

PARLIAMENT OF KENYA**THE NATIONAL ASSEMBLY****THE HANSARD****Thursday, 21st October 2021**

The House met at 2.30 p.m.

*[The Deputy Speaker (Hon. Moses Cheboi) in the Chair]***PRAYERS***(Several Hon. Members walked into the Chamber)*

Hon. Deputy Speaker: Hon. Members, we have the required quorum and therefore, business will begin. Order, Hon. Members! The Members who are coming in take your seats.

(Hon. Mohamed Duale and Hon. Wafula Wamunyinyi stood in their places)

Order! Take your seat Hon. (Dr.) Dahir and the rest of you please take your seats because the Communication is fairly long. Hon. Wamunyinyi, I doubt if you want to stand for long, so take your seat. Hon. Members, I have a Communication.

COMMUNICATION FROM THE CHAIR**THE CONSTITUTIONALITY AND ASPECT OF PUBLIC PARTICIPATION DURING
CONSIDERATION OF THE HEALTH LAWS (AMENDMENT) BILL**

Hon. Deputy Speaker: Hon. Members, you will recall that during the afternoon Sitting of the House on Tuesday, 5th October, 2021, the Member for Garissa Township, the Hon. Aden Duale, EGH, MP, rose on a point of order seeking deferment of the Second Reading of the Health Laws (Amendment) Bill (National Assembly Bill No. 2 of 2021), which intends to amend various health sector related statutes so as to improve efficiency and for better service delivery.

The Hon. Duale indulged the Speaker to defer Second Reading of the Bill until the matter of the adequacy of public participation undertaken by the relevant Departmental Committee on the Bill, and the constitutionality of certain provisions contained in the Bill are determined. He claimed that barring the determination by the Speaker of the two cited fundamental issues concerning the Bill in question, would make the House to proceed with a legislative exercise that was likely to be successfully challenged in court for being unconstitutional, especially for want of adequate public participation.

Hon. Members, the concerns by Hon. Duale elicited a lot of interest. The Members who weighed in on the matter raised by the Member for Garissa Township were the Leader of the Majority Party, the Majority Whip, the Hon. (Dr.) Eseli Simiyu, the Hon. T.J. Kajwang', the Hon.

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John Mose, the Hon. (Dr.) Otiende Amollo, the Hon. Peter Kaluma, the Hon. (Dr.) Robert Pukose, the Hon. Stephen Mule, the Hon. (Dr.) James Nyikal, the Hon. John Kiarie, the Hon. Jared Okelo, and the Hon. Gideon Koske, among others.

In their arguments, the Members claimed that the proposed amendments, if carried, would substantially alter the composition of various statutory and regulatory boards and councils in the health sector and should, therefore, have been contained in separate Bills seeking to amend the relevant statutes, rather than being brought through an omnibus Bill as is the case now. It was further claimed that the Bill was ill-intended, particularly because it sought to domicile control of the regulatory or statutory boards and councils in the Executive by excluding stakeholders and professional bodies from membership. This, it was claimed, is contrary to the provisions of Article 10 of the Constitution which places public participation at the core of our national values and principles of governance.

Hon. Members, you will agree with me that the matters raised by the Hon. Duale and other Members are weighty and would have merited the direction of the Speaker before any further action is taken on the Bill. However, I did guide, in the interim, that debate on Second Reading of the Bill proceeds in the event that the Order under which the Bill was listed in the Order Paper for that day was to be reached. My decision was based on the principle that, as your Speaker, my role is largely facilitative and not obstructive. Hence, I should, as much as possible, allow the House to proceed to transact its business unimpeded, even when reservations have been raised, as long as a decision is not taken until a determination of any substantive question raised by a Member is made.

From my understanding of the issues raised by the Member for Garissa Township, I am being invited to find that to the extent that the Health Laws (Amendment) Bill, 2021 proposes to limit involvement of professional bodies and various sector stakeholders in statutory and regulatory boards in the health sector and domiciled their appointment within the ambit of the Executive, the amendments are unconstitutional and therefore untenable as they negate the realisation of the national values and principles of governance espoused by Article 10 of the Constitution.

Hon. Members, there is no contestation that Article 3 of the Constitution obligates me to respect, uphold and defend the Constitution. I would ordinarily, therefore, be required to forestall any affront to the Constitution by whichever manner, including legislation before this House, if indeed the concerns raised by the Member for Garissa Township are valid. Having said that, let me emphasise that the path for determining unconstitutionality or otherwise of the amendment under consideration of this House ought to be navigated with caution lest the House be unnecessarily gagged from exercising its constitutional mandate.

Hon. Members, as you are aware, I have previously hesitated to determine questions of constitutionality raised in this House. Even when I ruled on 19th September, 2019 that clauses 50 and 51 be severed from the Finance Bill, 2019 for failure by the Cabinet Secretary (CS) to disclose in the accompanying memoranda that the two clauses would limit the right to privacy as required in Article 24 of the Constitution, I was categorical that the determination was only related to the procedural defects in the manner in which the proposed amendments had been presented. I also clarified that at that stage, the question as to whether the two clauses would offend the Constitution if they were to comply with the standard of disclosure set in the Constitution and introduced as a separate Bill did not arise.

(Hon. Members made their way into the Chamber)

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Hon. Members who are coming in please take your seats. Order Members! Hon. Member for Gem, please, take your seat.

Hon. Members, I do not wish to deviate from my previous decisions on questions of constitutionality. As a matter of fact, the Hon. Speaker's respect for upholding and defence of the Constitution is subject to the express provisions of Article 165 of the Constitution. For clarity, the said Article provides as follows, and I quote:

“165(3) Subject to clause (5), the High Court shall have –

(d) Jurisdiction to hear any question respecting the interpretation of this Constitution, including determination of –

(i) The question whether any law is inconsistent with or in contravention of this constitution;”

Clearly. Hon. Members, the question of construing and interpreting the Constitution, including the authority to make a definitive determination as to the constitutionality or otherwise of any law rests within the exclusive province of the High Court. I am inclined to believe that the framers of our Constitution had a good reason for couching Article 165 of the Constitution to only make reference to law and not Bills. We all appreciate that a Bill in itself is not law until it successfully goes through the stages of law making, including the Committee of the whole House, where it may be amended. It is my view that declaring a Bill unconstitutional while still undergoing consideration in the House is premature given that the House still has room to correct any potentially unconstitutional provisions, perceived or real, by way of amendments at the Committee of the whole House stage.

Hon. Members, I note that the Constitution grants the Members of this House an expansive legislative mandate, which should be jealously safeguarded. In this regard, I ought not to make decisions that would hinder or inhibit the House from executing its mandate. Instead, I am duty-bound to facilitate the continuity of legislative business of this House even in the face of concerns like the one expressed by the Member for Garissa Township, provided that the matter is still within the province of the House and the House still has legislative power to rectify the concerns through amendment and voting. My views are buttressed by the provisions of Section 72 of Mason's Manual of Legislative Procedure, (2010 Edition) which states as follows:

1. “The propriety and wisdom of a statute are questions exclusively for the legislature. The wisdom, justice and expediency of an act of the legislature is not subject to review by the courts.

2. Before a statute can be declared unconstitutional, it must clearly and unavoidably appear to be beyond the power of the legislature. It is for the courts to decide whether there has been compliance with constitutional provisions and whether a Bill of the legislature has become law.”

Hon. Members, I am persuaded that the House still has power to apply itself on the matters canvassed by Hon. Duale by amending the Bill appropriately during the Committee of the whole House or making a conscientious decision on the Bill in one way or the other. Further, it is not enough to simply claim that “a Bill is unconstitutional” without particularising with specificity the basis of the claim. No Member stated with specificity any provision in the Bill which offends a particular provision of the Constitution. I am therefore hesitant to forestall consideration of the Health Laws (Amendment) Bill, 2021 on grounds of unconstitutionality. This may be construed on one hand as an attempt by the Hon. Speaker to unduly fetter the authority of the House and usurping the constitutional mandate of the High Court on the other hand. I believe, Hon. Members that this settles the second question.

Hon. Members, the second issue also relates to whether the amendments proposed in the Health Laws (Amendment) Bill, 2021 are of a substantive nature requiring the publication of a

separate Bill for each affected statute instead of their publication in an omnibus format as presented in the House. The courts and, indeed, myself have had previous occasion to address the question of the nature and scope of omnibus Bills. What is clear is that the courts have left the determination of the form of Bill to the province of Parliament. The courts are also on record as having found difficulties in establishing provisions of a Bill that would constitute miscellaneous *vis-à-vis* substantive provisions so as to make a determination as to whether such provisions sit well in a stand-alone Bill or an omnibus Bill.

Hon. Members, this is not the first time that the House is considering a Bill presented in an omnibus format. As you may be aware, it is the practice of this House to publish and consider Bills, making amendments to various statutes in an omnibus format. Miscellaneous or various amendments to several disparate statutes have been published on an annual basis in a Statute Law (Miscellaneous Amendment) Bill. Where the amendments proposed relate to a defined sector or theme such as finance or health, omnibus Bills such as the Finance Bill or the Tax Laws (Amendment) Bill have been presented to this House. Indeed, and for the record, this House has considered and passed Bills similar in form to the Health Laws (Amendment) Bill, 2021. They include, the Finance Bills, the Tax Laws (Amendment) Bills, 2020, the Land Laws (Amendment) Bill, 2020, the Business Laws (Amendment) Bill, 2019, the Land Value Index Laws (Amendment) Bill, 2018, the Health Laws (Amendment) Bill, 2018, just to mention but a few.

As a matter of fact Hon. Members, the Bill under contestation was published in accordance with the practice and procedures of this House and processed in accordance with Standing Orders 114 and 114 (A).

(Hon. Members made their way into the Chamber)

Members, please, take your seats because I still have a few more pages.

Hon. Members, you may also recall that I have previously ruled on questions as to whether proposed amendments contained in an omnibus Bill ought to be published as separate Bills. I remain of the considered view that any concerns over the substance of a Bill can only be addressed through the conduct of adequate public participation and exhaustive consideration of the proposals by the House. I have previously committed affected statutes in an omnibus Bill to their relevant Departmental Committees to facilitate public participation for this very reason. The test for the House is not the form of the Bill, but the manner in which it considers and interrogates the substance of the Bill before making any resolution. It is my finding that the Health Laws (Amendment) Bill, 2021 is in order as to the format and style of the House and the House proceed with it. This settles the second question.

Hon. Members, the third and final issue is the question as to whether the Departmental Committee on Health did conduct adequate public participation within the meaning and threshold envisaged under Article 118 of the Constitution and Standing Order No. 127(3). From the outset, Hon. Members, you are aware that I have previously guided this House that since the promulgation of the Constitution of Kenya 2010, public participation in legislative business is no longer optional. Article 118 of the Constitution is couched in mandatory terms and obligates Parliament, in this case the National Assembly, to facilitate public participation and involvement in legislative and other business of Parliament and committees. In my previous rulings on questions of public participation, I have repeatedly underscored that public participation ought to be undertaken in a qualitative manner and not a quantitative or cosmetic ritual of ticking the box to satisfy the requirements of Article 118 of the Constitution and Standing Order No. 127.

Hon. Members, as you may recall, I have previously referred a Bill back to the relevant Committee and ordered fresh public participation where I was not satisfied that the threshold of public participation within the meaning of Article 118 was met. This was the case when I directed the Departmental Committee on Transport, Public Works and Housing to undertake fresh public participation on the National Aviation Management Bill, 2020, (National Assembly Bill No.18 of 2020). Indeed, the courts have also affirmed the mandatory nature of public participation and emphasised on its qualitative aspects to distinguish it from a mere consultation or a public relations exercise without a meaningful purpose. In this regard, I need not revisit and belabour the meaning, scope and threshold of public participation.

Hon. Members, in arguing that the Departmental Committee on Health did not conduct adequate public participation within the meaning and threshold envisaged in Article 118 of the Constitution and Standing Order No. 127(3), Hon. Aden Duale claimed, and I quote:

“... despite several bodies in the health sector, including the Kenya Union of Clinical Officers (KUCO) and the Kenya Clinical Officers Association (KCOA) - the bodies that regulate medical doctors, pharmacists and nurses, among others, in this country - submitting memoranda to be considered by the Committee, they can confirm to this House that the Committee in its Report completely disregarded their submissions. In disregard of Article 118 of the Constitution, the Committee never considered one single memorandum, neither did it give some of those institutions and bodies an opportunity to appear before it to prosecute.”

Hon. Members, I have perused the Report of the Committee on its consideration of the Health Laws (Amendment) Bill, 2021 and noted that, pursuant to Article 118 of the Constitution and Standing Order No. 127(3), the Committee rolled out the process of public participation by placing an advertisement in the print media on 11th March 2021, requesting for comments and memoranda from the public on the Bill within seven days. Hon. Members, page 25 of the Report of the Committee indicates that the Committee received a Joint Memorandum and individual memoranda from the following parties:

(a) Parties to the Joint Memorandum

1. The Ministry of Health
2. The Pharmaceutical Society of Kenya
3. The Kenya Medical Association
4. The National Nurses Association of Kenya
5. The Kenya Dental Association
6. The Kenya Pharmaceutical Association
7. Kenya Clinical Officers Association
8. Association of Kenya Medical Laboratory Scientific Officers
9. The Association of Medical Engineering of Kenya
10. Kenya Association of Radiologists
11. The Public Health Society of Kenya
12. Environmental Public Health Association of Kenya

(b) Individual Memoranda:

1. The Peoples Health Movement of Kenya
2. Christian Medical and Dental Association of Kenya
3. Kenya Progressive Nurses Association
4. Kenya Medical Association
5. Kenya Nutritionists and Dieticians Institute

6. Association of Medical Records Officers of Kenya
7. Health Records and Information Management Society
8. Health Systems Management Association
9. Society of Radiography in Kenya
10. Dr. Kahura Mundia
11. Dr. Magare Gikenyi
12. Ikacho Lokwee
13. Willis Okoth
14. Abraham Kimeli Kiplagat
15. William Komen
16. Rodgers Kwalera
17. Henry Cheruiyot
18. Faith Adhiambo
19. Japheth Ngeno
20. Milcah Koech
21. Rose Jepchirchir Bargoiyet
22. Nelly Jepngetich Tarus
23. Alice Jeruto Kimutai
24. Faith Cheruiyot
25. Mark Kiplimo Chepsiror
26. Kenneth Kibet Koech
27. Jane Mochache
28. Thomas Orwenyo.

Hon. Members, it is worth noting that in the letter dated 20th May 2021 submitting the Joint Memorandum to the Clerk, the Cabinet Secretary for Health is on record that the the Ministry had reviewed the Health Laws (Amendment) Bill, 2021 in consultations with stakeholders in the Health Sector. He added that the Ministry had reached a consensus with a majority of the stakeholders on regulatory councils/boards as contained in the Joint Memorandum.

Honourable Members, over and above the public advertisement placed in the print media inviting submission of memoranda, the Committee, by way of a letter dated 20th April 2021, invited key stakeholders in the health sector for a virtual stakeholder engagement on 22nd April 2021. Having perused both the Report and the Minutes annexed to the Report, I can confirm that, far from the claims made by Hon. Duale, the Kenya Clinical Officers Association was party to the Joint Memoranda submitted by the Ministry of Health on behalf of the parties to it.

Further, minutes of the meeting of the Committee held on 22nd April 2021 also confirm that the said association was present and did participate in the proceedings. With regard to the Kenya Union of Clinical Officers, minutes of the foregoing meeting show that the Union was present at the meeting. While the Union is not listed in the Report as having submitted a separate memorandum, I am inclined to believe that by virtue of having been on record to have attended the hearings on 22nd April, 2021, it had the opportunity to canvas its views on the Bill.

I am also reliably informed that the Ministry of Health wrote to the Clerk of the National Assembly seeking to 'clarify and articulate the proposed amendments'. The Committee and the Ministry held consultative meetings, physically on 17th August, 2021 and virtually on 31st August, 2021 before adopting the Report. From the foregoing, it is apparent that the Committee engaged most stakeholders in the health sector and afforded them the opportunity to make their submissions

on the Bill. What weight, if any, they gave to the submissions they received from the stakeholders, is what remains to be seen.

(Some Hon. Members stood at the bar)

The remaining Members, come in and take your seats!

Hon. Members, the qualitative aspect of public participation as espoused in Article 118 of the Constitution requires the House to receive views from the public, to consider such views and also to demonstrate such consideration in its final output. Indeed, the High Court recently observed in Constitutional Petition No. E001 of 2021 EKLK, that, and I quote—

“All parties interested in legislation should feel that they have been given a real opportunity to have their say, that they are taken seriously as citizens and that their views matter and will receive due consideration at the moments when they could possibly influence decisions in a meaningful manner. The objective is both symbolical and practical. The persons concerned must be manifestly shown the respect due to their concerned citizens, and the legislators must have the benefit of all inputs that will enable them to produce the best possible laws.”

Members are specifically enjoined by Article 10 of the Constitution to ensure the participation of the people when enacting any legislation. This obligates a Committee of the House to which a Bill is committed to undertake and demonstrate the discharge of two distinct tasks in its report to the House on a Bill. The Committee must first invite the public to participate in its consideration of the Bill. Such invitation introduces the public to the general content of the Bill and directs them on where to obtain a copy to allow them to review and comment on the Bill either in person or through written memoranda. The substance of the Bill under consideration and the urgency at hand shall guide the Committee in prescribing the period within which submissions are to be made. Second, the Committee must consider any representations it receives from the public on a Bill. The Committee must deliberate on the submissions received, record its views on the submissions and indicate its decision or reasons (where possible) for either agreeing or disagreeing with the representations. This, ideally, is what would inform the recommendations it makes to the House.

Hon. Members, from a perusal of the Report tabled before the House, it is evident that though the Committee laudably applied itself to the tasks it was given by the House, it fell slightly short of the standards required. The Committee did invite the public to participate in its consideration of the Bill. The Committee gave notice for the public to submit memoranda and thereafter invited the key stakeholders it had identified to a virtual meeting and other meetings. The Committee did receive submissions from key stakeholders affected by the proposals in the Bill as well as other interested members of the public. Reading through the Part III of the Report, Members will note that the Committee took great lengths to record the submissions received from the public and concluded its Report by recommending amendments to various provisions of the Bill. The only major gap that is apparent from the body of the Report is a commentary or a record noting how the Committee considered the submissions it received, its views on those submissions and reasons for either agreeing or disagreeing with the submissions. Unless this omission is remedied, the assumption by members of the public and non-members of the Committee shall remain that the public participation conducted by the Committee was a mere perfunctory exercise without any bearing on the final outcome of the Bill.

(Applause)

Hon. Members, the obligation to facilitate public participation in legislative processes can only be fully discharged if the public who take their time to either submit memoranda or make oral submissions receive adequate feedback from this House on such submissions. I do agree that not all submissions may be relevant. A submission may be outlandish. It may even not relate to the subject matter under consideration. It may propose expansion of a Bill in a manner that is prohibited under our Standing Orders. It may be untenable for the fact that it impacts on current or future budgets in a manner that cannot be supported in the short or medium term.

Nevertheless, Parliament, as a House of record, must ensure that all such submissions are received, recorded and afforded clear and proper feedback. The feedback must address the question of whether the submissions will affect the legislative process and give reasons on the position taken by a Committee. It is the duty of each Committee to meticulously sieve the cocktail of submissions it receives and note the manner in which that exercise informs the recommendations that it makes to the House.

Hon. Members, this House makes laws that directly affect the people, hence the participatory approach to law-making required by the Constitution. We cannot expect the public to look favourably at laws made by the House when their input is disregarded without them being given the courtesy of a proper reason. The Report of the Departmental Committee on Health on its Consideration of the Health Laws (Amendment) Bill, 2021 does not expressly indicate the manner in which it considered the submissions it received from the public or provide any reasons either in agreement or disagreement with the submissions. Consequently, it is my view that the conduct of public participation on the Bill is incomplete and wanting to that extent.

(Applause)

Hon. Members, before I conclude, you will recall that during debate on the matter that gave rise to this guidance, there arose the issue of whether a Minority report may be appended to a Committee Report on a Bill. This was alluded to by Hon. Simiyu Eseli. I would not expect the Member for Tongaren, who is serving his third term in this House, to be misled on this matter. For the avoidance of doubt, Standing Order No. 199(5) provides, and I quote— “A report having been adopted by a majority of Members, a minority or dissenting report may be appended to the report by any Member(s) of the Committee.”

The Member, therefore, remains squarely within his rights as a Member of the Departmental Committee on Health to propose, cause drafting and have a minority report included in the Report of the Committee for attention of the House.

Hon. Members, in summary, my considered guidance is as follows:

1. THAT, the role of the Speaker in respecting, defending and upholding the Constitution is limited to the procedural aspects of the exercise of the mandate granted to the House by Article 95 the Constitution. The form, substance and manner in which the Health Laws (Amendment) Bill, 2021 was introduced in the House accord with the provisions of the Constitution and the Standing Orders of the House. The House remains at liberty to effect any changes it deems fit to the Bill in exercise of its legislative mandate. The Constitution, however, reserves the powers to determine the constitutionality or otherwise of a resolution made by the House to the High Court.

2. THAT, the Health Laws (Amendment) Bill, 2021 which seeks to amend various health related statutes and is presented in an omnibus format is in order as to the form and style of the House.
3. THAT, in order to discharge the requirement to facilitate public participation under Article 118 of the Constitution and Standing Order No. 127, a Committee of the House to which a Bill is committed must first undertake and demonstrate the discharge of two distinct tasks in its report to the House as follows:
 - (a) The Committee must invite the public to participate in its consideration of the Bill and prescribe an adequate period of time within which submissions are to be made. The period may be determined with reference to the substance of the Bill and the urgency of the matter under consideration, and
 - (b) The Committee must consider any representations it receives from the public on a Bill by deliberating on each submission received, recording its view(s) on the submissions and providing reasons for either agreeing or disagreeing with the representations in its Report.
4. THAT, to the extent that the Report of the Departmental Committee on Health Laws (Amendment) Bill, 2021 does not expressly indicate the manner in which it considered the submissions it received from the public or provide any reasons either in agreement or disagreement with the submissions, the conduct of public participation on the Bill does not meet the threshold required by Article 118 of the Constitution and Standing Order No. 127.
5. THAT, the Report by the Departmental Committee on Health in its consideration of the Health Laws (Amendment) Bill, 2021 is hereby referred back to the Committee for regularisation along the terms of this guidance. The Committee is at liberty to seek further engagement with the public on the Bill if need be, and
6. THAT, the Committee should also address and attempt to resolve the concerns raised by part of its membership in the House with respect to the approach, value and actualisation of the output of the stakeholder engagement exercise.

Hon. Members, having given this guidance and conscious that this Bill is one that concerns County Governments in terms of Articles 110 and 112 of the Constitution, the House will now await the Committee to resubmit its report to the House after complying with this guidance before resuming with its consideration at Second Reading. However, the final decision on the Bill and the form in which it will be passed ultimately lies with the House.

The House is accordingly guided. Thank you.

Hon. Members, we have not even started business and Members should remain calm. Order! Hon Members.

I want to make another very short Communication.

(Hon. Caleb Kositany and Hon. Kimani Ichung'wah consulted loudly)

Hon. Caleb Kositany take your seat. Order, Hon. Ichung'wah and Hon. Caleb. This is a brief one.

VISITING DELEGATION FROM THE PARLIAMENT OF ZIMBABWE

Hon. Members, I wish to introduce a delegation of Members of Parliament and staff from the Parliament of Zimbabwe seated in the Speaker's Row.

(Applause)

(Hon. (Ms.) Odhiambo-Mabona spoke off record)

Order, Hon. Millie Odhiambo-Mabona.

The delegation comprises of the following Members drawn from the Committee on Local Government, Public Works, National Housing and Social Amenities:

1. Hon. Miriam Chikukwa, Chairperson and leader of the delegation.
2. Hon. Marko Raidza, Committee Member.
3. Hon. Omega Sibanda, Committee Member.
4. Hon. Chidakwa James, Committee Member, and
5. Hon. Allan Markham, Committee Member.

The delegation is accompanied by:

1. Ms. Sithabisiwe Macheza, Committee clerk.
2. Ms. Esline Ganda, Minister Counsellor from the Embassy, and
3. Ms. Edith Muteema, Counsellor from the Embassy.

The delegation is in the country on a benchmarking visit to our Parliament, specifically to share experiences and learn good practices with their counterpart committees. On my own behalf and that of the House, I wish to welcome them to the National Assembly and wish them a fruitful engagement during their stay in the country.

Thank you.

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

Hon. Deputy Speaker: What is it? There is absolutely nothing that can be out of order on that particular one. Hon. Millie Odhiambo Mabona, what is it that you want to say? Just a minute.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Thank you, Hon. Deputy Speaker, for giving me this opportunity to welcome the delegation from Zimbabwe in a very special way. It would be actually a travesty of justice if my in-laws would be here and I do not welcome them specially. That would create jeopardy in my house: I might be divorced if I do not welcome them specially. I want to take this opportunity to specially welcome them to the House.

Thank you.

Hon. Deputy Speaker: We will not then have a problem with an interpreter in the House just in case. What is it Hon. Fatuma Gedi?

Hon. (Ms.) Fatuma Gedi (Wajir CWR, PDR): Hon. Deputy Speaker, let me also take this opportunity to welcome the delegation from Zimbabwe and declare that they are our in-laws. I wish them well during their stay in Nairobi, Kenya. *Karibuni sana*. We must acknowledge and also welcome them. They are our in-laws through our sister, Hon. Millie Odhiambo.

Hon. Deputy Speaker: Order! It is not normal that Members would be given an opportunity to welcome Members from another country because the Deputy Speaker has already done the job. I understood that the case for Hon. Millie Mabona made sense but I could not

understand the claim by Hon. Gedi when she said, “They are our in-laws.” I would prefer it if it was one in-law, but that is okay.

Hon. Members, let us proceed. We have a busy afternoon. Next Order.

PETITIONS

MISTREATMENT OF KENYAN DOMESTIC WORKERS IN THE MIDDLE EAST

(Loud consultations)

Hon. Deputy Speaker: Order, Members! Hon. Members, please, take your seats. Those who are standing, please, freeze. Order, Member for Mvita.

Hon. Members, Standing Order No.225(2)(b) requires the Speaker to report to the House any petition other than those presented by a Member. Further, Article 119 of the Constitution provides for the right of any person to petition Parliament to consider any matter within its authority, including petitions to the House to enact, amend or repeal any legislation.

In this regard, I wish to report to the House that my office has received a Petition from Mr. Fredrick Gaya of ID No. 22729580, on behalf of the residents of Kojwach Location, Rachuonyo Sub-County in Homa Bay County, who are directly and indirectly aggrieved with the servitude subjected to Kenyan domestic workers in Saudi Arabia, the United Arab Emirates and other Persian Gulf countries.

Hon. Members, the petitioners state that in pursuit of earning livelihoods, many young Kenyan women who have been unable to find employment at home have moved to Saudi Arabia and other Gulf States as domestic workers, mostly through recruitment agencies. The petitioners state that, unfortunately, there has been an increase in the number of heart-breaking accounts of Kenyan domestic workers in various Gulf States being subjected to servitude and mistreatment of grave nature, with some of them being tortured to death. The petitioners have been moved by several cases of alleged mistreatment and killing of Kenyan domestic workers in the Gulf States, particularly the case of Ms. Caroline Aluoch Akiri who died in Saudi Arabia in May 2021 in what the deceased’s family believed could have been torture by the employer.

They have also mentioned the cases of Ms. Waruguru Beatrice, Ms. Lucy Wambui, Ms. Maximilla, Ms. Murunga Faith Shimila, Ms. Wanja, Ms. Nancy Nyagoha Idah and Ms. Esther Wanjiku Thuku, among others, some of whom have reportedly been assaulted, gone missing or were killed. The petitioners are distressed that most employers in the Gulf region subject Kenyan domestic workers to torturous working conditions and deny them access to quality health services, clean water, food, proper housing and reasonable standards of sanitation.

The petitioners aver that Article 21(1) of the Constitution places on the Government of Kenya the obligation to observe, respect, promote, fulfill and protect the rights and fundamental freedoms in the Bill of Rights. They are persuaded that that State’s responsibility is not exclusive to Kenyans at home but also applies to those in the diaspora, as long as they hold Kenyan citizenship. They are, therefore, disturbed that despite the foregoing express provisions in the Constitution, the Ministry of Foreign Affairs and Kenyan Embassies in the Gulf States have been reluctant whenever families of distraught domestic workers sought assistance to locate and repatriate victims of torture, including transportation of bodies of those who sadly succumbed to death.

It is against this backdrop that the petitioners are seeking urgent intervention of this House to:

- (i) Cause the Ministry of Labour, in consultation with the Ministry of Foreign Affairs, to provide the number and details of Kenyan citizens engaged in domestic labour in Saudi Arabia, the United Arab Emirates and other Persian Gulf countries from 2013 to 2021;
- (ii) Cause the Ministry of Labour, in consultation with the Ministry of Foreign Affairs, to provide a record of the number of deaths of Kenyan domestic workers in the said countries, causes of death, including those associated with mistreatment by employers;
- (iii) Intervene to cause the Government, through the Ministry of Foreign Affairs, to urgently audit the conditions of Kenyan domestic workers in Saudi Arabia and other Gulf States, and repatriate those who are being involuntarily held in servitude without the option of accessing their travel documents to return home or seek alternative decent employment;
- (iv) Cause the Ministry of Labour to provide a list of recruitment companies or agencies that are involved in exporting Kenyan domestic labour to the Gulf States; status of their registration and conditions, including commitments on the protection of employees from potential abuse by employers; and
- (v) Intervene to compel the Government to formulate and implement policies that are deterrent to the inhumane working conditions bedeviling Kenyan domestic workers in the Gulf in order to secure their right to life, dignity, reasonable working conditions and freedom from slavery, servitude and forced labour, among other rights and fundamental freedoms.

Hon. Members, having determined that the matters raised by the petitioners are well within the authority of this House, I order that, pursuant to the provisions of Standing Order No.227(1), this Petition be committed to the Departmental Committee on Labour and Social Welfare. The Committee is required to consider the Petition and report its findings to the House and to the petitioners in accordance with Standing Order No.227 (2).

Let us have the Member for Kibra.

SAFEGUARDING HOME OWNERSHIP RIGHTS OF RESIDENTS OF WOODLEY ESTATE

Hon. Bernard Okoth (Kibra, ODM): Thank you, Hon. Deputy Speaker.

I, the undersigned, on behalf of various residents of Woodley Estate in Nairobi, draw the attention of the House to the following:

THAT, Articles 10(2) and 40 of the Constitution of Kenya, 2010 respectively identify public participation as one of the national values and principles of governance in Kenya and uphold every person's right to acquire and own property of any description in any part of Kenya;

THAT, Woodley Estate in Nairobi, which comprises of 96 flats and 188 bungalows of between two and three bedrooms, was built between 1948 and 1957 through the British Colonial Office in an undertaking led by Sir Richard Woodley who was the then Mayor of Nairobi;

THAT, Woodley Estate residents have had a unique arrangement with the now-defunct Nairobi City Council and its successor, the County Government of Nairobi, whereby the latter collects rent while the residents undertake the management, repair and maintenance of their respective properties at their own expense since 1968;

THAT, such maintenance has included repair and maintenance of drainage, sewerage, water pipes, gardening and beautification of internal and external public areas and enhanced security by erecting and reinforcing fences and gates to the estate at their own cost, and this has led to both expectation and demand by residents for full legal possession of their respective houses;

THAT, following the then Nairobi City Commissioner's decision to sell the said Nairobi City Council Estates' houses in the early 1990s as they had been deemed unserviceable, unmanageable and uneconomical to maintain, a Motion was passed in Parliament in 1992 to sell the said houses to the then tenants/occupiers;

THAT, Woodley Estate, Suna Road Estate, Madaraka Estate and Kileleshwa Civil Servants Estate were among the recognised estates. The tenants of Madaraka, Suna and Kileleshwa Estates had their properties successively sold to the existing tenants at the time, leaving out Woodley Estate tenants;

THAT, the City Commission subsequently, instead of allocating the houses to the existing tenants, fraudulently allocated them to outsiders and strangers to the estates were eventually awarded the property. Out of the 284 tenants, only 15 were allocated the houses to buy, and the rest of the residents were denied that opportunity;

THAT, on 7th January, 2021, and without the requisite public participation or stakeholder consultation, the Nairobi Metropolitan Services (NMS) announced plans to re-develop several county estates in Nairobi, including Woodley Estate;

THAT, this act of impunity breaches the Woodley Estate residents' constitutional rights as well as provisions of the Physical and Land Planning Act, 2019; the Environmental Management and Coordination Act, 1999, and other provisions of law;

THAT, contrary to statute, the NMS further failed to conduct an environmental and social impact assessment at the initial stage of the proposed project prior to the announcement, which would have addressed concerns such as the project's effect on human health, drainage patterns, water resources, possibility of multiple use among other concerns, and has yet to release a plan/blueprint for the proposed urban renewal programme for Woodley Estate;

THAT, residents of Woodley Estate have since the 1980s expressed their desire to continue dutifully preserving and protecting the ecosystem and to have full ownership of their respective houses within a safe, healthy and secure environment, have invested in and have sustained financial and social equity in the estate through the maintenance of the houses, maintenance of Woodley grounds, seeking legal intervention on several occasions to protect the estate, and enhancing overall security through reinforcing of gates and fences;

THAT, repeated attempts by the residents to consult and engage the NMS on the planned urban renewal programme have been futile due to the latter's indifference and failure to respond to inquiries; and,

THAT, the issue in respect of which this particular Petition is made is not pending any court of law or any constitutional legal body.

Therefore, your humble petitioners pray that the National Assembly through the Departmental Committee on Transport, Public Works and Housing:

- i. Recognises the residents/tenants of Woodley Estate as proper allottees of the estate as referenced in paragraph (vii) above.
- ii. Urgently intervenes to ensure that Woodley Estate houses are sold to the current tenants based on an affordable housing model that is inclusive of considerations of social and infrastructural equity advanced to the estate by the residents as well as beneficial interests based on significant maintenance and management costs

incurred directly by the residents since occupancy; and facilitates the structuring of the current rental arrangements in the form of a tenant-purchase mortgage agreement that secures full ownership of the houses by current tenants within three years at rates not exceeding Ksh15,000 per month.

- iii. Intervenes to ensure that protection of the Woodley Estate environment that comprises of over 25,000 trees, as well as preservation of open green spaces are guaranteed and prioritised in any current or future development plans.
- iv. Makes any other orders in the interest of the Woodley Estate residents who have toiled for years to maintain and develop the estate and its neighbourhood.

Your petitioners will ever pray.

Thank you, Hon. Deputy Speaker.

Hon. Deputy Speaker: Hon. Members, we are already too deep into the afternoon, but I will give a chance to two Members to comment on both or either of the two Petitions. I do not know how I am to pick them, because I see there is a lot of interest. We will have the Chairperson or the Vice Chairperson of the Departmental Committee on Labour and Social Welfare, if they are in the House. I will then give a chance to a few more Members. Do we have the Chairperson? Would you want to say something, Hon. Kabinga? Say something to it.

Hon. Josphat Kabinga (Mwea, JP): Thank you, Hon. Deputy Speaker. I would like to comment on the first Petition.

The Petition is very timely. We have had several Questions, Statements and Petitions on the same issue. My Committee has, for the last three months, been working on this particular issue. We have met with various stakeholders locally; we have met with agents that are concerned with recruitment of the young men and women who go to Saudi Arabia; we have also met with the training schools that have been involved; we have met with the Ministry of Labour as well as with the Ministry of Foreign Affairs. We are on the verge of compiling a very detailed and comprehensive Report...

(Hon. Kareke Mbiuki consulted loudly)

Hon. Deputy Speaker: Order, Hon. Kareke. Proceed.

Hon. Josphat Kabinga (Mwea, JP): Thank you, Hon. Deputy Speaker.

We are in the process of compiling a comprehensive Report on this issue, because our Committee considered it a priority. We cannot allow our children to be dying or being enslaved in Saudi Arabia and in other places in the name of working. For that reason, to conclude, our mission on the same is that we are sending a delegation to Saudi Arabia this Saturday. They will be there for one week. We expect them to meet with our young men and women in Saudi Arabia, and we also expect them to hold discussions with our Embassy in Saudi Arabia and our people who are there. We, therefore, expect that when we come back, we will respond to this particular Petition and other Petitions that we received before this one. We will also make recommendations on how the issue can be resolved once and for all.

We are taking it seriously.

Hon. Deputy Speaker: Let me pick a Member from this other side, Hon. Dr. Wakhungu Wamalwa.

Hon. (Dr.) Chris Wamalwa (Kimini, FORD-K): Thank you, Hon. Deputy Speaker. This is a serious Petition. It is not the first time we are getting it on the Floor of this House.

The Departmental Committee on Labour and Social Welfare and our ambassadors in the Gulf Region have been sleeping on their jobs. We have lost many Kenyans. I have buried many Kenyans from my constituency and the entire Trans Nzoia County. We call upon the Chairperson to take this matter seriously and, if possible, involve the agencies that have been recruiting domestic workers to go and work in Saudi Arabia. They need to have a proper contract such that in case of any eventuality, there must be an aspect of compensation. Many Kenyans who have gone there do not wish to go there, but it is because of unemployment in this country. They go to look for livelihoods. But they should not be going alive but are brought back in caskets to be buried.

Hon. Deputy Speaker: Let us be brief so that I can give a chance to other Members.

Hon. (Dr.) Chris Wamalwa (FORD-K): I support what the Chairperson has said. More importantly, the Departmental Committee on Defence and Foreign Relations must be involved because the Departmental Committee on Labour and Social Welfare's mandate is to the extent of the boundaries of Kenya. I wish they work together with the Departmental Committee on Defence and Foreign Relations.

Thank you.

Hon. Deputy Speaker: Hon. Ichung'wah.

Hon. Kimani Ichung'wah (Kikuyu, JP): Thank you, Hon. Deputy Speaker. I rise to support the Petition. I ask the Chairperson, Hon. Kabinga, that as they consider this Petition, they should also seriously look into how the Government can regulate the agents who send our young ladies and men to Saudi Arabia, so that if a person gets harassed or tortured anywhere in Saudi Arabia, then the agent who sent them there should be held culpable back here at home. The problem is with the agents who send our children to people that they know will mistreat them and end up doing nothing. But more so, it is also an indictment on our own Government and even us, as the people's representatives. I was rather amazed when you read all these names that you read here. It is a matter that, once again, I would want the Chairperson to bear in mind, that Ms. Wanja, Nancy Nyangoha, Esther Wanjiku Thuku, Waruguru Beatrice and Lucy Wambui come from my area. It also points to a bigger problem probably within the region where these names come from in terms of lack of opportunities of employment. That is why I say it is also an indictment on our Government and even on us, as a House, on how we create opportunities the moment you see young Kenyans going to get tortured in the Kingdom of Saudi Arabia and other countries. What they are doing is tantamount to slavery. As much as there is also local slavery through state capture in this country, we must at least protect those who leave this country because we are a sovereign nation. We must stand for them.

Hon. Deputy Speaker: Okay. Hon. Milemba Omboko.

Hon. Omboko Milemba (Emuhaya, ANC): Thank you, Hon. Deputy Speaker, for giving me this chance.

As this matter is looked at, I would wish to say that there used to be stores where slaves were put before being shipped abroad during the old Trans-Atlantic Slave Trade. These stores were called barracoons. Today, we have a group of people called agents. These are simply barracoons. What happens is that when these young Kenyans are sent to the Kingdom of Saudi Arabia, they are actually completely sold at a price. So if they have to come back, the agreement that they make between the agents and the people who take these children is breached. So, I wish that, as a Committee, we look at the types of agreements that are done between the agents and the people in Saudi Arabia, who are basically slave traders.

Hon. Deputy Speaker: On top here is Hon. Pukose.

Hon. (Dr.) Robert Pukose (Endebess, JP): Thank you, Hon. Deputy Speaker. I want to comment on this Petition on mistreatment of Kenyan domestic workers in Saudi Arabia, the United Arab Emirates and other Gulf countries.

As the Committee looks into it, I wish it could develop a bilateral agreement that Kenya Government can sign with those countries that guarantees safety. It is because this is a very big industry. As an industry where employment is created for these domestic workers, there is no way we can do without it. It is a livelihood. It is an opportunity for them. But, we can have a way of regulating it so that these people can benefit and also work under good conditions that are up to the International Labour Organisation (ILO) standards.

Hon. Deputy Speaker: Hon. Wanyonyi.

Hon. Ferdinand Wanyonyi (Kwanza, Ford-K): Hon. Deputy Speaker, thank you for the opportunity.

I am sad, as a Kenyan, that our children go to the Middle East. I have two cousins who are not able to call back because those who have hired or taken them are not even allowing them to make a phone call back home. Therefore, Hon. Kabinga, I want you to get hold of the Ministry of Foreign Affairs. Jointly, let us look at the agents who are sending our children to the Middle East. They should know where each of those workers has gone, because I am told that some of those people are actually being tortured. There is one person that I am supposed to return from the Middle East, but the employer has refused to release the body. I am so sad about it. Let the Ministry of Labour and Social Protection handle it.

Hon. Deputy Speaker: Okay. Let us give a chance to another Member. Let us share it, Hon. Members. Please, briefly. Hon. Sankok, just very briefly.

Hon. David ole Sankok (Nominated, JP): Thank you very much, Hon. Deputy Speaker.

I am a Member of the Departmental Committee on Labour and Social Welfare. We are taking this matter very seriously because we, as a country, have a lot of unemployment. We must export labour. Countries like the Philippines have made trillions of shillings because of exporting labour. Even we will make a lot of money or foreign exchange when we export labour. But, we cannot agree or accept our children to be suffering abroad. But as you can see, the professionals that we have been sending abroad are not complaining. The complaint is in the lower cadre of workers. I think it is because of pre-departure training. We need to train them.

Hon. Deputy Speaker: That is okay. Hon. Koske. We still have another Petition. So, I will give chance to two last Members. Briefly.

Hon. Gideon Koske (Chepalungu, CCM): Over 89 Kenyans have died abroad in the past two years, and all of them are due to cardiac arrest related diseases. Both the Ministry of Labour and Social Protection and the Ministry of Foreign Affairs have failed in protecting Kenyans who are working outside.

Kenyan labourers abroad need urgent protection. The Departmental Committee on Labour and Social Welfare should take this matter very seriously to ensure that a proper and clear recommendation on ensuring our people are safe is going to be brought to this House. Many of our youth resort to labour migration due to high unemployment rates here. We need to tell our youth that the perception that greener pastures are outside there is wrong. We need to have proper agents who are hooking them up.

Hon. Deputy Speaker: Thank you. Let us have the Member for Fafi, Hon. Abdikhaim.

(Hon. Mohamed Abdikhaim was not in the Chamber)

Okay. Member for Muhoroni and then we go to the next Order.

Hon. Onyango Oyoo (Muhoroni, ODM): Thank you very much, Hon. Deputy Speaker. I want to comment on this labour issue.

Although I am a Member of the Departmental Committee on Labour and Social Welfare, I think the ultimate solution to this issue will be when the Ministry becomes serious to take up labour exports so that it is regulated from a respected Government Ministry. That is so that we can have tight records of people in terms of who are going, where they are going, what they are doing and whether they are making any progress. In the meantime, if they are left to some labour agents – people who do not even have funds and proper contacts – the Government cannot trace them. These agents end their businesses once the employees have been dispatched to various countries. This is the cause of the cries of many Kenyans. Because this involves lives, the Government should be very serious.

Hon. Deputy Speaker: We will now go to the Petition by Hon. Kareke. Well, before that, I think I see the former Chairperson of that Committee. He can say just one word. Then, Kareke, yours will be brief. It is the one that came late.

Hon. Peter Mwathi (Limuru, JP): Thank you, Hon. Deputy Speaker. It is true that I am the former Chairperson of that Committee. I stand in support of this Petition.

But most importantly, I ask the Committee to check, while listening to the facts of this case or the cases that arise from this mistreatment, on the statutes and do amendments to ensure that we criminalise those agents who are sending workers without registering with the National Employment Authority (NEA). The NEA is supposed to have the data, but there are some agents who bypass that and ensure that they send our children to suffer without registering them. That is very critical; that any agency doing that must register with the NEA.

I agree with Hon. Pukose that we need bilateral agreements between our country and the countries that take our labour so that we can have data of those who work there and are coming from this country, even if they sneak.

I support, Hon. Deputy Speaker.

Hon. Deputy Speaker: Hon. Members, I very quickly want to reorganise business. Before I do that, let me allow Hon. Kareke to quickly finish his Petition. Then, there is something I am going to do to the Order Paper to make it convenient for everybody.

Proceed, quickly.

COMPENSATION FOR LAND ACQUIRED FOR CONSTRUCTION OF ROADS IN MAARA CONSTITUENCY

Hon. Kareke Mbiuki (Maara, JP): Hon. Deputy Speaker, thank you for giving me the opportunity to prosecute Public Petition No.064 of 2021 regarding compensation of owners of land acquired for construction of St. Marys-Kinoooro, Access to Igoji Teachers Training College, Gianchuku-Mbogori road project in Maara Constituency, Tharaka-Nithi County.

I, the undersigned, on behalf of the concerned registered owners of parcels of land that were acquired by the Ministry of Transport, Infrastructure, Housing and Urban Development through the National Land Commission (NLC) for purposes of construction of St. Marys-Kinoooro, Access to Igoji Teachers College, Gianchuku-Mbogori road project, draw the attention of the House to the following:

THAT, Article 40 of the Constitution recognizes the right of every person subject to Article 65 of the Constitution to either individually or in association with others to acquire and own property of any description in any part of the Republic of Kenya;

THAT, Article 40(3)(b)(i) of the Constitution further bars the State from depriving a person of property of any description, or of any interest in, or right over, property of any description, unless the deprivation is for a public purpose or in the public interest and is carried out in accordance with this Constitution and any Act of Parliament that requires prompt payment in full, of just compensation to the person;

THAT, various families in Maara Constituency forfeited their rightfully owned parcels of land to the Ministry of Transport, Infrastructure, Housing and Urban Development through the National Land Commission under compulsory acquisition for purposes of construction of the said roads;

THAT, the said parcels of lands were gazetted in various gazette notices, including *Kenya Gazette Notice* No. 4972 of 26th May, 2017.

THAT, a schedule of plot numbers, registered owners, gazetted area acquired and corresponding compensation award amounts were prepared, and have been in the custody of the Kenya Rural Roads Authority;

THAT, the affected families relinquished their rights over the land that previously supported their livelihoods in order to pave way for construction of St. Marys-Kinooro, Access to Igoji TTC, Gianchuku-Mbogori road project in support of infrastructure development in the constituency.

THAT, despite the construction of the said roads, the project having been completed in 2018, the Ministry of Transport, Infrastructure, Housing and Urban Development and Kenya Rural Roads Authority are yet to compensate some of the registered land owners through the National Land Commission as expected;

THAT, the acquisition of land and delay in compensation has not only caused the affected land owners to suffer great economic loss, including inability to provide for housing for themselves, but also condemned them to vagrancy, which forced them to find alternative settlements at their own costs; and

THAT, efforts by the petitioners to have their plight addressed by the relevant Government bodies have not yielded satisfactory response.

THAT, none of the matters in respect to this Petition are pending in any court of law or constitutional body.

Therefore, your humble petitioners pray for intervention of this House, through the Departmental Committee on Transport, Public Works and Housing to:

- 1) inquire into all the matters raised in this Petition, including the status of the compensation of affected owners of parcels of land acquired for the St. Marys-Kinooro, Access to Igoji TTC, Gianchuku-Mbogori road project and reasons for the undue delay in compensation contrary to Article 40(3)(b)(i) of the Constitution;
- 2) Recommend to the relevant Government Ministries and agencies to immediately compensate families whose land was acquired for the construction of the aforementioned roads in accordance with the law and, if necessary, appropriate sufficient funds in accordance with the relevant budgetary procedures to ensure immediate compensation; and,
- 3) Recommend any other relief it deems fit in order to ensure that the petitioners' right to property is upheld.

And your petitioners will ever pray.

Thank you, Hon. Deputy Speaker.

Hon Deputy Speaker: Very well. Hon. Members, as I had indicated earlier, I am going to reorganise the Order Paper for convenience of the House and bring Order No. 8 and No. 9 forward. Please let us go to those Orders first.

MOTIONS

RATIFICATION OF THE BILATERAL AIR SERVICES AGREEMENTS BETWEEN THE REPUBLIC OF KENYA AND SOUTH AFRICA/BOTSWANA

THAT, this House adopts the Report of the Departmental Committee on Transport, Public Works and Housing on the Ratification of the Bilateral Air Services Agreements between the Republic of Kenya and the Republic of South Africa; and between the Republic of Kenya and the Republic of Botswana, laid on the Table of the House on Tuesday, 28th September 2021, and pursuant to the provisions of section 8(4) of the Treaty Making and Ratification Act, 2012, approves the Ratification of:

- (i) the Bilateral Air Services Agreement between the Republic of Kenya and the Republic of South Africa; and,
- (ii) the Bilateral Air Services Agreement between the Republic of Kenya and the Republic of Botswana.

(Hon. David Pkosing on 19.10.2021)

(Debate concluded on 19.10.2021)

Hon. Deputy Speaker: Order, Members. Having confirmed we have the required numbers, I will put the Question.

(Question put and agreed to)

RATIFICATION OF BILATERAL AIR SERVICES AGREEMENT BETWEEN THE GOVERNMENTS OF KENYA AND RUSSIAN FEDERATION

THAT, this House adopts the Report of the Departmental Committee on Transport, Public Works and Housing on the Ratification of the Bilateral Air Services Agreement between the Government of the Republic of Kenya and the Government of the Russian Federation, laid on the Table of the House on Thursday, 30th September 2021, and pursuant to the provisions of section 8(4) of the Treaty Making and Ratification Act, 2012, approves the Ratification of the Bilateral Air Services Agreement between the Government of the Republic of Kenya and the Government of the Russian Federation.

(Hon. David Pkosing on 19.10.2021)

(Debate concluded on 19.10.2021)

Hon. Deputy Speaker: Again, I will put the Question having confirmed the numbers.

(Question put and agreed to)

Hon. Members, we will go back to the Order we were in.

Next Order.

PAPERS LAID

Hon. Amos Kimunya (Kipipiri, JP): Hon. Speaker, I beg to lay the following Papers on the Table of the House:

The National Government Constituencies Development Fund (NG-CDF) Board Report for the first quota of 2021/2022 Financial Year.

Reports of the Auditor-General and Financial Statements in respect to the following institutions for the year ended 30th June 2020 and the certificates therein:

- (i) Jomo Kenyatta University of Agriculture and Technology Enterprises Limited;
- (ii) Kabete National Polytechnic;
- (iii) PC Kinyanjui Technical Institute;
- (iv) Nairobi Technical Institute; and
- (v) Talanta FC.

The Reports of the Auditor-General and Financial Statements in respect of the following institutions for the year ended 30th June 2019 and the certificates therein:

- (i) Kenya Medical Training College;
- (ii) Thika Training Institute;
- (iii) Keroka Technical Training Institute;
- (iv) Nyeri National Polytechnic;
- (v) Laikipia County Executive Car and Mortgage Scheme Fund;
- (vi) Kenyatta National Hospital; and
- (vii) Pest Control Products Board.

The Reports of the Auditor-General and Financial Statements in respect of the following constituencies for the year ended 30th June 2019, and the certificates therein: Lari, Nyeri Town, Nyatike, Mt. Elgon, Balambala, Lagdera, Suba North, Gatundu North, Kuria East, North Mugirango, Gatanga, Bobasi, Laikipia West, Gatundu South, Lamu West, Wajir West, Uriri, Suna East, Kitutu Chache, Kiambaa, Mathioya, Suna West, Kitutu Masaba, Kabuchai, Kiminini, Banissa, Eldas, Lamu East...

(Loud consultations)

Hon. Deputy Speaker: Order, Members! Order! Proceed, Leader of Majority Party.

Hon. Amos Kimunya (Kipipiri, JP): Kitui East, Kitui Central, Kibwezi East, Kibwezi West, Kangundo, Mwingi North, Kanduyi, Teso North, Butere, Mumias West, Kaloleni, Wajir North, Mandera South, Gichugu, Laisamis, Kirinyaga Central, Centra Imenti, Mandera North, Shinyalu, Funyula and Matungu.

The Reports of the Auditor-General and Financial Statements of Laikipia County Executive Car and Mortgage Scheme Fund for the years ended 30th June, 2015, 2016, 2017 and 2018, and the certificates therein.

Thank you, Hon. Deputy Speaker.

Hon. Deputy Speaker: The Chairperson of the Select Committee on National Government Constituencies Development Fund (NG-CDF).

Hon. Wafula Wamunyinyi (Kanduyi, FORD-K): Thank you, Hon. Deputy Speaker. I beg to lay the following Paper on the Table of the House:

Report of the Select Committee on the National Government Constituencies Development Fund on its consideration of the NG-CDF (Amendment) Bill (National Assembly Bill No. 4 of 2021).

I thank you, Hon. Deputy Speaker.

Hon. Deputy Speaker: Very well. Let us go to the next Order.

NOTICES OF MOTIONS

Hon. Deputy Speaker: Let us start with the Leader of the Majority Party.

PRESERVATION OF THE HISTORY OF PARLIAMENT OF KENYA

Hon. Amos Kimunya (Kipipiri, JP): Hon. Deputy Speaker, I beg to give notice of the following Motion:

THAT, aware that the history of any institution is key to evaluating its development over time; further aware that documenting history provides a knowledge back for future generations; noting that the history of the Parliament of Kenya is largely unrecorded, scattered and piecemeal; further noting that most comparable jurisdictions have elaborate records of their history which are periodically updated to capture new developments; cognisant of the fact that the Parliament of Kenya marks its 114 anniversary this year, having been established as the Legislative Council, popularly known as LEGCO, in August 1907; and further cognisant that the legislature has been transforming in the last century, both in mandate and composition, starting as a fused unicameral legislature to a bicameral one at Independence to a unicameral legislature before again reverting to a bicameral Parliament after the promulgation of the Constitution of Kenya in 2010; recognising the many works of art, including statutes, murals and pictures connected with the history of the Parliament of Kenya, including the contributions of great men and women, families, architects and politicians throughout the 114 years of the history of the institution and its transformation and growth throughout the period; now therefore, in order to ensure preservation of the history of the institution for future generations, this House resolves —

THAT, at an appropriate stage, the House appoints a committee comprising of not more than nine members to oversee the preservation of this history for prosperity, with special focus on the National Assembly.

THAT, the copyrights of the History of the Parliament of Kenya projects be reserved for the benefit of Parliament and the people of Kenya; and,

THAT, the Clerk of the National Assembly puts in place and executes appropriate mechanisms to actualise this resolution.

Thank you, Hon. Deputy Speaker.

Hon. Deputy Speaker: Let us go to the next Order.

QUESTIONS AND STATEMENTS

Hon. Deputy Speaker: Under this particular order, we will start with Questions. We will start with Questions by Private Notice. To start us off is the Member for Kitui Rural, Hon. Mwalika Mboni.

QUESTIONS BY PRIVATE NOTICE

Question No. QPN 008/2021

PROVISION OF RELIEF FOOD TO SCHOOLS IN KITUI RURAL CONSTITUENCY

Hon. David Mboni (Kitui Rural, CCU): Thank you, Hon. Deputy Speaker. I rise to ask Question No.8 of 2021 by Private Notice to the Cabinet Secretary for Education:

- (i) Could the Cabinet Secretary state whether there are any schools that are in need of relief food in Kitui Rural Constituency and, if so, list the schools?
- (ii) Considering the famine currently being experienced across Kitui Rural Constituency, could the Ministry urgently consider including all schools in the constituency in the list of schools benefiting from the Government's schools feeding programme so as to ensure that children in the area attend school without interruption?
- (iii) What measures is the Government taking to cushion residents of the said constituency against the effects of famine due to the perennial drought normally experienced in the constituency?

Thank you, Hon. Deputy Speaker.

Hon. Deputy Speaker: That Question will be replied to before the Departmental Committee on Education and Research.

The Member for Fafi, Hon. Abdikhaim Osman.

Question No. QPN 009/2021

KILLING OF A PERSON AND LIVESTOCK BY KDF OFFICERS IN RAS KIAMBONI

Hon. Mohamed Abdikhaim (Fafi, KANU): Thank you, Hon. Deputy Speaker, for giving me this opportunity. I wish to ask the Cabinet Secretary for Defence the following Question:

- (i) Could the Cabinet Secretary for Defence explain why the Kenya Defence Forces officers based at Ras Kiamboni KDF Military Camp sprayed pastoralists herding animals with bullets in Ras Kiamboni area, Fafi Constituency, on Sunday, 17th October, 2021, instantly killing over 40 herds of cattle?
- (ii) What action has the Ministry taken against the officers who took this action that also led to the killing of Mr. Arab Maulid Jirow of ID No. 35122734 from Fafi Constituency, leaving behind an expectant widow in addition to losing all his livestock to the gunshots?

- (iii) Could the Cabinet Secretary ensure that the matter is fully investigated with a view to ensuring justice for the deceased and his family, and compensation for the loss of life and the livestock?

Thank you, Hon. Deputy Speaker.

Hon. Deputy Speaker: That Question will be replied to before the Departmental Committee on Defence and Foreign Relations.

Next is the Member for Kibra, Hon. Imran Okoth.

Question No. QPN 10/2021

CIRCUMSTANCES SURROUNDING THE ABDUCTION AND KILLING OF CYNTHIA MAKOKHA

Hon. Benard Okoth (Kibra, ODM): Thank you, Hon. Deputy Speaker. I rise to ask Question 10 of 2021 by Private Notice, directed to the Cabinet Secretary for Interior and Coordination of National Government:

- (i) Could the Cabinet Secretary explain the circumstances surrounding the abduction and subsequent killing of the late Cynthia Makokha, a young Form 4 student from Kibera Girls Soccer Academy in Kibra Constituency, who was abducted, violated, killed and her body dumped into a river in Shianda Village, Mumias East Sub-county, Kakamega County, while visiting her family during the recent October schools holiday?
- (ii) Could the Cabinet Secretary also provide the status of investigations into this heinous crime and indicate whether any suspect(s) have been questioned or arrested?
- (iii) What steps is the Government taking to end the increasing cases of gender-based violence (GBV) in the country, which have seen many women and girls injured, maimed or killed, and to also ensure justice for the victims?

Thank you, Hon. Deputy Speaker.

Hon. Deputy Speaker: That Question will be replied to before the Departmental Committee on Administration and National Security.

We now go to Ordinary Questions. Let us start with Hon. Kassim Tandaza, Member for Matuga.

ORDINARY QUESTIONS

Question No. 364/2021

IMPLEMENTATION OF COMPETENCY-BASED CURRICULUM

Hon. Kassim Tandaza (Matuga, ANC): Thank you, Hon. Deputy Speaker. I rise to ask Question 364 of 2021 to the Cabinet Secretary for Education:

- (i) What measures has the Ministry put in place to ensure smooth implementation of the Competency Based Curriculum (CBC) in all schools?
- (ii) Could the Cabinet Secretary confirm whether all stakeholders were involved in the development of the new curriculum and its rollout?
- (iii) Could the Cabinet Secretary provide a list of all secondary school teachers undergoing training on the new curriculum across the country, and explain how the training is being rolled-out, particularly in Matuga Constituency?

- (iv) Could the Cabinet Secretary provide the number of infrastructure projects such as workshops, laboratories and sports fields that the Government is putting up, if any, to ensure the success of CBC across the country and in particular in Matuga Constituency?
- (v) Could the Cabinet Secretary provide the status of the implementation of the initiatives in paragraph (d) above, indicating the commencement dates, amount of money utilised so far and the expected completion dates?

Thank you, Hon. Deputy Speaker.

Hon. Deputy Speaker: That Question will be replied to before the Departmental Committee on Education and Research.

The next Question is by the Member for Nyaribari Masaba. He had given authority to Hon. Thuddeus Nzambia to ask the question on his behalf.

Question No. 378/2021

PROGRESS REPORT ON CONSTRUCTION OF SOSERA-RAMASA ROAD

Hon. Thuddeus Nzambia (Kilome, WDM – K): Hon. Deputy Speaker, on behalf of the Member for Nyaribari Masaba, Hon. Ombaki, I would like to ask the Cabinet Secretary for Transport, Infrastructure, Housing, Urban Development and Public Works:

- (i) Could he give the progress of the construction of Sosera-Ramasa Road in Nyaribari Masaba Constituency and explain why the project, which commenced in 2019, is yet to be completed?
- (ii) Could he indicate the initial contract period for the said project, outlining the steps that the Ministry is taking to ensure its completion?
- (iii) Could he state the total amount of money so far paid to the contractor for the project?

Hon. Deputy Speaker: Very well. That Question will be replied to before the Departmental Committee on Transport, Public Works and Housing.

Member for Msambweni, Hon. Feisal Bader, ask your Question.

Question No. 383/2021

MECHANISMS TO ENSURE ROYALTIES COLLECTED FROM M/S. BASE
TITANIUM LIMITED BENEFIT RESIDENTS OF KWALE

Hon. Feisal Bader (Msambweni, Independent): Thank you, Hon. Deputy Speaker. I would like to ask the Cabinet Secretary for Petroleum and Mining:

- (i) Could he provide details on the amount of royalties collected by the Government since the enactment of the Mining Act, 2016?
- (ii) Could he explain the mechanisms put in place to ensure that fees and other royalties collected by the Government from M/s. Base Titanium Limited, benefit the people of Kwale County?

Hon. Deputy Speaker: Very well. That Question will be replied to before the Departmental Committee on Environment and Natural Resources.

We go to the next one by the Member for Mumias East, Hon. Benjamin Washiali. He is absent and so, the Question is deferred.

Question No. 428/2021

INCREASED COSTS OF TRANSPORTING GOODS THROUGH STANDARD GAUGE RAILWAY

(Question deferred)

Hon. Deputy Speaker: Member for Bomet Central, Hon. Ronald Tonui, please ask your Question.

Question No. 430/2021

IMPLEMENTATION PLAN OF THE TEACHERS PROGRESSION DEVELOPMENT TRAINING MODULE

Hon. Ronald Tonui (Bomet Central, JP): Hon. Deputy Speaker, I arise to ask the Chairperson, Teachers Service Commission:

- (i) Are there plans by the Teachers Service Commission (TSC) to fund the recently introduced refresher course and Teachers' Progression Development (TPD) training module?
- (ii) What is the legal basis for arriving at the Kshs6,000 fee for the said courses?
- (iii) Could the Commission confirm if TPD training will be a factor in determination of teachers' promotions?
- (iv) Could the Commission also explain whether public participation was effectively carried out in the development of TPD modules considering the inadequate human and material resources and correlation between content and pedagogical practices?

Hon. Deputy Speaker: That is for written reply by the Teachers Service Commission. Next will be the Member for Homa Bay Town, Hon. Peter Kaluma Opondo.

Question No. 431/2021

Hon. Peter Kaluma (Homa Bay Town, ODM): Hon. Deputy Speaker, I beg to withdraw this Question for the reason that I am a Member of the Justice and Legal Affairs Committee (JLAC). While the Question was pending, I engaged the Commission together with the Committee and the subject matter is already being addressed.

Hon. Deputy Speaker: That saves our time.

(Question No. 431/2021 withdrawn)

We go to the Question by the Member for Teso South, Hon. Omuse Geoffrey.

Question No. 436/2021

POOR AND SUB-STANDARD WORKS DONE DURING
THE TARMACKING OF BUSIA–MALABA ROAD

Hon. Geoffrey Omuse (Teso South, ODM): Hon. Deputy Speaker, I rise to ask the Cabinet Secretary for Transport, Infrastructure, Housing and Urban Development:

- (i) Could he explain the poor and sub-standard works done during the tarmacking of Busia-Malaba Road, which has already developed potholes along the entire stretch less than a year since its completion?
- (ii) What was the total amount of money that had been allocated for the improvement and maintenance of the said road and could the Cabinet Secretary confirm if the Kenyan taxpayers did get value for money used in the project?
- (iii) Could he provide details of the contractor awarded the contract for the maintenance of the said road, indicating his capabilities, work experience and when they are expected to begin maintenance works?

Hon. Deputy Speaker: That one will be replied to before the Departmental Committee on Transport, Public Works and Housing.

We go to the next Question by the Member for Matungu, Hon. Oscar Nabolindo.

Question No. 438/2021

MEASURES TO PROTECT INDIVIDUALS AND BUSINESSES FROM
CRIMINAL ACTIVITIES IN MATUNGU

Hon. Oscar Nabolindo (Matungu, ANC): Hon Deputy Speaker. I beg to ask the Ministry of Interior and Coordination of National Government:

- (i) What steps is Ministry taking to ensure that MPesa agents, businesses and individuals do not continue to lose their hard-earned money to criminals who defraud them using high-tech gadgets that are rampant across the country, particularly in Matungu Constituency and the neighbouring constituencies, where majority of MPesa operators and businesspersons have since closed down as a result of the vice?
- (ii) What measures has the Cabinet Secretary put in place to protect individuals and businesses from such fraudulent activities?
- (iii) Could the Cabinet Secretary ensure that the crime is put to an end and guarantee security for individuals and businesses?

Hon. Deputy Speaker: That will be replied to before the Departmental Committee on Administration and National Security.

Member for Kamukunji, Hon. Yusuf Hassan, do you want to ask this Question? Proceed.

Hon. Yusuf Hassan (Kamukunji, JP): I do not have a card.

Hon. Deputy Speaker: Use the microphone next to you; the one you are using is not okay.

Question No. 439/2021

STATUS OF INVESTIGATIONS INTO THE DISAPPEARANCE
OF MR. HASSAN OSMAN DAHIR

Hon. Yusuf Hassan (Kamukunji, JP): Hon. Deputy Speaker, I would like to ask the Cabinet Secretary for Interior and Coordination of National Government:

- (i) Could he explain the status of investigations into the disappearance of Mr. Hassan Osman Dahir of ID No. 27294534, aged 36, a resident of Kamukunji Constituency,

who went missing on 13th June 2021, in the evening on his way from Abubakar Sadiq Mosque, situated on 7th Street in Eastleigh, Nairobi, and a missing person report made at Pangani Police Station vide OB No. OB55/15/06/2021?

- (ii) How many suspects have been apprehended or questioned in connection with the disappearance of Mr. Hassan Osman Dahir, whose disappearance is connected with security personnel who allegedly have abducted him?
- (iii) Could he explain when Mr. Dahir will be presented to his family, considering that his abduction and failure to be presented before a court of law within the statutory timelines have caused immense psychological suffering and apprehension to his family, friends and the wider Kamukunji Constituency?
- (iv) What specific measures has the Government put in place to protect Kenyan citizens from the spate of abductions and subsequent disappearances that have been rampant in the country this year?

Hon. Deputy Speaker: Okay. That Question will be replied to before the Departmental Committee on Administration and National Security.

Let us have the Member for Kitui West, Hon. Edith Nyenze.

Question No. 442/2021

REASONS FOR MERGING OF EXAMINATION CENTERS WITH LESS THAN 30 STUDENTS

Hon. Ms. Edith Nyenze (Kitui West, WDM-K): Thank you, Hon. Deputy Speaker, for giving me this opportunity to ask Question No.442/2021 to the Cabinet Secretary for Education and Research:

- a) Could the Cabinet Secretary explain why the Kenya National Examinations Council has merged national examination centres with less than 30 candidates in both primary and secondary schools, such that schools with less than 30 registered candidates will cease being exam centers?
- b) How does the Ministry intend to address the logistical difficulties and disruptions that may be experienced by candidates as a result of the policy, which could negatively affect performance in the national examinations?
- c) Was there stakeholders' participation and consultations prior to effecting the policy change?

Thank you, Hon. Deputy Speaker.

Hon. Deputy Speaker: This one will be replied to before the Departmental Committee on Education and Research.

The next Question is by the Member for Sigowet/Soin, Hon. Koros Kipsengeret.

Question No. 443/2021

THE POSITION OF GOVERNMENT REGARDING THE MARITIME
DISPUTE BETWEEN KENYA AND SOMALIA

Hon. Kipsengeret Koros (Sigowet/Soin, Independent): Thank you, Hon. Deputy Speaker for this opportunity. I rise to ask Question No.443 of 2021 to the Cabinet Secretary for Defense and Foreign Relations:

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- (i) Could the Cabinet Secretary state the Government position following the recent International Court of Justice's decision regarding maritime delimitation dispute between the Republic of Kenya and the Federal Republic of Somalia, which majorly favoured Somalia by awarding her two-thirds of the disputed maritime zone?
- (ii) What is the immediate impact of the decision on Kenya, which has actual possession of the disputed area, and is utilizing the same for growth of the economy?
- (iii) How much money was used in the litigation process and why did Kenya opt out of the legal proceedings considering that it has been an active participant in international law treaties and conventions?

Thank you, Hon. Deputy Speaker.

Hon. Deputy Speaker: Very well. That Question will be replied to before the Departmental Committee on Defence and Foreign Relations.
Next is the Member for Kilome, Hon. Nzambia.

Question No. 444/2021

STATUS OF CONSTRUCTION OF SULTAN HAMUD-KASIKEU-KYAMBEKE ROAD

Hon. Thuddeus Nzambia (Kilome, WDM-K): Thank you, Hon. Deputy Speaker, for this opportunity. I rise to ask Question No. 444/2021 to the Cabinet Secretary for Transport, Infrastructure, Housing and Urban Development:

- (i) Could the Cabinet Secretary provide the status of the construction of Sultan Hamud-Kasikeu-Kyambeke Road in Kilome Constituency under the Low Volume Seal Tarmacking Programme, which has since stalled with only six kilometers and a bridge remaining to completion?
- (ii) Could the Cabinet Secretary state the total amount of funds allocated for the said project and the sum already paid to the contractor and any outstanding amount, if any?
- (iii) Could the Cabinet Secretary confirm whether the road is being constructed as per the set standards and, if so, explain why the completed section is already developing potholes?
- (iv) What action does the Ministry intend to take against the contractor for substandard works, and could the Cabinet Secretary ensure that that the sections with potholes are immediately rehabilitated?

Thank you, Hon. Deputy Speaker.

Hon. Deputy Speaker: Very well. This one will be replied to before the Departmental Committee on Transport, Public Works and Housing.

Next and lastly is the Question by Member for Mvita, Hon. Nassir.

Question No. 445/2021

MONEY COLLECTED BY GOVERNMENT THROUGH RAILWAY LEVY DEVELOPMENT FUND

Hon. Abdullswamad Nassir (Mvita, ODM): Asante sana, Mheshimiwa Naibu Spika. Ningependa kuuliza Swali 445 la mwaka wa 2021 kwa Waziri wa Fedha. Tunataka Waziri aweze kutuelezea:-

- (i) Ni fedha ngapi ambazo Serikali imeweza kukusanya kupitia hazina ya kulipa deni la *Standard Gauge Railway (SGR)*, yaani *Railway Levy Development Fund*, tangu ianzishwe?
 - (ii) Tunaomba Waziri aelezee fedha hizi zimetumika kufanya nini na kutoa mpangilio ama ratiba ya kila amana iliyoweza kutumika na kwa njia gani?
 - (iii) Nataka Waziri atuelezee ni idadi ipi katika pesa hizi ambayo imeweza kutumika kulipa deni la wenyewe?
 - (iv) Wana mikakati gani kama Wizara ya Fedha ya kurejesha fedha hizi ili ziweze kutumiwa kwa njia iliyokusudiwa wakati sheria hii iliundwa?
- Asante, Mheshimiwa Naibu Spika.

Hon. Deputy Speaker: Hon. Nassir, I would have ordinarily had a problem with what you have just done, because you know the Question is written in English, but you have asked it in Kiswahili. However, I followed it and noted that you are actually interpreting it properly. I also considered that since we already have the Kiswahili Standing Orders, it would be wrong for me to stop you. However, in future, you should simply have the Question in Kiswahili then you can read and follow it with everybody else.

(Hon. Abdullswamad Nassir stood up in his place)

Hon. Nassir, before I refer it to the relevant Committee, what is it?

Hon. Abdullswamad Nassir (Mvita, ODM): Mheshimiwa Naibu Spika, wasiwasi wangu ni lugha isije ikamchenga Waziri atuletee majibu ambayo hayaeleweki. Nilionelea ile ya kuandika iwe ni Kiingereza, lakini niisome kwa Kiswahili ili tuweze kuzungumza na kukitukuza Kiswahili lakini isiwe sababu ya Waziri kutuletea majibu ambayo hayana mwelekeo na ya shaghala-baghala.

Hon. Deputy Speaker: I want to put your fears to rest. I know the Cabinet Secretary for National Treasury and Planning, and having seen him in school, I want to state that he was a very good Kiswahili student.

I want to proceed to commit that Question to the Departmental Committee on Finance and National Planning.

Just a minute, Hon. Members.

[The Deputy Speaker (Hon. Moses Cheboi) left the Chair]

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

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): We will move to Statements, and we are starting with the Member for Kamukunji, Hon. Yusuf Hassan.

REQUESTS FOR STATEMENTS

RECURRENT FIRE OUTBREAKS AT GIKOMBA MARKET

Hon. Yusuf Hassan (Kamukunji, JP): Thank you, Hon. Temporary Deputy Speaker, for this opportunity.

Hon. Temporary Deputy Speaker, pursuant to the provisions of Standing Order No.44(2)(c), I wish to request for a Statement from the Chairperson, Departmental Committee on Administration and National Security on the measures the Government is pursuing to protect the lives, property and businesses of traders at the Gikomba Market and curtail the recurrent fires at the market.

Hon. Temporary Deputy Speaker, Gikomba Market is the largest open-air market in Kenya and the East African region, serving as an economic hub for businesses, particularly those specialised in second hand clothes otherwise known as *mitumba*. The market hosts thousands of traders, has created numerous employment opportunities and attracts thousands of customers daily, thereby significantly contributing to the national Government and the Nairobi City County government revenues through custom duties, levies, rates and licence fees.

Hon. Temporary Deputy Speaker, Gikomba Market has been exposed to a series of frequent fires. The most recent fire occurred on 20th October 2021 on the southern part of the market, opposite the *Jua Kali* artisans section, resulting in destruction of property and businesses, thus occasioning big financial losses to traders and consequently crippling the traders' efforts to rebuild their razed down businesses, and affecting the overall performance of the economy.

Article 27 of the Constitution guarantees the protection of the right to life. Article 40 guarantees every citizen protection of their property individually or in association with others. Article 41 guarantees the right to reasonable working conditions for every worker. Article 43 of our Constitution *inter alia* provides for the right to reasonable standards of sanitation for every person. The traders at Gikomba Market have decried that the Government has neglected its obligation to put in place suitable measures to sustain the business environment at the market. Further, it has been unwilling to address perennial fires. It is on account of these concerns that I seek a Statement from the Chairperson of the Departmental Committee on Administration and National Security on the following:

(i) What causes the current fires at Gikomba Market as established by the various investigations?

(ii) What measures is the Government putting in place to control and manage the situation at Gikomba Market so as to create a conducive business environment for the traders?

(iii) What steps have been taken to ensure that adequate precautionary and preventive measures are put in place to reduce and curtail the current fire outbreaks at Gikomba market?

(iv) What plans does the Government have to improve the deplorable infrastructure inside the Gikomba Market so as to improve access, install proper drainage system; build sheds, pavements and secure the market?

(v) What specific measures is the Government implementing to cushion the Gikomba Market traders from the devastating losses caused by the frequent fires at the market to enable them rebuild their stalls, restock and resume businesses?

I thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Chairperson, could you give an indication as to how you will handle the response?

Hon. Peter Mwathi (Limuru, JP): I thank you, Hon. Temporary Deputy Speaker. I agree with Hon. Hassan. That issue is quite important. People are doing businesses there, hence getting their livelihoods and equally supporting many families. Therefore, we will try and expedite that matter within two weeks.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Hon. Chairman, have you finished? Let us have Hon. Yusuf.

Hon. Yusuf Hassan (Kamukunji, JP): Thank you, Hon. Temporary Deputy Speaker. I am happy with the two weeks period.

However, I had also previously requested for a Statement from the Committee on Masten Wanjala, the serial killer. The last time that Question was asked, the Departmental Committee Vice-Chair promised to respond as quickly as possible on that urgent issue. I am yet to hear the response from the Departmental Committee on Administration and National Security.

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

Hon. Peter Mwathi (Limuru, JP): Hon. Temporary Deputy Speaker, the Hon. Member has raised a matter of a Question he had asked previously. Since we have scheduled a meeting on 28th October, I would invite the Hon. Member to attend so that we can address that matter, among many other issues that are scheduled to be prosecuted on that day.

I thank you.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Let us have the Member for Saboti Constituency on the matter pertaining to issuance of national identity cards (IDs).

(Hon. Gideon Ochanda stood up in his place)

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Hon. Ochanda, you are not the Member of Saboti Constituency.

Hon. Gideon Ochanda (Bondo, ODM): Hon. Temporary Deputy Speaker, I am not, but the Hon. Speaker had allowed me to do this on his behalf. Of course, I also have mine.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Very well. You may proceed.

DELAY IN ISSUANCE OF NATIONAL IDENTITY CARDS

Hon. Gideon Ochanda (Bondo, ODM): Thank you, Hon. Temporary Deputy Speaker. Hon. Caleb Hamisi of Saboti Constituency is requesting for a Statement with regard to delays in the issuance of national identity cards.

Hon. Temporary Deputy Speaker, for a person to be registered as a voter in Kenya, it is a requirement that one must hold a national identification card. The voter registration exercise that begun on 4th October, 2021 will be concluded on 4th November, 2021 and yet, many Kenyan citizens, especially from Saboti Constituency and the rest of the Republic who have applied to be issued with identity cards, have not received the cards. They risk being locked out of the voter registration exercise as they are yet to be issued with national identity cards despite having applied for them.

It is against this background that the Member is seeking a Statement from the Chairperson of the Departmental Committee on Administration and National Security to address the following matters:

(i) How long does it take to process a national identity card once an application has been made?

(ii) Could the Chairperson give an explanation as to why it is taking long to process the national identity cards thereby denying eligible persons the opportunity to register as voters?

(iii) What measures has the Ministry put in place to expedite the processing and issuance of all identity cards already applied for?

I thank you, Hon. Temporary Deputy Speaker, on behalf of Hon. Caleb Hamisi.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Hon. Ochanda, you will have to hold on. Let us have the Chairman to guide us on how he is going to respond.

Hon. Peter Mwathi (Limuru, JP): I thank you, Hon. Temporary Deputy Speaker. I expect that we will have it done within two weeks. However, we may get a written reply even before we resume. I will ensure that it is transmitted to the person who is requesting for the Statement.

I thank you.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Hon. Ochanda, are you okay with that?

Hon. Gideon Ochanda (Bondo, ODM): Hon. Temporary Deputy Speaker, with the authority to continue executing this, when the Chair gives us two weeks, I note that it is exactly the period remaining to November 4th. I am wondering whether on that day we will also be addressing the matter that has been raised by Hon. Caleb.

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

Hon. Peter Mwathi (Limuru, JP): It is important to note that we are not going to submit this request two weeks from now. It will be submitted immediately and if there are issues that need to be addressed, I am sure they will be addressed between now and then. As a matter of fact, if the Statement comes past that date, they will have to state whether they will have already addressed the questions that have been raised in the Statement. So, we shall transmit it immediately it comes but because of that urgency, we will quote and ensure that they act on those very urgent issues.

I thank you.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Hon. Ochanda, are you okay?

Let us have a request by Hon. Kuria Kimani on Kenya Certificate of Secondary Education (KCSE) Certificates.

FATE OF KCSE CERTIFICATES HELD BY SCHOOLS

Hon. Kuria Kimani (Molo, JP): Thank you, Hon. Temporary Deputy Speaker. I rise pursuant to Standing Order 44 (2) (c) to request for a Statement from the Chairperson of the Departmental Committee on Education and Research regarding the fate of the numerous Kenya Certificate of Secondary Education (KCSE) certificates being held illegally in secondary schools across the country.

Hon. Temporary Deputy Speaker, it is the constitutional duty of every government to protect its citizens by providing a level playing field for all of them regardless of their social status in the society. It is also a constitutional obligation of every government to see to it that there is equal and even administration of justice through the various government justice apparatus. The Kenya National Examinations Council Act 2012 provides that the function of the Council shall be to award certificates or diplomas to candidates in such institutions, and such certificates and diplomas shall not be withheld from candidates by any person or institution.

Further, in July 2014, the Government of Kenya, through the then Cabinet Secretary for Education, issued an order vide a circular compelling all secondary school head teachers to release all KCSE certificates withheld illegally for various reasons to the respective candidates. Despite the clear provisions in law as passed by this honourable House, and notwithstanding the directive

from the Government, thousands of KCSE certificates belonging to disadvantaged Kenyans continue to be held in various secondary schools across the country, while those very Kenyans continue to miss life-changing opportunities due to lack of those important documents.

Hon. Temporary Deputy Speaker, it is against this background that I seek a Statement from the Chairperson of the Departmental Committee on Education and Research on the following:

(i) How many KCSE certificates are still being held by the various school heads across the country for non-clearance of school fees?

(ii) Why are some head teachers of schools still illegally holding onto the said certificates, contrary to the existing law and the Government order?

(iii) What measures has the Ministry put in place to ensure adherence to the law and Government's directive on the ban on withholding certificates?

I thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Let us have the Chair of the Departmental Committee on Education and Research.

Hon. (Ms.) Florence Mutua (Busia CWR, ODM): Thank you, Hon. Temporary Deputy Speaker. We will respond to the request in two weeks' time, before we come back from recess.

Thank you.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Hon. Kimani, are you okay with two weeks?

Hon. Kuria Kimani (Molo, JP): In as much as the two weeks is advisable, I will request the Chair to expedite the process because there are already many students who are yet to join university because their KCSE certificates are being held by the managements of their former schools. If that would be expedited, it will save those students at least one academic year. They do not have to waste time because of something that is not of their own doing.

Thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Chair, I guess at most it will be two weeks.

Hon. (Ms.) Florence Mutua (Busia CWR, ODM): Hon. Temporary Deputy Speaker, we will try as a Committee to give the response. You have seen that today we have already received four Questions and some Requests for Statements. As a Committee, we will do our best to give priority to issues like the one on certificates being held by school administrations. Thank you.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Let us go to Hon. Ochanda.

ALLOCATION OF YALA SWAMP LAND TO M/S. LAKE AGRO LIMITED
BY NATIONAL LAND COMMISSION

Hon. Gideon Ochanda (Bondo, ODM): Hon. Temporary Deputy Speaker, pursuant to Standing Order No. 44 (2) (c), I rise to request for a Statement from the Chairperson of the Departmental Committee on Lands regarding allocation of a whopping 6,763.74 hectares – about 16,300 acres – of the Yala Swamp Land in Siaya County to M/s Lake Agro limited.

Hon. Temporary Deputy Speaker, the National Land Commission vide an advertisement in the daily newspapers on 14th October 2021, posted a public notice of its intention to allocate 6,763.74 hectares of Yala Swamp land to M/s Lake Agro Limited. The move comes against the backdrop of a Petition placed before this honourable House during the 11th Parliament, in 2015. This issue had also previously been discussed by the County Assembly of Siaya and there was a series of court matters between Yimbo communities and the defunct Dominion Farms and the then

Siaya County Council. According to the records that we have, the Yala Swamp land, together with the riverine lakes, is estimated to be 7,500 hectares. It is now apparent that the NLC and the County Government of Siaya are allocating the entire swamp land to M/s Lake Agro Limited, and this is unacceptable to us.

The history of the Yala Swamp land recognises that Alego, Usonga and Yimbo communities settled and utilised portions of the swamp land up to the 1960s, when they agreed amongst themselves to move out and pave way for the construction of an artificial river course way for purposes of flood control and reclamation of land. The new river course way was completed in 1969. From then onwards, the communities did not go back to settle on their lands but agreed on their own free will to use the land for cultivation and livestock reserves.

In the late 1970s, the Lake Basin Development Authority (LBDA), based on an agreement with the communities, started a structured farming arrangement on the eastern tip of the swamp land. Of course, the LBDA activities did not go on for long. They folded their operations and the ownership of the land reverted to the communities for their use. However, in 2005, the then Siaya County Council, through a disputed agreement, leased out the land to M/s Dominion Farms. The disputed agreement subsisted until M/s Dominion Farms shut down their operations some time in 2019. The communities are not against land allocation to any entity. I want to repeat that the communities are not against land allocation to any entity but, the first consideration must be given to the communities' interests. We need a lot of peace with any investor – peace which will only prevail when the communities have their space.

Hon. Temporary Deputy Speaker, it is against this background that I seek a Statement from the Chairperson of the Departmental Committee on Lands on the following:

(i) Could the Chairperson explain the circumstances under which the NLC is allocating the entire Yala Swamp land to a private developer and for how long?

(ii) Could the Chairperson explain the status of the House resolution on which its recommendations included that the local communities must be recognised and be allocated land alongside any other engagements?

(iii) Could the Chairperson explain under what circumstances the Commission did survey and named blocks as Usonga, including lands that are in Bondo Constituency, knowing very well that Usonga is in Alego Usonga Constituency and they have their own land registry and Bondo has its own land registry?

Therefore, any lands that are within Bondo Constituency must be recognised under the land registry in Bondo,

(iv) Could the Chairperson confirm the assurance that in whatever allocation arrangements being considered, the alienation and allocation of the community blocks must run concurrently with the allocation done for private developers and further confirm and demonstrate that any lands alienated for community use must fall on the safely reclaimed areas?

(v) Could the Chairperson explain whether there is proof of revocation before the same lands are allocated to another party, considering that in as much as M/s Dominion Farms Limited stopped operations, the legal instruments subsist and the legal agreements between M/s/ Dominion and Siaya County Council – now Siaya County Government – was for 40 years from 2005?

(vi) Could the Chairperson explain under what arrangements M/s Lake Agro Ltd has been operating in the area for the last 4 years and yet, they are yet to be allocated the said land?

(vii) Could the Chairperson facilitate halting of the notice by the NLC vide the daily newspapers advertisement of 14th October 2021 until all the necessary details are addressed and the communities are involved as provided for in the Constitution in regard to public participation?

Thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Chairperson or Vice-Chair of Departmental Committee on Lands. Is there anyone holding brief for them?

Majority Whip!

Hon. Emmanuel Wangwe (Navakholo, JP): Hon. Temporary Deputy Speaker, the Chair of the Departmental Committee on Lands has just gone to her office within Parliament Buildings. She is still around. I will convey to her the request from the Member. I hope immediately we resume from recess, they will bring the response.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Did you get authority from the Chair to hold brief for her or you are just stepping in for her? That would occasion inordinate delay for the response required by the Member.

Hon. Gideon Ochanda (Bondo, ODM): You are right, Hon. Temporary Deputy Speaker. What the Majority Whip did not get right is that the notice was published on 14th October. The notice requires that anybody with any complaints or any issues must raise them with the NLC within 15 days from that date. By the end of 29th October, when we shall be on recess, the land will be up for allocation. Therefore, I request that the Majority Whip picks up this matter so that the Chair of the Departmental Committee on Lands can address it as quickly as possible, bearing in mind the deadline that has been provided in the NLC notice. The Committee should deal with it within the first two days of next week.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Majority Whip, having heard Hon. Ochanda, can you give an undertaking on behalf of the Chair?

Hon. Emmanuel Wangwe (Navakholo, JP): Hon. Temporary Deputy Speaker, as I said earlier, allow me to call myself a conveyor belt. I was just apologising on behalf of the Chair since she has just stepped out to perform other duties of a Chair. Now that the Member has sought further clarifications, I will insist the same on the Chair, considering that we are going on recess and the matter is coming up on 29th October, as the Member has stated. She will have to look into it and expedite it. I will convey the message to the Chair in the manner the Member has raised it.

Thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): That is in order. Let us now move to responses to Statement Requests, starting with the Chairperson of the Departmental Committee on Environment and Natural Resources.

STATEMENTS

RELEASE OF TERMINAL BENEFITS TO FORMER EMPLOYEE OF KENYA WILDLIFE SERVICE

Hon. Kareke Mbiuki (Maara, JP): Thank you so much, Hon. Temporary Deputy Speaker. I have two Statements Requests to respond to.

One is by Hon. Kubai Iringo regarding the release of terminal benefit to one of his constituents, Ms. Nderi, who is a former employee of the Kenya Wildlife Service (KWS) who was working as a ranger.

I wish to state that we have interrogated the Statement with the Hon. Member together with KWS. The Hon. Member is satisfied. I, therefore, wish to table the response. I am in consultation with him.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Is Hon. Kubai Iringo in the House?

Hon. Kubai Iringo (Igembe Central, JP): Yes, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Are you okay?

Hon. Kubai Iringo (Igembe Central, JP): Hon. Temporary Deputy Speaker, I am okay with it. We sat with the Cabinet Secretary, the Committee and KWS and we agreed on the way forward.

Thank you.

(Hon. Kareke Mbiuki laid the document on the Table)

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Very well. Go on Chair.

MEASURES TO ADDRESS WATER SHORTAGE CRISIS IN JOMVU

Hon. Kareke Mbiuki (Maara, JP): Thank you so much, Hon. Temporary Deputy Speaker. The other Statement was sought by Hon. Badi Twalib regarding ongoing water provision crisis in Jomvu Constituency. I also wish to confirm that we had an engagement with the hon. Member, but I would like to go through the response.

I want to take this opportunity to thank the hon. Member for the goodwill and the leadership that he has demonstrated in finding a long lasting solution to the water crisis in his constituency.

The Member for Jomvu Constituency, Hon. Twalib, sought a Statement regarding the water provision crisis in Jomvu Constituency, pursuant to Standing Order No.44 (2) (c), specifically clarifying the following issues:

(i) The specific factors which have contributed to the drastic water shortage in Jomvu Constituency.

(ii) Why the Danaff Group has delayed in completing the water piping project.

(iii) The presence of water cartels in the area which contribute to the water crisis in Jomvu Constituency through deliberately obstructing the water piping programme.

(iv) The timelines within which the residents of Jomvu Constituency will gain access to adequate water supply.

Hon. Temporary Deputy Speaker, the Committee engaged the Ministry of Water, Sanitation and Irrigation on the above concerns and I, therefore, wish to respond as follows:

(i) Two key factors have contributed to the drastic water shortage in Jomvu Constituency

(a) Regular pipe bursts along the Mzima Pipeline due to the aged infrastructure of the pipeline, which has outlived its usefulness; and,

(b) Increase in water demand in centres like the SGR Terminal, and industries and yards which have increased water uptake upstream of the pipeline.

(ii) The water supply project was declared substantially complete on 27th August, 2020 and final inspection was done on 27th August 2021 by the team from the Ministry of Water, Sanitation and Irrigation as well as Mombasa Water Supply and Sanitation Company (MOWASSCO) and the consultants.

The larger project component involved laying of pipelines, which is already complete. In addition, the contract provided for installation of 4,000 consumer meters. This activity was undertaken in collaboration with MOWASSO to ensure proper identification and registration of new consumers. Since there were delays by the utility company in the above process, it was agreed that the water meters should be procured and handed over to them for the connection to be undertaken progressively. The infrastructure has already been completed and certified. By the time the project was completed, more than 200 consumer connections had already been executed. The major reticulation improvement in these areas through the Danaff Project is in preparation of the Mwache and Mzima II Water Supply Project. The Water Supply Department is currently serving the people through water rationing for 36 hours per week.

On whether the presence of water cartels contribute to the water crisis in Jomvu Constituency through deliberately obstructing the water pipeline programme, MOWASSCO is solely owned by the County Government of Mombasa. Based on verified information, I would like to confirm that MOWASSCO has an inspection team that works jointly with the County Inspectorate Department and internal security team to ensure efficient and effective distribution of water to make the services reliable.

Finally, on the issue of timelines within which the residents of Jomvu Constituency can gain access to adequate water supply, the water supply in the constituency was to gradually improve from 36 hours to 46 hours per week, when Pemba Dam will be completed and made operational. The additional water supply anticipated will be 2000 cubic metres per day to Miritini, Jomvu and Changamwe constituencies. It is, therefore, anticipated that the Pemba Dam, which is currently at 83 per cent complete, will be operational by the close of the year. The water services will further improve when Mwache Dam and Mzima II Pipelines are completed.

As I said earlier, we had a very constructive engagement with the hon. Member who participated in the Committee's meetings with the Ministry officials. I confirm that the hon. Member went out of his way to ensure that we find a lasting solution to water supply in his constituency and in the larger Mombasa County, and I thank him for doing so. I am very optimistic that once Mwache Dam and Mzima II Pipelines are complete, we will have a lasting solution to the water crisis that Mombasa County is experiencing.

Thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Hon. Bady Twalib, are you okay with the response?

Hon. Bady Twalib (Jomvu, ODM): Ahsante, Mhe. Naibu Spika wa Muda. Namshukuru Mwenyekiti, Mhe. Kareke Mbiuki. Vile vile, namshukuru Naibu wake, Mhe. Sophia Abdi.

Kama alivyosema Mwenyekiti, Mhe. Kareke Mbiuki, nimeridhika kama Mbunge wa Jomvu. Mradi wa Danaff uliokuwa ufanyike ulimalizika mwezi wa Agosti. Vile vile, tuko na *cubic metre* 4,000 ambazo tutawapatia wananchi wetu.

Kitu ambacho ningetaka kuzungumzia ni kuwa haya majibu si ya leo pekee. Mhe. Mwenyekiti alifanya kikao na *officials* wa Wizara, Mkurugenzi wa Coast Water na mimi. Kama alivyosema, aliwaamrisha wawasiliane nami. Naripoti kuwa wiki ijayo, nitakuwa na mkutano na Mkurugenzi wa Coast Water na Mkurugenzi wa Mombasa Water, Bwana Carmel Bokoko, kuhusu mambo haya ya Jomvu.

Inasikitisha kwa sababu ni hujuma na usaliti mkubwa sana kuona maji yakitoka Mzima, yapite Mazeras, yaanze katika Kaunti ya Mombasa kwenye Eneo Bunge langu la Jomvu, yaende mbele mpaka Mombasa Mjini na watu wangu wakose maji. Lakini tangu Mwenyekiti na Naibu

wake, Mhe. Sophia Abdi, walipofanya mkutano ule, tumeona mabadiliko kidogo yakifanyika hapo Jomvu.

Kuhusiana na mambo ya wale wakora ama *cartels*, naripoti kuwa tulikaa na watu wa Wizara, tukaangalia na kusema kuwa jambo hili ni la watu wa usalama. Kwa hivyo, tumehusisha *Surveillance Department*, ambayo itanza *crackdowns*. Pia, tumewahusisha *Deputy County Commissioner (DCC)* na *Officer Commanding Police Division (OCPD)* ili waweze kuchukua hatua dhidi ya hao *cartels* ambao wanawahujumu watu kwa kuwafanya wakose maji.

Zaidi ya yote, narudisha shukrani zangu nyingi sana kwa Mhe. Kareke Mbiuki, ambaye ni Mwenyekiti wa Kamati ya Mazingira. Vile vile, natoa shukrani nyingi sana kwa Mhe. Sophia Abdi kwa sababu nilipokuwa katika mkutano na Wizara, yeye ndiye alisimamia mkutano huo. Aliwapa *direction* kulingana na vile Mwenyekiti wake alikuwa amesema.

Kwa hivyo, nitazungumza na watu wangu wa Jomvu wawe na subira kidogo. Baada ya kumalizika kwa mabwawa hayo, tutapata maji na shida ya maji itakuwa ni jambo la kuzikwa katika kaburi la sahu.

Ahsante, Mheshimiwa Naibu Spika wa Muda.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): We now move to the next response on Collective Bargaining Agreement for Kenya Ports Authority Employees.

What is out of order, Hon. Mule?

Hon. Stephen Mule (Matungulu, WDM-K): Thank you, Hon. Temporary Deputy Speaker. Before we move to the next Order, I beg to get a response to a Question I asked on 7th October 2021 regarding a young man who was picked up by the police and later found dead at the Kenyatta National Hospital. The Departmental Committee on Administration and National Security had promised to give an answer within two weeks. This is a very emotive issue in my constituency. The constituents and the family are waiting to get a response from the Government, probably today, because justice delayed is justice denied. We need to deal with this issue once and for all.

The people of Matungulu and Tala feel that, because the police were involved in this...

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Hon. Mule, we have not yet finished with the scheduled responses. That is an overdue response from the Chairman of the Departmental Committee on Administration and National Security.

Chairman, do you have something to say to Hon. Mule?

Hon. Peter Mwathi (Limuru, JP): Thank you, Hon. Temporary Deputy Speaker. I agree with the hon. Member that the issue at hand is very sensitive. Yes, I had undertaken to deliver the Statement within two weeks, which are ending today but, two days ago, I spoke to the Cabinet Secretary for Interior and Coordination of National Government, who stated that they took one week off to prepare for Mashujaa Day celebrations, which took place yesterday. They have requested that we indulge them, so that they deliver the same on Tuesday next week. For the better part of last week, they were not in office.

I have communicated this position to the hon. Member but we agreed that it is important that we put it on record that the Ministry has asked for five days. The hon. Member will get a written response on Tuesday. Further, we will have a sitting with the Cabinet Secretary on Thursday. I urge the hon. Member to attend so that he may ask any supplementary questions, if he is agreeable.

The reason for the delay is that the Ministry officials were preparing for Mashujaa Day celebrations.

Thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): That should be fair enough, Hon. Mule. I am sure you will get a way forward in the course of the week.

Hon. Stephen Mule (Matungulu, WDM-K): Thank you, Hon. Temporary Deputy Speaker. I will indulge the Chairman. The case of the late Abubakar Muli Nduva is a very emotive issue in Tala. If you are requesting for another five days, I will agree with you. Make sure that we dispense with this matter once and for all, so that the family can get justice and the people of Matungulu can have peace.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Okay, fair enough. Let us have the Chairman of the Departmental Committee on Labour and Social Welfare to respond to Hon. Abdullswamad's request.

Chairman, Departmental Committee on Lands, I am sure you have been briefed on a Request for a Statement from Hon. Ochanda. Prepare to give direction on how you will handle the request.

Hon. Josphat Kabinga (Mwea, JP): Thank you, Hon. Temporary Deputy Speaker. I seek your permission to respond to the request without my face mask because it is a bit uncomfortable. I had to tie it because it got cut.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): That is un-procedural, Hon. Member. Just speak with your mask on. We will hear you.

Hon. Josphat Kabinga (Mwea, JP): Thank you, Hon. Temporary Deputy Speaker. It was just a request. I was waiting to hear what you would want me to do. I will struggle with it.

DELAYED IMPLEMENTATION OF COLLECTIVE BARGAINING AGREEMENT FOR KENYA PORTS AUTHORITY EMPLOYEES

Hon. Josphat Kabinga (Mwea, JP): Hon. Temporary Deputy Speaker, I beg to respond to a Request for Statement by the Member for Mvita, Hon. Abdullswamad Nassir, on delays in implementation of a Collective Bargaining Agreement (CBA) for Kenya Ports Authority (KPA) employees. The second part was on some employees who were sacked from KPA.

When this request came to us, we took it seriously and engaged the various stakeholders. We thank the hon. Member for being very patient and cooperating with us to ensure that we get to the bottom of the matter even though it took us some time. We received the response from the National Treasury, which we shared with the hon. Member. This afternoon I will go through additional notes other than what the hon. Member received from the Ministry.

Hon. Temporary Deputy Speaker, pursuant to Standing Order No.44 (2) (c), Hon. Abdullswamad Sheriff Nassir requested for a Statement on 16th June 2021 regarding the unfinalised CBA for KPA employees during Financial Year 2021/2022 and the matter of reinstatement of 247 former employees. The Member sought clarifications on the following issues:

(i) Challenges hindering the commencement and finalisation of the CBA for KPA employees during Financial Year 2021/2022;

(ii) Measures that the National Treasury has put in place to ensure that the CBA negotiation for Financial Years 2020/2021, 2021/2022 and 2022/2023 are commenced in 2021;

(iii) Assurance that the Ministry will facilitate commencement of the negotiations of the CBA;

(iv) That KPA employees will have their salaries backdated to January 2021; and

(vi) That 247 employees who were unlawfully laid off in 2011 will be reinstated.

Hon. Temporary Deputy Speaker, the Committee received the initial response from the National Treasury on 3rd August 2021, and an updated version on 31st August 2021, both of which were promptly shared with the hon. Member. We have copies of the same here.

The Committee invited officials from the National Treasury, KPA, Dock Workers Union (DWU) and the hon. Member to a meeting on 2nd September 2021 to deliberate on the matter. The Committee further held meetings with the Salaries and Remuneration Commission (SRC) on 21st September 2021. During the two meetings, the Committee was informed that KPA and DWU signed a two-year CBA for Financial Year 2021/2022 on 12th March 2021. The National Treasury and KPA confirmed that the Authority is in a position to sustain the salary increment.

The SRC informed the Committee that it declined to grant clearance to facilitate the registration of the CBA between KPA and DWU at the Employment and Labour Relations Court on the grounds that the CBA is a two-year agreement and not a four-year one as prescribed in the SRC guidelines issued on 4th July 2012, and revised on 21st March 2014 and 14th October 2019. This raised the issue of whether the SRC guidelines are legally sound.

The SRC guidelines were issued by SRC through letters addressed to accounting officers of various State organs, constitutional commissions, independent offices and other public bodies. The guidelines prescribed the procedure to be followed by public service organisations and requirements to be met while seeking SRC advice on remuneration and CBA in the public service.

Hon. Temporary Deputy Speaker, the right to collective bargaining is enshrined in Article 41 (5) of the Constitution, which states that every trade union, employers' organisation and employer has the right to engage in collective bargaining. A scrutiny of the SRC guidelines reveals specifications on the manner of undertaking collective bargaining as well as the contents of the agreement. For instance, the guidelines state that the cycle of CBA shall be four years. It is the Committee's considered view that SRC's directives regarding CBAs reduce or limit the right to engage in collective bargaining as safeguarded in Article 41 (5) of the Constitution.

This brings us to the question of whether the right to labour relations as provided for under Article 41, and in particular collective bargaining, may be limited? The answer to this question is found in Article 25 of the Constitution, which sets out the fundamental rights and freedoms that may not be limited. The right to engage in collective bargaining is not listed under Article 25 of the Constitution and, therefore, it can be inferred that it is a right that may be limited.

Upon that conclusion, the question that follows is how such a right of fundamental freedom can be limited. This concern is adequately addressed by Article 24 of the Constitution, which guides that such limitation must be within the confines of legislation enacted by Parliament. Article 24 (1) provides that a right or fundamental freedom in the Bill of Rights shall not be limited except by law. The upshot, therefore, is that a person who desires to limit a right or fundamental freedom of the Bill of Rights must do so through a law. Upon that ascertainment and the earlier option that the imputed SRC guidelines limit the rights to collective bargaining, it follows that one must then ask whether the SRC guidelines on the collective bargaining are law as envisioned in the Constitution.

Hon. Temporary Deputy Speaker, the Constitution, in Article 94 (5), empowers Parliament to make provisions having the force of law in Kenya and precludes all persons or bodies from so doing except under authority conferred by the Constitution or by legislation passed by the Legislature. Article 94 (6) further stipulates that legislation that confers authority to make provisions having the effect of law shall expressly specify the purpose and objectives for which

that authority is conferred, the limits of the authority, the nature and scope of the law that may be made and the principles and standards applicable to the law that is made under that authority.

On the matter in dispute, the Committee posed a query about the legal provision upon which SRC resides to make the guidelines in question. In response, SRC submitted that the guidelines had been made pursuant to Section 11 (e) of the Salaries and Remuneration Commission Act No.10 of 2011, which states as follows:

“(11) In addition to the powers or the functions of the Commission under Article 230 (4), the Commission shall –

(e) Determine the cycle of salaries and remuneration review upon which Parliament may allocate adequate funds for implementation.”

Hon. Temporary Deputy Speaker, it is clear that Section 11 of the SRC Act purely sets out the functions of the SRC, but it is not crafted in the manner prescribed in Article 94 (6) of the Constitution. Consequently, Section 11 (e) of the SRC Act is not an enabling provision for the purpose of making delegated legislation.

On the other hand, the Committee observed that Section 26 of the SRC Act does not delegate legislative powers to the SRC to make general regulations to bring to effect any of the provisions of the Act and that, indeed, SRC enacted regulations pursuant to that provision. The power to make regulations shall be exercised only after a draft of the proposed regulations has been approved by the National Assembly.

The Committee observed that the Salaries and Remuneration Commission had not relied on Section 26 as its enabling provision to issue the impugned guidelines. However, even if Section 26 were to be relied upon in this case, the guidelines as crafted generally offend the requirement of the Statutory Instruments, Act No.13 of 2012 and the Interpretations and General Provisions Act, Cap.2 of the Laws of Kenya.

Further the guidelines were issued as letters or memos addressed to various institutions and were neither gazetted nor transmitted to Parliament for tabling and scrutiny as required by Section 11 of the Statutory Instruments Act.

In view of the foregoing, the Committee is of the opinion that the SRC Guidelines on Collective Bargaining dated 4th July 2012, 21st March 2014 and 14th October 2019 failed the constitutional test on making statutory instruments hence are defective, for the purpose of the Constitution, the Statutory Instruments Act, No.13 of 2013 and the Interpretation and General Provisions Act, Cap.2 of the Laws of Kenya, and lack the force of law.

Noting the gravity of the matter, the Committee is of the considered opinion that the guidelines on collective bargaining ought to have the force of law hence they should be enacted in a manner prescribed by Article 94(6) of the Constitution and the Statutory Instruments Act.

Further, considering the guidelines limit the rights to collective bargaining, they must be enacted in strict adherence to the Constitution dictates set out in Article 24. These are essential checks and balances laid down in the law to prevent abuse of power by an arm of Government or state organ exercising its powers.

In view of the above, the Committee made the following recommendations:

1. The SRC reconsiders its decision and urgently approves the two-year collective bargaining agreement to pave way for the Financial Year 2022/2023 negotiations and unlock the stalemate on the payment of employees' dues in the negotiated CBA Financial Year 2021/2022.

2. The SRC guidelines on collective bargaining must be given force of law through enactment in the manner prescribed in Article 94(6) of the Constitution and the Statutory Instruments Act.

That concludes the first part of the Statement required by the Member with the Committee recommending that the two-year collective bargaining agreement be implemented immediately.

On the matter of the 247 ex-employees of Kenya Ports Authority, the Committee met with the National Treasury where it was resolved that there should be a further meeting where KPA is required to make available the following information:

1. Number of employees recruited by KPA since 2014 including copies of job advertisements and employee terms of the new employees.
2. Payment of outstanding dues of the 247 former employees...

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Hon. Chairperson, it is in my knowledge that Hon. Nassir has gone through the Statement and he is ... Are you privy to the Statement, Hon. Nassir?

Hon. Abdullswamad Nassir (Mvita, ODM): (*Off record*)

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): You do not need to read it verbatim.

Hon. Josphat Kabinga (Mwea, JP): I have gone through it, Hon. Temporary Deputy Speaker, because of the weight of the matter. We also know that there have been many cases relating to the SRC. So, this particular case might trigger some further enquiries and requests by other entities. This is why the Committee went through the pain to prepare additional notes.

3. Status of restructuring process of the Kenya Ports Authority.

In conclusion the Committee had scheduled a meeting with the National Treasury and KPA on 21st September 2021 but the Cabinet Secretary sought a one-month extension before the meeting can take place.

We will have a meeting probably before we resume from the coming recess. Thank you, Hon. Temporary Deputy Speaker.

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

Hon. Abdullswamad Nassir (Mvita, ODM): Asante sana, Mhe. Naibu Spika wa Muda. Nachukua fursa hii kupeana kongole za dhati kwa Kamati ya Idara husika. Ndugu yangu, Mhe. Kabinga, amefanya jambo la maana. Ni kweli...

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Put your mask on, Hon. Nassir.

Hon. Abdullswamad Nassir (Mvita, ODM): I had requested to remove it for the purpose of being noted.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): No. Just put your mask on, Hon. Nassir. Hon. Wamalwa, also put your mask on.

Hon. Abdullswamad Nassir (Mvita, ODM): Asante sana, Mhe. Naibu Spika wa Muda. Nilikuwa naelezea kwa kutoa kongole kwanza kwa Kamati. Kila Mjumbe amefanya kazi. Leo ni dhahiri licha ya mambo mengine yote kuwa Bunge limeweka msimamo wake wazi kuhusiana wafanyikazi wanaoleta mapato katika Kenya hii.

Kulikuwa na mambo mawili. La kwanza, kuna vijana 247 ambao walikuwa wakiajiriwa baada ya kila muda fulani wanapatiwa *contract*, wanaambia waende warejee kwa muda wa miaka kumi. Chini ya sheria Bunge hili liliweka ni kuwa mtu akifanya kazi kwa muda fulani lazima aajiriwe. Waliambia kuwa hao watu hawafai na wakawatoa. Licha ya hayo hawajatuambia bado tangu wale vijana 247 wafutwe vile wameajiri watu, na waliwajiri kwa njia gani na kama

waliomba nafasi kuhusiana na jambo hilo. Lakini, lile la leo ambalo wamesema ni kwamba hao watu 247 Kamati imenijulisha ikifika kati kati ya Novemba watakuwa na jawabu. Tutastahimili kama vile walivyostahimili wale wengine.

Kuhusiana na nyongeza ya mishahara, kama alivoyozungumza Mwenyekiti, hili ni jambo litakuwa mfano na kiegezo chema kwa mashirika mengine. SRC walitoa stakabadhi ambazo hazina mwelekeo wa sheria. Kuna sheria zinapitia kwa Kamati ya *Delegated Legislation*. Huwezi toa *memo* ikawa sheria. Leo kwa wafanyikazi wa KPA, nashukuru Mwenyezi Mungu nimefanya jukumu langu kama Mjumbe wao na watalipwa mishahara wao vile inavyostahiki.

Nikimalizia, kwa unyenyekevu, kwa sababu tulikuwa na Mhe. Mishi na Mhe. Bady na pia hawa ni wale... Nawaambia kwa unyenyekevu kuwa kuna Wajumbe wengine wanadhani kuwa ukizungumza katika majukwa na vibaraza... hawasaidii watu. Sheria zinatengezwa na ukitaka kutetea watu wako, ingia katika hili Bunge, kaa vile tunakaa sisi, kauka kama sisi, fanya utafiti wako na soma, lakini usiwe unapaa na kudanganya watu katika vibaraza lakini huwasaidii kwa jambo lolote. Wahudumie watu katika hili Jumba. Hukupigiwa kura uende kupiga ngojera za kisiasa kule nje.

Asante sana. Naomba kwa unyenyekevu Mhe. Bady na Mhe. Mishi ...

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Usiharibu kwa Mwenyekiti, Mhe. Nassir. Hiyo si kazi yako. Umemaliza yako.

Hon. Abdullswamwad Nassir (Mvita, ODM): Asante sana.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Kwa hivyo, usiwaribie wenzako. Mhe. Mishi na Mhe Twalib, najua nitawapa dakika mbili kila mmoja. Msizidisha. Mhe. Twalib.

Hon. Bady Twalib (Jomvu, ODM): Asante sana, Mhe. Naibu Spika wa Muda.

Kwanza nataka kumpongeza Mhe. Abdullswamwad Sheriff Nassir. Amesema maneno mazuri. Ndio maana kule Mombasa sijaonekana kuwa nina wazimu niliposema kuwa yeye atakuwa gavana wetu mwaka wa 2022.

(Applause)

Nasema kulingana na Kipengele 41(5) cha Katiba ambacho kinasema juu ya mambo ya maafikiano ya pamoja yaani *collective bargaining*, kuwa watu wana haki ya kuona ni vipi wanaweza kukaa na kukubaliana.

Kwa hivyo, kwa dakika mbili ulizonipa, nataka kusema kuwa ni muhimu Kamati Tekelezi au *Implementation Committee* ifanye haraka iwezekanavyo kuchukua mapendekezo ya hii Kamati na kuona kuwa watu wa KPA wamelipwa. Vilevile, tunasema kuwa, kibinadamu na wakati huu mgumu wa Korona, watu wote waliofutwa waregeshwe kazini ili wajikimu na kujimudu katika maisha yao kama kawaida.

(Applause)

Kwa hayo, narudia kumpongeza Mhe. Abdullswamwad kwa kazi nzuri ambayo amefanya. Asante na Mwenyezi Mungu atubariki.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Dakika mbili, Mhe. Mishi Mboko.

Hon. (Ms.) Mishi Mboko (Likoni, ODM): Asante sana, Mhe. Naibu Spika wa Muda.

Kwanza, nataka kutoa shukrani na kongole kwa Mwenyekiti wa Kamati hii ya Leba na Ustawi wa Jamii. Pia namshukuru Mhe. Abdullswamwad kwa kutetea wafanyikazi wa bandari ambao ni vijana wetu, akina mama na akina baba. Kwa hakika Kamati imeangalia sheria kwa sababu sheria ni msumeno. Yakata mbele na pia yakata nyuma.

Wafanyikazi wa bandari wamekuwa wakichangia Hazina Kuu ya taifa na uchumi wa taifa letu la Kenya pakubwa sana. Wafanyikazi hawa, mbali na kuwa kulikuwa na *COVID-19* ama Korona, walimenyeka na kung'ang'ana kabisa kuzalisha na kuhakikisha kwamba mapato ambayo yanaingia katika Hazina Kuu ya taifa hayakupungua wala kuwa machache kwa sababu ya Korona. Wafanyikazi wa bandari wanafanya kazi katika hali ngumu na hatari pale bandarini. Kwa hivyo, watu walikubaliana katika mjadala wa pamoja na *dock workers* na KPA wakaweka kidole kusema “tunaweza kuwapa mishahara na posho zao na wala haitaathiri ule uchumi tunatengeneza pale katika bandari”. Kwa hivyo, iwapo bandari imesema inaweza, kwa nini SRC iseme haiwezi na wale KPA wanajua mapato wanayopata na wafanyikazi wao?

Jambo lingine, wafanyikazi 247 ni familia 247 wakiwemo akina mama, watoto na watu wengi. Sisi kama Wakenya na viongozi tuhakikishe kwamba wameregeshwa katika kazi zao ili waweze kusomesha watoto, kujenga taifa na kuwa na maisha ya Wakenya ambao wanaheshimika.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Let us have the Chairperson of the Departmental Committee on Lands. Members, you should note that we are still on preliminaries. We need to move to substantive Motions. Is Hon. Ochanda here?

An Hon. Member: He is not here.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): He left, but, I am sure you were well briefed. Just make your commitment.

Hon. (Ms.) Rachael Nyamai (Kitui South, JP): We spoke, Hon. Temporary Deputy Speaker. Thank you so much for the opportunity.

I start by thanking you very much and also the Whip of the Majority Party because he took up this Petition. The commitment that I would like to give for this is two weeks. I am saying this well aware of the sensitivity of the matter. Also, the Member raises a date on the second page where notices have already been issued for 29th October. So, I would like to commit that the Departmental Committee on Lands is going to liaise with the institutions concerned so that everything is put on hold until this Petition is responded to.

So, I request for two weeks hoping that I will also communicate with the Office of the Clerk to write requisite letters to concerned institutions.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Okay. I am sure that will get to Hon. Ochanda. Hon. Jared Okelo, do you have a point of order?

Hon. Jared Okelo (Nyando, ODM): I thank you very much, Hon. Temporary Deputy Speaker.

By guidance of the Speaker, I raised a Question by Private Notice here on Tuesday. I believe there are rules that guide such types of Questions in terms of time to respond. This was relating to the very punitive penalties proffered by the Kenya Revenue Authority on levying taxes to our constituency and country offices. In cases where the National Treasury has delayed remitting monies to the Parliamentary Service Commission (PSC) which consequently goes to our offices, the KRA has always proffered very high penalties. I asked that Question on Tuesday. It was cascaded to the Departmental Committee on Finance and National Planning. I expected to get a response this afternoon.

It puzzles me that the KRA is a department within the National Treasury. It should know when those delays are in place. This is Government to Government and so, I do not understand

why we still have to be penalised for inordinate delays emanating from the National Treasury. I need your guidance on this matter. I had hoped to get a response this afternoon. It touches on all Members of Parliament present here, and Senators, through their constituency offices.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Yes, Hon. Okelo. You are perfectly in order. Questions by Private Notice need to be answered within three days. Yes, it is a second day but we are going on recess and so, it should have been responded to latest today. Where is the Chairperson of the Departmental Committee on Finance and National Planning? Yes, Hon. Gedi, do you have authority to speak for Hon. Wang'a? What about the Whip of the Majority Party or the Leader of the Majority Party?

Hon. Emmanuel Wangwe (Navakholo, JP): Thank you, Hon. Temporary Deputy Speaker.

I was just speaking to the Chairperson when the Member was asking the Question. Indeed, the Chairperson is out on parliamentary assignment. She is just across interrogating members proposed to the Privatisation Commission. With your leave, Hon. Temporary Deputy Speaker, I feel we need to just excuse her for today. Maybe she will have an answer immediately we resume from recess.

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

Hon. Jared Okelo (Nyando, ODM): I thank you once again, Hon. Temporary Deputy Speaker.

The Speaker gave guidance on that type of Question and it is upon that guidance I was acting. I also reckon that we are going out for recess today. We will not be back here until 9th November 2021. As long as through private notice, the Question will remain alive, because I am fearing it may be overtaken by events hence become nugatory, and I do not want to fall into that trap. However, because of the commitment of the Chairperson, and she has already communicated through the Whip of the Majority Party, I will take that by stride and hope that a comprehensive response that will safeguard our offices will be delivered on the Floor of this House as we resume on 9th November 2021.

For that, I accept the challenge. I accept her request, and I will hold my horses. In the interim, I hope the Kenya Revenue Authority will not rear its ugly head in our offices proffering the same penalties that we are challenging here to today.

Thank you.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Hon. Whip, you will be the one who will convey the message to the Chairperson. You have indicated that she is away on parliamentary business. Even though we are going on recess, Committees will still be operating and so, she should present her response to Hon. Okelo in the shortest time possible. It is a matter of interest to all Members of Parliament. She should do so at the immediate opportune time. It is unfortunate that the Chairperson is not here to respond. Chairpersons are still allowed to delegate to their vice-chairpersons or even Members of their committees. We will be setting a bad precedent of having time bound functions of the House not respected.

The Majority Whip; since the Chairperson, the Vice-Chairperson and Members of the Committee are not here, we need to have the response relayed to Hon. Okelo in the shortest time possible. Immediately after we resume, we should revisit it because Members would wish to know and hear the response to the issue which is of interest to all of them.

Hon. Ichung'wah.

Hon. Kimani Ichung'wah (Kikuyu, JP): Thank you, Hon. Temporary Deputy Speaker. Indeed, I agree with you. I was proposing to the Member for Nyando that this is something that

we should consider legislating on. It is true that many constituencies and county offices are suffering because of penalties that are not occasioned by delays by our constituencies and county managers, but delays in release of the Exchequer by the National Treasury. The Finance Bill and the amendments to it that the Committee brought last week and we debated is something the Member of Nyando should consider. He should bring an amendment to the Income Tax Act to exempt, not just our constituency and county offices, but also many Government bodies that get penalised because the National Treasury has not remitted money to them.

Hon. Temporary Deputy Speaker, I beg your indulgence. My point of order is on a matter that is not on the Order Paper. I have consulted with the Chairperson of the Departmental Committee on Administration and National Security, Hon. Mwathi. There was a request for a Statement that he was to respond to today and indicate when he will be tabling a report on the withdrawal of the security of the Deputy President. When he was away early in the week, Hon. Speaker directed that he responds today and he has indicated that he is ready.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Hon. Chairperson, are you ready with your response?

Hon. Peter Mwathi (Limuru, JP): Thank you, Hon. Temporary Deputy Speaker, I am ready. With your indulgence, I have the Statement here and I can read it.

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

ILLEGAL ARREST AND DETENTION OF A TURKISH NATIONAL

Hon. Peter Mwathi (Limuru, JP): Thank you, Hon. Temporary Deputy Speaker.

The Member for Kikuyu Constituency, Hon. Kimani Ichung'wah, sought a Statement on the arrest and detention of Mr. Harun Aydin, a Turkish national. He particularly sought to be informed on the following:

- 1) The circumstances that lead to the arrest of and detention of Mr. Harun Aydin from 7th to 9th August 2021.
- 2) Why he was denied access to his lawyers and Turkish Embassy officials during this period.
- 3) The specific issues that led to Mr. Harun Aydin leaving the country and whether his departure was voluntary or not.
- 4) Why he was not charged before a court of law besides being held in detention for over 48 hours.
- 5) What the Government has so far done to reassure the Turkish Government and its people and other investors that they will not be mistreated in Kenya as Mr. Harun Aydin was.

The response is as follows: The National Police Service was established by Article 243 of the Constitution of Kenya, 2010 and operationalised by the National Police Service Act, 2011 to among other functions enforce all laws. To this end, the National Police Service has been partnering with other Government agencies in enforcing various laws in the country. The Kenya Citizenship and Immigration Act, 2011 bestowed the responsibility to issue and determine validity of a work permit or resident permit or a valid pass to the Immigration Department.

Mr. Harun Aydin is a Turkish national born on 10th January 1966. He is a holder of an ordinary Turkish Passport No. U20470175 which was issued on 19th July 2018 and it is valid for 10 years. He made an application online for investor work permit class G on 24th November 2020 under a company called Unit 2HA Investment Energy Africa Limited. In the cover letter provided,

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the company stated that they will be investing in Kenya and the greater East Africa region in the energy sector among other related areas including but not limited to private public partnership on solar plant establishment, wind and biomass plant developments. Subsequently, permit serial No. 111144 was issued for two years, valid until June 2023. However, after receipt of adverse information, the work permit was revoked and cancelled on 8th August 2021 pursuant to Section 40(4) of the Kenya Citizenship and Immigration Act, 2011. This revocation rendered Mr. Harun Aydin's presence in Kenya unlawful and he was thus deported on 9th August 2021.

The deportation of Mr. Harun Aydin was within the law, therefore, he was not mistreated whatsoever. Nevertheless, the Government of Kenya has continued to assure its citizens and all investors from across the world including Turkey of its commitment to provide a conducive environment for investment in the country and within the law.

Thank you.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Hon. Ichung'wah.

Hon. Kimani Ichung'wah (Kikuyu, JP): Thank you, Hon. Temporary Deputy Speaker. I want to thank the Chairperson of the Committee for the response that I see has been signed by the Cabinet Secretary, Ministry of Interior and Coordination of National Government, Fred Matiangi. I cannot take anything against the Chairperson because he is reading what has been relayed to him by the Cabinet Secretary.

(Hon. (Dr.) Chris Wamalwa spoke off record)

I can hear Hon. Chris Wakhungu Wamalwa, the incoming Governor of Trans Nzoia, saying that he is only a conveyor. As much as we cannot punish the conveyor or the messenger, he must also respond to the House in a manner that is in line with our own procedures and precedents. If you look at the issues that I sought to know from the Ministry, one was the question of whether this particular gentleman was deported or he left the country voluntarily. In matters to do with deportation, as the Chairperson has pointed out, you do not just wake up and you are deported. There ought to be - there should be - a deportation order. In line with our procedures as a House of records, it would have been only kind and fair that the Committee does justice in its work by interrogating this issue to ensure that the Cabinet Secretary has, indeed, produced before the Committee a response to the statement request. And I expected it would be one of the annexures. The annexure should have indicated there was a deportation order that was issued on the 8th or 9th of August.

Two, if you listened to the Statement carefully, you will realise that Mr. Aydin was issued with a work permit in November 2020. This work permit is what is being cancelled while he is in police custody. A day after they arrested him, they purported to cancel the work permit. The Statement does not even say when the Cabinet Secretary or the Government got any adverse information, as they purport, regarding Mr. Aydin. I raise this matter because we have a tendency, especially notoriously from this Cabinet Secretary, of using Committees of this House and the precincts of Parliament to advance political innuendos and gossip, knowing that he probably has the protection of the House.

The other issue I had sought information on was a report that the Committee was interrogating regarding withdrawal of security. It is the same notorious Cabinet Secretary who invited himself to a Committee meeting, purported to carry out lifestyle audit on the Deputy President without tabling any iota of evidence. If we allow Cabinet Secretaries and anybody else,

including myself, to use this House or to use Committees of the House to advance political shenanigans, we shall be doing this country and the people of Kenya a lot of injustice.

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

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Hon. Kajwang', what is your point of order? I heard your voice first.

Hon. T.J. Kajwang' (Ruaraka, ODM): Hon. Temporary Deputy Speaker, the Member for Kikuyu is a veteran of this House, but he stands in his place to say that a mere Cabinet Secretary is using this House to advance innuendos and so many other words that he has used. Is it in order that he should present this House in such a manner as to suggest that this House is so deplorable and base that it can be used by Government officials to advance their own interests? In fact, he himself is a Member of this House. Is he not debasing himself that he is a Member of this House who has not resigned and he is enjoying privileges while at the same time he is saying that this House has been used by Government officials? Is he in order or should he withdraw that part of his statement that seems to show this House in bad light out there?

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Hon. Ichung'wah, you know better. You are an emeritus Chairperson of a Committee of this House. You know the rules and you cannot disparage a House which you are a part of. Secondly, you have a right to express displeasure with a response that is not satisfactory according to your expectation. At the same time, you know the procedure of sanctioning a Cabinet Secretary or taking any other action that you deem fit. It is not done the way you are doing it. So, confine yourself to the rules of the House.

Hon. Kimani Ichung'wah (Kikuyu, JP): Thank you, Hon. Temporary Deputy Speaker. I am well guided. What Hon. T.J. Kajwang' is saying is, indeed, true. But if he had listened to me carefully, I said that I sought that Statement to dissuade not just Cabinet Secretaries but even myself from using the Floor of this House to say anything disparaging towards Hon. Kajwang' or that Cabinet Secretary or any other Kenyan who has no place to defend themselves in this House.

The issues that have been responded to are extremely unsatisfactory.

Hon. Peter Mwathi (Limuru, JP): On a point of order.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Chairperson, do you not want to listen to what Hon. Ichung'wah is saying? I will give you a chance to respond.

Hon. Peter Mwathi (Limuru, JP): Hon. Temporary Deputy Speaker, I will listen; and I am a very good listener. As Hon. Ichung'wah has referred to this House, I want to find out whether this happened and whether it is on record. While I was away, he made the same sentiments against the Departmental Committee on Administration and National Security. He said that the Committee is being used by the Cabinet Secretary to further his agenda and that the Committee is behaving like it is the Executive. I am yet to find out. That statement was made on record. I, therefore, request that you find it out of order that Hon. Ichung'wah says such things about the Committee, not just the House. I have heard him now. He says that this Committee is being used to further the agenda of the Cabinet Secretary. If there is no such a thing, he should retract that statement and apologise. If there is, then he should table evidence and show how this Committee has been used by the Cabinet Secretary to further his agenda. If there is no evidence...

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Order, Chairperson. You have talked about two different things. You have talked about an earlier statement by Hon. Ichung'wah and the onus is on you to tell the House when that statement was made. You have also said that you have heard him now. Hon. Ichung'wah, did you say that? Clarify and confine yourself to the issue raised.

Hon. Kimani Ichung'wah (Kikuyu, JP): You know, Hon. Temporary Deputy Speaker, some things are not even worth responding to. You have put it right. Hon. Mwathi is raising extraneous issues that he purports were said last time while he was away. I do not know where he was and it is not my business to know. Everything I say in this House is not secret. It is on *The Hansard*. He is at liberty to go through *The Hansard* and check what was said.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Order, Hon. Ichung'wah. I will give you one minute to conclude. The only chance I gave you was to say whether the Statement by the Cabinet Secretary is satisfactory. If it is not, you are at liberty to say so then we move to the next step.

Hon. Kimani Ichung'wah (Kikuyu, JP): Hon. Temporary Deputy Speaker, it is only that the Chairperson and other Members are getting a little agitated. I said the Statement as it is does not address the issues I raised.

(Loud consultations)

Can I get protection, Hon. Temporary Deputy Speaker? You might be overzealous to protect the Cabinet Secretary...

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Hon. Ichung'wah, proceed.

Hon. Kimani Ichung'wah (Kikuyu, JP): Thank you for your protection, Hon. Temporary Deputy Speaker. The Chairperson should listen to me because this is the most important issue. I would want the Cabinet Secretary, because he says he got adverse information regarding this Turkish citizen, to appear before the Committee, even in camera, to adduce that adverse information.

Two, I know, and I will adduce evidence before the Committee once invited by the Chairperson, that Mr. Harun Aydin was never deported from this country. He, indeed, paid for his own air ticket and they pleaded with him to leave the country.

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

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Hon. Millie, what is out of order? You have heard what Hon. Ichung'wah has said.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Thank you, Hon. Temporary Deputy Speaker. Can Hon. Ichung'wah declare his interest in this matter? To the best of my knowledge, information and belief, the gentleman he is talking about is not his constituent and he is not from Kenya. Why the personal interest in a person who is not his constituent? Can he declare his interest? We have information that that is his business partner.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Hon. Ichung'wah, do you have conflict of interest in the matter?

Hon. Kimani Ichung'wah (Kikuyu, JP): Hon. Temporary Deputy Speaker, Hon. Millie is a seasoned Member of Parliament and she knows the rules on conflict of interest. I am a businessman, and a good one for that matter, including trading in fish and Hon. Millie Odhiambo knows that. The maritime industry in Turkey is quite established, and I will be inviting her to deal with maritime issues even in Turkey.

What is really important to me is that the Cabinet Secretary purports to have deported Mr. Harun Aydin. I expect the CS to have the decency and the courtesy to adduce evidence including the deportation order that was used. It is the same case I said last week, and that is what the Chairperson is getting agitated about, that when you appear before a Committee of this House as a CS, you do not invite the media to come and drive political narratives without adducing evidence.

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We expect you to come and if you say that Mr. Kimani Ichung'wah owns a particular piece of land in Laikipia or in Kikuyu, you adduce evidence. When you come and say that the Deputy President is protected by 250 police officers, *sijui* Recce and the others, adduce evidence with names of police officers. That was the second issue that the Chairman was to respond to which he has not. I beg that he uses this opportunity to inform the House when he will table the report.

(Loud consultations)

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Order, Hon. Ichung'wah.

Hon. Kimani Ichung'wah (Kikuyu, JP): Hon. Temporary Deputy Speaker, if I say the CS is the Ruaraka land thief...

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Order! Members, I am going to give the Chairman... Let us not protract issues which are not within what we are discussing. Hon. Ichung'wah says that he is not satisfied. Can you respond?

Hon. Peter Mwathi (Limuru, JP): Hon. Temporary Deputy Speaker, allow me to say this even if you are going to determine whether it is satisfactory or not.

Hon. Kimani Ichung'wah (Kikuyu, JP): Your neighbour; say "my good neighbour."

Hon. Peter Mwathi (Limuru, JP): I have listened to the Member for Kikuyu. He has cast aspersions on Members of this House that they are being used by the CS to further his agenda but you have not asked him to withdraw that including what I was alluding to. He did the same to the Committee. I am asking that you find it in order to tell him to withdraw because he is now telling us that the Committee of this House is compromised to the extent that it cannot work for this House but for the Executive. If that is what he is saying, and you are allowing it, even to attack CSs who have no right of reply here, let him bring the matter to the Committee by way of a Question. We will call the CS and he will have a chance to ask that question and ask him to bring the annexures.

A statement is brought here and I read it. How do I know whether there are annexures? When a statement is brought... He was talking about Aydin. Now he is talking about the lifestyle audit of the Deputy President. Is it part of this Statement?

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Hon. Chairman, do not respond to him, address me.

(Loud consultations)

Hon. Peter Mwathi (Limuru, JP): Hon. Temporary Deputy Speaker, he is bringing everything and anything. Let us confine ourselves to this. If he has another issue, let him bring it so that we address it. He is talking about Mr. Aydin. He is speaking about the DP. He is speaking about everybody and it is all being heaped on one CS. I am not the advocate of the said CS but to cast aspersions on the Committee that we are working for the Executive is out of order. I persuade you to find him out of order.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Hon. Ichung'wah, Member for Kikuyu, it has been asserted that you have said that the Departmental Committee on Administration and National Security is being used to advance the interests of Cabinet Secretaries. That would be a very strong statement coming from you being a Member of this House. We will stop there to ask you again whether you said that, because it is out of order. Withdraw it so that we move on. Let us get to the point where you are not satisfied with the Statement by the Chairman

signed by the CS then move to the next step. Hon. Ichung'wah, do not debate. You are a Member of this House, and if that is what you said, withdraw it.

Hon. Kimani Ichung'wah (Kikuyu, JP): Thank you, Hon. Temporary Deputy Speaker. Everything that I have said is on record. What is purported by Hon. Mwathi is that I said we must not allow the House...

(Loud consultations)

The Member is at liberty to go back to *The Hansard* if what he purports is true. Since I am subject to the rules and procedures of the House...

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

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Order, Hon. Kajwang'. I do not want it to be Hon. Ichung'wah's word against yours. Hon. Ichung'wah, I hope you recollect what you said so that we do not waste time on it. If that is what you said, it is out of order. You need to apologise and withdraw.

Hon. Kimani Ichung'wah (Kikuyu, JP): There is nothing I have said that is out of order. I will not disparage the House as Hon. T.J. has said. We must be cautious. *The Hansard* is there. I am subject to the rules of this House. If I have said anything that would be disparaging, the House is at liberty to name me and you should go ahead. Hon. Temporary Deputy Speaker, I should be the one to invite you to go back to *The Hansard* and establish what was said.

(Loud consultations)

Most importantly, I did not raise a matter that was extraneous. When the substantive Speaker was on the seat, he directed that Hon. Mwathi addresses the two issues: the issue of the deportation...

(Loud consultations)

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Order, Members. Hon. Ichung'wah and Members who are raising points of order, we do not want this to be a word of one Member against the word of the others. We are going on recess. In the next Sitting, we will immediately have a production of *The Hansard* – the records of the House. Hon. Ichung'wah, it will not be for you to invite the Speaker to process a naming of yourself, it will roll out on its own. I want us to put that matter to rest and then we proceed to the next Order.

Let us go to a Statement by the Leader of the Majority Party to be read by the Majority Whip.

BUSINESS FOR THE WEEK COMMENCING 9TH NOVEMBER 2021

Hon. Emmanuel Wangwe (Navakholo, JP): Thank you, Hon. Temporary Deputy Speaker. On behalf of the Leader of the Majority Party and pursuant to the provisions of Standing Order No. 44 (2)(a), I rise to give a Statement on behalf of the House Business Committee which met on Tuesday, 19th October 2021, to prioritise the business for consideration.

As Members are aware, we are proceeding on a two-week recess starting tomorrow in accordance with our Calendar. I, therefore, want to wish Members a fruitful and restful recess

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period as they interact with their constituents. I also wish to urge the committee leadership to take some time during the break to finalise on any urgent business pending before them to set the pace for substantive debate once they return on the last part of the 5th Session.

Hon. Temporary Deputy Speaker, when the House resumes its sittings on Tuesday, 9th November 2021, the House is scheduled to undertake Committee of the whole House on the WAQF Bill, 2019, if not concluded today, and Second Reading of the following Bills:

1. The Kenya National Commission on Human Rights (Amendment) Bill, 2020.
2. The Health Laws (Amendment) Bill, 2021.
3. The National Electronic Single Window System Bill, 2021.
4. The Asian Widows' and Orphans' Pension Repeal Bill, 2021.
5. The Provident Fund (Repeal) Bill, 2021.
6. The County Governments Grants Bill (Senate Bill No.35 of 2021).
7. The Coffee Bill (Senate Bill No.22 of 2020).
8. The Community Groups Registration Bill, 2020.
9. The Mediation Bill, 2020.

Hon. Temporary Deputy Speaker, I am reliably informed that there are no Questions scheduled to be responded to by Cabinet Secretaries in the coming week. That presents an opportunity for Committees to conclude any pending business.

Finally, the House Business Committee will reconvene on Tuesday, 9th November 2021 to schedule other business for consideration that week.

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

(Hon. Emmanuel Wangwe laid the Statement on the Table)

Hon. Members: On a point of order!

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

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Thank you, Hon. Temporary Deputy Speaker. I thank the Leader of the Majority Party. He is reading on behalf of the Leader of the Majority Party, and that is why I am thanking him.

Going by our Calendar, we will be out for two weeks. When we come back, we will be here for a short time before we go for the long recess. By the time we come back, some of us will be current Members and others former. I know Members will hardly be here. Some of us have brought several Bills, some of which are already at the Committee of the whole House stage. Could I, please, request that the Assisted Reproductive Technology Bill be prioritised next time? As it stands, I can almost predict that none of the other Bills that I brought since the first year we came here up to now have reached the Second Reading stage. Therefore, could the House Business Committee be kind enough to, at least, prioritise that?

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): I am sure the Majority Whip will carry that to the House Business Committee. Do you want to say something on it?

Hon. Emmanuel Wangwe (Navakholo, JP): Thank you, Hon. Temporary Deputy Speaker. I just want to echo what you have said. I will carry the same sentiments to the House Business Committee where I sit. Allow me to carry the same sentiments to the Committee which will look into it.

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

Hon. David ole Sankok (Nominated, JP): Hon. Temporary Deputy Speaker, the Majority Whip has read that in the coming week, there will be no Questions answered. I had asked a

Question directed to the Departmental Committee on Administration and National Security, and I was told it would be answered on Thursday. The Question was related to the 15,000 acres of land purported to be owned by the Deputy President somewhere in Laikipia. You know people are dying in Laikipia and that it is a very emotive issue. I had asked that Question and was told that it would be answered today.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Did the Chair say that?

Hon. David ole Sankok (Nominated, JP): No. The Questions were read by the Leader of the Majority Party and he also stated when they would be answered. One of the Questions was mine. When I came, I was told by the Clerk that it would not be possible because there were preparations for Mashujaa Day. We cannot accept some unjustified excuses. We all know that we celebrate Mashujaa Day on 20th October every year. We cannot be told last week that the Questions will be answered this week only for the Ministry of Interior and Coordination of National Government to realise that there is Mashujaa Day. Even my child who is learning under the Competency Based Curriculum (CBC) knows that on 20th October next year, there will be a Mashujaa Day.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Your point is made. Do you have another issue for Hon. Mwathi? Hon. Sankok, do you have another issue or are you on the same issue?

Hon. David ole Sankok (Nominated, JP): It is on the same issue.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): No. Let us give Hon. Mwathi a chance to respond to you. Your response is overdue as purported by Hon. Sankok.

Hon. Peter Mwathi (Limuru, JP): Hon. Temporary Deputy Speaker, I had alluded to the same earlier and I know the response is due. However, I said as much in an earlier statement that was sought by Hon. Mule that the Cabinet Secretary requested, vide a letter that was written to the Clerk of the National Assembly that they be given five days so that they can answer the Questions by Tuesday. For that one week, they were doing preparations for Mashujaa Day away from Nairobi. It was scheduled to be held in Kirinyaga and they were all domiciled there. So, they asked for the indulgence of the House through a letter that they do it on Tuesday and that if there is any other clarification that is required, they are ready to appear before the Committee on 28th Thursday for engagement.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): The coming Tuesday?

Hon. Peter Mwathi (Limuru, JP): Yes.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): So, Hon. Sankok you have an opportunity to get your response on Tuesday and if you are not satisfied, you will go before the Committee on Thursday. Hon. Sankok.

Hon. David ole Sankok (Nominated, JP): I so much respect Hon. Mwathi. He is the “*Muthuri wa Muthiigi*,” meaning a “leader” in the Kikuyu culture and I know he can never be used by Matiang’i

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Order, Hon. Naisula Lesuuda and Hon. Fatuma. Order, Hon. Sankok.

Order, Hon. Fatuma and Hon. Naisula. Do the necessary. You are seasoned Members of the House. Hon. Naisula, go right back and do the right thing.

Next Order.

CONSIDERATION OF REPORT OF COMMITTEE OF THE WHOLE HOUSE

THE SUGAR BILL

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Order Members. Order, Hon. Gedi. Hon. Members, I wish to guide on the consideration of the Sugar Bill (National Assembly No.68 of 2019).

COMMUNICATION FROM THE CHAIR

CONSIDERATION OF THE SUGAR BILL

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Hon. Members, Order No.10 having being called out by the Clerk, I wish to guide the House on the stage at which this Motion is at the moment and the procedure to be followed.

You will recall that the Sugar Bill (National Assembly Bill No.68 of 2019 was considered at the Committee of the whole House on Wednesday, 6th October and 13th October 2021.

However, upon conclusion of the Committee of whole House on Wednesday, 13th October 2021 and reporting, several Members sought to recommit various clauses of the Bill and re-committal Motions were made in accordance with the provisions of Standing Order 136A on the re-committal procedure.

Order, Hon. Members. Is that the Member for Kibwezi?

(Hon. (Dr.) Patrick Musimba consulted loudly)

Hon. Members conversing back there, you are totally out of order.

At the end, the House resolved to recommit Clauses 18 and 26 and New Clauses 5B, 15A, 15B and 16C upon a Motion moved by the Member for Kanduyi, Hon. Wafula Wamunyinyi.

The Motion for re-committal of New Clause 9A as moved by nominated Member, Hon. David Ole Sankok, was however negated by the House.

Hon. Members, there was indication on that day that other Members were desiring to recommit more clauses of the Bill. However, before the Motions for recommitting these other clauses could be made, the House rose for lack of quorum pursuant to the provisions of Standing Order No.35(2)(a) regarding adjournment of the House for lack of quorum. Hon. Members, the manner of seeking re-committal is as provided for under Standing Order No.136A. Therefore, I will propose the Question of the Motion under Order No.10 again, so as to accord any Member seeking to recommit further clauses an opportunity to move amendment of the Motion for Agreement with the Committee of the whole House in accordance with the Standing Orders. Thereafter, if the proposed amendment is agreed to, the House will dissolve into Committee of the whole House to dispense with all the recommitted clauses sequentially.

Hon. Members, I will, therefore, proceed to propose the Question again.

(Question proposed)

Are there any further re-committals by Hon. Members? I can see the Member for Yatta, the Whip of the Majority Party and Hon. Waruguru. Those are three Members.

Hon. Charles Kilonzo (Yatta, Independent): Thank you, Hon. Temporary Deputy Speaker. I beg to move...

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Order, Member for Yatta! Just a minute! I think Hon. Kilonzo you are ahead of time because there are Members who have not yet got the procedure from the clerks.

Hon. Waruguru and the Whip, you can approach the clerks.

(Hon. (Ms.) Catherine Waruguru and Hon. Emmanuel Wangwe consulted the Clerk-at-the-Table)

Member for Yatta, you can have ago. The Members we have so far is the Member for Yatta, Hon. Waruguru and the Whip of the Majority Party. Is there any other Member? The other one is Hon. Tiren. So, we have four Members, namely, Hon. Kilonzo, Hon. Waruguru, Hon. Wangwe and Hon. Tiren. Let us have the Member for Yatta.

Hon. Charles Kilonzo (Yatta, Independent): Thank you, Hon. Temporary Deputy Speaker. I beg to move that the Motion for agreement with the Report of the Committee of the whole House be amended by inserting the words 'subject to recommittal of Clause 24(f)'.
I also request Hon. Millie to second the Motion.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Thank you, Hon. Temporary Deputy Speaker. I second.

That was actually an error on our part and it is fairly straightforward.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Order Members!

(Hon. Silas Tiren and Hon. (Dr.) Chris Wamalwa Walked along the gangways)

Hon. Tiren and Hon. Wamalwa just freeze and allow us to proceed.

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

Hon. Emmanuel Wangwe (Navakholo, JP): Hon. Temporary Deputy Speaker, I beg to move that the Motion for agreement with the Report of the Committee of the whole House be amended by inserting the words 'subject to re-committal of Clause 9A'.

I request Hon. Charles Kilonzo, to second the Motion.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Did you say Clause 9A?

Hon. Emmanuel Wangwe (Navakholo, JP): Yes. Clause 9A is talking about the head office of the Sugar Board.

Hon. Members: What about it?

Hon. Emmanuel Wangwe (Navakholo, JP): We will discuss it when recommittal has come.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Yes. That is the essence of recommittal. You will deal with it at the Committee of the whole House stage. Hon. Kilonzo.

Hon. Charles Kilonzo (Yatta, Independent): I second.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Let us have the next Member, Hon. Waruguru.

Hon. (Ms.) Catherine Waruguru (Laikipia CWR, JP): Thank you, Hon. Temporary Deputy Speaker. I beg to move that the Motion for agreement with the Report of the Committee of the whole House, be amended by inserting the words 'subject to the recommittal of Clause 15A'.

I request Hon. Melly to second the Motion.

Hon. Julius Melly (Tinderet, JP): I second, Hon. Temporary Deputy Speaker. Thank you.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Hon. Waruguru, just for the record, I think you are referring to New Clause 15A.

Hon. (Ms.) Catherine Waruguru (Laikipia CWR, JP): Hon. Temporary Deputy Speaker, I beg to move that the Motion for agreement with the Report of the Committee of the whole House be amended by inserting the words “subject to the recommittal of New Clause 15A.”

I request Hon. Melly to second.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): What did you say, Hon. Waruguru? Put it on record clearly.

Hon. (Ms.) Catherine Waruguru (Laikipia CWR, JP): In New Clause 15A, the Bill should be amended by inserting the words “subject to the recommittal of New Clause 15A.”

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

Hon. Julius Melly (Tinderet, JP): Thank you, Hon. Speaker, I second.

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

Should I go on to put the Question?

Hon. Members: Yes.

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

Hon. Silas Tiren (Moiben, JP): Thank you, Hon. Temporary Deputy Speaker. I beg to move the Motion for agreement with the Report on the Committee of the whole House be amended by inserting the words “subject to recommittal of Clause 5(4).”

I also request Hon. Waruguru to second the Motion.

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

Hon. (Ms.) Catherine Waruguru (Laikipia CWR, JP): Hon. Temporary Deputy Speaker, I second.

(Question put and agreed to)

Next Order!

COMMITTEE OF THE WHOLE HOUSE

(Order for Committee read)

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

IN THE COMMITTEE

*[The Temporary Deputy Chairman
(Hon. Patrick Mariru) in the Chair]*

THE SUGAR BILL

The Temporary Deputy Chairman (Hon. Patrick Mariru): Order, Members! We are now in the Committee of the whole House. I want to ask the Clerks-at-the-Table to organise themselves faster.

(Recommittal of Clauses 5(4), 18, 26, New Clauses 5B, 9A, 15A, 15B, 16C and 24F)

Order, Members! We are now in the Committee of the whole House. We do not have a lot of time. So, we will be fairly quick on this one now that it is just a few clauses on recommittal.

Clause 5(4)

The Temporary Deputy Chairman (Hon. Patrick Mariru): We have an amendment from Hon. Tiren. Please, give him the microphone. We do not have time. Use the one behind you.

Hon. Silas Tiren (Moiben, JP): Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 5 be amended in sub-clause (4) by inserting the word “Secretary” immediately after the word “cabinet” appearing after the words “appointed by the”.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Tiren, what is the justification?

Hon. Silas Tiren (Moiben, JP): Hon. Temporary Deputy Chairman, this is just a correction because in the first amendment, the word ‘Secretary’ was left out. It read: ‘Cabinet’, but now we are adding ‘Cabinet Secretary’.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Very well.

(Question of the amendment proposed)

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

(Clause 5(4) as amended agreed to)

Clause 18

The Temporary Deputy Chairman (Hon. Patrick Mariru): We have an amendment by Hon. Wamunyinyi. Just give the justification in half a minute.

Hon. Wafula Wamunyinyi (Kanduyi, FORD-K): Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 18 be amended—

(a) by deleting sub-clause (1) and substituting therefor the following new sub-clause—

“(1) The Cabinet Secretary may, in consultation with the Board, by order in the Gazette, impose a levy on domestic sugar and a ten per centum of CIF value on imported sugar to be known as the Sugar Development Levy.”

(b) by inserting the following new sub-clauses immediately after sub-clause (6)—

“(7) The Sugar Development Levy collected under subsection (2) shall be apportioned as follows—

(a) fifteen per centum shall be applied by the Board for income or price stabilisation for sugar growers;

(b) twenty per centum shall be applied by the Board in the furtherance or exercise of any function or power of the Board;

(c) twenty per centum shall be remitted directly to the Institute;

(d) forty-five per centum shall be applied for infrastructure development in the sugar subsector on a pro rata basis.

“(8) the funds provided for under subsection (7) (a) shall be used to provide for sustainable, affordable credit and advances to farmers for all or any of the following purposes—

- (a) farm improvement;
- (b) farm inputs;
- (c) farming operations; and,
- (d) price stabilization.

Hon. Temporary Deputy Chairman, this is a very straightforward proposed amendment. It is putting the word ‘shall’ in place of “may”.

(Question of the amendment proposed)

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

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

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

(Clause 18 as amended agreed to)

Clause 26

The Temporary Deputy Chairman (Hon. Patrick Mariru): We have an amendment by Hon. Wamunyinyi. Those with amendments, please, be on top of the game.

Hon. Wafula Wamunyinyi (Kanduyi, FORD-K): Hon. Temporary Deputy Chairman, I beg to move:

THAT, the Bill be amended by deleting Clause 26 and substituting therefore the following new clause—

Quality, safety
and health control
measures.

26. (1) All sugar millers and importers shall ensure that all sugar produced locally or imported into the country meets—

- (a) safety and quality standards as set by the body for the time being responsible for setting standards;
- (b) safety and health standards for food handlers as set by the body for the time being responsible for public health; and
- (c) environmental issues as set by the body for the time being responsible for environment.

(2) A person who contravenes the provisions of subsection (1) commits an offence and shall be liable, upon conviction—

- (a) to a fine not exceeding ten million shillings, or to imprisonment for a term not exceeding seven years, or to both; and

(b) the court may where a person is convicted for an offence make a further order that the persons licence be withdrawn.

Hon. Temporary Deputy Chairman, this was to do with the importation of sugar. We need to have it clear, very clear, so that there is no importation without satisfying the market and certification of the necessary standards and requirements.

(Question of the amendment proposed)

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

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

(Clause 26 as amended agreed to)

New Clause 9A

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Wangwe, please move it for the Second Reading of the New Clause 9A. It is a recommittal.

Hon. Emmanuel Wangwe (Navakholo, JP): Hon. Temporary Deputy Chairman, I beg to move:

THAT, new Clause 9A be deleted.

My proposal is that we delete New Clause 9A in its entirety. The reason is that new Clause 9A proposes that the headquarters of the board be in Kisumu and in part, it proposes that the board may establish offices in other parts of the country as it may determine.

The reason I propose we delete this is on three parameters. The first one is that we cannot designate an office of a parastatal. Instead, the office of a parastatal as per the State Corporations Act is domiciled within the borders of Kenya. Therefore, we will be going against our laws.

(Hon. (Dr.) James Nyikal spoke off record)

The Temporary Deputy Chairman (Hon. Patrick Mariru): Order, Hon. Nyikal. I must propose the Question.

(Question of the amendment proposed)

Hon. Nyikal

Hon. (Dr.) James Nyikal (Seme, ODM): This is exactly the same amendment that was proposed by Hon. Sankok and it was negated. It was negated. So, is it in order that it now comes up through another recommittal? It was actually done and it was negated. It is exactly the same.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Nyikal, this is a deletion. It is properly put.

(Hon. David ole Sankok spoke off record)

Hon. Sankok, you do not need to engage in this. It is properly in the House. The Speaker actually gave direction in his Communication. So, it is for the Members to vote on this.

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

(New Clause 9A deleted)

New Clause 5B

The Temporary Deputy Chairman (Hon. Patrick Mariru): There is a New Clause 5B by Hon. Wamunyinyi.

Hon. Wafula Wamunyinyi (Kanduyi, FORD-K): Hon. Temporary Deputy Chairman, I beg to move:

THAT, the Bill be amended by inserting the following New Clause immediately After New Clause 15A(2).

Vacation of Office.

- 5B. A person shall cease to be a member of the Board of if the person—
- (a) is absent from three consecutive meetings of the Board without notifying the chairperson in writing;
 - (b) becomes an officer, agent or member of staff of the Board;
 - (c) resigns in writing addressed to the Cabinet Secretary;
 - (d) is convicted of a criminal offence and sentenced to a term of imprisonment of exceeding six months without the option of a fine;
 - (e) is declared bankrupt;
 - (f) is unable to perform the functions of his or her office by reason of mental or physical infirmity; or
 - (g) dies.

Hon. Temporary Deputy Chairman, it has been established that among the reasons for removal of a member of the board is when he or she is convicted and is sentenced to imprisonment with or without a fine. The problem is to include the fine being paid as one of the reasons that one should be removed.

(Question of the new clause proposed)

(New clause read the First Time)

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

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

(The new clause was read a Second Time)

(Question, that the new clause be added)

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to the Bill, put and agreed to)

New Clause 15A

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Waruguru.
Hon. (Ms.) Catherine Waruguru (Laikipia CWR, JP): Hon. Temporary Deputy I beg to move:

THAT, the Bill be amended by inserting the following new clause immediately after Clause 15 —

- Sugar Import.
- 15A. (1) A person who imports sugar into Kenya shall, prior to importation —
- (a) provide evidence that the sugar they intend to import is not available in the local market;
 - (b) provide a sample of the sugar to be imported and pre-import verification certificate from the country of origin; and
 - (c) obtain pre-import approval from the Board.
- (2) A person who contravenes this section commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding five years or to a fine not exceeding ten million shillings or to both.

The justification is that I am seeking to insert New Clause 15A so that we add the word “sugarcane” after “sugar” because we are limiting or giving a pro rata for sugar importation yet we have ignored the fact that there is imported sugar and there is also imported sugarcane from our neighbouring countries.

(Question of the new clause proposed)

(New clause read the First Time)

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

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

(The new clause was read a Second Time)

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

The Temporary Deputy Chairman (Hon. Patrick Mariru): It is the same clause, Hon. Wamunyinyi. So, yours is carried.

New Clause 15B

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Wamunyinyi, please, move for the Second Reading of New Clause 15B. Do it in half a minute, Hon. Wamunyinyi, if you can squeeze it.

Hon. Wafula Wamunyinyi (Kanduyi, FORD-K): I beg to move:

THAT, the Bill be amended by inserting the following new clause immediately after New Clause 15A—

Industrial sugar. 15B. (1) A licenced sugar miller shall be licenced by the board to carry out the business of processing industrial sugar.
(2) The Board shall regulate the processing of industrial sugar.

This is also straightforward. It has no issues except to confirm that a licensed miller cannot import industrial sugar without a licence. So, it is just a confirmation.

(Question of the new clause proposed)

(New clause read the First Time)

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

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

(The new clause was read a Second Time)

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

New Clause 16C

The Temporary Deputy Chairman (Hon. Patrick Mariru): That is by Hon. Wamunyinyi.

Hon. Wafula Wamunyinyi (Kanduyi, FORD-K): I beg to move:

THAT, the Bill be amended by inserting the following new Part immediately after New Part III 16B—

Managem
nt of the
Institute. 16C. The Management of the Institute shall vest in a Board which shall consist of—

- (a) a chairperson appointed by the Cabinet Secretary who shall have a background in agricultural research or related field;
- (b) three persons nominated by the farmers from each of the sugar catchment regions under the Second Schedule;

- (c) two persons nominated by the farmers from each of the sugar catchment regions under the Second Schedule;
- (d) the Principal Secretary for the time being responsible for the National Treasury or a representative appointed in writing;
- (e) the chief executive officer of the Board;
- (f) the chief executive officer of the Kenya Agricultural Livestock and Research Organisation; and
- (g) the Director General who shall be an *ex officio* member.

This is also straightforward. It is just a mere clean up. It is renumbering (a) and (c) by merging the number of directors which is three and two, to be five, and then you renumber them.

(Question of the new clause proposed)

(New clause read the First Time)

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

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

(The new clause was read a Second Time)

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

New Clause 24F

The Temporary Deputy Chairman (Hon. Patrick Mariru): That is by Hon. Kilonzo. Please, what is the justification for that new clause? It is Second Reading, please.

Hon. Charles Kilonzo (Yatta, Independent): It is New Clause 24F.

Hon. Temporary Deputy Chairman, I beg to move:

THAT, the Bill be amended by inserting the following new clause immediately after New Clause 24E —

Vacancy.

24F. Where the office of any member becomes vacant, whether by death or otherwise, the Chief Justice may appoint another person to be a member of the Tribunal for the remainder of the term of the member whose vacancy cause the appointment.

If you look at Clause 24 as drafted, it says, where the office of any member becomes vacant, whether by death or otherwise, the Chief Justice will appoint a person to serve for the remainder

of the term. What we are basically saying is that, that is an error. It should not be like that. That person should serve his or her new term. Basically, we are deleting “the remainder of the term”.

(Question of the new clause proposed)

(New clause read the First Time)

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

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

(The new clause was read a Second Time)

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

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Members, we are done with the recommitted clauses in the Sugar Bill (National Assembly Bill No.68 of 2019). Just a minute.

(The Temporary Deputy Chairman (Hon. Patrick Mariru) consulted with the Clerk-at-the-Table)

We considered Clause 18. It was not new. It was a recommittal and we are done with it. In light of the time that we have and considering the fact that the House must rise in 10 minutes, we will not proceed with the Waqf Bill (National Assembly Bill No.73 of 2019) in the Committee of the whole House because we must report progress. We have dealt with all the recommitted clauses in the Sugar Bill.

Let us have the Mover of the Bill, Hon. Wamunyinyi.

Hon. Wafula Wamunyinyi (Kanduyi, FORD-K): Hon. Temporary Deputy Chairman, I beg to move that the Committee do report to the House its consideration of the Sugar Bill (National Assembly Bill No.68 of 2019) and its approval thereof with amendments.

(Question proposed)

(Question put and agreed to)

(The House resumed)

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

REPORT

THE SUGAR BILL

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Chair, did you get lost? I now call upon the Chair to report to the House.

Hon. Patrick Mariru (Laikipia West, JP): Hon. Temporary Deputy Speaker, I was not lost. I was just making sure that there is a smooth transition of the seat of the Speaker.

Hon. Temporary Deputy Speaker, I beg to report that a Committee of the whole House has considered the Sugar Bill (National Assembly Bill No. 68 of 2019) and approved the same with amendments.

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

Hon. Wafula Wamunyinyi (Kanduyi, FORD-K): Hon. Temporary Deputy Speaker, I beg to move that the House do agree with the Committee in the said Report. I also request Hon. Emmanuel Wangwe to second the Motion for agreement with the Report of the Committee of the whole House.

Hon. Emmanuel Wangwe (Navakholo, JP): Thank you, Hon. Temporary Deputy Speaker. I second.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Did you get a seconder? Order, Members.

(Question proposed)

Hon. Members: Put the Question!

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Hon. Members, for obvious reasons, we shall leave it at that and put the Question at the next appropriate moment.

(Putting of the Question deferred)

We have five minutes to go. I think we can leave it at this. We will just adjourn. I do not think we are going to have anything of substance to deal with in four minutes. We can start enjoying our recess. I am sure there is a lot in your hands.

ADJOURNMENT

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Order, Members. The time being 6.57 p.m., this House stands adjourned until Tuesday, 9th November 2021 at 2.30 p.m.

The House rose at 6.57 p.m.