had dealings with this law firm before he joined the IEBC. Therefore, the Commission went ahead - I am not saying under his direction, because there is no evidence to that effect that he influenced the award of contract to this law firm, and awarded this law firm a number of contracts to represent it and act on his behalf in court. In the end, that law firm was paid not less than Kshs30million without Mr. Chebukati declaring in any form and in any meeting, to any person that he had dealings with this law firm prior to his joining the IEBC.

Hon. Temporary Deputy Speaker, if that is not conflict of interest then I do not understand what conflict of interest is under the Constitution and the relevant laws.

Hon. Temporary Deputy Speaker, the Committee is highly elated despite the fact that the Hon. Speaker in his wisdom expunged a number of recommendations of the Committee, and we respect that decision. The observations and findings of the Committee remained intact and they also form part and parcel of the records of this House; if this House in its wisdom adopts this Report.

One of the recommendations we made is on the investigative agencies, because my Committee has no capacity to carry out investigations that can lead to criminal trials. Therefore,

we asked the relevant investigative agencies; in this case, the Director of Criminal Investigations (DCI) and the Ethics and Anti-Corruption Commission (EACC) to move with speed and carryout further investigations on all these aspects and matters we raised. If anyone is found culpable they should be taken to court.

Again, from our findings, we have made it very clear, and laid a very strong basis that if we are living in a more advance democracy these individuals, be they commissioners or the Secretariat staff do not need the resolution of this House to vacate office. Their conscience should prick them, but I leave that to them given the ruling of the Speaker.

Finally, this country must not at any given moment forget its history and the past. If you read the Kriegler Report generated after the 2007/08 elections violence, you will find that among other things, it recommends that the constitution of the electoral body must happen well in advance for that body to have the capacity to run an election. With no doubt whatsoever, the IEBC as currently constituted, I strongly believe, even if we do some patch work and bring in new commissioners to join the old ones it will not have the credibility to conduct election that satisfies the interest of Kenyans.

Therefore, this House must take the lead in ensuring that the IEBC is restructured at the earliest possible opportunity to ensure that this country is ready to conduct free and fair elections.

Hon. Temporary Deputy Speaker, I beg to move. I want to ask my Committee Member, Hon. Patrick Makau, the Member for Mavoko to second the Motion.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Hon. Makau, you have the Floor.

**Hon. Patrick Makau** (Mavoko, WDM-K): Thank you, Hon. Temporary Deputy Speaker. It can never be put better than that. The passion with which the Chair, PAC has explained that Report leaves no doubt. It is true. Let me thank the office of the Auditor-General and Members of PAC for the tireless time they took to examine this Report.

When I hear some members saying some part of the Report should be expunged, it hurts me because if you look at how monies were wasted by IEBC, any Kenyan will know there was no proper use of the taxpayers' money. For example, I do not think the Chairman, IEBC had any idea and if he did, he must have misused his powers. You cannot sit in a tender committee and see billions being allocated to direct tenders. For example, the Information and Communications Technology (ICT) Director, Mr. Muhati authorised the purchase of bundle data worth Kshs1.8 billion that went to waste.

Again, the Chief Executive Officer (CEO), Mr. Ezra Chiloba gave out a direct contract of Kshs452,006,000 for International Business Machines (IBM) Biometric Voter Registration (BVR) machines which were not used. We cannot sit here and say there was value for money. If you look at the provisions of Section 11A of the IEBC Act, it is clear that the CEO did not advice the Commission or did not implement any policy by the commission. In fact, I want to invite this House--- If you watch National Geographic, you will see there was a rush for who is who in the tender issuance and who was giving what. If you have ever seen how a small fish called "piranha" attacks its prey that is what was happening at the IEBC. The commissioners and the Secretariat were wrangling over who will give what.

It is high time this House adopted this Report this time when we are talking about corruption. I do not think this is corruption but direct theft. It has become a tendency in this country every electioneering year for all State Agencies to have pending bills. The 2013 and 2017 pending bills are still outstanding. It is upon this House, and particularly the National Treasury and the office of the Auditor-General to see what can be done about the IEBC pending

bills. As time goes by these bills are attracting interest from the firms that were illegally awarded contracts.

The economy of this country is not doing very well. It is high time this Report is implemented to the letter. I want to commend PAC Members plus our very able Chair who has put a lot of time to this. This Report is not in vain. I invite Members, as I second, to support it. Let this country realise that the National Assembly is serious and everybody liable must be held culpable.

With those few remarks, I second. Thank you.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Order! Hon. Members, I will propose the Question on this Motion. Before I do that just to refresh our memory that a lot has been discussed on this Motion, but we did not go into the substance.

I think all that has gone to the record of the House has been on the basis of a point of order raised by the Leader of the Majority Party. The Speaker went on to make a ruling on a number of critical issues raised. Therefore, what the Chair has moved is the Report of the Committee taking into consideration sections expunged through the ruling of the Speaker.

*(Question proposed)*

We will consider the Report taking into account parts of it which have been expunged. I can see we have quite a bit of interest. I will start with the Leader of the Majority Party, Hon. Mbadi.

*(Laughter)*

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Order Members! I am sure the Leader of the Minority Party does not want that to go into the record. This is the Leader of the Minority Party, Hon. John Mbadi.

**Hon. John Mbadi** (Suba South, ODM): Thank you, Hon. Temporary Deputy Speaker. You are right. I am proud to be the Leader of the Minority Party of the National Assembly and not the Leader of the Majority Party who is Hon. Duale. There is that separation and clear demarcation.

Allow me to support the Report of the PAC. One of the cardinal functions of the National Assembly or Parliament world over is to oversee. It oversees the Executive and other agencies through parliamentary committees. The PA) is one of the oldest committees of Parliament in any jurisdiction, and more so in the Commonwealth countries.

The PAC has a cardinal responsibility of overseeing the expenditure by the Executive, following the audit by the Office of the Auditor-General or the Controller and Auditor-General Office, as it used to be called. This is one of those committees chaired by the Opposition or Minority Party in any jurisdiction. It is understood that the Opposition or Minority Party would check the performance or execution of the functions and expenditure of public funds by the Executive in a better way.

I want to, first, congratulate this Committee for doing a thorough job of looking at the Auditor-General's report regarding the affairs and expenditure of the IEBC. I have looked at this Report and I am happy because the Committee, in its wisdom, saw it fit or right to bring the Report without making further amendments; except the exclusion of the expunged sections of the Report as ordered by the Speaker which is fine.

I remember we came up with the laws in this House regarding the electoral processes the 2007 General Election and Constitution 2010. After the 2007 electoral process, which resulted into very unfortunate circumstances - we are all aware of - Kenyans with the help of our friends, decided to look at the entire electoral process. We even invited an expert, Justice Kriegler, who came to this country and made clear recommendations. I sat in the Constitutional Implementation Oversight Committee which was tasked with the responsibility of reviewing all the laws that actualised the Constitution. That was when the Departmental Committee on Justice and Legal Affairs had a problem. We did not have that Committee for almost two years. Therefore, all the legislations were scrutinised by the Committee where I sat.

One of the things that we did when we were coming up with these electoral laws was to try to separate the functions of the Secretariat from that of the Commission in line with the recommendations of Justice Kriegler. We gave the mandate of running the day to day affairs of the Commission to the Secretariat. We went ahead and even prescribed that the matters of procurement are supposed to be exclusively dealt with by the Secretariat.

It pains me to read this Report and find that the Commission which we denied the power to be involved in procurement was doing it. The answer is simple. Where I do not agree with the Committee fully is that the legal framework is not clear today on matters of procurement. The legal framework is clear. It is only that the commissioners want to get involved in procurement for obvious reasons. We need to look at why we should have permanent commissioners in this Commission. These commissioners sit in the Commission from Monday to Friday to discuss matters of policy. Why do commissioners sit in Anniversary Towers for five days a week over 20 days a month? They will obviously get involved in operational activities because there is no much work to warrant their continued and permanent sitting in those offices.

The reason the cost of election in this country is very high is because of corruption. This is the corruption which the Auditor-General has unearthed, and which PAC has investigated and agreed to. Therefore, to stop this wastage of public funds and frustrate these Kenyans who want to profit, benefit and become rich out of taxpayers' money, it is important that we have the State agencies which have the mandate and powers to investigate with a view to prosecuting and have prosecutorial powers like the DPP to handle these individuals. We cannot allow a few people to become billionaires at the expense of the poor taxpayers. It is immoral, and we must bring it to an end.

I sat in the PAC in the last Parliament when we started investigating this matter. I agree with this Committee that the information that was coming to us was mind boggling. The CEO of the Commission was recruited with a lot of hope. Kenyans had a lot of hope because of his background. He had just come from the United Nations Development Programme (UNDP).

*(Technical hitch)*

Hon. Members, let us confine ourselves to the mandate of this House.

Hon. Tonui Kiprotich, you have the Floor.

**Hon. Ronald Tonui** (Bomet Central, JP): Thank you, Hon. Temporary Deputy Speaker for giving me this opportunity to support this Report although I believe that in its current form, it is disabled because of the action of excluding certain sections. Even though it was a decision of the House, I believe that freedom of expression should have been part of the Report to make it flow nicely. All the same, we have to go by the ruling of the Speaker.

Among the recommendations contained in the Report is the Kshs4.3 billion contract that was signed without a performance guarantee. I would have wished that Report should have gone ahead to clearly state the consequences of failure to have the performance guarantee so that it can be understood in a simpler manner. But since it is not there I believe it is important to provide for it so that we have all the information that is required.

There is a recommendation on recovery of funds which were paid, but no services were rendered. Currently, we have many challenges which require funding. There is no way we can allow people to be paid for no services rendered. I support the recommendation by the Committee that the funds need to be recovered. I urge the relevant authorities to follow it up and make the recovery.

Hon. Temporary Deputy Speaker, there is the issue of verification of pending bills. The Report is so voluminous, but I have perused through it. I have not seen the figures. Those figures are not captured in the recommendations section. I would have wished that the figures of the pending bills were stated in the recommendation. As a mathematics teacher I love figures. When I see them, I am able to raise questions and verify them. Even in committees, those are my key issues. While others talk generally and move on, I normally want to see figures as I did today in the Departmental Committee on Labour and Social Welfare.

On the issue of failure by the Commission to exercise oversight over the Secretariat, I believe we need to strengthen the Commission by replacing the commissioners who left. I believe that is the only way to strengthen it. We are now all in the Government; there are no longer Opposition and Government sides.

Issues of electoral reforms, which used to be championed by the National Super Alliance (NASA), are a forgotten story at the moment. I believe this institution needs to be strengthened by ensuring that more commissioners are appointed. I do not have many issues on the current structure of IEBC. After all, it presided over our elections and I was elected to this House in a very fair manner. So, I believe the structure, as it is at the moment, is okay. We only need to deal with issues where money was paid without services being rendered so that we recover it. We should then strengthen IEBC by appointing more commissioners.

I am also happy with the section where the Committee dealt with issues of supplies to the Commission. The average price of an item in retail market should be considered. I believe all Government institution need to consider this. A simple pen costs Kshs15 in a supermarket but when it goes through the tendering process its price jumps to Ksh150. Surely, when we deal with issues of supplies, we must have a category where we state the tender price and the retail price so that it is simple to understand. There is real looting in Government. I talked with a Member in one of the committees where I sit and she told me in confidence that a lot of money which is allocated for development, only 30 per cent is actually spent on development. Seventy per cent is shared within Government through the stages of tendering. Everyone wants a share of it. When you are told the cost of certain things you get amazed. So, I believe, we should be getting a list of supplies showing the average retail price for every item quoted. It should be indicated that so and



so is supplying this and the average supermarket price is this, to ensure that the public gets value for money.

The issue of reviewing the Public Procurement and Assets Disposal Act is very important. We need to re-look at it because currently, everything that goes through procurement is very expensive. I have seen the way classrooms are being constructed by the national Government and the county governments. When they go through the Public Procurement and Assets Disposal Act directly, they do it at a cost of Kshs2 million per classroom. When other institutions build it, they do so at Kshs1.5 million. When I do it by sending the money direct to the school board of management, the maximum they can use is Kshs500,000 per classroom. I tell the villager to count the number of lorries supplying building blocks so that the public can benefit. I believe the average retail price for every item needs to be captured during procurement exercises. I believe the Public Procurement and Assets Disposal Act does not capture the idea that has come from this Report. It needs to be amended so that retail price of every item quoted can be shown.

With those remarks, I support.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Let us now hear Hon. Mogaka Kemosi.

**Hon. Vincent Kemosi** (West Mugirango, FORD-K): Thank you, Hon. Temporary Deputy Speaker, for this opportunity to contribute to the Report.

Article 227 of the Constitution of Kenya provides that when a state organ or any other public entity contracts for goods or services, it shall do so in accordance with a system that is fair, equitable, transparent, competitive and cost-effective. Section 11(a) of the IEBC Act provides for the relationship between the Secretariat and the Commission. In that particular section, the work of the Commission is to formulate policy and strategy while the function of the Secretariat is to implement the policy and strategy. Therefore, we do not expect the members of the Commission, together with the Chairman, to interfere with the day-to-day management of the Commission's affairs because that is the sole mandate of the Secretariat.

The IEBC is a public entity and we expect it to be guided by the Public Procurement and Asset Disposal Act, 2015 when it procures goods and services. In 2017, IEBC, while procuring the KIEMS kits, decided to do direct procurement. This has been explained in the Report which says they decided to go that way because they were faced with legal challenges. I do not agree with that. The Constitution of Kenya, 2010 is very clear that on 8<sup>th</sup> August, 2017, we would have general elections. So, this means IEBC knew very well that we would be having elections on 8<sup>th</sup> August, 2017; they had a long period of time to prepare themselves.

The Constitution, under Article 227, provides that the process must be competitive. The purpose of this is to give other bidders an opportunity to participate in the process. The advantage of competition is that the taxpayer will get value for money from goods and services procured. When you do direct procurement, you have to agree with whatever price is quoted for the goods to be supplied.

While trying to procure goods, accounting officers must also be guided by the price index provided by the Public Procurement Authority in that particular year. Most of the accounting officers do not take the price index into account. Most of the goods are procured at much higher prices compared to the price index published annually by the Public Procurement Authority. In order to address this situation, accounting officers must be made to comply with Section 54(2) of the Public Procurement and Asset Disposal Act, 2015, which prohibits public officials from procuring goods and services at inflated prices. Procuring entities must be made to comply with the price index and the relevant laws.

There are some areas where the Secretariat must have not complied with the law. It is high time, as we adopt this Report that the agencies responsible for carrying out audit and also investigation came in, investigated and see where the law was not complied with so that the culprits can face the law.

I support the Report.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): The Leader of the Majority Party, you have the Floor.

**Hon. Aden Duale** (Garissa Township, JP): Hon. Temporary Deputy Speaker, the Chair of PAC said I should speak because he is a student; he wants to go to class. That is why I had to come back.

I rise to support the Report of the PAC on the report of the Auditor-General on the financial statements of IEBC. At the outset, I want to thank the Committee for doing a good job. More so, I thank the Speaker for making sure that the House does not violate the Constitution.

Article 251 of the Constitution is very clear. The PAC is one of the most respectable committees in any parliamentary jurisdiction, be it parliamentary system or presidential system. What is the function of PAC? The Committee has a single broad fundamental function. If you allow me, I will read out Standing Order No. 205(2), which states:

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

The PAC deals with what comes from the Auditor-General. In my honest opinion, in a layman’s language, PAC is like a mortician. It is like conducting a post-mortem. Hon. Nyikal will agree with me. They deal with a matter which has been concluded by the Auditor-General. Their business is to give chance to those other people to come and agree with what the Auditor-General has done. I thank the Office of the Auditor-General.

The Auditor-General, Mr. Ouko, will go down in the history of this country as one of the finest Auditor-Generals we ever had. Public Accounts Committee deals with accounting officers. The IEBC Act is very clear. The accounting officer ought to appear before IEBC. He should be held responsible even in the matter where there was a conflict of interest between his chair and the Commission. This accounting officer called “Chiloba” was bigger than life. We must call a spade a spade. That man was bigger than IEBC. He must be held accountable. He was the accounting officer. He is the person answerable to the Auditor-General in terms of the Public

Audit Act, the Public Finance Management Act, and the IEBC Act. The Commission deals with policy.

So, if for example, there was conflict of interest in the law firm where Chebukati is named, it is the work of the accounting officer to reject it and say, "I will not sign this." All these things the Chair has said where 1.7 million seals are delivered after the general elections, the person who should be taken to court, charged and jailed is none other than this young man who was very famous to the women of this country because of his looks. He is called "Chiloba". That is the person to be held accountable. We are missing---

*(Hon. Junet Nuh spoke off record)*

Hon. Junet, you have just come in. First listen to what has been going on this afternoon.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Hon. Junet, what is out of order?

**Hon. Junet Nuh** (Suna East, ODM): Hon. Temporary Deputy Speaker, is the Leader of the Majority Party in order to describe a senior member of the Kenyan society as the only one who appeals to women and no any other person? Which kind of women is he talking about? What age and colour? Can he describe them better?

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Hon. Junet, are you disputing his reference to only one man as being the one who is... Hon. Kaluma, the Leader of the Majority Party is desirous of hearing your point of information.

**Hon. Peter Kaluma** (Homa Bay Town, ODM): Hon. Temporary Deputy Speaker, I am informing both the Leader of the Majority Party and Hon. Junet that for men who are not as gifted as the gentleman the Leader of the Majority Party was describing, they had many problems during the elections. In fact, the gentleman had a new name in Kenya called 'Chilobae'. So, the Leader of the Majority Party is very right to say that this was a person who won the favour of very many women by his looks.

**The Temporary Deputy Speaker** (Hon. (MS.) Soipan Tuya): I am not sure that is substantive information.

**Hon. Aden Duale** (Garissa Township, JP): Thank you, Hon. Temporary Deputy Speaker. You know when it comes to expert advice on women, Hon. Kaluma is my authority.

**The Temporary Deputy Speaker** (Hon. (MS.) Soipan Tuya): The Leader of the Majority Party, I will allow a point of order from Hon. Oduol.

**Hon. Prof. Jacqueline Oduol** (Nominated, ODM): Thank you, Hon. Temporary Deputy Speaker. Is the Leader of the Majority Party in order in a discussion of a matter of such magnitude in a House of Parliament, to refer in a way that shows hatred and disregard for women, while he does not have any basis or authority and he is not even one of them? Is he in order to make that remark?

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): The Leader of the Majority Party, you need to come clear on what you have said about the women of Kenya in relation to the IEBC.

**Hon. Aden Duale** (Garissa Township, JP): Hon. Temporary Deputy Speaker, you being of that gender, I am sure you will agree with me, after my expert authority on this matter, Hon. Kaluma, has spoken. Even when we walk in the streets with Hon. Junet, the attention of our other halves is more on me than him. Very few women will look at Hon. Junet; more will look at me, particularly ladies from our community because having lived in Migori he no longer looks like us.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Order the Leader of the Majority Party! I think we need to refocus on the substance. But since you have mentioned Hon. Junet, it is only fair that he says something about your statement. Hon. Junet, you have the Floor.

**Hon. Junet Nuh** (Suna East, ODM): Hon. Temporary Deputy Speaker, it is known that I attract the other gender more than the Leader of the Majority Party. How can you be attracted to a man with a bald head who is now putting on a *kofia* to hide his baldness? How can women be attracted to such a person? He has lost all his hair; he has no hair on his head. How can he be attractive?

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Order! The Leader of the Majority Party, please redirect us to the substance of the Motion.

**Hon. Aden Duale** (Garissa Township, JP): Hon. Temporary Deputy Speaker, thank you. I will now go to the substance. I am sure the great ladies out there will make a decision based on the expert advice.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): It is said that beauty lies in the eyes of the beholder. So let us leave that to the beholders.

**Hon. Aden Duale** (Garissa Township, JP): Hon. Temporary Deputy Speaker, I really want to take time. The person who should be held culpable is the accounting officer, and in this case, the CEO and Secretary to the commission. Let us call a spade a spade. You can dislike Chiloba because of how he looks. You can dislike the other commissioners, but the person who should be held responsible, based on any report of PAC or from the Auditor-General, is the CEO. I have a feeling that we had a number of CEOs. Hon. Shollei was one time a CEO. The other gentleman who was a CEO before Chiloba... These were people of integrity. The problem is we brought a clerk from UNDP. The Committee must pin down that person. He is the one who made sure that companies like OT Morpho... I am wondering why OT Morpho is not indicted here. It was given over Kshs23 billion in both elections. Now they have changed their name and they are doing other jobs here. Hon. Wandayi, the way you blacklisted that company that brought 1.7 million seals after the elections, is the way you must blacklist OT Morpho.

*(Applause)*

The problem with our elections, from the kits to transmission of results, is OT Morpho. It is a French company, but here it is owned by some people. We must say it. The problem with my colleagues from ODM is that you talk of think tanks. When I used to be in ODM in 2007, when we were sharing power with Kibaki, I learnt something called ‘irreducible minimum’. That is an ODM terminology. They would tell you this is irreducible minimum. Now they have introduced something called ‘electoral reforms and justice’. You cannot reform the electoral system without dealing with OT Morpho. Why are you dealing with Chebukati? Deal with the guys who supplied the infrastructure for the election.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuyu): Hon. Kaluma, what is out of order?

**Hon. Peter Kaluma** (Homa Bay Town, ODM): Hon. Temporary Deputy Speaker, I never interfere with the Leader of the Majority Party, but there is a point he has made which is crucial. I think it should be substantiated further. He has mentioned that the local faces or owners of OT Morpho are known. It would be good for this House that we get that information and we go in the direction that that goes. He is doing a very good job for Parliament.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuyu): Yes, the Leader of the Majority Party.

**Hon. Aden Duale** (Garissa Township, JP): That is the work of PAC that invited OT Morpho to appear before them. The information I hear is that they appeared very late in the evening. I asked Hon. Junet, “Did OT Morpho come?” He told me no. But later when I talked to the Chair I gathered Hon. Junet was away that Friday when they came. The problem in our country is that we are dealing with individuals. We chased Issack Hassan. We chased so and so. Why are we chasing individual Kenyans until now it has become difficult to work for IEBC? We are stigmatising the staff of IEBC, who are innocent Kenyans. We are stigmatising Kenyans who have their careers every year because of IEBC. Every election, we hound them out of office. But we do not deal with the issue. We must deal with the suppliers of ballot papers, equipment and technology, and we must get transparency on how they supply. Chebukati is a very innocent man from Kitale. Or is it Bungoma? He is a very innocent man. Guliye is from Nakuru. Molu is from... The other characters who left... Hon. Wandayi, you need to listen to me. I have stated the function of PAC.

That is why you will never see Cabinet Secretaries appearing before PAC. It has never happened. The people who appear before PAC are PSs and Hon. Nyikal is a good example. So, crimes committed by the CEO are being transferred. The CEO became a politician and a wheeler-dealer. He made a lot of money and I do not know even whether he has influenced the Committee. Maybe he has influenced it so that the Committee can spread liability. The crime committed was for Chiloba, but Chiloba said “let me share this crime that will take me to court with the commissioners”.

As a House, we are saying that you are the one who will go to court. We must tell the French company. I really wanted this Report to be discussed when the President of France was here. This House would have discussed it at that time so that Emmanuel Macron and the French Government must know that in their capitals they talk about transparency, good governance and good elections, but when their companies come to Africa, they are involved in corruption. How

do you pay one company Kshs23 billion? As a country, we must decide how much we will pay to conduct elections. The election of Kenya is like you are conducting an election for people to go to heaven which is a very difficult thing.

If today you are told to do an interview for those who will go to heaven, it is very difficult. So, in the process of electing Hon. Kaluma, each citizen, even the unborn are paying dearly and crooked deals are taking place. They have bribed the Judiciary to get fair judgements, whether it is a ballot paper company or transmission.

Hon. Wandayi is a man I respect and he is a very good Chair, but on this one, if you watch football, you scored your own goal. You know that PAC is a Committee whose reports cannot be amended. Issues of constitutionality cannot be raised. So, let us deal with Chiloba.

Secondly, if you want to indict the Commission, the procedure is well documented. Where I had a problem is if we indict the commissioners through this Report unapproved, there was no way this House could have dealt with a petition to remove them. There must be separation of jurisdiction. You cannot be the prosecutor and the judge.

The Committee has done a number of things that will help us reform our electoral system. The Committee observed that there were instants of outright conflict in the functions of the CEO. The CEO's functions are well documented in the IEBC Act, and Hon. TJ and the legal officers in committees know that.

Mr. Chiloba cannot use Mr. Chebukati and the two other guys as suicide bombers. He cannot tie them together. He should carry his cross. I note in the Report that this problem arose due to the manner in which the IEBC Act is couched in particular on the functions of the CEO. If there is a grey area, the Departmental Committee on Justice and Legal Affairs should look at that Act and make a clear determination between the function of the CEO and that of the Commission. Part of the reforms we are going to introduce.

We are tired and I want to tell our friends from the Orange Democratic Movement (ODM) that I was a member. It is the party that inducted me into politics and in the unlikely event that I leave Jubilee Party you will never see me in Wiper Party, ANC or KANU. I will go to the ODM. It is a serious party like the Jubilee Party. I will not think twice even when I close my eyes. I will know where I will go. So, I want to give some advice to the ODM that elections are not won through the IEBC.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuyu): One minute for the Leader of the Majority Party

**Hon. Aden Duale** (Garissa Township, JP): I want to tell the ODM fellows that it is the people of Kenya who vote. So, if you do not win, it is not the IEBC. It is the people who denied you votes. Hon. Junet is listening. Let us stop the story of evicting commissioners. If you look at Chebukati's demeanour, he is a very decent and polite man. He is a man of God and he cannot be influenced or corrupted. The two other commissioners are also pastrolists. They are very honest and so, I really want this House to move forward. Let us ask the Departmental Committee on Justice and Legal Affairs to bring an amendment or Hon. Kaluma is aware of it. Let us fill the remaining four Members then we can bring a reform legislation on the IEBC and we can deal with crooks like OT and those that bring materials after elections.

Finally, I thank the Chair, PAC. I will ensure that every report you bring, as the Leader of the Majority Party, I will not allow it to be amended, but please, do not make crimes to be shared. Crimes must be carried by those who commit them. In this case, Chiloba must carry the cross and Chebukati and his team must be left alone or they can carry the coffin.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Hon. Junet, are you on a point of intervention?

**Hon. Junet Nuh** (Suna East, ODM): Thank you, Hon. Temporary Deputy Speaker for giving me an opportunity to contribute. I want to thank the PAC for the wonderful Report they have done for this House. I am a Member of the Committee. However, I want to remind the Leader of the Majority Party that a Commission consist of commissioners and the Secretariat. You cannot separate them. They are jointed at the hip and are full time.

You remember when the EACC took some people to court and there were no commissioners in place, all the cases were dismissed because the Commission was not fully constituted. There were no commissioners in office and they lost many cases because of that. So, to insinuate that a commission can only be run by a secretariat and an accounting officer is to miss the point and the reality of the matter.

I participated fully in the interrogation and the sittings of that Committee. What happened in that Commission for the last two years is gross violation of the Constitution of the Republic of Kenya.

That is a Commission that threw out of the window all provisions of the law including the Constitution. Why should we be the ones who are holding the most expensive elections in the continent of Africa and in the world? Elections in Kenya cost US\$7 per voter. Why should an election cost me that much?

**Hon. Ali Rasso** (Saku, JP): On a point of order.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Hon. Junet, there is a point of order from Hon.Rasso.

**Hon. Ali Rasso** (Saku, JP): Thank you, Hon. Temporary Deputy Speaker. As a matter of procedure, is Hon. Junet contributing to this debate or he is on a point of order? I can almost see that he is contributing to the debate. Thank you.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Hon. Junet, are you on a point of intervention or you are contributing?

**Hon. Junet Nuh** (Suna East, ODM): Hon. Temporary Deputy Speaker, I am contributing, but you know he was a member of the armed forces and retired at the level of Colonel. He does not know that I am the Chief Whip and I am also a leader here and the Colonel rank remained in the barracks.

This is a very serious matter because of the amount of money.

**Hon. Adan Keynan** (Eldas, JP): On point of order, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): What is it, Hon. Keynan?

**Hon. Junet Nuh** (Suna East, ODM): It is my time, Hon. Temporary Deputy Speaker. Are you going to add me more time?

**Hon. Adan Keynan** (Eldas, JP): On a point of order, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): What is it, Hon. Keynan?

**Hon. Adan Keynan** (Eldas, JP): On a point of order, Hon. Temporary Deputy Speaker. Is it in order for my good friend, Hon. Mohamed Junet, to demean the Kenya Defence Forces (KDF) when we know it is the most sacred institution in the Republic of Kenya? To demean the role Hon. Rasso played in the KDF... If anything, he is one of the most celebrated former KDF officers in the African way. Hon. Junet should withdraw that demeaning remark about anybody who has served in the KDF.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Come clear, Hon. Junet. What was your statement?

**Hon. Junet Nuh** (Suna East, ODM): The Member I referred to had no problem. I was just telling him that I am more senior than him in the House, but the other Member is intruding the matter by thinking it is a community affair. I have talked about somebody from Marsabit and he has to respond. We should stop that kind of business in this House. We are not in our village elders' meeting. We are in the National Assembly. This matter is very serious.

**Hon. Makali Mulu** (Kitui Central, WDM-K): On a point of order, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Dr. Makali, what is it?

**Hon. Makali Mulu** (Kitui Central, WDM-K): On point of order, Hon. Temporary Deputy Speaker. With all due respect to Hon. Junet, I think he should apologise. He stood on a point of order and started contributing. Instead of appreciating that you had given him a chance, he is now harassing my friend.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): I think Hon. Junet clarified that he is substantively contributing.

**Hon. Junet Nuh** (Suna East, ODM): It is the prerogative of the Speaker to allow one to speak and you gave me the Floor.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Hon. Junet, that is very clear, but Hon. Keynan has made some insinuations.

**Hon. Adan Keynan** (Eldas, JP): I have tremendous respect for Hon. Junet, but I will not allow him to abuse the practice and traditions of this House. I stood on a point of order and sought the guidance of the Chair on that misleading statement by Hon. Junet on the Membership and those who serve in that sacred institution called the KDF.

Secondly, instead of apologising or withdrawing, he went ahead to make other further discouraging remarks on the role of village elders. He is a product of Hon. Raila Odinga and other elders in his constituency. I am also a product of very proud village elders from my constituency called "Eldas". Therefore, is it in order for him to abuse and demean the role of KDF officers and negate the role of elders?

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Order, Hon. Keynan! Hon. Junet, on the first point, you were referring to Hon. Rasso when you talked about the KDF. You also clarified that you are more senior than Hon. Rasso in the House, if that is what I heard. On the issue of elders, you need to clarify. We have dispensed with the issue of the KDF. On the issue of the elders, just clarify and then let us move to the substance of the Motion.

**Hon. Junet Nuh** (Suna East, ODM): Hon. Temporary Deputy Speaker, I have a serious contribution to make before the House. I did not refer to him as an elder. I said this is not a House of elders. So, it is about the House and not him. I know he is protecting his cousin who is a member of the IEBC. So, he does not want me to oppose this. Let him not waste my time.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Order, Hon. Junet!

**Hon. Adan Keynan** (Eldas, JP): Hon. Temporary Deputy Speaker, allow me with due respect to ask for the HANSARD because this is a House of record. First, the statement he made about Hon. Rasso that he is a retired former KDF officer and their work is in the barracks, is demeaning

Secondly, he said that this is not a place of village elders. According to my tradition, unless he is also running away from the tradition of where he was born, village elders play a very important role. Thirdly, I do not have a cousin or anybody in the IEBC. Can he produce evidence or withdraw profusely and apologise? I am not the likes of your small unexperienced membership. In fact, if it is about seniority, I am your senior. Can you go ahead and apologise?



**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Order, Hon. Junet! You know you cannot make disparaging remarks against any Member of this House. I cannot ignore the point of order raised by another Member. If you do not want us to go back to the HANSARD to ascertain that you said that Hon. Rasso belongs to the barracks, then you must withdraw.

*(Hon. Junet Nuh spoke off record)*

Hon. Junet, you do not have the microphone. If you made that statement, you must withdraw. If the statement against Hon. Keynan is to the effect that he is...

*(Hon. Junet Nuh spoke off record)*

Order Members! Both of you are out of order. None of you has the microphone and this is not about the two of you. The House is running and we have to be bound by the rules.

I am speaking right now and Hon. Junet is on his feet because he was contributing. If you want us to go back to the HANSARD, we can do that to ascertain the statements you have made. If you can be forthright that you said Hon. Rasso belongs to the barracks and insinuated that Hon. Keynan is an elder, you should withdraw.

We want to move on because I cannot entertain disparaging remarks by any Member against another in this House. Hon. Junet, you should make it short and brief so that we do not go back to the HANSARD. But if you want us to bring it out, we will do so before we move on. We will skip you as we wait for the HANSARD. Let us have Hon. Manje.

**Hon. Joseph Manje** (Kajiado North, JP): Thank you, Hon. Temporary Deputy Speaker for giving me a chance to contribute because I have been waiting. I want to appreciate the work done by the PAC. We do not go very far because we do not implement recommendations by committees of Parliament.

If you draw parallel between implementation and corruption, you will find that all the reports we have been coming up with in this Parliament have never been implemented to the full. That is why we have repetition of the same things. I was drawing a parallel between the particular uses of money by the IEBC in the past election and in the previous one and I saw the same similarities.

There was a tag of war in 2013 between the then CEO, Mr. Oswago, and the Chairman at the time. They were unable to procure the Biometric Voter Register (BVR) kits for this country, and the Government had to take over and do Government to Government procurement.

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

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

The same thing happened in 2017. Why should we repeat the same? I sat in PAC in the previous Parliament for five years and the Report we are reading today is similar to what we recommended then. How can the House sit in vain? We recommend something, it is not enacted

and the actors repeat it. At that particular time, we said that there was conflict of interest between the then Chairman and the CEO. They were unable to work because of the conflict of interest. There were about three procurement committees that were not able to procure the BVR kits. The same thing was repeated in the previous election. If we do not do anything about it, the same thing is likely to be repeated in 2022. It is time we sat down as Parliament and asked whether we should come up with reports that are never implemented. That is not the way to go.

If you look at the level of corruption in the country and read the previous Report by PAC, you will see that it is a repetition of what has been going on since time immemorial. It is repeated in the same design. Things are imported from abroad and paid for, but they are not supplied. It is the same thing. If we implement the recommendations in this particular Report, we will go somewhere. If we keep doing things in vain and put the reports in the library, then, it would be useless to come up with the reports.

We need genuine oversight in this country. We have to oversee taxpayers' money. If we continue doing things casually, fighting over issues that are dear to this country while our people are dying in the background because of lack of medicine and other essentials, we will not be doing justice to this country.

The IEBC is normally given money at the last minute. They should be given money to manage within a longer period. They are denied a good budget during other years until the last year of elections which means that they normally work and operate in a hurry.

In previous elections, they procured items shortly before the elections. They were not given enough time to implement and test the equipment because they were supplied the last minute. Why can we not plan and make sure that our systems operate?

We also make our elections very expensive because of distrust among communities. In developed economies and democracies, elections are not taken as seriously as we do. Some of them are done at the post-office. They are announced after three or four days. Nobody is interested. When you get a position, you are expected to serve diligently. We have to do something different. We have to make sure that we bring the cost of elections down. If you check that Report and the amounts spent in this country, you will be shocked. It is as if the only important issue is elections. We spend so much money on elections while our schools do not have desks and are not renovated. You go to the outskirts and you find schools built from mud and our children reading under trees yet we use a lot of money on elections. We have to see what we can do better.

We have to understand that sometimes the IEBC conducts very many elections at a go. They conducted six elections at once. We should find a method to separate national elections from county elections. The IEBC can conduct the three county elections at a go and then conduct the national elections on a separate day. That way, we may reduce the burden and the timeline of holding elections.

We also have to implement the Kriegler Commission Report. It was well-stated that we need to have this system well in advance. You cannot start changing the commissioners at the last minute. The commissioners should be well-versed in what they are going to do. Being a day-to-day Commission, you cannot wholly separate them from the Secretariat because they operate on a daily basis. Sometimes they divide themselves into different regions. You will find the commissioner in charge of Nairobi region is different from the one in charge of other regions. This is a situation where they work daily and, therefore, we cannot separate them.

With regard to that particular election, there was something I found peculiar where the Chairman and the CEO were fighting in the open. I have never seen a commission or an entity

where the chairman openly accuses the CEO. You remember before the repeat election, the Chairman of the Commission put the CEO to task even before other bodies did so. If you are a serious chairman, you should support your CEO to the hilt instead of engaging in mob justice against your CEO like other Kenyans. Despite the fact that the Chairman was supported by some Members, he erred. How can you accuse your CEO before investigations are conducted? You are showing your house is not in order yet you are the chairman of that particular organisation. You ought to support your CEO.

There is also the way they procured previous lawyers. If you compare the lawyers the IEBC had in 2007 when they won and the lawyers they had in the 2017 elections when they were defeated, you can see that the latter were of very low quality. They did not defend their position properly and that is why the election was nullified. Check the lawyers and compare them to the ones they had previously. That means they were not very serious. They wanted that election to be nullified because of the tug of war between the commissioners.

Lastly, there have been consistent entities that are used in corruption. They are French and Canadian companies repeating the same thing. I can assure you that in the next elections---

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Hon. Member, your time is up. Hon. Kajwang', is anything out of order?

**Hon. T.J. Kajwang'** (Ruaraka, ODM): I am not on intervention. I want to contribute, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): No. I am religiously following the request list. I am aware every Member wants to contribute, but please, wait for your chance. You are out of order! You are not even far on the list. You are out of order, Hon. Kajwang'!

Let us have the Member for Igembe South.

**Hon. John Paul Mwirigi** (Igembe South, Independent): Thank you, Hon. Temporary Deputy Speaker. I rise to support the Report by PAC. They have done a commendable job as far as investigations are concerned. As a House, it is our job to oversee commissions and all bodies which concern the Republic of Kenya.

First and foremost, I want to support the Report since the Committee has elaborated in its recommendation what messes up the Commission. During the reforms, the functions of the Chairperson, the CEO and the commissioners were defined well, so that we do not have conflict of interest. This is what happened to the IEBC.

During the procurement, the CEO, together with the commissioners, had their interest in procuring KIEMS kits which were supposed to be used during the election. As you all know, election is a crucial activity in the Republic of Kenya. At the same time, we are supposed to be serious in exercising our oversight role.

The Report of the Committee expresses that there was conflict of interest. Procurement favoured the company which the IEBC officials wanted since they had hidden agenda. There is something which they wanted to obtain from the companies. It is good for the IEBC budget to be spelt out clearly. This will ensure that when money is being spent, there is a timeline to spend it, how it is used and what it is used to purchase, so that we can have transparency in the procurement process. We should not award some contracts to companies which are not qualified, and even without involving other companies which have capacity to purchase the equipment required to do the activity. I understand there is the timeline which guides or governs what to buy and the limitation of prices. When the acquisition of the kits was done, some of the prices were exaggerated. The citizens of Kenya are exploited. They pay taxes, but the money is

not used properly. When tenders are being awarded, it is good for us to scrutinise them to see the companies which are given the tenders and method that is used to come up with the companies. The Report of the Committee should be taken seriously and implemented the way they have proposed.

The commissioners also failed to exercise their oversight mandate. They lacked prior planning. When they started to acquire the KIEMS kits, there were no plans and this contributed to lack of fairness, equity, transparency, competency and cost-effectiveness.

I beg to support the Report. Thank you.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): The Member has spoken well. That is the youngest Member in the 12<sup>th</sup> Parliament. So, the youths are well represented. The Member for Navakholo, Hon. Wangwe Emmanuel, you have the Floor. These are the Members who leave their cards in the system. The Member for Muhoroni, Hon. Oyoo, you have the Floor. The Leader of the Majority Party, we need to do something about the Members who leave their cards in the system. The Member for Seme, it is your turn.

**Hon. (Dr.) James Nyikal** (Seme, ODM): Thank you, Hon. Temporary Deputy Speaker. Let me start by congratulating the Committee. The PAC is the most important committee in the House. It expresses our oversight function in the way public funds are used. I agree with you that when the House is empty like this and we are discussing a PAC Report, it is something to be concerned about.

This particular Report is on the IEBC, which is the single institution that everybody looks up to every five years in terms of whether we are going to have peaceful transition in this country or not. This period is when we have our elections. We all know what happened. The elections were disputed. More than 300 people died because of this. One of the reasons was the transmission of election results, which was due to the procurements, which were done by the IEBC. If this Report says that we had problems in procurement and that things were not done properly, obviously, the person responsible for that must take responsibility for the chaos that we had and the people who died.

Look at what was brought before us, namely, a legal framework. There seems to be doubts on the legal framework of the institution. Members have indicated that there was a tag of war between the past leadership, namely, between Mr. Oswago and Mr. Issack at the time. Now, there has been a tag of war between Mr. Chiloba and Mr. Chebukati. When you have something recurring, you must look at the structural arrangement.

I know Chapter 15 of the Constitution provides that commissions are independent and full time. We must look at what full time commissions do. Do they do executive work? If they do, then, there will be conflict between the executive and commission. As indicated in Section 11(a) of the IEBC Act, that is something that we cannot take for granted. If one part of the Act gives the CEO executive powers and the Constitution gives the commissioners executive powers, then we have a conflict.

I agree with the recommendation of the Committee that we need look at the legal framework of the IEBC. We may be taking it for granted, but it is a cause of a big problem in our electoral system. The Committee talks of conflict of interest. We had a long debate today on the issue of conflict of interest. This is something Kenyans must look at very seriously. We must even, as individuals, know when there is conflict of interest. If it appears, as it is in the Report, that the commissioners and the officers made decisions on procurement in the interest of people they either knew or related to them, nothing can be worse than that particularly when it is IEBC and what it does for the people of this country.

Any change of Government is always a risky business and the people given that mandate cannot afford to have an issue like conflict of interest. They cannot look after their interests whether it is pecuniary or something else. So, I agree with the recommendation of the Committee that there is need to investigate this matter further with a view of prosecuting people who may have contravened the Public Procurement and Assets Disposal Act.

They have said that there is lack of oversight on the part of the Commission. We must go back to the structure. I am beginning to think that the legal experts must look at the IEBC Act, particularly Section 11(a) and the Constitution. It is possible to have an Act that is in conflict with the Constitution. Again, if they do not oversee, they have committed a big error against the country. Actually, it is a crime.

I will not go into the recommendations because that has been expunged through the ruling of the Speaker. The second recommendation can still apply here, so that lack of oversight should be investigated. Sometimes, lack of oversight can be criminal. There can be criminal negligence for which people can be taken to account.

Hon. Temporary Deputy Speaker, we have a huge pending bill. We have a pending bill in circumstances where the procurement process and its intent has been put into question. So, are the pending bills that we are going to pay genuine? Were they incurred properly? Do we get value for the money we are paying? We should look at the pending bills in two ways, namely, we should pay the genuine ones because they may be costly for the Government in future, but those that are not genuine should not be paid. Reason should be found why they are not genuine and the people concerned should take responsibility for that.

When we review the paid pending bills, we should look back to see if there is a way in which we can get some of our money back. Remember in the last IEBC, people in Britain who were involved were tried, found guilty and jailed. How could they be jailed while our people here were not even tried? In fact, funds were recovered and brought back to the country to be utilised, yet their counterparts here went scot-free. These are things we should really look at.

The CEO has been described variously. He was handsome and appealing to all kinds of people, but he signed away Kshs4.3 billion against the law or the procurement process according to the Report. It is also clear from the Report that he ignored the market value. Procurement law now indicates that if you have tenders that come out with costs that are far above market index, you can put that procurement to question. But many of our colleagues have said that the IEBC gets money late. I do not know whether that is intended so that things are hurried and they begin saying that if you begin questioning it, we will not have elections. We should look at that. Mr. Chiloba should be taken to task. I would even say more.

*(Hon. Peter Kaluma spoke off record)*

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Order, Hon. Kaluma! You must also learn. When the Member for Seme is contributing, please, allow the House, the

HANSARD and the Temporary Deputy Speaker to listen to his contribution. You will have your time.

**Hon. (Dr.) James Nyikal** (Seme, ODM): Thank you, Hon. Temporary Deputy Speaker.

There is also an issue of blacklisting. They talked of one company to be blacklisted and another one called OT Morpho. I have always wondered. I see some road projects in my constituency and the same people have been doing projects all over. They do not do them to completion. We should blacklist these companies.

There is one issue in the country that we have ignored which is a fact that corruption is even bigger in the private sector. We seem to make an assumption that corruption is only in the public sector. It is like a tango. Those who give and those who take must take equal responsibility. These companies must be blacklisted.

With those remarks, I support the Report.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Hon Members, I have 12 requests from Members who want to contribute to this Report. The Speaker is always non-partisan. Hon. Members do not have to come to the Speaker's desk to request. We will follow the request list religiously.

Let us now hear the Member for Wajir East.

**Hon. Rashid Kassim** (Wajir East, WDM-K): Thank you Hon. Temporary Deputy Speaker for giving me an opportunity to air my contribution to this matter.

There was definition of responsibility that was made in the Kriegler Report. This was very clear. When Kenyans felt that the IEBC was not giving the service that was required and there were issues, it was recommended that we form a secretariat and a commission at that time. The enactment of the IEBC Act gave a definitive role for both commissioners and the secretariat. It was very clear that the commissioners were to provide certain overall formulation of policies and guidelines, but the day-to-day activities of IEBC are within the domain of the Secretariat. Therefore, it is very clear that it was not in order for PAC to insinuate or make the mishandling of the procurement process the responsibility of the commissioners, so that they can be removed from office. If, indeed, certain actions were supposed to be enumerated, it should have been done by the Secretariat, and Mr. Chiloba should have been held responsible. So, it is ill advised as far as this Report is concerned to incriminate commissioners who are not involved in the day-to-day running of the Commission.

On the issue of the tendering process, it is guided as indicated in the Act. It is very clear that it is supposed to be done by none other than the Secretariat. For the Report to, again, incriminate the commissioners and say that they gave their voices on who should be awarded and who should not is a clear indication of bias against the commissioners whose role was not to adjudicate on the matter of the tendering process.

On the issue of culpability on the financial part of it, it is the responsibility of the Secretariat not the commissioners. Therefore, the recommendation of PAC incriminating the commissioners and recommending that they be removed through this process was equally ill

advised. As far as the removal of the IEBC commissioners is concerned it is clearly a constitutional matter. Their removal is clearly indicated in Article 251 of the Constitution.

Therefore, the PAC Report that is being used to remove commissioners is equally ill advised, un-procedural and unconstitutional for that matter. The Chairman of PAC---

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Order, the Member for Wajir East. Even as you contribute, it is also good to look at your Order Paper. We are debating the Report of the Examination of the Financial Statements of the IEBC. As you consider it, exclude the expunged parts of the Report. For relevance, you now consider the Report in consideration of the parts that are expunged. You do not need to debate on them.

**Hon. Rashid Kassim** (Wajir East, WDM-K): Thank you. The ruling in terms of expunging the commissioners and the wisdom of the Speaker as far as the ruling is concerned is, indeed, supported. I support the expunging of the names of the commissioners in this regard.

Further to that, the PAC Report should rather not have been used to incriminate and remove the commissioners from office. I am thankful for that ruling as far as this is concerned.

Further to that, the companies which were single sourced as far as the tendering process was concerned were un-procedurally picked. So, the incriminating and the relevant action should be meted out to the officers who were responsible for the flouting of regulations. As an advice, and as a former CEO for that matter, I concur with the Report. Officers - including Chiloba, who was the head of the secretariat and the financial controller - should be held responsible and not the commissioners as recommended in the Report.

Further to that, there are certain companies whose services were tendered for like the Spanish company, which was used single-handedly and it provided mediocre services as far as the electoral process is concerned. The electoral process in terms of remission of elections results and the ICT component was wanting. We realised that there were a number of rules for capturing the number of voters in the country. The services of those companies were wanting and they were not able to provide the services tendered for. As a result of that, we recommend blacklisting of companies that initially provided the services with regard to equipment, kits, KIEMS and the necessary ICT information that was required to conduct free and fair elections. This made the 2017 elections flawed and highly contested in the Republic of Kenya.

I recommend that the recommendations of PAC should be upheld as regards taking action against the companies that provided lukewarm services and the officers who were responsible for the flawed and un-procedural tendering process.

I support the exoneration of commissioners as stipulated.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Hon. Members, pursuant to Standing Order No. 106, let us observe relevance. The Member for Eldas, Hon. Adan Keynan, who is a senior Member of the House has the Floor.

**Hon. Adan Keynan** (Eldas, JP): Thank you, Hon. Temporary Deputy Speaker. I appreciate your guidance in line with that Solomonian ruling by the Speaker of the House. Under the current Constitution, Chapter 15 clearly spells out the role of the 15 constitutional

commissions and the two independent offices one of which is the office of the Auditor-General whose main function is to audit accounts of State institutions.

Equally, PAC is one of the oldest and the most respected committees in the Commonwealth Parliamentary traditions. Therefore, whatever we do as a country, we must be careful and always respect the traditions of our Parliament, so that it gives value to the taxpayers' money.

I will not go back to what was discussed. I also appreciate the fact the office of the Auditor-General has done a good job. I am speaking as a former commissioner in the audit commission. I know the good work. I appreciate professionalism and the zeal in which Hon. Ouko has conducted his work.

Secondly, at the end of every election, there are issues. I know there are different categories of individuals on societies and parties who are not generally satisfied with the results of elections. We must also be very careful. We sorted out Kivuitu. We threw his team out of office. We did it with the Issack Hassan led team. We are doing it with Chebukati and team. We need to ask ourselves: Is the problem the Kenyans society or the IEBC? If there is need for electoral reforms, then we do not necessarily at the end of every election need to bash individuals who do not have an opportunity to defend themselves. If, as Parliament, we are desirous of engaging in serious electoral reforms, then we know that this House has the mandate to undertake that.

Without going back to what the Speaker has made a decision on, we also need to understand the role of the Secretariat and that of the Commission. Politicisation, regionalisation, ethnicisation and trivialisation of audit reports will only negate the very essence of having PAC. That is why some of us were a bit concerned when we saw what was captured earlier on in the Report. It was completely out of the mandate of the PAC, but that has been sorted out. This is not a banana republic.

We have different categories or sources of law. The first one is the Constitution, the second are the statutes, the third is subsidiary legislation and the fourth one is traditions and precedents. We also have presidential pronouncements. Unfortunately, these days, roadside presidential declarations do not form part of our laws. We also have our own Standing Orders. We must be guided by this.

Having said this, it is also clear that we need serious and well-thought out electoral reforms, so that we end this issue of having challenges at the end of every election and we start hammering innocent individuals. We need to seek and reflect right now as the leadership of the Republic of Kenya and agree that there are challenges. There are issues that caused a bit of discomfort and dissatisfaction with different categories of the Kenyan society. Because we have time, we need to sort these issues. Were they legislative, driven by individual weaknesses, or institutional?

Is it a societal problem? Do we need to legislate? Do we need to sort out those challenges as part of the general societal reforms or through electoral and legislative reforms? These are issues that we should be seized of. We appreciate that in the last 20 years, we have undertaken



different reforms tailored for different issues. So, if it is the desire of this House to undertake serious electoral reforms, as individuals or collectively as a House, we are at liberty to initiate it.

I want to thank those who brought an important law referred to as the Fair Administrative Act which was meant to safeguard against abuse of power just like what we were about to see. I thank the Speaker for having stood firmly to jealously protect the roles of Parliament. We hope that that will serve as a lesson in future to any individual, committee or institution that will attempt to circumvent the rule of law.

Having said that, the functions of an accounting officer are clearly spelt out in our laws. We have the Public Finance Management Act, and for purposes of this Report, we have the IEBC Act. The Mandate of the Secretariat - I serve as a Commissioner of the Parliamentary Service Commission (PSC), and, therefore, I understand the work of commissioners and the work of the Secretariat - led by the CEO is accounting. It is accounting group. The CEO is the accounting officer. The commissioners play an oversight role. Therefore, mixing these issues may negate that.

I do not want, in any way, to say that money was not wasted. Obviously, it was wasted. That is why the Auditor-General flagged out a number of areas where there was abuse. These are things that you must be prepared to deal with. If somebody has abused power, wasted public resources and improperly spent tax-payers money, they must be dealt with in accordance with the law.

I thank the Auditor-General. In the past, we used to see audit reports that were dated back to four or five years. This Report is of audit accounts of the IEBC dated 30<sup>th</sup> June, 2017. Over the years, I have been asking Parliament to empower the office of the Auditor-General in terms of human resource capital and financial support. If we do that, I can assure you that tax-payers will get value for money. Because the Auditor-General has done a commendable job, it is the role of parliament to be a neutral arbiter. Sometimes I wonder. As Parliament, if we look at the process of allocating the budget and votes, departments are expected to utilise the allocations and the Auditor-General is expected to audit how that money is utilised. Therefore, it will still come back to Parliament to act as a neutral arbiter by midwifing the report of the Auditor-General taking into account public views. That is why it is wrong for any committee and any Member to usurp the functions of the Auditor-General.

I do not have a problem with the Report as it is now. What I had a problem with were the parts that have been expunged as a result of the Speaker's considered ruling. Therefore, in future, I beg the leadership of PAC or any other oversight committee to always remain relevant to the issues before them. That is why PAC and PIC normally deal with post audit reports. That means that they get reports that have been prepared by the Auditor-General, tabled before this House and committed to the particular committee. That is the way the House is seized with the reports. So, what the committee is supposed to do is to act as an independent and neutral arbiter by allowing the office of the Auditor-General to interact with the particular public entity that has been audited. Therefore, that role must not be lost.

Hon. Temporary Deputy Speaker, it is also a reality that we have struggled over the years to completely ensure that the office of the Auditor-General and its reports are not politicised. In the past, the office of the Auditor-General used to work under political pressure. In the current Constitution, every constitutional office holder is accountable to the people of Kenya. Therefore, this is something that we must always be proud of unlike when the office of the Auditor-General was accountable to certain individuals and political offices.

In conclusion, this Report minus what has been expunged deals with audit issues. These issues are as a result of the audit report by the Auditor-General. These are things we ought to interrogate. These are things that we need to encourage PAC to deal with in future. Therefore, this Report minus what has been expunged is good. I know Hon. Temporary Deputy Speaker that you are also a Member of this Committee. What we are trying to say is: Let whatever we do as a parliamentary committee be devoid of the politics of the day. That way, we will remain relevant and guided by the Standing Orders and the Constitution. We will also be seen to be fair. The IEBC requires serious reforms. Those reforms must be agreed upon by the leadership of the Republic of Kenya, which is vested in this House.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Hon. Members, I want to remind you again the ruling of the Speaker. We are debating the report excluding the expunged parts. So, for relevance let us debate the report as it is in the Order Paper. As I said, the Speaker is always non-partisan.

I will follow the request list religiously, including the ones who have put their cards but are not here. The Member for Muhoroni has left. Of course, he is consulting outside; I have seen him in the consultation room. Hon. Mbadi is in the consultation room too. Is the Member for Baringo South in the House? He is not here. The Member for Matungulu, you have the Floor.

**Hon. Stephen Mule** (Matungulu, WDM-K): Thank you very much, Hon. Temporary Deputy Speaker. At the outset, I want to thank PAC for the good job done. I want to agree with the Speaker on the relevant section of this report which has been expunged. I want to say clearly to Kenyans, if they are serious, today is one day where a report to rectify and make sure that in 2022 we do not repeat the same mistake is in the House. It is important for Kenyans to know this report does not target anybody. It targets the malpractices which have happened at the IEBC.

I want to agree with the recommendation of the Committee. We are trying to look at where we have gone wrong after all those years, as Kenyans, so that after conducting elections we must have chaos; we must go to the streets to sing that the election body and the commissioners must go.

More fundamentally, one aspect which is coming out of this Report is lack of planning. Why am I saying lack of planning? If you go through the entire Report, you will find that most of the procurement for election materials is delayed until the eleventh hour, such that people start threatening Kenyan taxpayers that there will be no election because they do not have enough time to do procurement. As we debate this Report and adopt it, I know for sure this Parliament is committed to deal with this issue in this country once and for all.

Once this Report is adopted by the House, it should be taken by the relevant authorities with immediate effect. The authorities should start implementing the recommendations given to them. They should also make sure that they report back to this House. We do not want to get into the elections of 2022 in such a mess; in a mess whereby the CEO of IEBC without any choice or with a choice and probably not knowing or knowing signs contracts worth Kshs4.3 billion without any performance guarantee provided and without following the Constitution and the Public Procurement and Asset Disposal Act, 2015.

It is a shame. It is high time - and it is good this Report is coming at least three years before the next election - we asked the Committee on Implementation (COI) of this House to do a favour to Kenyans by picking this Report and start working on it like yesterday once it is adopted.

I want to agree that we might be forced to relook at the IEBC Act for a simple reason of ensuring that we give proper framework of legislation to the IEBC to ensure that they do the right things. At times, it is very interesting in this country where you appoint people into office, but the legal mechanisms and the tools to work are very minimal yet you want them to deliver too much. So, I want to agree with the Committee that we need to relook at Section 11(a) of the IEBC Act so that we can clear this once and for all.

Hon. Temporary Deputy Speaker, the National Treasury has a Department of Planning and as I said from the outset, probably we have always gone wrong because we have failed to plan. If we fail, it is because we have failed to plan. The National Treasury and the Auditor-General must do verification of all the pending bills at the IEBC to ensure that the bills are real and audited. They should bring to this House a proposal during the budget making process to make sure that we deal with the pending bills because they might create a problem in future.

It is not only the IEBC that has huge debts, pending bills and other bills accumulated from courts. Quite a number of ministries have them. We must deal with them as a country. Accounting officers in the entire Commission are the Secretariat. The Secretariat must have known its requirements and must have come up with their work plan early enough for implementation. The commissioners are to blame. They must act firmly and perform their oversight role.

We agree with what the Speaker has ruled today. However, as much as we are looking forward to it, we might revisit the issue of the commissioners to know their interests. There are those who resigned and others remained. Those are people who made Kenyans go to the streets and have doubts on the election outcome. They must carry their own cross. That is a matter of another day.

Let us deal with the Report as it is right now and ensure that those who are mentioned and are found culpable and guilty are dealt with accordingly. This is to ensure that the other officers who remain in office do not misuse their positions and make the same mistakes yet Kenyans have trusted them. The Secretariat needs to be scrutinised early enough. We must plan for 2022 early enough and not in 2022 because we go for elections every five years.

So, for the last three elections, we have been dissuaded and disappointed as Kenyans. I believe in the spirit of the handshake, we will not sort out the issues of the IEBC in the streets. The issues with regard to the coming elections in 2022 will be sorted out with the kind of Report that has been done by my colleagues.

I want to agree with the Committee that the Commission should establish framework contracts with suppliers. On this rider, we want to put it clearly as a House that those companies which have not delivered to the IEBC at the right time to enable it deliver quality elections, must be blacklisted.

We say everybody must carry his own cross. Therefore, we should not only look at the commissioners and the secretariat, but also at the particular companies which have been doing business with the IEBC but failed to deliver on their mandate. It is high time we told them to forget next time for the simple reason - once beaten twice shy.

We cannot allow the Commission to go ahead and engage with partners who cannot fulfill their promises. It is completely immoral when you are given a job as the CEO of the IEBC

Secretariat to go ahead to sign contracts without performance guarantee. What a shame in this era and time. We must get things right as Kenyans.

I support the Report and we will ensure that the Committee on Implementation follows it up. Making this Report a priority will benefit a lot to Kenyans than anything else because 2022 is coming. We do not want to see a shameful election again conducted in fear because results will not be favorable to Kenyans.

God bless Kenya and PAC.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): I will give the remaining minutes to the Member for Homa Bay, Hon. Kaluma Opondo. As I said earlier on I am following the request list.

**Hon. Peter Kaluma** (Homa Bay Town, ODM): Thank you, Hon. Temporary Deputy Speaker. I am proposing some amendments to the recommendations. I have been advised by the team I am consulting that if I contribute, I will forfeit my chance to move the amendments. Therefore, I am requesting to speak after I move the amendments.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): You are on record saying you do not want to speak to this for now because you are not ready. The rest you can do procedurally because you know the House procedures.

The Member for Kitui Rural, you have the Floor.

**Hon. David Mboni** (Kitui Rural, CCU): Thank you, Hon. Temporary Deputy Speaker for giving me a chance to contribute to this Report. From the onset, I want to thank PAC for bringing it. It is raising fundamental issues like direct procurement and conflict of interest where companies known to the commissioners and staff were awarded huge contracts worth millions of shillings.

While direct procurement is among the proposed procurement methods in the Public Procurement and Assets Disposal Act, it is highly discouraged. It is normally used when there is only one supplier in the country who can supply the items required. Therefore, it is not acceptable for the IEBC to use this method. We need to understand that 60 per cent of our development budget is wasted through procurement. That is why we cannot get value for money and this country remains very poor because of these activities. We need to know that huge activities like election procurement plans are done earlier. Activities are given deadlines so that they are not delayed in terms of implementation. For the IEBC to go back and use direct procurement...

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): The Member for Kitui Rural, I will cut you short. Resume your seat. I will cut you short because of time. This is a House of procedure. During the next sitting when we debate the same Report, you will have eight minutes to contribute. We will continue debate on the Report of the Examination of the Financial Statements of the IEBC in the next sitting. You can prepare.

I appreciate the requests from the Hon. Members who still want to contribute to the Motion. They include Hon. Sophia Abdi. In the interest of time and rules of the House, we are not in a position to do that. I order that debate on the Report of the Examination of the Financial Statements of the IEBC to continue in the next sitting as it will be slotted on our Order Paper.

## ADJOURNMENT

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Hon. Members, the time being 7.00 p.m., the House stands adjourned until Tuesday, 2<sup>nd</sup> April, 2019, at 2.30 p.m.

The House rose at 7.00 p.m.