

PARLIAMENT OF KENYA

THE NATIONAL ASSEMBLY

THE HANSARD

Thursday, 10th September 2020

The House met at 2.30 p.m.

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

PRAYERS

QUORUM

Hon. Speaker: Hon. Members, there is no quorum. Ring the Quorum Bell.

(The Quorum Bell was rung)

Hon. Speaker: We have quorum now. We will proceed.

COMMUNICATION FROM THE CHAIR

WITHDRAWAL OF PROPOSED AMENDMENTS TO THE ENERGY ACT, 2019 AND FILMS AND STAGE PLAYS ACT

Hon. Speaker: Hon. Members, as you may be aware, the Statute Law (Miscellaneous Amendments) Bill (National Assembly Bill No.15 of 2020) was published vide Kenya Gazette Supplement No.89 of 6th June 2020 to effect various amendments to 38 statutes.

The Bill which was sponsored by the Leader of the Majority Party was read a First Time on 23rd June 2020. It was thereupon referred to various departmental committees for consideration, in accordance with the respective mandates as indicated in my Communication of 25th June, 2020.

Hon. Members, as you will recall, in my Communication of 15th July 2020, I acceded to the request by the Leader of the Majority Party for the withdrawal of proposed amendments to the following eight statutes as contained in the Bill:

- (i) The Criminal Procedure Code Cap. 75;
- (ii) The Evidence Act Cap. 80;
- (iii) Anti-Corruption and Economic Crimes Act of 2003;
- (iv) The Public Officer Ethics Act of 2003;
- (v) Proceeds of Crime and Anti-money Laundering Act of 2009;
- (vi) The Counter-Trafficking in Persons Act of 2012;
- (vii) The Leadership and Integrity Act of 2012; and,
- (viii) The Bribery Act, 2016.

Hon. Members, I wish to inform the House that I have since received two other letters from the Leader of the Majority Party, dated 30th July 2020 and 28th August 2020, respectively, requesting my consent for withdrawal of proposed amendments to Sections 13(1), 46(1) and 61(1) of the Energy Act, 2019 and proposed amendments relating to the Film and Stage Play Act (Cap.222) as contained in the Bill.

Hon. Members, in his requests, the Leader of the Majority Party indicates that the said proposed amendments relating to the Energy Act, 2019 contravene the Mwongozo Code of Governance for State Corporations and other Government policy directives governing the appointment of Chief Executive Officers (CEOs) of State Corporations.

With regard to the proposed amendments to the Film and Stage Play Act (Cap. 222), he indicates that the Ministry of Information, Communication and Technology, Innovation and Youth Affairs is currently formulating the National Film Policy.

I have acceded to the two requests, which implies that the Bill will now undergo public participation, Second Reading and other stages without making reference to the withdrawn Sections and Act. Further, the Bill will now proceed as though the withdrawn Sections and Act were not part of the Bill as published.

Even as I grant this consent Hon. Members, I wish to caution the House as follows:

- i. This is going to be the first time that more than two requests regarding withdrawal of proposed amendments to part of a particular Bill are permitted. Indeed, this relatively new measure in our legislative processes is intended to be applied sparingly. The process should not be a replacement to the Committee of the whole House Stage, where the Mover of the Bill is at liberty to propose amendments to delete any provisions contained in a Bill;
- ii. If such partial withdrawals are several and introduced at varied times, they not only present an untidy manner of processing a Bill, but may also project the House as unsystematic in its processing of legislation, particularly when the withdrawals are made at the penultimate stage after the relevant Committee(s) have concluded the process of considering and undertaking public participation on the particular Bill as published. Where there has been change of mind or position in the process of law-making, the tidy options have been either to withdraw the Bill and republish it, or move deletion of the offensive provisions at the Committee of the Whole House stage.

Hon. Members, given this background, going forward with respect to this particular Bill, I will find it extremely difficult to consent to any further request for withdrawal of part of its provisions and any such process be undertaken in the normal course/stages of consideration of the Bill.

The House is accordingly informed.

MESSAGE

REFERRAL BY HIS EXCELLENCY THE PRESIDENT OF THE
PARLIAMENTARY PENSIONS (AMENDMENT) BILL, 2019

Hon. Members, you may recall that on 5th August 2020, the National Assembly passed the Parliamentary Pensions (Amendment) Bill (National Assembly Bill No. 45 of 2019). The Bill was sponsored by the Leader of the Minority Party, the Hon. John Mbadi. Following its passage, I did

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present the Bill for assent to His Excellency the President in accordance with the provisions of the Constitution and our own Standing Orders. However, in exercise of the powers conferred under Article 115(1)(b) of the Constitution, His Excellency the President, by way of a Memorandum dated 7th September 2020, has since referred the Bill back to the National Assembly for reconsideration.

Hon. Members, in his Memorandum, His Excellency the President has expressed reservations on Clause 2 of the Bill which sought to amend Section 8 of the Parliamentary Pensions Act (Cap. 196) to provide for an entitlement for former Members of Parliament who served between 1st July 1984 and 1st January, 2001 to a monthly pension of Kshs100,000. Amongst the reasons for his reservations, His Excellency the President notes the following:

(i) Members' pensions under the Act are calculated according to the contributions paid into the Scheme during their parliamentary term. The proposed amendment fails to provide for such calculation, and makes no reference to the Members' contributions;

(ii) The Bill overlooks the mandate of the Salaries and Remuneration Commission under the Constitution, which comprises, among other things, the setting and review of remuneration and benefits for all State officers, who include Members of Parliament; and,

(iii) The proposed pension payment will result in an annual cost implication of about Kshs444 million. Added to this, will be the almost certain demand for similar upward review of pension benefits by other retired State and public officers, which is within their rights to demand. The resultant ripple effect is unaffordable and fiscally unsustainable.

Consequently, His Excellency the President recommends the deletion of the said Clause 2 of the Bill, which as a matter of fact, is the primary content of the Bill.

Hon. Members, Standing Order 154(2) requires the House to consider the President's Reservations 21 days upon the receipt of the Memorandum. In this regard, the Reservations of the President, as contained in his Memorandum, now stand committed to the Departmental Committee on Finance and National Planning for consideration, which should table its report soonest to allow the House to consider the President's Reservations within the said timelines.

Hon. Members, may I, at this point, remind the House of the Speaker's Communication of 28th July 2015 concerning the consideration of the President's reservations to a Bill and amendments thereto. I particularly draw your attention to my guidance that the voting threshold for the passage of amendments proposed by a Committee or an individual Member that have the effect of fully accommodating the President's reservations is a simple majority as contemplated under Article 122(1) of the Constitution as read together with Article 115(2)(a).

On the other hand, an amendment that does not fully accommodate the President's reservations or, indeed, one that has the effect of a total override of the President's reservations, including negating his proposed text, would require a two-thirds voting threshold to be passed in keeping with the provisions of Article 115(4) of the Constitution.

Hon. Members, I, therefore, direct the Clerk to circulate the Memorandum from His Excellency the President to all Members so that they can familiarise themselves with its contents.

I thank you.

PAPERS LAID

Hon. Amos Kimunya (Kipipiri, JP): Hon. Speaker, I beg to lay the following Papers on the Table of the House today, 10th September 2020, in the Afternoon Sitting:

The Report of the Auditor-General and the financial statements in respect of the following institutions for the year ended 30th June 2019, and the certificates therein:

- (i) The Ethics and Anti-Corruption Commission (EACC).
- (ii) Ethics and Anti-Corruption Commission Staff House Mortgage and Car-loan Scheme.
- (iii) The Nursing Council of Kenya. (NCK).
- (iv) The Retirement Benefits Authority (RBA).
- (v) The 2019 Kenya population and housing census Volume (2) from the Kenya National Bureau of Statistics (KEBS).
- (vi) The Kenya economic Report 2020, main Report and Popular Version from the Kenya Institute of Public Policy Research and Analysis (KIPPRA).

Thank you, Hon. Speaker.

Hon. Speaker: Let us have the Chairperson of the Departmental Committee on Transport, Public works and Housing.

Hon. David Pkosing (Pokot South, JP): Thank you, Hon. Speaker. I beg to lay the following Paper on the Table of the House today, 10th September 2020:

The Report of the Departmental Committee on Transport, Public Works and Housing on its consideration of the National Aviation Management Bill, 2020, (National Assembly Bill No.18 of 2020).

Thank you, Hon. Speaker.

Hon. T.J. Kajwang' (Ruaraka, ODM): On a point of order, Hon. Speaker.

Hon. Speaker: Members, you know where the intervention button is. The only intervention I can see is from Hon. T.J. Kajwang'

Hon. T.J. Kajwang' (Ruaraka, ODM): Hon. Speaker, thank you for recognizing me. I rise to raise a point of order on the Report which has just been laid on the Table of the House by the Chair of the Departmental Committee on Transport, Public Works and Housing.

This is a Report that is causing a lot of anxiety both in the House and outside. Although it has just been laid on the Table of the House right now, I have had a privilege of seeing a draft because I was a friend of the Committee.

There are fundamental issues - and specifically one - which I want to touch on now, which is the question involving public participation. It is a matter which is in public domain out there, although I do not want to bring issues that are out there into the House. But I want to ask that if there is a Report in the House in which fundamental principles of the Constitution have not been met, that is, public participation on an issue as serious as this one, is it possible that Hon. Speaker, may *suo motu* direct that the Committee retreat to consider such sentiments as much as possible so that we do not have a House which has a bad face? I know that during COVID-19, things have been different. Even the issue of public participation somewhat is different. But when we have a Report which both in the general domain and within us we entertain a view that probably we should have opened to more participation than it would, instead of waiting for the gravy train to roll on, is it not easy and cost benefit that the Hon. Speaker can *suo motu* direct the Committee to open up this Report to as many stakeholders as it can?

Hon. Speaker, I beg your...

(Hon. (Ms.) Rozaah Buyu consulted Hon. T.J. Kajwang')

Hon. T.J. Kajwang' (Ruaraka, ODM): It has been tabled. Have you not read it? Yes, I have read it.

Hon. Speaker, sorry. The Member for Kisumu County was wondering what *suo moto* means. She thought I was speaking the language from the lake. But allow me to explain to her that *suo moto* means that “by yourself without being moved by anybody” including the Member for Ruaraka that you can see gaps on public participation.

Hon. Speaker, my intervention is that you can, by yourself, look at the Report and direct that it be exposed to a large population of public participation. The question of public participation is a matter that is now dire. But we have to look at it as a nation. It is true that we cannot have *wananchi* coming to the National Assembly to ventilate on an issue. But when a reputable legal society like where I come from, the Law Society of Kenya, which is created by an Act of Parliament, says that they have not had participation on an issue such as this, then this is an issue which is big enough.

I see the Leader of the Majority Party a little uncomfortable, but he will get his opportunity to respond. We surely cannot close our eyes to issues such as those. So, Hon. Speaker, I beg to intervene.

Hon. Speaker: The Member for Mandera North, you have the Floor.

Hon. Major (Rtd.) Bashir S. Abdullaih (Mandera North, JP): Hon. Speaker, just as the Hon. Member has just said, I agree that this Report is not properly before the House.

The only public participation that was done was by stakeholders who were themselves the drafters of the Bill. There are many petitioners who wrote to the Committee but were disregarded. They were not called and were not asked to appear before the Committee. Even others were given a notice of one day and when they asked to be given alternative days for them to respond, they were disregarded.

Standing Order No.127(3) requires complete public participation and this is in line with Article 118 of the Constitution of Kenya. A Report of this magnitude talking about changing the landscape of Kenya’s aviation industry and key stakeholders being denied an opportunity to appear, one being LSK and others who wrote petitions were never accorded the chance, is not right.

We are also aware that the Committee’s notice to retreat was given on an evening and were told to report the following day. The Report was consummated and discussed in a record of two to three hours. We are talking about an aviation Bill of this kind and the Committee goes with it for half a day! The elephant in the room is that there was no public participation on this thing. We cannot be running away under the guise of COVID-19. We are not going to wash away or cut the Constitution of Kenya.

This is something, Hon. Speaker, which calls for your indulgence and direction. There are things, because Hon. Members have not spoken, which we just want to see if the threshold of public participation as emphasized in the Constitution was met by the Departmental Committee on Transport, Public Works and Housing in considering the Aviation Management Bill of 2020. Let the Committee allow the stakeholders who are interested and were excluded in presenting their memoranda to the Committee be given an opportunity to be heard by it.

In line with the foregoing, what is the technical preparative Report of the Committee on the National Aviation Management Bill? This is not an ordinary Bill. This is a Bill that will change how we operate as an industry especially in the aviation sector. It cannot be left to only a few members of the Committee that will congregate somewhere, do something and exclude people who are stakeholders.

Hon. Speaker, I seek your indulgence. Thank you.

Hon. Speaker: Hon. Members, all of you are intervening on points of orders. We are well versed with our own procedures. Leader of the Majority Party, you have the Floor.

Hon. Amos Kimunya (Kipipiri, JP): Hon. Speaker, I have heard two Hon. Members contribute through points of order. In their contributions, one can see that they obviously come here to represent certain interests that are not here. Our Standing Orders require that when you are discussing and agitating a case on behalf of somebody, you need to declare the interest that you have on that person.

A Report has just been tabled here. Members have not even seen it. But it appears that there are Members that are privy to even the contents of that Report before the rest of the House and even know who has been excluded. It means they have been discussing this Report with outsiders even before it has come to the House and that is why they are agitating for certain interests to be included in the Report even before Members of the House have seen it. Can those Members declare the interest that they have and the passion they have exhibited in those stakeholders being included in this Report when we have not even seen the Report or even known whether they are in the Report or not?

Hon. Speaker: Let me just make this clear. Remember upon the Bill being read for the First Time in the House, it will automatically stand committed to the relevant Committee. Subsequent to that, the Committee requested the Clerk of the National Assembly to place advertisements in the newspapers indicating that there was such a Bill and they may require people to appear either in person or send memoranda. So, there is really nothing wrong with anybody. That information was out there for every Kenyan and even others. So, it is okay for anybody to have discussed it out there with others because it was already a matter of public knowledge. That is not a problem.

I think the issue being raised by Hon. Kajwang' and I think the Hon. Member for Mandera North was one that touches on public participation. It is good if we can limit contributions. I can see the next one on the list of these interventions is the Hon. Wamalwa. Hon. Kajwang', you have the Floor.

Hon. T.J. Kajwang' (Ruaraka, ODM): I hardly rise on issues such as this. I have enough latitude to absorb such shocks. But when the Leader of the Majority Party says something which touches on my integrity and reputation, that I am here holding brief for certain people who are outside; that, in itself, is dishonesty and a question of lack of integrity. Could the Leader of the Majority Party explain other than saying the fact that I have seen a Report which I am entitled to see? I am entitled to even sit in that Committee because I am a Member of Parliament (MP).

Hon. Amos Kimunya (Kipipiri, JP) *Off-record.*

Hon. T.J. Kajwang' (Ruaraka, ODM): Give me a minute, Leader of the Majority Party. Could the Leader of the Majority Party, because this is the first time he has ever done that and I will give him benefit of doubt, be gracious enough to apologize to me? Unless he has evidence which he can table before the House that Hon. T.J. Kajwang', the Member for Ruaraka, is a man who lacks integrity so as to come and represent people outside this House and probably for financial gain... I take that very seriously.

Hon. Speaker: Of course, the people of Ruaraka are not in the House. So, you represent them and you are still entitled to speak on their behalf.

(Laughter)

Let us hear Hon. Wamalwa.

Hon. (Dr.) Chris Wamalwa (Kimini, FORD-K): Thank you, Hon. Speaker, for granting me this opportunity. The matter that has been raised by Hon. T.J. Kajwang' is a serious one to the extent of the population that it affects in terms of livelihoods. Article 118 of the Constitution which talks about public participation is a fundamental matter. You have been on record that any matter of constitutionality can be raised on this Floor of the House at any stage of the Report, whether a Bill or a Motion. So, we are completely in order to raise this matter. We respect Hon. Kimunya so much. But he should know that he is a Leader of the Majority Party, but not a Leader of Government Business like in the previous Parliamentary System. We are in a Presidential System. Members should be allowed to raise the matter and they must be respected. One thing we need to know is the extent to which public participation was done. We know we do not have an Act that operationalises Article 118. But we are aware that some of us have proposed a Bill on this. So, as we move forward, this is an issue that should be withdrawn if there is no hidden agenda. That is so that public participation can be done to the extent that Members will be comfortable. We want to use a bottom-up approach. Many issues have been happening without proper public participation. We have seen many Bills or even matters going to court. The court has quashed. So, as Parliament, it is, indeed, important that you pronounce yourself on this. If possible, Hon. Speaker, we should subject it to the satisfaction of the Members as far as public participation is concerned.

I thank you, Hon. Speaker.

(Applause)

Hon. Speaker: Let us hear from the Member for Central Imenti.

Hon. Moses Kirima (Central Imenti, JP): Hon. Speaker, I hereby stand to say that what has been said by the Leader of the Majority Party about public participation on this National Aviation Bill cannot be taken on a light note, taking into account that it touches on the Constitution of Kenya. Article 118 talks of public participation. When it does so, it is not talking of selective public participation. When it comes to anything to do with Nairobi, any Bill pertaining to Nairobi is looking at the way Nairobi is growing.

(Applause)

The National Aviation Bill touches on the security of the people. If it touches on the security of the people, they must be given an opportunity to participate. It is because anything to do with aviation is not like anything to do with a motor vehicle. Aviation means flying above in the air and the public must be given an adequate chance and the Constitution provides for this. Anything which deals with the Constitution cannot be disregarded. The Constitution is the supreme law of this land.

So, I hereby state that there was no proper participation by the public through the Committee. If you look at the Committee, I wonder if they really represent the public for each of them. Any Member in that Committee is opposing the idea of public participation. Can they give us their interest? What is their interest if it is not the public?

I hereby state that public participation was not properly done.

Hon. Speaker: Member for Mvita, you have the Floor. Before you speak, I want to just caution Members. When you are seated at your place and you start shouting "point of order", you

are actually creating disorder for which the Standing Orders are very clear what should happen to you.

(Applause)

It is because you have put your cards for intervention. I have two open eyes as you can see, notwithstanding the mask. So, I can see all those who have put in their intervention. Please, relax. Just relax. Let us hear others. You are seated at your place and you appear like you are dancing while seated, shouting “point of order”. No! No! I can see. Anybody who wants to rise to make an intervention presses his or her intervention button. Just press it. So, do not worry.

The Member for Mvita has the Floor.

Hon. Abdullswamwad Nassir (Mvita, ODM): Ahsante sana Mhe. Spika. Historia inajirejelea. Nakumbuka kauli ambayo wenzangu wameitaja ya kuwa Umma haukuhusishwa katika jambo hili licha ya kuwa ni sharti kikatiba. Hili ni Jumba ambalo linaenda na mambo yaliyotangulia kabla yetu. Miaka takriban miwili iliyopita nilipoinuka katika Jumba hili na kuzungumza ya kuwa mambo ya *privatisation* ya bandari ya Mombasa hayakuhusisha watu, baadhi ya watu walisema yale yale ambayo ndugu yangu Mhe. T.J. Kajwang’ anaambiwa – ya kuwa ana watu ambao anawasaidia. Wengine wameambiwa lugha hiyo kwa sababu ya kuzungumza sauti ile ya Wakenya iliyosababisha sheria ile ile kukataliwa. Kwa sababu haikufuatwa kisawasawa, ilienda nje na mahakama ikaamua kuwa sio sawa. Sasa hili Bunge lisiwe la kutumika kutengeneza sheria na baadaye kuonekana kuwa zile sheria zilijaribu kupitishwa kimabavu.

Kwa hivyo namsihi mwenzangu sana. Ni kwa sababu ya mambo ambayo tutazorota na hapa hapa katika Jumba hili. Kando na haya ambayo ni mambo ya National Aviation Bill, kuna mengine ambayo yatakuja hapa. Yanahusiana na mkataba wa kuunganisha Kenya Ports Authority, Kenya Railways, Kenya Pipeline na pia ICDC. Hayajakuja hapa lakini yatakuja. Yakifika hapa tutayazungumza na vile vile wenzetu walivyoambiwa kuwa wana yale wanataka, tutawazungumza hapa hapa katika Jumba hili hili.

Mhe. Spika, ningependa kuwasihi wenzangu kuwa tufuate mamlaka ambayo tumepewa, sio tu kuzungumza kule nje lakini kupitia Jumba hili, tuwatete watu wetu. Kila mmoja wetu ameapishwa kikatiba kwa kushika kitabu cha dini yake ili kuhakikisha kuwa mambo ya Wakenya waliotuchagua yatakuwa ya kwanza.

Hon. Speaker: Let us now hear the Member for Garissa Township.

Hon. Aden Duale (Garissa Township, JP): Hon. Speaker, I want to talk from experience. It is my first time as a Member of Parliament to see a Report being tabled here raising issues of public participation. The procedure of public participation is well documented. The Bill is published, it matures, it is read for the First Time, the Office of the Clerk makes an advertisement, the period is set and people submit memoranda. Some people would want to appear before the Committee. That is what public participation entails. It is critical in Article 118 of the Constitution. You will agree with me that, of all the litigations that went to court on legislations passed by this House, the courts will always use two things to either nullify or agree with the process - the *Hansard* and the Report of the Committee on public participation. They can also use the debate on Second and Third Readings. You will realise that of late, the courts have been rejecting a fundamental amendment that comes at the Committee of the whole House. The reason has been that the amendment is substantial and has not been subjected to public participation. If I had time, I could have cited a number of legislations where the court has disagreed with the House.

Hon. Speaker, you need to make a strong ruling on this, because if we go this route and a litigant goes to court tomorrow after the passage of this Bill, he will use the *Hansard* for today to fault us because the House is already indicting its own Report before it even goes to the Second and Third Readings.

The Chairman of the Committee should be honest and tell us whether there were people who wanted to appear before the Committee and were not given a chance, like the Law Society of Kenya (LSK) as indicated by Hon. T.J. Kajwang'. It is important that you listen to the views of Members and go back and sit with the technical team of Parliament, Director of Committee Services and the Clerk and go through the memoranda submitted. We should find out whether there were people who were not given a chance by the Committee and on the basis of that, you can make a ruling. If we do not do that and proceed like this, we will be preparing defense for Mr. Omtatah and other litigants. This is a serious matter. It is the first time I am seeing a Report being tabled here raising issues of public participation. From experience, I want to state that this is a heavy matter and you need to listen to views from Members and make a decision before we move to Second Reading.

Hon. Speaker: Member for Kanduyi, you have the Floor.

Hon. Wafula Wamunyinyi (Kanduyi, FORD-K): Thank you, Hon. Speaker. From the contributions of the former Leader of the Majority Party and other Members, I have noted the important issues that have been raised on public participation. However, my concern is that the Report has just been tabled. I appreciate that some people are privy as they might have received complaints from institutions that were not accorded a chance to give their presentations to the Committee. Upon committal of a legislative piece to a Committee, the procedure is that it must go through public participation. When a Report is tabled before the House, it would normally go through the normal procedure. The Report informs Members on the details of the Bill which informs the debate.

The Report has just been tabled and I cannot tell whether the public was involved or not. I think it would be important that Members would first go through the Report and later on, debate. Matters would then arise from the contents of the Report. I agree that public participation is one of the requirements for any successful legislation. My concern is how possible it is to know that the public did not participate in a Report that has just been tabled. You need to consider these issues and accord the Report the normal route and other issues can follow.

Thank you, Hon. Speaker.

Hon. Speaker: The Member for Ndaragwa, you have the Floor.

Hon. Jeremiah Kioni (Ndaragwa, JP): Thank you, Hon. Speaker, for giving me an opportunity to comment on this.

First, it is unsettling to see us debating a Report that we have not looked at, as it has just been tabled. We are being informed by Members who obtained information ahead of time. It is not a crime to obtain information ahead of time. We should challenge the Report within the procedures of Parliament.

Secondly, we are peoples' representatives in this House. We represent the interests of others, including those of the people of Ndaragwa. It would be wrong if someone paid me to try and influence my view. Lobbying is normal and allowed. We should not be hostile to one another because we have different views. It is important to address the issue raised by Hon. Kajwang', a member of my Committee, and we are keen in implementing the Constitution as it should be. Public participation is crucial and it must be done. It is, however, something that we must address ourselves to as Members of Parliament who are elected to represent others. If all we do is listen to

others and bring what they say to the Floor, we must make sure that we do not reduce ourselves to the level of clerks. This principle is very good, but if it is over-stretched, it will stagnate legislation. Going forward, we should define the threshold of public participation. It will always be thrown to us to derail us. It is important to accommodate those who feel they were left out, but they should also know the process of legislation and know the point at which they should come in. I understand that there are those who do not pay attention to what we do as Parliament but later on, come to challenge the process and throw in obstacles. They can also derail us as Members of Parliament.

Hon. Speaker, when we had the Bill on Article 100 of the Constitution here, there was a fundamental amendment that was introduced on the Floor of the House. It was introduced at that time by the Leader of the Majority Party, who worked well with the Leader of the Minority party to kill my Bill, a fundamental thing - and he may find himself in the court because that was a thing we had worked on with the public. So, we need to quickly get into terms with these issues. My concern is: If we are not careful, public participation can be used to derail legislation on the Floor of this House. It is important to make sure that we give opportunity to the public to bring in what they have, but within the timelines.

Thank you.

Hon. Speaker: Member for Wajir North, you have the Floor.

Hon. Ibrahim Ahmed (Wajir North, ODM): Thank you, Hon. Speaker. I happen to be a member of the Departmental Committee on Transport, Public Works and Housing. I was involved in this process right from the initial stage. Without an iota of doubt in my mind, I am one of those who have dissented to the Report. We are five Members. I can assure you that one of the reasons for dissenting the Report from what Members are raising is public participation. The Speaker and his Clerk allowed us...

(Laughter)

The Speaker and the Clerk allowed us to go for a retreat during this difficult period to ensure that the process is adequately done. Unfortunately, from the two days that we were given, this Report was exhausted within two hours. One of the key issues that I raised on the day that the Report was exhaustively done within two hours – and the *Hansard* will prove me right – was the issue of public participation. The stakeholders I mentioned were the Law Society of Kenya (LSK) and the Competition Authority of Kenya to look into the issue of competition laws. I can remember vividly that we gave them one day only within this Chamber. The guidance the Chair gave was that we could only extend for two hours because of COVID-19, and that it would be difficult to continue dealing with the issues. I can assure you that the process was not exhaustive.

That, notwithstanding, we were supposed to review exhaustively various documents that were presented by those stakeholders, including a transaction advisor's progress report from the Kenya Airports Authority (KAA). This Committee had no access to important reports even for a single day. They could have informed us. We were all in agreement that we must save Kenya Airways (KQ) during this difficult period. We were supposed to do it in a good manner. We were to conduct exhaustive public participation and review all relevant documents. I have the transactions advisor's report which the Committee has no access to up to date. The Committee had no access to an important evaluation report of the KAA. This Report was done within two hours.

We have dissented and the *Hansard* can prove me right. It is not exhaustive. It is important we return it to the Committee to ensure its better conclusion.

Thank you.

An Hon. Member: On a point of order, Hon. Speaker.

Hon. Speaker: No! He was also on a point of order. Many of you have spoken.

(Hon. (Ms.) Rozaah Buyu interjected)

Hon. Rozaah Buyu, I told you not to shout! You are creating disorder by shouting. I have given you the Floor. You do not even see that!

Hon. (Ms.) Rozaah Buyu (Kisumu CWR, ODM): Thank you, Hon. Speaker. I rise on a point of order. Is the Hon. Member in order to suggest that the Committee does not have the specific reports that he is showing us and yet, he is a member of that Committee and he is holding the reports? Is he in order to hold those reports and blindly tell us that the Committee has not seen those reports?

Hon. Speaker: He is a member of the Committee, but he is not the Committee. There is a difference. Unless we want to... You know, Hon. Members, there are some people in the county governments who are called members of the County Executive Committees (CECs), but I have heard many of you say: "I also have my CEC here; he is CEC for Education". What you mean is that you have an Executive Committee; not a member. You also need to define some titles, for example, that, that one is a member, but he is talking about the committee. Those ones are members, but they are not the committees. Finally, let us hear the Member for Kikuyu before I give the Chairman a chance.

Hon. Kimani Ichung'wah (Kikuyu, JP): Thank you, Hon. Speaker. A number of fundamental issues have been raised. I was particularly keen on what the Member for Wajir North has said, that they are dissenting the Report. I was wondering whether he and the other members of the Committee who are dissenting may afford a minority report that could have been tabled together with this Report. Fundamentally, I have perused through this Report and, indeed, the issue that has been raised by Hon. T.J Kajwang' on public participation – and he has mentioned the LSK among the stakeholders – is very fundamental. The written submissions that were received by the Committee include that of the LSK and, at least, other five law firms that wrote submissions.

However, the issue that Hon. T.J Kajwang' has raised was the adequacy of public participation. There is a complaint. I am privy to the discussion with a few of the members of the Committee – that the LSK has, indeed, written to the Committee protesting the issue of not having been allowed to appear before the Committee - more fundamentally, is the notice that was given by the Office of the Clerk that, members of the public, including the LSK and all the other people who wrote memoranda, were only given five days. Understandably, in these COVID-19 times, there might have been issues. But with COVID-19 all over the world, we have been challenged that even parliamentary democracy is being threatened. Democracy around the world is being threatened by this pandemic. It is being used as an excuse not to allow due process to be followed. We must not fall prey to this danger.

Other than public participation, what this Bill seeks to do – and I want to agree with the member of that Committee, the Member for Wajir North – is to nationalize Kenya Airways. As you are aware, KQ is not just making losses, it is making monumental losses. With COVID-19, it is at a risk of making higher losses. The Bill is seeking to nationalize KQ by merging it with KAA. I am happy that the Member for Wajir North – and I think he is taking over from my experience

as a former Vice-Chair of the Public Investments Committee (PIC) – has spoken about a valuation report of KQ. If you look at the audited accounts of 2019 of KAA, it is holding assets worth about Kshs1.3 trillion. That is the institution that we are seeking to merge with KQ, which is making losses and is bound to make further losses because of COVID-19. Without valuing KQ and not having a feasibility report that tells this country and all stakeholders how feasible this transaction is of KAA merging with a loss-making entity, KQ will gobble up financial assets and other assets of KAA. They are public assets. For me, as an accountant, other than a loss-making institution taking over a profit-making institution, it is a question of a public entity and the privacy of KQ.

Remember KQ has private shareholders, including myself. We must be able to understand how we are going to deal with the question of the individual shareholders and the commercial banks that had lent money to KQ and are owed billions of shillings. We might use the assets of KAA and other public institutions to offset those debts. It is a matter that is weightier than the Report I am seeing here. To be honest and with all due respect to my good friend Hon. Pkosing, this Report is too shallow for a fundamental issue like the merger and nationalization of KQ. I would beg the Speaker to allow the House and members of the public a little more time for public participation. Go into the issues of feasibility and valuation of the assets of all the institutions that you seek to be merged, so that finally when you bring us a report, it is not just a bulky report. The bulk of this Report is the minutes of committee attendance. The substance of the report is zero. Absolutely zero! I would beg that you find it wise to set aside this Report and ask the Chair to spend a little more time looking at the issues that have been raised, including the issue of public participation, the issue of feasibility study, the issue of the transaction advisor's report to understand valuation of the assets of all the institutions involved and the implications that the process will have, as Hon. Kirima has mentioned, on the entire aviation industry.

With that, Hon. Speaker, I beg to support the point of order that had been raised.

Hon. Speaker: Before I allow the Chair to respond, let me allow the Leader of the Majority Party to give it a second shot.

Hon. Amos Kimunya (Kipipiri, JP): Thank you, Hon. Speaker. I had risen earlier on a point of order because I realized that, perhaps, there were conflicts of interest that were not being declared. But be that as it may, the issue we have here is: A Bill was introduced in this House through First Reading. It has not been placed in the Order Paper for it to be read a Second Time, but we have already started debating it. The Report of the Committee is only reacting to a Bill that was committed before them. The Committee is not reacting to a decision to privatize KQ. This matter was brought to this House through a Report of the same Committee. That Report, on the inquiry into the Kenya Airways privately-initiated investment proposal, was approved by this House on 17th June 2019. The Report was prepared by the Committee, approved by this House and, pursuant to it, a Bill has been prepared. We are now going back to where we were before 2019. Maybe, some Members were not in the House and now they are hearing this for the first time. This Bill was prepared pursuant to the approval of that Report by this House. The House then decided to have a Bill to take forward this process. A Bill was prepared and committed to a Committee. The Committee has looked at this Bill and they have prepared a Report for us.

The second thing we need is for the House Business Committee to allocate time for this Bill to come before the House for Second Reading. During that time, Members will have an opportunity to look at the clauses and all the issues, bring the matters on the Floor and we will make a decision on whether the Bill should proceed beyond Second Reading or not. If it proceeds, Members will have an opportunity at the Committee of the whole House stage to seek and bring amendments, even from all those other stakeholders, then we have an Act of Parliament by this

House and not by the Committee. So, I think we are trying to prematurely kill a baby even before it has left the labour ward. It has been brought to the House. Let us wait. We are anticipating debate. We are already debating because we have information that other Members do not have.

When you look at the Report, which I have been perusing through, there is a whole list of stakeholders who appeared before the Committee. Others sent their memoranda. The fact that somebody's memorandum has not been accepted in total does not mean they did not participate. It means they participated, but their views were not taken into account. That is different from saying: "I did not participate! I was not given adequate time." How much is adequate time? If we start doing this, as the Member for Ndaragwa has said, we will end up with a situation where we will fall victim to the agitation by the civil society out there and this House will never do anything without being challenged. You will be told there was not adequate public participation. How much is adequate? We are making ourselves victims of their own accusations out there and soon, this House will never be able to legislate. Or we will always be challenged on everything we legislate. Let us stand firm. Time has been given, people are told to come or send memoranda. If somebody's memorandum was sent outside time, and they still want to be considered... As an individual Member, you still have an opportunity to bring that issue on the Floor of the House during the Second Reading of this Bill, and to bring any amendments at the Committee of the whole House stage. But let us respect the work the Committee has done. Otherwise, we are going to kill committees. Committees do all the work and bring a report. But before you have even seen it, somebody says that report should be thrown out even before it has been debated. Let us be careful so that we do not set a precedent where we will make it possible for anyone dissatisfied with what is going on in a Committee to come here or to tell a Member to come and raise an issue to kill a report even before the House has had an opportunity to look at it, debate it and add their inputs to either enrich it or to refer it back to the Committee.

Thank you, Hon. Speaker.

Hon. Speaker: The Chairman of the Committee.

Hon. David Pkosing (Pokot South, JP): Thank you, Hon. Speaker, for giving me this chance. I am fairly senior in this House, this being my second term. I have never seen something like this. Although people have independence and freedoms to say what they want at any time, I have not seen this before.

That is because we are not discussing the pros and cons of the Bill, I am certain that what you are trying to listen to from us is whether the process was followed, so that when the Bill comes up for Second Reading, we can discuss it. The process, as you guided and as guided by the Standing Orders and the laws, was 100 per cent followed. I want to attest to that as the Chair of the Committee. And this is not the first Bill that my Committee has processed. We did the same thing we have done in the past. After the Bill was committed to my Committee, we advertised for public participation. That was done by the Office of the Clerk. People submitted memoranda.

Something similar to what is happening in the House came up in my Committee when we were trying to consider the Bill. Members, including the Member for Wajir West, who is a member of the Committee, had their own suggestions. They felt that we should give the Bill more time. And we did. We gave more than two weeks for Members to read the Bill again. If somebody is interested or influenced, and they are free to be, let them not bring politics into this Bill. I beg the House. And I beg you, Hon. Speaker.

Second, why are we talking about the Law Society of Kenya (LSK)? If Members have looked at the Report that I have tabled, they would see that all those who submitted memoranda are listed, including the attachments in form of an appendix. The LSK, which is now a party in this

debate, submitted its memorandum way past time. But being human beings, we said let us give everybody an opportunity. In fact, every person who submitted a memorandum for public participation was invited to this House. Everybody was to come. On that day, the LSK sent an apology to say: "Please give us another time. We are doing our business in Mombasa." Parliament and my Committee cannot transact business by being dictated to or drawn programme by another person. The House must proceed on its own calendar. And you gave us an instruction to submit a report after the recess.

Hon. Speaker, we gave them an opportunity. Apart from number one submitting out of time, we even had to bend backward to accommodate them and invite them to appear before the Committee. They never attended. It is on record and in the *Hansard*. So, what are we supposed to do? We were supposed to do what we were supposed to do. Everybody else did what they were supposed to do. I am pleading that you allow this process to proceed. Hon. Speaker, you can rule looking at the precedent. However, allow me as a human being to say this. I have heard some of these things. This Bill is a product of the House. You know what happened.

Hon. Speaker, PIP came and it was controversial. Moreover, it pitted me against the Committee on Transport, Public Works and Housing and Public Investments Committee (PIC). Hon. Speaker you know that.

In addition, Hon. Speaker, you guided that my Committee looks at the issues and we went through the issues. It took us about eight months or one year. We brought the Report here. This Bill is a replica of that Report that was approved by the House. If there is any Bill that has gone through proper public participation, Hon. Speaker, it is this one. I dare and bet on it. Why? This is because it started as an inquiry. Eight months, we invited everybody in this country, including workers. They came before my Committee, gave their views, we listened to them and thought that the best way is to nationalize.

We brought the entire Report with proposals and Hon. Speaker, if you look at this Bill, it has not deviated from the Report that was approved by the House. Hon. Speaker, maybe, some Members were not there or were not listening or they have been influenced. They are free. However, Hon. Speaker, it is a product of the House. Therefore, it was not rushed because it took eight... Before the Bill was even prepared by the Government, it took eight months out there in the public. There was the inquiry, report writing, round table and so on. All that was done and it included the Competition Authority of Kenya. Of course, you know where the Competition Authority of Kenya (CAK) goes when they have issues. They go to the National Treasury. Moreover, the Cabinet Secretary to the National Treasury and his team appeared before my Committee and presented their views at that time of inquiry. In addition, when the House approved, what did it approve? It approved that Kenya Airways (KQ) must be nationalized. It is this House, Hon. Speaker. Furthermore, Hon. Kajwang' is sitting in this House and he participated in that approval that KQ should be nationalized. After nationalization, Hon. Speaker - and I am surprised by Hon. Ichung'wah! Even if he was removed from the Budget and Appropriations Committee and is now playing politics, he should play his politics in Kikuyu, not in Parliament. He participated in approving it. He approved it when I was here.

So, what happened? What we said, Hon. Speaker, it should be nationalized. That is number one. Number two, we create an agency that will hold... It is not a merger Hon. Speaker. I want to correct Hon. Ichung'wah. He should read the Report. If you look at that Report, there is no merger. KQ has shares. There are different entities, Hon. Speaker. They are only influenced by their own political persuasion. If it is politics, then we will meet in politics. The position, Hon. Speaker, is that let us allow Kenyans an opportunity for them to read the Bill and our Report. We did one of

the best reports in this country. My Committee did, Hon. Speaker. You know we are committed. When you direct us, we do a proper job. We did. Procedure was followed.

Let me also share with the House and with you Hon. Speaker what I heard yesterday. These issues were simmering around and some members of my Committee came to my office. Some of them were threatened not to sign. Some of them were threatened not to sign this Report. About four Members have not signed this Report and if you look at those four members, you can almost demographically know.

I want to say this Hon. Speaker: This is dangerous for the country. I asked one of the Members: "Why would you not sign the report?" He told me: "I was told even this Report will not see the light of the day. It is going to be returned back". So, Hon. Chair, I am not going to sign because *inarudishwa* anyway."

Therefore, Hon. Speaker, I am shocked this afternoon when I see the direction which Members are taking. Hon. Speaker, you know what I do? If you return the Report to my Committee, I will do a diligent job. I am ready. I am a performer. Being a cattle keeper, I keep the cows properly. I will follow even the smallest feet. I will proceed and prosecute the matter. I have no problem with you returning the Report. However, I only fear should we go this direction, then we are not going to do any other report in future. Why? This is because somebody will stand and say: "There was no public participation! I was not informed." And then you return the report. So, when you return the report, what will happen? Will it now mean that I take all the views from the person who refused himself to come or what happens? You know I will also be confused. I say what happens. This Report is a report and not a Bill. Members, even if they might have done whatever they did, it is because they represent people.

Hon. Speaker, they can produce those items in the Second Reading when we are debating this Report. After that, we can go to the Committee of the Whole House where they can submit other reports. Whatever the Hon. Member of my Committee is trying to induce that this Report was not there... It came in the last eight months when we were doing the inquiry. That Report came and it is on record. It is Parliament.

So, as I conclude, I plead with you Hon. Speaker that you allow the process to proceed. That is because there is a danger if we allow the Law Society of Kenya *peke yake*. Only LSK out of about 30 people, then there is a problem. Moreover, I have also seen in reports when we are doing amendments.

(Hon. Jimmy Angwenyi consulted loudly)

Hon. Speaker: Now, the Deputy Majority Leader, you are creating disorder in the House. You are out of order.

(Laughter)

Hon. David Pkosing (Pokot South, JP): I thank you Hon. Speaker for protecting me from the Deputy Majority Leader of the House. However, Hon. Speaker, as I say, protect your Committee. Protect us Hon. Speaker. Protect the process of Parliament. Protect the House. If anybody feels like they have not been considered, let them come in the Second Reading while we are debating and then we can also have an amendment. It is not the end of the day. The only danger is, Hon. Speaker, what should I do? In addition, what about another report? Everybody will come. Therefore, I want to plead with you, Hon. Speaker, but I want to say this on the Floor of the House:

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If somebody is interested, he or she can declare interest as the Leader of Majority Party has said. Moreover, if they do not declare interest, we will bring evidence. I will bring evidence and it is not about the Bill. These people are addressing different constituencies and I had to plead with them Hon. Speaker. If they want to address those constituencies, please allow the Bill.

(Loud consultations)

Hon. Speaker: You know you cannot speak endlessly.

Hon. David Pkosing (Pokot South, JP): Okay, Hon. Speaker. I thank you.

(Laughter)

Hon. Speaker: Now, Hon. Members, I know many of you would have wished that I retreat to go and do a ruling. However, I have had occasion to weigh the various issues that you have raised. One is to observe that the issue that is in contestation is that of compliance with Article 118 on Public Participation. If that is - and it appears to be the main grounds because the others would be issues that can be raised at other stages... Many of the other issues that have been addressed can be raised at other stages of the Bill. However, Hon. Members, I find myself in some very awkward position in that whenever a Bill that is passed through here becomes an Act of Parliament and somebody goes out to court to challenge it, the first respondent usually is the Speaker. Moreover, you know very well the Speaker does not even have a vote nor the chair of any committee.

In addition, we have many Acts of Parliament that have been challenged on the grounds of public participation. The most glaring one - and I am happy that again it concerns the Hon. Pkosing, the Chair of Committee on Transport, Public Works and Housing - is the one the Member for Mvita alluded to. Maybe, Chairman, you are not aware that the Merchant Shipping Act which you passed here was successfully challenged in a judgment by a three judge bench and actually today, the matter is pending in the Court of Appeal. However, I am still a respondent again, Hon. Kajwang'. The issue is that there was not sufficient public participation. I remember at that time some Members had tried to raise that issue.

Therefore, as the Member for Garissa Township has said, if public participation is raised now at this stage, you are preparing the grounds for challenge. So, even if you go to the Second Reading with the evidence already on *Hansard*, what is it that we seek to do in enhancing laws? It is not personal to Hon. Pkosing or to Hon. Kajwang'.

(Inaudible)

I do not address those ones. If there are some members of the committee, even if they are two raising that issue of insufficient public participation, if there is no hurry, the lessons learnt is that we should listen to those kind of concerns.

(Applause)

Whether or not our Standing Orders provide for those kind of situations, remember we have the fall-back position, Standing Order No.1. Indeed, in order to allay any fears anybody may have, it may be desirable that when such public participation happens on a matter such as this since we are

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not having sittings on Wednesdays; we can even make available this Chamber and the *Hansard* to the Committee.

Quite strangely about this Bill, I have also received several representations most of which I have always marked to the Committee, including those late submissions. I have forwarded them to the Committee because I do not receive submissions from stakeholders. However, to give everybody comfort and that satisfaction, I see no harm in the Committee sitting and hearing as many stakeholders as they may be.

(Applause)

If anything, it can only enrich the Bill. It cannot take it away. Do an addendum as another report to this. Therefore, with a lot of caution, I will direct that the Clerk will sit with the Chair of the Committee, agree on when another advertisement is going to be placed in two local dailies of national circulation, inviting Kenyans and anybody who has any views. They must be people with views, not supporters of people who may have views. To meet and agree on the dates that it will be advertised and the Committee sets aside three days to take views.

It may not change whatever may be in the Report. Nothing prevents the Committee from saying: "Having listened to 1,001 stakeholders, we find nothing useful to add to the previous report." That will still be a report. You will be saying you stand by your original report. This way, nobody will arise to accuse the Committee that they were not given adequate time to be heard. As the Chairman pointed out correctly, the Committee also has other pressing business that they are considering, including Members' Questions, Statements, Petitions and others. So, I will direct that we will stay placing this business before the House pending any further hearings and any other reports in addition to this, so that everybody feels satisfied. This is because the route that we may be going is similar to that, that we went on the Merchant Shipping Act. Fortunately for me, I get those judgements and I read. Here in the House, I have heard many of you asking how much time is adequate time. The people in the Judiciary have a way of determining that if you sat for six days, that was not adequate like in that instance.

The Committee sat for six days, but the court still said that was not adequate. So, even as we criticize, we must also be alive to some of those decisions. We are going to be alive to what the Court of Appeal is going to say. If it agrees with the High Court, that should make you understand even as the Hon. Wamalwa is pursuing his Public Participation Bill, you should take into account what the courts are saying. They will make pronouncements, but they will not make the law. It is you to make the law. That is your mandate under Article 94.

So, they can disagree with you, but they will not tell you how it should look like. It is up to you to go and imagine that it should look like this. Maybe, it should be seven or ten days. We do not know whether the Court of Appeal is going to agree with the High Court but, to the extent that up to now an Act which we can remember very well has been annulled on the basis that there was not sufficient public participation... Because you remember it touched on similar matters.

So, it is only fair for us to avoid a situation in which we could be said to be acting in vain, especially having raised the issue of insufficient time to participate or lack of enough time, lack of space and such like things.

But, for this one, the Clerk is directed to sit with the Chairman and agree on the days the advert is going to appear and agree on the three days that the Committee is going to sit and listen to everybody. This may include the Members of this House who may even have instructions from their constituents to also come and represent them before the Committee. That is the direction.

(Applause)

Next Order!

NOTICE OF MOTION

APPROVAL OF NOMINEES TO THE NG-CDF BOARD

Hon. Speaker: Let us have Hon. Wamunyinyi

Hon. Wafula Wamunyinyi (Kanduyi, FORD-K): Thank you Hon. Speaker, I beg to give notice of the following Motion.

THAT, pursuant to the provisions of Section 43 (4) of the National Government Constituencies Development Fund (NG-CDF) Act 2015 and paragraph 5(2) and 10 of the NG-CDF Regulations, 2016, this House approves the list of nominees for appointment to the following 11 Constituency Committees of the NG-CDF, laid on the Table of the House on Wednesday, 12th August 2020 and Thursday, 10th September 2020 respectively:

- (i) Lurambi Constituency;
- (ii) Tigania West Constituency;
- (iii) Baringo South Constituency;
- (iv) Cherangany Constituency;
- (v) Kacheliba Constituency;
- (vi) Mumias West Constituency;
- (vii) Mvita Constituency;
- (viii) Ol Kalou Constituency;
- (ix) Wajir North Constituency;
- (x) Ndaragwa Constituency; and
- (xi) Sabatia Constituency.

Thank you, Hon. Speaker.

Hon. Speaker: Very well. Next Order!

QUESTIONS AND STATEMENTS

ORDINARY QUESTIONS

Hon. Speaker: The first segment of that Order is Questions. The first Question is by the Member for Baringo Central, Hon. Joshua Kandie.

Question No.140/2020

STALLED CONSTRUCTION OF KABARNET MEDICAL TRAINING COLLEGE

Hon. Joshua Kandie (Baringo Central, M CCP): Thank you, Hon. Speaker. I stand to ask Question No.140/2020. The Question is directed to the Cabinet Secretary for Transport, Infrastructure, Housing, Urban Development and Public Works.

- (i) Could the Cabinet Secretary explain why the construction of Kabarnet Medical Training College (KMTC) in Baringo Central Constituency, which was under

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construction by the Ministry, and which was 70 per cent complete, has stalled for over 10 years?

- (ii) Why is the college yet to be equipped with amenities such as hostels, kitchens and lecture halls despite the fact that the college is already admitting students?
- (iii) What measures are in place to ensure that the remaining 30 per cent of the unfinished works are completed?

Thank you, Hon. Speaker.

Hon. Speaker: The Question will be responded to before the Departmental Committee on Transport, Public Works and Housing. Next Question is by the Member for Laikipia County who has requested deferment. The request has been acceded to. Similarly, the Member for Soy Hon. Caleb Kositany request to defer was also granted. The request by the Member for Malindi Hon. Aisha Jumwa for the Question to be deferred has been acceded to. Next Question is by the Member for Moiben Hon. Tiren.

Question No.178/2020

STALLED TARMACKING OF KICHINJO-MATANYA-THOME ROAD

(Question deferred)

Question No.185/2020

STATUS OF IMPLEMENTATION OF HUDUMA NAMBA PROGRAMME

(Question deferred)

Question No.186/2020

STATUS OF GALANA KULALU IRRIGATION PROJECT

(Question deferred)

Question No.187/2020

STALLED CONSTRUCTION OF KITALE – ENDEBESS - SUAM ROAD

Hon. Silas Tiren (Moiben, JP): Thank you, Hon. Speaker. I had gone to Kenya Seed Company because farmers are asking how they will send their seeds. My Question is directed to the Cabinet Secretary for Transport, Infrastructure, Housing, Urban Development and Public Works:

- (i) Could the Cabinet Secretary explain why the construction of Kitale–Endebess-Suam Road (C45) in Endebess Constituency has stalled despite having been funded?
- (ii) What measures has the Ministry put in place to ensure that the construction of the said road resumes as soon as possible and that it is completed on time?

- (iii) Could the Cabinet Secretary give an undertaking to ensure that the road diversion created by the contractor, and which is currently impassable, is made motorable?

Thank you, Hon. Speaker.

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

Last Question is by the Member for Laisamis Hon. Arbelle Marselino. You appear to not have a card. When you come to the Chamber without a card and you have a Question to ask just disappear to the streets. You have no business coming here to ask a Question without a card. This means you do not take the House seriously. Do you have a card?

Hon. Marselino Arbelle (Laisamis, JP): *(Spoke off record)*

Hon. Speaker: You do not. Where are you going now?

Hon. Marselino Arbelle (Laisamis, JP): *(Spoke off record)*.

Hon. Speaker: Who told you? If you come here without your card... Members take it from me, if you do not have a card you have no opportunity to speak. Just go home.

Hon. Marselino Arbelle (Laisamis, JP): *(Spoke off record)*

Hon. Speaker: So that next week you remember to carry your card from Laisamis. Yes, you will ask the Question next week. Today, without a card no speaking. So, you can just sit and enjoy listening to your colleagues. Even your constituents know today *umekuja kujivinjali na kujienjoy*.

(Laughter)

Next segment is Statements.

STATEMENTS

INCIDENTS OF ABDUCTION OF CITIZENS IN GARISSA COUNTY

Hon. Speaker: There is a request from Hon. Aden Duale, right.

Hon. Aden Duale (Garissa Township, JP): Hon. Speaker, pursuant to Standing Order 44(2) (c), I wish to request for a Statement from the Chairperson of the Departmental Committee on Administration and National Security on the increased incidents of abduction of members of the public.

Hon. Speaker, as a nation we have recently been disheartened and greatly concerned by reports of abduction and missing members of the public. The most recent case is the abduction of the two residents of Garissa Township Constituency namely; Mr. Siyow Abdi Maow of ID No.0028495 which occurred on 19th August 2020 and that of Mr. Irshed Aden Abdullahi of ID No.244289778 who was abducted on 28th August 2020.

Hon. Speaker, it is alleged that the two persons were abducted by security officers using a Toyota Succeed motor vehicle bearing registration number KAT 002Q. Consequently, a report was filed at Garissa Police Station on 28th August 2020. However, no arrest has been made so far and despite a search by the families of the victims and residents of Garissa Town where the two hail, the whereabouts of the victims cannot be established up to today.

Hon. Speaker, Article 49 of the Constitution espouses the rights of arrested persons which every human being is entitled to regardless of what offences the arrested persons may be accused of having committed. This includes the right to be brought before a court as soon as possible but

not later than 24 hours after being arrested. This has not happened for the two persons I have named. We ask the security agencies to ensure the whereabouts of the two people are ascertained.

Hon. Speaker, it is on account of these alarming increased incidents that I seek a Statement from the Chairperson of the Departmental Committee on Administration and National Security on the following:

- (i) Could the Cabinet Secretary state the whereabouts of Mr. Siyow Abdi Maow of ID No.0028495 and that of Mr. Irshed Aden Abdullahi of ID No.244289778?
- (ii) What steps is the Government taking to establish the whereabouts of the two individuals and bring to book the culprits involved?
- (iii) What specific steps is the Government taking to deal with security personnel who are alleged to be involved in the incidents of disappearance and extrajudicial murder of innocent citizens mainly at the Coast and North Province?

Thank you, Hon. Speaker.

Hon. Speaker: I do not see the Chairperson of the Departmental Committee on Administration and National Security, so the request will be channeled through the Office of the Leader of the Majority Party.

BUSINESS FOR CONSIDERATION ON 15TH AND 17TH SEPTEMBER 2020

Hon. Amos Kimunya (Kipipiri, JP): Hon. Speaker, the events of this afternoon have taken us by surprise.

Hon. Speaker, pursuant to provisions of Standing Order No.... (*Technical hitch*). Let me repeat that because of the power surge.

Pursuant to the provisions of Standing Order No. 44 (2) (a), I rise to give Statement on behalf of the House Business Committee which met on Wednesday, 9th September 2020 to project business for consideration.

On Tuesday, 15th September 2020, the House Business Committee has prioritised the Motion on approval of nominees to various National Government Constituencies Development Fund Constituency Committees and the Refugees Bill 2019 which will also be considered in the Committee of the whole House.

We shall also continue with the Second Reading of the following Bills, should they not be concluded today: The Public Finance Management (Amendment) Bill (Senate Bill No. 3 of 2019); the County Wards (Equitable Development) Bill (Senate Bill No. 34 of 2018); the County Statutory Instruments Bill (Senate Bill No. 21 of 2019) and the Statutory Instruments Bill (Senate Bill No 24 of 2018).

During the Morning Sitting of Thursday 17th September, 2020 the House is scheduled to consider the following Private Members' Bills in the Committee of the whole House: The Employment (Amendment) Bill by Hon. Martha Wangari MP; the Industrial Training (Amendment) Bill 2019 by Hon. Jude Njomo MP; the National Youth Council (Amendment) Bill 2019 by Hon. Gideon Keter MP and the Public Service (Values and Principles) (Amendment) Bill by Hon. Andrew Mwadime MP.

The House Business Committee also prioritised the following Reports for debate: The Report of the Special Funds Accounts Committee on the Audited Financial Statements for the National Government Constituencies Development Fund for the Constituencies in Kiambu County and the Report of the Public Investments Committee (PIC) on the Special Audit Report on

Procurement of Pre-Export Verification of Conformity to Standard Services for Used Motor Vehicles, Mobile Equipment and Used Spare Parts by Kenya Bureau of Standards.

In accordance with the provisions of Standing Order No. 42A(5) and (6), I wish also to convey that the following Cabinet Secretaries are scheduled to appear before the departmental committees as follows:

- i. The Cabinet Secretary for Foreign Affairs will appear before the Departmental Committee on Defence and Foreign Relations on Wednesday, 16th September 2020 to answer a Question from Hon. Samuel Atandi.
- ii. The Cabinet Secretary for Education will appear before the Departmental Committee on Education and Research on Wednesday 16th September 2020 to answer the following Questions:
 - a. Question No. 101/2020 from Oku Kaunya, MP;
 - b. Question No. 83/2020 from Hon. Gideon Keter, MP;
 - c. Question No. 113/2020 from Hon. Kamoti Mwamkale, MP;
 - d. Question No. 123/2020 from Hon. Omboko Milemba, MP; and
 - e. Question No. 165/2020 from Hon. Daniel Tuitoek MP.

Hon. Speaker, the House Business Committee will reconvene on Wednesday, 16th September 2020, to consider business for the following week.

Hon. Speaker, I now wish to lay this Statement on the Table of the House.

Hon. Speaker: Before we go to the next Order, there is a special request from the Member for Kaiti, Hon. Kimilu.

Hon. Joshua Kivinda (Kaiti, WDM-K): Thank you, Hon. Speaker for giving me this opportunity. I want to bring to your attention and the attention of the Members of this House that we lost a former Member for Kaiti, Gervaise Maingi, who served this country from 1988 to 2000. He was the Member for Kaiti Constituency, which was Kilome Constituency then. I was of the request...

Hon. Speaker: Did you say up to the year 2000?

Hon. Joshua Kivinda (Kaiti, WDM-K): Hon. Speaker, he served from 1988 to 1992. I want to condole with the family and the people of Kaiti who are mourning. It is my request through your directive that we have a moment of silence to condole with the people of Kaiti and the family at large because he was a leader who served his constituents for five years. He contributed to the development of Kaiti Constituency until he lost the seat.

I remember then, he served the people of Kaiti and they also remember his development agenda that were taken over by former Members. I am currently walking in the footsteps of the late Hon. Gervaise Maingi. My colleagues, Hon. Maanzo and Hon. Nzambia, the Member Kilome Constituency are my neighbours.

Hon. Speaker, I beg to give my condolences to the family and my constituents.

Thank you.

Hon. Speaker: Hon. Maanzo,

Hon. Daniel Maanzo (Makueni, WDM-K): Thank you, Hon. Speaker for giving me the opportunity to condole with the people of Kaiti Constituency, Makueni County and generally the people of Kenya. The late Hon. Maingi left Parliament and was not elected again. The constituency included some parts of what is now Machakos Town Constituency. It was quite a challenge to represent those days due to the large masses. When Hon. Maingi left politics, he continued to be a community leader and was very good in advising young leaders like ourselves, when the constituencies were later on split. He also participated in a lot of activities of development in the

area. The most important thing is that he also went into business when politics could not work anymore. He has been a business leader in that region.

I beg to condole with the family of the late Maingi and the people of Kaiti Constituency, Kilome Constituency, Makueni County and the rest of the country.

I thank you, Hon. Speaker for the opportunity.

Hon. Speaker: Member for Kilome.

Hon. Thuddeus Nzamba (Kilome, WDM-K): Thank you, Hon. Speaker. I rise to condole with the family of the late Hon. Member of this House, Gervaise Maingi. I am sure right now, there is no Member of Parliament who was in this House then during this period of 1988 to 1992. Maingi used to serve the current Kilome and Kaiti constituencies. If it were today, he would be serving two constituencies. He will be remembered for his legacy in education. I remember he used to educate secondary school and college students. I humbly request the Members of this House and Kenya at large to condole and bereave with his family. Hon. Maingi was dedicated to people of the two constituencies, that is, Kaiti and Kilome. Let me take the opportunity to ask Members to stand with his family during this trying time. We pray for them before he is laid to rest. May God bless you.

Thank you, Hon. Speaker.

Hon. Speaker: Very well. I thought the Members wanted to pour messages of condolences. I see the Member for Lungalunga desirous of ... Let us go to Hon. Kajwang'.

Hon. T.J. Kajwang' (Ruaraka, ODM): Hon. Speaker, according to the customs and traditions of the House, would it be proper to rise for a minute of silence in respect of the departed former Member of Parliament, if it is in your discretion to do so?

Hon. Speaker: I do not know, it is only that I did not have a written...How were the Members aware? Is anybody moving that, that happened?

Hon. T. J. Kajwang' (Ruaraka, ODM): Hon. Speaker, having listened to condolences raised in this House, I am moved because this is a man who has given his service to the nation, and the only reward of the public service is if people are able to acknowledge that you benefitted the society and you made it a little better than you found it. Therefore, with a lot of respect to the Members I move, if it may please you, that Members could rise for a minute, in silence, in respect of the public service given by the departed Member of Parliament.

I so move.

Hon. Speaker: Hon. Members, the Motion has been proposed that the House rises to observe a moment of silence in honour of the late Hon. Gervaise Maingi, former MP for Kilome.

(Members stood and observed a minute of silence)

May his soul rest in eternal peace.

Next Order.

MOTION

AUDITED FINANCIAL STATEMENTS FOR STATE CORPORATIONS

THAT, this House adopts the Twenty Third Report of the Public Investments Committee on its consideration of the Auditor-General's Reports on Financial Statements of State Corporations, laid on the Table of the House on Thursday, 2nd July 2020.

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(Hon. Abdullswamad Nassir on 5.8.2020)

(Resumption of Debate interrupted on 8.9.2020)

Hon. Speaker: Hon. Members, there was no Member on the Floor at the time the House rose and, therefore, anybody can contribute but he or she must be a Member who has not contributed to this. The first person on the screen is Hon. John Paul Mwirigi, Member for Igembe South.

Hon. John Paul Mwirigi (Igembe South, Independent): Thank you, Hon. Speaker. I was to contribute to the next Motion.

Hon. Speaker: Okay. The next one is Hon. Rashid Kassim, Member for Wajir East.

Hon. Rashid Kassim (Wajir East, WDM – K): Thank you, Hon. Speaker, for giving me an opportunity again, as a member of this Committee, to add my voice with regard to this 23rd Report of Public Investments Committee (PIC).

Hon. Speaker, with regard to this Report, we have been able to capture about 48 State corporations and some of the queries and observations we have had are quite valid. One of the critical things we have realised is that these corporations have a massive engagement in terms of allocation of funding from the Exchequer. It is prudent for the oversight authority to read the Auditor-General's Report in order to see whether those finances have been prudently utilised over the period of expenditure, and to look at the Standing Orders of 2006, which mandated the PIC to look at the audited books of those State corporations.

We have made a number of observations. One of the critical observations is on ownership of properties, land and equipment. We realised that there are quite a number of pieces of land which belong to a number of State corporations that still do not have title deeds. A title deed is a key indicator of resources which are being held by those State corporations. Some of those State corporations are critical in terms of disposition of their mandate. The Kenya National Highways Authority (KeNHA) is one on those. The Kenya Airports Authority (KAA), which is currently under discussion, and as you have heard some of the pieces of land are not in their books indicating that they own them. The same applies to the National Housing Corporation (NHC), Kenya Pipeline Corporation (KPC) and Kenya Wildlife Service (KWS). Those are some of the critical observations, but this is not unique to only those. We have realised that quite a number of State corporations have land issues, which have not been properly documented and titles have not been received.

Another critical observation that we have observed is that, the KWS has 222 parcels of land, but it is only 45 parcels which have been registered. The Kenya Co-operative Creameries (KCC) has five acres of land which have been encroached on, out of the 32.9 acres which are in their custody. So, this idea of not having title deeds to land which has been given to them is a recipe for the public encroaching on them and annexing them for their personal use. So, these are critical observations that we have looked at.

One of the other issues that we have realised is that the procurement process and control of finances are not properly done. It does not comply with the Public Procurement Act of 2015. We have observed that construction of Miritini Road was awarded to Ms. Telewa Construction Company at an amount of Kshs.341 million. When this project was midway, it could not continue. The project was terminated, yet the company had been paid Ksh144.1 million — that is a colossal amount of money. Later, the project was awarded to SS Mehta to a tune of Ksh292 million, which

brings the total expenditure to nearly Ksh436 million, which is over 28 per cent. That clearly indicates that some of the State corporations are going above the stipulated 25 per cent. It is our recommendation that we look into those things.

Another matter which we have considered is that of Mitihani House, which was given a contract in 1989 — imagine a project that was awarded in 1989 and up-to-date it has not been completed! That gives an expenditure of Ksh1.8 billion and the initial award was Ksh248 million. It has gone up over the years to a tune of Ksh1.8 billion and it is because of these irregularities that we have been able to observe. There are a lot of other issues which...

Hon. Speaker: Well, before I give the next Member, let me indicate the Members who have contributed to this Motion, so that we do not mix. The Chairperson, Hon. Abdullswamad Nassir; seconded by the Vice Chair, Hon. Ibrahim Ahmed; Hon. Ndindi Nyoro has spoken; Hon. T.J Kajwang'; Hon. Godfrey Osotsi; Hon. Gichimu Githinji; Hon. Kulow Maalim; Hon. Daniel Rono; Hon. William Chepkut; Hon. (Dr.) James Nyikal; Hon. John Nyaga and Hon. Emmanuel Wangwe. So, any other Member is at liberty to contribute. A very interesting coincidence, the Member for Wajir East on this side, the next one on the screen is the Member for Eldas.

Hon. Adan Keynan (Eldas, JP): Thank you, Hon. Speaker.

Hon. Speaker, I know you are a former Chair of this important Committee and I am also a former Chair. What is interesting is that the same historical issues are coming up — and I am glad that first of all we looked at the Standing Orders in the last Parliament and helped this Committee to avoid mid-term reconstitution. They should be very grateful to us because those are some of the reforms that we introduced.

Having said that, this Committee has a very important mandate. One of its important mandates is to examine, in the context of autonomy and efficiency of public investments, whether their public affairs are being managed in accordance with sound financial management and principles. Over the years, the issues that we used to raise are the same ones that are being raised.

But one critical thing that the Committee ought to consider is, under the current constitutional framework, which slightly has improved the mandate and the efficacy of committee work, I thought that we would think out of the box and ensure that these State corporations - which are very important investments - function in line with prudent public financial management, public finance management regulations, public procurement and asset disposal regulations, the Public Procurement and Asset Disposal Act, international public sector accounting standards and international financial reporting standards. Why do I say that?

If you look at the same observations, the issue of ownership has been there since time immemorial. What have the parent ministries and parastatals done in order to improve the land ownership challenges that they have faced? If anything, there is nothing they have done. This, therefore, means that these organisations are being used as a milking cow in order to grab public land. It is high time that the ministries where these parastatals fall critically looked at the issue of ownership of land. This is because this is a very important investment. We cannot have the same audit queries and concerns year in, year out. Therefore, I plead with the membership of this Committee to critically dissect this issue and ensure that all State corporations with land issues get title deeds as a matter of urgency.

The other issue that has always been there is procurement and execution of contract. This issue has been like this throughout. We have progressive procurement laws. It is high time that these key Government investments are obligated by law to strictly follow the procurement regulations. Without this, public investment and trust in those particular organisations will be wasted. This has been the theory. Therefore, it is high time that the Committees invoke both the

letter and the spirit of the current Constitution to ensure that those parastatals do business differently. They have become a public money guzzler. Every year, we appropriate funds to those institutions. Instead of making returns to the Exchequer, they only bring back deficits. It is high time that we limit those organisations in line with the *Mwongozo* Regulations. That policy was very important, good and progressive but as usual, we fear implementing progressive laws. Where are the *Mwongozo* Regulations? Why are they not being implemented? It took very broad-minded committees to come up with them. They have been shelved. It is high time that through you and this House, the *Mwongozo* Regulations are implemented so that we have productive and efficient public investment entities.

The other bit which has always been an issue is pending cases in court. That issue has been abused. You realise that the process of internally-arranged legal representation or outsourced lawyers has become an avenue for corruption. It is high time that no case involving a particular State corporation takes more than a year or two years. There are cases that have been going on for the last 10 or 15 years. You ask the organisation to declare how much they spent on that particular case and you realise it is even more than what the organisation requires for operations. You ask yourself who benefits from that particular case. It reminds me of what a friend of mine once told me. He once sent his son to study law in America. When the son was leaving Kenya, there was an open case file. When he came back 10 years down the line, he realised the same file was still open. He asked the father why he had not concluded the case. The father told the son that he was foolish because without that file, he would not have gone to America. Do we not see the same thing in the many case files that are still open?

The other bit that is of great concern to those organisations is the appointment of accounting officers. An officer serves in an acting capacity for five years. For instance, the Director-General of the Kenya Urban Roads Authority (KURA) was confirmed the other day. He had been serving in an acting capacity for five good years. That denies that officer fair judgement and the right to think and be independent. Therefore, it is high time that the appointing authorities realise that appointment to some of those key positions must be expedited so that those people can act independently. The moment you are serving in an acting capacity, you are not sure if the next moment you will be in office or somebody else will be brought in, in an acting capacity. Therefore, you must ensure that anything you do is in conformity what is expected of you. This is one thing that we can put our foot down on because we currently have so many regulations.

I know I am running out of time so maybe you will give me two more minutes. This is one area that we really need to address because it has always been the case.

The other bit is the issue of the financial performance stability of the State corporations. Do we need to have State corporations that do not add value to the public interest?

Hon. Speaker, can I get an additional minute?

Hon. Speaker: You are the ones who passed these timelines. I will give you one minute.

Hon. Adan Keynan (Eldas, JP): Hon. Speaker, the other bit is the delay of implementation (*inaudible*). We need to complain.

The other one is the issue of unqualified accounts. I know there are some corporations that have done very well. In general, the essence of why the framers of the current Constitution or our forefathers came up with this special group called State corporations is to add value to the public. Therefore, it is my appeal to the Members of the Committee to ensure that the existence of these State corporations adds value to the well-being of Kenyans.

Hon. Speaker: You have raised very important points, particularly, the second last one. The Chairman of the Committee is here. I can see a few more Members. There should be no

situation where a CEO of a State corporation can serve in an acting capacity in excess of six months. If there is any corporation that has had a CEO in an acting capacity for more than six months, they better call the appointing authorities to appear before them and explain why that should be so. There is no reason. As Hon. Keynan has rightly pointed out, he chaired that Committee for the last five years. That is the part of the problem. You may have so many things happening and you cannot quite explain them. People are kept in acting positions for so long. If someone has been acting for three years and they are appointed to serve for three years, they would have served for six years. During the first three years, they did not know whether they were animals or birds. They were just somewhere there. Please, Chairman, take up that challenge by Hon. Keynan. It is a valid one.

Let us have the Member for Funyula.

Hon. (Dr.) Wilberforce Oundo (Funyula, ODM): Hon. Speaker, thank you for this opportunity to contribute to this Report. I wholly support the Report and thank the Chair of the Committee together with the Members and the secretariat for the splendid job. It is never easy to have such a detailed report in view of the challenges that we have. I hope the Almighty God will grant him his wishes in future endeavours.

I just want to point out a few issues. Let me start with the issue of land ownership and documentation. It is inconceivable that in this time and era, a State corporation can allegedly have a parcel of land or property where they have no valid title. The Land Registration Act is explicitly clear on what constitutes a *prima facie* evidence of ownership of a property, namely, a land title, a deed title or certificate of lease. Failure by the State corporation to get that particular documentation would be termed as dereliction of duty. Therefore, when their performance is being evaluated, they should be given zero. They should also not be allowed to renew their contracts.

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

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

I want to train my attention on a very fundamental issue. Many of us have questioned this matter continuously and incessantly. A State corporation - or a parastatal as we know it today - was designed to be a self-sustaining organisation. It was designed to contribute to the economy of this country and to the Exchequer. I see a footnote in the Report and I want to read it verbatim;

“Further, it was observed that State corporations over-relied on Government grants for continued operations rather than enhancing internally-generated funds, raising doubts on their capability as going concern in the absence of support from the National Treasury.”

Honestly, it is unfair to the people of Kenya for their taxes to be used to run what will more or less look like a private entity. I am aware that there has been a lot of effort in the Office of the President to try and reorganise those State corporations. I urge the Executive to hasten the process to reorganise and review those State corporations so that we only retain those ones that are sustainable and that contribute something useful to the Exchequer. It is a business failure as a manager to operate on a deficit year in, year out yet you have all that it requires for you to deliver on what you have.

Therefore, like in the private sector, if you do not make profit as a Chief Executive Officer (CEO), you know the best way is the exit door. So, I want to urge the Government and those Cabinet Secretaries who oversee these State Departments to apply pressure on these parastatals, to

ensure that they become profitable and stop or cease depending on the National Treasury for survival.

Hon. Temporary Deputy Speaker, I sit in the Departmental Committee on Trade, Industry and Cooperatives. We made it very clear to the various agencies that we oversee, especially the parastatals, that we will not entertain further injection of public funds into their daily operation, unless it is a specific development project that has a higher multiplier effect on the economy of this country.

Finally, there is the issue of procurement. Indeed, the Public Procurement and Asset Disposal Act is very clear. Variation should never exceed 25 per cent of the initial contract sum. I do not understand how any State corporation can allow a project to exceed 25 per cent of the initial contract sum. We can only read that there is a very clear attempt to gain unlawfully from public funds through variations, in order to benefit personally.

Secondly, there is the issue of time overruns. A properly planned project should not have more than 10 per cent time overrun based on the work plan agreed upon at the tendering process or planning.

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

The Temporary Deputy Speaker (Hon. Christopher Omulele): Very well spoken, Hon. Oundo. It is good that you have said the things that you have said. In consideration of Hon. Speaker's earlier direction for re-consideration of public participation for the Kenya Airways issue, we hope that the Committee will also have an opportunity to look at the financial statements of Kenya Airways from the CEO for the past five years, so that the House will be properly informed when it will consider that Report along with your contributions.

We shall have contribution from Hon. Thuku Kwenya, Member for Kinangop.

Hon. Zachary Thuku (Kinangop, JP): Thank you, Hon. Temporary Deputy Speaker for giving me this opportunity to contribute to this Report that emanated from PIC.

At the outset, I want to thank our able Chair, Hon. Nassir. We are praying that by God's grace, he will win the gubernatorial position in Mombasa County when time comes, because of his competence. We have gone through several audit reports of various parastatals. As my colleagues have rightly stated, we found out that there are some issues that are outstanding in all of them. There are issues to do with land, procurement and bureaucracies in terms of implementation of decisions that are made.

I have singled out a few parastatals that I want to speak on, starting with KAA which elicits a lot of reactions and debate from Members because of the proposed takeover or merger of KAA and Kenya Airways. There are several issues that I want to bring to the fore, especially the issue of land.

(Hon. William Chepkut crossed the Floor without bowing)

The Temporary Deputy Speaker (Hon. Christopher Omulele): Just hold on, Hon. Kwenya. Hon. Chepkut, you are an observant of the House rules. Crossing the Floor in the manner that you have done to speak to Hon. Nassir is not the proper way. Do it correctly next time. Observe the rules of the House.

Proceed, Hon. Kwenya.

Hon. Zachary Thuku (Kinangop, JP): Thank you, Hon. Temporary Deputy Speaker. I was saying that the KAA has a lot of land issues. They have land but they do not have title deeds. It becomes so difficult when it comes to their financial reporting because they have to give the

actual value of land or properties that they own. Therefore, it came out clearly that it is so difficult to give a clear valuation report on the properties that are owned by KAA. As much as we do not want to pre-empt debate on the envisaged or proposed merger, it will be so difficult for a takeover to happen. We do not know the exact value of land that is owned by KAA.

We also found out that KAA has this habit of procuring so many projects and yet most of them are incomplete. The question that begs is whether they procure just for the heck of it and then have the same as incomplete projects after contractors have been paid part of their money. Therefore, the same ends up in a lot of arbitration.

We also looked at the audit reports of Kenya Pipeline Company (KPC). Something that touched us and brought us to so many questions is the issue of compensation of contractors, especially the ones who were constructing Line Five from Mombasa to Nairobi. Zakhem International Construction Limited was contracted to construct it. There came up a claim where the company was supposed to be paid some monies. What really struck us is the kind of money that was claimed, the recommendations thereof and the many consultations that were made. A decision was made that the contractor be paid his money. The same escalated to the court of law because the company could not pay the money. From the media today, I can tell you for sure that the same amount that was given to the contractor....

As I conclude, for purposes of record, the other company is KCC which buys milk from farmers. This is a parastatal that needs to be protected, so that unfair competition is not brought by private processors. The Government of Kenya needs to put money into KCC, so that it is seen as a regulator or stabiliser of the market to protect farmers from the losses that they have been incurring over time. Therefore, I wish that we adopt this Report because I support it. It will be a game changer in the way that parastatals do their job.

Thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Christopher Omulele): That is quite understandable from Hon. Kwenya who comes from Kinangop Constituency where milk producers have deep interest in KCC. Well spoken.

Hon. Buyu Akinyi, Member for Kisumu.

Hon. (Ms.) Rozaah Buyu (Kisumu CWR, ODM): Thank you, Hon. Temporary Deputy Speaker for giving me this opportunity to contribute. However, I opt to pass this chance to another Member, as I wait for the next Motion.

Thank you.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Very well. We shall then have Hon. Ibrahim Abdi Abdisalan, Member for Wajir North. He had already spoken to the Motion. Next on my list is Hon. Were Ong'ondo, Member for Kasipul.

Hon. Charles Ong'ondo (Kasipul, ODM): Thank you, Hon. Temporary Deputy Speaker. I want to request you to allow me to speak to Order No. 10.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Very well, Hon. Were. The next one on my list is Hon. Babu Ongili, Member for Embakasi East.

Hon. Babu Owino (Embakasi East, ODM): Thank you very much, Hon. Temporary Deputy Speaker. I rise to support the 23rd Report of the PIC on the Audited Financial Statements of State Corporations. The Committee is chaired by the indomitable, indefatigable, lion-hearted, fearless or courageous Member of Parliament for Mvita Constituency, Hon. Abdullswamad, who doubles to be the next Governor of Mombasa County. May God's will be done.

We came up with certain observations in our Committee. One, we saw that there are delays in availing documents to the Auditor-General. We know that one of the maxims of equity states

that delay defeats equity. Therefore, we urge the CEOs to comply with the provisions of Section 68(2) of the Public Finance Management (PFM) Act, 2012, to ensure that they act with God's speed to present the documents that will be helpful in our investigation.

Two, the procurement process is so much flawed which we know is against the Public Procurement and Asset Disposal Act. This leads to inflation of project costs and it can also lead to delay in completion of the said projects.

Hon. Temporary Deputy Speaker, the third issue is about the court matters. There are a lot of delays in courts and therefore cases should be expedited. Also, before Chief Executive Officers take a matter before a court of law and before involving themselves in litigation, they should embrace alternative dispute resolution mechanisms, which is enshrined in Article 159 of the Kenyan Constitution and which is the apex of law in this land. Whoever goes against that apex of the law becomes inconsistent and repugnant to the natural laws and justice.

Lastly is about the ownership of property and land. In this, we noted that most State corporations do not possess title deeds and as a result, this leads to most of these corporations not coming up with projects because you cannot start a project on a land that does not belong to you.

Hon. Temporary Deputy Speaker, on the financial performance, most of these State corporations are limping financially and without the help of the national Government, they do not have the internal generated funds that can help them at least fund their projects. As a result, very soon, most of these State corporations will be insolvent.

With that, I rest my case and support with all my body parts and organs. Thank you.

(Laughter)

The Temporary Deputy Speaker (Christopher Omulele): The Member for Embakasi East, Hon. Babu is always an interesting one to listen to. Is the Hon. Omboko Milemba in the House? You may proceed.

Hon. Omboko Milemba (Emuhaya, ANC): Thank you, Hon. Temporary Deputy Speaker, for this opportunity. I want to fully support this Report by the Committee and also thank the Chairman. Of course, as the Member for Embakasi East did state, this is a very strong Member of Parliament for Mvita. I hear that he has interest there, we wish him well if he has to become the governor. This Report is spot on and maybe it just shows the quality of person he is.

Hon. Temporary Deputy Speaker, I will begin by stating the original reason why State corporations - sometimes called parastatals - were created. They were created specifically among other things to fit in places where individual or private businesses could not fit. Therefore, it was very important that the Government comes in to take care of those areas. With time, the economy expanded after we got our independence and there are very many areas where private enterprises are doing far much better than State corporations.

State corporations have become irrelevant and it is high time that some of them are audited thoroughly with the intention of phasing out those that cannot sustain themselves and those which private entrepreneurs have taken over, like in the case of supermarkets. Originally, no individual Kenyan was able to invest strongly in supermarkets but with time they have come in and State corporations in the areas of marketing and trading have become irrelevant.

So, this Report is timely and should be pushed to the very end so that we sieve State corporations that have remained to only suck the Government's money, instead of making profits. They have outlived their importance and that is why this Report becomes very important. Of course, there are few that must remain even if they are making no profit, as they may be touching

on important areas in the nation. I will be quick to give an example of Kenya Railways because it touches on lives of many people and the interests are wide and far.

Hon. Temporary Deputy Speaker, I would specifically want to speak on land because these State corporations have a lot of land and as it has been indicated, some of that land does not have title deeds. This has become a conduit for those who are corrupt within Government to take that land away. That is why positions in State corporation leadership become tribalised. Sometimes those in leadership act for a very long time because of interest.

The faster we adopt and act on this Report, the better. So that when we are dealing with a State corporation, you also value the land it has. Currently, you will hear: 'we want to privatise.' Yes, I will support that but are you privatising including the value of the land that these State corporations have?

Hon. Temporary Deputy Speaker, Mitihani House has been built for all the years. The estimate cost was supposed to have been Kshs200 million only. Tonight, as we speak, Mitihani House has taken about Ksh1.8 billion and has not been completed. Each time there is an aspect of finishing Mitihani House, the matter is taken to court. I am happy that the Report brings out the relationship between the court cases and the State corporations. Those cases are an avenue of fleecing more and more of the monies through the State corporations.

Because my time is out, I want to state that this is a very good Report and I fully support it. Thank you for giving me this chance.

The Temporary Deputy Speaker (Christopher Omulele): Very well spoken, the Hon. Member for Emuhaya. The issue of land is very interesting in these State corporations. It is true I have heard of a case where one State corporation was privatised and sold for about Kshs900 million. The person who took it up only sold three houses that that State corporation had here in Nairobi and recovered Kshs1.2 million before he did anything else. It is very interesting.

The Hon. Wanga Nyasuna, Member for Homa Bay County.

Hon. (Ms.) Gladys Wanga (Homa Bay CWR, ODM): Thank you, Hon. Temporary Deputy Speaker. I rise to support this Report of the Public Investments Committee. Before I left on promotion to chair the Departmental Committee on Finance where you are a very strong member, I served in PIC and I would like to commend our Chairman, Hon. Abdullswamad Sheriff Nassir. And if the diligence with which he serves the PIC is utilised by the people of Mombasa when he becomes the governor then Mombasa will continue to rise.

Hon. Temporary Deputy Speaker, let me state that as Parliament, when we look at these reports of the audit Committee, apart from the recommendations to other institutions to perform certain things, we must also look inwards. What is it that Parliament can do to improve the systems, so that we do not have these audit queries year after year because we are the body charged with legislation? We must look at what legislation we can tighten so that year in, year out, we stop dealing with procurement issues, issues remaining in court and issues of the reports of the audit Committees of this House not being implemented to the later.

The first thing I would like to state is that the Office of the Auditor-General is severely under-resourced. When you ask for a special audit which we have done before, for example the issue of the hydrant valves at Kenya Pipeline, the Auditor-General takes so long. By the time the special audit comes, the matter was long overtaken by events. The person had been arrested, charged or they are away. Even if you call them to come and answer questions, they can even refuse to come because it is no longer a matter of priority to them. I think the matter of resourcing the office adequately should be a serious priority for this House, so that the Auditor-General can operate at optimum capacity.

When you look at the Auditor-General's Reports, you find organisations that have very many audit queries. One that has been given as an example here is the Kenya Airports Authority. Some of the incomplete projects they have are: Ukunda Airstrip Fencing, Embakasi Fencing Project, Construction of Terminal 4 building, parking garage and construction of fire station at Wilson Airport. As a country, we said that we want to bring expatriates to head some of these parastatals. Expatriates are overrated. When you hire them to run a Kenyan institution properly and make it efficient, sometimes they do not produce results. This must be noted. We can have homegrown talent that is good and that can drive institutions to the place they need to be. Kabunde "International Airport" in Homa Bay has been pending for the longest time just because the Kenya Airports Authority cannot work with the National Land Commission quickly to compensate land owners so that we can have a proper runway built at Kabunde. That is our international airport as the people of Homa Bay. We would like it to be completed so that we are able to land large Embraer planes in the county.

I would also like to make a comment on the issue of who follows up the implementation of these recommendations. We need to put in law that if an accounting officer does not implement recommendations of an audit Committee Report like this one, that accounting officer should be held responsible. In the Departmental Committee on Finance and National Planning, we will be discussing to amend the Public Audit Act so that we put in law that there will be punishment for accounting officers that do not implement recommendations of PIC and PAC.

Finally, I want to speak on the timelines for audit. A lot has been said here about delay by organisations or parastatals in submitting their financial accounts to the Auditor-General for purposes of audit. We should also look at that so that we reduce it from three months after the end of a financial year

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Wanga, half a minute.

Hon. (Ms.) Gladys Wanga (Homa Bay CWR, ODM): Thank you, Hon. Temporary Deputy Speaker.

If we reduced it from three months to just one month after the end of a financial year, the Auditor-General will have enough time to audit then give us reports in good time.

Thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Wanga, the future definitely belongs to those who believe in the beauty of their dreams. So, when you say that you would like to have large Embraers landing at... is it Suneka?

Hon. (Ms.) Gladys Wanga (Homa Bay CWR, ODM): Kabunde.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Kabunde in Homa Bay, we can only pray and hope that your dreams will become a reality. We pray for Hon. Nassir, and all of you seem to be praying for him for greater things in future. We hope that his dreams will see reality.

We shall have contribution from Hon. Rasso Ali, Member for Saku.

Hon. Ali Dido (Saku, JP): Thank you very much, Hon. Temporary Deputy Speaker.

At the outset I want to thank the Chairman, my brother Abdullswamad. Looking at this Report, I always find him a stickler for the best things that he does. That is the finest thing we expect of all our Chairmen. As you proceed to Mombasa, as Committees, we normally visit Mombasa in our free time, with your leadership, it is going to be a different Mombasa. We are going to hold you to that.

I support this Report. For one, it is well written and is very comprehensive. I am also interested in this Report because all these institutions that are funded directly or indirectly by the National Treasury, in one way or another, they are expected to generate their own funds to carry out their operations. As it were, some of what the Committee has highlighted in the Report is irregular procurement processes contrary to the provisions of the Public Procurement and Asset Disposal Act. In this country, one of the problems we experience is in procurement across Government. It is the source of corruption, a source of pilferage and it is the source of failure of project completion in time.

The other point is delayed contract and variation of cost. This is really important. Some of my colleagues who have spoken before me have alluded to this fact. Some of these projects that have been tied to a timeline, that is, the cost to an extent is capped. But what the contractors tend to do is to delay so that there is variation of cost. At the end, it will cost the taxpayer more. It is important that PIC has picked up this so that we try to maintain the projects within the estimated time of completion.

The issue of land is important. Land is capital and a factor of production. When you do not hold any document that tells you this land belongs to you, then it leaves these institutions standing on very fickle ground. For that reason, we must put in place a moratorium on these parastatals to make sure that they have documents for the land that they own. That is why more often than not they are in court because they are in disputes with citizens of this country.

Matters pending in court has been spoken to. They say that justice delayed is justice denied. Once a project is delayed, of course, one of the things that make the projects to be delayed is when they are taken to courts. It has cost implications. The best thing to do is most of the time once the institution, the contractor and the Office of the Auditor-General confirm, then they can arbitrate and it can be taken out of court.

Finally, is on the Office of the Auditor-General. This office is very important. For it to effectively carry out its duties, it should be funded and must be well manned.

The Temporary Deputy Speaker (Hon. Christopher Omulele): The Hon. Kamene Joyce, Member for Machakos.

Hon. (Ms.) Joyce Kamene (Machakos CWR, WDM-K): Thank you, Hon. Temporary Deputy Speaker for giving me this opportunity to air my views on the Report. First, I thank the Chair and the entire Committee for a job well done and for coming up with this comprehensive Report about our parastatals or State corporations.

The biggest issue here is about the implementation of this Report, more so when it comes to issuing title deeds. We know there is a lot of land grabbing in current times. It would be very good if each parastatal was able to acquire the title deeds and have them in their possession.

The other issue is on procurement. Procurements should be made in accordance with the regulations and also make sure there is no mischief or embezzlement of public funds.

With these remarks, I beg to thank the Committee and also support this Report. Thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Jeremiah Kioni, Member for Ndaragwa.

Hon. Jeremiah Kioni (Ndaragwa, JP): Thank you, Hon. Temporary Deputy Speaker.

Fully aware that campaigns for 2022 have not begun, I totally refuse to say that the Hon. Member for Mvita is capable of managing the affairs of Mombasa because the campaigns have not begun. So, I am not saying it even if he is capable. I am not saying that he is capable but I know that he is totally capable but I refuse to say it.

I want to support this Report by saying that one of the other things among many things that Members have said, I think Mr. Nassir should encourage Parliament to resume sittings in Mombasa for the retreats. Not for anything else but to rejuvenate the economy of Mombasa. I have heard Members speak to the issues of procurement and the Office of the Auditor General. There are 10 recommendations that have been made by this Committee under the leadership of *Mhe. Nassir*. They are good recommendations. There is need for the parastatals to ensure that land under them or they own is registered in their names to avoid encroachment. There is need to ensure that procurement processes are being followed properly.

There is a new area that is being used by these parastatals, and I believe also by the county governments, to fleece the public of their resources. That is in fencing. I see a lot of fencing of public facilities. It is good because in so doing you are indicating ownership. But when you undertake fencing on land that is already disputed, land that is in court, you are awarding contracts certainly with a mind that they will not be done and you again expose yourself to loss of money. Perhaps deliberately and other times not so. I think it is important they pay attention to that.

The issue of delaying appointment of accounting officers to even beyond two years is again another unacceptable behaviour by these parastatals.

Let me also say what I think the Committee can, going forward, improve their Reports. They have very good recommendations and all these offices have human faces. For those who failed to do what was expected of them by the specific Acts, the Constitution, the Leadership and Integrity Act and by the *Mwongozo* document, the Committee should go to the point of mentioning those names in the Report. The fear of a public officer being mentioned adversely in a parliamentary document will certainly move them to do what is already expected or implementing what has already been called upon by these Reports. But mentioning the parastatals without bringing the name of the officer who failed to do that specific exercise, you do not call for the implementation. I say this because we have our Committee on Implementation and we know they are trying their best but Parliament is always inhibited in the fact that they cannot move to the next phase of perhaps suing. Ours is oversight and recommendation. There is a law that requires or provides that once mentioned adversely in any public report and especially parliamentary reports, then you will be debarred from carrying out some specific duties. So, I think it is important that we have names of individuals who have failed or who need to be investigated further in the coming reports.

As I conclude, I think it is also important that the Committee, and I know it may be falling under other Committees, I was looking for their thoughts on the proposed merger of parastatal. Is this something that should continue being pursued? Those are thoughts that are in other quarters. I thought the Committee would have exercised their mind on the issue to see and ensure that they are viable and useful to this Republic.

Thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Odhiambo Akoth, Member for Suba North.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Thank you, Hon. Temporary Deputy Speaker, for giving me this opportunity. Unlike my friend, Hon. Jeremiah Kioni, who is waiting for 2022 to declare competence or otherwise of the Chair, I hereby declare that I have worked with the Chair for a long time and I know he is extremely competent even to serve as a governor. I am not under any duress to say so. He has done very well as the Chair. He has done extremely well as the MP. That is why he has been given the second chance.

Let me congratulate the Chairman and the Committee for this good job. I will just make brief comments. The Report looks at 48 State corporations. They have done their best in terms of looking at the corporations and accounting issues. There were just some issues that were standing out, some which other Members have spoken to. One was on the issue of need for titles for State corporations. This is a very big problem in the country, not just touching on State corporations but also touching on other public lands. When I got in as Member for Suba North, the largest public primary school in my constituency was about to be sold. The matter had already gone to court because the person who had originally sold the land had no documentation. Over the years people tend to change their minds. That is happening all over. Because there was no further money to be given, they were selling the largest school. We had to quickly come in and redeem the school at Kshs2 million.

One of the things I have noticed because it is a present problem even in my constituency now, is even where you get the title deeds, or even in the process of getting those title deeds, who does it? Who is mandated to do it? Even when you get the title deeds, who actually takes the physical document or secures the document physically? What then happens if it is a school, it is left with the headmaster or the principal. If you find people without integrity, they can still go ahead and try and compromise land and sell it or they can lose it so that these same people go back again and seek the same title.

I would want to encourage this Committee to bring a legal amendment so that we have a repository of State titles because we currently do not have a body that is a repository for State titles. Not just for these corporations but also for any State entity. If I have a title as Hon. Millie Odhiambo, I know where I keep it in my house. But, who keeps or where do we keep public ones? If a school burns, for instance, how do we know who has that physical title? I think that is something they need to look at.

The other issue that I picked up is what Hon. Jeremiah noticed. I also picked it up. That the Committee did a good job by actually mentioning that the CEOs should be held personally accountable where Government money is lost.

I was hoping the Committee would be brave enough to hold people personally accountable by naming them. When you name people, most of them get scared and that increases accountability. I am encouraging the Committee to name people involved in corruption in future.

The other issue of squatters is also of concern to me. I had so much to say but I can see that I am running out of time. If you look at this, squatters do not come in droves. It is usually one person and then they multiply. They use the broken window concept to come in because nobody chases them. We should be serious as a Government that whenever one person invades public land, they are evicted immediately instead of waiting to chase them and the Government looks bad. We should stop people squatting on public land.

The other issue...

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Odhiambo, you have very interesting points. I will add you one minute to wind up.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Thank you, Hon. Temporary Deputy Speaker, for indulging me. I will be very fast. We must find a way of dealing with comingling of funds. For instance, when different entities are dealing with Government funds, namely; counties, NG-CDF and other corporations. If one is building something, our counties are notorious for taking up an almost complete project that has been abandoned and complete it. The original building could have been done at Kshs20 million but they put in Kshs50 million in paper

when it is actually Kshs1 million. We end up losing a lot of money. We should have a legal framework for dealing with double funding where more than two entities are doing this.

I will give my written comments to the Committee especially on legal frameworks about things that we can do.

Thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Millie Odhiambo, the most interesting thing you have mentioned is in regard to the titles to public land owned by public entities. I agree that we should have registries for repository of such titles. You should run with that idea. You should not wait for the Committee to take it up. I would be glad to associate with you so as to improve the state of titles for public land in this country. I am excited by it.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): It is something that we can work on with you.

The Temporary Deputy Speaker (Hon. Christopher Omulele): I am willing to follow up on that. Thank you. Let us have Hon. Nyikal.

Hon. (Dr.) James Nyikal (Seme, ODM): Hon. Temporary Deputy Speaker, I have already contributed to the Bill.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Mwashetani, had you contributed to this?

Hon. Khatib Mwashetani (Lungalunga, JP): No, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Christopher Omulele): You have the Floor.

Hon. Khatib Mwashetani (Lungalunga, JP): Asante sana Mhe. Naibu Spika wa Muda, kwa kunipa nafasi kuchangia Ripoti iliyoletwa na Mhe. Sheriff Nassir. Kwanza, nina bahati kuwa nilisoma na Sheriff Nassir darasa moja. Nimebahatika kuwa naye Bunge kwa mara ya pili. Naielewa kazi yake na kwa uwezo wa Mwenyezi Mungu, anatosha kuwa Gavana wa Mombasa.

Mheshimiwa Naibu Spika wa Muda, ukaguzi wa hesabu ni jambo ambalo kama Wabunge lazima tulizingatie kwa makini. Kulingana na sheria ya Kenya, yeyote ambaye ana haki ya shamba lolote sharti awe na hati miliki. Tukiangalia mtiririko wa Ripoti hii, ni wazi kuwa mashirika mengi ya Serikali hayana hati miliki. Kama Kamati ya Mashamba, tumepokea migogoro mingi baina ya wananchi na mashirika ya Serikali. Tumeweza kutatua migogoro hiyo kwa kuita Wizara ya Mashamba na kuipa kauli mbiu kuwa kuna haja ya kuzunguka na kuhakikisha kuwa mashirika ya Serikali yamepata hati miliki. Kama ilivyosemwa, kama Wabunge tunajinyima nguvu. Tuna nguvu za kikatiba kuwa kila ripoti inayopitishwa hapa sharti itekelezwa na wahusika. Kwa sababu hatuna mipango msingi, ripoti nyingi zikipitishwa na Bunge hili zinapatikana kwenye meza za wahusika.

Ukiangalia *Equalisation Fund* ambayo imekuwa ikitolewa kwa sababu ya kuleta usawa, ukiangalia sehemu ninayowakilisha, pesa za Serikali zimetumika kuchimba visima sita. Visima vimesimama kwa sababu aliyekuwa kiongozi wa shirika la maji, aliondoka na mwingine kuletwa. Aliyeingia ameshindwa kukamilisha pale ambapo pesa za umma zimetumika. Ukamilishaji wa miradi ni muhimu na kama Wabunge, tuna nguvu nyingi kama wawakilishi wa wananchi. Tukiwa hapa kama Wabunge 290 sharti tuangalie masuala yanayowahusu wananchi. Kauli mbiu kutoka Bunge hili sharti ipewe uzito. Bila kuweka uzito, tutaendelea kuleta ripoti nyingi. Tumeleta ripoti nyingi kuhusu mashamba yanayochukuliwa na mashirika mbalimbali kiholelaholela na Wabunge wengine wameleta masuala ya mashamba kuhusu wananchi wao kupelekwa mbio. Tunapitisha ripoti hizo lakini hazipatiwi uzito. Kwa yale ambayo yamepitishwa katika Ripoti hii na Mhe. Sheriff Nassir na Kamati yake ni kuwa yafuatiliwe, yaangiliwe na yakamilishwe. Hata ile Kamati ya Utekelezaji haina nguvu nyingi. Ni ukweli kuwa imepatiwa nguvu lakini hazikamilishi masuala kama haya. Katiba inasema wazi kuwa kama Wabunge tuna nguvu ya kufanya shauri na

kukamilisha chochote ambacho kinaletwa hapa. Tukiweka mikakati ya kisawasawa ya kuwa jambo lolote linalopitishwa na Bunge hili linakamilishwa, basi ripoti nyingi zinaweza kukamilishwa.

Naunga mkono Ripoti hii. Asante sana kwa kunipa fursa hii.

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

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

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

Hon. Julius Melly (Tinderet, JP): Thank you, Hon. Temporary Deputy Speaker. I rise to support the 23rd Report of the Public Investments Committee. I want to commend the Chair and the Members of the Committee for this Report. The work that has been put forth by the Committee is quite commendable. The mandate of this Committee is manifested in the Report. It shows the abilities and the leadership of the Chair of the Committee. This has shown the way forward for all State corporations. The Inspector of State of corporations and the National Treasury, which is a body in charge of most State corporations, should take this Report and be part of it. They should look into how to oversee some of the State corporations that have issues.

As a Member of this Committee, this Report has been written meticulously. A number of issues have come up. I do not want to go into issues that other Members have talked about. I want to talk about a number of issues on the observations and recommendations. The activities of this Parliament are active in committees. It is in committees that Parliament is able to oversight the Executive and makes deliberations concerning various sectors of the Government and the society. I want to talk about the issue of ownership. Land is an emotive issue in this country. A number of State corporations, mostly universities and research facilities, have land that they do not own; they have no ownership documents. Earlier speakers have talked about that. We also have equipment that has been inherited by some of the State corporations from other corporations and they do not own it. We have in question a number of universities that have inherited land, equipment and buildings, and they do not have titles of the land and log books of various vehicles and equipment. The lack of legal documents of ownership of these equipment will open a way through which some of these equipment can easily get lost. The Committee has made good recommendations. There is need for follow up on how these things can be secured.

The other issue is the challenge facing most State corporations on procurement, control and management processes these entities. Most of them do not follow the necessary procurement procedures as per the Public Finance Management (PFM) Act and the Public Procurement and Disposal Act, 2005. Some have entered into contracts that sometimes has costed them a lot and has cost the Government to be taken to court and surcharged.

There is also delay in the appointment of CEOs. Some of the CEOs have been good, but they have been in acting capacity for many years. If they are confirmed, they will work well. There is an issue of financial performance sustainability. Most of the State corporations depend on the national Government for funding; they have not decided to have their own ways of generating income. The recommendations of the Committee need to be relooked and supported by both the Committee on Implementation of this House and the Executive.

I support.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): We have one minute to go. I will give the floor to Hon. Nyikal. Hon. Nyikal, you have already contributed. Let us have Hon. Sahal Ibrahim. She is not interested. Hon. Osotsi Godfrey, do you want to speak on this? Well it seems like there is no other Member who intends to contribute on this one. I will go ahead to call upon the Mover to reply. Hon. Nassir.

Hon. Abdullswamad Nassir (Mvita, ODM): Thank you, Hon. Temporary Deputy Speaker. I want to first and foremost, on my own behalf and on behalf of the people of Mvita, to congratulate my colleagues, Members of PIC, for allowing my stewardship together with the offices of the Speaker and the Clerk, and definitely the clerks who serve in our Committee. It is not a mean task to come up with a Report of 48 State Corporations. It is an in-depth Report which is 600 pages plus.

I want to give an overview of this Report. I am glad that so many Members have contributed on this. The Report talks about many things on issues to do with land ownership. We have not been just reactive, we have been proactive. We have looked at this Report. On issues of land, we have given instructions and recommendations on what needs to be done regarding land that has been purported to be grabbed. We have given instructions and directions on those individuals who have flouted procurement laws to enrich themselves. On this report, we have saved this country billions of shillings which would have been paid from interest accrued due to neglect or purposely ensuring that contractors are not paid on time, or projects taking too long to complete. In this Report, we have identified projects that are incomplete and have been over the years milking stations of certain individuals. We have put a stop to it.

Many Members have asked what next. My message to the Judiciary, the NLC, the ECC, the DCI in this Report is advice to them on what needs to be done. We have stated who needs to be investigated, charged and in some cases we have talked about names. When you are told that a certain area smells of rotten fish, chances are that, that area has rotten fish.

To the Executive, we want to work hand in hand with them to make this country a better. So, when we tell them that a certain place is where it smells of fresh flowers and roses or fresh fruits, then there is likelihood that that is where an orchard is and that is where they need to invest for this country to benefit. If for anything else, this is a warning. I know many other entities have talked about Kenya Medical Supplies Authority (KEMSA). Legally as per the Constitution of this country, it is this House that can audit KEMSA through PIC and hold KEMSA accountable. I want to tell those that feel they can enrich themselves we are coming for them. We are coming for those who pilferage in the name of ensuring that there is food security and those who pilferage in the name of roads. I want to appeal to my colleague--- I know my time is up and I want to thank everyone. The Vice-Chair is here and he has been keen in the National Assembly---

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Wind up in one minute Hon. Nassir.

Hon. Abdullswamad Nassir (Mvita, ODM): I want to tell my colleague in the National Assembly and legislators outside the National assembly that, the Constitution of this country has allowed us to deliberate and resolve issues in this House, in the county assemblies and in the Senate. However, the trend we are having of going to levels of insulting people's mothers under the guise that it is politics, we will not get anywhere with it. If anything, this Committee, despite the Handshake, has been able to hold people accountable. This Committee and this very House, by the action of every single one of you in supporting this Report, has been able to show that the Constitution of this country remains supreme than abuses that are currently going on out there. I want to urge my colleagues, we will not grow by hurling insults at each other. We will grow by

doing what necessarily needs to be done, which is ensuring that we follow the law and the Constitution to the letter.

Thank you very much, Hon. Temporary Deputy Speaker. I want to thank everyone. We have another Report on the Floor of the House and we will be tabling some more very soon. Thank you very much.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): We shall defer putting the Question until when the Motion will be placed again on the Order Paper. Let us move on to the next Order.

MOTION

INQUIRY INTO STATUS OF DAMS IN KENYA

THAT, this House adopts the Report of the Departmental Committee on Environment and Natural Resources on its inquiry into the status of dams in Kenya, laid on the Table of the House on Thursday, 17th October 2019.

(Hon. Kareke Mbiuki on 30.7.2020)

(Debate interrupted on 30.7.2020 – Morning Sitting)

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Hon. Members, we have a balance of 43 minutes. I have the list of Members who had made their contributions; I will not name them because I will be eating into the 43 minutes. Hon. Tuitoek had a balance of two minutes. Is he here? If he is not here, I am going to give the opportunity to Hon. Nyikal Wambura.

Hon. (Dr.) James Nyikal (Seme, ODM): Thank you, Hon. Temporary Deputy Speaker, for giving me the opportunity to contribute to this Report. I support it, but I also have an amendment which I would like to move immediately then proceed to give reasons for it and also make further contribution on the Report.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Yes, Hon. Nyikal, I actually intended to let you come in immediately to prosecute your amendment so that we can try and make good use of the 43 minutes. So, please, go ahead.

Hon. (Dr.) James Nyikal (Seme, ODM): Thank you, Hon. Temporary Deputy Speaker. I beg to move an amendment to the Motion. As I said, I support the Motion. It is great work that has been done. The amendment that I intend to move is in regard to the recommendations.

I beg to move:

That, the Report be amended by deleting the word ‘stop’ appearing after the words ‘must forthwith’ in Paragraph 180 of Page 44 and substitute therefor with the word ‘reassess’.

The reason for this is that the Committee has done a wonderful job and they have made very many good recommendations. Even this recommendation on Paragraph 180, which I propose to amend, is also a fantastic one, but it has one issue for which I am amending it. That is, if we say that all the projects that are in the process of procurement and planning must stop forthwith, pending appraisal, the experience is that those projects will actually die. What happens is that if

the assessment is not done quickly and the projects are stopped, then the legal issues and financial implications that will come with the stoppage are actually very expensive. If we are not careful and we blanket-stop all of them, we may run into those legal and financial issues. Many contractors have used that to make a lot of money where they did not do work at all.

The second reason is that when you stop Government projects, whether funded by the Government or by donors, the projects are likely to die because the funds set aside are now available to be used elsewhere. If you had money set aside for a project and you stop the procurement process, that money is available and can be used elsewhere. What happens in many cases is that such projects die. The third reason why I want the amendment to pass is that if you stop the projects, the officers will lose interest in them. The whole process is stopped and there is a delay. In the end, the projects die.

The Committee visited eight dams and they have done a fantastic job. They have made recommendations on what should be done in respect of each dam. My fear is that if you make this recommendation, then it almost nullifies the recommendations they have put in place which indicate what should be done so that the projects can go forward. Their purpose, I believe, was not to stop the projects but to get them done in a proper way by following due diligence, so that we can get value for money. For that reason, I think deleting the word 'stop' and replacing it with the word 'reassess' will make sure that the projects go on, but all the procurement processes will be reassessed. I repeat, if we use the word 'stop', there are chances that these projects will never go on. As I always say, we should not kill...

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): You will have one minute, Hon. Nyikal.

Hon. (Dr.) James Nyikal (Seme, ODM): We should not kill projects just because some people have done a bad job. What we should do is to reassess the projects so that they go on and people get value for money. The planned development in those areas can proceed. With that, I support this Report, but with that amendment. It is a very great report.

I ask Mhe. Buyu to second the amendment.

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

Hon. (Ms.) Rozaah Buyu (Kisumu, ODM): Hon. Temporary Deputy Speaker, thank you for this opportunity. From the onset, I would like to say that I am Member of this Committee. I would like to second that amendment because essentially, it does not alter the intention of the Committee. When the Committee recommended stoppage of any procurement process that is ongoing, it intended to cure any anomalies that might have been committed. To use the word 'reassess' instead of 'stop' still gives the projects an opportunity to be looked into again. In case there is any problem with procurement, there is still a remedy. With that, I second that amendment.

Thank you, Hon. Temporary Deputy Speaker.

*(Question of the first part of the amendment,
that the word to be left out be left out, proposed)*

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Hon. Members, now you will be speaking to the amendment as moved by Hon. Nyikal. Hon. Mbiuki Kareke.

Hon. Kareke Mbiuki (Maara, JP): Thank you so much, Hon. Temporary Deputy Speaker. I rise to support the amendment as proposed by Hon. James Nyikal. I want to say that the intention of the Committee was not to gag or to stop all the projects that are under procurement. As a

Committee, we observed that there is a procurement process or a financing project called ECPF, which has been subject of abuse by the Ministry of Water, Sanitation and Irrigation. Moreover, the amendment proposed by Hon. (Dr.) Nyikal, which is to replace the word "stop" by "reassess", as a Committee, we wish to say that it is accommodative. It will give the Ministry leverage to reassess all the ongoing projects which are under procurement. In addition, it does not really affect the spirit of the Committee.

With those few remarks, I support the amendment. Thank you.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Now, I want to know who it is. I see Hon. Kioni wants to speak to the amendment.

Hon. Jeremiah Kioni (Ndaragwa, JP): Thank you, Hon. Temporary Deputy Speaker for that opportunity. I want to support that amendment that it is important that when we are undertaking these kinds of exercises, when the intentions are good like the ones we have for the Committee, it is important not to open room for abuse. When you say that you want to get all the work redone, you have created a highway for those in the public service to again loot and do all the wrong things that they have done.

However, in supporting this amendment, I think it would be more useful - and I said it earlier when we were discussing the Public Investments Committee (PIC) Report - that committees would help us in a big way if, for example, they were to mention the specific officers who have caused this kind of turmoil to Kenyans. Why is it that we are reassessing? Who are the specific individuals? When we talk about institutions, we are like again going out there to cover up and to become part of the cover up. I am not saying that we have, but I am just suggesting the way we should do things in the future. That way, Parliament becomes efficient and members of the public become fearful including the members of the public service, of any exercise being done by the parliamentary committees. However, when we come with a blanket condemnation, we have this institution and... Every institution has a human face. The law requires that if you have been mentioned adversely in any report that has been tabled and accepted by Parliament, then there are places, advantages, privileges or opportunities that cannot be accorded to you going forward. That alone will make it necessary for any person that has this kind of responsibility not embarrassing us.

I look at the dams and I am happy that Pesi Dam, Keja Dam and Malewa Dam are not part of this exercise. However, them not being part of it does not make us any happier in Nyandarua because again we seem to have been left out of the loop. However, it is good that they have not been mentioned adversely. However, it is important as Members of Parliament and as parliamentary committees, that we move that extra. Let us be courageous enough to carry names of individuals misusing public resources into the reports because that is the only way we can exercise proper oversight. Otherwise, our reports will continue looking like daily newspapers that you look at in the morning and in the evening you are done away with.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Hon. Members, I think with that contribution on the amendment, we can go on to put the Question on the amendment and then we go into debating the substance of the Motion.

*(Question of the first part of the amendment, that the word
to be left out be left out, put and agreed to)*

(Question of the second part of the amendment, that the word

to be inserted in place thereof be inserted, proposed)

(Question of the second part of the amendment, that the word to be inserted in place thereof be inserted, put and agreed to)

(Question of the Motion as amended proposed)

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Okay, Hon. Members. Since the amendment has been carried, now let us go on to the debate of the Report as amended. Hon. Godfrey Osotsi.

Hon. Godfrey Osotsi (Nominated, ANC): Thank you Hon. Temporary Deputy Speaker for the opportunity to contribute to this Report. First, I will start by thanking the Departmental Committee on Environment and Natural Resources for this very strong Report and one that many Kenyans have been waiting for. I will go to some of the issues raised.

The first issue is the one that has been in our media for some time, one that has created a lot of anxiety in this country and that is the issue of Itare Dam Project. You are aware that there has been concern around the contractor for this project, a company by the name CMC Di Ravenna that has had to go through bankruptcy proceedings in Italy. This is a major concern because public money is going to be lost because of lack of proper due diligence in the selection of a contractor for the project. If you go to Itare, there is a lot of very expensive equipment amounting to billions of shillings. Part of the plant has already been constructed. However, now the contractor is not on site. He is facing bankruptcy proceedings in Italy. I think this is a serious matter because we are even told that the performance bond and even the advance payment guarantee is almost expiring. Therefore, who is going to pay for this wastage of billions of money? I think the Committee should have gone further and reprimanded some people who were involved in the procurement of this project. The Report is silent on that. Billions of taxpayers' money is going to be lost because of someone not having done his work right. This brings us to the issue of how well are background checks done before a contractor is chosen for multi-billion projects like this one. How is continuous due diligence done even in the course of the project? I think this is one issue that as Parliament, we will need to follow up and as the Vice-Chair of the Committee on Implementation, I want to guarantee the House that we are going to take this matter up very seriously, so that we go to the bottom of it.

The next issue is that of land which ties into project planning. For most of these dams, the project is planned, procured and yet land is not secured. Therefore, when they start the project, they end up having issues, which delays the implementation of the project and this is something affecting many other projects of this nature.

The other very important issue is the involvement of locals in the project through, for example, utilisation of local resources to build the project. This Report talks very well about the Kiserian Project and how it was done through utilisation of local resources and it was done very well. However, in the other projects, you find that there is a lot of external resources which are used, therefore, leading to conflicts with the local community.

The other point is the financing model for the project. We need to desist from the Engineering Procurement Construction and Financing (EPCF) Model. We lose local content in such projects and we end up having challenges such as this one. All in all, this Report is good. I agree with the Report recommendation that the Ministry should come up with a directorate on dam

engineering. This will guide such processes and ensure we have a proper technical diligence on all projects of this nature, so that we can get value for money.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuiya): It is unfortunate I cannot add you time because the time is so limited and there are so many people who want to speak to it. Let us have Hon. Kioni Jeremiah.

Hon. Jeremiah Kioni (Ndaragwa, JP): Thank you, Hon. Temporary Deputy Speaker. Once again, in support of this Report, I want to point out the following. It is important that reports of this nature carry names when they are tabled in Parliament. As we sit here, we ought to know which officers are going to be punished for having misled the country into undertaking exercises that cannot be completed and are not beneficial. That is the only way Parliament will be felt by the Executive or those whom we have the mandate to oversee.

Secondly, as we commend the Committee for the work done, it is important to mention that one of the biggest problems that seem to have hit all these dams is that the projects were conceived long before land had been acquired. Acquiring land in this country is certainly not an easy thing. We know that land must be acquired by the National Land Commission (NLC) and it takes time. It is a costly exercise and people have ways of making it difficult to get the land acquired. When it is not done properly and in good time, you create room and channels for money to be misappropriated and taken elsewhere.

Thirdly, it appears like the contractors have come up with a new way of fleecing Kenyans. A contract is awarded and you can see that the project is not well thought out. However, you sign the contract and from that point, you start suing the Government because they are either delaying in allowing the contract to start or the contract is being frustrated because of some reasons. There is a contract that was signed in Nyandarua to do with windmills. One of the provisions in the contract was that the Government would pay an amount of money if the project is frustrated because of political reasons. True to it, political reasons were created by everybody else including the contractor.

As a country, we were supposed to have paid Kshs4 billion as penalty. So, you conceive a project with a clear intention of stealing money from Kenya and it is even put in the contract document. Other than for the fact that we found some favourable judgement in London, we were going to pay Kshs4 billion. It is good to commend the Government because they challenged that provision in the contract. So, we must be careful with the contractors that we are having. In my constituency, and in other five counties in the country, I am told the Kenya Power and Lighting Company contracted a similar contractor who did some shoddy job in maximisation of electricity and he has taken off in the five counties across the country. You can imagine the kind of embarrassment that he is causing leaders in those areas and the KPC itself. This is a similar behaviour that we are seeing being done by contractors who are doing the dams.

The issue of having done inadequate background checks on the contractors is a problem. When you are dealing with these huge amounts of money, how would you award a billion worth contract to a firm and you have not done proper background checks? These is a thing that we need to pay attention to.

As I conclude, we have to be very careful on the promises we make during campaigns. Kenyans need to hear what any incoming Government wants to do for them. However, it is important that we be careful such that we do not make huge promises and we do not have adequate time to prepare for the implementation then prompt Kenyans to start accusing you saying that you lied to them. The pressure that is exerted by the public can also lead officers into making costly blunders of this nature. So we have to be careful with the way we make these promises going

forward. Some of these promises cannot be done during a political campaign period. They will need to be done and carried from the books that may have been prepared by the current Government

Therefore, useful work needs to be done in this country, but we have had very useful lessons from such mistakes that we have seen from these dams. Kenyans will never be satisfied, even as we continue implementing these projects, we need to see faces in court who are suffering because of the damage they have caused to our reputation and even the loss of money.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuiya): Let us have the Member for Kisumu County. Hon. Buyu.

Hon. (Ms.) Rozaah Buyu (Kisumu CWR, ODM): Thank you, Hon. Temporary Deputy Speaker for giving me this opportunity to talk about dams and water in effect. Like I already said, I am a Member of this Committee. We all know that water is an essential commodity that every single Kenyan needs and would benefit from.

We also know that only 50 per cent of this country has access to clean safe and adequate water. Kenya can be referred to as a water scarce country. The Committee found that the distribution of dams in this country is skewed. You find that there are particular areas that have more than two dams when other areas that also need water have absolutely none. Having said that, the Committee also found out that there is a very clear consistent pattern in the way these dams were procured and how the whole system of dam construction was handled.

First, there is awarding without due diligence which some of the Members have already referred to. After awarding without due diligence, you then have huge sums of money being paid up front, then within two months of commencement of construction, you find that already there is request and payment of variation sometimes going up to Kshs2 billion. After that, you find that work stalls and there is a whole lot of problems and back and forth in courts. Later, you find that the contract ends and there is settlements that go up to billions of shillings.

In the end, Kenyans lose. The Government loses a lot of money and Kenyans who are hoping to benefit from the construction of dams are left helpless and without the benefit of water. When I am talking about due diligence, and this has already been mentioned, when you look at Itare and Thwake dams, within two months of the commencement of the contract, Itare applied for bankruptcy way back in their home country of Italy. After Thwake had already been given the contract, it was then discovered that it was blacklisted by World Bank. The question the Committee was asking was how you do your due diligence if within no time the contactors are already in problems either financially or in terms of integrity and reputation.

When we talk about huge advance payments, there is Karimenu II where Kshs4 billion had already been paid. Even before work started, Kshs4 billion had been paid 24 months before the work started. Why? Because they put the cart before the horse. They committed the project, paid the money and yet they had not acquired land.

Also, looking at Thwake Dam, Kshs7 billion had been paid when only seven per cent of the work had been done.

So, there is a consistent pattern in all these dams where steps are taken which do not help in effective completion of construction of the dams. If you look at earlier variations, Umaa has a variation of Kshs318 million being requested and paid just almost two months after construction had begun. So, you wonder what the variation is for when work had not even gone to a certain extent.

When you look at the Kshs318 million, it is 38 per cent of the total cost of the project. How did they get the project, get advance payment and get a variation payment of 38 per cent of the

whole project when they had only done seven per cent of the work? These are the issues which the Committee found out. In terms of the work stalling, you look at Badasa in Marsabit and Umaa in Kitui where...

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): The Member for Wajir North. Unfortunately, we are running out of time.

Hon. Ibrahim Ahmed (Wajir North, ODM): Thank you, Hon. Temporary Deputy Speaker. I also rise to support this Motion. I want to strongly agree with my sister that distribution of dams all over the county is unfair. There is need to carry out a good needs assessment to ensure distribution of dams is fairly done.

I am aware of areas including my own constituency when if you look at the agricultural productivity, it is very high. However, dam construction is low. Indeed, war against hunger was proposed five or six years ago and up to-date, this has not been done. With that said, one thing we need to improve with regards to dam construction is the issue of public procurement which has been mentioned.

It is true that in a number of cases, due diligence is not observed and contractors identified mostly from areas outside where the dam construction will be done. There is poor involvement of stakeholders engagement or public participation which sometimes is extremely low. In most cases, you find that even site identification is not properly done. A number of pans are usually washed away during floods because the identification process did not involve the public or key stakeholders. This is despite the fact that experts are required. But also, local knowledge is very important.

That aside, during both the entry and exit period of the project, community participation is very low. This way, the sense of ownership is extremely low. In regards to this, you find that once ownership is absent, the issue of sustainability is always missing. This is a key area that we need to improve. A number of pans have stalled and there is need to put more effort in ensuring their completion. There is need to improve allocations by the Ministry of Water, Sanitation and Irrigation to assure adequate funds are allocated and completion is observed.

Above all, one key thing that I want to emphasise is wherever we make pans, it is good to ensure that right from the assessment stage, implementation level and project exit level, there is adequate public participation for us to inculcate a sense of ownership in the local community, so that if the contractors pull out from the dam, the community can own the project and ensure adequate sustainability.

There is a dam in my constituency called Bute Dam, which was proposed five years ago and is still at the initial stage. It is my hope that this will be one of the dams given special consideration and ensure its completion. I have no doubt that food security will definitely be improved. As I speak, the locals have constructed a pan using their own efforts and the kind of output they are making, you cannot believe. If only we ensured completion of that dam, the entire Wajir County and neighbouring Moyale County will be safe in terms of food security. That way, we will be in a position to ensure the Big Four Agenda and specifically food security and nutrition aspects are well addressed.

Thank you, I support.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Hon. Sahal Ibrahim.

Hon. (Ms.) Nasri Ibrahim (Nominated, FORD-K): Thank you, Hon. Temporary Deputy Speaker. I contributed to the Motion the other day. I am just waiting for the Motion on the rhinos.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Very well. Hon. Odhiambo Akoth.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Thank you, Hon. Temporary Deputy Speaker. I support the Report as amended and thank the Committee for the good work. In Kenya, it is not a question of whether we need a legal framework. We have a very good framework in relation to different issues including public procurement.

What we are lacking is the culture constitutionalism. We abuse laws with impunity knowing we will not be held accountable. Until we are serious about prosecution and ensuring convictions, I think this culture will not change. Let us look at countries where there are very serious efforts at ensuring there is not just public relations exercises. We tend to do this as a country and sometimes it is marred in politics and we will not see a change. I am looking forward to a time when we will change this.

I know the Committee meant well when they came up with their objectives. But I wish they had provided for determining equity in their objectives. I know they were looking at specific dams, but if you look at the geographical locations of some of these dams, and if this is a sample of what we have in the country, then it means we are still not following the Constitution because it talks about equity.

It is because of this that we are seeing a deadlock at the Senate level when it comes to resources. The little cake remaining at the national level is not shared equitably. So, I would want to encourage that we must ensure that the cake is shared equitably. Perhaps, that is where we may need a legal framework that enhances parliamentary oversight. What we have right now is a Committee looking at specific dams in specific areas.

I could easily decide that I have nothing to do with Itare, Chemususu, Northern Water Collector Tuner or Karimenu II dams because they are not in my constituency. So, because of this, the people who will be concerned with this are specifically those in the Committee. I will only be bothered about the dams in my constituency. This then means that our oversight role is very limited to a few Members especially because of the amount of work we have here.

We should have a law that obligates the different Government ministries to give a report to Parliament not just on the work they have done, but the work they will do annually. I know we passed the budget, but what is implemented is very different from what comes out from the budget. I think there must be a way where Parliament is given every project the Government is doing in every part of the country indicating how equitable it is. Not just what the President gives us once a year which Hon. Ichung'wah was asking for the other day.

The other issue, because I know I might have challenge of time, is that success normally has mothers. We may not see this because these ones have problems and this has not been highlighted. But it is good to raise concerns before we see a problem. I had said this in the earlier Motion and I want to repeat it here. When a successful project is done by the national Government, for me in the NG-CDF, I will lay claim that the NG-CDF has done that project. I will even brand it when it is not my project. This must come in law that only the institution that has done the project should lay claim on it whether orally or in writing, so that we do not have people laying claim to have done dams without money. We are politicising these projects and that is why there is a lot of wastage of public resources. I want to agree with Hon. Jeremiah Kioni that we must limit the way we over-politicise these projects because they become susceptible to abuse.

Thank you, I support.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Hon. Dr. Nyikal.

Hon. (Dr.) James Nyikal (Seme, ODM): Hon. Temporary Deputy Speaker, even the Report of the Public Investments Committee that we have just discussed brings out the problem in our systems, which is the failure to observe procedures and legal framework that we have. If you

look at what is happening in broad terms, companies abandon projects and when they do that, like in the case of Itare, they go and declare themselves bankrupt. They have been paid more money than they should have. In the process of monitoring, it was clear that these people were not performing well. The certificate they were being given for work done was getting smaller. Nobody looked at that. That is a management issue.

Then there is variation of cost. We all know variation in any project should not be more than 25 per cent. Here we find variations, like in Badasa Dam, where we started with Kshs2.3billion, it went to Kshs3.3billion and eventually Kshs2.1 billion was the amount paid. That was at 56 per cent of the work done. Then you find payment in advance. How do you make payment in advance? You do not even have land, but you are already paying the contractor. These are all against the regulations. I looked at that in Karimenu Dam, Kshs4 billion was paid before work was started. At Thwake Dam, Kshs7 billion was paid in advance. Then you find projects have stalled, but payments are made. Look at Umaa Dam, the project was supposed to be Kshs824 million and then it stalled, but what was paid was Kshs1 billion, with 68 per cent of the work done. Then we come up with this proxy system of engineering, procuring, construction and funding, so that the same person is basically doing everything because we are getting people to fund our projects.

So, all round the world we have systems in place, we have legal framework in place, we have structures in place and I assure you if you look at the next debate that is coming, you will find the same system. We really have to come round as a country and as others said, we should start mentioning people. This person did not do this and this person did this instead of generalising. That way, we can start taking action on them.

I want to end by saying that I support this project, the recommendations that we have made and I call upon the Committee on Implementation to make sure that these generic principles that have been put in place are looked at during implementation.

Thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Member for Wajir South, Hon. Sheikh.

Hon. Mohamed Mohamud (Wajir South, JP): Thank you very much, Hon. Temporary Deputy Speaker. I support this Report and I want to congratulate the Committee Members and the Chair of the Departmental Committee on Environment and Natural Resources. I want to support this because there are quite important findings that I have seen. However, it is very important to understand that issues to do with dams are quite serious in the sense that we do not realise the values that dams can have on most parts of the country. Kenya has about 82 per cent of its land arid. About 80 per cent of this land is considered ecotourism. Ecotourism is one of the most important foreign exchange earners at about Kshs165 billion. I am bringing ecotourism into dams because dams are not only essential for domestic use, but also important for wildlife and animals that can utilise them. Unfortunately, that has not been what has been working.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Hon. Sheikh, I will give you two minutes to wind up because our time for the Motion is up.

Hon. Mohamed Mohamud (Wajir South, JP): Thank you very much, Hon. Temporary Deputy Speaker. I will stick to that given that time has rushed. I have realised that the dams that are established and created in this country have not been done through proper evaluation. You can imagine Kshs35 billion is spent on one single dam when the entire country would have spent that amount at about half a million shillings for each dam. Those dams would have been supported. Wajir is one county that requires such big dams, unfortunately it has not been covered. It is not

considered. Even for the small dams that are required in this place simply because livestock rearing and utilisation in rural village in Wajir South requires water, it was still not considered. These dams were established haphazardly in other parts and the amount of money that has been invested in such dams is not good enough because it should have been utilised around the country.

In this case, given that I have run out of time, I support this.

Thank you, very much.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): It is now time for the Mover, Hon. Mbiuki to reply.

Hon. Kareke Mbiuki (Maara, JP): Thank you very much, Hon. Temporary Deputy Speaker. At the very outset, I want to take this opportunity to thank the leadership of this House headed by the Speaker and the Clerk for giving us the opportunity and the resources to undertake this noble cause. I would also like to thank the membership of the Departmental Committee on Environment and Natural Resource for their commitment in undertaking these inquiries bearing in mind we moved across the country and visited various projects across the country. Therefore, I really wish to thank the members of the Committee.

Finally, I would like to thank the Members of this honourable House for the overwhelming support for this Motion. I specifically want to thank Dr. Nyikal for bringing in the amendment that has been carried by the House. The issue of dams in this country has been extremely emotive. Members have raised the issues of the financing model, which is basically government taking commercial loans from other countries. It is basically a single sourcing way of procurement where the Government does not get value for its money.

The other issue that has been brought in by the Members is that of land acquisition. You will find the Government moving ahead procuring for the project, but at the same time, they have no land. As a Committee and as a House, we are saying that before the contract is signed, the Government needs to ensure that at least it will have acquired adequate piece of land where the dams will be constructed.

The other challenge which these projects have been encountering is the wayleave where the Government procures projects, but unfortunately, the other arms of Government especially the KFS under the Ministry of Environment and Forestry does not give the Government the wayleave, so that some of the dams can be undertaken inside the forest. This is despite the environmental impact assessment and other regulatory approvals having been there. You will realise that some of the dams can only be constructed inside the forest, so that they can help the residents downstream.

The other issue which Members have highlighted is the issue of consolidating the construction of the mega dams to the Ministry of Water and Sanitation. Currently, we have seen the mega water dams being spread or undertaken by several agencies or regional authorities across the country where some of the regional authorities do not have competent engineers to undertake the mega projects.

Hon. Temporary Deputy Speaker, the issues of distribution...

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Hon. Kareke Mbiuki, I am sorry to interrupt before you finish. Hon. Charles Ong'ondo, kindly see the Clerk for purposes of the next Motion.

Go ahead Hon. Kareke Mbiuki.

Hon. Kareke Mbiuki (Maara, JP): Thank you, Hon. Temporary Deputy Speaker.

On the issue of distribution of dams, the Committee noted that the distribution of the dams across the country does not reflect equity and hence, we want to take it up to ensure that the dams reflect the face of the country.

Lastly, Hon. Temporary Deputy Speaker, there is the use of the Government of Kenya (GoK) funded projects. Sometimes, the Government undertakes the projects through direct GoK funding. Unfortunately, the same Government or the Exchequer does not give adequate funding for the completion of the projects. Look at Muruny-Siyoi Dam in West Pokot, for instance, which has serious damages due to lack of financing. Therefore, I call upon the national Government, once it initiates the construction of dams, the same dams should be supported by adequate financing.

In this regard, I have in mind the Koru-Soin Dam, which is currently under procurement and which we support 100 per cent. In this financial year, it has been allocated only Ksh500 million out of a budgetary estimate of Kshs25 billion.

(Inaudible)

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Your reply needs to go on record, Hon. Kareke Mbiuki. So, I will give you a minute to wind up the reply.

Hon. Kareke Mbiuki (Maara, JP): Thank you, Hon. Temporary Deputy Speaker.

I was emphasising the need of the national Government-funded projects to ensure that they use the available budget. Although the responsibility of providing the budget is with this House, it becomes extremely difficult when the projects are overfunded or there is a very low budget provision. It makes the role of this House extremely difficult.

So, in the case of Koru-Soin Dam, I request the Government to ensure that we have adequate financing over and above the Kshs500 million, which has only been allocated out of Ksh25 billion. I will be calling upon this House to ensure that Koru-Soin Dam, which is the game changer in Nyanza and some parts of Rift Valley, especially in the control of floods, is given adequate funding.

With those many remarks, I beg to reply. I thank you.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Very well. Hon. Members, we are moving on to the next Order because we cannot conclude this one for obvious reasons. So, we will wait for it to come back on the Order Paper.

Next Order.

INQUIRY INTO THE DEATH OF 11 BLACK RHINOS AFTER
TRANSLOCATION TO TSAVO EAST NATIONAL PARK SANCTUARY

THAT, this House adopts the Report of the Departmental Committee on Environment and Natural Resources on its Inquiry into the Death of 11 Black Rhinos after Translocation to Tsavo East National Park Sanctuary, laid on the Table of the House on Thursday, 19th September 2019.

(Hassan Hulufu on 30.7.2020)

(Resumption of Debate interrupted on 30. 7.2020)

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Hon. Members, if I recall well, we had Hon Charles Ong'ondo, who was the Secunder of this Motion, and he simply stood up and bowed. That gave him a right to speak to the Motion after his seconding. So, I will go on to propose the Question and then have Hon. Charles Ong'ondo have his time to contribute, his five minutes.

(Question proposed)

Hon. Odhiambo-Mabona, what is out of order?

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Thank you, Hon. Temporary Deputy Speaker. My point of order is in relation to the directions that you have just given in relation to Hon. Charles Ong'ondo. Whereas I do not wish to have him stopped from contributing, for purposes of future debates, there is need for clarity. When I was asking the Chairperson of the Committee where the debate is at so that I could see whether I could stay and contribute or whether to leave, he indicated that Hon. Charles Ong'ondo stood and bowed. By Standing Orders that, in itself, is contribution in support and if you have already given contribution in support by seconding, I do not think the Standing Orders necessarily allows you to contribute again to the Motion, except in response.

So, perhaps you could guide on that so that in case he is deemed to have contributed by bowing, which indicates support, then the Chairperson could, as a Member of the Committee, forego his chance of reply to then give him time to respond. If you could directly guide.

I thank you.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Hon. Odhiambo-Mabona, actually, Hon. Charles Ong'ondo by simply bowing in seconding, reserved his right to contribute to the substance of the Motion. I will refer you to Standing Order No.82C, which speaks to reservation of the right of speech. So, Hon. Charles Ong'ondo actually has his full five minutes to go on with the contribution.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Much obliged.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Sure. Hon. Charles Ong'ondo.

Hon. Charles Ong'ondo (Kasipul, ODM): Thank you, Hon. Temporary Deputy Speaker, for the opportunity. I want to indicate that I am a Member of the Departmental Committee on Environment and Natural Resources, which undertook the inquiry into the death of the 11 rhinos.

Just for the record, black rhino is one of the rare species in the animal kingdom. It attracts a lot of tourists. That is why before the botched translocation, it received wide publication, which was presided over by the Cabinet Secretary for Tourism and Wildlife. We also noted that the translocation attracted donor funds equivalent to £25 million, which is a lot of money. It was not the first time for translocation to be undertaken within Kenya. Actually, we have seen up to 11 translocations amounting to 180 rhinos, which has been very successful. Due to the death of the 11 rhinos, it rests on the point of the inquiry of what happened.

Hon. Temporary Deputy Speaker, the Committee further went looking into the mandate of the Kenya Wildlife Service, which covers conservation and management of wildlife. Another mandate is the implementation and management of laws and regulations, which guides the same system. The Committee had a meeting with KWS, Cabinet Secretary for Tourism and Wildlife, the Veterinary Union and other agencies which were involved. Actually, we noted that there were management gaps, which contributed to the death of rhinos because even before that, the former board had declined, up to 2015, the translocation due to ecological issues and water salinity levels within the water source. There was delay in naming of the board which brought about policy guideline issues. The Committee also noted that there was fault with the Principal Secretary because she sits on the board. With the absence of the board, she could have taken the opportunity to oversee all translocation levels.

We also noted some management gaps in appointments. One officer, Dr. Omar, who was in charge of ecology, was really not trained in that line. In his job profile, Dr. Omar is a trained marine scientist. So we wondered how he was appointed to head the ecological department within the Kenya Wildlife Service.

Queries were also raised on the veterinary and the captures officers. The Committee recommended that further investigations be done. In the report by Dr. Omar, he did not disclose the information that after testing, there was a high salinity level of water within Tsavo. This report was not availed. Therefore, the general report indicated that water poisoning due to the high salinity level is what brought about the death of the rhinos.

Other recommendations which were made were that the Ministry...

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Hon. Ong'ondo, I will give you a minute because you are the Secunder of the Motion.

Hon. Charles Ong'ondo (Kasipul, ODM): The other recommendations which were made include tightening the management gaps by the Ministry.

The other one was that the Ministry should liaise with the National Treasury so that we do not rely on donor funds. This is because there were some reports which stated that the World Wide Fund (WWF) was pushing back as their financial year was ending.

The other recommendation was that the Kenya Wildlife Service should review their policies especially on employment and positioning of officers. Each officer employed should be positioned in their area of specification.

The last recommendation was for the KWS to take action against the officers whose negligence contributed to the death of the rhinos.

I beg to support the Motion. Sorry, I second.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): No.

Hon. Charles Ong'ondo (Kasipul, ODM): I am supporting. Correct.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Order Members. Hon. Ong'ondo is not seconding. He already seconded. For the avoidance of doubt and to tidy up the record of the House, I will read Standing Order No.82C. It speaks to the reserving rights of speech. It states:

“82C. Upon a Motion, other than a Motion by way of amendment to a question proposed by the Speaker, a Member may second by rising in his or her place and signifying acquiescence by bowing the head, without speaking, and such Member shall thereby reserve the same rights of speech as the Member would have had if some other Member had seconded such Motion”.

What Hon. Ong'ondo did last time was to bow in secondment of the Motion. That is why I started by proposing the Question. Hon. Ong'ondo then picked up his reserved rights to speak for five minutes. I hope that is now clear to Hon. Millie and other Members.

Let us move on. Let us have Hon. Ibrahim Sahal.

Hon. (Ms.) Nasri Ibrahim (Nominated, FORD-K): Thank you, Hon. Temporary Deputy Speaker for giving me this opportunity. First, I congratulate the Departmental Committee on Environment and Natural Resources for the wonderful Report.

I strongly support the Committee's recommendation that the Ministry of Tourism and Wildlife should take full responsibility for the botched translocation exercise for exhibiting weaknesses in the execution of their oversight role. This was characterised by unwarranted delays in appointment of a new board of trustees and failing to ensure an existing legal framework governing KWS and partners' engagement.

Secondly, with the absence of the board, the Ministry took the supervisory role in the botched translocation.

Madam Speaker Sir, the former board of trustees had created two positions, namely, Advisor to the Director-General then occupied...

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Hon. Sahal, you just said, Madam Speaker Sir. I am just wondering whether that is a new English reference.

Hon. (Ms.) Nasri Ibrahim (Nominated, FORD-K): I am sorry.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): (*Off-record*)

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Hon. Millie, I think you have gone overboard. I do not think that is what Hon. Sahal did. Maybe it was just a slip of the tongue.

Hon. (Ms.) Nasri Ibrahim (Nominated, FORD-K): It was just a simple mistake.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Go ahead, Hon. Sahal.

Hon. (Ms.) Nasri Ibrahim (Nominated, FORD-K): Hon. Temporary Deputy Speaker, the former board of trustees had created two positions, namely, Advisor to the Director-General, then occupied by Mr. Mark Jenkins, and the Chief Operating Officer, then occupied by Ambassador Nehemiah Rotich, reporting directly to the board in violation of the principles of good governance. However, the Cabinet Secretary has since abolished the position acknowledging its significance and culpability in regard to the mismanagement of the translocation exercise.

It was observed that the head of ecology monitoring at KWS, Dr. Mohamed Omar - since then suspended - failed to provide the water quality assessment report to the translocation team to help them make informed decisions which amounted to sabotage. I support the Committee's recommendation for the Director of Criminal Investigations to investigate him and his counterparts, namely, the head of veterinary services and the head of capture services for withholding crucial information that could have aided the translocation.

From the submissions, it was evident that the former board of trustees had declined the translocation of the free range rhinos to the restricted sanctuary citing high salinity levels in the water and unfavourable habitat conditions. The Ministry officials presided over the translocation exercise with regard to the weather conditions, habitat and ecological assessment whose results had indicated negative survival rates at the Tsavo East National Park due to reported habitat situation, prevailing drought and water salinity level.

It was further noted that the Wildlife Conservation Management Act 47 of 2013 was enacted without a policy document hence bringing about challenges in implementing the law. The repealed Section 3B of the Wildlife Conservation Management Act, Cap.376, removed the Director of Wildlife Conservation and the Director of Veterinary Services from the membership of the board of trustees hence affecting the board's capacity to make informed decisions on matters regarding all animals' welfare, disease control and salinity. This led to the poisoning and eventual demise of the 11 rhinos.

I support the Report.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Let us have Hon. Odhiambo

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Thank you, Hon. Temporary Deputy Speaker for giving me this opportunity. I support the Motion.

In supporting the Motion, my second love after human rights is the environment. In studying for my second Master's in Law at the University of Nairobi which I abandoned, my strongest area was in environmental law. One of the things that I do in this Parliament is to

mainstream cross-cutting issues. Some of the issues that I mainstream are human rights of women, children, persons with disability and environmental issues, including climate change.

Hon. Temporary Deputy Speaker, it is very disheartening to see that there is consistency on certain issues in the three Motions that we have dealt with, including this one. One, there is the issue of poor governance, which is very deliberate. When the term of a board expires, we take too long to appoint people. We create positions which are not in existence, so that we can use them to do our own things and not to follow the law.

The other theme that is very consistent in all these Motions is lack of due diligence. In this Motion, I do not even want to call it due diligence because it is a case of negligence. Due diligence was done. It is clear that the salinity of the waters caused the salt poisoning of the rhinos. This is what led to the death of the rhinos that are endangered in this country. If you watched news in the last few days, it was very disheartening to see that one of the greatest tourist attractions in Kenya is under threat because we allowed somebody to build a hotel where we have the migration. What is it called? I have forgotten what it is called.

An Hon. Member: It is called wildebeest migration.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Hon. Temporary Deputy Speaker, that is part of age catching up with me. You can see we do a lot of those things because of negligence and impunity because we know that nobody will hold us to account. What we are relying on is the ability of Kenyans to raise issues on social media. It is like the social media has become a form of governance in this country. I want to say a fourth thing before I say what we need to do.

The other thing is the lure of money. We have been told here that the World Wide Fund for Nature had given out funds that some people were eager to put their hands to. Because of that, we are willing to sacrifice 11 black rhinos, so that we can find a way of putting our fingers to this money. As a country, we must learn to say no. If we have been given funds and yet we find that what they are supposed to do will not be beneficial to us, as a country, we must say no because this is also a form of corruption. The only reason we are so keen to get this money is because we are not concerned about the rhinos, but to get some droplets from this money. Even in the previous Motion, you can see that we actually go for the highest financing abroad, so that we can get foreign financing of a project just because we want to make some money out of it.

As I have said, it is not a question of whether we have laws in this country. In this case, the laws are there. The previous board warned against the movement and made very serious observations that would affect the rhinos. However, it was completely ignored. If you look at Paragraph 10 of the Report, I hope I will get it right, it says:

“Although there were officers who were suspended as a result of the death of the 11 rhinos, the senior officers who presided over the botched exercise were still serving in the service without much reprimand for the loss of the animals.”

This is why impunity goes on. In this country, we know that we arrest people for purposes of public relations. Nothing comes out of it. Because of that, everybody is comfortable right from primary school. We tell young people not to do what we say. How do we expect them to follow us when we are giving them the wrong actions? We, as a country, need to change the way we behave.

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

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

Hon. Daniel Maanzo (Makueni, WDM-K): Thank you, Hon. Temporary Deputy Speaker for giving me an opportunity to speak on this very important Motion. I want to build from where Hon. Millie Odhiambo left. This is not only negligence, but also criminal negligence. Hence the

proposition that the Director of Criminal Investigations takes up the matter for investigation should be really followed. The death of these animals was occasioned by negligence and for that, people should be held culpable and most probably face some jail terms or are even be removed from office. This is so that something of this nature will not be repeated in this country and we will save other animals in future.

The same people are still in charge of other animals and endangered species, but particularly the black rhino which is very dear to the world. If you look at it from the way the whole Report has been presented to us, you will clearly see that one person would refuse to do something and this led to the loss. In many other jurisdictions in the world, there is no way you can manage animals without veterinary doctors. This country has very many jobless veterinary graduates. There has also been this culture of impunity where some people think that no matter what they do, nothing will happen to them. But, fortunately, this particular accident made the country awake to a lot of things.

While we are looking at the post COVID-19 period, tourism has been a main foreign exchange earner and many people look forward to coming to our country to visit the park just near the city here and many other parks in the country. Therefore, the security and care of animals is so crucial. We should not have poachers and we should have a management which will truly take care of the animals.

Recently, there was a lion which strayed from Makueni Constituency and eventually crossed to Kitui West. First of all, when the concerned officers were notified, they took a long time to respond and quite a number of lives were put at risk. When they finally showed up, they chased the lion instead of taming and taking it back to where it belonged. In fact, when it tried to go back to the park, there was no proper way through. It could not go through the electric wires and, therefore, it got wild because it could not go back to its habitat.

Using this particular case, we must protect all animals that God has put in our care. One of the good teachings biblically is that people who are not kind to animals are not even kind to fellow human beings. So, kindness extended to these animals which we use as tourist attraction is very important. According to a veterinary doctor that I know, when animals lack love, they become miserable. This is exactly what happened to the black rhinos. They were handled carelessly, negligently and criminally.

Therefore, I am one of the people pressing and will continue to press that the particular people be arrested and charged in a court of law, so that no one will risk the lives of wild animals in future.

I thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Hon. Buyu Rozaah, you have one minute.

Hon. (Ms.) Rozaah Buyu (Kisumu CWR, ODM): Just one minute? Thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Soipan Tuya): You can use the one minute then pick up the four later.

Hon. (Ms.) Rozaah Buyu (Kisumu CWR, ODM): Thank you, Hon. Temporary Deputy Speaker. In that one minute, I would like to support the Report of the Committee of which I am a Member. If the one minute is not up, I would like to say that this is not the first time this relocation was taking place. But the most important thing is that in this particular instance, the board that had just been disbanded had three times declined to carry out this relocation for reasons that the water

in Tsavo East where the relocation was going to take place was too salty and could cause the death of the rhinos. However, that was ignored and the relocation was still carried out.

Hon. Temporary Deputy Speaker, I am sure I am going to have an opportunity when we resume debate. So I would like to stop there. Thank you for the opportunity to speak today.

ADJOURNMENT

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Order Members. Hon. Members, the time being 7.00 p.m., this House stands adjourned until Tuesday, 15th September 2020 at 2.30 p.m.

The House rose at 7.00 p.m.