



REPUBLIC OF KENYA

THIRTEENTH PARLIAMENT

NATIONAL ASSEMBLY

THE HANSARD

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THE HANSARD

Tuesday, 3rd October 2023

The House met at 2.30 p.m.

[The Deputy Speaker (Hon. Gladys Boss) in the Chair]

PRAYERS

QUORUM

Hon. Deputy Speaker: I hereby direct that the Quorum Bell be rung for 10 minutes.

(The Quorum Bell was rung)

Hon. Deputy Speaker: Serjeants-at-Arms, I direct that you stop the Bell. We can now proceed.

MESSAGES

PASSAGE OF TWO SENATE BILLS

Hon. Deputy Speaker: Pursuant to the provisions of Standing Order 41(4) relating to Messages to and from the Senate, I wish to report to the House that on 2nd October 2023, I received a Message from the Senate regarding the passage of two Bills, namely:

1. The Facilities Improvement Financing Bill (Senate Bill No.43 of 2023).
2. The Primary Health Care Bill (Senate Bill No.44 of 2023).

Hon. Members, the first Message relates to the passage of the Facilities Improvement Financing Bill (Senate Bill No.43 of 2023) which was published vide Kenya Gazette No.168 of 15th September 2023. The Bill seeks to, among other things, provide for public health facility improvement financing, and management and administration of the improvement financing. The Senate passed it with amendments on Wednesday, 27th September 2023.

The second Message relates to the passage of the Primary Health Care Bill (Senate Bill No.44 of 2023) which was published vide Kenya Gazette Supplement No.169 of 15th September 2023. The Bill seeks to, among other things, provide a framework for the delivery and access to the management of primary health care. The Senate passed it with amendments on Thursday, 28th September 2023.

Having passed the two Bills, and pursuant to Articles 110 and 111 of the Constitution and Standing Orders 46(1) and 161 of the Senate Standing Orders, the Senate now seeks the concurrence of the National Assembly on each of the Bills. Standing Order 143 of the National Assembly Standing Orders requires the Speaker to cause a Bill received from the Senate to be read a First Time upon conveyance of its Message. In this regard, you will notice that the two Bills have been listed for First Reading on today's Order Paper. Upon being read a First Time, the Bills will stand committed to the Departmental Committee on Health for consideration in line with Standing Order 143.

Hon. Members, noting the urgent nature of the Bills, the Committee is encouraged to expeditiously undertake public participation and report to the House for onward processing of the Bills. The House is accordingly guided. I thank you.

Next Order.

I do not think there are any Papers to be laid. Leader of the Majority Party, are there any Papers? Chairperson of the Departmental Committee on Justice and Legal Affairs, do you have a Paper?

(Loud consultations)

Member for Tharaka? I will recognise some guests as the Chairperson of the Departmental Committee on Justice and Legal Affairs gets himself together.

COMMUNICATION FROM THE CHAIR

DELEGATIONS FROM PARLIAMENTS OF ZAMBIA AND NAMIBIA

Hon. Deputy Speaker: Hon. Members, I wish to introduce to you delegations of staff from the Parliaments of Zambia and Namibia seated in the Speaker's Gallery.

From the National Assembly of Zambia:

1. Mr. Tennieson Nyangu, Principal Clerk, Journals & Table Office;
2. Mr. Collins Ngozi, Deputy Principal Clerk, Learning & Development; and
3. Mr. Kabwibwi Mubanga, Deputy Principal Clerk, Research.

From the National Assembly of Namibia:

1. Mr. Vincent Sinalumbu, Deputy Director, Research & Information; and,
2. Mr. Raphael Hangula, Senior Information Officer.

Hon. Members, the staff from the National Assembly of Zambia are in the country on a visit to the Centre for Parliamentary Studies and Training (CPST) to, among other things, learn about the model and the organisational structure of the Centre. On the other hand, the staff from the Parliament of Namibia are on a study visit to the Department of Public Communication and Media on an exchange learning on, among other things, legislative communication strategy, social media policy, and outreach programmes.

Hon. Members, on my own behalf and that of the National Assembly, I welcome them to the National Assembly and wish them fruitful engagements during their stay in Kenya.

I thank you.

PAPERS

Hon. Deputy Speaker: Chairperson of the Departmental Committee on Justice and Legal Affairs, Hon. Sir. George, you have the Floor.

Hon. George Murugara (Tharaka, UDA): Thank you very much, Hon. Deputy Speaker. Sorry that this was delayed a little bit.

I beg to lay the following Paper on the Table:

Report of the Departmental Committee on Justice Legal Affairs on its consideration of the Conflict of Interest Bill (National Assembly Bill No.12 of 2023).

Thank you very much.

Hon. Deputy Speaker: Next Order.

NOTICES OF MOTION

Hon. Deputy Speaker: I think there are none. I do not see any notices of Motion. Next Order.

**NOTICE OF ADJOURNMENT ON A MATTER
OF URGENT NATIONAL IMPORTANCE**

SKYROCKETING FUEL PRICES IN THE COUNTRY

Hon. Deputy Speaker: Hon. Ken Chonga, Member for Kilifi South, you were supposed to have a notice of Motion. If he is not here, we can always pivot back to him when we come back. Hon. Ken Chonga.

Hon. Ken Chonga (Kilifi South, ODM): Yes!

Hon. Deputy Speaker: Proceed.

Hon. Ken Chonga (Kilifi South, ODM): Thank you, Hon. Deputy Speaker. Pursuant to the provisions of Standing Order 33(1), I rise to seek leave for the adjournment of the House to discuss a definite matter of urgent national importance regarding the skyrocketing fuel prices in the country.

Hon. Deputy Speaker, the Energy and Petroleum Regulatory Authority (EPRA), in its latest price review, revised the fuel prices for Super Petrol, Diesel and Kerosene upwards by Ksh16.96, Ksh21.32 and Ksh33.13, respectively, leading to a cost of over Ksh200 per litre. This surge in fuel prices has caused serious apprehension among Kenyans as these prices are the highest in the country's history taking into consideration the levels of purchasing power of the majority of the people of Kenya.

Hon. Deputy Speaker, while it is acknowledged that global demand and supply factors influence the fuel prices, the sharp increase in fuel prices coupled with the numerous taxes will take the country's economic growth backwards, as prices of most goods and services are pegged on such rates. Instructively, taxes account for up to 40 percent of the fuel pricing in the country.

It is against this background that I seek leave for the adjournment of the House to discuss this matter of urgent national importance with a view to finding sustainable solutions to the ever-increasing fuel prices so as to alleviate the burden on Kenyans.

Thank you, Hon. Deputy Speaker.

Hon. Deputy Speaker: Hon. Chonga, do you have 20 Members?

(Several Members stood up in their places)

Okay. I am reliably informed that you have 21 Members.

(Applause)

So, the matter shall be debated at 6.00 p.m. Actually at 6.15 p.m., so as to allow us to finish the other businesses.

Next Order.

QUESTIONS AND STATEMENTS

Hon. Deputy Speaker: Hon. Peter Lochakapong, Chairperson of the Departmental Committee on Regional Development, are you ready? Give him the microphone. You may proceed.

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(Hon. Kassait Kamket moved to Hon. Peter Lochakapong's seat)

Hon. Kamket, please, move to the seat on your right so that we can get a microphone for the Member.

STATEMENTS

PROGRESS REPORT ON CONSIDERATION OF REGIONAL DEVELOPMENT AUTHORITY BILL

Hon. Peter Lochakapong (Sigor, UDA): Hon. Deputy Speaker, I rise under Standing Order 127(5) to report progress on the consideration of the Regional Development Authority Bill (National Assembly Bill No.7 of 2023) by the Departmental Committee on Regional Development. The Bill was read for the First time in this House on 6th June 2023 and was committed to Departmental Committee on Regional Development for consideration pursuant to Standing Order 127(3).

Hon. Deputy Speaker, the Bill is very important as it seeks to consolidate all laws relating to regional development and to provide for the establishment, powers and functions of the six existing regional development bodies. The Bill further seeks to standardise the functions of Regional Development Authorities (RDAs) and the membership of the boards of each authority to 11 members in line with best practices in corporate governance. It also seeks to align all existing RDA Acts with the provisions of the Constitution of Kenya, 2010.

The Committee was required to undertake public participation on the Bill by inviting submissions on the memoranda, holding public hearings, consulting relevant stakeholders in the sector, and consulting experts on technical subjects. I wish to report that in compliance with Article 118(b) of the Constitution and Standing Order 127(3), the Clerk of the National Assembly placed an advertisement in print media on Monday, 12th June 2023 inviting the public to submit memoranda on the Bill. By the close of the submission deadline, the Committee had received six memoranda from the following institutions:

1. State Department for ASALs and Regional Development.
2. Six Regional Development Authorities.
3. Kenya Law Reform Commission.
4. Council of Governors.
5. National Gender and Equality Commission.
6. Intergovernmental Relations Technical Committee (IGRTC).

In addition, the Committee met with key stakeholders to submit views on the Bill on 25th and 26th August 2023.

While the Committee was undertaking public participation on the Bill, the IGRTC submitted that there was a multi-agency technical team on Regional Development Authorities comprising the six Regional Development Authorities, county governments, the Council of Governors, the Executive Office of the President, and the Kenya Law Reform Commission that recommended, among other things, to align all RDA Acts with the provisions of the Constitution of Kenya, 2010, which this Bill is preparing to address.

Taking into consideration the submissions by the IGRTC, the Committee resolved to further engage it on the contents of the report by the multi-agency technical team and to also undertake further public hearings on the Bill in Kilifi, Tana River, Kisumu, Elgeyo Marakwet and Isiolo counties to collate the views of the public.

In view of the foregoing, the Committee requests an extension of 60 days to further engage the IGRTC, all stakeholders involved in the multi-agency technical team, and to conduct public hearings on the Bill. I wish to restate our commitment to processing the Bill.

Thank you, Hon. Deputy Speaker.

Hon. Deputy Speaker: Hon. Lochakapong, you have given valid reasons, including the list of important stakeholders that you have been unable to consult with. I am inclined to approve your request for a further 60 days to undertake public participation. We hope that you will use the opportunity to consult widely.

Hon. Members, I make that decision pursuant to Standing Order 127(4A) which states:

“(4A) The Speaker may extend the period for public participation under paragraph (4) where various provisions of the Bill proposing to amend more than one statute in its principal provisions are referred to separate Departmental Committees under paragraph (1A).”

For that reason, I approve the extension.

Hon. Dorice Donya (Kisii County, WDM): On a point of order.

Hon. Deputy Speaker: What is your point of order, Madam Dorice Donya?

Hon. Dorice Donya (Kisii County, WDM): Hon. Deputy Speaker, I seek your indulgence. The Cabinet Secretary for Education was in this House on 3rd May 2023 and we asked him a question about the issuance of sanitary pads to our school-going girls...

Hon. Deputy Speaker: Hon. Donya, would you like to make a Statement?

Hon. Dorice Donya (Kisii County, WDM): Yes.

Hon. Deputy Speaker: Okay, proceed with your Statement.

ISSUANCE OF SANITARY PADS TO SCHOOL-GOING GIRLS

Hon. Dorice Donya (Kisii County, WDM): Hon. Deputy Speaker, I am very grateful. The Cabinet Secretary told us that he had directed the Ministry of Public Service, Gender and Affirmative Action and other stakeholders involved to deal with this issue once and for all. Five months down the line, our children have no sanitary pads. I come from Kisii County and I have not seen any sanitary pads being issued to our young school-going girls.

I am not ashamed to say that he did not give us the correct answer. I even asked him about our young girls and boys fetching water from rivers. He told us that there were no pupils still fetching water from rivers, but yesterday I received photos of boys and girls from Emesa A.I.C Primary School fetching water from a river.

I want an answer as to why Woman Representatives and other female leaders in this House have not received any positive response regarding issuance of sanitary pads even after I had spoken to the Cabinet Secretary in our vernacular language. I told him, “*omogaka toe ebinto ebi toe abana baito batumie ase chisukuru*”. I thought he would hear me if I spoke in our vernacular language because he has not given us any answer in English. We need assistance.

Hon. Deputy Speaker: Hon. Dorice Donya, you can come up with a written Statement and send it to the Departmental Committee on Education; which Departmental Committee will handle the matter. Is it the Departmental Committee on Education, or the Departmental Committee on Social Protection?

(Several Members spoke off the record)

What is your suggestion? I will listen to someone else.

Hon. Dorice Donya (Kisii County, WDM): When I asked the Cabinet Secretary for Education the question, he said that he would engage with the Ministry of Public Service, Gender and Affirmative Action.

Hon. Deputy Speaker: Okay. The Statement can be marked to the Departmental Committees on Education and Social Protection.

Hon. Dorice Donya (Kisii County, WDM): Thank you, Hon. Deputy Speaker.

Hon. Jared Okello (Nyando, ODM): On a point of order.

Hon. Deputy Speaker: What is your point of order, Hon. Jared Okello?

Hon. Jared Okello (Nyando, ODM): Thank you, Hon. Deputy Speaker. I have two issues that need your attention, direction and assistance.

The first one relates to international travels by Members of this House together with our secretariat. In his wisdom, our Clerk, my good friend, Mr. Samuel Njoroge, took the amounts allocated to international travels and apportioned them along Committee lines. At the end of the day, we realised how paltry that money was. That makes it very difficult for Committee Members to travel. We accrue benefits from international travels through workshops, bench-markings and so forth. I am glad our friends from Zambia are present in the House. We learn many things that cannot be gainsaid.

I belong to the Committee on Delegated Legislation that has 21 Members, and the Budget and Appropriations Committee that has 27 Members. That paltry sum of money would be depleted if you were to only send three Members to the United States of America (USA), Australia or the United Kingdom (UK).

Hon. Deputy Speaker: Hon. Okello, that is a directive and advice from the Government. When it reaches the Clerk of the National Assembly, he will deal with it administratively and communicate to Members in their various committees. Trying to debate it in the House when we do not have an official circular from the Government is an exercise in futility. We should not debate a matter on the basis of newspaper reports.

Let us proceed.

Hon. Jared Okello (Nyando, ODM): Thank you, Hon. Deputy Speaker. That is not the direction I was taking but I was also ...

Hon. Deputy Speaker: No. I know you, Hon. Jared. Like I have said, you are alluding to something that is not properly before the House. It is an administrative issue that has been sent to accounting officers. Let the accounting officers communicate the details of it to their respective institutions.

(Hon. Jared Okello spoke off the record)

No. You only get one point of order. Sit down and then ask for a different point of order.

Let us proceed. You will sit down and then ask a different point of order.

Hon. Njeri Maina (Kirinyaga County, UDA): On a point of order.

Hon. Deputy Speaker: What was your point of order, Hon. Gacheri?

Hon. Njeri Maina (Kirinyaga County, UDA): Thank you, Hon. Deputy Speaker. I thought Hon. Donya raised a general statement so, I am seeking your indulgence on whether Members can have a few minutes to kindly ventilate on the issue of sanitary towels. It is a pressing concern for our girls.

Hon. Deputy Speaker: Okay. I can give you a chance to ventilate and then we will proceed.

Hon. Njeri Maina (Kirinyaga County, UDA): Thank you, Hon. Deputy Speaker. When we passed the budget in this House, we put Ksh940 million for procurement of sanitary towels. Hon. Donya has told this House that she discussed this with the Cabinet Secretary for

Education who indicated the need to have progressive consultations with the Cabinet Secretary for Public Service, Gender and Affirmative Action. I want to confirm that more than 30 county women Members of the National Assembly had a sitting with the Cabinet Secretary for Public Service, Gender and Affirmative Action, Hon. Aisha Jumwa, to discuss the issue of sanitary towels.

When we were signing the Kenya Kwanza Women's Charter, our Government promised to give free sanitary towels. In this day and age, sanitary towels are still a pressing concern for majority of girls in Kirinyaga County in parts of Mwea, Gichugu, Ndia and Kirinyaga Central. I am certain this is the same for many Members. As women representatives, we have exhausted our personal finances on ensuring that we buy sanitary towels so that girls can go back to school. I was addressing this Parliament last week and confirmed that we have not yet received our National Government Affirmative Action Fund (NGAAF) funds.

In all honesty, we must be told by the Cabinet Secretary for Public Service Gender and Affirmative Action and the Cabinet Secretary for Education where the Ksh940 million for sanitary towels is. We need that money to buy sanitary towels as soon as yesterday. Periods are not something girls can say they want to do away with. It is not an option. They have periods every month. I want to urge this House to take that issue seriously and as a matter of urgency.

Thank you, Hon. Deputy Speaker.

Hon. Deputy Speaker: Thank you Member for Kirinyaga County, Hon. Njeri. I indulged you even though there is no substantive statement before the House at the moment. I know you had raised this issue in regard to NGAAF and it was marked to the Departmental Committee on Social Protection at that time. I indulged you for that purpose, but there is nothing substantially before the House.

Before we move to the next Order, allow me to recognise the presence of Pesi Day Secondary School from Laikipia West Constituency, Laikipia County; and Woodcreek Secondary School from Roysambu Constituency, Kiambu County. Both are seated in the Speaker's Gallery. I also wish to recognise seated in the Public Gallery Visa Oshwal Primary School from Westlands Constituency, Nairobi County. On my own behalf and that of the National Assembly, I welcome you to observe the proceedings of the House. Thank you.

Next Order!

MOTION

NOTING OF REPORT OF KENYAN DELEGATION TO 146TH ASSEMBLY OF IPU AND RELATED MEETINGS IN BAHRAIN

THAT, this House notes the Report of the Kenya Delegation to the 146th Assembly of the Inter-Parliamentary Union (IPU) and related Meetings, held in Manama, Kingdom of Bahrain from 11th to 15th March 2023, laid on the Table of the House on Wednesday, 14th June 2023.

(Moved by Hon. John Kiarie on 22.8.2023)

(Debate concluded on 28.9.2023)

Hon. Martha Wangari (Gilgil, UDA): On a point of order, Hon. Deputy Speaker.

Hon. Deputy Speaker: Before I proceed to put the Question, Hon. Martha Wangari, I have seen your request to raise a point order.

Hon. Martha Wangari (Gilgil, UDA): Thank you, Hon. Deputy Speaker. I had only put it to support the issue of sanitary towels raised by Hon. Njeri because I think it is overdue. Just the way condoms are free and sex is a choice, for menstruation you cannot choose. On this issue, the ping-pong between the Ministry of Public Service, Gender and Affirmation Action and the Ministry of Education have caused our girls to stay away from school. That is the reason we are having defilement cases and Gender Based Violence (GBV). We have girls being lured to traps by a packet of sanitary towels. I do not think we can insist more. Let us have a timeline when this statement will come on the Floor.

Hon. Deputy Speaker: Hon. Members, allow me to put the Question. The matter is absolutely before your Committee, Hon. Alice Ng'ang'a.

(Question put and agreed to)

Next Order!

BILLS

First Readings

THE FACILITIES IMPROVEMENT FINANCING BILL
(Senate Bill No.43 of 2023)

THE PRIMARY HEALTH CARE BILL
(Senate Bill No.44 of 2023)

THE LEGAL AID AMENDMENT BILL
(National Assembly Bill No.53 of 2023)

THE PRISONS BILL
(National Assembly Bill No.54 of 2023)

THE PENAL CODE AMENDMENT BILL
(National Assembly Bill No.55 of 2023)

(The Bills were read a First Time and referred to the relevant Committees)

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

Hon. Deputy Speaker: Leader of the Majority Party, what is your point of order?

Hon. Kimani Ichung'wah (Kikuyu, UDA): Thank you, Hon. Deputy Speaker. Pursuant to Standing Order 40(2), as we discussed in the House Business Committee (HBC), I wish to request you to reorder business appearing as Order No.15 to become Order No.16 and business appearing as Order No.16 to take the place of Order No.15.

Hon. Deputy Speaker: Hon. Members, following the request by the Member for Kikuyu who is also the Leader of the Majority Party, Hon. Kimani Ichung'wah, and pursuant to the provisions of Standing Order 40(2), I reorganise the business as follows:

That, after Order No.13, the House will proceed to consider business appearing under Order No.16, which will be Order No.14 and after consideration, the House will then proceed

to consider business appearing as Order No.18, which will become Order No.15 in that sequence. You have made your point, Leader of the Majority Leader

Hon. Kimani Ichung'wah (Kikuyu, UDA): Hon. Deputy Speaker, I think you got a little mixed-up. The request was after we dispose Order No.14, then you rearrange Order No.15, so that Order No.16 takes its place.

Hon. Deputy Speaker: Okay. My direction should have been that after Order No.14 we will proceed to consider business appearing under Order No.16 which will now be referred to as Order No.15.

Further, after the consideration of the business appearing under Order No.16, which will now be Order No.15, the House will proceed to consider business under Order No.18 which will now be Order No.16. Is that correct?

Hon. Kimani Ichung'wah (Kikuyu, UDA): Yes, Hon. Deputy Speaker.

Hon. Deputy Speaker: Thank you.

Next Order.

MOTION

RATIFICATION OF PROTOCOLS RELATING TO AMENDMENTS TO THE CONVENTION ON INTERNATIONAL CIVIL AVIATION 1944

THAT, this House adopts the Report of the Departmental Committee on Transport and Infrastructure on its consideration of the protocols relating to amendments to Article 50(a) and 56 to the Convention on International Civil Aviation 1944 (Chicago Convention), laid on the Table of the House on Thursday, 17th August 2023 and pursuant to the provisions of section 8(4) of the Treaty Making and Ratification Act, 2012, approves the ratification of the protocols relating to amendments to Article 50(a) and 56 to the Convention on International Civil Aviation 1944 (Chicago Convention).

(Moved by Hon. George Kariuki on 28.9.2023)

(Resumption of debate interrupted on 28.9.2023)

Hon. Deputy Speaker: Hon. Members, there was a balance of time of two hours 27 minutes. Was any Member on their feet? There was none. Those Members who want to contribute to this particular debate, kindly, press the intervention button.

Yes, Hon. GK, Chairperson of the Departmental Committee on Transport and Infrastructure.

(Hon. George Kariuki Spoke off the Record)

It was never moved? I thought it was moved. I think you were absent. My notes show that the debate to this Motion was interrupted on Thursday, 28th September and there was a balance of two hours 27 minutes.

(The Deputy Speaker was given a copy of the Votes and Proceedings)

Luckily, Hon. GK, this is a House of records. I have been given an original document by the Clerk-at-the Table, which shows that on Thursday, 28th September 2023, in the afternoon, Hon. George Kariuki – yourself - at 16:49 moved the Motion and thereafter, Hon. John Kiragu, at 16:52 seconded the Motion. The Motion was moved and the Question was proposed. Rising in his place pursuant to Standing Order 96, Hon. Owen Baya, claimed to move that the debate be adjourned.

So, the Motion was deferred for continuation today. So, I will be correct to say that we resume debate. We have two hours 27 minutes.

Hon. Members, press your intervention buttons. The first person who has done that is Hon. John Waweru, also known as KJ, Member for Dagoretti South.

Hon. John Kiarie (Dagoretti South, UDA): Thank you very much, Hon. Deputy Speaker. I rise to support the amendments to Articles of the Convention on International Civil Aviation 1944 (Chicago Convention). There is a very vibrant aviation industry that is beckoning. However, East Africa is lagging behind. My biggest concern beyond the Convention on International Civil Aviation 1944 that we are seeking to amend today is the fact that we must reconsider how we attend to aviation matters in this country even as we move as East Africa. As we speak, it looks like we are very keen to look at what is happening in the region, but when we get home, that is where we draw the line.

We have a national carrier that is on its knees. Each Member here will tell you that Kenya Airways is in the doldrums. As we support the amendments to the Convention on International Civil Aviation 1944, we have to know that if we are looking forward to a vibrant aviation industry, we will need to go back and check the aviation industry in our home country.

The Kenya Airways is a critical matter that we cannot ignore as we discuss this Motion. There are issues that need to be addressed on the national carrier. One, why is the national carrier perennially registering losses? This can only point to one issue of management and governance. This House shall not continue to hide its head in the sand. The national carrier is facing a governance crisis. If we study other airlines that are doing well in the globe, we will find out that they have two very critical components on their boards of management. For starters, the boards of airlines that are doing well have pilots and engineers sitting on them. These are people who understand aviation. However, that is not the case for Kenya Airways. In Kenya Airways, they have a way of bringing in bankers, human resource and finance people. Ultimately, this locks out professionals who are pilots and engineers. We must remedy that.

Two, is the issue of the people working for Kenya Airways. As we amend the Convention on International Civil Aviation 1944, back at home, Kenya Airways - which was one of the great employers - is an embarrassment. That is why the airline is bleeding talent left, right and centre. Our pilots and engineers are taking off and our air hosts and hostesses are running away. All this is pointing at the mis-governance at the highest level.

Three, we have an airline that has packed a Dreamliner. Statistics have shown that when a Dreamliner is operational, it brings in close to US\$1 billion per flight. That money can do well by contributing to the forex earnings of this country. We have Dreamliners that are packed at the airport hangers. This also points to mismanagement. The point I am trying to make is that as we amend the articles on the Convention on International Civil Aviation 1944 today, we still have to come back home and attend to aviation matters starting with Kenya Airways. I support these amendments and as we do this, let us look at what is happening with the national carrier.

Hon. Deputy Speaker: The Member for Limuru, Hon. John Kiragu. You are a Member of the Committee. Sorry. I have been informed that you have contributed.

Let us have the Member for Kitutu Masaba, Hon. Clive Gisairo.

Hon. Clive Gisairo (Kitutu Masaba, ODM): Thank you, Hon. Deputy Speaker. I did not intend to contribute on this debate.

Hon. Deputy Speaker: Hon. Members, please, press your intervention buttons so that I can know that you want to comment on this Motion.

The Member for Nyando, Hon. Jared Okello. You will be followed by the Member for Sirisia, Hon. John Waluke.

Hon. Jared Okello (Nyando, ODM): Thank you very much, Hon. Deputy Speaker. Taking the cue from my friend, Hon. Kiarie, it is an absurdity that we have an airline that we ought to be proud of as a nation, which is incurring losses year in, year out. Something needs to be aggressively done. All Members of Parliament in this House travel with Kenya Airways flights. Every time we fly, the aircraft is full. I want to believe that they do not transport us as charity. It is also not out of convenience that Members use Kenya Airways flights. We pay for them. It is not just the Members of Parliament, but everyone else who gets in their flights pays. One wonders where all the money goes. So, there is a problem somewhere. If it is managerial or interference by certain powers that be, we need to get to the bottom of it. If those who have leased aeroplanes to Kenya Airways are demanding more than what they should get as their dues, we all need to know this, otherwise, we have competitive airlines within the region that are going to take the business away from us. It will be a tragedy for Members of Parliament and the general populace to be using other airlines to the detriment of our own. Kenya Airways needs a complete overhaul so that we can inject new impetus into its business. I am very concerned. I hope the Cabinet Secretary for Roads, Transport and Public Works - Hon. Kipchumba Murkomen - will bite the bullet, call silver its rightful name and make amendments where necessary so that as a country, our airline can start to be a going concern. I thank you, Hon. Deputy Speaker, for giving me the opportunity to contribute.

I support the Motion.

Hon. Deputy Speaker: Member for Sirisia, Hon. Waluke.

Hon. John Koyi (Sirisia, JP): Thank you very much, Hon. Deputy Speaker, for giving me a chance to contribute to this Motion.

We are all proud of Kenya Airways as the pride of Africa. Since I came to this Parliament, the Government has given many billions to Kenya Airways to try and revive it. We need to call a spade a spade if we want to save it. The money is taken by some people. We need to tell you the truth so that we can save this country. There are big people who siphon money from Kenya Airways the way they did to Kenya Power. Hon. Deputy Speaker, parliamentarians do not know this. This country has a financial problem. If we do not say the truth for fear of being jailed or killed, we are not going to save the country and Kenya Airways.

For example, the Nairobi Expressway's money is collected every evening and taken to a certain family, which has killed Kenya Airways and Kenya Power. It is also killing this country. We cannot be giving out money all the time. Even if we give out money today, it will not be there after two or three days. Kenya Airways will continue crying. The money will be siphoned 24/7.

Hon. Deputy Speaker, with all those...

Hon. Samuel Atandi (Alego Usonga, ODM): On a point of order, Hon. Deputy Speaker.

Hon. Raphael Wanjala (Budalangi, ODM): On a point of order, Hon. Deputy Speaker.

Hon. Deputy Speaker: What are your points of order, Hon. Atandi and Hon. Wanjala?

Hon. Samuel Atandi (Alego Usonga, ODM): Thank you, Hon. Deputy Speaker. The Motion on the Floor of the House is not what the Members are discussing. The Motion has nothing to do with Kenya Airways. Can you direct Members to debate appropriately?

Hon. Deputy Speaker: Okay. Unless I heard it wrongly, they had established relevance. The only aviation industry they know of that they can refer to, as Kenyans, is Kenya Airways. As long as they can link it, like the way Hon. KJ did, we can allow them to proceed.

What is your point of order, Hon. Wanjala, before I go back to Member for Sirisia?

Hon. Raphael Wanjala (Budalangi, ODM): Hon. Deputy Speaker, the Member clearly said that we allocate money to Kenya Airways, but there is a family that siphons the money. I want him to come out clearly on this family that siphons money.

(Loud consultations)

(Hon. John Koyi walked out of the Chamber)

It has to be clear. He cannot leave the National Assembly in suspense. This is a House of records which deals with substantive issues.

Hon. Deputy Speaker: Member for Sirisia, you may proceed. You are responsible for confirming the facts. Has he left? It looks like he has left.

Let us proceed. Next, I have the Member for Endebess, Hon. (Dr.) Robert Pukose.

(Laughter)

Hon. (Dr.) Robert Pukose (Endebess, UDA): Thank you, Hon. Deputy Speaker, for allowing me to contribute to the Motion on Consideration of the Protocols Relating to Amendments of Articles 50(a) and 56 of the Convention on International Civil Aviation 1944 (Chicago Convention).

Article 50(a) of this Convention increases the membership from 36 to 40, while Article 56 also increases the membership. The Chicago Convention has several rights. It talks about issues on flying over airspaces of different countries, the freedom of those flights to fly over there and to land without even disembarking of the passengers in another country. It also talks about flying back from a foreign country to your country and disease control matters from one country to another.

These are issues that are critical in civil aviation. When Chicago Convention was adopted initially, it had four Articles. Subsequently, they have increased to nine. I will now go to the local aviation industry. When Members are contributing about our pride of Africa, which is the Kenya Airways, they feel that it should be a real pride of Africa in terms of making profit. It should be a profit-making organisation. When they are flying from our country to another country and the various destinations, following this Chicago Protocol, they should look at profit-making destinations, but not loss-making ones. When many of the Members fly all over, they use Kenya Airways. They fly to countries where other airlines go to. Ethiopian Airline makes profits. How come Kenya Airways does not make profits?

This Convention also talks about the State-owned aircrafts in the civil aviation industry. I remember in the last Parliament, there were some amendments on nationalising the Kenya Airways. It is high time we considered that. When you compare Kenya Airways with our neighbour's, the Ethiopian Airline, which is a national carrier makes a lot of profits. Kenya Airways is also a national carrier. What is wrong with our national carrier that it is not able to make profit and compete effectively in the various destinations with other flights? Those are issues that the Departmental Committee on Transport and Infrastructure should look into

critically and come up with amendments and laws that can make Kenya Airways, the pride of Africa, the way it should be.

With those few remarks Hon. Deputy Speaker, I support the Motion.

Hon. Deputy Speaker: Let us have the Hon. Member for Mandera West, Hon. Adan Haji, followed by the Hon. Member for Nairobi County, Hon. Esther Passaris. The others should press the intervention button. Give the Hon. Member a microphone.

Hon. Yusuf Adan (Mandera West, UDM): Hon. Deputy Speaker, I was waiting for the next one.

Hon. Deputy Speaker: Let me repeat the instruction. Anyone who wants to contribute to this Motion on Consideration of the Protocols Relating to the Amendments of Article 50(a) and 56 of the Convention of the International Civil Aviation 1944, Chicago Convention, please press the intervention button. Hon. Esther Passaris, were you also for another one or this one?

Hon. Esther Passaris (Nairobi City, ODM): Thank you, Hon. Deputy Speaker, for allowing me to contribute to the Consideration of the Protocols Relating to the Amendments of Articles 50(a) and 56 of the Convention of International Civil Aviation 1944, also known as the Chicago Convention.

Civil aviation is a global concern, and its safety is equally a global concern. We cannot be in isolation. I am thrilled that they are considering enhancing the membership of the Council from 36 to 40. I hope the African Continent will have adequate seats to voice their opinion on several issues relating to the Continent. We are very proud as a Continent. We have Kenya Airways as the Pride of Africa, Ethiopian Airways and Rwanda Air. Ethiopian Airways has set a high standard to the point it is becoming a point destination of connectivity, just like Dubai and Hong Kong. We need to look at how, as a country, we can benefit from this protocol and improve our participation in civil aviation.

When you get into an aeroplane, it is a global representation of citizens worldwide. So, safety is mandatory, but also the issue of pricing. When you go to Europe and America, budget airlines provide affordable transportation. But when you look at Kenya Airways, it is pricey compared to the global airlines and how they price their travels. We need to figure out how, as a country, we can improve our civil aviation in terms of price and safety. When a country belongs to protocols and conventions and is a signatory, we can also raise our standards. If we have a country where corruption is rife, and we are not focussing on improving our standards, then when we sign up for such a convention, it is a check and balance for us as a country to make sure we up our standards and improve in terms of our safety and training. Kenya Airways is one of the best airlines that offers one of the best landings.

You will always have a smooth landing on the runways. Our pilots are one of the best trained, and I still believe they are the best. We have also liberalised and included gender. We have female pilots, whom we are very proud of. So, the Committee on Transport and Infrastructure has been wise to bring this to us to consider. Being part of this protocol will mean that our civil aviation in terms of safety, pricing and standards will go higher. This is also a challenge for the management of Kenya Airways, which was our Pride of Africa, to look at where they went wrong and how they can improve so that we can get back to our position as the Pride of Africa. That is because today, when you look at the Airlines by comparison, I think the Ethiopian Airways has really raised their standards, and we are proud of that.

We saw South African Airlines go down, but we should think of these protocols as Kenya and the Continent of Africa. This is because, as a Continent, we have got to figure out how we will become independent from the controls of the West. We also have to ensure that these protocols favour the Continent of Africa and do not make us dependent and lose our ground in terms of being monopolised by the western airlines. Overall, I support the Motion and congratulate the Committee on Transport and Infrastructure for bringing this to the Floor of the House.

I thank you, Hon. Deputy Speaker.

Hon. Deputy Speaker: The Hon. Member for Buuri, Hon. Mugambi.

Hon. Mugambi Rindikiri (Buuri, UDA): Thank you, Hon. Deputy Speaker. I rise to support this ratification. This is not a matter of Kenya Airways. It is a matter of the Kenya Civil Aviation Authority working in conjunction with the 198-member countries that are bringing these amendments. They are in terms of air transport and management, security, financial responsibilities, crisis management and matters of air transport and shared responsibilities. The Kenya Civil Aviation plays a significant part in the management of airspace in this country. There are too many issues that we have to take into account when it comes to managing the civil activities in our airspace. Therefore, Kenya is being called upon to rectify the membership from 36 to 40, Articles 50(a) and 56, which call for Air Navigation Commission membership from 19 to 21.

This is an essential ratification for Kenya to become a global player in civil aviation management. Kenya will benefit from other countries regarding airspace management because we have shared responsibility, like the satellite the aircraft uses in flight. Kenya Airways benefits from these conventions because it is our air transport carrier. The reason why Members are agitated is because Kenya Airways has failed us as a State. This is because, despite being a member of the Chicago Convention, Kenya Airways has had all the privileges to fly into any of the 198-member countries, but because of limitations caused by poor management, it has not been able to benefit much from this Convention.

Therefore, I support that this House ratify this amendment. I urge Kenya Airways, wherever they are, to hear the concern of Members that the declining performance is causing a lot of concern in this country. Sometimes, it does not make sense to be part of these conventions if we are not benefitting as a country.

Hon. Deputy Speaker, I support.

Hon. Deputy Speaker: I thought I had the Hon. Member for Chepalungu, but he has pulled out his card. So, I will go to the Hon. Member for Kitui West, Hon. Edith Nyenze.

(A Member spoke off the record)

She is not here.

Hon. Edith Nyenze (Kitui West): I am here.

Hon. Deputy Speaker: There you are.

Hon. Edith Nyenze (Kitui West, WDM): Thank you, Hon. Deputy Speaker, for giving me this opportunity to speak on this Motion on aviation. I will go straight away to talk about Kenya Airways as other Members have done. This national carrier KQ has been mismanaged. Although it has always been branded as the Pride of Africa, it is not; but I wish it was. Compared to the others, it should be the best because it is one of the oldest. But the mismanagement is noticed.

I will call it mismanagement because it is the most expensive compared to others and yet, they do not keep time. Every now and then, flights are cancelled despite passengers having trust in it and having paid for the tickets. Let me say that the airline is not the Pride of Africa. But we should improve it because we have the tools. The Government allocates more money to this airline every time, but it has not improved. If we align things, it could be one of the best airlines in the world. Kenya Airways management should be looked into to remain the Pride of Africa.

Thank you, Hon. Deputy Speaker.

Hon. Deputy Speaker: Thank you. There being no other interventions or interest in this matter, I will now call upon the Mover to reply.

Hon. George Kariuki (Ndia, UDA): Hon. Deputy Speaker, I thank Members for their support and insightful contribution to this Motion. Ratification of the amendments on the increasing membership in the International Civil Aviation Organisation (ICAO) Council provides an opportunity for Kenya to lobby for Part II membership, that is, a Permanent Council member seat upon entering into force of these amendments. Additionally, membership of the ICAO Council enables a State to actively participate in global aviation policy formulation and adoption. Further, Kenya stands to gain through access to multiple opportunities, especially deployment of Kenyans for service in ICAO through access to job placements, secondments and engagements as short-term experts to ICAO. Kenya is a critical player in the aviation sector in the region. Notably, Kenya was elected as a Part III member of the Council on 4th October 2013, for a three-year term from 2013 to 2016. Kenya was re-elected to serve for a second term from 7th October 2016 until 6th October 2019.

The protocols relating to the amendments are consistent with the Constitution and promote constitutional values and objectives. In addition, there are no additional obligations imposed by the protocol about the amendments of the Convention other than those in the initial Convention. Further, the ratification of the amendments to the Convention could be incorporated into existing institutional frameworks that the Kenya Civil Aviation Authority (KCAA) has made provision for. Therefore, there are no budgetary changes that are envisaged. There are no implications on matters relating to counties, as is required by our Constitution.

To inform the House, the Chicago Convention was signed on 7th December 1944 by 52 States. Kenya became a signatory to the Convention on 1st May 1964. There are currently 193 contracting States to the Convention. The Convention aims to regulate international air transport and establish the ICAO. The ICAO is a specialised agency of the United Nations charged with administering the principles laid out in the Convention. The 96 Articles of the Chicago Convention establish the privileges and restrictions of all contracting States. The Convention accepts the principle that every State has complete and exclusive sovereignty over the airspace above its territory and provides that no scheduled international air service may operate over or into the territory of the contracting State without its previous consent.

The Agreement is very critical. Once it is ratified, it will bring several benefits to Kenya, including enhanced co-operation and collaboration in investigating aircraft accidents and incidents, sharing resources among partner States and utilising common guidance materials and accident investigation manuals and handbooks. Sharing safety information will contribute to a more comprehensive understanding of aircraft accidents, causes and preventive strategies.

Having said that, I beg to reply. Thank you, Hon. Deputy Speaker.

(Question put and agreed to)

(A Member spoke off the record)

You are out of order. I heard you clearly.
Next Order.

BILLS

Second Reading

THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL
(National Assembly Bill No.60 of 2022)

Hon. Deputy Speaker: Leader of the Majority Party.

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Hon. Kimani Ichung'wah (Kikuyu, UDA): Thank you, Hon. Deputy Speaker. I beg to move:

THAT, the Statute Law (Miscellaneous Amendments) Bill (National Assembly Bill No. 60 of 2022) be now read a Second Time.

As the title says, this Bill is for miscellaneous amendments, as is customary. The Bill seeks to amend various statutes. It is worth noting that the majority of the amendments in this particular Bill seek to harmonise various Acts of Parliament with the functions of the Office of the Director of Public Prosecutions (ODPP) under Article 157 of the Constitution. Article 157 defines the role of the Director of Public Prosecutions (DPP) as the person in charge of undertaking prosecution of all criminal proceedings, while the Attorney-General acts as the Principal Legal Advisor of the Government.

As I said earlier, this Bill seeks to amend a number of Acts, including the Penal Code. Members can peruse through the Bill and note that the Penal Code (Cap 63) is being amended by deleting the expressions contained in Section 146, which in many ways could be perceived as discriminatory towards persons with mental disabilities. It is now a policy and a constitutional requirement that we mainstream the involvement of all persons, including persons living with disabilities, up to and including mental disability. That is why there should not be anything within the Penal Code that seems to be discriminatory against people living with mental disabilities. Mental disability could be interpreted differently, not just in how we know those people we see in mental institutions. Many people are living with us in society, but have certain mental disabilities.

Hon. Deputy Speaker, protect me from the Hon. Kangogo, who is whispering behind me that this includes Parliament and that those who are shouting might be suffering from one form or another of a mental disability. I do not want to take the route of Hon. Kangogo, who is whispering that Hon. Masara, who has just shouted when you called the vote on the previous statute, could be in that category. I do not want to get there because we cannot be imputing improper motive on Hon. Masara, even when he opts to use his mouth to express displeasure with the way the vote has gone, as much as I am sure he does not know what was being voted for.

(Laughter)

On the Criminal Procedure Code (Cap. 75), we seek to harmonise terms in that particular provision with the provisions of the Constitution and the National Police Service Act, 2011. Additionally, it proposes to amend the Act to allow the Director of Public Prosecutions to delegate his powers to specified officers and to delete offenses provided for in the Sexual Offenses Act.

The other provision is in the Evidence Act (Cap. 80), which seeks to expand the definition of “photograph.” Hon. KJ, who is very good on issues to do with photography, innovation, image rights and the digital economy, will tell you that what is in our Evidence Act today is very restrictive in terms of the definition of what a photograph is that can be adduced in court as evidence.

Therefore, we are seeking to expand this to allow digital photographs in line with the current technological advancements so that now, even a digital picture can be used in court with the necessary safeguards to ensure that those who are very good at photoshopping are not photoshopping images that can be used in court. The Evidence Act will be amended with this miscellaneous statute to expand that definition of a photograph in line with technological advancements with digitisation.

The Bill also touches on the Anti-Corruption and Economics Crimes Act, 2003 to allow the Ethics and Anti-Corruption Commission (EACC) to seek a court order to allow the

Commission to order that a state officer who is under investigation or one who is charged with corruption or economic crimes, be barred from accessing their office or exercising powers of that office where the public officer is likely to interfere in investigations in any way.

This is particularly important. The most recent example is the matter between the Ministry of Water, Sanitation and Irrigation and the former Chief Executive Officer (CEO) of the Athi Water Services Board (AWSB). EACC is said to have written a letter to the Cabinet Secretary asking her to suspend the CEO the EACC was investigating. Without casting any aspersions on the Cabinet Secretary, it was reported in the media — and I am just saying this because it was reported in the media and I have not verified the veracity of what we have been watching in the media — that the Cabinet Secretary apparently wrote back to the EACC asking them to disclose the nature of the complaint and who the complainant is. From where I sit, I wondered: The EACC is an independent constitutional Commission that investigates anybody and everybody, including Cabinet Secretaries and, therefore, there is no Cabinet Secretary who can pretend to have powers to direct EACC or to ask them to adduce information as to what they are investigating and who the complainant is.

The EACC has the power to investigate anything touching on the integrity of public officers and those charged with public office. Cabinet Secretaries and other senior government officers must never imagine that they can write to EACC and ask them to disclose who the complainant is before they act. EACC does not need to have a complainant. They should be able to move on their motion and investigate any matter, anybody and everybody, including the Leader of the Majority Party and Cabinet Secretaries themselves.

The President has been very emphatic, and all Cabinet Secretaries must be seen to be in tandem with what the President says on matters touching on corruption. The President cannot be saying *mambo ni matatu* on issues bordering on corruption, and Cabinet Secretaries are speaking a different language. Worst of all, speaking a different language to constitutional offices charged with dealing with corruption matters. We are often tempted to speak for Cabinet Secretaries, especially if they come from our background. I have said not more than once, from where I stand in this House, on matters advancing Government policy in the House as Leader of the Majority Party, I will do all I can to advance Government policy on behalf of even the Cabinet Secretaries. But on matters touching on accountability in Government and transparency in how you conduct yourself while in office as a Cabinet Secretary or as a state officer, there shall be no compromise, and I shall never stand here to defend any Cabinet Secretary, whether from my community, my brother or my sister. When we gave you work as a Cabinet Secretary, you must work for the people of Kenya. Do not work for the people from your backyard. Do not work to protect officers because they come from your backyard. Work for services to be delivered to the people of Kenya who have put you in that office.

I needed to say that because these amendments are speaking to that. The law will now be amended to allow EACC — while investigating any public officer, including a Cabinet Secretary, leave alone those who are subordinate to Cabinet Secretaries — to go to court and get orders to bar an officer from accessing office so that they do not interfere with evidence and use their time and space in that office to cover up for their theft of public resources.

If we are to realise this *mambo ni matatu* and take people to jail over corruption, we must make sure that they are also not able to use their offices to cover up for their theft. We have spoken at length about State capture. State capture pervades because people are in Government and have the means to steal and then cover up for that theft. It now must be very difficult for State officers to steal from the people and use the same offices to cover themselves up. I speak that with a lot of passion because I truly believe in that mantra of *mambo ni matatu*.

Hon. Jared Okello (Nyando, ODM): On a point of order.

Hon. Kimani Ichung'wah (Kikuyu, UDA): There is nothing out of order, Hon. Deputy Speaker. I was moving on the EACC.

Hon. Deputy Speaker: Allow him to ventilate on his point of order before you proceed. What is your point of order, Hon. Okello, provided you stay within relevance because you are notorious?

(Laughter)

What Standing Order are you basing your point of order on?

Hon. Jared Okello (Nyando, ODM): Hon. Deputy Speaker, it is becoming a tired line that lots of lamentations come from this House and the Executive regarding the conduct of Cabinet Secretaries. My brother, Hon. Ichung'wah, has properly captured this matter.

Hon. Deputy Speaker: Hon. Okello.

Hon. Jared Okello (Nyando, ODM): Let me come to my point, Hon. Deputy Speaker.

Hon. Deputy Speaker: Hon. Okello, what is the Standing Order upon which you stand to make your point of order?

Hon. Jared Okello (Nyando, ODM): Hon. Deputy Speaker, this lamentation has come from none other than the topmost office; their own employer, Hon. William Ruto. He said that he knows more.

Hon. Deputy Speaker: Hon. Okello, I just asked you to follow the Standing Orders. State the Standing Order upon which you are raising your point of order. Do not start to debate directly or respond to Hon. Ichung'wah. You are not responding to Hon. Ichung'wah. You speak through the Speaker.

Hon. Jared Okello (Nyando, ODM): Yes

Hon. Deputy Speaker: Just rise legitimately. Quote the Standing Order.

Hon. Jared Okello (Nyando, ODM): Check Standing Order 40. The lamentations have come from none other than President William Samoei Ruto.

Hon. Deputy Speaker: Hon. Okello, I will read Standing Order 40. It talks about the sequence of proceedings. Standing Order 40(1) says:

Each day after prayers have been said and the House has been called to order, the Business of the House shall be proceeded with in the following sequence—

- (a) Administration of Oath;
- (b) Communication from the Chair;
- (c) Messages;
- (d) Petitions;
- (e) Papers;
- (f) Notices of Motion;
- (g) Questions and Statements;
- (h) Motions and Bills.

(Loud consultations)

I think we will just proceed. Leader of the Majority Party, you can proceed.

Hon. Kimani Ichung'wah (Kikuyu, UDA): Thank you, Hon. Deputy Speaker. You know Hon. Jared Okello is fond of such interruptions. I commend you because this is how you should conduct business in the House. That, when a Member seeks to stand on a point of order, they must say the Standing Order they stand on. I believe Hon. Jared Okello was here earlier when I used Standing Order 40(2) to re-order business. He was simply trying to copy me. I encourage him to copy me on constituency matters.

I was saying that, in terms of matters touching on the EACC, the Bill further seeks to amend the Leadership and Integrity Act of 2012 (Bill No.19 of 2012) to allow the EACC to verify the suitability of candidates intending to apply to be appointed to a public entity and to

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make recommendations to the recruiting entity on the integrity and suitability of candidates. Hon. Deputy Speaker, you know all that has happened as we vet cabinet secretaries, principal secretaries and other state officers. Recruiting or vetting institutions ordinarily write to the EACC, which tells whether this person has any pending matters before the EACC.

With this amendment, we seek to give EACC the power to make recommendations on the suitability of candidates to take up appointments in public offices. For instance, the EACC may have information that points to your non-suitability to hold public office even if it is not investigating you. A case might probably be of a governor who is impeached, and maybe never ended up being charged. In the view of the EACC, with credible evidence, those people should not hold public office. If they are applying for a job as a principal secretary or any other public officer, EACC should look at their suitability, verify it and make recommendations as to whether they are suitable to hold public office.

Additionally, the Bill proposes to allow the High Court, on application by any person, to declare the assumption of office by a State officer invalid for want of executing a commitment to the specific leadership and integrity code. Even if you have been appointed to a public office, you are required to execute a specific commitment in the leadership and integrity code. If you have failed to do so, any person can petition the High Court to have you removed from office or your assumption of office as a State officer declared invalid.

Hon. Deputy Speaker, the other matter touched by this Bill is the Merchant Shipping Act of 2009 (Bill No.4 of 2009). It is deleting Section 16, which restricts ship owners from providing several services in the maritime industry, including crewing agencies, pilotage, clearing and forwarding agencies and port facility operators, among others. You remember this follows the High Court, in September 2020, declaring the Merchant Shipping Act section unconstitutional. This, therefore, allows the revival of the Kenya National Shipping Line. That amendment aligns with the High Court's declaration of Section 16 as unconstitutional because it barred ship owners from providing several services. The courts found that provision unconstitutional.

The other Act is the Prevention of Organised Crimes Act of 2010. The Bill seeks to enhance the penalty for organised crimes and extend the period in which an order obtained about tracing property shall lapse. It also seeks to apply the term "Inspector-General" as the authorised officer in place of the term that is in the Act concerning the Commissioner of Police in line with the terminology that is now used under the current Constitution. Members will appreciate the prevalence of crime and danger exposed to our country on issues to do with organised crime. It is not just small-scale organised crime in the backyards of our constituencies where gangs are coming together and stealing from people. It is also about organised crimes of a larger scale nature, touching on economic crimes. Therefore, the period provided for under the Act was not adequate. We seek to extend this period so that if the police have an order they have obtained for tracing property from organised crime, including those looting from public offices, they will have a longer time to trace such property.

The other Act touched is the Judicature Act (Cap. 8) of our laws. In this amendment, we seek to increase the number of judges serving as Court of Appeal judges from the current 30 to 70 judges. Members know that the Judiciary has been keen on taking services closer to the people. As much as we have been able to devolve the High Court from Nairobi to many of our counties, the Judiciary has worked very hard to ensure that we have courts, at least, in every county headquarters. Some are still under construction. There are others where judges hold stations for the High Court. However, the same has not been possible with the Court of Appeal because of a limited number of judges in the Court of Appeal. The number stipulated in the Judicature Act (Cap. 8) limited this. We want to increase that number to 70 judges.

Hon. Members, you remember a matter that went to the Court of Appeal during the last elections. The Court of Appeal had to sit at night to deal with that matter a few days, I think

just a day, before the elections. If the Court of Appeal had adequate judges, they would deal with appellate matters from the High Court and other courts in time. Therefore, that amendment will seek to increase the number of judges in the Court of Appeal.

The Chair of the Departmental Committee on Transport and Infrastructure, Hon. GK, will bear witness to the Kenya Roads Board Act that the Kenya Roads Board has had a current membership of thirteen. It is actually among the largest boards in the country. They want to align with the Mwongozo Policy to have nine members instead of the current thirteen.

The last is the Bribery Act of 2016. Here, we seek to include private and public entities in the scope of applying the Bribery Act. Hon. Speaker, Members and Kenyans will agree that bribery or corruption is not matters just touching on public offices and officers. The key drivers of corruption, even in public entities, are private entities seeking opportunities to do business with the Government.

The laws, as they were, only targeted public entities and excluded private entities. We now want to bring to the purview of the Bribery Act the private entities so that we can make the fight against corruption possible and easy for the EACC and other investigative agencies to deal lawfully with those engaging in bribery, whether in the private or public sector.

The Bill, as had been published, had other various amendments. However, you recall that in the Communication made by the Speaker last week, we dropped several of those provisions that we shall therefore not be considering. Those are just some of the matters in line with the Speaker's Communication last week.

With those many remarks, I beg to move and request Hon. Kangogo Bowen to second.

Hon. Kangogo Bowen (Marakwet East, UDA): Thank you, Hon. Deputy Speaker. I stand to second the Statute Law (Miscellaneous Amendments) Bill by the Leader of the Majority Party.

The amendments raised by the Leader of the Majority Party, especially on issues dealing with corruption and the Judiciary, are very important. As raised by Members when discussing the matter of Kenya Airways by the Chairman of the Departmental Committee on Transport and Infrastructure, it is clear that we have serious issues of corruption across many sectors in the country. Apart from this Bill, there is also serious confusion between the EACC and the DCI. The DCI has left its work of investigating non-economical crimes. It has now focused on economic crimes because they want to put their hands on what they are investigating. Giving these powers to the EACC will ensure that it can investigate all of us and any other Kenyan so that you do not find officers being investigated while they are still in office. It becomes very difficult for the EACC because those officers interfere with witnesses.

On the Judiciary, some areas, like where I come from, Elgeyo Marakwet County, only have the smallest magistrate court.

Hon. Robert Basil (Yatta, WDM): On a point of order.

Hon. Deputy Speaker: What is your point of order?

Hon. Robert Basil (Yatta, WDM): Thank you, Hon. Deputy Speaker. I am standing under Standing Order 91. My brother is admitting that there is confusion between the DCI and the EACC. I want him to clarify that confusion with facts.

Thank you.

Hon. Kangogo Bowen (Marakwet East, UDA): You are the one who is confused, Hon. Member. I said there is confusion in terms of the investigation and prosecution of economic and even non-economic crimes between the DCI and the EACC. I have clearly stated that it would be better to have the EACC investigate economic crimes and the DCI investigate and proceed to prosecute non-economic crimes. That will create clear lines.

Hon. Deputy Speaker: Hon. Member, he is alluding to overlap and the need for clarity of mandate, hence the nuisance of mischief you are trying to cure through the amendment. He is not alluding to any unsubstantiated facts. You may proceed, Hon. Kangogo.

Hon. Kangogo Bowen (Marakwet East, UDA): Thank you, Hon. Deputy Speaker. For instance, tax evasion is an economic crime, and we need to give more powers to the EACC, the Kenya Revenue Authority (KRA), and the DCI to focus on cattle rustling and other crimes like banditry and robbery.

Hon. Deputy Speaker, many cases have dragged on for many years in the Judiciary. People in this country have died after following cases in court for too many years. I support increasing the number of appellate judges to 70 or even more. If possible, we should have an appellate court in every county to fast-track cases. We would like to have a magistrates' court in every constituency if possible. For instance, Elgeyo Marakwet County only has a Magistrate Court at the county headquarters. The four constituencies have no court.

I want to support these amendments by the Leader of the Majority Party so that the operations and development of the Government agenda can move. It will also ensure that there is transparency and accountability in the Government.

With those few remarks, I want to support.

(Question proposed)

Hon. Deputy Speaker: We can proceed with debate. Hon. Members, please press the intervention button if you want to contribute to this debate.

(Hon. Samuel Atandi spoke off the record)

Okay. You can walk right up here and speak to the Clerks-at-the-Table.

(Hon. Samuel Atandi spoke off the record)

Do you have a point of order? Okay, let him proceed. Hon. Members, please remove your cards if you will not contribute to this debate. Press the intervention button to differentiate the other Members who have made scheduled requests. Proceed, Hon. Atandi.

Hon. Samuel Atandi (Alego Usonga, ODM): Thank you, Hon. Deputy Speaker, for giving me the opportunity to contribute to this important Bill.

I want to zero in on the amendments that are touching on the EACC Act. All of us are interested in fighting corruption. If there is anything that anybody in this country needs to fight, then it is corruption. Corruption has caused this country to stagnate. Many of our peers across Africa and the world are doing better because they have slayed the dragon of corruption. The proposed amendment seeks to strengthen the investigative arm in the war against corruption.

[The Deputy Speaker (Hon. Gladys Boss) left the Chair]

[The Temporary Speaker (Hon. Martha Wangari) took the Chair]

As a country, we first need to professionalise investigations. Whatever we have on the investigation is not professional. Giving the EACC power to investigate anybody is politicising investigations. This is the reason we have failed.

Inquiries into corruption usually begin with investigations and then prosecutions. The ODPP is very professional. It consists of competent advocates and lawyers who look at cases before they are presented in court. Hon. Temporary Speaker, you were in the last Parliament, and you know there was a time when there were disagreements between the DCI and the ODPP on many corruption cases. The DPP felt that some cases he was given to prosecute were not adequately investigated. Most of them were products of politics. The system would send

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somebody to investigate you and hold a press conference to say how corrupt you were. However, when the matter would be presented before the DPP, there would be no evidence to support the case in court.

If we really want to fight corruption, we must begin by strengthening investigations into corruption. I want the Leader of the Majority Party to listen to me because this is his Bill. As long as we still have the current EACC officers who are not very good at undertaking professional investigations, we will not succeed. Even if we gave them the power to investigate corrupt individuals, they will never succeed in ending corruption because they will still conduct shoddy investigations. When matters are presented before the DPP, he rejects them because they cannot hold up before a judge. No judge would give you a good ruling. I oppose the proposal to provide EACC officers with the power to conduct free investigations. As Parliament, we must find a way to ensure that the EACC can conduct professional investigations that can lead to prosecutions. That is where we need to start.

I urge the Government to consider how we can professionalise the EACC and the DCI. The DCI never conducts professional investigations. As long as you are a Government target, the DCI will send officers to your offices who will announce how they are investigating you or another person. That will be the end of the story because they will never find anything substantial to take to court.

The Government should consider professionalising investigations to successfully fight against corruption.

The Temporary Speaker (Hon. Martha Wangari): Before I give an opportunity to the next speaker, allow me to recognise students from Dr. Wachira Secondary School in Laikipia West Constituency, Laikipia County. The Member is not in the House. He would have confirmed whether this school was named after him. On my behalf and that of the House, allow me to welcome the students to observe the proceedings of the House.

(Applause)

(A Member Spoke off the record)

Order, Members. The school is Dr. Wachira Secondary School from Laikipia West Constituency in Laikipia County. The coincidence is quite something. Hon. Bowen, I will indulge you for a minute. Maybe you are holding a brief for the Member of Parliament.

Hon. Kangogo Bowen (Marakwet East, UDA): Thank you, Hon. Temporary Speaker, for giving me this opportunity to welcome Dr. Wachira Secondary School from Laikipia. On behalf of the Member of Parliament, I welcome them to this House. I went for a Harambee to fundraise for this school with Dr. Wachira and the current President when he was still the Deputy President. I welcome them to Parliament together with other learners.

The Temporary Speaker (Hon. Martha Wangari): Thank you, Hon. Kangogo. The next speaker is the Member for Sotik. Is he in the House? If not, let us have Hon. George Gitonga Murugara, the Member for Tharaka.

Hon. George Murugara (Tharaka, UDA): Thank you very much, Hon. Temporary Speaker. I rise to support the Statute Law (Miscellaneous Amendments) Bill, which we are debating this afternoon. It is important to say that a Statute Law (Miscellaneous Amendments) Bill seeks to amend various statutes in an omnibus Bill of Parliament such as this one. We have previously been accused of sometimes sneaking in amendments that should not be prosecuted through a Statute Law (Miscellaneous Amendments) Bill. However, I wish to confirm that, as far as this Statute Law (Miscellaneous Amendments) Bill is concerned, the various Acts proposed to be amended deserve it. Most of the amendments are minute housekeeping amendments that do not go to the core and substance of the individual Act. In doing so, we can

amend many Acts without bringing many Bills to the House that touch on each Act. That is the long process that is required by our laws.

Hon. Temporary Speaker, we propose to amend several Acts. I will begin with the Judicature Act, the first in the Memorandum of Objects to the Bill. The Departmental Committee on Justice and Legal Affairs was the lead Committee regarding this Bill. We considered some of the amendments, including amendments to the Judicature Act. One amendment proposed increasing the number of Court of Appeal judges from 30 to 70. We will debate this, especially during the Committee of the whole House Stage, and determine whether we should increase the number from 30 to 70 and whether or not the number is too high. However, there is room for an increase between 30 and 70. The Committee Report is evident on our proposal to settle at 45. We believe that is reasonable and urge the House to support it.

There are other proposed amendments, including the amendment to the Appellate Jurisdiction Act. We must ensure that our laws align with the Constitution because some of our current laws are very old. They were passed during colonial times when the structure of Government was different, especially from the one we got during the promulgation of the Constitution of Kenya 2010. That is why you hear that the Penal Code and the Criminal Procedure Code are being amended because the Government Prosecutor at that time was the Attorney-General. He had a department that conducted public prosecutions. Today, the ODPP conducts investigations. Therefore, it is necessary to amend some of these laws to align them with the constitutional provisions in the new Constitution of Kenya, 2010.

There is also the Vexatious Proceedings Act. Some of these laws may sound new to everybody. What are vexatious proceedings? You have heard many people say that one Senator is a vexatious litigant. You do not become a vexatious litigant until you are declared so by the courts. That is the reason why many people go to court. Some are fully vexatious. They go there to vex and annoy people and ensure that the Government is not happy with them. Previously, the Attorney-General would apply to have you declared a vexatious litigant. We have to amend this law to ensure that it is not the Attorney-General who should apply but the ODPP.

Someone alluded to the Bribery Act. These are some Acts whose titles make you wonder what laws they are. What is the Bribery Act? What is the Witchcraft Act? In essence, the title of an Act of Parliament is supposed to tell you the positive thing the Act does. Therefore, people may think that the Bribery Act allows Kenyans to bribe, but it is not so. The amendment to that Act clarifies that it is the Anti-Bribery Act and not the Bribery Act. It should be known as the Anti-Witchcraft Act and not the Witchcraft Act. Many people may think that under the Witchcraft Act we are allowed to become witches, wizards, sorcerers and other associated things. It is supposed to be 'anti-witchcraft' all the way down. I must confirm there was extensive public participation. Courts say that we do not conduct public participation with the Statute Law (Miscellaneous Amendments) Bill. There was extensive public participation. The reports produced by all the committees that considered these Acts show that people appeared before them and aired their views which were taken into consideration. Therefore, at the Third Reading of this Bill, we will be stating the proposed amendments so we can make them better than they are.

With those remarks, I beg to support.

The Temporary Speaker (Hon. Martha Wangari): Member for Mwingi Central, Hon. Gideon Mulyungi.

Hon. Gideon Mulyungi (Mwingi Central, WDM-K): Thank you, Hon. Temporary Speaker.

The Temporary Speaker (Hon. Martha Wangari): It is Mulyungi.

Hon. Gideon Mulyungi (Mwingi Central, WDM-K): Yes, Gideon Mulyungi. Thank you, Hon. Deputy Speaker, for this opportunity. I rise to support the Statute Law (Miscellaneous Amendments) Bill. I would like to start with the matter of the Kenya Roads Board (KRB). It has 13 members and they are there to squander public finances. Therefore, the proposal to reduce the number to nine will be in tandem with what obtains in other boards and what the *Mwongozo* Code requires. So, it is laudable.

On the matter of the Ethics and Anti-Corruption Commission (EACC), vetting of public servants before appointment has been ongoing. Every public entity writes to EACC which then writes back confirming whether or not there are pending corruption cases against an officer. I have heard we are amending this so that EACC will be mandated to vet officers and make recommendations. In my view, this mandate can be misused by interested parties at EACC and politicians. It can be politicised. If Ichung'wah does not want Mulyungi to come to Parliament, with all his powers, he can talk to EACC who will disqualify me.

The Temporary Speaker (Hon. Martha Wangari): Hon. Mulyungi, I do not know why you are inviting trouble.

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

The Temporary Speaker (Hon. Martha Wangari): What is out of order, Hon. Ichung'wah?

(Laughter)

Hon. Gideon Mulyungi (Mwingi Central, WDM-K): Ichung'wah is my friend. I am supporting.

The Temporary Speaker (Hon. Martha Wangari): Take your seat, Hon. Mulyungi.

Hon. Kimani Ichung'wah (Kikuyu, UDA): Thank you, Hon. Temporary Speaker. Hon. Mulyungi is my friend so I do not take offence when he uses me as an example. However, to say that I have immense powers to direct EACC, when he knows I was just verifying here that EACC is an independent constitutional commission that does not work under directions of anybody... Hon. Mulyungi, for your information, the amendment does not seek to give EACC powers to vet. It is for EACC to be able to check the suitability of a person seeking appointment to a public office. That does not in any way take away powers given to Parliament in terms of vetting public officers.

The Temporary Speaker (Hon. Martha Wangari): Thank you.

Hon. Kimani Ichung'wah (Kikuyu, UDA): Parliament writes to...

The Temporary Speaker (Hon. Martha Wangari): Leader of the Majority Party, do not be tempted to debate. You can do that when replying. Hon. Mulyungi, I am sure you meant it in jest. Continue.

Hon. Gideon Mulyungi (Mwingi Central, WDM-K): Hon. Temporary Speaker, I am guided. On the matter of public and private entities being investigated and charged, I think in every corruption case, there is a giver and taker. I agree that we should amend the law so that both the giver and taker are prosecuted. I support that 100 per cent. I also want to implore the architect of these amendments, the Departmental Committee on Justice and Legal Affairs, that we have come across EACC officers who are also corrupt. In as much as they investigate public officers and private entities, there are corrupt EACC officers amongst them. We need to re-look into what needs to be done so that EACC officers conduct themselves with high levels of integrity.

On the matter of the Court of Appeal Judges being increased from 30 to 70 then down to 45, I am not sure what scientific formula has been used to arrive at those figures. I would be more comfortable if the Committee looked at the pending cases in court so they can say they

are increasing the numbers to clear pending cases within a certain period of time instead of coming up with an arbitrary figure, which is going to eat into the national cake of public finances.

With those few remarks, I support.

The Temporary Speaker (Hon. Martha Wangari): Member for Dagoretti South, Hon. John Waweru.

Hon. John Kiarie (Dagoretti South, UDA): Thank you, Hon. Temporary Speaker. I appreciate this opportunity. It is not very often that Parliament gets an opportunity to work on an omnibus Bill. This happens to be one of those miscellaneous Bills that come loaded with quite a number of amendments. Being an omnibus Bill, I will only concern myself with a few of them. At the outset, I want to say that I support. If I will have any amendments, I will present them during the Committee of the whole House.

One of the reasons I am supporting this omnibus Bill is that it seeks to delete the expressions contained in Section 146 of the Penal Code (Cap 63). It seeks to remove some of the provisions that seem discriminatory to people with mental conditions. When we talk about the issue of mental health, for most of us, what rings in our heads is the Mathare Mental Hospital situation. I would like to put it very clearly that there are too many people walking around this town who are living with mental conditions. This city is replete with people who are managing mental conditions, some extreme and others mild. Even in this House, I am not embarrassed to say that we have Members managing mental conditions like bipolar. It is a mental situation. There are people trying to manage different levels of schizophrenia and so on. Even depression is a mental condition. The Constitution is very clear about discrimination: that no citizen shall be discriminated on account of very many things, including their mental condition. For this reason, I support.

There is an effort in this omnibus Bill to amend the Evidence Act (Cap 80). This is seeking to expand the definition of the term ‘photograph’. We are living in the digital age. In fact, we are post the digital age. We are now in the fourth Industrial Revolution where we are talking about the whole movement towards artificial intelligence, robotics, internet and all those other things that accrue from there. Therefore, our courts cannot be restrained, as they are now, when seeking to admit evidence, say, in the situation of defining a photograph.

I had taken a Petition to the courts in 2007. I was at pains to make the court understand that the evidence that I had carried in a compact disk should be admissible. It would have changed the course of that matter before the judge. I would have proven my case that I had won an election. I had captured this very amazing incident that happened at the polling centre in a tape and produced it in court in a Digital Video Disc (DVD). The court did not admit it because it was limited in the definition of evidence that it could admit. Each Kenyan is a potential citizen journalist. One can capture evidence anywhere on the go. We must re-define some of these terms so that we are up to speed with technological advances.

The Mover of the Bill, the Leader of the Majority Party, was very clear on what we need to do to fortify this amendment. It is so that this definition does not fall prey to people who manipulate photographs. The good thing about digital technology is that there is always a digital footprint. If you manipulate a photograph, it does not matter how good you are at photoshop, since there will be a digital footprint embedded in that manipulated image that will prove that it is either an organic and real image, or a manipulated image using any of the softwares available. I support the amendment of the Evidence Act Cap 80 to define the term “photograph” better.

The amendment of the *Judicta* Act seeks to increase the number of Court of Appeal judges. Hon. Temporary Speaker, you know the problems in your constituency and the clamour for justice. Kenyans, being as litigious as they are, have many cases that are stuck in our courts. They are not only stuck there because of inefficiency or human error, but also because of the

overwhelming number of cases that are filed. Any effort that seeks to increase the administration of justice to as many people as possible should be supported. It is true that we have taken our High Courts to as many corners of the country as possible. That should also be the case for the Court of Appeal. Increasing the number of judges in the Court of Appeal to offer justice to as many people as possible speaks to the principle of utility. It talks to us, as representatives of the people, to bring as much good as possible to as many people as possible. That is why we have banners, even in this Chamber, stating that we are here for the welfare of society and the just Government of the people.

I support the move to amend the *Judicta* Act to increase the number of judges in the Court of Appeal. I support the Bill. I will bring a few proposals in the Committee of the whole House.

Hon. Anthony Oluoch (Mathare, ODM): On a point of information, Hon. Temporary Speaker.

The Temporary Speaker (Hon. Martha Wangari): Hon. KJ, do you want to be informed by Hon. Tom Anthony Oluoch?

Hon. John Kiarie (Dagoretti South, UDA): This is a great mind. I want to benefit from the information from my former leader at Kenyatta University.

The Temporary Speaker (Hon. Martha Wangari): Hon. Tom Oluoch.

Hon. Anthony Oluoch (Mathare, ODM): Thank you, Hon. KJ. He is my very good friend from my alma mater. I want to inform him in utmost good faith. Already I can see Hon. Murugara smiling at what I want to inform him about. The Act is called the Judicature Act. I know, understandably, because he is not a lawyer, he called it *Judicta* Act. It is a legal term. Thank you. This is a very good contribution.

The Temporary Speaker (Hon. Martha Wangari): Hon. KJ, you are well guided.

Hon. John Kiarie (Dagoretti South, UDA): You can see the reason I accepted information from Hon. *Wakili* Tom Oluoch. They say English originated from the part of the world where Hon. Tom comes from. It is not lost on me that even some English words sound like the Dholuo language. If you give an opportunity to Hon. Oluoch, he will tell you that “*Tek molojo ji*” actually means the same thing in English as it does in Dholuo. It means, “it is very hard”. I appreciate the information that I got.

If I have any changes to make to this Bill, I shall propose them in the Committee of the whole House. I support the Bill. Thank you very much.

The Temporary Speaker (Hon. Martha Wangari): Thank you. Member for Funyula.

Hon. (Dr.) Ojiambo Oundo (Funyula, ODM): Thank you, Hon. Temporary Speaker. I am one of the people who are always very uncomfortable with the Statute Law (Miscellaneous Amendments) Bill because that is where the devil finds its way and where they hide most of the things. For once, this Bill deals mostly with routine issues of changing from Attorney-General to Director of Public Prosecutions, which is in order as it complies with the provisions of Article 157(2) of the Constitution of Kenya.

There are a few issues that require people’s attention which we need to highlight. In the proposed amendment to the Judicature Act, 70 Judges for the Court of Appeal are just too many. I always believe that many of the issues that end up in the Court of Appeal can be sorted out at a very low level. This brings in the question of the level of corruption and unprofessionalism in the lower courts. We have Alternative Dispute Resolution (ADR) mechanisms. I want to encourage my friend, Sir George, who was a very good man in the last Parliament but power has got into his head nowadays. He does not listen to the common *mwananchi*. If we can find a way to entrench ADR mechanisms, they can sort out some of these issues.

Hon. George Murugara (Tharaka, UDA): On a point of order, Hon. Temporary Speaker.

The Temporary Speaker (Hon. Martha Wangari): Member for Tharaka, what is out of order?

Hon. George Murugara (Tharaka, UDA): Hon. Temporary Speaker, I do not understand what the Member for Funyula means when he says I was a very good man last time. Indeed, I was and I am still a good man. There is no power that I got from any quarter. I think he has taken a hard-line stance, especially against my Government. That is why he feels that way. I am still a good man. May he be informed that he should also continue to be the way he used to be at that time. I know we possibly had some common denominators those days. They should still be there because we serve one Government and we are all good people. I am still a good man.

Hon. (Dr.) Ojiambo Oundo (Funyula, ODM): Hon. Temporary Speaker, I do not know why the Member of Parliament for Tharaka has been involved. I mentioned Sir George. According to the records in Parliament, there is no Member of Parliament called Sir George. I may not respond now.

(Laughter)

The Temporary Speaker (Hon. Martha Wangari): Hon. Oundo, unfortunately you know you served with Hon. Murugara and I in the last Parliament. So, we know the implied meaning. Please, avoid casting aspersions on your colleagues.

Hon. (Dr.) Ojiambo Oundo (Funyula, ODM): Thank you, Hon. Speaker. I have understood.

We can re-look at this issue. As my colleagues have said, the problem may not lie in the Court of Appeal. It lies in sorting out investigation, application of the law, professionalism, and fidelity to the rule of law. We do not need 70 Court of Appeal Judges. We can as well cap the number to the number of counties so that each Court of Appeal deals with one county.

Hon. Temporary Speaker, it is good that this Bill has come. I totally agree that the words used under Section 146 of the Penal Code are offensive, discriminatory and shocking. All my life, I have not come across any idiot or imbecile. I say so because I have been a teacher for a few months. Before I came here, I taught at the University of Nairobi and I have never come across an idiot or an imbecile. People have different levels of understanding and comprehending issues. We need to delete it. What does it mean that a person with mental disability cannot consent to sexual interactions? The reference to this is that any contact that happens that does not amount to rape, with a person with mental disability, will amount to an offence. This causes more problems than the existing definition. I request the Chairperson of the Departmental Committee on Justice and Legal Affairs to have a serious look at that proposal. We are criminalising consensual sexual interaction between a person of normal ability and a person living with mental disability. We need to get a clear view of it.

Allow me to also comment on the Public Holidays Act. Again, it is unfair to change the name of the 10th October Holiday. Politics should never cloud historical aspects of our lives. Those of us who drank *maziwa ya Nyayo* have very fond memories of the Moi Day. We might have our issues but we have fond memories of Moi that should never be erased from our history. Those of us who lined up to sing patriotic songs and pledge loyalty to President Moi... Some of you may not understand this because you are younger and that is why you are rushing to distort history. However, history will remain with us because this was important.

On the Anti-Corruption and Economic Crimes Act No.3 of 2003, we have made many laws in an attempt to fight corruption. We have made so much noise, used platitudes and held high-sounding press conferences yet we have not slayed the dragon of corruption. Even these enhanced powers to lock someone out of office while investigations and prosecution are ongoing will not end up anywhere. The new Chairperson of the EACC, Rev (Dr.) Oginde,

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needs to get to the core of public education and sensitisation on corruption. He also needs to come to Parliament so that we deal with budgeted corruption. This is going to be vindictive because we are re-initiating the basic principle that one is innocent until proven guilty. If this amendment is approved, it is in a way condemning someone who is unheard that he is already corrupt and is bound to be charged.

Hon. Temporary Speaker, again, on the Leadership and Integrity Act, the vetting we do here is just a charade, face-saving and window dressing. In all the years I have been here, out of the number that we have vetted, we have only failed to approve probably 1 per cent. Often, even when we did not approve candidates, they would still be appointed to serve. A good example is the case of the lady who was posted to the South Korean Embassy. This Parliament did not approve her but she went on to serve the entire term.

Giving the EACC the powers to pass judgment upon suspecting that somebody is about to commit an economic crime or has already committed an economic crime and to verify the suitability of candidates... Suitability is a composite matter. For instance, as my colleague, Hon. Mulyungi, has said that if there is any reference to any suspicion, let that matter lie...

The Temporary Speaker (Hon. Martha Wangari): Your time is up. The Member for Githunguri, Hon. Gathoni Wamuchomba.

Hon. Gathoni Wamuchomba (Githunguri, UDA): Thank you, Hon. Temporary Speaker. I am humbled and glad for the opportunity to debate the Statute Law (Miscellaneous Amendments) Bill (National Assembly Bill No.60 of 2022). I am excited that we are re-looking at various Statutes that govern this country. I will focus more on the Co-operative Societies Act of 1997. I represent a county and a constituency that is made up of many co-operative societies like Githunguri Dairies, which is a milk-based co-operative society. I am sure that the House honours Githunguri for our brilliance in the management of dairy animals and the exemplary management of dairy societies.

That notwithstanding, allow me to concentrate on coffee matters, a sub-sector that I am very passionate about because I come from a coffee-growing home. We have had many issues surrounding co-operative societies relating to coffee farming in Kenya, specifically in the Central Region of Kenya, where coffee is a prime cash crop. In my constituency, we have had serious allegations of mismanagement of co-operative societies. The regulations that govern the elections of officials who manage these co-operative societies, the regulations and rules that govern the operations of management committees, and the term limits given under the Co-operative Societies Act make it completely difficult for the Office of the Director of Public Prosecutions (DPP) and the EACC to nab those who have taken advantage of our farmers.

As we speak, I have a very serious issue in my constituency with one of the coffee co-operative societies where farmers lost money to the tune of Ksh19 million last year. We have tried to mobilise farmers to go to EACC to follow up on this matter, but each time we are limited by the existence of the conflicting statutes between the Co-operative Societies Act of 1997 and the operations of the EACC.

I am also very excited because in the past, many co-operative societies have crumbled with a lot of assets belonging to the 'bottom-up community'. Farmers have died claiming to own property that crumbled because of a few individuals currently known as management committees.

Hon. Temporary Speaker, even after we are done with this Statute Law (Miscellaneous Amendments) Bill, we can go a few steps backward and get to know how we can help our farmers.

As a woman leader representing Githunguri Constituency and one who has actively spoken against matters sexual violence, I am very excited with the proposal on the Sexual Offences Act (No.3 of 2006). If there is an area where justice is never delivered, then it is in the area of sexual violence in this country. I happen to have followed up a particular case in

my county, Kiambu, when I was representing Kiambu as the County Woman MP. A child was molested in the police cells in Gatundu Police Station back in 2019. The child was molested by a police officer who was manning the police station. He took advantage of a minor who was in the cells. To date, that case has never been concluded. Do you know why? Because tracking of sexual violation evidence in this country has become a mountain. You can easily go to court, press charges against a defiler, but you will not be able to produce evidence because we do not have clear systems of securing evidence, what we call the forensic evidence provisions.

In other countries like the United States of America (USA), you will find that they have a very clear system on how to preserve evidence. The inner-wear of a child who is sexually molested... The Deoxyribonucleic Acid (DNA) from that kind of an inner-wear is safely secured for seven years. In this country, files are presented in the Office of the Director of Public Prosecutions (ODPP), but there is no evidence because we have no systems of securing such evidence.

In my previous term as a Member of Parliament representing Kiambu County, I brought forth a Bill that sought to address the issue of sexual assault forensic evidence. Unfortunately, I have never managed to complete the Bill. How I hope that during the life of this Parliament I will manage to complete it. That notwithstanding, I am very excited that within this whole combination of statute laws, we have found it worth to align the Sexual Offences Act, 2006 with the Constitution of Kenya so that we can allow the ODPP to prosecute the offenders, repeat offenders, and, if possible, blacklist the repeat offenders.

With those very many submissions, I am humbled to support. Thank you.

The Temporary Speaker (Hon. Martha Wangari): Member for Ndia, Hon. GK.

Hon. George Kariuki (Ndia, UDA): Thank you, Hon. Temporary Speaker. I rise to support the Statute Law (Miscellaneous Amendments) Bill. I note that the Bill touches on a number of Articles concerning the transport and infrastructure docket. I see there is a proposal to reduce the board members for the Kenya Roads Board (KRB) from 13 to nine as per the *Mwongozo* Code. This is an amendment that my Committee fully supports because we want our institutions to be run in an effective manner. Reducing the number of Board members will contribute to that. I know that there was a proposal to increase the term of the National Transport and Safety Authority (NTSA) Director-General, which my Committee does not agree with. I see the Bill seeks to drop that amendment and seeks to stay the term to three years. I fully support that because we want the term to remain at three years.

Concerning the proposal to amend Section 16 of the Merchants Shipping Act, No.4 of 2009, I see there is a justification because on matters local content, the Ministry proposed to introduce a clause on local content requirement to be made by both foreign and national ship owners and maritime operators. This will enable Kenyan citizens to benefit from massive opportunities available in the maritime industry. The maritime industry in other countries like the Netherlands is a multi-billion-dollar industry. We want Kenya to move to that level, where the maritime sector would employ many Kenyans, provide jobs for our young people, and also spur the growth of our maritime sector.

Another area addressed in the Statute Law (Miscellaneous Amendments) Bill concerns the transport sector and it is the proposal to amend the Maritime Insurance Act Cap. 390. We fully support that proposal as a Committee. Thank you for your indulgence.

The Temporary Speaker (Hon. Martha Wangari): Member for Nairobi, Hon. Passaris.

Hon. Esther Passaris (Nairobi City County, ODM): Thank you, Hon. Temporary Speaker. It is really good for the Leader of the Majority Party to bring all these miscellaneous amendments, but I feel that as much as we say there must be public participation, Parliament should take advantage of social media. We have got a number of Kenyans who are on social media. I would have wished that each and every one of those amendments be put on social media so that we get feedback from the public on how they feel about various amendments. In

any case, we do make laws for Kenyans. Whereas public participation is called for in newspapers and people write memoranda, I feel that we are lacking when we come to the House and straightaway debate the Bills on the Floor of the House. We do not involve as many Kenyans as possible. This could be a way for us to consider sensitising the public when it comes to various amendments.

There are very good amendments that have been proposed on the Floor. It is important that we generate activity and buzz in the public domain. We realised during deliberations on the Finance Bill, that the public was really active. Members of the public got involved and we realised that they understood what Parliament does. As representatives of the people, whenever we bring Bills we fail in that we do not involve the public in understanding what exactly the proposed laws seek to do. I have seen the Bill on the KRB where you are trying to reduce the number of Board members to be in line with all the other Bills. When it comes to increasing the Court of Appeal Judges, it is said that justice delayed is justice denied. There are too many people whose cases remain unheard and will, probably, not be heard in their lifetime. I believe that in trying to get the courts to be efficient, we should provide a good number of judges.

In the same light, we hope that soon we will come up with amendments to increase the number of police officers in line with the population that they serve. When you say that you have one policeman for 30,000 people, it is impossible to provide justice.

When it comes to Gender Based Violence (GBV), as Nairobi County, we have put containers in every police station. The reason we have done that... We are also building the first safe house in the county. The ugly face of COVID-19 showed us that GBV is rife. We need to make sure that while we provide such services, we also make sure that we provide personnel and the necessary training. While we make all these amendments, it has to be backed by budgets that are targeted to make sure that the amendments to various laws are meant to serve the people better. Sometimes you have legislation and then you do not provide a budget. One that comes to my mind as I speak right now is the Psychology and Counsellors Act. We passed that Act in 2014. When matters mental health were a big issue in the country, I walked into the office of the Principal Secretary for Health during the last Parliament and asked that we implement the Psychologists and Counsellors Act. Unfortunately, they did not even know that the Act had been passed in 2014. They finally created the body that would have the mandate to put counsellors in place, whether in schools, police institutions or medical facilities. If we have all these Acts and we do not have a budget for them, we will not be able to serve the people better. I feel that the Kenyan public is very vibrant when it comes to politics and sometimes they look at us, parliamentarians, and wonder what we do. We do a lot, that is, from the committees that we serve in, to playing an oversight role on amendments and legislation. We need to focus on how we can take public participation live to Kenyans to enable them participate online. Not everybody is aware of or can come to Parliament during public participation.

All in all, I commend the Leader of the Majority Party and the Government for looking into all the gaps in all these laws that they have brought together. I hope that we will back it up with the necessary budget to enable implementation. There is need for training in the various ministries so that, as a whole, we can make legislation that works and serve the people of Kenya.

I stand to support and commend the Leader of the Majority Party for all these amendments to the various statutes. Thank you.

The Temporary Speaker (Hon. Martha Wangari): Deputy Whip for the Majority Party and Member for Marsabit County.

Hon. Naomi Waqo (Marsabit, UDA): Thank you very much, Hon. Temporary Speaker, for this opportunity to add my voice to these amendments on the Statute Law (Miscellaneous Amendments) Bill of 2022 that the Leader of the Majority Party brought. It is

a good thing that seeks to harmonise various Acts with the functions of the Director of Public Prosecutions under Article 157 of the Constitution.

From the outset, I support this Bill. My attention is drawn to the Anti-Corruption and Economic Crimes Act of 2003. I have just picked a few reasons why I support the amendment. If we allow the Commission to seek court orders on State officers under investigation, this will help us because we know very well that our country has suffered in the past and is currently affected by previous corruption practices. I want to quote what the late President Kibaki said:

“Let us not have people who seek to swindle the Government. Such people should not be alive because the Government uses public money. There is no need to have mercy on a fellow who is trying to swindle us. A person who is trying to misuse public funds must not be allowed to continue working in Government. We will sack such fellows.”

I respect these words because our country is where it is today because of corruption. Today, a poor young man, a graduate who qualifies for a certain position, has no hope just because of corruption. People believe that besides your academic qualifications, you must corrupt the system through bribes in order to get a job. Justice has no place in our country as we have made corruption the order of the day. Passing this Bill will help us because many civil servants are being mentioned in corruption cases. Once this Bill passes, we will take control. Unless we give corruption serious attention, it will continue affecting us. If a public or civil servant is involved in corruption, allowing him to remain in office will definitely jeopardise investigation. It is better for that person to leave and allow for investigation to take place.

I also support amendments to the Leadership and Integrity Act (No.19 of 2012) to allow EACC to verify suitability of any candidates. There are people who have gone through the process and have been employed in institutions and offices, but when you look at the records years later, you realise that mistakes were made. It is good to have proper procedures that can be followed and referred to so that in case of anything, we have someone who is accountable for any mistakes that may have occurred.

In the past, some Kenyans have used fake certificates to get into various offices. This amendment will help to minimise the problem that many people encounter after some years. I am aware that in some counties many people have been involved in corruption. Such people never went through proper investigation and follow-up. They now occupy offices that they do not qualify to serve in. Some have been transferred from one institution to another due to their bad records. If we pass this amendment, we will be able to take care of that area.

The amendment to the Judicature Act seeks to increase the number of judges of the Court of Appeal from 30 to 70. Kenyans complain of the many months that cases take before rulings are made. Increasing the number will help us be more efficient in serving Kenyans. Therefore, I support the amendment. The amendment to the Kenya Roads Act (No.7 of 1999) seeks to reduce the number of Board members from the current 13 to nine as per the *Mwongozo* Code of Conduct. When you have a smaller number of Board members, better decisions are made. It is easier to handle a smaller team than a big number of people. This is a good recommendation. We can look for qualified people like engineers or youth who are well educated and qualified to represent us on the Board. As we consider that, the face of the country should be reflected in every institution and Board.

With those few words, I support. It is my prayer that this will soon be implemented.

The Temporary Speaker (Hon. Martha Wangari): Hon. Janet Sitienei, Member for Turbo.

Hon. Janet Sitienei (Turbo, UDA): Thank you, Hon. Temporary Speaker. I request to skip this Bill because I did not prepare for it.

Thank you.

The Temporary Speaker (Hon. Martha Wangari): Thank you. The next chance will go to the Member for Kirinyaga County.

Hon. Njeri Maina (Kirinyaga County, UDA): Hon. Temporary Speaker, I was just telling my colleague that it seems you are not getting to my name. Thank you. I rise to support the Statute Law (Miscellaneous Amendments) Bill, 2022. Laws must be progressive. As a society, we must make laws that are in tandem with the challenging times of the day.

I would like to speak on the Evidence Act, Cap. 80, Laws of Kenya. My good friend, Hon. KJ, has said that every edited photo leaves a digital imprint. It is about time we thought about countering technology, Artificial Intelligence (AI) advancements in terms of photographic evidence, which forms a majority part of the evidence that is presented in court by advocates. I was just telling Hon. Naomi that there is a photo of me circulating on social media platforms showing that I have a head of a goat. I do not know how that came about but it is about time we introduced changes in the law to ensure that we have the right evidence in court to enable judges and magistrates to make the right judgments.

I would also like to speak on the Anti-Corruption and Economic Crimes Act, 2003. This is a very welcome amendment. The Commission has sort of become a toothless bulldog. If you remember very recently, we saw it play out in the media between a Cabinet Secretary and a Principal Secretary, and the Commission was caught up in between with its actors wondering what to do about both State officers. It is about time we amended the law to ensure that the Commission can get barring orders against any State officer who is indicted or who is declared a person of interest in an investigation. Why am I saying this? There are glaring issues of interference when people who are being investigated are in office. They can interfere with the evidence. There is also conflict of interest because they were not able to provide the Commission with clear and outlined evidence.

I also support the proposal to increase the number of Court of Appeal judges from 30 to 70. As a law practitioner in this nation, I can say that there is such a big disparity in terms of ensuring that we provide justice to Kenyans. A simple case takes about seven years in Kenya. It is unfortunate because most of the time people who cannot afford the services of lawyers are left at the mercy of the judicial system. They go to court, and they are told, 'Come and take another appearance date.' They do not have lawyers who can say, 'No, our timelines are like this.' You are told to come again another time. It is about time. I mean, even for magistrates and judges, we should ensure that we make provision in the laws to protect the right to access to justice for all Kenyans from all walks of life.

With those few remarks, I beg to support.

The Temporary Speaker (Hon. Martha Wangari): Thank you. The next chance goes to the Member for Seme.

Hon. (Dr.) James Nyikal (Seme, ODM): Thank you, Hon. Temporary Speaker, for giving me this opportunity.

I am always very cautious of miscellaneous amendments because, one; they are bound to have mischief and, two; they are practically large and difficult for people to go through and understand what is happening. Sometimes the Bill contains very many statutes that have been lined up for amendments and is, therefore, very voluminous. However, I will support this one with caution knowing that the most important aspect of miscellaneous amendments is actually the Committee of the whole House, where we make clear decisions. The most common thing about them is aligning a lot of laws with the role of the Director of Public Prosecutions, which is a procedural thing. It also provides for many agencies that must give their annual reports within six months. Those are really administrative matters that can be undertaken in miscellaneous amendments. However, there are important issues under the Judicature Act, as many of our colleagues have indicated. I am not a lawyer but we have now been educated.

There is nothing better than increasing the number of judges. Delay in justice in this country is a major drawback. Therefore, that is something we can support.

On the Penal Code, terms like ‘imbeciles’ and so on used to refer to certain people are totally unacceptable. I think we should support that particular amendment and review it when the time comes. The Criminal Procedure Code, and the Sexual Offences Act, are really good. At the Committee of the whole House, we may look for more amendments. This is because, on one hand, there is this problem of a deficit of forensic evidence basically because the people who handle the matters are not trained adequately or they are not keen enough to know how to save and protect evidence or even guide people who are affected on what evidence is required at what time. That is, therefore, something that has been really terrible in sexual offences.

Matters defilement and the age of offenders are things we need to look at, particularly where boys of ages 19, 20 and 21 deal with girls of ages 17 and 18. They are more exposed and in their action, they may be thinking that they are dealing with normal human beings. There are cases where marriages have been organised with families only for the boys to be taken to court and punished severely for defilement. So, I think that is something we should look at.

With regard to the Evidence Act, as we move with technology and allow digital photographs, we must up our game in managing photographs because the manipulation that can occur in those digital photographs is amazing. People may find themselves going to jail for things they did not do. It is good that we are in the digital period and the artificial intelligence time but we must see how we can protect people from those who can do digital manipulation and get people into problems.

I like the Bribery Act. The word ‘bribery’, as a Member said, seems to imply that we are promoting bribery. What I really like about it is that for once in this country, we are going to accept that corruption is not seated in the public sector only. The contribution of the private sector is immense. If we are going to look at that, that is something I will support.

As for holidays, let us not change history. Let history stay as it is. I do not see why we are changing Moi Day. Whatever happened, I think we should retain it. Changing 26th December to Utamaduni Day would not be respecting our cultures. We are looking at a day that is celebrated all over the world for other things and saying that we can give this one to something we can relate to.

On the Copyright Act, our artists are losing a lot from their skills and talents. I think that is something that we need to look at.

I agree with the Anti-Corruption and Economic Crimes Act. There are people who should be barred from their offices when they are being investigated. You cannot be investigating people while they are still holding the objects that you need to look.

For the Merchant and Shipping Act, what we had was declared unconstitutional. The shipping sector has been operating without it. Therefore, it has been hard to revive the Kenya National Shipping Line. If the proposed amendment will do it, it is okay.

In the Prevention of Organised Crime Act, we must enhance the punishment. Sometimes we should have capital punishment for organised economic crimes because these people kill others through their activities. Therefore, by enhancing the punishment and giving more time to pursue the proceeds, especially property, is something we can support.

In the Leadership and Integrity Act, let the EACC verify suitability. By the time these people come to us, so much politics has gone in the process and we do not do much. Finally, on the Scrap Metal Act, this is something we need to look into. It is not just about copper, aluminium and their alloys. We need to protect our infrastructure and not just electrical and electronic infrastructure but even the physical ones.

Hon. Temporary Speaker, with that, I support but with reservations until we get to the Committee of the whole House, where we will look at each one individually.

Thank you.

The Temporary Speaker (Hon. Martha Wangari): The next chance goes to the Member for Mbeere North Constituency.

Hon. Ruku GK (Mbeere North, DP): Thank you, Hon. Temporary Speaker. I rise to support the Statutory Instruments (Amendment) Bill. I sit in the Committee on Delegated Legislation, where we have seen many State corporations or Government agencies having delegated powers to come up with laws or regulations which are not forwarded to our Committee and this House. This has happened quite a number of times.

The Temporary Speaker (Hon. Martha Wangari): Member for Mbeere North, I think you are contributing to the next business. We are on the Statute Law (Miscellaneous Amendments) Bill. Kindly, be guided, and if you are not prepared to speak to this one, you can speak when we get to the next one.

Hon. Ruku GK (Mbeere North, DP): Hon. Temporary Speaker, I have seen the moving notes by the Leader of the Majority Party, where the Statutory Instruments (Amendment) Bill is mentioned. However, I stand guided.

The Temporary Speaker (Hon. Martha Wangari): Member for Funyula Constituency.

Hon. (Dr.) Ojiambo Oundo (Funyula, ODM): On a point of order, Hon. Temporary Speaker. I request my colleague to look at the Memorandum of Objects and Reasons of the Bill in question. It shows all the principal Acts being amended. The moving notes by the Leader of the Majority Party are not the Bill. The Bill is the property of the House. Allow me to give him a copy of the Bill so that he can apprise himself.

Hon. Ruku GK (Mbeere North, DP): Yes, Hon. Temporary Speaker. I have the Statutory Instruments (Amendment) Bill. I thought that is where we are.

The Temporary Speaker (Hon. Martha Wangari): Member for Mbeere North, let me guide you so that as you make the few comments you want to make, you do so on the right Bill. The Bill on the Floor of the House is the Statute Law (Miscellaneous Amendments) Bill, 2022. It does not contain the Statutory Instruments Act among the Acts being amended. So, kindly, restrict yourself to the Bill that is on the Floor of the House.

Hon. Ruku GK (Mbeere North, DP): Thank you, Hon. Temporary Speaker for your guidance. I want to support the proposed amendments to the Anti-Corruption and Economic Crimes Act, 2003. As you know, we have to make corruption very painful in the Republic of Kenya. We have seen the rate at which corrupt activities have let down Kenyans, more so when it comes to economic crimes – which are never dealt with in a serious manner.

We have seen prosecution of corruption cases which cannot be justified. Economic crimes are never prosecuted in a manner that makes corruption painful. We have seen the agony of coffee, tea, dairy and poultry farmers. People in senior Government offices sit down and make policies which distort the market prices of these products. These people have never been prosecuted in any court of law for coming up with policies which distort the market prices and enable cartels to thrive. We have to amend the Anti-Corruption and Economic Crimes Act to ensure that all corruption activities or economic crimes are prosecuted and made very painful for anybody involved in these activities. I support these amendments in the strongest terms possible.

On the issue of the KRB Act, we need to make this organisation efficient and effective in carrying out its mandate. We need to ensure that our parastatals are in tandem with *Mwongozo* Code, which recommends nine board members and not 13. It is surprising that up to date the KRB has 13 board members, which is against the policy documents known as *Mwongozo* Code. This amendment seeks to ensure that governance of our organisations is done in the most appropriate way so that taxpayers' money is not wasted. It seeks to ensure that we have a lean board that can make appropriate decisions.

I rise to support the proposed amendments to the Evidence Act, and the Criminal Procedure Code so that the justice administration system in Kenya, and more so the Judiciary, can function in an appropriate way. We also want to introduce...

This House has powers to create more courts. In future, we should have traditional courts as a method of ensuring justice in our society. We also need to establish jury courts and have different types of courts so that members of the public can choose the kind of courts they want to go to. Some of our courts have a long way to go in terms of the justice administration system.

We know what is trending out there. I do not want to mention it in this House. We have a long way to go in as far as the judicial system in this country is concerned. In the future, we want to have different types of courts so members of the public can choose which court to go to. Most people will choose to go to traditional courts because they are most effective in terms of unearthing the truth of whether a crime was committed or not. Alternative dispute resolution mechanisms need to be embedded in our society.

Hon. Temporary Speaker, with those remarks, I support these amendments. Thank you.

Hon. Eric Kahugu (Mathira, UDA): On a point of order, Hon. Temporary Speaker.

The Temporary Speaker (Hon. Martha Wangari): What possibly could be out of order, Member for Mathira Constituency?

Hon. Eric Kahugu (Mathira, UDA): Thank you very much, Hon. Temporary Speaker. I feel that this matter has been extensively discussed. Therefore, I am requesting you to call upon the Mover to reply.

The Temporary Speaker (Hon. Martha Wangari): Order, Hon. Members. A Member has risen, in accordance with our Standing Orders. I will, therefore, put the Question.

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

The Temporary Speaker (Hon. Martha Wangari): Mover.

Hon. Kimani Ichung'wah (Kikuyu, UDA): Thank you, Hon. Temporary Speaker. Let me take this opportunity to thank all the Members who have ably contributed to this very important Bill that touches on a number of statutes. I particularly thank those who have spoken in support of the amendments that touch on the EACC to make sure that it becomes a Commission that has teeth to bite the corrupt. It will not bite those who are not corrupt. Anybody who is not corrupt, or has no plans of engaging in corruption, should not be worried about the provisions that are contained herein, including those in the Bribery Act.

I know there are concerns that we have proposed to increase the number of judicial officers serving in the Court of Appeal. There have been questions on the judges serving in the Supreme Court as well. That being a constitutional matter, it is one of the issues that Kenyans should continue to engage one another on to know whether it is possible to increase the number of judges in the Supreme Court.

It is, indeed, important for the Court of Appeal to have enough judicial officers to handle the many appeals that emanate from the many High Courts that have been established. When this country had High Courts only in Nairobi, Mombasa, Kisumu, Nakuru and Nyeri – which were largely along the old provincial headquarters – the Court of Appeal sitting only in Nairobi had an adequate number of judges but even then there was a problem of cases taking too long in court. There were instances where prisoners who had filed cases in the Court of Appeal against their sentencing ended up serving their entire time in prison before their appeals could be heard. Unfortunately, some served for crimes they did not commit. Probably, they

would have received reprieve in the Court of Appeal but because of the absence of adequate judicial officers, they were unable to enjoy their freedom. The increment of the Court of Appeal judges from 30 to 70 will help in the dispensation of justice.

I also wish to point out that we are only increasing the number allowed by the law. However, that does not necessarily mean that the Judiciary will hire another 40 judges tomorrow. It means that the law will allow them that space. They will hire based on need and the number of cases that are before them. They will also give judicial officers hope that they can climb up the ladder in their service. When you see that you have a limited number of judges, then those serving in the High Court know the spaces available are very limited, unless judges retire. Judicial officers who are serving as magistrates will know that, as long as they serve with integrity, they have the space and time to rise up the ladder.

Hon. Temporary Speaker, finally, I was watching the engagement between the Member for Mbeere North and the Member for Funyula. I agree with the Member for Funyula that my talking notes only speak to certain aspects of the Bill that I find relevant. However, that does not mean other Members must not get hold of the Bill. When these Bills are read a First Time in the House, they are available in the Table Office. I encourage our new Members to get copies of the Bills and go through them. The Parliamentary Service Commission (PSC) has also facilitated us very well to have personal assistants. I hope the Member for Mbeere North has employed a personal assistant who can read and translate what is provided for in Bills. I am not only talking about the Member for Mbeere North but also all Members of Parliament.

Hon. Ruku GK (Mbeere North, DP): On a point of order, Hon. Temporary Speaker.

The Temporary Speaker (Hon. Martha Wangari): What is out of order, Member for Mbeere North?

Hon. Ruku GK (Mbeere North, DP): Hon. Temporary Speaker, is the Leader of the Majority Party in order to keep on reminding the new Members—who are highly qualified, having gone to various universities in the world and worked in different countries in the world—that they need to have personal assistants? The Member for Mbeere North, Hon. Ruku GK, is very well-versed with the Bill that is on the Floor of this House. Is the Member for Kikuyu in order?

The Temporary Speaker (Hon. Martha Wangari): Order, Member for Mbeere North. I have no doubt about it because I know you went to the university after I had gone there.

(Laughter)

Hon. Ruku GK (Mbeere North, DP): Thank you, Hon. Temporary Speaker.

The Temporary Speaker (Hon. Martha Wangari): There is only one university whose name starts with the article “The” in this country. That notwithstanding, Hon. Ichung’wah was responding to what the Member for Mbeere North admitted to. He was using the Leader of the Majority Party’s notes but not his personal notes.

Continue, Hon. Ichung’wah.

(Laughter)

Hon. Kimani Ichung’wah (Kikuyu, UDA): Thank you, Hon. Temporary Speaker, for that response to the Member for Mbeere North. He knows that I have tremendous respect for him because he has cut out his image as a very diligent Member of Parliament. Indeed, he is

among the best performing Members of Parliament in terms of contributions to debate. I was just encouraging him not to depend only on my notes next time. I read the Bill and indicated what I wanted to speak on. It does not necessarily mean that I covered the entire Bill.

When you are moving a Bill, the time does not allow you to cover the entire length and breadth of a Bill. Anyway, that was on a light note.

Hon. Temporary Speaker, I agree with you that there is only one university whose name starts with the article “The” in this country: The University of Nairobi. No other university has this article, especially those named after whom-I-do-not-want-to-mention.

With those many remarks, allow me to reply and thank all the Members who took time to contribute. From the Clerk-at-the Table’s desk, this is one of the Bills that a lot of Hon. Members have contributed to and spoke to the need for particular amendments that are contained in the Bill.

Thank you.

The Temporary Speaker (Hon. Martha Wangari): Thank you, Leader of the Majority Party. We will defer the putting of the Question to the next sitting, as guided by our Standing Orders.

(Putting of the Question deferred)

Next Order.

MOTION

ADOPTION OF REPORT ON THE PROBABLE LOSS OF INVESTMENTS IN CYTONN HIGH YIELDS SOLUTIONS PLATFORM

The Temporary Speaker (Hon. Martha Wangari): Chairman, Public Petitions Committee, Hon. Nimrod Mbai.

Hon. Nimrod Mbai (Kitui East, UDA): Hon. Temporary Speaker, I beg to move the following Motion:

THAT, this House adopts the Report of the Public Petitions Committee on its consideration of Public Petition No.07 of 2022 regarding Probable Loss of Investments in Cytonn High Yields Solutions Platform, laid on the Table of the House on Thursday, 4th May 2023.

Hon. Temporary Speaker, on 16th November 2022, the Member for Alego Usonga Constituency, Hon. Samuel Atandi, presented in this House public Petition No.7 of 2022 on Probable Loss of Investments in the Cytonn High Yields Solutions Platform on behalf of Ms. (Ambassador) Josephine Awuor, Ms. Carolyn Otieno and Mr. Omondi Obonyo, who are investors in the Cytonn Company Limited. The petitioner prayed that the National Assembly, through the Public Petitions Committee:

1. Summons the Capital Markets Authority (CMA) to establish how they intend to operationalise the investor compensation fund to grant compensation to investors who suffer pecuniary losses resulting from failure of licensed brokers or dealers to meet the constructional obligations as stipulated in Section 18 (1) of the Capital Markets Act.

2. Engages the Cytonn Investments Limited and its partners to clarify how they intend to fulfill their agreements with the investors, depositors and the aforementioned Ridge Investment Projects.
3. Holds the Chief Executive Officer of Cytonn as responsible for the mismanagement and secures the timely refund of investors' deposit money.
4. Make any other suitable recommendation it deems fit in addressing issues raised in the petition.

Hon. Temporary Speaker, upon hearing from the petitioners and witnesses, the Committee made determination on the prayers sought in the Petition as follows:

Summon the Capital Markets Authority (CMA) to establish how they intend to operationalise the investor compensation fund. To grant compensation to investors who suffer pecuniary losses resulting from failure of an unlicensed stock broker or a dealer to meet his contractual obligations as stipulated in Section 18 (1) of the CMA Act. Upon consideration of this prayer, the Committee resolved that CYHS was an unregulated product which guaranteed returns by Cytonn. Cytonn has not converted CWHS to CYHS as advised by CMA where the clients in CHYS would convert into a CHYF and eventually benefit from the investor compensation fund in case of any loss.

Section 18 of the Act and Regulation 64 of the CMA Licensing Regulations (General Regulations) 2002 provides that investors in the Capital market products and/or services are entitled for compensation from the fund if they suffer losses resulting from the failure of a licensed stock broker or dealer to meet his contractual obligations and paying beneficiaries from collected unclaimed dividends when they resurface.

The investors in CHWS are not liable for compensation from the fund as the product is unregulated. Further, Regulation 69 requires that investors shall apply for CMA for compensation from the Compensation Fund in cash or securities equal to the net loss following a loss due to failure of stock brokers, dealers or investors, banks carrying out any stockbroking business or dealing operations. To meet its contractual obligations, therefore, investors in CHYS are not entitled to benefits from the Investor Compensation Fund in case they suffer loss of their investments.

On engagements with Cytonn Investments Limited and its partners to clarify how they intended to fulfil their engagements with investors/depositors of the aforementioned Ridge Development Projects, upon consideration of this prayer, the Committee resolved:

1. The product by Cytonn high yield solutions CYHS and CPA are unregulated products and that Cytonn management PLC has not converted CYHS to CYHF as advised by CMA where the clients in the CHYS would convert into a regulated CHYF. During the presentation of the petition before the Committee, liquidation orders against certain entities CHYS and CPN under Cytonn were issued by the courts whereupon an official receiver was appointed. The order was made against among other properties the Ridge which is part of this Petition. Therefore, the court process of liquidation be allowed to proceed to its logical conclusion. This will allow the realisation of funds to compensate the investors. Therefore, the Committee recommends that the official receiver speeds up the process of liquidation and reports to the National Assembly within six months from the date of adoption.
2. All Chief Executive Officers of Cytonn are responsible for the mismanagement and secure the timely refund of investors and depositors' money.
3. The CMA fast-tracks the alternative funds regulation for private markets so as to seal loopholes by rogue operators. The House amends the Capital Markets

Authority Act to provide for an expanded market conducive environment for capital markets.

With those remarks, I beg to move and request Hon. Janet Sitienei to second the Motion.

The Temporary Speaker (Martha Wangari): Thank you. Let us hear the Member for Turbo.

Hon. Janet Sitienei (Turbo, UDA): Thank you, Hon. Temporary Speaker. I wish to second the Motion on probable loss of investment in Cytonn High Yield Solutions Platform. Having listened to the petitioners and other witnesses, and having visited the various investments, we concluded that the CEO of Cytonn and the partners failed to apply sound corporate governance techniques and strategies on the investment portfolios. For example, when we looked at one of the investments that we visited – The Ridge – which the petitioners had interest in, we realised that work was not on going. The work had stopped due to non-payment to the contractor. We even had difficulties accessing the property.

According to the CMA Act and Regulations, Cytonn Investments management had issued to the market both regulated and unregulated products. However, they chose to use the unregulated product despite the fact that Cytonn Asset Managers Investors Limited had six registered companies which they would have used to save the petitioners their hard-earned money.

(Several Members spoke off the record)

The Temporary Speaker (Martha Wangari): Hon. Janet Sitienei, just continue.

Hon. Janet Sitienei (Turbo, UDA): Thank you, Hon. Temporary Speaker. Cytonn Investments Company chose to use the vehicle called CHSY instead of using the registered vehicles which are already registered with CMA. Therefore, the products they had were unregulated. The investors, who are the Petitioners, suffered pecuniary losses but they cannot be compensated because of the status of the Cytonn High Yield Solutions (CHYS). According to the Capital Markets Authority (CMA), the Cytonn Investments Management was advised to procure a licence to allow it to operate services and products that fall within the purview of capital markets but Cytonn Investments Management did not procure the required licence.

(Several Members spoke off the record)

The Temporary Speaker (Hon. Martha Wangari): I do not know why you are pausing, Hon. Janet. Continue.

Hon. Janet Sitienei (Turbo, UDA): The CMA observed that there are financial services institutions that offer unregulated cash management products that would pull funds from the public for a guaranteed return. Therefore, CHYS was not within the mandate of the CMA. Therefore, CHYS duped the public by allowing them to invest their money in that institution, contrary to the provisions of the Capital Markets (Securities, Public Offers, Listing and Disclosures) Regulations, 2002.

The investors lost their hard-earned money to Cytonn Investments Management. Therefore, they suffered pecuniary losses due to failure by the stock broker, who was licensed to meet contractual obligations and pay beneficiaries. Section 18 of the Capital Markets Act and Regulation 64 of the Capital Markets (Licensing Requirements) (General) Regulations provide that investors in capital markets are entitled to compensation from the fund if they suffer pecuniary losses resulting from the failure of a licensed stock broker. If you listen to this, you realise that the investors suffered pecuniary losses through the CHYS and are, therefore, not eligible for compensation from the fund as the product is unregulated.

The Cytonn Investments Management continues to engage in extremely aggressive advertising and marketing using words, statements and phrases that could entice and lure unsuspecting Kenyans into buying or taking up the products as advertised and marketed without sufficient notice and information, contrary to consumer protection laws.

We request the CMA to fast-track alternative fund regulations for private markets to seal loopholes by rogue operators in order to protect unsuspecting citizens from losing their money or hard-earned investments. We recommend that the Chief Executive Officer (CEO) of Cytonn Investments Management, Mr. Edwin Harold Dayan Dande, be held personally liable for the loss of investors' money and mismanagement. Therefore, he should secure timely refund of investors and/or depositors' money.

The Directorate of Criminal Investigations (DCI) should undertake thorough investigations into the affairs and matters raised by the Petitioners and proffer criminal prosecution against any person found culpable. He should also investigate the relationship between Cytonn Investments Management and the CMA between 2015 and 2021. He should also investigate the business dealings of the 49 special purpose vehicles (SPVs), including their assets and liabilities. He should also investigate the dealings of the CEO, and his assets and liabilities so that he can bring to book any person who is culpable for investor losses.

The Temporary Speaker (Hon. Martha Wangari): Hon. Janet, you have 30 seconds to properly second the Motion.

Hon. Janet Sitienei (Turbo, UDA): Hon. Temporary Speaker, I wish to second this Motion and also pass it for debate so that our citizens can be guarded against any other losses in future.

With those remarks, I second the Motion.

(Question proposed)

The Temporary Speaker (Hon. Martha Wangari): Hon. Members, the debate on this Motion will resume when the House sits next time because, under our Standing Orders, the adjournment Motion that is to be moved by Hon. Ken Chonga is scheduled to start at 6.00 O'clock.

(Debate on Motion deferred)

Hon. Members, I now call upon Hon. Ken Chonga to move his adjournment Motion.

MOTION OF ADJOURNMENT ON A MATTER OF URGENT NATIONAL IMPORTANCE

MEASURES TOWARDS SUSTAINABLE LIVING

Hon. Ken Chonga (Kilifi South, ODM): I need to be guided, Hon Temporary Speaker.

The Temporary Speaker (Hon. Martha Wangari): Hon. Member, you rose in your place and garnered proper support for an Adjournment Motion. The Speaker scheduled it for 6.00 p.m. I have now given you the chance to move the Motion.

Hon. Ken Chonga (Kilifi South, ODM): Thank you, Hon. Temporary Speaker. I beg to move:

THAT, considering the rate at which the prices of fuel are changing and rising nearly every day, a concern about what could be done has come among Kenyans. Despite the fact that we are aware that global prices of fuel are going up, there is need for the Government to come up with concrete measures to address

this situation given the fact that there are too many effects that come along with these skyrocketing prices.

As we all know, fuel is the driver of the economy. A situation where the prices of fuel are high compels the populace to spend more on fuel than on anything or even have some savings. There are too many effects. The cost of living, the cost of transport and the cost of production are untenable and, therefore, the projected growth of the economy is unachievable because all these rely on fuel.

Hon. Temporary Speaker, I feel that this is a matter of urgent national importance that this House should debate. Therefore, I wish to move the Motion and give an opportunity for Members to contribute it.

Thank you.

The Temporary Speaker (Hon. Martha Wangari): Hon. Members, you are aware that Standing Order 33 gives each Member five minutes under this Motion, regardless of ranking or position. Only the Mover may take ten minutes.

What is out of order, Member for Gatundu North?

QUORUM

Hon. Elijah Kururia (Gatundu North, Independent): Thank you, Hon. Temporary Speaker. I rise under the provisions of Standing Order 35 to bring to your attention the fact that the House does not have the requisite quorum to continue transacting business. Therefore, we should work within our rules.

Thank you.

The Temporary Speaker (Hon. Martha Wangari): From the look of the House, I order that the Quorum Bell be rung for 10 minutes. Serjeant-at-Arms, go ahead.

(The Quorum Bell was rung)

The Temporary Speaker (Hon. Martha Wangari): Serjeant-at-Arms, 10 minutes are over. Kindly, stop the Quorum Bell. Order, Members. Kindly be on your feet.

ADJOURNMENT

The Temporary Speaker (Hon. Martha Wangari): Hon. Members, there being no quorum, the House stands adjourned until tomorrow, Wednesday, 4th October 2023, at 9.30 a.m.

The House rose at 6.21 p.m.

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