

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Tuesday, 23<sup>rd</sup> April 2019

The House met at 2.30 p.m.

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

### PRAYERS

### ADMINISTRATION OF OATH

The Oath of Allegiance was administered to the following Members:

Mr. Julius Mawathe Musili.

Mr. David Ouma Ochieng’.

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

**Hon. Speaker:** Hon. Members, you may now congratulate the newly sworn-in Members. There is no need of raising a point of order at this point. The Members may only be congratulated in the usual way. Just by applause.

*(Applause)*

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

**Hon. Aden Duale** (Garissa Township, JP): On a point of order, Hon. Speaker. With your permission, I want to thank the good people of Ugenya because I have served with Hon. David Ochieng’. Hon. Speaker, you can be my witness that Hon. David Ochieng’ was one of the finest and decent legislators in the 11<sup>th</sup> Parliament. I am sure the people of Ugenya decided not to look at the party or party leaders but at the people’s representative.

I also want to thank the people of Embakasi South because my choice was Hon. Mawathe. He won in 2017 but because of some *ukora*, they took him back to elections and he won with over 21,000 votes, when my good friend, Mr. Sumra, managed only 7,000 votes. I want to tell the people of Embakasi South and Ugenya that come 2022, this should be the route because they know where the route is. They must vote for the people who work, deliver and are development conscious.

They join people like Hon. Olago Aluoch, who came to this House with a small party from a very difficult constituency, Hon. Oyoo, Hon. Shabbir and many others from this side who are independent. Kenya must take this route because gone are the days when few people decided for the people. I want to send my condolences to Hon. Junet, Hon. Mbadi and many others who wanted to make sure that David Ochieng’ does not come to the august House.

I want to thank Hon. Millie Odhiambo because she stood by Hon. David Ochieng’ and said: “David Ochieng’ *tibim, tialala*”, and that he was the man to watch. Help me welcome Hon. David Ochieng’. I am sure that on Thursday, the people of Wajir West will also say *Kolosh tibim, tialala* and that is where Kenya is going.

Thank you, Hon. Speaker.

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

**Hon. Junet Nuh** (Suna East, ODM): Thank you, Hon. Speaker. I have just heard the Leader of the Majority Party saying he is condoling with me and I have not lost anybody. The last time I checked, all my relatives were intact and I have not heard of any accident in Kenya. So, I am shocked by his condolences and I am really worried that I may lose somebody because I have not lost anybody in Kenya!

I want to congratulate the new Members, Hon. Mawathe and Hon. David Ochieng'. Hon. Mawathe was the sitting Member of Parliament, just before the by-elections. The fact is that he is part of our coalition, because he has won the seat on a Wiper Democratic Movement-Kenya (WDM-K) ticket. The last time I checked, I am the Minority Whip and I will allocate him opportunity to sit in committees. So, I do not know why the Leader of the Majority Party is celebrating because I am the one who will give Mawathe opportunity to sit in the committees that he chooses in this House.

Hon. David Ochieng' has just left my office and pledged loyalty to me and the leader of ODM. He said he is very loyal to *Baba* and I told him that I will test him for two months with a loyal meter and I will know his level of loyalty. The way I saw him dressed today, I was a bit convinced that he is loyal. We even reached out to our party leader who was at Serena in a *kinyozi* and I told him Hon. David Ochieng' is here and has pledged loyalty. That is why I authorised Hon. Opiyo Wandayi to escort him. It was under my authority that he did so. Otherwise, he would not do it because he knows the consequences of what he has just done.

It is now good that politics in this country have gone to a higher level, where people can compete and disagree but, in the end work together in this House as one people. I want to thank the voters of Embakasi South and Ugenya for showing confidence in the two leaders they elected. In the case of Kolosh, you can remember the way the Leader of the Majority Party poached him at night and took him to Jubilee. But, under the spirit of the handshake, we said there was no problem. Let him come to the House under a Jubilee ticket.

In this era of the handshake, you cannot know who is in which party. You might be in ODM and Jubilee and those in Jubilee are also in ODM. Look at the *tanga tanga* group. They are more in ODM nowadays. Very soon, you will see them demonstrating in town carrying placards written "*mtu wetu*", the way I used to do. The only problem is that the other day they accused us of uprooting the railway tracks. The railway that will be going to Kisumu is the Standard Gauge Railway (SGR). The one we uprooted was the Meter Gauge Railway (MGR). We will not touch the new one.

With those few remarks, thank you, Hon. Speaker. *Ahsante sana.*

*(Laughter)*

**Hon. Speaker:** Hon. Members, I appreciate that, obviously, there is a lot of excitement in the House. That is because most Members in this 12<sup>th</sup> Parliament are fully aware of the potential of the two Hon. Members. Those who were in the 11<sup>th</sup> Parliament fully appreciate the contributions by Hon. David Ochieng' and those who are with us now in the 12<sup>th</sup> Parliament are fully aware of the capabilities of Hon. Mawathe. So, I suppose that is why there is a lot of excitement.

Also, let me recognise all the visitors who are in the Public Gallery and Speaker's Gallery who came to witness the swearing in of Hon. Julius Mawathe from Embakasi South in Nairobi

County and those from Ugenya Constituency who came to witness the swearing in of Hon. David Ochieng' from Siaya County. They are all welcome to observe the proceedings, albeit briefly, of the National Assembly this afternoon. *Karibuni sana*.

Hon. Members, I suppose we could go to business. The excitement should be over. You were not mentioned in a bad light, Hon. Millie Odhiambo. But I will give you one minute to say what you appear to be burning to say.

**Hon. (Ms.) Odhiambo-Mabona** (Suba North, ODM): Thank you, Hon. Speaker, for giving me this opportunity. I congratulate the two Members who have come back. I could see Hon. Duale is missing his ODM days. That is why he is introducing every Member with the words "*tialala, tibim*" and all that. In my mother tongue, we say, "*awendo ok we yiere*". That is a special bird. I do not know what "*awendo*" is in English. It can never leave... Is it a peacock? Whatever it is, it cannot leave behind its feathers.

**Hon. Speaker:** Hon. Millie Odhiambo, how will the HANSARD now report this? Even you do not know what it means.

(Laughter)

**Hon. (Ms.) Odhiambo-Mabona** (Suba North, ODM): Hon. Speaker, I will try and say that there is a special bird that never leaves behind its feathers. So, when I cheer my good friend, Hon. David Ochieng', it is because I am being a very true Luo and Suba who knows that it does not matter what attire I wear, I am still the daughter of *awendo*. So, I just want to tell Hon. Duale that I am truly in ODM. I welcome my brother, Hon. David Ochieng', who worked exceptionally well. I also welcome my brother, Hon. Mawathe. They have seen what the "D" in ODM is all about. That is what they have been challenging. It is the Orange Democratic Movement. Our people can actually choose somebody else in another party if you perform well. Hon. Orenge had actually been elected in the same seat. I am told the Member of Parliament where Hon. William Ruto comes from is an independent member. So, it is actually something that is happening in the whole country. However, because our party is the party to watch, everybody thinks it is very weird when we get people elected.

So, I want to tell Hon. Duale that he is welcome back to *tialala* and *tibim* because he is missing it.

**Hon. Speaker:** I suppose you may not also be able to tell us what either of those two terms mean in English, if you were to be challenged. So, again, you cause our HANSARD to have difficulties translating or interpreting that. Nevertheless, we all welcome to the House the two Members. Let us proceed to the next Order.

## MESSAGE

### PASSAGE OF BILLS BY THE SENATE

**Hon. Speaker:** Hon. Members, pursuant to the provisions of Standing Order No. 41, I wish to report to the House that I have received two messages from the Senate regarding its decision on the following Bills.

- (i) The Assumption of Office of the County Governor Bill (Senate Bill No. 1 of 2018).
- (ii) The County Governments (Amendment) Bill (Senate Bill No. 13 of 2018).

Hon. Members, you may recall that the Assumption of Office of the County Governor Bill (Senate Bill No. 1 of 2018) was passed by the National Assembly on Thursday, 6<sup>th</sup> December 2018 with amendments. The Message in respect of the Assumption of Office of the County Governor Bill (Senate Bill No. 1 of 2018) conveys that the Senate agreed to all the amendments made by the National Assembly to the Bill. This, therefore, signifies the completion of the bicameral passage of the said Bill. This being a Senate Bill, it follows that the Speaker of the Senate will refer it to His Excellency the President for assent in accordance with the provisions of Article 112(2)(a) of the Constitution.

Hon. Members, the second Message is in respect of the County Governments (Amendment) Bill (Senate Bill No. 13 of 2018). The Bills seeks to amend the County Governments Act to provide for additional qualifications of the chairperson of the county public service board and other relevant amendments. Standing Order No.143(1)(a) requires the Speaker to cause a Bill received from the Senate to be read the First Time upon conveyance of a Message from the Senate. Accordingly, I direct that the County Governments (Amendment) Bill (Senate Bill No. 13 of 2018) be read the First Time during the next Sitting of the House.

Hon. Members, paragraph (2) of Standing Order No. 143 provides that, and I quote:

“Following First Reading, the Speaker shall, within reasonable time, pronounce his or her opinion contemplated under Article 114(2) of the Constitution.”

The opinion envisioned under Standing Order No. 143(2) is a pronouncement by the Speaker as to whether a Bill originating in the Senate is a money bill in terms of Article 114 of the Constitution. In this regard, I direct that after the First Reading, the Bill will be referred to the Parliamentary Budget Office to offer advice that will enable the Speaker to form the opinion contemplated under Standing Order No. 143(2). Thereafter, I shall guide the House accordingly on how to proceed with the consideration of the said Bill.

I thank you, Hon. Members.

## PETITION

### SALARY ARREARS OWED TO PART-TIME LECTURERS OF KISII UNIVERSITY, MIGORI CAMPUS

**Hon. Speaker:** This must be Member for Suna West. Hon Masara.

**Hon. Peter Masara** (Suna West, Independent): Thank you, Hon. Speaker, for giving me this opportunity to read this Petition on behalf of the lecturers of Kisii University, Migori Campus. It is Petition No. 31/2019 regarding the salary arrears owed to part-time lecturers of Kisii University, Migori Campus.

I, the undersigned, on behalf of part-time lecturers at Kisii University, Migori Campus, draw the attention of House to the following:

THAT, Article 41 of the Constitution guarantees every person the right to fair labour practices, reasonable working conditions and fair remuneration;

THAT, the management of Kisii University has failed to pay the arrears owed to the part-time lecturers for services offered since January 2016;

THAT, recently, some sums of money, being payments for the January to April 2016 Semester, have been deposited into the accounts of some lecturers, and any inquiries over those deposits have yielded contradictory statements from the management;

THAT, those amounts so deposited fell short of the true reflection of the sums owed by the University for the 87 part-time lecturers, and that the statutory deductions to Kenya Revenue Authority, National Hospital Insurance Fund and National Social Services Fund remain unremitted;

THAT, the unfair labour treatment and delay in payment of dues to part-time lecturers has caused demoralisation, high turnover of staff and has resulted in compromised quality of service delivery to innocent students;

THAT, owing to the salary delays, most of the lecturers are not in a position to further their studies and some are living in squalor while struggling to fend for their families since the university is their sole source of income;

THAT, going by precedence in other campuses, the delays in salary arrears is likely to affect the sustainability of Migori Campus;

THAT, attempts to have the matter addressed by the leadership of the university and the relevant offices have not been fruitful and have instead resulted in intimidation and threats;

THAT, none of the issues raised in this Petition are pending in any court of law, constitutional or legal body.

Therefore, your humble Petitioners pray that the National Assembly, through the Departmental Committee on Education and Research:

- (i) causes an investigation to the matter to ascertain why Kisii University has not paid its part-time lecturers from January 2016 to date and when the payments shall be made;
- (ii) ascertains from the university management the sustained strategies in place to address the state of affairs and the quality of training and education due to non-payment of lecturers; and,
- (iii) makes any other orders it deems fit in the circumstance of this matter.

And your petitioners will ever pray.

Thank you, Hon. Speaker.

**Hon. Speaker:** The Petition will be referred to the Departmental Committee on Education and Research to consider. Given the issues raised, I will not allow comments. The Committee will delve into the issues and then table a report.

Before we go to the next Order, allow me to recognise the students from Starehe Boys' Centre and School. The students who are with us today in the Speaker's Gallery are the following:

- (1) Master Eugene Khwisera.
- (2) Master Timothy Mabango.
- (3) Master Brighton Onyango.
- (4) Master Linus Anari.
- (5) Master Ian Maundu.
- (6) Master Hillary Kirui, and
- (7) Master Martin Njoroge.

The students are undertaking various forms of activities and learning in the National Assembly for one week, as part of the Voluntary Service Scheme which the school undertakes in various Government institutions during school holidays. On my own behalf and that of the House, I wish them fruitful engagements during the course of their programme within the National Assembly.

Next Order!

### PAPERS LAID

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

Speech by His Excellency the President during the State of the Nation Address of 4<sup>th</sup> April 2019, pursuant to Standing Order No.24(5);

6<sup>th</sup> Annual Report on the Measures Taken and Progress Achieved in the Realisation of National Values and Principles of Governance;

Annual Report to Parliament on the State of National Security;

6<sup>th</sup> Annual Report on the Progress Made in Fulfillment of the International Obligations of the Republic;

The Crops (Irish Potato) Regulations, 2019 and the Explanatory Memorandum (pursuant to Section 40 of the Crops Act, 2013); and,

Draft Law Society of Kenya (General) Regulations, 2019 and the Explanatory Memorandum (pursuant to Section 41 of the Law Society of Kenya Act, 2014).

**Hon. Speaker:** Hon. Members, as you are aware, I am sure the Leader of the Majority Party will move some Motions. It is important to appreciate that a simple look at Article 132(1) clearly defines what is for debate and where. It is a matter that those of you who may be keen need to consider even as you debate these reports. There is a report which is submitted for debate in the National Assembly. People should not waste time debating certain issues when they are not supposed to. It is very clear in the Constitution.

The next Paper is by the Chairman of the Public Accounts Committee (PAC), Hon. Wandayi.

**Hon. Opiyo Wandayi** (Ugunja, ODM): Hon. Speaker, I beg to lay the following Paper on the Table of the House:

The Report of the Public Accounts Committee on the Examination of the Financial Statements for the National Government for the 2015/2016 Financial Year.

**Hon. Speaker:** Very well. I hope you have produced sufficient copies. It is quite voluminous. It is important to appreciate that it is the Report on the 2015/2016 accounts. It is important. I must commend your Committee for moving speedily to conclude this.

Let us move to the next Order.

**Hon. Aden Duale** (Garissa Township, JP): Hon. Speaker, even though it was being talked about in the media, I do not know how they got it.

I beg to lay the following Paper on the Table of the House:

The Special Audit Report of the Auditor-General on the Proceeds and Utilisation of the Eurobond as presented by the Auditor-General.

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

### NOTICES OF MOTIONS

THANKS FOR PRESIDENTIAL ADDRESS AND  
NOTING OF REPORTS BY H.E. THE PRESIDENT

**Hon. Aden Duale** (Garissa Township, JP): Hon. Speaker, I beg to give notice of the following Motion:

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THAT, pursuant to the provisions of Standing Order No.24(6), the thanks of this House be recorded for the exposition of public policy contained in the Address of His Excellency the President delivered in Parliament on Thursday, 4<sup>th</sup> April 2019, and further notes the following Reports submitted by the President in fulfillment of the provisions of Articles 132 (1) (c) and 247 of the Constitution laid on the Table of the House on Tuesday 23<sup>rd</sup> April 2019:

- (a) 6<sup>th</sup> Annual Report on the Measures Taken and Progress Achieved in the Realisation of National Values and Principles of Governance;
- (b) 6<sup>th</sup> Annual Report on the Progress Made in Fulfillment of the International Obligations of the Republic; and,
- (c) Annual Report to Parliament on the State of National Security.

**Hon. Speaker:** My attention was drawn to the fact that Hon. Duale indicated that the thanks of the House be recorded. Some of the Reports are to be noted. There should be a necessary modification with regard to the second Report on the progress made in fulfillment of international obligations. The Constitution requires that, that be debated in the National Assembly. The Motion will be moved with that necessary modification to capture that particular aspect. It is a constitutional requirement.

Let us have Hon. Wandayi.

#### ADOPTION OF 2015/2016 PUBLIC ACCOUNTS COMMITTEE REPORT

**Hon. Opiyo Wandayi** (Ugunja, ODM): Hon. Speaker, I beg to give notice of the following Motion:

THAT, this House adopts the Report of the Public Accounts Committee on its examination of the Report of the Auditor-General on the Financial Statements for the National Government for the 2015/2016 Financial Year, laid on the Table of House on Tuesday, 23<sup>rd</sup> April 2019.

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

#### ORDINARY QUESTIONS

**Hon. Speaker:** The first Question is by Hon. John Bunyasi, Member for Nambale.

*Question No. 175/2019*

#### IMPLEMENTATION OF NEW ADMINISTRATIVE COORDINATION UNITS

**Hon. Sakwa Bunyasi** (Nambale, ANC): Hon. Speaker, I wish to ask the Cabinet Secretary for Interior and Co-ordination of National Government the following:

(i) Could the Cabinet Secretary provide details and plans in place on the implementation of the newly established administrative coordination units in Nambale Constituency that were gazetted vide Notice No. 5853 of 21<sup>st</sup> June 2017?

(ii) What measures has the Ministry initiated to ensure that the existing administrative units in Nambale Constituency are provided with the requisite infrastructure and human resources to enable efficient delivery of services?

Thank you, Hon. Speaker.

**Hon. Speaker:** The Question is referred to the Departmental Committee on Administration and National Security. Sorry, Hon. Members. I had indicated that the Questions will be on the iPads. Indeed, if you look at the iPads, the first Question is by the Member for Rabai, Hon. Kamoti Mwamkale.

*Question No. 170/2019*

EASE OF CLEARANCE OF IMPORTED CONTAINERISED CARGO

**Hon. William Mwamkale** (Rabai, ODM): Hon. Speaker, I would like to ask the Cabinet Secretary for Transport, Infrastructure, Housing and Urban Development the following:

(i) Is the CS aware that imported containerised cargo destined for Mombasa is first transported to Nairobi Inland Container Depot (ICD) for clearance before being transported back to Mombasa?

(ii) What measures is the Ministry putting in place to ensure that the containerised cargo is cleared and offloaded in Mombasa to ease congestion at the Nairobi ICD and save the importers time and money?

Thank you, Hon. Speaker.

**Hon. Speaker:** This Question is referred to the Departmental Committee on Transport, Public Works and Housing. Hon. Members, the next Question is deferred at the request of the Member, through a letter he wrote to the Clerk.

*Question No. 173/2019*

ABOLISHMENT OF POLICE PATROL POSTS IN NAKURU

*(Question deferred)*

The next Question by Hon. Gideon Ochanda has also been withdrawn for re-drafting at his request. So, it will not be asked.

*Question No. 174/2019*

STATUS OF CONSTRUCTION OF ROADS IN BONDO CONSTITUENCY

*(Question deferred)*

The next Question has already been asked by the Member for Nambale. The next Question is by the Member for Belgut, Hon. Koech.

*Question No. 177/2019*

PROTECTION OF BRAND VALUE OF KENYAN TEA

**Hon. Nelson Koech** (Belgut, JP) asked the Cabinet Secretary for Industry, Trade and Cooperatives:

(i) What measures has the Ministry put in place to protect the brand value of Kenyan tea from likely harmful market publicity occasioned by multinationals such as M/S. James Finlay Company Limited which trades in the commodity in the United Kingdom (UK) and elsewhere?

(ii) What measures has the Ministry put in place to ensure that disputes or claims against multinationals involved in exporting Kenyan products abroad are settled in domestic courts of law or tribunals in the interest of international brand value of Kenyan products?

**Hon. Speaker:** The Question is referred to the Departmental Committee on Trade, Industry and Co-operatives. The next Question is by the Member for South Imenti who has also requested that the Question be deferred. He is on official duty outside Nairobi.

*Question No. 180/2019*

ALIGNMENT OF ADMINISTRATIVE BOUNDARIES WITH SUB-COUNTY AND  
CONSTITUENCY BOUNDARIES

*(Question deferred)*

**Hon. Speaker:** The next Question is by the Member for Nairobi, Hon. Esther Passaris, who has just requested that her Question be deferred to tomorrow in the morning. That completes the Questions as per the Order Paper.

*Question No. 178/2019*

REGISTRATION OF STATELESS PERSONS LIVING IN KENYA

*(Question deferred)*

**Hon. Speaker:** Hon. Wanyonyi, take your seat. Hon. Members, let me just make some clarification. An issue which is a matter of great moment has been brought to my attention here. As you noticed, Hon. Julius Musili Mawathe carried three books when he was taking the oath. An issue has been raised as to whether all of them were Bibles, books of his own inventions or books from somewhere in Embakasi South. I want to make this correction because it is fair that I do so. Indeed, all the three books are Bibles. This is the Holy Bible which is called the New International Version; the blue one is also titled "Holy Bible, King James Version". The other black one is also titled "Holy Bible, King James Version." One of them is an earlier version of the other. So, Hon. Mawathe swore by the Bible, but not by a combination of many books. All of them are Bibles. Nothing invalidates the oath that he has taken. That is the long and short of this explanation.

*(Laughter)*

I wish to thank Hon. Otiende who drew my attention to the fact that the Hon. Member may have been sworn both by the Bible and Quran. We needed to confirm that he swore by the Bible. I wish to confirm to the House that Hon. Mawathe swore by the Bible. That matter should be put to rest.

Hon. Members, we will move to the next business. There was a request by Hon. (Prof.) Oduol. Please go ahead.

## STATEMENT

### MEASURES TO ARREST MORAL DECADENCE IN SOCIETY

**Hon. (Prof.) Jacqueline Oduol** (Nominated, ODM): Thank you, Hon. Speaker for giving me an opportunity to make a Statement. I would like to make a Statement on the rising cases of passion killings, adolescent suicides, sponsor syndrome, teenage pregnancies, absentee parents and parenting guidance.

Pursuant to Standing Order No. 43, I seek to make a Statement regarding rising cases of passion killings, adolescent suicides, sponsor syndrome, teenage pregnancies and absentee parenting in the country. It is of concern that the family has ceased to be a safe space with increasing occurrences of domestic violence with spouses, children and the elderly being attacked and killed.

The youth are lacking role models and are sinking into a deeper sense of hopelessness and despair, low self-esteem, rejection and inadequate stamina or skills to face life's challenges and rejection. This has led to rising cases of passion killings, adolescent suicides, sponsor syndrome, teenage pregnancies, absentee parents and replacing of parental guidance with money or material rewards. Children and youth feel that parents, guardians and leaders have not invested in them and do not prioritise their needs.

Hon. Speaker, it is against this background that the Government ought to intervene and take stock of preparedness, competence and skills of girls, boys, women and men to manage the gender role stress and gender role strains arising from the shifts in traditional gender roles at home, work and in the public and identify strategies, programmes, policies and legislation that can strengthen the family as the fundamental unit of society to tackle these challenges.

Thank you, Hon. Speaker.

**Hon. Speaker:** Hon. Oduol, are you through with your Statement?

**Hon. (Prof.) Jacqueline Oduol** (Nominated, ODM): Yes, Hon. Speaker.

**Hon. Speaker:** Hon. Members, let us move back to the Order Paper.

Hon. Members, the Order Paper shows that Order No.8 is Committee of the whole House. But being a Statute Law (Miscellaneous Amendments) Bill, which proposes to amend and/or repeal a number of Acts, it has been found necessary that it be taken out so that the House is able, through the Clerk's Office, to see whether some of the proposed amendments, for instance, proposed amendments to the Energy Act... You know the House passed the Energy Act just recently. The Bill had been printed earlier and there are two other Acts which require to be cross-checked. There are others which had been withdrawn by the Leader of the Majority Party as the Mover of the Bill. So, there is need for it to be cleaned so that the House does not go into Committee and get into some complications while considering some Bills which the House may already have expressed itself on, one way or another. Some of the Acts that are proposed to be amended there, the House has already expressed itself on them by passing certain new legislations recently.

So, Order No.8, for the convenience of the House, is taken out of the Order Paper and it will be placed at an appropriate time. So, let us move to the next Order.

*(The Committee of the whole House stage on The Statute Law  
(Miscellaneous Amendments) Bill deferred)*

### MOTION

#### ADOPTION OF REPORT ON EXAMINATION OF FINANCIAL STATEMENTS OF IEBC

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

*(Hon. Opiyo Wandayi on 28.3.2019)*

*(Resumption of Debate interrupted on 2.4.2019)*

**Hon. Speaker:** Hon. Members, the last time this matter was before the House, there was a proposal by Hon. Peter Kaluma to move certain amendments. I want to dispose of that before debate on the Report commences.

We should give Hon. Kaluma the first chance to prosecute the proposed amendments. Proceed.

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

THAT, the Motion on Report on the examination of the financial statements of the Independent Electoral and Boundaries Commission for the year ending 30<sup>th</sup> June 2017 be amended as follows:

THAT, the Motion be amended by inserting the following expression immediately after the expression “February 27, 2019” subject to:

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

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

(ii) deletion of the words “Commissioners failed to exercise oversight while the” appearing in the first line of Recommendation 3 under Chapter 33.0 on (Committee Recommendations) on pages 4 and 127 of the Report;

(iii) Insertion of the following recommendations 9(a), (b), (c), (d) and (e) under Chapter 33.0 (Committee Recommendations) on page 128 of the Report -

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

9. Noting the Committee's Conclusions and Observations on pages 120 -126, relating to IDEMIA regarding its engagements in Kenya, the House further recommends:

- (a) THAT, the Directorate of Criminal Investigations and the Director of Public Prosecutions undertakes investigations and institutes appropriate criminal action under Section 974(3) of the Companies Act against M/S. IDEMIA in its current name and in its former names of M/S. Morpho, OT Morpho, SAFRAN Identity & Security, its officers and local representatives for having purported to do business with the IEBC before being registered as a foreign company by the Registrar of Companies and noncompliance with the mandatory provisions of Sections 974(1) as read together with Sections 975 and 979 of the Companies Act, No. 17 of 2015;
- (b) THAT, pursuant to the provisions of section 41 of the Public Procurement and Asset Disposal Act, 2015, the Public Procurement Regulatory Authority Board investigates, within sixty (60) days, the conduct of M/S. IDEMIA (formally operating as Morpho, OT Morpho, SAFRAN Identity & Security) and if it finds the company culpable, enters the names of the company in the central repository of debarred firms and ensures that the firm is precluded from participating, award or entering into any kind of procurement contract payable using public funds under any state department or agency in the Republic of Kenya for a period of 10 years;
- (c) THAT, all contracts entered into between the company known as M/S. IDEMIA in its current name herein or in its former names of Morpho, OT Morpho, SAFRAN Identity & Security and the IEBC be investigated and, if found to have contravened Sections 974, 975, 979 or any other section of the Companies Act or any other law, be nullified.
- (d) THAT, the IEBC takes immediate legal action to recover all monies unlawfully paid under the contracts entered into between itself and M/S. IDEMIA in its current name herein or in its former names of Morpho, OT Morpho, SAFRAN Identity & Security or otherwise howsoever as the contracts were entered into in contravention of the mandatory provisions of section 974 as read together with sections 975 and 979 of the Companies Act; and,
- (e) THAT, the Auditor-General and the Cabinet Secretary for the National Treasury ensures compliance with the resolution of the House under recommendation 9(b), and any State or public officer who contravenes the said resolution be held personally liable.

Hon. Speaker and honourable colleagues, naturally, under Standing Orders, committee recommendations draw from committee observations and committee observations draw from committee findings. Those committee findings derive from committee proceedings arising from the oral hearings, evidence or testimonies placed before the committee. In the last Parliament, we transacted business. That is the Parliament under which the current Companies Act was moved.

*(Loud consultations)*

Hon. Speaker, the consultations are a bit loud and distractive.

**Hon. Speaker:** To the right of the Speaker, please lower the decibels.

**Hon. Peter Kaluma** (Homa Bay Town, ODM): Thank you, Hon. Speaker. The amendments I am proposing to this particular Motion on the report by PAC are being drawn from the observations and the findings of the Committee itself. We sat in this Parliament. I am happy my brother, Hon. Ochieng', is now with us in the House. But it is in the 11<sup>th</sup> Parliament when we enacted the Companies Act now in operation. At Section 974 of the Companies Act, we provided that no foreign company shall do business in Kenya until and unless it is registered with the Registrar of Companies and its name entered in the register of foreign companies. That is the import and the literal reading of Section 974(1). When you go to section 974(3), a penalty is prescribed in law for a foreign company that does business in Kenya before it is registered with the Registrar of Companies at Sheria House. That penalty is a criminal penalty. That provision in Section 974(3) says that such company will be liable to a fine not exceeding an amount and on subsequent breaches there will be fines.

The PAC sat on this matter. I want to thank them for very good findings, taking evidence from everybody and very good observations. If you look at pages 120 through to 126 of the PAC Report, they are dealing with the company called IDEMIA Limited. It is this IDEMIA Limited with previously was called SAFRAN Securities & Identities Limited. Before that, it was OT Morpho. Before that, it was Morpho. It is the transactions relating to procurement of technology which was being investigated.

At page 126, the Committee, having listened to the foreign directors of IDEMIA, confirmed that by the time IEBC entered into contract with it for the provision of those technological services, IDEMIA had not sought registration and was not registered as a company in Kenya. On the face of it, IDEMIA could not be a company capable of doing business in Kenya within the meaning of Section 974(1) as read together with other provisions that I have mentioned – sections 975 and 979.

What I am picking from those provisions is that for a foreign company to do business in Kenya, beyond the fact that it should be registered with the Registrar of Companies, it must also have a local representative. There should be other local considerations in its composition and shareholding. All these are confirmed at page 126 of the Committee's Report not to have been so. I am merely picking from the Committee's observations having listened to all the testimonies that were adduced before it. Because our Standing Orders expect that the recommendations will pick from the observations, we find that the company could not do business in Kenya. In the light of the law, we should proceed to proffer the criminal and legal consequences. The criminal consequence, of course, is in section 974(3).

Generally in law, when a non-entity...For a company not registered in Kenya, it is not a recognised entity for doing business. This is a contract which in law is vitiated by illegality. If a contract is vitiated by illegality, it is un-enforceable. The other recommendations we are drawing is that beyond being found criminally culpable, the people who are investigating this matter should also pursue civil consequences. The civil consequences are that a contract that is vitiated by illegality like this one cannot be enforced. If any money has passed under such a contract, that money has to be recovered. I am proposing a recommendation not departing from the findings of the Committee and their observations that we do not only pursue criminal penalty, but also proceed to the level of recovering any monies paid to this company because they were illegally paid. Any contracts that they have entered into in the time they were not registered should be cancelled.

In terms of the very first recommendation to the Report, I am deleting the first recommendation. All I am doing, honourable Members, is to redraw the recommendations to make them sharper. Members will note that I am not departing much from their recommendation. But we cannot be recommending to the House to do legislation. That is why I am saying straight away this House ought to review and determine whether it is right and it should remain or to repeal section 11(a) of the IEBC Act.

Section 11(a) is a provision which has been misinterpreted to undermine the proper operations between a commission as a constitutional office and the secretariat. This is an interpretation and a provision being taken to literally all commissions across the country. This is the basis upon which an argument is being made that commissioners should only deal with matters policy and matters strategic directions or guidelines. Everything else to do with the commission is a matter for the secretariat. I want it to be remembered that the commissions created under the Constitution are executive commissions. In fact, within the contemplation of the Constitution, the commission is the chair and the members. Article 249(3) is very clear that it is those commissioners who then recruit the members of the secretariat or their staff. So, there is an interpretation being drawn and I saw it even in the context of this Committee. They are saying that a review of this law should be as envisioned in 11(a). I am merely sharpening it so that we can reconsider it and make the constitutional functions of the Commission clear as against the administrative functions of the Commission.

Hon. Speaker, in the second proposed amendment, I am proposing removal of the words, “the commission did not do oversight”. I have read through the Report of this Committee and two things are clear from the Report of the Committee.

One, this audit report by the Auditor General took place on the request of the commission. Unlike before, I found that interesting. It is also in the evidence of the former Chief Executive Officer of the commission and the commissioners that even before they invited the Auditor General to undertake this audit which is the subject matter of this analysis, they did their own internal audit. If that is true, and it is borne through the document and the Report, how can somebody or Parliament say the commissioners never undertook oversight yet, when they are seeking to do it, we are also saying that is the function of the secretariat?

I am saying in the context of what is contained in the Report, this audit was initiated by the commissioners. So, they undertook their oversight. They requested for audit by the Auditor General and had done their audit before. It is confirmed that it was the basis upon which the CEO was being removed or suspended by the commissioners to permit internal audit. That is a body, in all fairness, which was undertaking oversight. That is not a body the Report can recommend did not duly undertake oversight. I believe and submit before fellow Members that to the extent that the Report says so, it is inconsistent with the observations; it is inconsistent with the findings in the Report. We need to realign it in the manner proposed.

I urge all Members that we do not make these laws for the sake of it. When we pushed, in the 11<sup>th</sup> Parliament, for the new provisions in Section 974, Section 975 and Section 979 of the Companies Act, we were dealing with a situation which is becoming too rampant in this country. Most of the big contracts are being done by foreign companies. This is why we were saying a time will come when, even in cases of corruption, you will want to pursue these companies and you will not get them. That is why we were saying do not just tell us you are an international company, be registered there so that we can know you are a legal entity properly existing and doing business with Kenyans.

Two, we do not want a case where you will disappear because you are a foreign company. That is why we prescribed in those provisions of the Companies Act that, always, there will be a local representative we can pick if you were to disappear as a director or shareholder of a foreign company.

I humbly move the amendments. I beg my learned senior outside the House, Hon. (Dr.) Otiende Amollo to second my amendments. I thank you.

**Hon. Speaker:** Hon. (Dr.) Otiende Amollo.

**Hon. (Dr.) Otiende Amollo** (Rarieda, ODM): Thank you, Hon. Speaker. I wish to second the proposed amendments by the Hon. Member for Homa Town Constituency to the extent that the amendments are not in contradiction of the Report but consistent with the proceedings and observations of the Committee and, would constitute a logical conclusion to the two. Those amendments, in my view, are consistent with the law; they are consistent with logic, and their rationale is self-evident. The proceedings demonstrate that. I can confirm because I am a Member of the Public Accounts Committee that the company known as IDEMIA is not registered, so far as at the relevant time in Kenya – either as a Kenyan company or as a foreign company. It did not have any registered office or address of service; it did not have any local agent or representative. Those are the facts, self-evident on the proceedings.

It, therefore, means that there was a breach of the Companies Act as already explained. What is more important is to understand that the reason for tendering is so that whoever wins the tender enters a contract. In law and logic, you cannot enter a lawful contract if you are not a legal person or a natural person. To that extent, it means IDEMIA was incapable of entering any contract; any such contract entered stands to be voided.

It stands to reason that we have situations of companies being paid billions of shillings, even now. The companies then fail to deliver, cannot be found within the jurisdiction of this country and, cannot be sued because you cannot sue a non-entity. Therefore the taxpayers; money consistently gets lost. It is our obligation, in addition to the law or the Companies Act, as representatives of the people to protect the taxpayer. It is equally our role to ask the question of what happens when a company which is not registered wins tenders worth billions, as in this case, of over Kshs10 billion. How then do you pay tax? It means, in addition to all that, all the tax obligations are also avoided. It is my view that we must move, prescribe and require that entities follow the law before you do business with taxpayers' money. You need to be registered, have an office and, have an agent. That is so that we can pursue you legally if anything goes wrong. In the situation we are in, it is impossible to pursue IDEMIA legally because, who are you pursuing? It is not a natural person; it is not a legal person. This is particularly important because this is a continuing impropriety. The company in issue is now the company that is also providing technology for what is called National Integrated Identity Management System (NIIMIS).

Therefore, it is my view – as a Member of PAC, lawyer and Member of this House – that those proposed amendments should be carried. It is not just for this Report but for any other Report by either our Committee or any other.

I beg to support and second.

*(Hon. (Ms.) Cecily Mbarire and Hon. (Ms.) Ruweida Obo walked in the aisle)*

**Hon. Speaker:** Hon. Members, you know I sometimes wonder. When you see a Member walking, it tells you that Member does not know what is happening in the House.

Hon. Members, I need to propose the Question.

The debate is on these proposed amendments. I took the liberty to read through them so that everyone understands what the net effect of the amendment is. Member for Ugunja you are the Chairman of this Committee, let us hear you first.

*(Question, that the words to be added be added, proposed)*

**Hon. Opiyo Wandayi** (Ugunja, ODM): Thank you, Hon. Speaker. At the outset, I want to say that the Public Accounts Committee which I chair has no position on these proposed amendments. We neither support nor oppose, we remain indifferent and we want to leave it to the wisdom of the whole House to make a decision on them. We want to point out that this matter of Section 974 of the Companies Act was canvassed at length in the Committee and it was a question of interpretation.

Indeed, the legal officer of Parliament attached to the Committee had a contrary opinion to the proposed amendment. That is why we insisted that we get a formal or legal opinion from the Office of the Clerk. I wrote to the Office of the Clerk and I got a response which was a legal opinion on Section 974 of the Companies Act. As the debate continues, I want this to be put into context. The opinion we got from the Office of the Clerk on Paragraph 10 is very short. Allow me to read it.

“From the foregoing, and after looking at the Procurement and Assets Disposal Act and the Companies Act, it is our considered opinion that foreign companies bidding for open international tenders, floated in Kenya do not have a legal requirement to be registered. In addition, if there was such an intention, then Section 974 of the Companies Act and Section 89 of the Public Procurement and Assets Disposal Act of 2015 would have expressly provided for such a requirement.

Finally, the Companies Act of 2015 is a fairly recent legislation and the jurisprudence on this subject is yet to be developed”.

I do not want to say more, I just want to bring this to light so that as the House debates it, it is cognisant of this opinion.

Thank you, Hon. Speaker.

**Hon. Speaker:** I see the Member for Kiminini. He is the early bird.

**Hon. (Dr.) Chris Wamalwa** (Kiminini, FORD-K): Thank you, Hon. Speaker. The Chair of the Committee has spoken. If you internalise what he has said, he is actually against these amendments. He is just shying away from being bold and saying whatever recommendation Hon. Kaluma is putting across, from the technical team of Parliament, he is opposed to it.

I serve in the Public Investments Committee (PIC) and the practice has been otherwise. We have had issues of procurement and many international organisations have not had any obligations that they must be registered locally. In fact, I was actually shocked when I heard that this requirement must be there. I know the Companies Act is very recent and this time round we are starting to implement issues of enforcement. We cannot pass this law retrogressively. That is why in as much as it has good ideas, the practice has been otherwise. When you look at the recommendations, they have brought in the issue of the Kriegler Commission. The Kriegler Commission had so many recommendations. So, this particular amendment will be ambiguous. The implementation of the Report will be otherwise. That is why I humbly request that unless there is that specific value added to this recommendation, it will be ambiguous. It will not be implementable and will bring a lot of issues here and there which will not add any value. If we

are to implement the Companies Act of 2015, which was recently passed, then that is a different story. That is my take.

**Hon. Speaker:** I can see the Member for Ugenya.

**Hon. David Ochieng'** (Ugenya, MDG): Thank you so much, Hon. Speaker. This being my maiden speech, I want to take this opportunity to thank all the good people of Ugenya, the young people, the women and the old people for giving me an opportunity to once more serve them as their Member of the National Assembly. It is a great honour to be removed from Parliament and be brought back by the same people. I want to thank them so much. God bless you, Ugenya. I am going to put my best foot forward. I will work my heart out to ensure that the votes that you cast for me are not in vain. I am certain that God was in this and he will lead us in ensuring that your wishes and desires are reached through my being in Parliament.

Hon. Speaker, I want to be heard on this. This is the substantive issue that I want to address on this matter. The amendments as proposed by Hon. Kaluma...

*(Hon. Speaker consulted with Hon. Moses Cheboi)*

I want to address the Speaker. Mine is a legal issue and that is why I am waiting for your ear. The issues raised by Hon. Kaluma are important and weighty legally. They are not issues you can put to vote, in my opinion. He mentioned to you that I was in Parliament when this law was passed. If you read the Companies Act, 2015, Section 974, it will tell you which particular companies are being referred to. I have not read the Report yet but off my feet, on the issue of whether a company is qualified or not, especially in an international tender like this one, probably the Independent Electoral and Boundaries Commission said this is an international tender and, therefore, no one needs to come to Kenya to register first before they are able to participate in the tender. The issues you are being asked to put to vote are legal and you need to give your ruling on before you can allow them to be debated. They portend huge legal ramifications. It means not just this IDEMIA, but many other companies that have been doing business in this country may fall under this. It may easily make this country to fall under a serious tornado of legal disputes coming from international companies. It is just not this company since many companies have done business like this in the country many times. As we speak, we have tenders in our daily newspapers inviting international companies to come and bid. That is not part of what they are required to do. Some of the amendments that are being proposed... I am happy Hon. Speaker for the new iPad. I came in today and I was taught how to use it. I can tell you it is good. I do not have to carry any paper to Parliament. I have interacted with it and it is so easy to use. The day the company that supplied these iPads falls into these things that Hon. Kaluma is talking about they will ask you, as the Chairman of the Parliamentary Service Commission (PSC), to be legally charged because that company was not qualified at that time. You need to make a ruling on this. This is not a matter that you are going to allow Members to debate on and decide either way. It is a legal and national issue on how Kenya will engage the rest of the world in terms of trade. That is my two cents on this.

Thank you.

**Hon. Speaker:** Are you suggesting that the matter should not be put to vote?

**Hon. David Ochieng'** (Ugenya, MDG): Hon. Speaker, this requires your ruling, in my opinion and not a debate that will be decided on a vote. This is a pure legal issue that requires a legal and reasoned ruling from yourself.

Thank you.

**Hon. Speaker:** These are amendments that have been proposed. Let us leave the House also to make its decision just like the House passes laws then some are later struck out. Quite unfortunately, I have to balance between guiding the House and participating in the decision-making which I am specifically precluded from doing in Article 122 of the Constitution. I do not want to make rulings that will have the effect of a vote. That is dicey. I want a situation whereby the Members of the House are able to exercise their minds fully. That is why I took the liberty to read through the proposed amendments so that at least every Member is fully aware of what it is that they are required to decide on. So if the House, collectively, is not able to decide on what is legal, procedural and constitutional, that will be a collective failure of the entire institution. I should not be the one to make this decision. By doing what Hon. Ochieng' is proposing, you could very well be inviting me to exercise a veto and the Constitution has clearly said that I do not have any such power of vetoing proposals by Members except at the stage when it is necessary like I indicated earlier in my earlier message from the Senate.

On this one, I will allow Members to debate and make informed decisions on their own. That will be the wisdom of the House.

I can see the Member for Endebess Constituency desirous of speaking. Please take the Floor.

**Hon. (Dr.) Robert Pukose** (Endebess, JP): Thank you, Hon. Speaker. I stand to support the amendment by Hon. Kaluma. When we talk of the Companies Act that was amended in 2015, the procurement by OT- Morpho was done in 2017. That means that they are subject to the amendments that were done in 2015. So, they cannot escape from the Companies Act, 2015. The points that have been laid down are clear. Any company that does business in this country must be registered. For you to be able to pay tax to Kenya Revenue Authority, you need to have a Personal Identification Number (PIN). That means that you have to be registered. You cannot pay tax if you are not registered in this country. That is why we came up with amendments to the Companies Act, 2015. This is a good amendment. We should support it.

Thank you.

**Hon. Speaker:** Member for Nambale Constituency.

**Hon. Sakwa Bunyasi** (Nambale, ANC): Thank you, Hon. Speaker. I rise to support the amendment by Hon. Kaluma. I want to speak as a citizen of Kenya who cares about the affairs that go on in this country. If there is a lacuna in the provisions that will not compel these companies to be accountable to our local laws and requirements, it should be fixed. We should not shy away from any legal complication that may arise because that will be the process through which we will clean up our act as we go along.

The question that should be accurately considered is: When did the revised Companies Act, 2015 come into effect and when did this bit take place? If there will be any ambiguity in the interpretation, along the lines that Hon. Kaluma has raised, let us allow it time to go through the natural legal process that is provided in this country to clear it. We should not, in any way, as a country, lean towards a status that will make us a banana republic where multinationals can walk in with a briefcase and walk out with tonnes of money from this country without following due process.

The niceties of the law – some of which may have been missed out when the law was being passed – should be corrected to ensure that the Republic of Kenya gains from these interactions. Without any prejudice to the companies that are being named, they have had a rather disjointed history in many countries including African countries and condemnation by the European Parliament. We should not treat this lightly. We should consider it with the weight that

it deserves. It has the possibility of getting multinationals to come in and make money illegally without due process that is respected by ordinary citizens. If you asked a person in the streets whether companies that do business here should be liable in the event of any reason thereafter, for example, malpractice or improper completion of contracts that have been paid and so on, whether such companies must be held accountable, they will agree with you. Therefore, if you gave them a chance to say so, this nation will be voting in favour of the amendment by Hon. Kaluma, wholly.

I want to plead with the brilliant lawyers who are in this House to exercise their minds on how to clean up this process to make these companies liable rather than clarify how it is not possible to do it. If we take that route, we will be in fact defending these companies through educated arguments that will not help our nation. I worry intensely that at this time in our country when we have got serious issues of financial management where we are blaming our own citizens at all levels of misconduct, we have allowed multinationals who are criminally liable - they have even been in court in some countries in this continent whose jurisprudence we would quote as precedent – to thrive amongst us and simply get away with it. I think Kenya has reached a point where we must step back and ask ourselves questions. As a Parliament, are we here to defend the interest of the people of this republic or to defend the niceties of laws that hide behind technicalities and allow companies to exploit us?

I do support the amendment by Hon. Kaluma and I hope that this House will go the direction of his suggestion. I hope that the committees responsible and the lawyers in this House will put their minds together on how to clean up this process so that companies like this cannot walk out and do so at will.

Thank you, Hon. Speaker. I support the amendment.

**Hon. Speaker:** Member for Kiharu.

**Hon. Ndindi Nyoro** (Kiharu, JP): Thank you very much, Hon. Speaker, for the chance to contribute. I want to side with my chairman that especially we in PAC neither support nor oppose these amendments; we are indifferent. Whereas Hon. Kaluma has very serious reasons why he brought the amendments, also it is good to note that as a committee we had the same problems as Hon. Kaluma and that is the reason that necessitated the committee to look for legal advice from the same Parliament that we serve. The reason for saying this is that we have mixed reactions even as Members of PAC. If you go to Section 974 of the Companies Act, it is very clear when foreign companies may engage or carry out business in the Republic of Kenya and one condition is if the company is registered.

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

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

The other condition is if the company's application has not been dealt with within the period prescribed for the purpose of this section. Literally reading that section, it is very clear that IDEMIA ought not to have signed a contract with IEBC. Also, I side with the other Members who see a lot of ramifications in us supporting these amendments, because we have so many other companies not just based in IT but across other sectors in our economy that will actually be roped within the amendments in their interpretation. Even as we talk about IDEMIA, the company we are debating this afternoon, it is also important for us to note that the same company could be having other running contracts with the Republic of Kenya. We have an

exercise of getting *Huduma Namba* and the same company could be entangled within the same exercise. Therefore, it is good for us to note that the amendments as brought by Hon. Kaluma have more ramifications than the ramifications insofar as dealing with IEBC is concerned.

I started by saying that we have mixed reactions around it. That is why we as members are indifferent. On the other side of the coin, I want to note that we went through a lot of agony.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuyu): Hon. Ndindi, I do not think you can purport to speak for everyone else in the committee. So, kindly just make your own personal contribution without being very generic. You can go on.

**Hon. Ndindi Nyoro** (Kiharu, JP): Thank you, Hon. Temporary Deputy Speaker. I never wanted to be seen as usurping the powers of my chairman, who is my very good friend. The point I was driving home is that as a member of PAC I want to reminisce that we actually went through a lot of agony, even tracing where we could get these fellows to come before the committee. We went around Nairobi looking for them, we could not trace them. We went to their website calling them. We actually took a lot of time to get the directors of IDEMIA to come before PAC. Therefore, holistically speaking, we need to relook at the Companies Act itself without singularly looking at IDEMIA, because whereas on one side the amendments as brought by Hon. Kaluma may cure a lot of things that are happening around procurement in this country, especially where we have foreign companies engaging in procurement, we need also to look at the other side of the coin.

I am bringing this point out because I am privy to a lot of information being a member of PAC. Therefore, probably my submissions may form part of the discussions around this topic going forward. I want to put it very clearly that if we strictly follow Section 973 of the Companies Act, the ramifications are beyond IDEMIA. On the other side, we need these companies that are engaging in business in this country to have at least a physical location within our borders, because the issues we have in terms of audit queries may require some of these entities or their representatives to appear before this House or any other agency. And it becomes very hard for us to trace them. I also do not know how they pay taxes because if they are not registered as entities within our country, how do they get paid especially when you are using local accounts. As you know, you cannot open a local bank account if you are not a legal entity. Therefore, we need to look at all those loose ends so that we know whether to support or oppose. I can see Hon. Kaluma is laughing because I am clearly oozing wisdom that can enrich the amendments going forward.

Thank you, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuyu): Member for Ndhiwa, Hon. Martin Owino.

**Hon. Martin Owino** (Ndhiwa, ODM): Thank you, Hon. Temporary Deputy Speaker. I have been listening to the Chair of PAC. You cannot have it both ways. Even if you walk into the United States of America or the United Kingdom, you cannot just start doing business. Why should we allow people to come into our country and we do not even know their directors? He is even lamenting they could not even get the directors to come. We do not even know their physical address; you do not know who you are dealing with. So, this shoe is in which foot? You are already unable to transact because you do not know much of these people. But the law is very clear: For you to do business in Kenya you have to register a company. And you have to be subjected to Kenya's rules.

Hon. Temporary Deputy Speaker, I suggest we support this amendment so that we get things right even if we are going to uproot so many things. So be it. Why should we allow things

to go wrong as if they are going to correct themselves in future because the magnitude is so huge that if we tamper with it we are going to lose things? I think that is not the right way to do it. I pity PAC but that is the truth. We have to clean the House in order to breathe fresh air. It does not matter how many things will go wrong but let them go wrong if we can get it rightly done.

Lastly, if we go on doing business in this way... We have just lost billions of shillings in the dams saga because a company is bankrupt and nobody knew it. No due diligence was done before we engaged them in business. We cannot afford to lose more dollars from the Kenyan people in that way. I urge all Members to support this amendment so that we can clean up our House.

I thank you, Hon. Temporary Deputy Speaker

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): From this side we have Hon. Rasso, the Member for Saku.

**Hon. Ali Rasso** (Saku, JP): Thank you, Hon. Temporary Deputy Speaker. I rise to contribute to this particular amendment and I oppose it. I oppose it on the grounds of what the Chair of Public Accounts Committee was refusing to say. It is the practicability of this particular amendment. As Kenya, we do not live on an island. We live in an international system where the international tendering process has its own standards.

We have the British, Chinese, Americans, Germans and all do business in our country. If we need to develop, we must look for Foreign Direct Investments (FDIs). This comes from major multinational corporations and not necessarily from the Government. These companies are registered in specific countries. What we should be addressing here is the issue of corruption and bad companies doing business in our country.

A good example is the Anglo Leasing Company where front offices are functional but the companies are non-existent and money is syphoned out of our nation. Such is indeed a concern. What Hon. Kaluma in his good legal judgement and mind has done is that for a company to do business in Kenya it must be locally registered. The question this House must ask itself is whether that is tenable. Is it a universal requirement? One of the major issues around the world today for companies that have to do business in different countries is the issue of double taxation. When tax has been paid in country "A", does a company still pay tax in country "B"? So, whereas the suggestion looks very juicy in targeting to protect our hard-earned money, the question is whether we can enforce it as a country.

Second is the issue of arbitration. Whenever multinational companies are involved in trade disputes, they go to the International Court of Arbitration (ICA). That is the legally understood international framework when you do across border business. So, what we must ask ourselves is how to protect our resources and ensure that a few individuals do not open front offices to syphon money. For that reason, I beg to oppose that very candidly because of the impracticability of it. Also, it is like saying Kenya should not trade internationally unless a company is registered here.

I thank you, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Let us have the Member for Luanda, Hon. Omulele.

**Hon. Christopher Omulele** (Luanda, ODM): Thank you, Hon. Temporary Deputy Speaker for giving me an opportunity. At the outset, I support this very profound proposed amendment by my brother, Hon. Kaluma.

Hon. Temporary Deputy Speaker, I do not think for even one moment that it is tenable for any Kenyan company to go and trade in France or the European Union where this SAFRAN,

Morpho or IDEMIA Company comes from without first registering within the laws that are presently used in that given country. So, for us to continue giving companies like these ones and many others huge contracts, they take away our money in huge sums without any ability for us to have the money recovered is not tenable. The right thing to do is to obey the law as it is. The Company Law is the law as it is. It is a requirement today as it was when this contract was being entered into, that this company should have registered within our jurisdiction. If it did not, then it cannot be excused by the Parliament. This is the very Parliament that made that Company Law that requires that companies must have a footprint within this country for them to enter into contracts such as the one that IDEMIA entered into with the IEBC.

I have also heard contributions from especially my brother Hon. Ndindi where he says that it was even more difficult for the Committee to get any one from this company to come and testify before it. I think that in itself is the strongest testimony that this proposal by Hon. Kaluma should have been passed like yesterday. So, without belabouring the point, we should be given this to vote on it so that we pass it as fast as possible and it becomes part of the debate so that we can debate this going forward with the amendment on board.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): I still see a number of Members wishing to voice their contributions and we will have them do so.

Let us have the Hon. Member for Mukurweini. Hon. Kiai.

**Hon. Anthony Kiai** (Mukurweini, JP): Thank you, Hon. Temporary Deputy Speaker. I support the amendment.

Hon. Temporary Deputy Speaker, we cannot continue having companies operating in this country whose directorship, origin and legal standing is unknown. We first must register the company for it to do business in Kenya, whether under the new Company's Act or the old one.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Hon. Kiai, kindly reposition your microphone.

**Hon. Anthony Kiai** (Mukurweini, JP): It is very short. I will have to use another one.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Or it could be that you are too long.

**Hon. Anthony Kiai** (Mukurweini, JP): I am too tall physically and in other places.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Please use the next one.

**Hon. Anthony Kiai** (Mukurweini, JP): Thank you. Hon. Temporary Deputy Speaker.

I support simply because we have to get to know the companies that are doing business in Kenya. We must know their directorship and legal status. Also whether they are foreign or local. I am saying this because as Parliament we must also be seen to be fighting corruption which is eating this country. We have to start the fight from this Chamber and ensure that even as it drips down to other citizenry, we have set the example.

We must eliminate briefcase companies supported by shoddy characters who go to do business with the Government and are used as conduits to transfer money from the National Treasury to benefit a few individuals. We must ensure that if people are to do business legally and pay taxes, all the companies doing business here in Kenya, must be registered.

I support.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Let us have the Member for Seme, Hon. Nyikal.

**Hon. (Dr.) James Nyikal** (Seme, ODM): Thank you, Hon. Temporary Deputy Speaker. I rise to support these amendments. In my simple probably known legalistic mind, it is relatively straightforward what is going on. The issue we are discussing is that a foreign company is not

registered in Kenya yet, it is doing business. If you want to try it in court, which laws will be used because by Kenyan laws that company does not exist? Perhaps, we have to go and try this company in their homeland and that cannot be the case.

If a company does not have a physical residence here, it becomes very difficult to conduct due diligence on it. Therefore, I think without digging into the law lawyers will tell you that you cannot trade here if you are not registered. What does this mean? If this can happen in an organisation charged with the responsibility of conducting elections in Kenya, which must have utmost knowledge of law, and this happens under their watch, then something is grossly wrong. Is it that these people are incompetent, are there structural problems or can we easily say this is just corruption in Kenya? In my mind, recommendation No.1 proposed by Hon. Kaluma is extremely important. If there is a legal framework that seems to be conflicting... We know that under Chapter 15 of the Constitution, commissions are independent. Looking at the Constitution, they may work fulltime or overtime but most of them are fulltime and executive. If they are executive and then the IEBC law gives the secretariat power, we have a situation where there is a conflict because the secretariat feels they have the power and the Commission also feels they have the power. In my mind, we need to address this.

Maybe, this is why we have had so many problems with many commission chairs. If a structural problem exists and is not addressed, it creates problems. We have seen how they behave, we see the Chairman and CEO trying to express their own power while quoting the law, one, the Constitution and the other law. I think the recommendation by Hon. Kaluma is extremely important and it is really what we must look at.

Secondly, the Commission failed to exercise oversight. If you have a situation where the commission feels like the executive and actually they are on fulltime employment with offices when do they become oversight organs? The IEBC law seems to give a situation where Commissioners are a board, but the Constitution, in my simple mind, seems to give a situation where they are executive and then we have a quagmire. In that case, even recommendation No.2 will be appropriate, because you then do not know who should play oversight.

In my mind, these issues on the legal framework which will give proper authority for oversight and subordinate the secretariat to the Commission is what we require. Without this, I think commissions, even if we change this one, will have problems. I think these issues should be addressed and I support the proposed recommendations.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuyu): The Member for Garissa Township.

**Hon. Aden Duale** (Garissa Township, JP): Thank you, Hon. Temporary Deputy Speaker. I was at the airport seeing my boss off and when I heard these amendments over the radio, I had to rush back and I stand to support. There are many reasons for supporting this Motion, based on the Companies Act. We passed a reformed company law in the 11<sup>th</sup> Parliament and specifically showed how a foreign company can behave and do business in Kenya and this law must be complied with.

Above this, we receive controversy every election year. We received in 2013 and 2017. There were many petitions on the companies that handle the technological aspect of election. We have no problem with the people who handle ballot papers, supply ink and transport ballot boxes. The problem is technology and there is no way you can discuss technology in election minus a company that changes its name every three years in our country.

It came in as Morpho, then it became SAFRAN Identity and Security, OT Morpho and now it is called Ms./IDEMIA. I am aware because I have read the HANSARD of PAC and Hon.

Nyoro and the Chair will agree with me that they did not want to appear before the Committee until the Chairman gave them a summon. You know the Chairman belongs to a party that has been singing electoral reforms and justice. My friend Chairman, this is where you should do electoral reforms and justice. You should not do it in the street, but through the powers given to this House by the people of Kenya.

So, we must deal with OT Morpho, whether they are called that way or SAFRAN Identity and Security or Duale. We must deal with them, if we want to have a free and fair election in 2022. Why did the President, the Deputy and former Prime Minister shake hands? They did so to bring the people of Kenya together. They have said we should forget about political parties and that Kenya is one. I really want to thank Hon. Kaluma because when he brought these amendments, I told him he should not run away on the day he is supposed to move because it has happened many times, where MPs disappear the last minute.

I told him this because he is a man of integrity. I told him that we are going for a short recess and if he disappears, I have three other Members who will move the same amendments. There are people in the reserve bench. So, he should not try to disappear. This afternoon, I was looking for him but he came in late. I told Hon. Junet, Kaluma had disappeared then, all of a sudden, I saw him because he is not made of the stuff that disappears.

Colleagues, let us deal with OT Morpho, I have no interest and I have never done business with them, but we must make sure that companies... When companies are in Europe, they follow a specific code of ethics and guidelines. When they come to Africa and to Kenya, they get involved in unethical behaviour and corruption. They do not employ our people. Why should they have double standard? OT Morpho cannot do in Paris, France, UK and the US what it is doing in Kenya. There is a serious governance code of ethics that guarantee all companies. I want to ask my chairman. Hon. Wandayi is very thorough. He has got very brilliant people in the Committee. This morning, somebody told me: "Why is Parliament reviving Ruaraka?" I told him: "It is not Parliament, it is the Auditor-General." We have no business. We passed our Report in the Departmental Committee on Lands. In his Report, the Auditor-General is bringing money issues. Hon. Kaluma will be remembered by many parliaments to come. All the other companies that will do business in Kenya must do it ethically and sound, the way they do when they are in France.

There is no way Emmanuel Macron will come here and teach us how to run the affairs of the State of Kenya when his own companies are involved in serious malpractices and corruption. So, if you guys from ODM agree your problem was technology and the technology was not even on the biometrics... In fact, biometric saved everybody. It stopped ghost voters and people coming to vote two or three times. We are on the right side of history. Ask yourself a question: Why is this company changing names and directors? How do I call myself Aden Duale today, next year I am called Washiali, the other year I am called Wandayi and the other year I am called Kaluma and Otieno? Why am I changing my names? Vodafone has never changed its name. The East African Brewers has never changed its name. Where you see there is change of name, there is *ukora kabisa*.

I support the amendment and I think we should not even dwell too much on it. Put the Question, we approve it and then we discuss the report.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Hon. Osotsi.

**Hon. Godfrey Osotsi** (Nominated, ANC): Thank you, Hon. Temporary Deputy Speaker, for the opportunity to contribute to this amendment. I start by emphasising that I fully support the amendments by Hon. Kaluma. Particularly, I want to draw your attention to the first

amendment which is amending Recommendation No. 1. This is a very important amendment because it is talking about expediting the strengthening of IEBC, the legal framework and the general policies and guidelines on management of elections. I think this is overdue. This is an important amendment that we should all support because we want to see a situation whereby we have an IEBC that is independent and accountable to the people.

Most importantly is the suggestion on how we need to improve Section 11(a) of the IEBC Act so that we have a clear separation of functions between the commissioners and the secretariat. Looking through the Report, you get a feeling that this is one of the major challenges at IEBC. Most importantly, this amendment also seeks to tell us that we need to go back to Kriegler's Report and see what has not been implemented. We spent a lot of time and resources to come up with Kriegler's Report but over 60 per cent of it has not implemented. Probably, that would be the solution to our electoral problems in this country.

Coming back to the other amendments, I want to say that this company called IDEMIA has changed names severally. It used to be called Morpho and then SAFRAN until 2017 when it merged with another company to become OT Morpho on 31<sup>st</sup> May 2017. If you look at the timing of the change of name, it was at the time when this country was preparing to go into the general elections and then immediately after elections on 28<sup>th</sup> September 2018, the company changed the name to become IDEMIA. This amendment we are making today is very important. The Companies Act is very clear and I want to read to the House. Section 74(3) is very clear that if a foreign company carries on business in Kenya in contravention of sub-section (1), the company and each officer of the company who in default commits an offence, on conviction are each liable to a fine not exceeding Kshs5 million. This is in law. This company has committed an offence and as a country, we need to take action against it.

Most importantly, this company has severally changed its name because of credibility issues wherever they have been. They have technical credibility issues. Even in this country, this is the company that claimed that they could not access data because the servers were "asleep". This is the company that interfered with the transmission of results. As earlier designed, the system was to transmit text results simultaneously with the graphical results but the system was adjusted to allow transmission of results in a text form only and many other things. If the server audit report was to be released today, we would not be talking about this company called IDEMIA because they did funny things on that server. It is important that we are recommending that something has to be done. From the IT perspective, I think we need a more focused inquiry into this company. This is because this same company has been awarded the tender to implement the NIIMS that all our key leaders, including the President, are supporting. The person who is doing this job is one with credibility issues. Today, if this House passes this amendment, we will have an issue because the same company is conducting a very important national project that will bring progress to this country. What are we going to do about it?

Though we are a bit late in taking action against this IDEMIA, I think it is important. The history of this country will judge us harshly if we do not take action.

With those few remarks, I support the amendment.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Hon. Adhiambo Oduol.

**Hon. (Prof.) Jacqueline Oduol** (Nominated, ODM): Hon. Temporary Deputy Speaker, if possible, I want to speak after the amendment. I did not want to speak on the amendment. I want to speak on the substantive Motion. Thank you.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Hon. T.J.

**Hon. T.J. Kajwang'** (Ruaraka, ODM): Hon. Temporary Deputy Speaker, thank you for allowing me to put in very quick remarks on this because I feel compelled.

First of all, I take issue with the Chair of the Public Accounts Committee. It is correct when he says that PAC does not have a common stand on this. If the Chair knew that this was a controversial issue, courtesy would dictate that he speaks last. If the Chair of PAC comes to the plenary with the opinion of a clerk or a legal officer to influence the minds of the Members, he should know the limits of legal officers and clerks. They only advise committees. That is it! The Committee has an opportunity to make its own decision. Once it has made its decision, it becomes the official decision. Some lawyer, sitting in some room somewhere, from whichever school cannot purport to make a decision for the plenary. We are the National Assembly and not some lawyer somewhere. That needs to be understood.

Having understood that, this issue is very controversial. Although the Chair said it was discussed by the PAC, you do not see it in the body of the Report. It means that it is a matter which needs to be investigated. Having taken that position, I support Hon. Kaluma. I am a ranking Member of that Committee and Hon. Kaluma is only trying to clean up what we may, as a Committee, have left out by oversight.

First of all, Section 11 is a live issue both in the Report and in the recommendations of the Committee. Hon. Kaluma is a man of words. He has chosen to add a few sentences more than what we gave in the Report to make it clear that we should consider repealing. Those are beautiful words. This is what we are called upon to do by this House - to review legislation and see if we can reconcile Section 11(a) with the Constitution which makes the Commission independent and executive. It is the problem we had with the Ethics and Anti-Corruption Commission (EACC). Until we resolved it in the plenary, it was a big problem. It is now here with us. This is why there is a rift between the Chiloba team and the other team of the Commission. We must reconcile. What do we think as Parliament? Should the Commission give decisions on these issues or should it be the secretariat? Otherwise, you set them up for failure. They will fight eternally.

There is also the issue of Morpho. Is it Suffering or SAFRAN? These people change their names like chameleons. Hon. Kaluma is not, for a moment, saying that we make a decision on whether international companies will bid for tenders or not. He is simply saying that the Directorate of Criminal Investigations (DCI) and the agencies concerned should investigate if at all there was a crime which was committed. That is their mandate. They may investigate it and conclude that no crime was committed or a court can express its view and say that Sections 974 or 975 should be interpreted otherwise. However, to come to the plenary and assume to interpret the Constitution and say that this is what should happen is not our mandate. Hon. Kaluma is not asking for anything which cannot be enforced. He is simply asking that the DCI and the agencies concerned to investigate if a crime was committed.

Section 975 was done in the 11<sup>th</sup> Parliament. I was in the Departmental Committee on Justice and Legal Affairs and we did it in open daylight. We were very conscious of what we were doing. It came before the plenary. We debated and passed it. Today, somebody says that that was not the intention. You can only get the intention of a piece of legislation by reading the law. The intention of the law is what it says. To bring in your opinion and decide that there is a better way of interpreting what is clear in the script is not a principle of understanding legislation. We have to decide whether we are a country that is led by law or by the jungle. If a law is clear, let us follow it. If the law presents challenges, bring it to the Assembly and we amend it suitably. Until it is amended, that is the law. We should be comfortable unless it does

not sit well with us that this is the law. We should follow it because when they were doing procurement in 2017, they knew that this was the law. Their lawyers should have told them so. We then proceed from there. If it will give us challenges, because I hear people talking about tax and so on, bring those suitable amendments to the Assembly. We will consider them against the Companies Act and pass them.

I rarely support the Member for Homa Bay Town because he is a man who is given to other things, but for this and only this, I support him. He has come in handy. Those amendments are correct.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): I am sure whatever Hon. T.J is insinuating is unparliamentary.

*(Laughter)*

It is good that you stopped at that. Let us have Hon. Kubai.

**Hon. Kubai Iringo** (Igembe Central, JP): Thank you, Hon. Temporary Deputy Speaker for giving me this opportunity to add my voice to these important amendments.

From the outset, I support the amendments by Hon. Kaluma. I also wish that the Committee considers them with an open mind. This Report was brought to Parliament for us to debate, give our input and make a decision on the same. I would like this House to take the amendments seriously, pass them and debate the Motion as amended.

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

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

Having said that, we should not open up our country to be a jungle where people come in and start doing business because they know there are some loopholes in the law. They come in through the backdoor to do business in this country. In the process, once they loot, make mistakes, fail to complete the business, they go away and we do not have a law to get hold of them or one that we can use so that they can be punished or asked to pay back. In this country, we had the experience of the Anglo Leasing scandal. We had the Goldenberg issue. We are currently talking of the problem we had the other day of dams where Kshs25 billion was spent by a company which had already been blacklisted.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Just one minute, Hon. Kubai. Hon. Wandayi, what is out of order? Very well.

Proceed, Hon. Kubai.

**Hon. Kubai Iringo** (Igembe Central, JP): Thank you, Hon. Temporary Deputy Speaker. A company which had already been blacklisted or is insolvent in its own motherland comes here and gets business because of the loopholes in our law. In the 11<sup>th</sup> Parliament, as many of my colleagues have said, this law was passed and it was watertight. That is what the Committee should have employed when they were looking at this matter, so that they could relate the law, which was passed in the 11<sup>th</sup> Parliament, with this particular company and many other companies which would come in the same way.

The amendments by Hon. Kaluma are coming in so that we can take the same breath. There are companies which hop, run and jump from one country to the other looking for business and changing names. First and foremost, before they come here, they look at the loopholes which are in the mother country. We cannot allow our country to be...

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Iringo, there seems to be a point of order. Hon. Mbarire, what is out of order?

**Hon. (Ms.) Cecily Mbarire** (Nominated, JP): Hon. Temporary Deputy Speaker, I rise under Standing Order No.95. I have been sitting here since the debate on the amendment by Hon. Kaluma was moved. We had a lot of discussions and I have heard a lot of agreement on the need to support it. I wish to request that you call upon the Mover to reply.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Very well. Hon. Members, allow me to put the Question that will call this debate to closure.

On this one, Hon. Kaluma, there is no reply. So, you will allow me to put the Question. Hon. Members, having ascertained that we have the requisite numbers, allow me to put the Question.

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

Hon. Members, you have now amended the Motion. Debate will proceed on this particular Motion as amended. Give me one minute, Hon. Cecily Mbarire. I will give you an opportunity to rise on a point of order. Let me make this direction. Members recall that before we went on recess, there were parts of this particular Motion that were expunged. So, you will pay particular attention to those parts that were expunged by the substantive Speaker. Those will not be part of the debate. Hon. Mbarire, what is out of order?

**Hon. (Ms.) Cecily Mbarire** (Nominated, JP): Hon. Temporary Deputy Speaker, I stand again under Standing Order No. 95. We have debated this Motion exhaustively. If you recall, even before we went on recess, there was a lot of debate on this particular Motion. May I request that you call upon the Mover to reply?

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Members, allow me to put the Question.

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

*(Question of the Motion as amended proposed)*

The Mover will reply.

**Hon. Opiyo Wandayi** (Ugunja, ODM): Hon. Temporary Deputy Speaker, I thank the Members for their contribution.

I beg to reply.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Members, hold on for one minute. I will put the Question in a second. Hon. Members, exercise a little patience with me.

*(Question of the Motion as amended put and agreed to)*

*Resolved accordingly*

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

Subject to -

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

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

(ii) deletion of the words “Commissioners failed to exercise oversight while the” appearing in the first line of Recommendation 3 under Chapter 33.0 on (Committee Recommendations) on pages 4 and 127 of the Report;

(iii) Insertion of the following recommendations 9(a), (b), (c), (d) and (e) under Chapter 33.0 (Committee Recommendations) on page 128 of the Report -

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

9. Noting the Committee’s Conclusions and Observations on pages 120 -126, relating to IDEMIA regarding its engagements in Kenya, the House further recommends:

- (a) THAT, the Directorate of Criminal Investigations and the Director of Public Prosecutions undertakes investigations and institutes appropriate criminal action under Section 974(3) of the Companies Act against M/S. IDEMIA in its current name and in its former names of M/S. Morpho, OT Morpho, SAFRAN Identity & Security, its officers and local representatives for having purported to do business with the IEBC before being registered as a foreign company by the Registrar of Companies and noncompliance with the mandatory provisions of Sections 974(1) as read together with Sections 975 and 979 of the Companies Act, No. 17 of 2015;
- (b) THAT, pursuant to the provisions of section 41 of the Public Procurement and Asset Disposal Act, 2015, the Public Procurement Regulatory Authority Board investigates, within sixty (60) days, the conduct of M/S. IDEMIA (formally operating as Morpho, OT Morpho, SAFRAN Identity & Security) and if it finds the company culpable, enters the names of the company in the central repository of debarred firms and ensures that the firm is precluded from participating, award or entering into any kind of procurement contract payable using public funds under any state department or agency in the Republic of Kenya for a period of 10 years;
- (c) THAT, all contracts entered into between the company known as M/S. IDEMIA in its current name herein or in its former names of Morpho, OT Morpho, SAFRAN Identity & Security and the IEBC be investigated and, if

found to have contravened Sections 974, 975, 979 or any other section of the Companies Act or any other law, be nullified.

- (d) THAT, the IEBC takes immediate legal action to recover all monies unlawfully paid under the contracts entered into between itself and M/S. IDEMIA in its current name herein or in its former names of Morpho, OT Morpho, SAFRAN Identity & Security or otherwise howsoever as the contracts were entered into in contravention of the mandatory provisions of section 974 as read together with sections 975 and 979 of the Companies Act; and,
- (e) THAT, the Auditor-General and the Cabinet Secretary for the National Treasury ensures compliance with the resolution of the House under recommendation 9(b), and any State or public officer who contravenes the said resolution be held personally liable.

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

### MOTION

#### REPORTS OF THE KENYA DELEGATION TO SESSIONS OF ACP-EU JOINT PARLIAMENTARY ASSEMBLY

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

**Hon. Ali Rasso** (Saku, JP): Hon. Temporary Deputy Speaker, I beg to move the following Motion:

THAT, this House notes the Reports of the Kenya Delegation to the Sessions of the African Caribbean and Pacific Parliamentary Assembly and the African Caribbean, Pacific and European Union (ACP-EU) Joint Parliamentary Assembly, laid on the Table of the House on Wednesday, 27<sup>th</sup> February 2019 as follows:

(i) Report of the 50<sup>th</sup> Session of the ACP Parliamentary Assembly and the 35<sup>th</sup> Session of the ACP-EU Joint Parliamentary Assembly held in Brussels, Belgium from 13<sup>th</sup> to 20<sup>th</sup> June 2018.

(ii) Report of the 51<sup>st</sup> Session of the ACP Parliamentary Assembly and the Intercessional Meetings of the ACP-EU Joint Parliamentary Assembly held in Brussels, Belgium from 9<sup>th</sup> to 11<sup>th</sup> October, 2018 and,

(iii) Report of the 52<sup>nd</sup> Session of the ACP Parliamentary Assembly and the 36<sup>th</sup> Session of the ACP-EU Joint Parliamentary Assembly held in Cotonou, Benin from 25<sup>th</sup> November 2018 to 5<sup>th</sup> December 2018.

Hon. Temporary Deputy Speaker, first of all, I take this opportunity to thank the Speaker and the Clerk of the National Assembly for having assisted and facilitated the attendance of Members to the three Sessions of the ACP-EU Joint Parliamentary Assemblies. The attendance by Members of both the National Assembly and the Senate under the leadership of the Deputy Speaker has been welcome and has represented this country in what I would consider to be outstanding leadership in all the three sessions, which I intend to present to the House.

The ACP is a coming together of 78 countries from the African, Caribbean and Pacific nations joined by the EU of 28 membership to form the ACP-EU, one of the largest gatherings of

countries and legislators around the world that meets twice or thrice in a year depending on exigencies in those countries.

Let me begin with the first, the Belgium meeting from 13<sup>th</sup> to 20<sup>th</sup> June 2018. I will try to compress the Report and invite Members to read it, which is available at the Table Office; Room No.8.

The 35<sup>th</sup> Session of the African, Caribbean, Pacific and European Union Joint Parliamentary Assembly and the 50<sup>th</sup> Plenary Session of the African, Caribbean and Pacific Parliamentary Assembly deliberated on various matters of concern to the member states and exercised scrutiny over the European Commission and the ACP-EU councils through questions and answers. Some of the major areas of deliberation during that session were on demographic growth, challenges and opportunities, the global impact on emigration and fighting xenophobia, racism and discrimination. Let me pick on the first, namely, the demographic growth. What we are experiencing today and what Members of Parliament from different regions have realised is that the fastest growing region in the world still remains Africa while there is a decline in demographics in Europe. We see potentially one of the reasons of the North South movement is because 70 to 80 per cent of Africa is the youth looking for opportunities, prosperity and they see that opening in Europe which is looking for skilled manpower of young able-bodied people.

The UN has come up with a very important convention on Global Compact for Migration, on how we can construct and try to structure movement of people from the south to the north or throughout the world because one of the challenges being experienced around the world is xenophobia. Because of migration, many young nationals arrive from Africa, Asia and the Middle East and this appear to create a desire to challenge the norms and the culture in Europe. It is considered a major concern.

In the ACP-EU, the conference is organised into three committees, namely, the Committee of Political Affairs, the Committee of Social Affairs and the Committee for Economic Affairs. These are the standing committees that consider issues that are brought to the floor of the plenary. Once the three committees discuss issues as presented, the main issues are presented to the plenary while the standing committee on Political Affairs Economic Development, Trade and Finance Committee and Committee of Social Affairs and Environment consider the following and prepare reports to the Joint Assembly: The ACP-EU relations, post Cotonou in a strong parliamentary dimension. It shows social and environmental consequences of urbanisation, particularly sound management of industrial waste in ACP countries, the impact of illegal trade in phytosanitary products, seeds and agricultural inputs on ACP countries' economies.

There are issues that the ACP considers in terms of the relationship between regions. On the parliamentary side, the EU in post Cotonou is trying to move to the regionalisation where they want to directly engage with Africa, Caribbean and the Pacific as regions whereas the ACP considers unity in strength or solidarity where they want to negotiate with ACP as ACP as opposed to dividing ACP into different regions. In parliamentary dimension, what has been observed over the years is the tendency for the European Council of the ACP Council of Ministers and the executive tending to deal directly with each other. For that reason, parliamentarians are advising on strengthening of parliaments, so that they can play oversight just like in the member states' parliaments where they oversee the Executive.

Secondly, there are issues of concern because the ACP's main agenda is trade, aid and political cooperation. Those are the three well-defined pillars of engagement with the EU, but over the years, what happens is negotiation with unequals. The European Union, through what I

would cover later in my presentation on the Economic Partnership Agreements (EPAs), considers this as negotiation of unequals. On the other hand, the EU provides aid through what is considered the single significant aid package through the European Development Fund through the provision of predictable resources and accounting for a larger share of the European development aid. They also considered other sources of aid to the ACP countries, the growing number of alternative competing policy and institutional framework such as what is considered as the Joint Africa Europe Strategy where the African Union, in particular through the African Continent Free Trade Agreement, is asking them to trade with us. We want an African free trade area, but Africa is poised to look at the continental position as more viable because Africa is considered as the best negotiating framework particularly in the area of trade.

The other issue is post-Cotonou. As you are well aware, the ACP was founded in 1975 in Georgetown, which is in the Caribbean. During that time, the Cotonou Agreement was the main instrument through which negotiation was carried out, but through the years there have been Lomé 1 up to Lomé 4. By February of 2020, the Cotonou Agreement will come to an end. It is the major concern of the regions of the ACP and the EU on how they intend to proceed from February 2020 onwards.

In the current setup of negotiation, there is a central negotiating group and three technical negotiating teams based on three identified pillars. In this, Kenya and Ethiopia from our region were nominated to the central negotiating team representing the East African region. It is important to note that the overall budget for the European Development Fund between 2008 to 2012 was Euros 22,682,000. One of the concerns that parliamentarians raised in the use of the European Development Fund is that it must be transparent, accountable and properly channeled. At times, the European Development Fund goes directly to countries or even to departments through the European Union Commissioner who is in the country of residence. It is considered that unless these funds are properly quantified, parliamentarians cannot fight for the money or say that the money is adequate or it has been used in certain projects which are important to development in the ACP countries.

Looking at initiatives by the ACP-EU Joint Parliamentary Assembly, some of the important matters that they have discussed and also attempted to implement and reinforce in the ACP-EU countries include things such as the upgrading of the role of women in developing countries, the integration of environmental policy in development and promotion of trade as a tool for development particularly by way of EPA foreseen in the Cotonou Agreement. It also includes the drawing up of rural development programmes and micro-projects tailored to the needs of specific communities, promotion of regional, political and commercial cooperation and closer cooperation with Non-Governmental Organisations engaged in development. It also includes aid to indebted poor countries pursuing structural adjustment policies, measures to enhance the cultural dimension in North South cooperation, acceleration of aid procedures and the increase in appropriation for refugees and displaced persons. It also includes measures to reinforce commitment to respect and defend human rights and human dignity.

It is important to identify the interest driving the ACP in their relation with the EU. First of all, that relationship is anchored on unity and solidarity. In the increasingly globalised and regionalised world, the ACP countries which are normally the poor, indebted and least developed countries look at how to engage with the European Union. The reality beyond 2020 will be dominated by differentiation with the aid being concentrated on least developed countries primarily in Africa. The issue of migration and stability is also key to defining this relationship. When you watch Cable News Network (CNN), British Broadcasting Corporation (BBC) and Al

*Jazeera*, you will see Africans trying to cross the Mediterranean and making very dangerous journeys.

One of the things we have identified is the issue of Africans attempting to get to Europe, which is insignificant compared to the global trend on migration that comes from Asia, Middle East and central Asian republics that used to be in the former Soviet satellite. For that reason, it is in the interest of both Europe and Africa that migration can be a good thing. In Africa, we have population dividend. We have young educated and skilled manpower while they are experiencing a population decline. It is important to have a negotiated framework where skilled labour can be imported and exported to the other side so that the idea of thinking that migration is bad can be put to an end.

Take for example Kenya, currently, many of our young nationals are going to Middle East; United Arab Emirates, Qatar, and Saudi Arabia. Many of them are going to skill-based jobs where they are recruited nationally and those particular skills are identified. Even for Europe, it is important and that is why the ACP-EU Joint Parliamentary Assembly considered that the migration trend, although there is attempt to control it, once it is structured, can be a force for good.

On the EPAs, from 2002, the European Union and individuals as well as groups of countries that make up the ACP group of states have been negotiating for free trade. The general framework of negotiating EPAs is found in Cotonou Agreement. The overall objective of EPAs is to ensure sustainable development of ACP countries and smooth and gradient integration into the global economy and eradication of poverty. Specifically, EPAs are promoting sustained growth, increasing production and supply capacity, fostering the structural transformation and diversification of the ACP economies and providing support for regional integration by being tailor-made to suit specific regional circumstances.

On EPAs, some of the key features include that they are WTO compatible agreements, but go beyond conventional Free Trade Agreements focusing on ACP development taking account of their socio-economic circumstances and including cooperation assistance to help countries to benefit from the agreement. They open up EU markets fully and immediately, but allow ACP countries long transition periods to open up partially to new imports while providing protection for sensitive sectors. Kenya ratified the instruments of ratification. In our region, it is only Kenya and Rwanda that have ratified EPAs while other countries of the East African Community (EAC) have not. This in itself challenges the EPAs. Is it a good thing? Is it a bad thing or are the objectives not good? If the EAC is going to negotiate with the EU as a region, then we have to have a stronger position to negotiate, but if we are going to negotiate with the EU, then, one of the concerns is that it is going to be negotiation of unequals with Kenya being one country or Kenya and Rwanda against 27 or 28. That may not be desirable.

The EU is the second largest development cooperation partner after the World Bank. Similarly, the EU is the second largest destination of the Kenyan products after the Common Market for Eastern and Southern Africa (COMESA) contributing a third of the total exports. Therefore, we believe that for Kenya to be in EPAs, it is a positive thing because there are many areas of cooperation and understanding. By cooperating with the EU, we will be able to look at areas of combating terrorism on the issue of refugees and supporting regional peace and stability.

Today, the EU is the largest supporter of the African Union Mission in Somalia (AMISOM). Any time the EU may feel constrained or burdened, it is going to weaken the AMISOM peace keeping force and also progression towards a stable and peaceful Somalia. For Kenya, there is a lot that we need to look at in terms of our cooperation, governance and trade

with the European Union. Also, on the areas of development cooperation, economic relations, Kenya enjoys the EU market exports worth Euros1.28 million; Kshs144 billion, and imports worth Kshs213 billion. Our main exports include tea, coffee, horticulture and fish. Imports include machinery, chemicals and manufactured goods.

The other important area of cooperation is on the fight against terrorism. The European Union has assisted in terms of funding and training of human capacity.

On development, one of the major discussions going forward in the region of African, Caribbean and Pacific Parliamentary Assembly is on the small and medium-sized enterprises (SMEs). When we look at the mainstay of the Kenyan economy, other than agriculture and tourism, it is SMEs. They are the major hub of the Kenyan economy today.

On education, one of the major concerns throughout the ACP is the number of children who are out of school. In Kenya, it is considered that almost 800,000 young boys and girls are out of school. So, one of the things we must do, as a House, when we go out there to talk to our constituents, is to take advantage of the free primary education and free transition to secondary school. An enlightened population looks into the future.

Some of the important areas of concern by the Joint Parliamentary Assembly were illegal trafficking in wildlife and protected species. It will take the Kenyan population a lifetime to secure areas under wildlife and it will cost them so much to deny themselves the trappings of good life to make sure that their habitats are protected. Wildlife is being destroyed and so are its habitats. Therefore, it is a major global concern and a concern to our country.

Finally, we are using renewable energy to light up the rural areas. The advantage that we have in our country - and we do not seem to value that blessing - is that we have sunshine and wind, which are sources of clean energy. This is one of the important areas that the EU partners have been asked by the ACP to engage in developing rural Africa.

With those many remarks, I call upon my young friend, Hon. K.J from Dagoretti South, to second.

Thank you.

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

**Hon. John Kiarie** (Dagoretti South, JP): Thank you, Hon. Temporary Deputy Speaker for this opportunity. I want to congratulate Hon. Rasso for such an eloquent and well-rounded presentation to the House.

I second Hon. Rasso. The relationship between the ACP countries and the EU countries has traditionally been viewed as one between the colonisers and the colonised. It is at this point, as we present these Reports, that we see a great opportunity in relooking at the landscape in which the African, Caribbean and Pacific countries relate with the EU countries. This great opportunity presents itself in the way that the African, Caribbean and Pacific countries are going to conduct business as we venture into this new epoch that we are calling "The post Cotonou epoch."

Post Cotonou discussions are giving a great opportunity to our African, Caribbean and Pacific countries to re-imagine the way these countries engage with their former colonial masters. There have been discussions about how these countries will be relating with the EU.

One of the recommendations that had been brought to the fore is caucusing of regions and presenting themselves individually as regions before the EU. With the continued debate, it is coming out that African, Caribbean and Pacific countries want to continue dealing with the EU as a bloc. They do not want to go to an area that will be viewed as a grey area of the divide and rule tactic.

Kenya has a great opportunity here to lead on behalf of the continent. At this juncture, I take the earliest opportunity to say that the leadership in this House is leading by example. The calibre of the Members that have been nominated to represent this honourable House at the African Caribbean, Pacific and European Union is high starting with the leader of the delegation, the Deputy Speaker of this House, and all the Members who have got the opportunity to represent this House at the ACP-EU deliberations.

I have had an opportunity to represent this House. I do not take it for granted. In a nutshell, in all the fronts that the ACP-EU is going to be relating with the EU at the political, social and economic fronts, Kenya stands the opportunity to not only be the torch and flag bearer, but to also be the thought leader by the quality of Members the House shall be nominating to go and represent us in these deliberations.

Because of obvious reasons, I will make my contribution very short.

With that, I second.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Members, allow me to propose the Question.

*(Question proposed)*

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

**Hon. Mwambu Mabongah** (Bumula, ANC): Hon. Temporary Deputy Speaker, from where I sit, my assessment tells me that we do not have sufficient quorum to continue with the business of the House. I do not know whether it is in order for us to proceed.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): You are quite in order for raising that. You are within your rights. I will direct the bell to be rung for 10 minutes. Hon. Members, it has to ring for 10 minutes. This is in your Standing Orders. If you look at it, you will find it.

*(Quorum Bell was rung)*

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): I direct that the Serjeant-At-Arms stops the Quorum Bell.

## ADJOURNMENT

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Members, the time is 6.04 p.m. This House stands adjourned until Wednesday, 24<sup>th</sup> April 2019, at 9.30 a.m.

The House rose at 6.04 p.m.