

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Tuesday, 2<sup>nd</sup> April 2019

The House met at 2.30 p.m.

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

### PRAYERS

*(Loud consultations)*

**Hon. Speaker:** Hon. Members, I have heard some of you shouting that there is no Order Paper, but I can see it in your gadgets.

### COMMUNICATION FROM THE CHAIR

**Hon. Speaker:** Hon. Members, a Communication will come before we go to Order No.8.

### PAPERS LAID

**Hon. Speaker:** Is it Hon. Katoo who is taking the mantle today or is it Hon. Koinange?

**Hon. Paul Koinange** (Kiambaa, JP): Thank you, Hon. Speaker. I beg to lay the following Paper on the Table of the House:

Report of the Joint Departmental Committee on Administration and National Security of the National Assembly and the Standing Committee on National Security, Defence and Foreign Relations of the Senate on the Vetting of the Nominee for Appointment to the position of Inspector General of the National Police Service.

**Hon. Speaker:** Very well. The Leader of the Majority Party.

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

The Ethics and Anti-Corruption Commission's Third Quarterly Report for the period 1<sup>st</sup> July 2018 to 30<sup>th</sup> September 2018.

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

- (i) Kenya Safari Lodges and Hotels Limited.
- (ii) Kenya Medical Laboratory Technicians and Technologists Board.
- (iii) Maasai Mara University.
- (iv) Egerton University.
- (v) State Department for Devolution.
- (vi) Kenya Local Loans Support Fund.
- (vii) Small-Scale Irrigation and Value Addition Project in the Ministry of Agriculture, Livestock, Fisheries and Irrigation.

(viii) Industrial Development Bank Capital Limited.

(ix) Retirement Benefits Authority.

(x) State Corporations Appeals Tribunal, and

(xi) Office of the Director of Public Prosecutions.

The Report of the Auditor General on the Financial Statements of the Tana and Athi Rivers Development Authority for the year ending 30<sup>th</sup> June 2017 and the certificate therein.

Thank you, Hon. Speaker.

**Hon. Speaker:** I am also informed that the Chairperson of the Departmental Committee on Defence and Foreign Relations and the Chairperson of the Departmental Committee on Finance and National Planning have Papers to lay on the Table.

**Hon. Katoo ole Metito** (Kajiado South, JP): Thank you, Hon. Speaker. I beg to lay the following Paper on the Table of the House:

Report of the Departmental Committee on Defence and Foreign Relations on the inquiry into land acquisition by the Kenya Defence Forces for establishment of Forward Operating Base (FOB) in Narok County.

**Hon. Speaker:** Chairperson of the Departmental Committee on Finance and National Planning.

**Hon. Joseph Limo** (Kipkelion East, JP): Hon. Speaker, I beg to lay the following Paper on the Table of the House:

Report of the Departmental Committee on Finance and National Planning on its consideration of the County Statistics Bill (Senate Bill No.9 of 2018).

Thank you, Hon. Speaker.

**Hon. Speaker:** Next Order.

## NOTICES OF MOTIONS

### APPROVAL OF NOMINEE FOR APPOINTMENT AS INSPECTOR GENERAL OF POLICE

**Hon. Paul Koinange** (Kiambaa, JP): Thank you, Hon. Speaker. I beg to give notice of the following Motion:

THAT, taking into consideration the findings of the Departmental Committee on Administration and National Security of the National Assembly and the Standing Committee on National Security, Defence and Foreign Relations of the Senate in the Report on the vetting of the nominee for approval as the Inspector General of the National Police Service, laid on the Table of the House on Tuesday, 2<sup>nd</sup> April 2019; and pursuant to Article 245(2)(a) of the Constitution and Section 12(1) of the National Police Service Act 2011 and Section 8 of the Public Appointments (Parliamentary Approval) Act 2011, this House approves the appointment of Mr. Hilary Nzioki Mutyambai as the Inspector General of the National Police Service.

**Hon. Speaker:** Hon. Katoo.

### ADOPTION OF REPORT ON INQUIRY INTO LAND ACQUISITION BY KENYA DEFENCE FORCES

**Hon. Katoo ole Metito** (Kajiado South, JP): Thank you, Hon. Speaker. I beg to give notice to the following Motion:

THAT, this House adopts the Report of the Departmental Committee on Defence and Foreign Relations on the inquiry into land acquisition by the Kenya Defence Forces (KDF) for establishment of the Forward Operational Base (FOB) in Narok County, laid on the table of the House on Tuesday 2<sup>nd</sup> April 2019.

Thank you.

**Hon. Speaker:** Very well. Before we move to the next Order, allow me to recognise the presence, in the Public Gallery of students and pupils from the following institutions: Kyeni Girls High School, Runyenjes Constituency, Embu County; Kiambani Primary School, Kibwezi West Constituency, Makueni County and Glory Vision Academy, Kirinyaga West Constituency, Kirinyaga County. They are welcome to observe the proceedings of the National Assembly this afternoon.

*(Applause)*

Next Order!

### QUESTION BY PRIVATE NOTICE

**Hon. Speaker:** First Question by Private Notice is by the Member for Kajiado Central Constituency, Hon. Memusi.

*Question No. 015/2019*

#### ALLEGED ARREST OF MOHAMED BASHIR ABDI BY TANZANIAN AUTHORITIES

**Hon. Memusi ole Kanchory** (Kajiado Central, ODM): Thank you, Hon. Speaker. I rise to ask Question No. 015/2019 to the Cabinet Secretary (CS) for Interior and Coordination of National Government.

(i) Is the Cabinet Secretary aware that, one Mohamed Bashir Abdi of identification number 25692796 was on 26<sup>th</sup> March 2019 allegedly arrested in Namanga One Stop Border Town by the Tanzanian authorities while on the Kenyan side?

(ii) Is the Cabinet Secretary further aware that following the arrest of Mr. Bashir, there were demonstrations, where the said Tanzania authorities fired live bullets at protesters causing injuries on a number of Kenyans including the Namanga Jamia Mosque leader, Sheikh Abdiwahid Sheikh Adan of identification number 25138893?

(iii) What action has the Ministry taken to secure the freedom of Mr. Bashir and put to a stop the alleged continued harassment of Kenyans by the Tanzanian authorities?

(iv) What measures is the Ministry putting in place to enhance peaceful co-existence of communities living along the Kenya - Tanzania Border?

**Hon. Speaker:** The Question by Private Notice is supposed to be responded to within the shortest time possible, including within three days. So, the Departmental Committee on Administration and National Security is requested to prioritise the Question for response by the CS for Interior and Coordination of National Government.

The next Question is by the Member for Ganze, Hon. Mwambire.

### ORDINARY QUESTIONS

*Question No.138/2019*

#### STATUS OF SETTING UP STRUCTURES FOR THE NEWLY ESTABLISHED KAUMA SUB-COUNTY HEADQUARTERS

**Hon. Teddy Mwambire** (Ganze, ODM): Thank you, Hon. Speaker. I rise to ask Question No. 138/2019 to the Cabinet Secretary for Interior and Coordination of National Government:

(i) What is the progress made in setting up structures for the newly established Kauma Sub-county headquarters in Kilifi County?

(ii) What modalities have been put in place to demarcate boundaries of the two newly created Kauma and Chonyi sub-counties in Kilifi County?

**Hon. Speaker:** Very well. To be responded to before the Departmental Committee on Administration and National Security.

*Question No. 145/2019*

#### ADMINISTRATION AND FUNDING OF INTERNAL EXAMINATIONS IN PUBLIC SCHOOLS

The next Question is by the Hon. Member for Kathiani Constituency who has written to request that it be deferred, to which request has been acceded to.

*(Question deferred)*

Next Question by the Member for Sotik, Hon. Dominic K. Koskei. The Member is not present. We will come back to the Question. Next Question by the Member for Kaiti, Hon. Kimilu Joshua.

*Question No. 155/2019*

#### LACK OF ADEQUATE CIVIL REGISTRATION CENTRES IN MAKUENI COUNTY

**Hon. Joshua Kivinda** (Kaiti, WDM-K): Thank you, Hon. Speaker. I rise to ask Question No. 155/2019 to the CS for Interior and Coordination of National Government:

(i) Is the Cabinet Secretary aware that there is only one civil registration centre in Makueni County located at Wote Town and that the centre is served by only two registration officers?

(ii) Could the Ministry consider ensuring that each sub-county in Kenya has a civil registration centre with adequate staff?

**Hon. Speaker:** Question to be responded to before the Departmental Committee on Administration and National Security.

Next Question by the Member for Igembe Central Constituency, Hon. Kubai Iringo.

*Question No. 165/2019*

DESTRUCTION OF TREES AND VEGETATION BY CONTRACTOR  
INSTALLING POWER LINE AT NYAMBENE REPEATER STATION

**Hon. Kubai Iringo** (Igembe Central, JP): Thank you, Hon. Speaker. I rise to ask Question No. 165/2019 to the CS for Environment and Forestry:

(i) Is the Cabinet Secretary aware that trees and other vegetation, including indigenous trees were either destroyed or taken away as wood and timber by a contractor installing a power line at the Nyambene Repeater Station in Nyambene Forest?

(ii) Could the Cabinet Secretary state the amount of money allocated for the contract and when the installation of the power line is expected to be completed?

Thank you.

**Hon. Speaker:** Question to be responded to before the Departmental Committee on Environment and Natural Resources.

Member for Sotik, Hon. Dominic K. Koskei for the second round. The Member is not present.

*Question No.153/2019*

STATUS OF COMPENSATION FOR VICTIMS OF 2007/2008 POST ELECTION VIOLENCE

**Hon. Speaker:** The Question by the Member for Sotik is also deferred.

*(Question deferred)*

Hon. Members, before we move to the next Order, allow me to make this communication.

**COMMUNICATION FROM THE CHAIR**

CONSIDERATION OF THE PROPOSED AMENDMENTS  
TO THE SPORTS (AMENDMENT) BILL

**Hon. Speaker:** Hon. Members, before we proceed to the next Order, being the Committee of the whole House, I wish to issue the following guidance which relates to the consideration of the proposed amendments to the Sports (Amendment) Bill (National Assembly Bill No.25 of 2018).

As you are aware, Article 114(2) of the Constitution provides:

“If, in the opinion of the Speaker of the National Assembly, a motion makes provisions for a matter listed in the definition of “a money Bill”, the Assembly may proceed only in accordance with the recommendation of the relevant Committee of the Assembly after taking into account the views of the Cabinet Secretary responsible for finance.”

In this regard, Hon. Members, my office has received several proposed amendments to the Sports (Amendment) Bill (National Assembly Bill No.25 Of 2018). I am satisfied, after perusal that the amendments proposed by the Departmental Committee on Sports, Culture and Tourism are in order.

However, the amendments proposed by the nominated Member, Hon. Godfrey Osotsi and the Member for Lari, Hon. Jonah Mburu, to introduce a New Clause 4 in the Bill are not admissible. This is because the amendments intend to retain two separate sports funds: one under the Sports Act, 2013 and the other under the Public Finance Management Act (Sports, Arts and Social Development Fund Regulations 2018). The resultant effect is to give a lifeline to the two sports funds despite their having similar objectives. In this regard, these amendments will render the law illogical and offend the provisions of Standing Order 133(5), (6) and (8) relating to admissibility of amendments at the Committee of the whole House.

Further, the proposed amendments will make provisions for matters listed in the definition of a money Bill pursuant to the provisions of Article 114(2) of the Constitution and Standing Order No. 114. The Budget and Appropriations Committee has recommended that the Assembly does not proceed with the amendments.

I, therefore, wish to guide the House that the amendments introducing New Clause 4 as proposed by the Nominated Member Hon. Osotsi and the Member for Lari, Hon. Jonah Mburu, shall not be considered in the Committee of the whole House.

I thank you, Members.

## COMMITTEE OF THE WHOLE HOUSE

*(Order for the Committee read)*

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

*[The Chairman (Hon. Moses Cheboi) in the Chair]*

### THE SPORTS (AMENDMENT) BILL

**Hon. Chairman:** Order Members. You have obviously heard the guidance given by the Speaker. This will be a fairly brief Committee of the whole House, so please be keen so that we move together.

#### *Clause 3*

**Hon. Chairman:** There are two amendments by Hon. Osotsi and Hon. Mburu. Are the Hon. Members in the House to move them? They do not seem to be in the House. I ask again: Is Hon. Osotsi in the House? Is Hon. Mburu there? Do you want to move your amendment? Even as you proceed, and this is for guidance of the House; I can see you have proposed deletion of all the clauses.

Hon. Members, it is important to know that if his deletions are carried, the Bill will be as good as negated. So as Members proceed to make their decision, that is the position, if the

deletions succeed. Hon. Mburu and Hon. Osotsi are proposing deletion of all the clauses. Let me hear whether he wants to proceed then we can deal with the clauses.

**Hon. Jonah Mwangi** (Lari, JP): Thank you, Hon. Chairman. After a lot of soul searching and consultations, I see that the proposed amendment will kill the Bill, although I wanted the money to get down to the constituency level through partnering of the new board and the NG-CDF Board. It seems that if I do not withdraw my proposed amendments, this Bill may die. So, after a lot of consultations with my leader and everybody else, I decided to withdraw the amendments.

Thank you.

*(Proposed amendment to by Hon. Jonah Mwangi withdrawn)*

**Hon. Chairman:** All the proposed amendments by Hon. Jonah Mburu are withdrawn. I am also trying to see whether in the absence of Hon. Osotsi, it probably means that we have no amendment proposed other than the Committee amendment.

*(Clause 3 agreed to)*

*Clause 4*

**Hon. Korei ole Lemein** (Narok South, JP): Hon. Chairman, I beg to move:

THAT, the Bill be amended by deleting Clause 4 and substituting therefor the following New Clause—

Amendment of section 11  
of No. 25 of 2013.

4. Section 11 of the principal Act is amended by deleting paragraph (c) and substituting therefor the following new paragraph—

(c) an amount out of the Fund for the promotion of and development of sports;”

**Hon. Chairman:** Even as I proceed to propose the Question, it should be noted that the amendment by Hon. Osotsi and Hon. Mburu have obviously been dropped because Hon. Osotsi was not here to move it, and Hon. Mburu who withdrew his.

*(Proposed amendment by Hon. Godfrey Osotsi dropped)*

Hon. Ole Lemein, you need to explain your proposed amendment, but remember we are moving fast.

**Hon. Korei ole Lemein** (Narok South, JP): Hon. Chairman, the amendment is to expressly provide that one of the sources of funds for Sports Kenya shall be an amount out of the Sports, Arts and Social Development Fund established under Regulation 3 of the PFM (Sports, Arts and Social Development Fund) Regulations 2018.

*(Question of the amendment proposed)*

**Hon. Chairman:** I wanted to know the preference. Is it Dr. Lemein or Dr. Korei? Either of the two; so, let us proceed. Who wants to speak to it? Leader of the Majority Party.

**Hon. Aden Duale** (Garissa Township, JP): Hon. Chairman, first I want to know: Is it an honorary doctorate or has he gone and learnt? If it is honorary, then you do not need to use the title. You only use that title if you have worked for it. There are many people here who have honorary doctorates. So, if it is honorary you have to retreat.

**Hon. Chairman:** Maybe you will be guided accordingly. This is Dr. Korei Lemein, PhD, MP.

**Hon. Aden Duale** (Garissa Township, JP): Hon. Chairman, I really wanted to support him because in the PFM regulations we passed. In Section 4(2) (b), we have even said an amount not exceeding 35 per cent will be set aside for the promotion and development of sports. So, it is in tandem with the regulations that we passed in this House. I support.

**Hon. Chairman:** Hon. Wanyama, do you want to speak to this particular one? Your microphone is not working. In any case, you are too tall to use that particular mic. So, please, get to the next one.

True, Hon. Chairman, I am vertically challenged with these microphones. That is why sometimes I choose to remain silent. Nevertheless, I want to support the amendment although in my view I thought it would be not less than 35 per cent. The way it has been drafted, I agree with it.

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

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

*(Clause 4 as amended agreed to)*

*(Clauses 5, 6, 7, 8, 9, 10 and 11 agreed to)*

*New Clause 5A*

**Hon. Chairman:** Just to be clear Members, New Clause 4A is the particular one which the substantive Hon. Speaker gave a communication on. So that one is dropped and will not be considered. We are now doing New Clause 5A. So, I ask the Mover to move Second Reading. Yes, Leader of the Majority Party.

**Hon. Aden Duale** (Garissa Township, JP): The Chair has an amendment on Clause 2.

**Hon. Chairman:** We have not reached there. Clause 2 is always the last one. We are now doing the New Clause 5A. Chairman, please proceed.

**Hon. Korei ole Lemein** (Narok South, JP): Hon. Chairman, I beg to move:

THAT, the Bill be amended by inserting the following new clause immediately after Clause 5—

Amendment of Section 38  
of No. 25 of 2013.

5A. Section 38 of the principal Act is amended by inserting the following new paragraph immediately after paragraph (b)—



“(ba) an amount out of the Fund for the promotion of and development of sports;”

Hon. Chairman, the justification for the amendment is to expressly provide that one of the sources of funds for the Kenya Academy of Sports shall be an amount out of the Sports, Arts and Social Development Fund, established under Regulation 3 of the Public Finance Management (Sports, Arts and Social Development Fund) Regulations 2018 for the promotion and development of sports.

I thank you Hon. Chairman.

*(Question of the new clause proposed)*

*(New clause read the First Time)*

*(Question, that the new clause be read a Second Time, proposed)*

*(Question, that the new clause be read a Second Time, put and agreed to)*

*(The new clause was read a Second Time)*

*(Question, that the new clause be added to the Bill, put and agreed to)*

#### Clause 2

**Hon. Chairman:** Hon. Osotsi is absent and so his proposed amendment is dropped. Hon. Mburu has withdrawn his amendment. Let me hear from Hon. Antony Oluoch before I go to the proposed amendment by the Chairman of the Committee.

*(Proposed amendment to by Hon. Jonah Mwangi withdrawn)*

*(Proposed amendment by Hon. Godfrey Osotsi dropped)*

Hon. Oluoch is also absent. Hon. Dr. Lemein, please proceed.

**Hon. Korei ole Lemein** (Narok South, JP): Hon. Chairman, I beg to move:

THAT, the Bill be amended by inserting the following new paragraph immediately after paragraph (b)—

(c) inserting the following new definition in its proper alphabetical sequence—

“Fund” means the Sports, Arts and Social Development Fund established under Regulation 3 of the Public Finance Management (Sports, Arts and Social Development Fund) Regulations, 2018;

The purpose of this amendment is to define the fund established under Regulation 3 of the Public Finance Management (Sports, Arts and Social Development Fund) Regulations, 2018

since the term “fund” has been used in the subsequent proposed amendment to Clause 4 and New Clause 5A.

I thank you, Hon. Chairman.

*(Question of amendment proposed)*

**Hon. Aden Duale** (Garissa Township, JP): Thank you, Hon. Chairman. This again is in tandem with the amendment we did when we were doing Regulation No.3 to the Public Finance Management Act, where we created Sports, Arts and Social Development Fund, Regulations 2018, where an amount not exceeding 35 per cent will be set aside for the promotion and development of sports. The other aspect will be used for the promotion and development of the universal healthcare under the Big Four Agenda of the President. The Cabinet Secretary for Finance has the powers under the regulations to vary based on the need of those sectors.

I beg to support.

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

*(Clause 2 as amended agreed to)*

*(Title agreed to)*

*(Clause 1 agreed to)*

**Hon. Chairman:** Hon. Members, before I proceed, let me introduce the visitors seated in the Speaker’s Gallery. They are from Borabu Teachers Training College, Borabu Constituency which is ably represented in the House by Commissioner Momanyi.

Hon. Members, that is the end of it and so let us have the Mover to move reporting.

**Hon. Aden Duale** (Garissa Township, JP): Hon. Chairman, I beg to move that the Committee does report to the House its consideration of the Sports (Amendment) Bill, National Assembly Bill, No.25 of 2018 and its approval thereof with amendments.

*(Question proposed)*

*(Question put and agreed to)*

*(The House resumed)*

*[The Temporary Deputy Speaker  
(Hon. Christopher Omulele) in the Chair]*

## REPORT

## THE SPORTS (AMENDMENT) BILL

**Hon. Moses Cheboi** (Kuresoi North, JP): Thank you, Hon. Temporary Deputy Speaker. I beg to report that the Committee of the whole House has considered the Sports (Amendment) Bill, National Assembly Bill No.25 of 2018 and approved the same with amendments.

**Hon. Aden Duale** (Garissa Township, JP): Hon. Temporary Deputy Speaker, I beg to move that this House does agree with the Report of the Committee of the whole House on its consideration of the Sports (Amendment) Bill, National Assembly Bill No.25 of 2018. I also request Hon. Lemein, Vice Chair of the Departmental Committee on Sports, Culture and Tourism to second.

**Hon. Korei ole Lemein** (Narok South, JP) seconded

*(Question proposed)*

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Members, I direct that the next steps on this Bill be taken when the matter will be next listed down so that the House considers it when it is appropriately rated. I direct that we move to the next business.

## MOTIONS

ADOPTION OF REPORT ON EXAMINATION OF  
FINANCIAL STATEMENTS OF IEBC

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

*(Hon. Opiyo Wandayi on 28.3.2019)*

*(Resumption of Debate interrupted on 28.3.2019)*

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Members, this particular business had been moved, seconded and the Question proposed. So, we shall proceed with it. I can see the first Member having interest on this is Hon. Wanyama Sitati, Member for Webuye West.

Please use the microphone to your left.

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

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): What is out of order, the Leader of the Majority Party?

*(Several Members stood in the gangways)*

Who are those Members congregating on the gangways? Hon. Leader of the Majority Party, proceed with your point of order.

**Hon. Aden Duale** (Garissa Township, JP): On a point of order, Hon. Temporary Deputy Speaker. I want Hon. Kaluma to listen to me because he had proposed amendments to this Report. I saw them because they were circulated and as the Leader of the Majority Party, I got a copy but, I am not seeing them on the Order Paper.

Therefore, there is a change of facts. Has Hon. Kaluma withdrawn his amendments? It is good for Members to see them and debate from a point of information. So, Hon. Kaluma should confirm if his amendments are still there and why they are not on the Order Paper.

Secondly, why have they not been circulated? Hon. Kaluma should inquire about this.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Leader of the Majority Party let me do a little consultation so that I can give direction on this one. Meanwhile, Hon. Daniel, Member for Webuye West, proceed with your contribution.

**Hon. Daniel Wanyama** (Webuye West, JP): Hon. Temporary Deputy Speaker, I had put my card earlier and contributed on the previous Order. So, on this one, I do not have anything to contribute.

Thank you, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): The Leader of the Majority Party, I cannot find the proposed amendments by Hon. Peter Opondo Kaluma, who is seated comfortably in the House. He has a mouth and can speak for himself. Hon. Mabona, you cannot represent him in the House because he is here under his own Motion. He is very well versed with the procedures of the House. I have no doubt that he knows what is right.

Hon. Members, concerning the directions I had given earlier, I had been handed the wrong ones. The correct position is that Hon. Mboni Mwalika was on his feet when this matter was last dealt with and he had a balance of eight minutes. So, Hon. Mboni Mwalika...

**Hon. Ferdinand Wanyonyi** (Kwanza, FORD-K): On a point of order, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Member for Kwanza, what is out of order?

**Hon. Ferdinand Wanyonyi** (Kwanza, FORD-K): On a point of order, Hon. Temporary Deputy Speaker. The Leader of the Majority Party has said that there are amendments on this particular Motion. It is important to know...

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): You are out of order. Hon. Peter Opondo Kaluma.

**Hon. Peter Kaluma** (Homa Bay Town, ODM): Thank you, Hon. Temporary Deputy Speaker. We began debate on this Motion last Thursday. I was the last person to be given opportunity to address it. I indicated to the substantive speaker at the time that I would not contribute because I would bring amendments and so, substantive contribution would interfere.

On Friday, I took the proposed amendments to the Table Office. Today morning I was told by the Table Office that the amendments would be on the Order Paper. I was even given a copy of the processed amendments and I have them here.

I, therefore, proceeded to inform colleagues because these are very substantive amendments. If my amendments are not here, it means Parliament is frustrating them. I would seek to know why Parliament is frustrating amendments brought by a Member of Parliament in good faith to better a Report of the Committee. I think it would not be right because I took the

whole weekend processing these amendments and then they are brushed aside and we proceed to debate this matter.

My thinking is that if my amendments are not here, I will take the hard position of opposing and lobbying my colleagues to reject the whole Report. This is not a good thing, because we can save the Report through the amendments.

Hon. Temporary Deputy Speaker, I beg that we do not proceed with this Report before I am allowed to move my amendments, which I proposed within the required time in Parliament.

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

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Millie Odhiambo, Hon. Kaluma's point of order is still under consideration. Let me deal with it. Hon. Kaluma, kindly approach the Clerks-at-the-Table, so that we can deal with this matter. Hon. Mabona, let us have your point of order.

**Hon. (Ms.) Odhiambo-Mabona** (Suba North, ODM): On a point of order, Hon. Temporary Deputy Speaker. My concern is that I am privy to some of the proposed amendments and it appears that some of the activities done were in direct contravention of the Companies Act. This is something that the House must be informed of, so that as we debate the whole Report, we are informed and we make a decision based on complete information.

So, I would urge that if the amendments are not ready, would it be in order to request that this matter be put aside, so that the amendments are included and we can debate from a point of information.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Mabona, you have said you are privy to the proposed amendments by Hon. Kaluma. Yes, we have them with us now, he is executing them and they will be distributed so that we can proceed with them. So, give the Clerks-at-the-Table a few minutes to put the House in order.

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

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Give the Leader of the Majority Party the microphone. He has a point of order.

**Hon. Aden Duale** (Garissa Township, JP): On a point of order, Hon. Temporary Deputy Speaker. My deputy is saying: "Switch him on". No, that is un-parliamentary. There is only one person who can switch me on and it is always at night and she is legally allowed. So nobody else can switch me on but, "give him the microphone" is a better phrase.

Hon. Temporary Deputy Speaker, let us continue with the debate as we get the copy of the amendments. Once we receive them, Hon. Kaluma can be asked to move them.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Very well, Leader of the Majority Party. I did not hear the person who was proposing to switch you on. The parliamentary way is to say: "Give the Leader of the Majority Party the microphone". We shall proceed in this manner then. I see interest from Hon. Mutua Barasa, Member for Kimilili. Let us have Hon. Mutua, Member for Kimilili.

**Hon. Didmus Barasa** (Kimilili, JP): Thank you, Hon. Temporary Deputy Speaker. Even as I support this Report, I was really waiting to contribute on the amendments by Hon. Peter Kaluma. I just want to say that even as we adopt this Report, it is very important that the agencies that are supposed to implement such reports do so. This House is spending a lot of time doing investigations and coming up with these kinds of recommendations in vain. So, I wish that the agencies in this country could go back and ensure that every investigative report that has

been adopted by this House is properly implemented. The reports should form the basis of their investigations to ensure protection of public resources from plunder by a few individuals. That is the only way they can appreciate the good job that this House is doing. We should give value for the taxpayers' money. We sit and burn the midnight oil trying to get facts so that we can write a report to be adopted by this House. That is what the authorities should be looking for, and not just fishing evidence that will not guide them properly to establish what happened.

With these few remarks, I support.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. ole Lemein. He is not desirous to be in the House. We move to the next Member desirous to contribute, Hon. Rasso.

**Hon. Ali Rasso** (Saku, JP): Thank you, Hon. Temporary Deputy Speaker. Listening to what has transpired in the House, I have not yet heard your ruling as to whether we proceed with the Motion as it is or we wait for the amendments by Hon. Kaluma. I am just seeking your guidance as to whether we proceed with the Motion as it is or we await the substantive amendment that Hon. Kaluma is proposing, which is likely to change the text and the context of the Motion.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Rasso, there is a bit of confusion at the Table today. So, I would ask you to proceed. If Hon. Kaluma gets an opportunity to move his proposed amendments, and if the House approves them, we shall also give you an opportunity to contribute to the Motion as amended.

**Hon. Ali Rasso** (Saku, JP): Thank you very much, Hon. Temporary Deputy Speaker. I am well guided. I rise to support the Motion by the Public Accounts Committee.

I thank the Speaker of the National Assembly for his Solomonian wisdom in expunging from the original Report what he felt the Committee tried to overreach, what constitutionally they were not allowed to.

After every general election, the general public attempts to dissolve the Independent Electoral and Boundaries Commission (IEBC). What this House must not do is to try and gerrymander an institution of this country. The IEBC is a commission that is protected under the Constitution. In every Report, we say that the IEBC must be dissolved. The Constitution is very clear on the steps to be taken. This particular Report was to cover the period until 30<sup>th</sup> June 2017 but it almost covers the 2017 elections. They looked at purchase of the Kenya Integrated Election Management System (KIEMS) kits and how they were used during the 8<sup>th</sup> August 2017 election and the repeat presidential polls. Reading the Report page by page, for the first time, I was a bit interested with the PAC Report because it covered both the general public's interest as well as the interests of this interesting institution that the IEBC has become. We are saying that IEBC is bad and, therefore, it must be dissolved but during the 2017 elections, and even during the elections of 2013, we conducted six elections-in-one. Nobody is faulting IEBC for the other five elections. We are saying that IEBC is bad just because of the presidential election.

If you read through this Report and look at its contents, you will come through several sections where they have clearly said that questions have been answered, and that the queries that the Auditor-General raised have been qualified. However, there are cases where they looked at what you call over-insurance. Over-insurance means buying items for much more than you need just in case you need more. While I support this Report generally, the Committee has not given us the statement from the Chief Procurement Officer. I am not sure if by the time we were going for elections in 2017 the IEBC had a chief procurement officer or these massive procurements worth over Kshs22 billion were done without a procurement officer. For those Hon. Members

who have read or will read the Report and contribute to this debate, we want PAC to tell us what happened to the statement of the Chief Procurement Officer.

In terms of the audit report, among those to be indicted are the Chief Executive Officer and the Chief Procurement Officer. If those two are not touched and we only talk about the Chairman and commissioners, then the Committee would not have done due diligence on what the House expected of it.

Overall, it is about taking care of the taxpayers' money. It is about expenditures that must be supported. Over the last few months, we have been talking about corruption. When we discuss corruption and challenge it both in courts of law and in this House, we must be guided by facts. From the outset, it was about doing due diligence with regard to the Auditor-General's report and not removing the commissioners and the secretariat of a constitutional commission. That is why I support this Report. Unfortunately, Hon. Kaluma is sitting on his hands instead of tabling what would be an important amendment to the existing Report.

With those remarks, I support the Motion.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): What is out of order, Hon. Abdisalan?

**Hon. Ibrahim Ahmed** (Wajir North, ODM): We are discussing the PAC Report and I cannot see the Chair, the Vice-Chair or any other Member of the Committee. It will be abnormal to discuss the Report when the leadership of the Committee is not in the House.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Abdisalan is on a point of order. Hon. Abdisalan, once the Motion is moved and it becomes the property of the House, we can then proceed. It is advisable and usually a much better way to proceed when they are here. If there are Members of that Committee in the House, they can advise them to make themselves available so that we can proceed in an orderly way.

Hon. Peter Kaluma, in your hands you have a duly approved copy of the amendments which you had proposed to make to this Report. I will, therefore, give you an opportunity to prosecute those proposed amendments.

**Hon. Peter Kaluma** (Homa Bay Town, ODM): Hon. Temporary Deputy Speaker. I beg to move:

THAT, the Motion on the Report on the Examination of the Financial Statements for the Independent Electoral and Boundaries Commission for the year ended 30<sup>th</sup> June 2017 by PAC be amended by inserting the following expression immediately after the expression "February 27<sup>th</sup>, 2019" subject to –

A. deletion of Recommendation 1 under Chapter 33.0 (Committee Recommendations) on pages 4 and 127 of the Report and substituting therefor the following:

"1. Parliament expedites the strengthening of IEBC by reviewing the legal framework and the general policy guidelines while taking into account the recommendations of the Kriegler Commission. Further, Parliament considers reviewing or repealing Section 11A of the IEBC Act relating to the functions of the Commission and the secretariat, to bring clarity to the constitutional functions of the Commission *vis-à-vis* the administrative functions of the secretariat."

B. deletion of the words "commissioners failed to exercise oversight while the" appearing in the first line of Recommendation 3 under Chapter 33.0 (Committee Recommendations) on pages 4 and 127 of the Report.

Pardon, Hon. Temporary Deputy Speaker. Some parts of my amendments are not complete. Could I be assisted with the amendment to paragraph C?

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Yes. The Clerks will do so. What is out of order, Leader of the Majority Party?

**Hon. Aden Duale** (Garissa Township, JP): Hon. Temporary Deputy Speaker, the amendments have been circulated. The Mover is complaining about a page missing. He should tell us whether his conscience is with the amendments. Your conscience and spirit should be with the amendments.

**Hon. Peter Kaluma** (Homa Bay Town, ODM): Thank you, Hon. Temporary Deputy Speaker. I now have the complete amendment. I thank our clerical team for the supply.

C. insertion of the following recommendations 9(a), (b), (c), (d) and (e) under Chapter 33.0 (Committee Recommendations) on page 128 of the Report –

M/S. IDEMIA (formerly Morpho, OT Morpho, SAFRAN Identity and Security)

9. Noting the Committee's conclusions and observations on pages 120 – 126 of the report relating to IDEMIA regarding its engagements in Kenya, the House further recommends –

(a) THAT, the Directorate of Criminal Investigations and the Director of Public Prosecutions undertakes investigations...

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Kaluma, which page of these proposed amendments are you reading from?

**Hon. Peter Kaluma** (Homa Bay Town, ODM): I am currently on page 2. That is a matter to be addressed by the clerical team, not me. Hon. Temporary Deputy Speaker, can I continue?

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Kaluma, just hold on. I do not have page 2. I am unable to follow. I have seen what is on page 1. I am informed that it is being brought.

Proceed.

**Hon. Peter Kaluma** (Homa Bay Town, ODM): I was on page 2.

(a) THAT the Directorate of Criminal Investigations and the Director of Public Prosecutions undertakes investigations and institutes appropriate criminal action under section 974 (3) of the Companies Act...

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Kaluma, just hold on. Hold your horses. Let us have the Leader of the Majority Party. He is on a point of order.

**Hon. Aden Duale** (Garissa Township, JP): Hon. Temporary Deputy Speaker, you need to help the House and guide us. Hon. Kaluma is moving an amendment that Members do not have. We want you to use Standing Order No.1. You have the powers to step aside this matter until tomorrow so that the House is well-guided. We will deal with that matter when all the amendments are on the Order Paper. The problem is that the Clerks-at-the-Table distributed amendments when a whole page is missing. This is a very important matter. We want you to defer this matter to tomorrow afternoon as we arrange for the amendments to be on the Order Paper tomorrow.

I indulge you, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Very well. Hon. Members, I believe that the rules of the House are such that any matters that are debated on this Floor must be those that are in the possession of the Members, so that they can deal with them. I have disclosed that Page 2 of these proposed amendments by Hon. Kaluma are not even in the hands of the Hon. Temporary Deputy Speaker. I am persuaded by the Leader of the Majority Party that prosecution of these proposed amendments is not ripe right now. I, therefore, direct that this particular business be stepped down for it to proceed at such a time that we shall have



ordered ourselves in a much better way, so that we can prosecute it with the necessary and deserved seriousness that it requires. I, therefore, direct that we step it down until such time it will be set down for consideration again. I direct that we proceed with the next business on the Order Paper.

**Hon. Peter Kaluma** (Homa Bay Town, ODM): On a point of order, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Peter Kaluma, what is out of order?

**Hon. Peter Kaluma** (Homa Bay Town, ODM): Hon. Temporary Deputy Speaker, I am obliged by your directions, which I believe are for good order. The House should be properly briefed on the amendment which is coming. I request that you direct that the amendment which I moved be expunged so that when the House reconvenes on the business, it can be moved anew. It is because it is something I take very seriously.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Kaluma, you are quite in order. I direct that the portion of the amendment that you had already executed be expunged from the record, so that when this matter is set down for consideration again, you will have a clean sheet and prosecute the whole amendment in one go. That is quite in order. I direct that we move to the next Order.

*(Motion deferred)*

REPORTS ON BUDGETARY PROPOSALS FOR THE EAST AFRICAN  
COMMUNITY FOR 2017/2018 AND 2018/2019

THAT, this House notes the Report of the Committee on Regional Integration on the Reports of the Committee on General Purpose on the Budgetary Proposals for the Financial Year 2018/2019 and Supplementary Budget Proposals for the Financial Year 2017/2018 of the East African Community (EAC), the EAC Supplementary Appropriation Bill, 2018 and the EAC Appropriation Bill, 2018, laid on the Table of the House on Tuesday, 27<sup>th</sup> November 2018.

*(Hon. (Ms.) Naisula Lesuuda on 26.3.2019)*

*(Resumption of Debate interrupted on 26.3.2019)*

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Members, the Mover finished her business in this Motion and it was seconded. The Question was also proposed. It is open for debate now. I, therefore, invite Members to debate this Report. The first Member who shows interest in this Motion is Hon. Mugambi Gichuki, Member for Othaya.

**Hon. Gichuki Mugambi** (Othaya, JP): Hon. Temporary Deputy Speaker, I am consulting on a matter here with my colleague. Let me finish first.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Wanyama Sitati, Member for Webuye West. I see no interest from Members to contribute to this particular Order. I, therefore, direct that the Mover be now called upon to reply.

Hon. Lesuuda, I direct that the Question to this particular Order be dealt with next time the matter is set down for consideration.

Next Order.

*(Putting of the Question deferred)*

## BILL

### *Second Reading*

#### THE SALARIES AND REMUNERATION COMMISSION (AMENDMENT) BILL

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Chair, Departmental Committee on Finance and National Planning.

**Hon. Isaac Ndirangu** (Roysambu, JP): I am here.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): There are three microphones around you. Use the one that is behind you. Move to the row which is behind you.

**Hon. Isaac Ndirangu** (Roysambu, JP): Hon. Temporary Deputy Speaker, I beg to move that the Senate Bill No. 12 of 2018 be now read a Second Time. This is the shortest Bill in this Session.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Waihenya, which Bill are you dealing with? We are on Order No. 11.

**Hon. Isaac Ndirangu** (Roysambu, JP): Is it the Salaries and Remuneration Commission (Amendment) Bill?

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Yes.

**Hon. Isaac Ndirangu** (Roysambu, JP): That is what I am moving, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Can you proceed? Propose the Bill to be considered for Second Reading. You need to do that.

**Hon. Isaac Ndirangu** (Roysambu, JP): Hon. Temporary Deputy Speaker, I beg to move that the Salaries and Remuneration Commission (Amendment) Bill (Senate Bill No. 12 of 2018) be now read a Second Time.

*[The Temporary Deputy Speaker  
(Hon. Christopher Omulele) left the Chair]*

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

This is one of the shortest Bills in this Session of Parliament. It only requires us to amend two clauses. When Members of Parliament hear issues related to the Salaries and Remuneration Commission (SRC), they normally split hairs. I want to assure Members that this Bill only deals with the timelines within which the names of the nominees to the SRC should be tendered to the Cabinet Secretary (CS). Hon. Temporary Deputy Speaker, the SRC (Amendment) Bill 2018 was published on 23<sup>rd</sup> April 2018 and passed by the Senate on 7<sup>th</sup> November 2018.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Hon. Ndirangu, there is a change of guard.

**Hon. Isaac Ndirangu** (Roysambu, JP): Thank you for prompting me, Hon. Temporary Deputy Speaker. I appreciate it.

We involved the Senate in this Bill because Article 230 of the Constitution establishes the SRC. It is mandated to examine and regulate public and State officers both at the national and county levels.

Hon. Temporary Deputy Speaker, the object of the Bill is to amend the Salaries and Remuneration Commission (Amendment) Act of 2011, by introducing a requirement that the relevant nominating body should consider applications, interview a candidate and forward the names to the Cabinet Secretary within 28 days. It also proposes to introduce the expiry of term of the office of commissioners at six years as set out in the Constitution as a ground for vacating office. It is intended to align the Act to Article 250 (6)(a) of the Constitution. If enacted, the Bill will provide timelines within which a nominating body is supposed to present the name of a nominee for appointment to the position of commissioner in the SRC to the CS.

I want to remind Members that the SRC has its members nominated from various sectors including the Parliamentary Service Commission which nominates one person, the Judicial Service Commission, the Teachers Service Commission, the Defence Council, the National Police Service and one person nominated by the Senate on behalf of the 47 county governments. We also have a person nominated by the umbrella body of trade unions and another one nominated by bodies representing employers in the country. Another one is nominated by the joint forum of professional bodies as provided for by legislation.

In processing the Bill, the Committee invited memoranda and comments from members of the public as stipulated in Article 118 of the Constitution and from stakeholders. This was done through advertisement in the print media. Only one organisation, the SRC came up with a memorandum. We sat down with them and they gave us their contributions which we took into account when drafting this Report. We agreed with their presentations that it should take 28 days for the CS to receive names of nominees.

Let me explain the two clauses to Members in an analysis. Clause 2 speaks to amending Section 7 of the Act. The Section relates to nomination of persons for appointment as SRC commissioners. It introduces a requirement that a relevant nominating body should consider application, interview candidates and forward the names to the CS within 28 days.

Clause 3 amends Section 9 of the Act which provides for a vacancy in the office of the chairperson or a member. It proposes to introduce the expiry of term of office, six years as set out in the Constitution, as a ground for vacating office. This is a uniform provision for all commissions that provides that commissioners should vacate office after completion of six years. The amendment aligns the Act with the Constitution.

I hope Members have picked the Report from the Table Office and will speak to it. I request all of them to contribute to this very important Bill.

I beg to move and request my colleague, Hon. Nanok, to second.

Thank you.

**Hon. Daniel Nanok** (Turkana West, JP): Thank you, Hon. Temporary Deputy Speaker. I rise to second the Bill that has been ably moved by the Vice-Chair of the Committee, Hon. Ndirangu.

As the Vice-Chair has observed, we are doing amendments to improve the procedure of nominating members to the SRC and to align the Act with the Constitution. As you know,

Kenyans are very ingenious people. Sometimes they can read laws and apply them in a manner that can create conflict because of the wording or openness of the laws that are made. The improvement which is being brought to the procedure on nomination is to make it a time bound process so that the recruitment process of identifying who becomes a member of the Commission and how he leaves office is clear. If they are left on their own, a mischief may arise such as delays or people flip-flopping with membership nominations. So, the 28 days that have been proposed and given as an amendment to the Act will improve that process. The nominating bodies will be properly guided with the amendment to Section 7 (2) of the Act.

Section 9 on the aspect of a chairperson of the commission vacating office by virtue of expiry of their tenure of office was missing and someone could have easily played games with it because of the missing provision. The original provisions that were given under Section 9 of the Act were that one would vacate office by virtue of death, by resignation and removal via other grounds. Someone could easily say that tenure of office is not a reason for vacating office. So, the amendment cures the *lacuna* in law.

With those observations, I believe that the nominating bodies have been given guidance on the timeframe and that people will not stick and remain in office or commission when they have to leave office.

With those remarks, I beg to second. Thank you.

*(Question proposed)*

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): I do not have a long list of requests. Let us start with Hon. Oyula Mairo.

**Hon. Joseph Oyula** (Butula, ODM): Thank you, Hon. Temporary Deputy Speaker. I rise to support the amendments to the Salaries and Remuneration Commission (Amendment) Bill, 2018, which was published on 23<sup>rd</sup> April 2018.

As it has been said, the amendment is intended to realign only two clauses that were found to be important. One deals with the period within which the nominating agencies should complete and pass over information to the Cabinet Secretary - which should be within 28 days - while the other - Clause 3 - amends Section 9 of the Act that provides for a vacancy in the office of the chairperson and members. It is proposed that we introduce a term limit of six years. Therefore, this short Bill is only amending the two clauses to realign the Act with the Constitution, as is the requirement.

Thank you.

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

**Hon. William Kisang** (Marakwet West, JP): Thank you, Hon. Temporary Deputy Speaker. I rise to join my colleagues in supporting the Salaries and Remunerations Commission (Amendment) Bill, 2018 (Senate Bill No.12 of 2018). Sometimes it is important that the nominating authorities are given timelines. If we do not do that, they can sit on the selection of their own representative thus messing up the Commission.

In the past, I remember when the Senate and the National Assembly were nominating a representative to sit in the SRC, it took a while. If the Commission fails to raise a quorum by even just one person, it will not undertake its job. So, this amendment to give the nominating bodies 28 days to make decisions and submit the names of their nominees to the Cabinet

Secretary for National Treasury is very important. It will ensure that the Commission's work continues.

The second aspect is on the expiry of the term of commissioners. Recently, the term of the Inspector-General of Police expired. The law is clear that a day before the date you were sworn in, your term expires. Even for this particular one, the term for the commissioners and the chairperson of the Commission will expire in six years' time, just a day before the day they were sworn in. I thought there was another amendment that talked about polishing the Bill so that instead of having the Auditor-General of State Corporations, we have the Auditor-General provided by the Constitution of Kenya, 2010.

With those remarks, I beg to support. I hope we will quickly dispose of this amendment Bill and proceed to other business.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): The Member for Kwanza, Hon. Kevin Wanyonyi, you have the Floor.

**Hon. Ferdinand Wanyonyi** (Kwanza, FORD-K): I am not a Member of this Committee but it is a good amendment. It is short and clear, and I support it. However, on the Chairperson's term of six years, when we get to the committee of the whole House, I may propose that if a chairperson is seen to have done a good job, we give him an extension of three years because we have had people who do exemplary work. As my colleague has mentioned, there is the example of the National Police Service Commission (NPSC). If someone has done a good job, there is nothing wrong for us to extend his term in office.

*(Loud consultations)*

Hon. Temporary Deputy Speaker, can you protect me from the noise at that corner?

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Order! There are loud consultations. Tone down on your consultations Hon. Members.

**Hon. Ferdinand Wanyonyi** (Kwanza, FORD-K): Thank you, for the protection. The amendment suggests that after six years, the holder of the office vacates. I am proposing to the Committee that maybe we should take consideration for extension of service, particularly if a person is doing a good job. We should re-examine this amendment.

I do not have any problem with the other amendments. The timeline of 28 days is good since some people sit on their assignment of nominating representatives. This will shield the Commission from being rendered hopeless or jobless upon the expiry of the 28-day timeline.

With those remarks, I support.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Let us now hear the Member for Nambale, Hon. John Bunyasi.

**Hon. Sakwa Bunyasi** (Nambale, ANC): Thank you, Hon. Temporary Deputy Speaker. I rise to support the proposed amendments. They are straightforward and appropriate. Let me use this opportunity to also comment broadly on the role of this very important institution.

The SRC has metamorphosed positively. It is like it is going for policy reforms rather than trying to get at anybody. When they began, there was a bit of fascination with particularly the National Assembly. That seems to have declined somehow. They are now moving into their appropriate territory of playing the role that is expected of them. It will help the Executive to manage remuneration packages and the wage bill and related issues across the board.

If they become effective, going forward, these changes will help them somehow. However, they must find operational space in which to challenge all institutions in this Republic

of Kenya in terms of wage containment in an effort to have lean and efficient service units. This includes even questioning whether what the PSC may have done contravenes the Constitution. We had recent appointments of Chief Administrative Secretaries (CAS) at a time when we expected to have a lean Civil Service in order to cut down on costs. That development does not indicate in any way that people were listening to the SRC. The SRC should have come out strongly to indicate whether that development was appropriate.

With those remarks, I support the amendments. Other than that prayer that I have got for the SRC, I support these amendments.

Thank you.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Hon. Members, I see no more interest in further contribution to this Bill. I now call upon the Mover to reply.

Hon. Ndirangu, you are mobile.

**Hon. Isaac Ndirangu** (Roysambu, JP): Hon. Temporary Deputy Speaker, I thank the Members who have contributed to this important Bill. I want to assure them that this time round, the SRC is heading towards the right direction. I want to thank Hon. Kisang, Hon. Wanyonyi, Hon. Sakwa Bunyasi and my colleague, Hon. Epuyo Nanok for supporting the Bill. I, however, want to assure Hon. Ferdinand Wanyonyi that the terms of service for all independent commissions are standard and are regulated by Article 250(6)(a) of the Constitution which says:

“A member of a commission, or the holder of an independent office— unless *ex officio*, shall be appointed for a single term of six years and is not eligible for re-appointment.”

So, as much as we may be happy with chairpersons of independent commissions, we are unable to reappoint them for another period. If we do that, it will be against the Constitution.

With those remarks, I beg to reply.

Thank you.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Hon. Members, I shall defer putting of the Question on this Order until such a time it will be brought up by the House Business Committee.

*(Putting of the Question deferred)*

Next Order!

#### THE COUNTY STATISTICS BILL (SENATE BILL NO.9 OF 2018)

**Hon. Isaac Ndirangu** (Roysambu, JP): Hon. Temporary Deputy Speaker, I beg to move that The County Statistics Bill (Senate Bill No.9 of 2018) be now read a Second Time.

The County Statistics Bill (Senate Bill No.9 of 2018) was published on 15<sup>th</sup> March, 2018 and passed by the Senate with amendments on 7<sup>th</sup> November...

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Hon. Ndirangu, could you position your microphone properly? We can barely hear you.

**Hon. Isaac Ndirangu** (Roysambu, JP): Hon. Temporary Deputy Speaker, Can you hear me now?

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Yes. Proceed, Hon. Ndirangu.

**Hon. Isaac Ndirangu** (Roysambu, JP): Hon. Temporary Deputy Speaker, the County Statistics Bill (Senate Bill No.9 of 2018) was published on 15<sup>th</sup> March 2018 and passed by the

Senate with amendments on 7<sup>th</sup> November. As a Committee, we considered it and made a Report that we have tabled today. Copies are available for Members at the Table Office. In processing the Bill, the Committee invited comments from members of the public by placing advertisements in the print media pursuant to Article 118 of the Constitution. In spite of the request for the public to present memoranda, when the presentation time lapsed, we were only able to engage the Kenya National Bureau of Statistics (KNBS) and the Council of Governors (CoG). We synthesised and discussed their presentations and memoranda together.

The principle objective of the Bill is to put in place a framework for collation, analysis and dissemination of statistical information by the county governments. As you know, Hon. Temporary Deputy Speaker, in planning for development, it is important that, any Government collects sufficient data to guide it in making decisions. Statistics is an important yardstick for any Government to determine whether it is meeting its development goals and providing services to its people.

This Bill seeks to establish a county statistical system that will assist county governments to plan for the development of counties and measure the gains made by county governments in improving the lives of their people and their constituents. Statistics is governed by the Statistics Act Cap 112 that was enacted prior to the promulgation of the 2010 Constitution.

Part Two of the Fourth Schedule of the Constitution provides statistics as one of the functions of county governments. Therefore, the Bill seeks to provide a legal framework for all the 47 counties to collect, collate and analyse data that is specific to each county to enhance the functions of planning and decision making for development.

This Bill provides for the establishment of a County Statistics Office in every county. Among its responsibilities, the office shall be collecting, compiling, analysing, abstracting and disseminating statistical information on devolved functions under Part Two of the Fourth Schedule of the Constitution. It will ensure coordination of operations in county governments and its other bodies that are involved in compilation and dissemination of statistics and related information. This will avoid duplication of collection of statistical information and allow attainment of compatibility and integration of statistics compiled by official bodies.

The Bill will advise the county governments on the use and development of statistical information. It will create the office of the County Statistician in every county who will be the head of the County Statistics Office. This officer will be recruited competitively and appointed by the county public service board of each county. This will also be a forum for consultation and coordination on matters relating to statistics since both levels of governments, National Government and county governments, have a role in collection, analysis and dissemination of statistical data. The county statistics offices will ensure access of statistical information to members of the public. As you know, Hon. Temporary Deputy Speaker, our Constitution and laws provides for access to information. This is also captured in the Access to Information Act, Act No.31 of 2016 that we passed in the 11<sup>th</sup> Parliament.

This Bill requires a County Executive Committee Member, who is responsible for statistics in the county to prepare an annual report and share it with the governor. It shall also be disseminated to the public and tabled in the Senate.

The Committee has considered this Bill and proposed several clauses to be amended during the Committee of the whole House. All these amendments are geared towards improving the Bill further and to make it a comprehensive instrument that will guide the country's and counties' statistical systems. The amendments are for purposes of uniformity.

Hon. Temporary Deputy Speaker, I beg to move and request my colleague Hon. Epuyo Nanok to second the Bill. Thank you.

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

**Hon. Daniel Nanok** (Turkana West, JP): Thank you, Hon. Temporary Deputy Speaker, once again. I rise to second the Bill. Statistics play a key function as far as development matters are concerned. They play a key role in planning. As the English people say, if you do not plan then you are planning to fail. At the level of the county governments, this new office that is being created—the county statistician—will play a crucial role in enabling our county governments to deliver services and spearhead development based on facts and real figures. Therefore, the planning at that level is going to improve with the advent of this office.

You know that this being a new dispensation for us as a country, the Constitution of Kenya 2010 ushered in devolution which brought us county governments together with the national government, being two levels of government that must consult and co-operate in serving Kenyans. The new arrangement brought with it new dimensions and dynamics of governance, development and service provision. Therefore, by passing this Bill to create the office of county statistician, we will be improving service delivery at the county level.

As I have observed, if you have your data correct, for example, the number of residents in a particular county or even a sub-location of a sub-county then you are able to align your development plans to those numbers in a better way than it was before.

Before the county governments came into place, all plans were being done at the national level. The KNBS was the custodian of all the statistics. If you were to go into those statistics, some of the areas of this country had no specific data about certain parameters or indicators of development. Even in terms of the number of people found in various areas of this country, some of were in doubt. So, with this new office being created at the county level, we should be in a position to improve the kind of data that we have about the various indicators of development in this country.

Looking at the various clauses proposed in this Bill, one that is of interest is the one that gives the qualifications of the county statistician. Some of the amendments being proposed narrow down the kind of person that would serve in this office. Some of the observations that we need to make generally about some of these offices is that sometimes we legislate so narrowly that we actually predetermine officeholders even before the process of recruitment and identification of the person starts – by the nature of the laws that we make.

At the level of a county statistician, I think it is imperative that we require that one is a manager. The county statistician is not the day-to-day statistics officer who does the technical work in that office. At that level, he or she is a manager who is supposed to bring together many people and facilities in order to get the desired results. So, you definitely want the county statistician to be a more open officer who would bring into the office aspects of management and not necessarily the technical aspects.

There are some words that were used in the Bill which I think require a bit of improvement. The Committee undertook to do that. For example, the Bill talks about “develop and support”, words that cannot be measured. For instance, how much support would you give a process? With regard to “develop”, there can be an outcome that can be used to measure that activity.

So, this Bill is spot on. The KNBS is now the custodian of all our statistics at this point in time. However, as we bring on board the county statistics office, I want to believe, with the constitutional requirement of co-operation and consultation between the two levels of



government, our statistics will be better managed and better collected. Therefore, we will have better plans for this country.

I beg to second that the statistics office be an office in the county governments of the Republic of Kenya. I second the Mover of the Bill.

*(Question proposed)*

**The Temporary Deputy Speaker** (Hon. Soipan Tuya): Let us now hear the Member for Kimilili, Hon. Barasa.

**Hon. Didmus Barasa** (Kimilili, JP): Thank you, Hon. Temporary Deputy Speaker. I wish to support this Bill. This is a very important Bill, because you cannot develop any region or area without first understanding the statistics of that area in terms of the population, economic activities of the people from that area and very many other parameters which would assist in planning so that we are able to come up with projects that will directly impact on the economy of the people. I want to appreciate that, at least, we have seen the Senate is now doing something which is very good. County governments have been developing their areas haphazardly without guiding principles on the areas that are more important and need to be focused on.

This Bill will herald a new development. The various parts of this country will begin to have development projects that aim at impacting on the local economy. If passed, this Bill will streamline many officers' roles that county governments have over employed. You can only discharge your duties properly if you have some guidelines. This Bill is going to give work to the County Executive Committee (CEC) member in this country in charge of statistics. They will develop a framework on how they are going to evaluate the needs of the people, gather data and come up with parameters that will assist county governments to plan and bring development that will be meaningful. As you are aware, you can bring many development projects to a particular area but without focus on what will completely transform that particular area, it will be a waste of the tax payers' money.

Hon. Temporary Deputy Speaker, as I support this Bill, may I bring to the attention of this House that from the time devolution was launched billions of shillings have been spent but the majority of Kenyans remain poor. No impact has been felt through the projects that have been funded by county governments. This is largely because of lack of statistics and parameters that would guide county governments in terms of priorities, and the amount of money to be spent. Some projects consume a lot of money but if you do an impact assessment on the local economy or on the lives of the people, you realise it is zero.

So, this is a Bill whose time has come. It is a Bill that is going to make Kenyans begin to view county governments in a new dimension. This Bill will address the problems of wastage and upside down priorities. I urge my colleagues to support this Bill.

With those few remarks, I support this Bill.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Let us have the Leader of the Majority Party.

**Hon. Aden Duale** (Garissa Township, JP): Thank you, Hon. Temporary Deputy Speaker. The County Statistics Bill, Senate Bill No.9 of 2018 seeks to establish a system for the county governments in terms of collection, compilation, analysis and dissemination of statistics information that will assist county governments in planning and measuring their socio-economic development. As you are aware, statistics is a concurrent function between the two levels of government. If you look at the Fourth Schedule of the Constitution and, more specifically under

Part I(11) you will find that the national Government is in charge of the national statistics and data on population. So, let us not confuse and imagine that we are giving county governments powers on national issues such as the Census. That is the mandate of the national Government, which also controls any other data on population that concerns the economy and the society in general.

If you look at Part Two of the Fourth Schedule, and more so section 8, you will find that the function of the county government in this matter is that of planning and development which includes statistics. So, for us to develop, the County Government Act of 2012 requires counties to develop County Integrated Development Plan (CIDP), County Sector Plans (CSP), County Spatial Plans (CSP) and Cities and Urban Areas Plans (CUAP). For them to conduct all those issues that I have raised, this Bill will provide the framework that will clearly demarcate the functions of both levels of government in as far as statistics is concerned.

So, this is a very important Bill. I think for the first time as we move forward, the Senate of the Republic of Kenya is coming to realise its functions as stipulated in the Constitution. The Senate must deal with county matters. It must address legal gaps and challenges. They should look at the County Governments Act and any other law that deals with county governments and bring amendments so that we provide the legal framework for county governments to operate.

Once this Bill is enacted into law, it will provide a legal framework to counties so that they can collect, collate and analyse statistical data that is specific to counties, in order to enhance their planning and evidence. This is so, so that they can make evidence-based decision. Every county must have its own data. They must deal with issues concerning their revenue projections, spatial data, poverty levels, mortality rate, the population age group and the Gross Domestic Product of that county.

We envisage that county governments will match their resources to the needs of the people. For example, do the people of Garissa need more water than roads? So, their resources must be guided based on data and statistics on what are the needs of that county. So, this Bill will act as the evidence to county governments to make a determination on whether they are meeting their development goals and agenda, and providing the requisite service to the people they represent.

Hon. Temporary Deputy Speaker, while county governments continue to receive resources and budgets from the national Government, questions have been raised as to whether we are getting value for our money as the people of Kenya. There is need to provide data to indicate the accountability of the resources that this House appropriates to counties. We must find out what is the mortality rate in counties. For example I come from Garissa County. Based on the resources and the data available, will they allocate more money to water, irrigation or health? This is because at the end of the day, both the national and county governments must account for the resources that this House appropriates on behalf of the people of Kenya. So, there is need to provide data to show accountability of resources that we appropriate to counties.

Allocation of resources on the basis of available data and evidence is believed to be economical and is good and adequate for tackling the inequalities that are seen in our country. For counties to share revenues equally, vertically and horizontally, within their wards and cities, there must be an objective way of resource allocation.

A governor or a county government cannot just sit without any basis of data, research or information that will form a basis of allocating money to a constituency or a ward. The data available must guide the county government in terms of the revenue to give it equally both vertically and horizontally within its area of jurisdiction. So, statistical data which is the basis of

this Bill will ensure that there is an equitable sharing of both the national and county resources throughout the country. The needs of the people of northern Kenya might not be the same as the needs of the people in Coast, Nyanza, Central or Rift Valley. Different regions of our country have specific needs. The statistics from the 47 counties will guide policy makers and this House in the budget-making process.

This law which we are discussing this afternoon in the Second Reading seeks to establish a system in the county governments which is not in isolation but works in coordination with the KNBS. This is the only body mandated by the Constitution and the statute to deal with collection of statistics. So, even a county government cannot work in isolation. It must work with the KNBS because this is the only body that this country has given the powers to deal with collection of statistics. So, there must be coordination between county governments. This is good for creating harmony between different levels of government.

The co-ordination mechanism is provided for through the establishment of a Committee known as “Inter-Governmental Technical Committee on County Statistics”. So, this Committee is the link between the KNBS and the County Statistics Committee. This Committee will develop strategies which will ensure uniform standards. There is no way a county government can have different standards. Even, the census we will conduct in August is based on the international set standards on population census.

So, Kenya cannot have its own parameters. The KNBS will use the system adopted at the United Nations (UN) that is foolproof. So, there is no way, in this Bill, we will have a county that has a system which runs in contradiction to the systems, standards, policies and methodologies of the KNBS. So, together they must develop a framework for both the vertical and horizontal coordination of offices in counties and the KNBS.

I am saying so, because this will ensure we do not have confusion, we get maintained quality standards and the data collected is accurate and credible for future use by other counties and leaders who will come after. There is a lot of duplication in resource allocation in our country. This is found in some county governments which have allocated resources and implemented programmes which have received resources from the national Government. While on the flip side, the national Government has also allocated resources to programmes that are also being implemented by county governments.

So, there is a lot of wastage and duplication by both levels of government. This is happening because we do not have statistics at the local level in the counties, constituencies and wards that can assist governors or Members of Parliament to bring development without duplication. We must get a harmonised plan in a county, so that at the touch of a button, you will find a project being funded by the national Government so that it is not touched. You will also find a project that is being funded by a Member of Parliament under National Government Constituencies Development Fund (NG-CDF). This project will also not be allocated more resources. This is a domain for the county government health---

In the First Schedule, the two levels of government are very clear. Even the NG-CDF has parameters that you cannot use its money to undertake certain programmes which a county government is doing. So, that duplication will be avoided.

Hon. Temporary Deputy Speaker, I will be proposing an amendment to Clause 4 of this Bill just to include Members of Parliament among the beneficiaries of the statistical information at the county level. Members of Parliament are stakeholders and we are part and parcel of the development of our constituencies. So, I will move an amendment to Clause 4 so that Members of Parliament will also be beneficiaries of the statistics information at the county level.

The essence of this is to ensure that we do not have duplication of duties and services at our counties, constituencies and wards. Together, all of us must realise Clause 4(1)(c)(i) of this Bill which is very important. Indeed, this is in line with the provisions of Article 6 of the Constitution which provides that the governments at both the national and county levels are interdependent.

In the last Parliament when devolution started there were some governors, and one of them is my very good friend. He was Hon. Isaac Ruto and we used to talk. He used to tell me, we are government my friend. At one time they even said, we cannot be summoned by the Senate and if they are summoned even the President should be summoned by the National Assembly. That is the time when devolution and power was sweet. But now, they have realised there is a world of difference between the President who is the Commander-in-Chief of the Kenya Defence Forces and a governor who has been elected by less than one hundred thousand or two hundred thousand people.

So, the provisions of Article 6 of the Constitution talk about the two levels of government being interdependent, and shall conduct their mutual relationship on the basis of consultation and co-operation. This is one of the Bills I was waiting for. There is also another Bill from the Government which I will be publishing very soon. It will guide on how we will conduct the census in August this year. It is called the Statistics Act (Amendment) Bill. I will introduce it in the House after recess.

With those many remarks, I want to thank the Departmental Committee on Finance and National Planning and the Senate. Slowly, they are learning their border lines. The Senate cannot be squatters, because the Constitution is very clear. That is why I agree for the first time with Hon. Matiang'i's advisory opinion from the Attorney-General. There are certain Cabinet Secretaries (CSs) who should not appear before the Senate.

That is why I also want to send a message to Hon. James Orengo, that there is no way he can impeach the Deputy President. He cannot even impeach a CS. The only place where the impeachment process of the President, Deputy President or a CS can begin is here. So, James Orengo, you are living in a world of dreams. Come to the National Assembly in the next elections and become a Member.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): The Leader of the Majority Party, you cannot be speaking to Senator Orengo. He is not here, and in any case, you should only address the House through the Speaker and you know this.

**Hon. Aden Duale** (Garissa Township, JP): Hon. Temporary Deputy Speaker, I totally agree with you. He cannot be here because he was not elected. I am only saying in the next election, he can go back to Ugenya which was his former constituency.

I beg to support.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): The Leader of the Majority Party, that is very political. Hon. Members, we have members of Kiratina Location Development Committee. I believe they are the ones at the Speaker's Galley courtesy of Hon. Gabriel Kago. They are from Githunguri Constituency, Kiambu County. Let us take time to welcome the members of Kiratina. Welcome. Let us have Hon. Kelvin Wanyonyi, the Member for Kwanza.

**Hon. Ferdinand Wanyonyi** (Kwanza, FORD-K): Thank you, Hon. Temporary Deputy Speaker. I also take this opportunity to thank the Departmental Committee on Finance and National Planning for bringing up this very timely Bill. Being a statistician, I agree that this has come at the right time. In planning, you need to have sufficient and accurate information for you to plan and develop an area.

Secondly, in moving the Motion, the Vice-Chair mentioned the fact that this is a very important area and that we need to have somebody appointed county government statistician. To me, that is important. If today you want statistical information from the county level, it is difficult. I have personally gone to my county and realised that you cannot know the number of people residing there. You will not even know the number of projects that are in that area. Given that the position will be created upon the passage of this Bill, it will be easier to access such information. I hope this will be done as soon as possible so that we have a position of statistician in the county so that such officers can provide whatever information may be required. Currently, you go out there for statistical information but you do not know who to go to.

The Committee should also emphasise the fact that we need to have a liaison department that will liaise the information from the central government going down to the county government. I have visited two or three counties and there is no linkage. Apart from the statistician, some of the liaison offices that were created at the time devolution started to be implemented have been given seats in some corners in some offices. Those guys are frustrated. Some of them have been recalled to the national Government. So, as we create this office in the counties, we should also create the position of liaison officer so that he can liaise the information between the national government, particularly the ministry, and the county government.

It is important to have accurate information and figures for planning purposes. I do not know whether Members have read news about 16 million Kenyans looking for jobs. The figure may not be very accurate but it is around that number. Most of these people have moved to urban areas. Therefore, there is need for county governments to have information on the migration of youths who are looking for jobs in counties to enable county governments provide the required social amenities in the various sectors. We need to have reliable statistical figures.

Somebody said something to which I agree. If you do not have the correct numbers, and if you do not plan to succeed, you are actually planning to fail. The emphasis should be on county governments to have their planning based on statistics originating from that level. Correct figures will give correct information for planning purposes to support whatever activities county governments may want to undertake.

Hon. Temporary Deputy Speaker, in order to avoid wastage, we should have statistics that are correct. Therefore, appointing somebody to be in charge of statistics at the county level will end the wastage that we are seeing across the country. I read somewhere in the newspapers today that my county has to account for Kshs2 billion. I think they were just guessing and shooting in the dark. They did not have the right information. I think that is the situation. Therefore, getting the right figures will help counties to plan.

This Bill is vital and very timely. I hope its passage will help county governments save on the wastage that we see because the so called-county executive managers can be able to give governors correct figures. Therefore, if they appear before the Senate, as it is supposed to be the case, they will have the right information.

The passage of this Bill will be a win-win situation. County executive members will be able to give correct information to governors so that when they appear before the Senators they are not chased away. I am told that one governor came with insufficient information and was told to go back and come with the correct information.

I thank the Committee for coming up with this Bill. I hope it will help us to do what is supposed to be done at the county level.

With those remarks, I support.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Next is the Member for Baringo South, Hon. Kamuren Charles.

**Hon. Charles Kamuren** (Baringo South, JP): Thank you, Hon. Temporary Deputy Speaker. I rise to support the County Statistics Bill (Senate Bill No.9 of 2018).

Statistics are very important. When we talk about county governments, we are talking about appropriation of monies being given to them. When they do not have authority to collect statistical data, it becomes a big challenge in terms of planning. This Bill will assist county governments to plan the appropriation of financial resources at their disposal according to the distribution patterns of the population they have. Within counties, there are different communities. So, when they do not have clear statistical data in terms of population and resources, some communities will be marginalised. This is against the Constitution of this country.

Statistical data will aid planning for development. It will also give them an opportunity to evaluate their status as counties. What challenges are they facing, and how are those challenges distributed geographically in terms of climate change and the social bit of it? What is going on according to their culture? An accurate statistical database will pick out such aspects and many other things that will assist county governments in planning. A very good example is what is happening in some counties in terms of security.

Some counties like Baringo have bandits all over. Right now, we are seriously affected by drought. We are now relying on relief food. These statistics will give them an opportunity to own their status and plan so that next time they will not request the national Government to support them. This is because they would have already known where they are, own it and allocate their resources accordingly. Apart from that, they will still have an opportunity to evaluate and monitor what is going on. This will enhance service delivery.

This Bill has come at the right time. Those who will have the opportunity to use it will deliver and improve. In Baringo South where I come from, there are very many things that are going on but we do not have clear statistics of the challenges that we are going through because we may not have the resources as Members of Parliament in terms of agriculture, livestock, education and all other sectors. This will give us an opportunity to sit together. As per the amendment to Clause 4 that the Leader of the Majority Party proposed, we should be included as beneficiaries of this so that we get an opportunity to sit, share and plan the lives and livelihoods of our people.

This is very important. I support this Bill.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Well said, Hon. Kamuren. Let us have the Member for Bumula, Hon. Mabongah. There could be another one, Hon. Ichung'wah.

**Hon. Mwambu Mabongah** (Bumula, Independent): Thank you, Hon. Temporary Deputy Speaker for giving me this opportunity to air my voice on this Bill. This is a very important Bill. All of us come from different counties and we see what is happening in this country. This Bill will regulate quite a number of things that are going wrong in most counties. This Bill will ensure that many cosmetic projects in the counties come to an end.

I agree with the Hon. Members who have said that there is a lot of duplication of resources. We supervise the Kenya Rural Roads Authority (KeRRA) monies. At times, whenever we allocate monies, we realise that there is no proper co-ordination. There is a lot of duplication in the counties because they do not understand the real needs of the people. You walk in some constituencies or wards where people are in dire need of water but the county government is

struggling to do something that is completely contrary that people are not even aware of. They talk about public participation that is never done. This is a very important Bill originating from the Senate. We want to believe that the counties will take the right direction from this moment.

There is unnecessary competition in most counties. Once you do not have the statistics of the real needs of your people, you are likely to do what your friend is doing. You will find that most governors are constructing sports academies that nobody goes to. Some people are dying at their doorsteps but the governors are constructing very big offices as if the priority of their needs is the offices. If they get the right information from the very people they are serving, they will meet their needs.

We are talking about equitable resources to most of the wards. You will find that one ward in a single county has more than five projects being undertaken in the same financial year. Another ward may just have a single project or none because the governor is concentrating on where the votes are. He is not doing his administrative duty as the CEO of that county. This Bill will make a number of things in order.

We also want to ensure that the national Government has proper communication channel with the county governments. The county governments should be aware of whatever we are doing at the national level and vice versa. That way, we will avoid a lot of resources being misused at the county level. These statistics will show the governor what he needs to do every day. Most governors wake up every morning as if they are in a campaign mood and promise projects all over. Some of the projects that most of the governors who were in office last time started, were supposed to be done in two financial years are still being worked on. Most of the governors who have come into office have abandoned them. The roads that were started by their colleagues are not being worked on because people seem not to understand that the little resources can be maximised so that people can benefit.

This is a great Bill that we should support. It should have a clear structure of working between the national Government and county governments.

With those few remarks, I support the Bill.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Let us have the Member for Isiolo North, Hon. Hulufu Oda.

**Hon. Hassan Hulufu** (Isiolo North, KPP): Thank you, Hon. Temporary Deputy Speaker. I support this Senate Bill on County Statistics. Before this Bill, the law which currently regulates matters statistics is the Statistics Act of 2006 which was legislated before we promulgated our current Constitution. That Act makes reference to local authorities and so on. It also designates the KNBS as the principal agency for collection, collation, analysis and dissemination of statistical data. Currently, county governments are mandated by law to plan in a number of key sectors like health, livestock and agriculture.

I reiterate what other speakers have said earlier on that this Bill is very timely. I thank the Senate for coming up with this Bill. Looking at the Report of the Departmental Committee on Finance and National Planning, there are very minimal changes to what the Senate proposed. This is an indication of a very good job done by the Senate. Without credible statistical information, it is very difficult for county governments to plan. Most sectors fall under county governments like the livestock sector in Arid and Semi-Arid Lands (ASALs). You can hardly get good information on the number of livestock. You can imagine how difficult it is to plan for a key sector like livestock in the ASAL areas, a sector which acts as the backbone of these counties.

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

*[The Temporary Deputy Speaker  
(Hon. Christopher Omulele) took the Chair]*

This Bill, which establishes systems for counties to collect information and statistical information to guide them in planning is very important. With clear and credible statistical information, it will be easier for our counties to plan well and target development interventions. At the moment, governors and county executive committee members are finding it difficult to distribute development resources because there is no credible statistical information to guide them in terms of how much to allocate to sectors like water. They end up distributing resources equally to each sector among the various wards in the counties when in the real sense, some wards are needier when it comes to access to clean and portable water compared to others. In some wards, the road network is poorer compared to others. Therefore, once the Office of the County Statistician becomes operational and counties collect this information, it will be easier to justify why a particular ward in a given county should be allocated more resources for water development compared to others. It will be easier to evaluate the impact of resources which are spent under different sectors. The statistical data will help the counties to come up with very good county integrated development plans and annual plans too. It will help them to establish clear baselines against which progress can be measured.

This Bill provides a clear framework for collaboration and co-ordination between the County Statistics Office and the KNBS. Therefore, once this Bill becomes law and the offices of county statisticians become operational, counties will invest in collection of statistical information which will then feed into the national data. We will even end up with a very good system at the national level where we can access all the information that we require for planning, whether it is for the NG-CDF or other national Government agencies.

With those few remarks, I would like to support this Bill as it will help us make our planning system to be more systematic and focused.

Thank you very much.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Odege, you have the Floor.

**Hon. Tom Odege** (Nyatike, ODM): Thank you, Hon. Temporary Deputy Speaker. Reading from the mood of the House and the contributions which we have advanced so far, I request you to call upon the Mover to reply.

Thank you.

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

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Mover, you have the Floor.

**Hon. Isaac Ndirangu** (Roysambu, JP): Thank you, Hon. Temporary Deputy Speaker. I wish to reply. I want to acknowledge and thank the Members who have contributed to this Bill, including Hon. Hassan Oda, the Member for Kimilili, the Leader of the Majority Party and Hon. Barasa. I want to assure the Leader of the Majority Party that we welcome his intention and



proposal to amend Clause 4 of the Bill. He has indicated his intention to put under law the fact that Members of Parliament and the NG-CDF will be important consumers and users of the County Statistics Bill.

We have 19 clauses which will be amended. The most important one is Clause 4 which sets out the functions of the County Statistics Office. It is responsible for compiling, analysing, abstracting and disseminating statistical information. Clause 5 will also be amended. It establishes the office of the County Statistician. This is the person who will head the county office. Clause 7 will be amended to provide for the staffing needs of the County Statistics Office while Clause 10 will be amended to provide for the Consultative Committee to be meeting twice a year. Our Committee has also recommended the amendment to Clause 11 to provide for consultation and co-operation between the national Government and county governments regarding the use of statistical information.

Clause 13 requires the County Statistician to develop code of practice for departments and agencies of the county government. We also need to amend Clause 15 which deals with the confidentiality of information obtained by the County Statistician. We also need to amend Clause 7 to be in agreement with the Access to Information Act No.31 of 2016. All these are amendments which we have proposed to move at the Committee of the whole House.

I also want to say something about Nairobi County. This is one of the counties that will benefit from this Bill. It does not have reliable data; not even about its employees. We have the highest number of ghost workers in Nairobi County. The county has no statistics and data on the court cases they are involved in.

My major concern with the Nairobi County is about management of data on public utilities that have been surrendered for the purpose of developing physical facilities and rendering service. I am talking about areas and spaces meant for building markets, schools, and recreational areas. For Nairobi and other counties to develop, they need to programme their work and get their priorities right. They will need to know, for example, what tonnage of garbage they generate in a day or week. That information will help them know exactly how many trucks they need to buy. They will need to know how many green grocers operate in a day in Nairobi. Such information will help them know the extent to which they need to expand their markets. We will also need to know whether, say, at Pumwani Maternity Hospital, the high mortality rate is as a result of the many sagas about stolen children or simply because of inadequate provision of care. The county needs to know how many residents are in a slum so that they can know the gallons of water they require to keep. They will even need to know how many households are in the slum areas.

**Hon. Kimani Ichung'wah** (Kikuyu, JP): On a point of order, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Ichung'wah, what is out of order?

**Hon. Kimani Ichung'wah** (Kikuyu, JP): Hon. Temporary Deputy Speaker, I do not want to interrupt Hon. Waihenya Ndirangu, the Member for Roysambu, but he was called upon to reply and yet he is now debating. I thought that being the Mover, he had debated and he was just to reply on the issues that the Members raised. He has turned this into another session of debate. I wanted to contribute. He is saying all the things that I wanted to say. I obliged when the Member for Nyatike asked that the Mover be now called upon to reply. I feel that the Vice-Chair of the Departmental Committee on Finance and National Planning should reply to the contributions that were made by the Members and not to re-debate; the debate was closed.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Ichung'wah, you desire to limit Hon. Waihenya on what he considers to be replying.

**Hon. Isaac Ndirangu** (Roysambu, JP): I will bear with my good friend, the Chairman of the Budget and Appropriations Committee.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Ichung'wah is in a hurry to do other things, but the business you are conducting right now is the business of this House. You are quite in order, Hon. Waihenya.

**Hon. Isaac Ndirangu** (Roysambu, JP): He might also need to know that this being my county, I have a lot to say be it during debate or when I am supposed to reply.

However, Hon. Temporary Deputy Speaker, I do not wish to belabour in replying. The county needs to have statistics on every matter including bridges, markets, roads and streets so that they are able to plan, programme and prioritise.

With those few remarks, I beg to reply.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Waihenya, you are quite proper and within your mandate to reply.

I direct that the necessary steps with regard to this Order to be taken at such a time as it will be set for consideration by the House Business Committee. I direct that we move on to the next Order in the Order Paper.

## MOTION

### ADOPTION OF REPORT ON INQUIRY INTO LEGISLATIVE/REGULATORY GAPS AFFECTING COMPETITION IN THE TELECOMMUNICATION SUB-SECTOR

**Hon. William Kisang** (Marakwet West, JP): Hon. Temporary Deputy Speaker, I beg to move the following Motion:

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

During its sitting held on 5<sup>th</sup> July, 2018, the Departmental Committee on Communication, Information and Innovation on its Motion, pursuant to the provisions of Standing Order No. 216(5)(e) resolves to undertake an inquiry into legislative and regulatory gaps affecting competition in the telecommunication sub-sector with a view of proposing amendments to existing legislation and regulation to the House under the following terms of reference:

1. To inquire into the nature, levels and extent of competition in the telecommunication sector under the existing legal framework with particular focus on:
  - a. Allocation and use of spectrum.
  - b. The market share of telecommunication service providers.
  - c. Broadband services and rates.
  - d. Call and SMS termination rates.
  - e. Unstructured Supplementary Service Data (USSD) SIM application toolkit (STK) access and rates.
  - f. Mobile money services and rates including transaction charges, transfer fees, loans and interest.

- g. Access to telecommunication infrastructure including cell towers, ducts, poles and fibre.
  - h. Provision of content services.
  - i. Mobile airtime and data rates including airtime loans and service fees.
  - j. Proposals on the measures to address gaps that contribute to anticompetitive behaviour or restrict growth in the sector.
2. What the players in sector have done to ensure fair play in the sub-sector.
  3. Whether the Communication Authority (CA) has adequately protected competition in the sub-sector.

The Committee wrote to key stakeholders in the telecommunication sub-sector and placed an advert in the local dailies on 3<sup>rd</sup> September, 2018 inviting them to submit their views on legislative and regulatory gaps affecting competition in the sector. Thereafter, the Committee held several meetings where it met the stakeholders to consider submission received incorporated in the Report.

A total of 13 memoranda were received from members of the public and stakeholders in the telecommunication sub-sector through the office of the Clerk of the National Assembly. The Committee further held 14 meetings with the CA, Telkom Kenya Limited, Jamii Telecommunication Limited, Airtel Kenya Limited, Central Bank of Kenya, Finserve Africa Limited, Safaricom PLC, Mobile Pay Limited, Wananchi Group, Liquid Telkom, Competition Authority of Kenya, Consumer Federation of Kenya and Safaricom Dealers Association. Thereafter the Committee proceeded for a report writing retreat which provided them an opportunity to consider the submissions of the public and stakeholders and to further draft, consider and approve the Report.

The telecommunication sub-sector in Kenya has grown exponentially since it was liberalised in 1999. The sub-sector has undergone rapid dynamism to the extent that it has become a fundamental driver of the economy. Every year the Exchequer through the Kenya Revenue Authority (KRA) gets a fat cheque from the telecommunication sub-sector.

The liberalisation also increased the number of operators, competition and additional services to the consumers such as internet access through mobile phones and reduced tariffs. The mobile telecommunications sub-sector has, over time, witnessed entry and exit of some players. The entry of new operators has seen the introduction of additional services such as SMS, USSD, mobile money transfer, data, banking and short-term loans. This has led to increased levels of innovation and competition among the operators which is very healthy. However, some of the operators seem to entrench dominance in the telecommunication sub-sector and concerns have been raised on the alleged dominance. That is why, on our own volition as a Committee, we decided to do an inquiry.

Parliament enacted the Competition In Contracting Act (CICA) Bill, 1998 which provides for the establishment of the Communication Commission of Kenya currently the Communication Authority which is responsible for facilitating the development of information and communication sub-sector.

The Constitution of Kenya and CICA, 1998 and the regulations made sometime in 2015 and the Competition Act of 2010 outline the legal provisions covering the telecommunication sub-sector in Kenya. To implement freedom of media, the Constitution of Kenya places an obligation on Parliament to enact legislation to provide for the establishment of a body that is to be independent of control by the Government, political interests or commercial interests, reflect sections of society and set media standards and regulate, monitor compliance of those standards.

The legislation contemplated by the Constitution is CICA which Parliament subsequently enacted to establish the Communication Authority some time in 2015. The CA is required, so far, as is reasonably practical to ensure telecommunications services in Kenya in a manner that is reasonably necessary to satisfy the public demand.

In regulating competition in the telecommunication sub-sector, CA is guided by Sections 23, 84(q) (r) (s) (t) and (w) of the CICA of 1998. CICA outlines rules governing competition within the telecommunication sub-sector as well as the powers and responsibilities of CA as the sector regulator. Section 84(q) of CICA prohibits licensees from engaging in activities which have, are intended to or likely to have the effect of unfairly preventing, restricting or distorting competition where such acts or omission is done in the course of or as a result or in connection with any business activities relating to license services.

In enforcing fair competition, CA is granted powers to investigate abuse of dominant position within the sub-sector or the entering into price fixing arrangement by players within the sub-sector. In addition, Section 84(w) and 85(a) of CICA further mandate the CS, ICT to make particular regulations on competition within the sub-sector.

Further, the Competition Act of 2010 was enacted by Parliament to promote and safeguard competition in the national economy, protect consumers from unfair and misleading market conduct, provide for the establishment, powers and functions of the Competition Authority of Kenya and the Competition Tribunal.

The Report is divided into several chapters. I believe Members already have it. For the sake of time, I want to go to the observations and recommendations of the Committee. The Committee recommends that the Communications Authority of Kenya (CAK) formulates and publishes clear guidelines on the application, allocation and use of spectrum resources within six months. The guidelines should clearly indicate the process involved at each stage, the conditions applicable to the resource allocated and the circumstances under which spectrum is allowed. Spectrum is basically the resource that the telecommunication sub-sector is signed and each pays about US\$25 million over a period of 10 years and there is an annual licence of about a billion after that period.

The guidelines should also indicate the procedure of monitoring and reporting on the usage of spectrum and the basis of charges for the allocation of spectrum for purposes of transparency and to prevent spectrum hoarding. Some people may buy land and speculate as they wait for prices to go up and dispose it. Even for spectrum, there are people who can just be allocated. If it is not followed properly, they wait for the investors who want to buy and sell at a premium price.

Other functions include reviews and audits of existing spectrum management processes including usage fees and related costs. It also includes licensing and reporting its findings to the National Assembly within six months as well as formulating and publishing regulations on the application for allocation of use and payment of spectrum fees instalments for local companies within six months.

This is very important. For local investors, if you are told to pay Kshs2.9 billion in advance, it will be difficult and it will be an entry barrier. That is why local investors can be given a softer option where they pay Kshs250 million over a period of 10 years instead of paying Kshs2.5 billion at once. That comes as a condition of building infrastructure.

On the market share of telecommunication service providers, the Committee recommends that the CAK reviews the market every two years to ascertain the levels of competition including dominance by any mobile operators and reports to the National Assembly biannually on whether

a dominant player exists within the sub-sector, including investment in infrastructure as a precondition for the issuance of licences in the sub-sector. Each applicant is required to demonstrate a clear investment plan. In the past, there are some investors who came in like ESSAR, and stayed with licences. After a short while, they exited by selling the spectrum to other players. It is important that when investors are given licences, they should give a clear plan on how they intend to invest.

The Kenya Information and Communications Act should be amended to provide a clear definition of market share with reference to gross revenues as relates to declaration of a dominant telecommunication service provider.

On broadband services and rates, the Committee recommends the enactment of critical infrastructure legislation to provide appropriate framework for protection of key information infrastructure within six months. The legislation is to be introduced by the Committee and should contain provisions to the effect that all infrastructure built using the Universal Service Fund should be available for sharing by all telecommunications providers. Currently, fibre is not treated as a critical infrastructure. If the optic fibre cable network goes down, it means all our mobile money and communications will go down. If you are at the hospital and you want to discharge somebody, you will not discharge him without paying if you have to pay through the mobile phone.

There is the issue of aligning the building code with regard to access for installation of fibre and permitting access to buildings by all ICT service providers. Currently, when providers are the first ones to go to buildings, they ensure that others do not go in. It is important for us to check our building code so that it is open for whoever wants to install fibre optic. This will ensure that we have options.

The Committee recommends that the CAK uses the Universal Service Fund to build new base station accessible to all network operations in the underserved counties of Isiolo, Garissa, Mandera, Marsabit, Samburu and Turkana. As soon as you build one tower, other operators can just plug in the active components in the towers and they do not have to rebuild. The USF are funds that have already been paid by the telecommunication operators and they are available for all those who are present and those who will be coming in.

The CAK and the Ministry, on matters relating to ICT, should formulate and publish regulations for provisions relating to critical infrastructure, which I mentioned earlier under the Computer Misuse and the Cybercrimes Act, 2018 within six months. The CAK should review the current licensing regime within six months and report to the National Assembly on measures taken to ensure equity in issuance of licences. Some operators have said that it looks like there are those who have advantage over others. We want to monitor this and see that people are treated equitably.

On SMS, the Committee recommends that the CAK consults the Mobile Network Operators (MNOs) and establishes a glide path for reduction of mobile termination rates within two years and the Ministry responsible for ICT publishes regulations on fair competition, equality of treatment, tariffs and interconnection.

On Unstructured Supplementary Service Data (USSD) and SIM Application Toolkit (STK), the Committee recommends that the CAK develops and publishes guidelines in the adoption of a unified Subscriber Identification Module (SIM) application toolkit with universal access across the platforms of all mobile network operators within one year.

We also need to conduct a study on the USSD within a year with a view to lowering the fees. Currently, the fee is Kshs1. They should develop and publish regulations of the USSD by

mobile network operators for non-telecommunication related services. Many services are already in place, which we will mention later on fintech services.

On mobile money services rates including transaction charges, transfer fees, loans and interests, the Committee recommends that the Central Bank of Kenya (CBK) and the CAK formulate and publish regulations within six months on mobile money transaction fees for all mobile money operators. Within six months, the CBK and the CAK should explore modalities of structuring and implementing agent interoperability through the use of a shared technology between mobile network operators engaged in mobile money services and requiring mobile network operators to deposit an agreed annual amount with the Kenya Deposit Insurance as a security for customer funds held in mobile wallets.

The CBK and the CAK should conduct an audit of the levels of compliance with anti-money laundering and Know Your Customer (KYC) obligations by mobile network operators engaged in mobile money services within six months. In this particular one, some mobile operators still give out SIM cards without registering them. That is why sometimes you receive a call either from Kamiti or from somebody who even if you searched on Truecaller, you cannot identify them. They need to have serious policies and regulations on KYC.

The CAK should conduct an audit of compliance by mobile network operators with SIM card registration within six months. This is basically what I was saying. The CBK and CAK should formulate and publish regulations within six months on interest rates on mobile money. The interest rates should be those applicable to commercial banks for standardisation. That is why we are saying that we need to standardise the rates, whether you borrow for a day or two or for a month, it should be uniform, namely, 13.5 per cent or less per annum. This will require mobile network operators engaged in mobile money services to obtain express consent of the customers with regard to accessing the services and products offered and to clearly disclose to the customers all the charges applicable to the services and products. Sometimes in the past, like about two or three years ago, you could sleep at around midnight or 1.00 a.m. or 2.00 a.m., and you receive an SMS from a mobile operator telling you there is a promotion going on. Of late, they have stopped that because that was intrusive.

The CBK and the CAK should audit all unregulated money lending fintech firms which leverage on mobile platforms and subject them to applicable money lending regulations within six months. On access to telecommunication infrastructure, including cell towers, duct, poles and cyber, the Committee recommends that the CAK formulates and publishes regulations on mandatory infrastructure sharing subject to technical, environmental and commercial viability within six months. Basically, the CAK needs to sit down with telecommunication operators, see where they already have towers and whether they can be upgraded to accommodate the others. If the tower is owned by operator A, they should negotiate commercial terms with the other operators, use the Universal Service Fund to build new base transceiver stations accessible to all network operators. This is what I had said earlier. Since we already have close to Kshs8 billion that is lying at the CAK, we want most of the funds to be used to build base stations that are shareable by the four or five operators who are available and also leave space for new entrants. The CAK should formulate and publish regulations allowing the use of telecommunications infrastructure funded by Government agencies by all mobile network operators at a reasonable and uniform fee within six months in consultations with the agencies. In consultation with county governments, the Ministry responsible for roads should develop a licensing framework to harmonise all the charges applicable to the use of wayleaves for laying of fibre and ducts within one year.

Currently, if you want to lay a fibre optic cable here in Nairobi, you will be charged different rates than in Kiambu. It is the same if you go to Elgeyo Marakwet or Thika. They are all different. So, we want the Ministry responsible for roads to standardise this so that technology becomes affordable.

The Committee recommends that money in the Universal Service Fund should be ring-fenced and utilised for the intended purpose which is supporting widespread access to information, communication and technology. The moment there are particular billions in a particular organisation, if we do not ring-fence the money, a need may crop up, as we saw sometimes back.

With regard to the provision of content services, the Committee recommends that the CAK formulates an adequate mechanism for monitoring the provision of content services within six months. This is meant to ensure that mobile network operators and content service providers offer customers only the services they have subscribed to. Service providers should not be intrusive. They should not send you messages that you have not requested for. The CAK should formulate and publish regulations to manage premiere rates service providers that will ensure customers can opt out of unwanted services without being charged, within six months. If there is a particular service that you subscribed to and after a month, a day or hours you are not willing to continue, you should be given an option to opt out of that service without being charged or getting restrictions. The CAK should formulate and publish regulations on the licensing of mobile network operators as content service providers and the obligations. The initial licences the providers are being given are not for content provision, but they are already doing that business. That is why we are saying that they need to pay additional fee for that so that the Exchequer gets additional funds.

Finally, on national roaming, the Committee recommends that the CAK implements national roaming to all the Tier 1 mobile operators in the seven counties of Isiolo, Garissa, Marsabit, Samburu, Turkana and Wajir within one year, subject to long-run average incremental cost. Tier 1 operators are those who can offer their services across the country and Tier 2 are those that are restricted to particular regions. Tier 3 is restricted to a particular county. So, because we have an issue with the seven counties, the CAK should ensure that national roaming is done quickly. Basically, they have to negotiate and agree on the rates.

We also propose the need to amend the Kenya Information and Communications Act, 1998 and the Competition Authority Act, 2010, to empower the CAK with the sole mandate to determine competition matters arising in the telecommunication sub-sector within six months. Currently, the CAK and the Competition Authority of Kenya should have an MoU because under the current law, the Competition Authority of Kenya is the sole authority that is mandated on competition matters, but CA is the technical organisation. The Competition Authority of Kenya does not have technical expertise when it comes to the telecommunication subsector.

With those many remarks, I wish to move and ask my colleague, Hon. Kivasu Nzioka, to second.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Secunder, proceed.

**Hon. Erastus Nzioka** (Mbooni, Independent): Thank you, Hon. Temporary Deputy Speaker. I second the Report of the Departmental Committee on Communication, Information and Innovation on the inquiry into the legislative and regulatory gaps affecting competition in the telecommunication sub-sector. I am a Member of that Committee and I was involved in the deliberations during the submissions.

First, on the spectrum, we realised that the allocation of spectrums lacks transparency, uniformity and fairness. With that, the spectrum is being fixed arbitrarily and requires upfront payments. This is a bit exorbitant for new entrants. The Kshs25 billion to be raised by a new entrant is a bit high. The request to stagger the payments will ensure that the charges to consumers are reduced. The request to have clear guidelines on applications, allocation and usage of spectrum resources is highly recommended.

On the issue of money transfer, we noted during the submissions that mobile money loans have too high interest rates. The 4.8 per cent or 7.5 per cent per day is not within any standards. The request to have these rates standardised is highly recommended so that we can enjoy the standard rates that other banks are giving. Customers are really exploited. We realised that there is one particular phenomenon which has been dominant in the transfer services which poses one big risk. One time, there was an outage in money transfers and this caused a lot of problems to the customers. We realised that this can also be a national security problem. The idea of looking at dominance to ensure that we do not have mobile money transfers on only one service provider is crucial. This will ensure that there is no threat to national security in any of the transfers.

With regard to data collection, when mobile money services are being registered, a lot of data is collected from the users. We do not know how this data is being used. That poses a risk when it comes to confidentiality of consumers' data. It needs to be safeguarded.

Hon. Temporary Deputy Speaker, on the issue of content of service providers, many of them are setting up prohibitive rights for the consumers to access content services via the short code services. Subscribers keep on receiving unsolicited messages. The messages come with a cost, which is not regulated. There is, therefore, need to formulate and publish some guidelines or regulations on the licensing of the mobile network operators as content service providers with clear obligations on how they are supposed to provide the services.

The Chairman of the Committee has talked about telecommunication infrastructure. We have realised that telecommunication infrastructure is not adequate, especially in some counties. This has called for the need to ensure that the telecommunication infrastructure is standardised in a way that all the MNOs can share or access that data. If all this is availed, then MNOs are going to share the data as they carry out their services. The critical information infrastructure is a need that must be addressed. When we look at the Nairobi City County and how the MNOs are accessing the buildings - every MNO wants to access a particular building - we realise that when one MNO gets access to a building, all the other MNOs are blocked. We need to ensure the other MNOs access the buildings. There is need to code so that we have a standardised way of accessing buildings when we are installing our fibres, towers or when we are setting up ducts along the roads. All MNOs can, in one way or another, share what is being provided without any hindrance.

Regarding mobile money services and the rates involved, we request the CBK to regulate them, so that we can enjoy what other banks are giving to their customers. The rates that are charged by many MNOs are exorbitant. We established that from the submissions given by the various MNOs.

With those remarks, I beg to second and thank the Committee for a job well done with regard to the enquiry into the dominance of MNOs. I thank you.

*(Question proposed)*



**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Let us have Hon. Mabonga Mwambu. Leader of the Minority Party, do you have interest in this matter? Your card does not seem to appear here, but I will give you the next chance.

**Hon. Mwambu Mabongah** (Bumula, Independent): Thank you, Hon. Temporary Deputy Speaker. I have spent time listening to some of the memoranda that were submitted before the Committee. Something notable here is about the towers. This House must take note of this because we have made very clear recommendations over the same. We realise that all the towers that belonged to Telkom, which happens to be a Government parastatal, were sold to an American company. Talking of security issues, it is worth noting that they just surrendered themselves to a super power. So, they can easily get access to a lot of our information. From the submissions, you realise that my colleagues have just alluded to it. We need to give more powers and, if possible, amend both the Kenya Information and Communications Act, 1998 and the Competition Act, 2010. We need to empower CAK to have more powers to regulate and determine the market competition in the telecommunication sector.

Some of the telecommunication providers appeared before the Committee and we realised that they are charging high interest rates when it comes to the short message services and money transfers. They have no clear justification for charging those high rates! It is for that reason that we have come up with these recommendations for the House to pass and ensure that they are adhered to.

Another thing is that the towers are not evenly distributed and because of that, we have dominance by one mobile service provider. It is known in this country and they have a tendency of frustrating newcomers in the market. That is why we are recommending that we have regular submissions from the CAK. We need feedback on market trends and how new entrants can join the market. The interest is to protect the consumer. When we talk of communication at the moment, we are actually talking of the most basic thing used by a watchman or even a small boy at home. If we do not protect the consumers, most Kenyans are going to suffer.

With those few remarks, I highly support the Report.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Let us have the Leader of the Minority Party. Hon. Ichung'wah, you understand that the Leader of the Minority Party has got priority. So, when he shows interest, then even Members who have been here slightly longer than him have to give way to him. You will have your time, anyway.

**Hon. John Mbadi** (Suba South, ODM): Hon. Temporary Deputy Speaker, none of them has been here longer than me, at least, not among the Members present this evening.

Thank you very much for giving me this opportunity. I would like to make my contribution on this Report by the Departmental Committee on Communication, Information and Innovation. May I congratulate the Committee for taking action in terms of investigating or inquiring into the matter of the telecommunications sub-sector and bringing the Report before the House.

The Committee that is chaired by Hon. William Kisang, I praise you for this work. As a House, under Article 95 of the Constitution, ours is to resolve or look into issues that are of concern to the people of Kenya.

Hon. Temporary Deputy Speaker, monopoly is not desirable in any economy. No economy can survive in terms of taking care of the consumers well if there is monopoly. Whether it is in the banking sector, communication or the oil sector, monopoly is usually disastrous to consumers. The way the market is structured, especially in the telecommunication

sub-sector, monopoly comes out very wrong. There is no way an economy can allow concentration of economic power in one player.

If you look at the telecommunication sub-sector, you will find that we have had a number of issues. Kenyans have been complaining of expensive services, from making calls to sending money. As the Mover and Seconder have rightly put it, even if you look at the products that the mobile network operators have come up with, you will realise that they are very expensive. In fact, they come out as shylocks. The many products they advertise and Kenyans get into are operated as shylocks. So, what is bringing this about is near monopoly in this country.

Where I find it a bit interesting is that the Committee fell short of doing what I wanted them to. I want to go straight to the Report of the Committee. It observed very well that Parliament enacted the Kenya Information and Communications Act in 1998, which we popularly refer to as KICA. This provides for the establishment of the Communications Commission of Kenya (CCK) currently known as the Communications Authority (CA).

The mandate of the CA is given under the various sections of the law, but I want to restrict myself to what I want to canvass this evening. Section 23(2)(b) provides for effective competition among the operators. This is the work of the CA. Moving forward, Section 84(q)(r)(s) and (t) provides that the Authority shall ensure there is fair competition, identify any anti-competitive conduct in the market and carry out investigations in cases of unfair competition.

Section 84(w) provides that the CA may, by a notice in the gazette, declare an entity to be a dominant telecommunication service provider. In declaring an entity to be dominant, the CA considers the market share of the entity being at least 50 per cent of the relevant gross market segment.

If you go to Page 41 of the Report, the Committee has observed that whereas the CA has determined that Safaricom has more than the threshold required to determine it as a dominant player in the market, which is 50 per cent, in terms of subscribers, it is about 72 per cent if not more. In terms of revenue, I am told it has about 99 per cent control in the market. Therefore, in terms of declaring Safaricom as dominant in this sub-sector, the CA should have done this way back.

I expected the Committee to be bold enough. They observed that as at June, 2018, Safaricom possessed a high market share in mobile subscription, money services, voice traffic and data subscription well beyond the statutory threshold for being declared a dominant player. To make the playing field level and more competitive we need to have Safaricom declared as dominant in the telecommunications sub-sector.

In the recommendations, the Committee is a bit shy and I am wondering why it developed cold feet. My fear is that the CA has been held captive by Safaricom. They cannot declare Safaricom dominant. According to their own Report, in fact, the CA had commissioned a research to be conducted through a reputable firm and through that research, they came to a conclusion that Safaricom has passed the threshold. What is it that stopped the CA from declaring Safaricom dominant?

That is why I say that it is clear to me that Safaricom is holding CA at ransom. Therefore, Kenyans are suffering in the hands of this dominant player and can only get reprieve from Parliament, through this Committee. So, even though it may be late for us, as a House, to make amendments to this Report, the Committee is asking the CA, which has literally refused to declare Safaricom dominant, to review the market every two years. I do not have a problem with this, but it should have been preceded by first declaring them currently dominant. Then, every

two years, they can review the market just to ensure that this player continues to enjoy dominance. But you cannot be shy from asking the CA to declare Safaricom dominant.

We know the benefits that accrue from declaring a player dominant. One of which would be to force the sharing of infrastructure. Some of us who decided to resist at one point - and I have refused to come back to normalcy since the resistance we engineered sometime and the Hon. Temporary Deputy Speaker was part of this resistance - have a problem when we go to our rural areas. You cannot easily communicate because the only dominant communication system there is Safaricom. The sharing of infrastructure is a common phenomenon in every jurisdiction, even in countries like South Africa.

This can easily happen if CA declared Safaricom dominant. I can see the Member is pointing at the Report. It is true and this is in the Report. That is why I am saying that the Committee has done a very good Report. It is also detailed. This is one of the few reports that are very detailed, straight to the point and clear to understand by people who are not experts or professionals in the communications system like me. Where I only fault the Committee is where it has not gone ahead to make fundamental decision or recommendation which would have immediately...

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

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): The Leader of the Majority Party, what is out of order?

**Hon. Aden Duale** (Garissa Township, JP): On a point of order, Hon. Temporary Deputy Speaker. I do not want to interrupt my very good friend and counterpart leader but he has said that sometimes back he resisted Safaricom. I think it is because of that resistance that he has not consciously gone back to Safaricom.

He is still representing Airtel on the Floor of the House because he keeps on repeating the dominance of Safaricom. Can he declare interest in terms of whether he has forgiven Safaricom since the resistance because Baba has forgiven everybody, even Jubilee? We expected the Leader of the Minority Party to forgive Safaricom after the resistance. I am ready to provide him with a new line on behalf of Safaricom because it will only cost Kshs100.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): The Leader of the Minority Party laid a very good basis for making his observations. If you look on page 41 of the Report, you will see where he is coming from when making his observations. Proceed, the Leader of the Minority Party.

**Hon. John Mbadi** (Suba South, ODM): Thank you, Hon. Temporary Deputy Speaker. I just wanted to add that I do not have anything personal against Safaricom. I have forgiven everyone, and there has been a handshake with our competitor. Actually, the issue I was raising is not even one that affects me as a person. I think this is something that affects Kenyans in general. We want a competitive environment where services that we get and consume are structured. We want Safaricom to do its business, make profits and even innovate. There is nothing wrong with that. This competition will even be healthy and good for Safaricom. In fact, I was sharing with another friend who works at Safaricom, whose name I will not disclose. I was asking him whether he is comfortable with the way things are and how Safaricom is dominating the market this much. He was telling me that he is not. He would want to see a situation where he could move from Safaricom and go and work for Airtel or Telkom, but right now, it is not possible because these other firms are barely surviving.

The concern I have, which I have shared with some of my friends who have knowledge about this sector is that if we do not take steps, by the end of next year, we may end up only with Safaricom in the market. That is what I am trying to beseech the Committee to look into because this is not the end. I would recommend and advise that the Committee goes ahead even to make further recommendations to the CA. Even if it is not formal on the Floor of the House or in form of a report, they can still engage with CA and ask them to declare Safaricom dominant.

I am sure the Committee is even more informed about this. Once a player is declared dominant, then there are certain benefits and advantages that accrue to others to make the playing field level and to make them participate and contribute to the development of our economy.

We all know about the banking sector and the reason we even came up with this interest rate capping law, which is not very good. Let us accept that it is not very good for the economy. However, we had to go that route because we were desperate. Banks were behaving like it was monopoly even though there were very many players. The environment was not competitive enough. We do not want to have the same affect the telecommunications sub-sector. I can see my time is up. I want to conclude by congratulating the Committee for having this thorough research. I just want them to look at the concerns I have raised to even make their work better.

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

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Next is Hon. Kimani, the Member for Kikuyu.

**Hon. Kimani Ichung'wah** (Kikuyu, JP): With your indulgence, before I contribute, I want to move two amendments on behalf of the Member for Ruaraka, Hon. T.J. Kajwang'.

I propose an amendment to Recommendation 5(i) and 11 in Section 12.4 and Section 12.9 of the Report by the Departmental Committee on Communications, Information and Innovation. Recommendation 5(i) on Page 81 of the Report proposes that the CA consults with mobile network operators and establishes a glide path for reduction of mobile termination rates to zero within a period of two years.

As a House, we have a duty and a responsibility to the people of Kenya and more so, consumers, to ensure that increasingly, we reduce the cost of calling to as low as possible. This is underpinned by the need to protect consumers and make communications affordable in our country to spur economic growth. However, if you read this recommendation as it is, you will find that the Committee is asking Parliament to take on the role of the CA, which ought and is, indeed, an independent regulator established through an Act of Parliament that was passed by this House. The CA, being an independent regulatory Authority, has powers that we should not be seen as a House to be interfering with. We should allow them, as an independent regulator within the industry, to regulate this industry without necessarily guiding them too much on specifics of how they should do this.

Again, you will note that the recommendation, as worded, would create an avenue for issuing directives for reduction of rates without an underlying mechanism that justifies the action. If you look at the history of the telecommunications industry in this country, you will find that we have already set a precedent and a trend as to how rates are reviewed.

Previously, when mobile termination rates have been lowered in this country, a network cost study is usually carried out. Last time, they did a network cost study to establish the actual cost of making a call. Therefore, we have already established a precedent on who should do these things. What the Committee is asking is to go out of this precedent that has already been established. It is important for us, as a House, not to be seen doing what would almost amount to

price control in this country. If it was to be done, it must be done in an objective way through a scientific process like it has been done in the past through conducting a network cost study.

If you look at the trend in other countries like our neighbours, Tanzania and South Africa, who you would comfortably say are our peers in the continent, and even Ghana where similar glide paths have been established, the initiative has always been informed by a network cost study. Therefore, it is international best practice that you do a study before you decide what rates will be charged. Therefore, there is nothing unique about the Kenyan jurisdiction that would warrant us to deviate from established good practice in the world and in the industry all over the world.

Additionally, we must demonstrate consistency by building onto what has already been done in the past. We have done it in this country in the past. We have conducted a network cost study to review the rates. Therefore, the Member for Ruaraka is asking is this, so that we can follow that precedence that we have already set.

I beg to move that the Motion be amended:

by deleting Recommendation 5(i) and replacing it with the following:

THAT, the Communications Authority consults with mobile network operators and carries out a network cost study within two years with the aim of establishing a glide path for reduction of mobile termination rates to zero.

If the House agrees with this proposal, the only thing we are doing is to introduce that element of having a network cost study to be done before you move the termination rates to zero within a period of three years. So, the only new introduction is that element of the network cost study being done, and I am hopeful the Chair of the Committee, the Committee and the entire House will be in support of this.

Secondly, Recommendation 11 on Page 84 proposes that the CA implements national roaming to other Tier 1 operators in seven counties of Isiolo, Garissa, Mandera, Marsabit, Samburu, Turkana and Wajir within one-year subject to long-term average incremental cost.

Again, the proposal seeks to tie the hands of the CA of Kenya by limiting it to one defined method of the long-run average incremental cost. Again, let me not reiterate and reemphasise the need for Parliament not to be seen to be directing an independent body like the CA. To function effectively, we should allow the CA of Kenya, being an independent Authority, to function effectively and have a free hand to determine the methodology they should use. Therefore, it is not for Parliament to define the methodology that the regulator should employ in implementing the recommendations as that would effectively be usurping the regulator's mandate leaving no room for the Authority to define the best possible approach in implementing national roaming.

For all we know, the methodology might not fit the Kenyan market or it may not necessarily be the cheapest, but the regulator in this industry may know the best methodology that can be used.

Therefore, I appeal to the House not to go into the specifics of defining the methodology to be used. The Communications Authority of Kenya implements national roaming to other Tier 1 operators, as the wording was previously.

Hon. Temporary Deputy Speaker, I beg to move that the Motion be amended in Recommendation 11-

by deleting all the words "subject to Long-Run incremental Cost" after the words "one year". The Recommendation reads as follows:

THAT, the CA implements national roaming to other Tier 1 operators in the seven counties of Isiolo, Garissa, Mandera, Marsabit, Samburu, Turkana and Wajir within one year.

This will cut off the methodology. Effectively, what we want to achieve - and I must commend the Committee for their initiative - is to ensure that Kenyans in far-flung counties that enjoy the Equalisation Fund also enjoy cheaper calling rates. They should access roaming and telecommunication services on mobile telephony at the cheapest possible cost.

It is only fair that we leave it to the regulator, in consultation with the industry players, to define the methodology. It is not for this House to pin it down on the regulator that it must be one particular methodology that may eventually be more costly. This way, the recommendation still remains, but gives the CA the leeway to determine the best approach to utilise in determining the network costs for national roaming.

In conclusion, these proposals still retain the weight of reducing costs of communication for consumers, encouraging connectivity in reserve areas and leaving the CA to exercise its mandate of implementing recommendations effectively. Since I still have one minute, I urge the Chair of the Committee and the Committee to note that most of the regulations that they have listed on Page 9 were there in 1999 and 2001. Others were there in 2010.

In Section 21 of the Statutory Instruments Act, those regulations have been given a lifespan of 10 years. Therefore, the Chair and the Committee should note that some of those regulations have expired.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): I will give you one minute.

**Hon. Kimani Ichung'wah** (Kikuyu, JP): Thank you, Hon. Temporary Deputy Speaker. Looking at the list of all the regulations, other than those that were done in 2012/2013 and in 2010, which will be expiring next year, it will be important for the Committee to be as proactive as it was while initiating this process that has borne fruit in this Report. They should be proactive to ensure that the Ministry and all the other relevant agencies, including the CA, bring new regulations or renew these regulations just to be in conformity with Section 21 of the Statutory Instruments Act.

With that, I beg to move those amendments and ask Hon. Didmus Barasa to second.

**Hon. Didmus Barasa** (Kimilili, JP): Thank you, Hon. Temporary Deputy Speaker. I beg to second.

This is a very important amendment. I know for a fact that we need to lower the rates on mobile connectivity and call rates. As a House, we cannot just usurp the powers of the CA. We must leave it to the CA to decide on the affordable rates that Kenyans will pay and in the spirit of public participation, they will not just wake up and decide how much they will charge. They will hold meetings with mobile operators to come up with the cheapest rates for Kenyans. Most important is to ensure that those charges are affordable. The northern part of this country should also have access to mobile connectivity.

While I agree that there must be fair competition within the mobile sector in this country, this has to be done within the purview of the law. The only institution that is mandated by the Constitution to determine that is the CA. These amendments will ensure all-inclusive consultations between the mobile regulators and operators in coming up with cost-effective call rates.

With those few remarks, I beg to second.

*(Question of the first part of the amendment, that the*

*words to be left out be left out, proposed)*

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Let us have Hon. Odege. He does not desire to be in the House. The next Member with interest is Hon. Maritim Sylvanus, the Member for Ainamoi. Hon. Members, the debate will be strictly on the proposed amendments at this time until such time that we have dealt with the proposed amendments. You are not contributing to the Motion as set out in Order No.13, but only on the amendments.

**Hon. Sylvanus Maritim** (Ainamoi, JP): Thank you, Hon. Temporary Deputy Speaker. I support the amendments because of one simple reason. In lowering the mobile termination rates (MTR), we risk introducing a cloud effect where particular subscribers will want to call within their network and as such no one will be willing to call across the networks.

I support the amendments.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Let us have Hon. Charles Kamuren. Hon. Kimani Ichung'wah, you cannot direct Members on how they will contribute. Your lobbying amounts to interference with the Members' independence in contributing in the House.

Proceed, Hon. Kamuren.

**Hon. Charles Kamuren** (Baringo South, JP): Thank you, Hon. Temporary Deputy Speaker. I also support this amendment. This amendment gives us an opportunity to lower the rates. It also gives opportunity to operators to adjust as per the requirements. It is necessary because of what is going on.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hold on, Hon. Kamuren. Hon. Members, those who are interested in making contributions to the amendment, kindly use the intervention slot, so that I do not necessarily interfere with those who do not wish to contribute.

Proceed, Hon. Kamuren.

**Hon. Charles Kamuren** (Baringo South, JP): Thank you, Hon. Temporary Deputy Speaker. According to the Mover of this Motion, this amendment will give opportunity to the operators to adjust as required. It will also give us an opportunity to enhance the telecommunication services to the regions which do not have them like what the Mover has said about Garissa and other regions. This is the same in other counties. There is a big area in my constituency that does not have telecommunication coverage like Laramoru, Ramacha, Nyimbei, Kirim, Sambaka and parts of Mochongoi. We lack this communication coverage. We want to be in touch with other Kenyans. This amendment will assist by giving an opportunity to these areas.

I support the amendment.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Wamunyinyi.

**Hon. Wafula Wamunyinyi** (Kanduyi, FORD-K): Thank you very much, Hon. Temporary Deputy Speaker for giving me an opportunity to contribute on the amendment. First, this amendment does not only intend to lower the communication rates, but it will also accord an opportunity for a survey to be undertaken for a research and scientific study which will then inform the decisions. That is why I always agree with Hon. Ichung'wah because he comes up with very innovative and important issues.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Wamunyinyi, the intervention is not by Hon. Ichung'wah. He is only a messenger today. The owner of the amendment is Hon. T. J. Kajwang'.

**Hon. Wafula Wamunyinyi** (Kanduyi, FORD-K): He has done very well and he owns the amendment, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Very well. Proceed.

**Hon. Wafula Wamunyinyi** (Kanduyi, FORD-K): He owned another one before, which is the amendment on interest rates which was brought by Hon. Njomo. He did very well and explained in the media and other places. This is one of the Members who are doing very well in the House.

The point I was trying to make is that as much as the intention is good, the goal is aimed at lowering the rates. It is important to note that we will do this while armed with all information. We should look at the market, the players, how it is unfolding and then we can make a decision.

I support the amendment.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Members, I see no further interest in contributing to the proposed amendment by Hon. T. J. Kajwang. Hon. Members, for obvious reasons, I will direct that the necessary motions on completing the matter of the proposed amendment will be undertaken at such a time when this matter will be listed again for consideration in the plenary. Therefore, I direct that we proceed with the Motion without the amendment until such a time that those steps will be taken and the House will make a decision in one way or the other. For the moment, we shall proceed with the Motion as it is without taking into account the proposed amendment. I will give the opportunity to Hulufu Oda, the Member for Isiolo North.

*(Proposed amendments to the Report deferred)*

**Hon. Hassan Hulufu** (Isiolo North, KPP): Thank you very much, Hon. Temporary Deputy Speaker. I stand to support the adoption of this Report. I would like to begin by thanking the Committee for a job well done. It is one of the best reports that I have seen since I joined this august House. It is well organised, 84-page Report with 12 chapters. It is clearly organised in terms of summary of submissions, observation of the Committee and recommendations.

I sit in the Committee on Implementation and we have challenges most of the times when we make follow ups on how the various Government agencies implement recommendations of the various committees. This is one of the reports where the recommendations are actionable. I come from one of the counties which have been highlighted as underserved counties in terms of not having adequate telecommunication infrastructure. Isiolo County is one of them.

To be precise, it is only 8 per cent of my county which has mobile service coverage. This is different from other parts of the country where the dominant player, as per the submissions made to the Committee, has covered 86 per cent of Kenyans with the 3G network. When other Kenyans are moving from 3G network to 4G network, you can imagine a county in this country where 92 per cent of the people has no access to mobile services. I particularly want to speak to the Committee's observation on the underserved counties, which has been captured very well.

I would like to appreciate the recommendations in terms of how that should be addressed. The Committee recommends that the Communication Authority of Kenya should use the Universal Service Fund to establish base transceiver stations. It is only the county headquarters and the sub county headquarters which have these stations in my county. This has impacted negatively in access to basic services like health. Health referrals are not effective because most of the health facilities are located in places where the medics cannot communicate to the next level of referral. For example, if a medic is in charge of a dispensary, it is difficult for him to



communicate to health centres. If there is need for an ambulance for referrals, this will not happen in an effective way.

It also impacts on security. When incidences happen, it takes sometimes a whole day or two days for them to reach police stations. It also impacts on disbursement of cash transfers which is done by the Ministry of Labour and Social Protection. Therefore, I would like to appreciate the recommendations in terms of how we can ensure that the disadvantaged counties, which have low coverage of telecommunication infrastructure can have these services, so that they can catch up with the rest of Kenya.

I have looked at the final recommendation. There is a recommendation to amend the law. It is important for the Committee to fast-track it, so that if there are gaps in existing regulations, which are tying the hands of the CA, we can seal them through appropriate subsidiary legislation or amendments to the various Acts, namely, the Competition Act and the Kenya Information and Communication Act. We can then task the CA to help us reduce the cost of calls, SMS and data, and ensure that through provincial investments in additional infrastructure, the disadvantaged counties can be integrated with the rest of Kenya.

Thank you very much.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Paul Mwirigi, the Member for Igembe South, you have the Floor.

**Hon. John Paul Mwirigi** (Igembe South, Independent): Thank you, Hon. Temporary Deputy Speaker. I rise to support the Report. Communication, especially in area of mobile telephony is very important. Let us not take it lightly. I commend the Committee for a job well done. There are many parts of Kenya where people are still unable to access good services. When the tariffs will be provided to some sampled counties, they will be of benefit to the people in those counties. The Report talks about regulation of some of the tariffs. We know that there are providers who charge highly for calls and even sending of messages. The Report is going to help in the regulation of tariffs.

The CA is independent. Its mandate is to collaborate with the mobile operators to determine and check the problems facing the industry. They are then to come up with proposals, which can help us legislate on issues affecting the industry. We must know what is happening and that can only be possible through information from the bodies that are involved in the telecommunication sector.

This is a good Report that we should adopt. I beg to support.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Let us now hear Hon. Mutua Barasa.

**Hon. Didmus Barasa** (Kimilili, JP): Thank you, Hon. Temporary Deputy Speaker for giving me this opportunity to support this Report. It is a very good Report that aims at prompting the regulator to ensure that we have a level playing field within the communication sector. The fact that one operator came in earlier and put its masts all over the country should not hinder upcoming operators from either using the masts or putting up their own in a particular area.

This country belongs to all of us. It does not belong to an individual. People doing business in the country should equally be guided by the fact that nobody should dominate a particular area. We must have a level playing ground so that anybody who graduates from university and wants to set up a telecoms company should do so. This has to be done within a legal framework provided by the CA, which is the regulator.

As I support this very important and good Report, I urge the Committee to move further and ensure that the recommendations are implemented. This House has resolved very many

issues and has also adopted very good reports. If the various Government departments were to implement them, Kenyans would begin to see a new country altogether. In fact, we will begin to receive good services.

I ask the Committee on Implementation to move with speed and ensure that these reports are implemented. It is on the basis of the implementation of the reports that have been adopted by this House that Kenyans' lives will begin to improve and they will begin to have confidence in what the House does. We burn the midnight oil debating and researching in order to come up with good reports, but if the various agencies in the country are not going to implement the recommendations in the reports, I am worried it will be a serious indictment of the role of Parliament of the Republic of Kenya.

With those few remarks, I wish to support the Report. I want to assure the Chairman that in future, if I become the President of this country, he will join ranks with the *githeri* man for he will get an honour award from me.

**The Temporary Deputy Speaker** (Christopher Omulele): Hon. Maritim, before you make your contribution, we definitely wish Hon. Didmus well in his desires as we move forward into the future of Kenya. We look forward to the day he will come to address this very House on an occasion like the one coming up on Thursday.

Hon. Maritim, proceed.

**Hon. Sylvanus Maritim** (Ainamoi, JP): Thank you, Hon. Temporary Deputy Speaker. I equally support the Report.

The telecommunication sub-sector is a key enabler in ICT especially now that the world is drifting towards and advancing in technology. The Report reminds us of where we have come from as a country. About 16 years ago, it was a privilege to own a mobile phone, but right now, almost everybody owns a mobile phone. It reminds us of the days when we could not make phone calls on Fridays because of congestion, but right now, we can make phone calls anywhere anytime. It reminds us of the history of the telecommunication industry where we had several players coming in while others bolted out.

The first player was Kencell. It changed to Celtel, Zain, and eventually to Airtel. Right now, we have four main mobile network operators, namely, Safaricom, Airtel, Telkom and Jamii Telkom.

Safaricom controls about 65 per cent of the market share in terms of subscriber numbers. The question is how it got there? For a fact, Safaricom has invested heavily in infrastructure. Safaricom has been very innovative. It has special offers to its customers, a scheme that can be replicated by the rest. I still do not understand why a leading mobile operator like Bharti operating in Kenya as Airtel is not investing in Kenya. It is true Safaricom is a dominant player in the country. There is nothing wrong in being dominant, but there is everything wrong in abusing the dominance. We have to ask ourselves where we are heading to as a country. If we are not careful, in the next few years, Safaricom is going to be a monopoly in this country. In as much as it is not our business to assist other operators to make money, we have to also ensure that we have a level playing ground.

As a Committee, we have looked at ways of introducing interventions just to ensure that we give opportunity to the other player to compete because they risk closing shops just like ESSAR did some few years ago. The licence fee is becoming an entry barrier to new players. Currently, every player is required to pay US\$25 million. That is an entry barrier. If that cost can be spread to a period of 10 years, it is going to assist new players and even the existing players who will want to advance in technology.

We have the USF. As a Committee, we are recommending that these funds can be used particularly to build infrastructure in areas that are not economically viable for mobile network operators to invest in like North Eastern. We must attach a condition where each mobile network operator must, within a specific duration, maybe two or three years, be positioned to roll out to other parts of the country.

We are also recommending infrastructure sharing and it is already happening. We have service operators sharing towers and fibre optic cables. We are also encouraging that to continue.

Finally, we are encouraging mobile money interoperability where it will be possible for me to walk into a Safaricom shop, deposit money and transact Airtel mobile money and T-Cash, so that by the end of the day, even people who are in remote areas can also access mobile money from other service providers through the use of Safaricom infrastructure.

I support the Report.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Let us hear Hon. Wamunyinyi.

**Hon. Wafula Wamunyinyi** (Kanduyi, FORD-K): Thank you, Hon. Temporary Deputy Speaker, for the opportunity to contribute on this Motion about the Report of the Committee. I have not had time to peruse the Report. As you are aware, I just arrived in the country this afternoon. Having looked at it, I find this Report very important. If pursued and the recommendations implemented, it will go a long way in ensuring there is order in the industry and the players are organised. It will also ensure that the users benefit in all manner and this country also moves forward in terms of telecommunication, internet and business through mobile money. This is important to this country.

One of the key issues in this Report is the rate. This is not limited to Kenya, but the entire region. We move around the East African Community, IGAD countries and the East and Central Africa to do business, but sometimes communication is very difficult within the region. I do not understand because in Europe, you enjoy mobile communication, but when it comes to our countries in East Africa, it is very expensive. When you go to Tanzania, you find it very costly even to receive a phone call from Kenya. The same case applies to Uganda, Rwanda and Burundi. In fact, Burundi is very difficult. You do not even get network. You do not receive calls because it costs Kshs80 to receive a call in Burundi.

It is also necessary that the study and review of the players and what it involves should extend to the region not just limit it to Kenya. We have challenges in Kenya. If you went to counties like Turkana, Samburu and those in North Eastern, you will find that some of the areas are connected, but the far rural points have not been connected. These are some of the things that should be looked at so that we are all on the same wavelength and working towards the same goal.

The Committee touched on the issue of security. You will realise that some of the findings from the investigation of the Dusit Attack revealed that there was use of mobile money to fund those who were working towards facilitation of the terrorist attack. As we free up the market, there must be ways of ensuring that security measures are put in place and that these open free liberal operations are not abused. This is very important not just to our country---

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Wamunyinyi, without disrupting, it is advisable to consider that the matters touching on Dusit are at this point basically allegations because they have not been presented before a court of law for it to make a determination. We cannot say with authority that it is a finding. Proceed.

**Hon. Wafula Wamunyinyi** (Kanduyi, FORD-K): Much obliged, but you will realise that some suspects have already been charged in court, especially those on the Diamond Trust Bank that are linked to the mobile money transfer. I have no intention---

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Precisely, Hon. Wamunyinyi. My point is that those are allegations that have been made by the prosecution. They have not been tested by way of trial in court.

**Hon. Wafula Wamunyinyi** (Kanduyi, FORD-K): I agree. Just as a matter of caution, we must put in place measures to ensure that this useful business - use of mobile money - is not abused. That is the only point I am trying to refer to.

My colleague also mentioned the issue of dominance and the likely losses that will result from some of the non-performing companies. If they are found to be going down because of certain reasons, there is need to have measures to prevent that. For instance, loss of jobs. We already have enough unemployed people in our country. If any of the companies went down, we obviously are going to suffer immensely in the area of jobs.

We also need to ensure that no redundancy is occasioned in terms of employment.

The other issue is anti-money laundering.

### ADJOURNMENT

**The Temporary Deputy Speaker** (Hon. Omulele): Hon. Wamunyinyi, you have a balance of three minutes. Hon. Members, the time being 7.00 p.m., this House stands adjourned until Wednesday, 3<sup>rd</sup> April 2019, at 9.30 a.m.

The House rose at 7.00 p.m.