

NATIONAL ASSEMBLY

OFFICIAL REPORT

Thursday, 16th March, 2017

The House met at 2.30 p.m.

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

PRAYERS

QUORUM

Hon. Speaker: Order, Members! I am alive to the point that Hon. Midiwo rose on Tuesday to seek guidance on the question of quorum. The last one day has been a bit busy. Therefore, the ruling on that matter is not ready. I shall communicate about it in the course of next week. We will proceed with the normal practice. Therefore, I direct that the Quorum Bell be rung to see whether there are people who may be caught up in the new lounge, which was opened yesterday.

(The Quorum Bell was rung)

We now have quorum. We can commence. What is your point of order, Hon. Midiwo?

Hon. Midiwo: Thank you, Hon. Speaker.

Hon. Speaker: Sorry, Hon. Midiwo. Can we commence so that there will be something you can comment about?

PAPERS LAID

Hon. Speaker: Before the Leader of the Majority Party tables various Papers, let me inform the House that the communication which was requested by several Members on Tuesday is not ready because, as you will appreciate, it entails a number of aspects. It requires a careful consideration of the various issues that were raised by Members, especially the right of citizens to petition Parliament, whether we should amend the Constitution so that they can be petitioning the courts instead of coming to Parliament, and whether the privilege of Members as guaranteed in Article 117 of the Constitution to debate freely here is also being taken away by the Judiciary. Those are all very fundamental issues. The best thing is for us to look at them critically, so that we address all those concerns in a manner that is passionate, keeping in mind always the prevailing and customary traditions in other jurisdictions, as well as the traditions and rulings of past Speakers, more so, on separation of powers and processes.

Hon. Members, we might also want to know whether the 10th Parliament made a mistake by giving us the current Standing Orders, and whether they are now being suspended, so that we can then begin operating from the jungle. The Constitution in Article 124 gives the House of Parliament the power to make its own Standing Orders for the orderly conduct of business. We

want to see whether anything suggested in those rules may have the effect of ousting or throwing them to the wind, or do we still continue following them given that, perhaps, it might be necessary that we seek direction from the courts, even before we declare the Calendar of the Sittings of the House?

There are many weighty issues that I thought we need to put together in making that communication. Unfortunately, I will disappoint those of you that expected that ruling to be ready today. It will be ready on Tuesday afternoon next week. However, that does not mean that the powers of any committee of this House to bring legislation and to oversee any arm or institution of Government have been ousted. It has not. So, the committees are still at liberty to proceed to do their oversight work, including considering budgets of all people. The House is at liberty to refuse to consider budgets of those that think that the House has no power to oversee them. Of course, what is good for the goose must be good for the gander. So, the House is at liberty to exercise any of its powers.

Hon. Midiwo, you wanted to raise a point of order.

Hon. Midiwo: Hon. Speaker, mine may have been overtaken by events because I wanted you to give the general expected time when you shall guide us on this issue of quorum. This is because when you spoke, many Members, as usual, were not here. Yesterday, we had enough quorum even before time. Maybe, it is because their salary is going to be cut and that is why they are not here.

(Laughter)

Maybe, they are scared because they do not know what the law says. We need to reassure them to come because Parliament is still on. So, maybe, just issue the guidelines.

Hon. Speaker: Hon. Midiwo, I do not think the salaries of Members of the 11th Parliament can be reduced to their disadvantage.

Hon. Midiwo: Hon. Speaker, I just wanted them to be reassured.

Hon. Speaker: Maybe, some new Members of another House.

(Laughter)

Hon. Midiwo: Mr. Speaker, we also need to tell them that those are suggestions from some people outside this House, and we will deal with them when the time comes. Those are just proposals.

Hon. Speaker: Let us have the Hon. Member for Kikuyu.

Hon. Ichung'wah: Thank you, Hon. Speaker. You have pronounced yourself on the question of the ruling that you were to give regarding the matter that was raised by the Chairman of the Departmental Committee on Finance, Planning and Trade. I wanted to seek a further clarification on a matter related to that issue. The Petition that is before this House is the one you are going to rule on, that is, whether the Committee can, indeed, continue to consider that Petition for the removal of the Auditor-General, Mr. Edward Ouko.

Hon. Speaker, I was rather perturbed this morning when I saw the Auditor-General and his lawyer in the media purporting to put his side of the story in the public domain. You remember him saying he has gone to court because he has no confidence and trust in getting a fair hearing before the Committee on Finance, Planning and Trade. Today, that matter is still before this House and also before a court of law. The Auditor-General appears to have lost

confidence in both this House, the Departmental Committee on Finance, Planning and Trade and the court. He has now gone to the court of public opinion where he clearly knows that the public have no means and ways of verifying anything that he says to the media out there.

It is a matter that is disturbing. This morning, I heard the Auditor-General - my good friend and colleague in the profession - Mr. Edward Ouko, and his lawyer purport that they cannot appear before Parliament because they will be in contempt of court. In the same statement, the Auditor-General contended that he was giving his side of the story. He said that he was also sending that statement to Parliament. So, I got lost in that clear contradiction wondering whether he was talking about this Parliament or another one. Therefore, I would want to seek your guidance on this matter even though I heard you speak about other committees, including those that deal with matters of budget. Is the Auditor-General not trying to use the court of public opinion and the public gallery to intimidate this House that he cannot appear before any of its committees on any other matter? For instance, the Finance Committee deals with matters to do with his budget. The Departmental Committee on Education, Research and Technology or the Public Investments Committee may need the Auditor-General. Is this to say that he cannot now appear before any committee of this House until this matter is determined by the court as they purport?

Hon. Speaker, even as we await your ruling on Tuesday, it will be very important that you also clarify whether now we have a blanket embargo that this House cannot engage the Auditor-General on anything as he and his lawyer have purported out there in the public.

Thank you, Hon. Speaker.

Hon. Chepkong'a: On a point of order.

Hon. Speaker: I do not think this is a matter for debate. Hon. Chepkong'a, what is your point of order?

Hon. Chepkong'a: Thank you, Hon. Speaker. I rise on a point of order under Standing Order No. 83. We have just been reading from the public domain that the Auditor-General is claiming that he cannot appear before any of the committees of this House. Will I be in order to ask you whether the Auditor-General is in order to intimidate Parliament when he knows Article 95 of the Constitution gives us the role to oversee anybody? I do not want to say "goats", but any living being with knowledge and who can speak like we do.

The Auditor-General is a creature of this House. He did not employ himself. We approved him in this House. I may not have been there, but he cannot pretend that he just landed in his office from the moon. Hon. Speaker, he is in breach of the Leadership and Integrity Act which requires him to respect other State officers. I am a State officer. For you to go and abuse me outside there, you are clearly in breach of the law. You can even be removed from office on the basis of lack of respect to other State officers. If he does not know the law, let him come and consult me. But let him not speak out of ignorance of the law.

(Hon. Midiwo interjected)

I am on a point of order, Hon. Midiwo. I am not debating. I have risen on a point of order on a serious constitutional issue.

Hon. Speaker: Now, the two of you are out of order to begin exchanging.

Hon. Chepkong'a: Hon. Speaker, I agree. I only speak through you. You know Hon. Midiwo is my good friend and so, he thinks that we are in a fellowship because we normally meet every Wednesday.

(Laughter)

Hon. Speaker, the Auditor-General is quite aware that he was investigated by the Ethics and Anti-Corruption Commission (EACC). The EACC is overseen by the Departmental Committee on Justice and Legal Affairs. We can invite the EACC to tell us why the Director of Public Prosecutions (DPP) did not charge him and he will appear before us.

Hon. A.B. Duale: *(Inaudible)*

Hon. Chepkong'a: Hon. Speaker, I am giving a factual position as the Chairman of the oversight committee on EACC and DPP. Hon. Speaker, people should be very careful. When you hold a public office, you represent people. I am elected to represent the people of Ainabkoi. Hon. Midiwo is elected to represent the very many professors in Gem Constituency.

(Laughter)

We come here as a conglomeration of all Kenyans who want to know the truth of this matter. But you cannot go shouting and telling people that you do not care about what Hon. Midiwo thinks. It is so unfair for people to demean Hon. Midiwo and the people he represents. We expect the Auditor-General to carry himself with decency and courtesy to this House.

Hon. Speaker: Hon. Members, I think there is no debate on this matter. I am in the process of working on the communication. But, of course, the House has its work cut out and roles clearly provided for in Article 95 of the Constitution. As you will all recall, and I always remind you about it, Article 125(1) of the Constitution, provides that:

“Either House of Parliament, and any of its committees, has power to summon any person to appear before it for the purpose of giving evidence or providing information”

In fact, Hon. Members, I think this House has a responsibility to make the final determination on that issue of House of Parliament summoning any person to appear before it either in plenary or committee, to provide information or evidence. So, as we move forward, we need to ensure that we have a place where we can be locking people who are coming to give information or evidence so that they do not contaminate the membership. We need to provide something similar to a dock because, it is the power given to the Houses of Parliament either in committee or in plenary by Article 125.

Therefore, Hon. Members, I do not think I need to really emphasis the point that Committees continue to exercise their oversight role without any hindrance. Any member of the public who is invited to appear and fails or neglects to appear, the Committee, under the Powers and Privileges Act, can bring up the matter for summons to be issued so that, appropriate procedures may be followed when that person does not appear as provided for in the Act.

I wish to say no more, save to wait for Tuesday for me to make the substantive communication. As we do so, because I know we suffer from momentary loss of numbers, allow me to recognise in our midst, students and pupils from the following institutions:

In the Speaker's Gallery, we have Kalulini Boys High School, Kibwezi West Constituency, Makueni County; Hoywik Programmes Secondary School, Langata Constituency, Nairobi County and Uruku Girls Secondary School, South Imenti Constituency, Meru County.

In the Public Gallery, we have ACK Gatugura Primary School, Gichugu Constituency, Kirinyaga County; Mabae Primary School, Gatanga Constituency, Murang'a County; Rwegetha Primary School, Gatanga Constituency, Murang'a County; Kiangige Primary School, Gatanga

Constituency, Murang'a County; Terige High School, Emgwen Constituency, Nandi County and High Vision High School, Isiolo North Constituency, Isiolo County.

They are all welcome to observe the proceedings of the National Assembly.

The Leader of the Majority Party.

PAPERS LAID

Hon. A.B. Duale: Hon. Speaker, I beg to lay the following Papers on the Table of the House:

The Address of His Excellency the President delivered on Wednesday, 15th March 2017.

The Fourth Annual Report to Parliament on the State of National Security submitted by His Excellency the President on Wednesday, 15th March 2017.

The Fourth Annual Report on the Measures Taken and Progress Achieved in the Realization of National Values and Principles of Governance submitted by His Excellency the President on Wednesday, 15th March 2017.

The Fourth Annual Report on Progress Made in Fulfilling the International Obligations of the Republic of Kenya submitted by His Excellency the President on Wednesday, 15th March 2017.

The Office of the Controller of Budget First Quarter County Government Budget Implementation Review Report for the Financial Year 2016/2017.

The Reports of the Auditor-General on the Financial Statements in respect of the following institutions for the year ended 30th June, 2015, and the certificates therein:

- (i) Mandera South Constituency;
- (ii) Saku Constituency; and,
- (iii) Eldoret National Polytechnic.

The Report of the Auditor-General on the Financial Statements of the Commission for the Implementation of the Constitution for the eight months period ended 26th February, 2016, and the certificate therein.

The Reports of the Auditor-General on the Financial Statements in respect of the following institutions for the year ended 30th June, 2016, and the certificates therein:

- (i) National Humanitarian Fund;
- (ii) State Department of Commerce and Tourism – Vote 1181; and,
- (iii) Kenya Law Reforms Commission.

Hon. Speaker: Very well. Let us have the Chairperson of the Public Accounts Committee (PAC).

Hon. (Eng.) Gumbo: Hon. Speaker, on behalf PAC, I beg to lay the following Paper on the Table of the House:

The Report of the Public Accounts Committee on the Special Audit Report of May 2016 on the Accounts of the National Youth Service (NYS), Volume I and Volume II.

Thank you, Hon. Speaker.

Hon. Speaker: The Chairperson, Budget and Appropriations Committee.

Hon. Musyimi: Hon. Speaker, I beg to lay the following Paper on the Table of the House:

The Report of the Budget and Appropriations Committee on the Socio-Economic Audit of the 2010 Constitution.

Hon. Speaker: The Chairperson, Departmental Committee on Lands. Hon. Otuoma, you are the Chair of the Departmental Committee on Lands, Members welfare.

Hon. (Dr.) Nyongesa: Hon. Speaker, I beg to lay the following Paper on the Table of the House:

The Report of the Departmental Committee on Lands on the Petition by Kiboroa Squatters Alliance regarding forceful eviction and resettlement.

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

NOTICES OF MOTIONS

EXPOSITION OF PUBLIC POLICY

Hon. A.B. Duale: Hon. Speaker, I beg to give notices of the following Motions:

THAT, pursuant to the provisions of Standing Order No.24 (6), the thanks of the House be recorded for the exposition of public policy contained in the Address of the President delivered on Wednesday, 15th March 2017 and laid on the Table of the House today, Thursday, 16th March 2017.

NOTING OF REPORTS BY HIS EXCELLENCY THE PRESIDENT

THAT, Pursuant to the provisions of Articles 132 (1) (c) and 240 (7) of the Constitution, this House notes the reports submitted by His Excellency the President on:

- (i) Measures Taken and Progress Achieved in the Realization of the National Values and Principles of Governance;
- (ii) Progress made in the fulfillment of the International Obligations of the Republic;
- (iii) The Annual Report to Parliament on the State of National Security, laid on the Table of the House today, Thursday, 16th March 2017.

ADOPTION OF REPORT ON SPECIAL AUDIT OF NYS ACCOUNTS

Hon. (Eng.) Gumbo: Hon. Speaker, on behalf of the Public Accounts Committee, I beg to give notice of the following Motion:

THAT, this House adopts the Report of the Public Accounts Committee on the Special Audit of May 2016 on the Accounts of the National Youth Service (NYS) Volumes I and II laid on the Table of the House today, Thursday, March 16th 2017.

ADOPTION OF REPORT ON SOCIO-ECONOMIC AUDIT OF 2010 CONSTITUTION

Hon. Musyimi: Hon. Speaker, I beg to give notice of the following Motion:

THAT, this House adopts the Report of the Budget and Appropriations Committee on the Socio-Economic Audit of the 2010 Constitution, laid on the Table of the House today, Thursday, 16th March 2017.

Hon. Speaker: Let us move to the next Order

STATEMENTS

BUSINESS FOR THE WEEK COMMENCING 21ST TO 23RD MARCH, 2017

Hon. A.B. Duale: Hon. Speaker, pursuant to the provisions of Standing Order No.44(2)(a), and on behalf of the House Business Committee, I rise to give a Statement regarding the business appearing before the House for the week beginning Tuesday, 21st March 2017.

The House Business Committee met on Tuesday this week at the rise of the House to give priority to a number of businesses for consideration. Starting Tuesday next week, the House is expected to deliberate on His Excellency the President's Speech for a maximum of four Sitting days, pursuant to Standing Order No.24(6).

In the same week, it is expected that the National Constituencies Development Fund Committee will table its report on the nominee to the Office of the Chief Executive Officer to the Constituencies Development Fund (CDF) Board. The Budget and Appropriations Committee is also anticipated to table its report on the Senate Amendments to the Division of Revenue Bill, 2017 for debate. We also expect the Budget and Appropriations Committee to table the Estimates for the Budget 2017/2018.

Finally, the House Business Committee will reconvene on Tuesday, 21st March 2017 at the rise of the House to consider business for the coming week.

Hon. Speaker: Member for Kisumu West, do you have an intervention?

POINT OF ORDER

RULING SOUGHT ON CHAIRMANSHIP OF PUBLIC INVESTMENTS COMMITTEE

Hon. Aluoch: Yes I do, Hon. Speaker. I stand to raise a matter for your direction that, in my view, touches on the conduct of Members and compliance by Members with the Constitution and the Standing Orders. This is a matter that will guide the House on the orderly conduct of business in accordance with the Standing Orders.

I want to draw your attention to Standing Order No.206(3) that relates to the Public Investments Committee. It says:

“The Public Investments Committee shall consist of a chairperson who shall be a member elected by the committee from amongst the members of the committee nominated from the minority party or coalition of parties and not more than 26 other Members.”

I also draw your attention to Standing Order No.206(4) that says:

“In the membership of the Public Investments Committee, the majority party or coalition of parties shall have a majority of one.”

I am privileged to serve as a member of Public Investments Committee. Our Chair is Hon. Adan Keynan. Over the weekend in a highly publicized meeting, Hon. Keynan declared that he had moved from the coalition that sponsored him as chair of that Committee.

Hon. A.B. Duale: To where?

Hon. Aluoch: Hon. Speaker, this matter is so serious that I would like the Leader of the Majority Party to listen very carefully. You may disagree with me or not but I urge that you listen with respect. This is not the way I want us to conduct business.

Hon. Speaker: Please, proceed.

Hon. Aluoch: The matter is serious in the sense that it governs the conduct of Members, particularly those who are given the responsibility by the House. The Member should respect that responsibility and the other Members who gave him that responsibility.

In view of that self-declaration by the Hon. Chair of the Committee, is it in order for him to continue to hold that position to the detriment of the coalition that sponsored him? Is it proper that the conduct of a Member in those circumstances can be condoned by the House? I say so because these Standing Orders are based on the Constitution which states very clearly that the powers of a Committee of Parliament are equivalent to those of the High Court. Is that how we expect our High Courts to behave? If the High Court misbehaves, we complain. What about if we misbehave ourselves? I wish to ask for your guided direction on this issue. It is a very serious issue.

Hon. Speaker: You say that the current Chair, the Hon. Member for Eldas, Hon. Keynan Wehliye, has moved from the party that sponsored him to some other place. Hon. Olago Aluoch, are you saying that he has moved? It is true that the Standing Orders provide that with respect to the Public Accounts Committee--- This House saw the value in maintaining that tradition. But you are saying that he is no longer in the minority party.

(Loud consultations)

Please give him the microphone.

Hon. Aluoch: Thank you, Hon. Speaker. I heard hon. Members talk about NASA. NASA is not a parliamentary party. So, it cannot be NASA. Reports have been widely made. The onus of disapproving those reports is not on me, it is on Hon. Keynan himself. The onus is on him to disapprove those reports.

Hon. Speaker: Where is the Member for Eldas? Maybe, he will be best placed to respond to that. The Standing Orders are that the chairmanship of Public Accounts Committee (PAC) and Public Investments Committee (PIC) must come from the minority party or coalition of parties. What Hon. Olago Aluoch has said is a fact. I agree with him. I wish the Member was here. He was with me earlier on in another meeting.

The Member for Kikuyu, you occupy a very unique position, which I think is not in accordance with your Standing Orders. If the leadership of a Committee is supposed to be from the minority, even the deputation should also be from that so that, in the event the Chairperson of that Committee is not present, the Deputy Chairperson must be from the minority party. You people are exercising some very interesting incestuous relationship in Committees.

Member for Kikuyu, what do you have to say?

Hon. Ichung'wah: Hon. Speaker, allow me not to defend anybody, but to defend myself. It is quite clear from the system of Government that we are in now, without an opposition *per se*, we cannot purport to say that minority and majority cannot deputise. I am a very able deputy to Hon. Keynan in PIC and, more so, because of my professional background as an accountant and a long-standing auditor in this country. Before I retired from that profession to join politics--- Not retired really. It is true I retired from the profession to get into public service. I was among the best accountants that you could ever find in this Republic. I have heard what Hon. Olago, my colleague in the Committee, has said in relation to the allegations of the Chairman having moved from one political party to somewhere else. We would need your guidance because, as far as I am concerned, those are things that, again, just like what I was talking about on the issue to do

with the Auditor-General, are out there and not in this House. Therefore, until the Chairman communicates to the Speaker that he has, indeed, formally moved from his political party to another one--- It would not be fair for the Chairman because there are very many other Members who we have also heard have changed their allegiance from one political party to another, but they are still enjoying the privilege of serving in the same committees. Maybe, what the sponsoring party of Hon. Keynan should do is to commence the same procedure they commenced upon the other Members in terms of de-whipping them from the committees and, perhaps, even removing them from the parties. All those things might be inconsequential at this time. It is rather too late in the day.

As a Committee, we are about to wind up our committee work. In a week or so, we will be retreating to do our final report. Therefore, I do not think it will be fair to interrogate that matter without Hon. Keynan being present here to speak for himself. Again, he is also at home. Wherever he is coming to, I think he is only following the wishes of the people of Eldas who elected him. They are the ones who have directed him as to where to move to; that is, where to find a political party that has a very clear vision of transforming this country and changing the lives of the people of Eldas, the northern Kenya and Kenya in general.

Hon. Speaker: Another Member of the Committee, Member for Kiminini, Chrisantus Wamalwa.

Hon. Wakhungu: Thank you, Hon. Speaker. I am not only a member of the Committee, but I am also the Deputy Whip on this side of the coalition. What Hon. Olago Aluoch has raised is something we have had a discussion on before. Personally, I had a discussion with Hon. Keynan to confirm whether it is, indeed, true that he has moved. The Standing Orders are very clear that the Chairman of PIC must come from the minority side. Hon. Keynan is not only the Chairman of PIC, but also a Commissioner at the Parliamentary Service Commission courtesy of the CORD coalition. So, when we had this discussion, we were to follow up with this.

The Political Parties Act is very clear that when you get involved in any activity that, perhaps, suits the other side of the coalition, then you are deemed to have defected. It is something we would like to leave upon you to look at and give us communication on Tuesday.

(Laughter)

We know you have the powers. As a whip, I would just write a letter to you and you would de-whip Keynan. I am sure you will also follow that because it is what the Standing Orders say.

My friend, Hon. Ichung'wah, earlier on said that the Auditor-General raised some issues in the media. It is the same case with Hon. Keynan. The matter was also in the media. The law is both-sided. You cannot have your cake and eat it. It is high time you looked into this matter and gave direction accordingly. You cannot say that we are through with our term as Parliament and so, we do not have much to do. We have so much to do as a Committee. If at all the Chairman does not belong to the minority side or rather, his loyalty has shifted, then it becomes dangerous for us to execute our mandate pertaining oversight.

I thank you.

Hon. Speaker: Hon. Members, as much as you discuss the issue of Hon. Keynan and where his loyalty lies, to avoid a situation whereby he would be discussed without a substantive Motion, which will be against our Standing Orders, the issue about chairmanship is a matter for the Committees save that the Chairperson must come from the minority party. The Speaker does

not get involved in electing chairpersons. What is important is to observe that the chairperson must be from the minority party. I have not received any communication that explains to me where the Chairman is.

Therefore, the coalition that sponsored him is at liberty to commence proceedings under Standing Order 176 in the manner that I directed late last year about the process or, indeed, proceed to act as a coalition within the Committee. The coalition is at liberty to select any other Member from among its ranks to chair that Committee, if they feel that they have lost confidence in the current Chairman. That would be the correct procedure to follow. I may not say what may have been widely circulated as Hon. Chris Wamalwa would want to invite me to base my decision on. The coalition is at liberty. The Leader of the Minority Party is here. In fact, he is a ranking Member of that Committee. Ordinarily, he should have been the Chairman of that Committee.

In the event the Coalition feels that the Chair is not meeting their expectations, they are at liberty to make whatever decisions. I cannot direct what the Committee should do or the Membership of the Coalition in that Committee may wish to do. Unless Hon. Keynan is here to speak for himself, it will be unfair for me to allow a debate that touches on his character without a substantive Motion. Therefore, I think any contributions on this one should avoid a situation of appearing to discuss Hon. Keynan as a Member of the House without a substantive Motion.

Leader of the Minority Party, do you want to say something about that?

Hon. Nyenze: Thank you, Hon. Speaker. I think your ruling on this matter is very correct. Since Hon. Keynan is not in the House, we will meet, make a decision and communicate. We will give him a chance.

Hon. Speaker: The Coalition is at liberty to strip him of any responsibility that they think--- Does the Chair of the Public Accounts Committee (PAC) also want to express himself on this? The Chair of the Departmental Committee on Finance, Planning and Trade also wants to express himself. Fine, but, please, let us also try to avoid discussing the conduct of the Member.

Hon. (Eng.) Gumbo: Thank you, Hon. Speaker. Let me start by declaring that Hon. Keynan is a great friend of mine and I am making comments here strictly guided by what the law and our procedures provide. As I discuss this matter, I am reminded of something that happened when I was beginning my practice as an engineer, which I think has been the most fulfilling time of my life. We were at a construction site and the sewer on that site was blocked. So, the main contractor was tasked to unblock the sewer, but he said that it was so messy that he could not unblock it and he required a gas mask and the architect on the site.

(Hon. Ichung'wah interjected)

It was one of those early sites. Probably Hon. Ichung'wah was still in primary school and he would not know. So, the architect, whether with a light touch or as a matter of fact, told the main contractor:

“My friend, life gives people very many opportunities. You could have chosen to be a teacher. No one would have asked you to unblock the sewer, but you chose to be a main contractor and that is part of your work and you have to unblock the sewer.”

Hon. Speaker, what am I saying? Every action that we take really has an opportunity cost. Even the choice to be a Member of Parliament means that you have given up something to want to represent your people. All of us in this House have given up a lot of things. Some of us have

given up our practices to represent our people. So, I would say that it is the honourable thing to do for my good friend. He has experienced himself and I think this has come from the pressure he is getting from where he is coming from because we have to respond to what our people say. However, honestly, it would be a contradiction of our own Standing Orders if a Member has moved to the majority coalition to continue chairing a committee which ought to be chaired by the minority Coalition.

I want to express myself as agreeing with you completely. Some of us have intentions not to come back in the 12th Parliament. God willing, we have intentions to look for work elsewhere. However, one of the things that should be looked at in the Standing Orders is this contradiction where the Chair comes from the minority Coalition and the Vice-Chair comes from the majority Coalition. It does not make sense to me. I think the reason why it was felt necessary that the Chair ought to come from the minority Coalition is because of the understanding that the majority Coalition would often times want to drive the agenda of the Government and, of course, the minority Coalition has the alternative view as to the agenda of the Government.

Hon. Speaker, you have invited proposals on areas that we need to look at in amending the Standing Orders. One of the areas that as a House, especially those of us who will be privileged and who will get God's mercy to come back here to the 12th Parliament, must look at, if we have agreed that these two important Committees – the PAC and the PIC – have to be chaired by the minority Coalition, is the fact that then the Vice-Chair really must also come from the minority Coalition.

I want to encourage my good friend, Hon. Kimani Ichung'wah. Being in the Opposition or the Government is not a permanent affair. In fact, hardly 10 years ago, our President right now was the Leader of the Opposition in this House. Like the late British Prime Minister would tell you, being drunk is not a permanent condition, but being ugly is a permanent condition. So, I encourage Members that when we look at these things, let us try to understand that these are positions. Today, you are here, and tomorrow you are there, but I want to assure Hon. Ichung'wah, through the Speaker, that when my Coalition finally gets to power, which I am sure we will in a few months' time, I will not run you out of town, but we will be more accommodating.

Hon. Speaker, I thank you for the opportunity.

Hon. Speaker: Let us have the Member for Ainamoi who is also the Chair of the Departmental Committee on Finance, Planning and Trade.

Hon. Langat: Thank you, Hon. Speaker. I do not intend to discuss Hon. Keynan, but the question raised by Hon. Olago Aluoch. As you have captured, the Member is inviting you to help them play their politics. As we know, in the Standing Orders, the Members elect the Chair. The whips of the Coalitions nominate Members into respective committees. Therefore, if they find one of their own no longer their own, it is the business of their leadership, which is in the House now, to do the necessary. They have done it before.

As the Chairman of the Departmental Committee on Finance, Planning and Trade, I have suffered. I lost very good Members of my Committee because they were de-whipped by the leadership of the Coalition for Reforms and Democracy (CORD).

Hon. Speaker, I encourage you not to even rule on that matter because it is clear in the Standing Orders and the procedure is clear. Therefore, they should do the needful through the Standing Orders.

Hon. Speaker: Let us not debate it further. In any event, the Member for Kikuyu has said that the Committee is at the tail end and they are retreating to write their final report. That is not

to say that the leadership of the Minority Party cannot decide to change the chairmanship. It is within their power to do so, if they feel that the current Chair has outlived his usefulness. It is the party that decides.

Indeed, what the Member for Rarieda said makes a lot of sense because the Majority Party even has a majority in the Committee. To have it even deputising makes the situation a bit daisy. I think it is a matter that needs to be considered when we are reviewing the Standing Orders.

Of course, Hon. Keynan is at liberty to come and explain himself to the House and his colleagues, so that they can also understand him better. I do not know why he has decided to go shopping or wherever he may have decided to go.

The Member for Kikuyu said that he retired from accountancy or auditing. I think he just took some sojourn to the realm of politics.

Next Order.

MOTION

REPORT OF THE CONSTITUTIONAL IMPLEMENTATION OVERSIGHT COMMITTEE ON IMPLEMENTATION OF DEVOLUTION.

THAT, this House adopts the Report of the Constitutional Implementation Oversight Committee on Oversight over the Implementation of Devolution up to the year 2016, laid on the Table of the House on Tuesday, 21st February 2017.

(Hon. Baiya on 28.2.2017)

(Resumption of Debate interrupted on 14.3.2017)

Hon. Speaker: Leader of the Majority Party.

Hon. A.B. Duale: Hon. Speaker, I once again rise under the Standing Order No.52(1) relating to the postponement of an Order of the day in relation to adoption of the Report of the Constitutional Implementation Oversight Committee (CIOC). Before you put the Question on this matter, I seek your indulgence to know what kind of a resolution this House is being asked to make. I have a lot of respect for the CIOC and for the Chairperson who is a very good friend of mine, Hon. Baiya. However, I have a few issues with the Committee's recommendation that the title of the Committee be changed from "Constitutional Implementation Oversight Committee" to "Select Committee on Devolution" and a transfer of its current functions to the new Committee.

My reading of the Sixth Schedule of the Constitution of Kenya indicates that CIOC is a permanent Committee created for the National Assembly for the purpose of overseeing the implementation of the constitution. The only time we can resolve that the life of the Committee is over is when the Constitution has fully been implemented. The question we should ask ourselves now is how the Committee can make a determination that the Constitution has been fully implemented.

Currently, there are provisions of the Constitution which are yet to be actualised and these include among others the Physical Planning Bill, 2015 which is a constitutional Bill that is still

lying in the Senate. Secondly, the question of the two-thirds gender rule, which in my view, is yet to be implemented whether progressively as pronounced by the courts or in full. This Committee seems to be telling the House that the work of the implementation of the Constitution is only about devolution which in my opinion is not the case. That is why they want to change the title. Is devolution the only part of the implementation of the Constitution? That is the question I am posing to you. The guidance I seek before you put the Question is whether the proposal to change the title of the Committee and transfer their functions to the new committee is in tandem with Article 262 and the Sixth Schedule of the Constitution. Two, is this decision implementable if we adopt this Report this afternoon?

If the House resolves to go the way the Committee is suggesting, your Committee on Standing Orders will have to amend the Standing Orders to create this new Committee on Devolution and probably cause a deletion of the Constitutional Implementation Oversight Committee from the Sixth Schedule of the Constitution. What I expected from the Committee is an assessment of the progress of the implementation of the Constitution in all aspects. That is what the Committee should have dwelt with and that report should have been tabled for this House to consider.

Finally, I seek your guidance and request you to defer putting the Question on this matter. I rest my case.

Thank you, Hon. Speaker.

Hon. Speaker: Hon. Njoroge Baiya, Chair of the CIOC.

Hon. Baiya: Thank you, Hon. Speaker. I want to agree substantially with what the Leader of the Majority Party is saying in so far as changing the title of CIOC into any other. It is quite clear that the CIOC was created by the Constitution and it is not within the Committee's mandate to make that kind of recommendation. However, the main decision we are seeking is to have Parliament set up a stand-alone committee to oversee implementation of devolution. I want to admit that the reference to changing the CIOC to any other is a problem and I will ask that we be allowed an opportunity to make an amendment to remove that. It is not the main substance of our prayer.

Our request is for a committee to oversee devolution. This came up not just within ourselves, but it is after consulting with the clearly established bodies involved in the implementation of the Constitution. It is felt that if we do not do this, there is a gap in terms of oversight of the implementation of devolution because this responsibility is vested in the Departmental Committee on Finance, Planning and Trade whose focus is on finance and economic management matters that has not, in the last four years, addressed itself to matters of devolution. Essentially, they are not in their domain. So, I agree that we "pend" this matter to give the Committee an opportunity to amend that Report in terms of the objection being raised by the Leader of the Majority Party.

Hon. Speaker: How do you amend at this stage? The stage we are in is for putting the Question. It is only fair that I be allowed to make a decision with regard to that recommendation one way or the other. The one that you concede to appears to be flying in the face of the Constitution. The CIOC is established in the Constitution and is given a specific mandate. Whereas what you said, and which forms the main body of your recommendation about the establishment of a committee to deal specifically with devolution, is not what the Leader of the Majority Party is contesting, it is the transition of the purported recommendation to transform CIOC to be that committee. There may be no harm in having the Members of CIOC being in the other proposed committee, but you can see that the recommendation is convoluted. When I read

your recommendation, that is one of the issues that I had expected Members debating the Report would raise. I have listened to many of the contributors and they all appeared not to have seen that bit. If you look at Section 5 of the Sixth Schedule, nobody seems to have looked at the functions of the CIOC as established. The best thing will be for me to make a ruling on the matter, make some determination with regard to constitutionality and possibility of obstacles in implementation of that aspect of that recommendation. I will leave the House to deal with the question of establishing a new committee to deal with devolution.

Hon. Midiwo, do you want to say something about that?

Hon. Midiwo: I just want to say something small. I support what you have said, but I only want to add that, as you make that consideration, you need to consider the fact that we may have wished to implement this Constitution in full. There are many aspects which this Committee needs to look at. Therefore, you need to consider that fact as you rule as regarding the completion or non-completion.

Hon. Speaker: Thank you, Hon. Midiwo. Hon. Gikaria, you have the Floor.

Hon. Gikaria: I want to agree with what the Leader of the Majority Party has just alluded to. He has raised the most critical issue of the matter that we are discussing. As a Member of the Implementation Committee, I know that we had a problem in terms of what the Leader of the Majority Party said regarding the devolved functions, which this Committee would want to oversee. The challenge is that the Committee does not have that mandate, as per the Constitution.

Lastly, and most importantly, the Committee's Report regarding the Kenya National Highways Authority (KeNHA) seeks to amend an Article of the Constitution. That is something we also need to look at. It is a constitutional issue and thus cannot be amended through a Committee Report.

If you look at most of the Standing Orders, they do not expressly say how, other than an *ad hoc* committee, other committees, like the Devolution Committee, can be formed. Again, we need to look through our Standing Orders and see whether there is any provision that allows formation of such a committee. There is nowhere in the Standing Orders that shows how we can start a committee that is not found therein. I totally agree with what the Leader of the Majority Party has said.

(The Clerk-at-the-Table consulted the Speaker)

Hon. Speaker: I think it is for the Clerk's Office to note what you are saying, Hon. Gikaria. Under Standing Order No.53, postponement of putting of the Question shall be forwarded to the next day. You need to make a communication on this one on Tuesday, Hon. Baiya.

Next Order!

COMMITTEE OF THE WHOLE HOUSE

(Order for Committee read)

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

IN THE COMMITTEE

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

THE NATIONAL CORONERS SERVICE BILL

The Temporary Deputy Chairman (Hon. Omulele): Hon. Members, let us begin consideration of the National Coroners Service Bill.

*(Clauses 3, 4, 5, 6, 7, 8, 9, 10 11, 12, 13, 14, 15, 16,
17, 18, 19, 20, 21, 22, 23 and 24 agreed to)*

Clause 25

Hon. Abong'otum: Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 25 of the Bill be amended in sub-clause (1) by deleting paragraph (b) and substituting therefor the following new paragraph—

“(b) make such report as soon as possible but not later than six hours after the death.”

The import of this amendment is to correct the sentence in paragraph (b) so as to ensure that there is proper grammatical flow of the whole sub-clause. We are basically correcting some grammatical error.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Omulele): Do I see interest from Hon. Makali Mulu? The public-address system has a problem this afternoon. You can use the microphone from the Dispatch Box.

Hon. Mulu: Thank you, Hon. Temporary Deputy Chairman. Just as the Chairman of the Departmental Committee on Administration and National Security, Hon. Kamama, has said, the purpose of this amendment is to ensure that there is consistency in the law we are making. This amendment is to ensure that there is consistency and harmonisation in that particular clause.

I support.

The Temporary Deputy Chairman (Hon. Omulele): Let us have the Leader of the Majority Party.

Hon. A.B. Duale: The Bill is mine and I want to indulge the House, through the Chairman of the Committee of the whole House, that we extend the six hours to 12 hours. This is for the simple reason that the next of kin could be far and might not reach on time. So, six hours is limiting. When one of your own dies in a prison in Nyanza or Western Kenya and you come from North Eastern, or vice versa, it will take time. So, with the concurrence of the Departmental Committee on Justice and Legal Affairs, I would like to propose a further amendment that we remove “six hours” and replace it with “12 hours”.

The Temporary Deputy Chairman (Hon. Omulele): He is proposing a further amendment. As that is worked out, we could have another Member making a contribution to this. I will, therefore, allow Hon. Sunjeev Birdi to make a contribution. Hon. Birdi, just hold on. Let us hear what the Leader of the Majority Party has to say.

Hon. A. B Duale: Sorry, Hon. Temporary Deputy Chairman. I have consulted. It is not for the notification of the next of kin, it is the police officer to do it and I think six hours is okay. I do not want to propose a further amendment.

The Temporary Deputy Chairman (Hon. Omulele): Very well. I will give the opportunity to Hon. Sunjeev.

Ms. Sunjeev: Thank you. I was about to give my thoughts to the change that Hon. Duale was going to bring, but since he has not made that change, everything is in order. I would, however, like to add that at a time when people are thinking that Members of Parliament are just spending their time campaigning, there are some of us who are busy here making amendments and passing laws.

The Temporary Deputy Chairman (Hon. Omulele): I will give opportunity to Hon. Ali Rasso.

Hon. Dido: Thank you, Hon. Temporary Deputy Chairman. In line with what Hon. Birdi said, the amendment is just about drafting and that has been corrected. When individuals die in police or military custody, the practice is that a report must go out immediately, so that if there is foul play, then other agencies can be quickly brought on board. I agree with the six hours.

*(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 25 as amended agreed to)

*(Clauses 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36,
37, 38, 39, 40, 41, 42, 43, 44, 45 and 46 agreed to)*

Clause 47

Hon. Abongotum: Hon. Temporary Deputy Chairman. I beg to move:

THAT, Clause 47 of the Bill be amended—

(a) by deleting the opening sentence in sub-clause (4) and substituting therefor the following new opening sentence—

“(4) If prescribed tissue has been removed, the Coroner shall not order the release of the body unless satisfied that—”

(b) in sub-clause (6) by deleting the expression “6-monthly” and substituting therefor the words “six months”.

The purpose of this amendment is basically to correct grammatical errors by deleting the word “however” and also by use of the word “shall” instead of the word “must.” So, it is purely a grammatical error we are trying to address.

(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 47 as amended agreed to)

(Clause 48 agreed to)

Clause 49

Hon. Abongotum: Hon. Temporary Deputy Chairman. I beg to move:

THAT, Clause 49 of the Bill be amended—

(a) in sub-clause (1) by deleting the word “must” appearing in the opening sentence and substituting therefor the word “shall”; and

(b) in sub-clause (3) by inserting the expression “47” at the end of the sentence in paragraph (a).

The amendment in (a) seeks to correct grammatical error by inserting word “shall” instead of the word “must”. The amendment in (b) seeks to provide correct referencing in the same paragraph. So, those are the intentions.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Omulele): I see there is no interest in this.

*(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 49 as amended agreed to)

*(Clauses 50,51,52,53,54,55,56,57,58,59,
60,61,62,63,64,65,66 and 67 agreed to)*

Clause 68

Hon. Abongotum: Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 68 of the Bill be amended in sub-clause (1) by inserting the words “and the Clinical Officers Council” immediately after the words “Kenya Medical Practitioners and Dentists Board” appearing in paragraph (g).

The purpose of this amendment is to introduce representatives of the Clinical Officers Council as members of the National Coroners Council because clinical officers are also deemed to belong to the medical profession where they play a very pivotal role.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Omulele): I see interest from Hon. Birdi.

Hon. (Ms.) Sunjeev: Thank you, Hon. Temporary Deputy Chairman. I would like to support this because as we saw in the recent doctors' strike, clinical officers played a major role in supporting our country. Therefore, I think this is warranted.

The Temporary Deputy Chairman (Hon. Omulele): Very well. Hon. (Dr.) Nyikal.

Hon. (Dr.) Nyikal: Thank you, Hon. Temporary Deputy Chairman. I also rise to support this amendment because the role of clinical officers at some level of service is such that many deaths take place under their watch and at times they are allowed to sign death certificates. Therefore, I think for inclusivity, they should also be in this Council.

The Temporary Deputy Chairman (Hon. Omulele): Very well. Hon. Rasso.

Hon. Dido: Thank you, Hon. Temporary Deputy Chairman. I rise to support this amendment. Recently on the Floor of this House, we passed the Clinical Officers Bill and bringing such an amendment to this important Bill gives it effect. We also recognise the contribution of clinical officers in our health sector.

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

(Clause 68 as amended agreed to)

(Clauses 69, 70, 71, 72, 73 and 74 agreed to)

(Clause 2 agreed to)

(Title agreed to)

(Clause 1 agreed to)

The Temporary Deputy Chairman (Hon. Omulele): The Mover of the National Coroners Service Bill, it is your time to move.

Hon. A.B. Duale: Hon. Temporary Deputy Chairman, I beg to move that the Committee do report to the House its consideration of the National Coroners Service Bill (National Assembly Bill No.46 of 2016) and its approval thereof with amendments.

(Question proposed)

(Question put and agreed to)

The Temporary Deputy Chairman (Hon. Omulele): Hon. Members, we shall now move to the next business.

THE MOVABLE PROPERTY SECURITY RIGHTS BILL

(Clauses 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93 and 94 agreed to)

(Clause 2 agreed to)

(Title agreed to)

(Clause 1 agreed to)

Hon. A.B. Duale: Hon. Temporary Deputy Chairman, I beg to move that the Committee do report to the House its consideration of the Movable Property Security Rights Bill (National Assembly Bill No.50 of 2016) and its approval thereof without amendment.

(Question proposed)

(Question put and agreed to)

(The House resumed)

*[The Temporary Deputy Speaker
(Hon. (Ms.) Shebesh) in the Chair]*

REPORTS

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): I call upon the Chairperson to report on the first Bill, the National Coroners Service Bill.

THE NATIONAL CORONERS SERVICE BILL

Hon. Omulele: Hon. Temporary Deputy Speaker, I beg to report that a Committee of the whole House has considered the National Coroners Service Bill (National Assembly Bill No.46 of 2016) and approved the same with amendments.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Let us have the Mover of the Bill.

Hon. A.B. Duale: Hon. Temporary Deputy Speaker, I beg to move that the House do agree with the Committee in the said Report. I request Hon. Kamama, the Chair of the Departmental Committee on Administration and National Security to second the Motion for agreement with the Report of the Committee of the whole House.

Hon. Abongotum: Hon. Temporary Deputy Speaker, I beg to second.

(Question proposed)

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): I will not put the Question at this time, Hon. Members.

(Putting of the Question deferred)

Let us have reporting by the Chairperson for the second Bill.

THE MOVABLE PROPERTY SECURITY RIGHTS BILL

Hon. Omulele: Hon. Temporary Deputy Speaker, I beg to report that a Committee of the whole House has considered the Movable Property Security Rights Bill (National Assembly Bill No.50 of 2016) and approved the same without amendments.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Let us have the Mover of the Bill, the Leader of the Majority Party.

Hon. A.B. Duale: Hon. Temporary Deputy Speaker, I beg to move that the House do agree with the Committee in the said Report. I also request Hon. Asman Kamama, the Chair of the Departmental Committee on Administration and National Security to second the Motion for agreement with the Report of the Committee of the whole House.

Hon. Abongotum: Hon. Temporary Deputy Speaker, I beg to second.

(Question proposed)

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): I will put the Question at the appropriate time.

(Putting of the Question deferred)

Hon. Members, we can now move on to the next Order.

MOTION

REPORT OF THE DEPARTMENTAL COMMITTEE ON DEFENCE
AND FOREIGN RELATIONS ON THE MARRAKESH TREATY

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Members, this is supposed to be moved by the Chairperson of the Departmental Committee on Defence and Foreign Relations. I do not see the Chairman.

(Hon. Dido stood up in his place)

Are you representing the Committee?

Hon. Dido: Yes. Hon. Temporary Deputy Speaker. I beg to move---

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Are you moving on behalf of the Chairman?

Hon. Dido: Yes, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Are you the Vice-Chairman?

Hon. Dido: I am a ranking Member of that Committee.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Okay. Go ahead and move that Report on behalf of your Committee.

Hon. Dido: Hon. Temporary Deputy Speaker, I beg to move the following Motion:

THAT, this House adopts the Report of the Departmental Committee on Defence and Foreign Relations on the Marrakesh Treaty to facilitate access to published works for persons who are blind, visually impaired or otherwise print disabled, laid on the Table of the House on Thursday, 1st December, 2016, and pursuant to Section 8 of the Treaty Making and Ratification Act, approves the ratification of the Marrakesh Treaty to facilitate access to published works for persons who are blind, visually impaired or otherwise print disabled.

This is a very important Treaty. If Kenya ratifies it, many Kenyans will benefit. The representation that was made by Commissioner Josephine Sinyo, representing people with special needs and Grace Tume Wario, a blind young girl from Dirib Gombo Location in my constituency is one of the reasons why as a Member of the Departmental Committee on Defence and Foreign Relations, I felt that this House should be urged to approve and, by extension, ratify the Marrakesh Treaty.

On Tuesday, 29th March, 2016, the Leader of the Majority Party in the National Assembly tabled in this House the Marrakesh Treaty to facilitate access to published works for persons who are blind, visually impaired or otherwise print disabled. The Treaty, from that point, was committed to our Committee. Our Committee sat many times both in Nairobi and Mombasa to get views from the public. This is in accordance with the Constitution; to allow for public participation.

I want to report to the House that we had presentation from the Law Society of Kenya (LSK) which was represented by its Chairman; the Kenya Law Reform Commission (KLRC); the Kenya Copyright Board and other institutions which were interested in this particular Treaty.

Pursuant to Section 8 of the Treaty Making and Ratification Act, 2012 and the second Schedule of the Standing Orders of the National Assembly, once ratified the Treaty shall become part of our Kenyan laws as provided for under Article 2(6) of the Constitution. This Article provides that any treaty or convention ratified in Kenya shall form part of the laws of Kenya under this Constitution.

During the consideration of the Marrakesh Treaty to facilitate access to published works for persons who are blind, visually impaired or otherwise print disabled, the Committee, pursuant to Article 118(1)(b) of the Constitution, on public participation and Section 8(3) of the Treaty Making and Ratification Act of 2012, met with all the partners who were interested in this Treaty.

The Republic of Kenya joined the World Intellectual Property Organisation (WIPO) in 1971. Kenya acceded to the Berne Convention for Protection of Literary and Artistic Works in on 11th March, 1993. The convention came into force on 11th June, 1993. The convention was domesticated through the Copyright Act, Cap.130 of the Laws of Kenya.

Kenya is also signatory to other copyright treaties like the Universal Copyright Convention, Paris Act and the agreement on trade-related aspects of intellectual property rights,

WIPO Performance and Phonograms Treaty, WIPO Copyright Treaty and the Beijing Treaty on Audiovisual Performance.

If this House approves, and by extension, ratifies this Treaty, it will allow authorised entities, usually libraries or NGOs in one country to send accessible format books directly to authorised entities or blind individuals in another country and allow for the unlocking of digital locks on electronic books for the benefit of the blind.

Individuals who are blind or visually impaired are found in this country, but many of them who do not have access to reading materials are often poor. They live in rural areas and if given opportunity, many of them could go to nearby schools and institutions in order to access reading materials. As it were, the current law, that is, the Copyright Act, actually denies that.

The whole idea of this Treaty is to impact Kenya, Uganda, Tanzania, Burundi and Rwanda. Once we ratify this Treaty, NGOs or individuals who are philanthropic will send materials across our borders so that they are available to blind and visually impaired individuals.

Moreover, this is also a constitutional obligation under Article 27 of the Constitution of Kenya. This Article is within the Bill of Rights on access to information. Today, many individuals who are blind and visually impaired are not able to read newspapers or normal books in their current form. If we allow this law to be passed, then these materials will be put in an electronic form that will be available to them 24/7.

The Marrakesh Treaty was signed in June, 2013 in Morocco, and to date it has been ratified by India, El Salvador, United Arab Emirates (UAE), Uruguay, Mali, Paraguay, Singapore, Argentina, Mexico, Mongolia, the Republic of Korea, Australia, Brazil, Peru, the Democratic People's Republic of Korea, Israel, Chile, Ecuador, Guatemala and Canada. It has been signed by over 60 countries including our country which signed it on 28th June, 2013.

More than 90 per cent of all published material in the world is not accessible to the blind or partially sighted individuals. We need to produce these materials in accessible formats such as braille; large prints or audio edition but the current copyright rules do not allow this. This also limits the number of books to which blind students can have access to, to further their studies and training.

The World Blind Union (WBU), an organisation bringing together all organisations of unions of the blind globally has led the international campaign in partnership with the WIPO to achieve the development of the Marrakesh Treaty and put an end to the current thirst for books and knowledge.

The Marrakesh Treaty has been ratified so far by 20 countries – the number needed for it to enter into force and allow for an increase of materials in accessible formats through cross-border sharing and the increased production of books in more countries.

I will now move to the object and subject matter of the Marrakesh Treaty. The Treaty will facilitate access to published works for persons who are blind, visually impaired or otherwise print-disabled. It has a clear humanitarian and social development dimension and its main goal is to create a set of mandatory limitations and exceptions for the benefit of the blind, visually impaired and otherwise print-disabled.

What is the constitutional implication of Kenya ratifying the Marrakesh Treaty? The Marrakesh Treaty does not impose any amendment to our Constitution. The Treaty does not also have any effect on any of our national security interests.

With regard to the obligation imposed on Kenya by the Marrakesh Treaty, I would say that the Treaty requires the contracting parties to fulfil two main obligations when implementing it at the national level, although they may do so according to their own legal system. The first is

to provide for a limitation or an exception to copyright in order to allow beneficiaries and authorised entities to undertake any changes needed to make a copy of our work in accessible format for persons who are print-disabled.

Secondly, it is to allow the exchange across borders of those accessible copies produced according to the limitations and exceptions provided under the Marrakesh Treaty or in accordance with the operations of the laws of the adopting country.

I will now move the requirement for the implementation of the Marrakesh Treaty. The Treaty requires the amendment of Section 26 of the Copyright Act, Cap.120 of the Laws of Kenya so that it can have effect in Kenya to enable printers and publishers know that those who are blind, visually impaired and otherwise print-disabled will access reading materials.

Hon. Temporary Deputy Speaker, let me move to the process leading to adoption of the Marrakesh Treaty. The Treaty was adopted on Friday, 28th June, 2013. It actually entered into force on 31st November, 2016 after ratification by the 20th country which was Canada. Currently, there are 51 countries which have already signed the Treaty. For Kenya, the Cabinet approved the ratification of the Treaty on 31st October, 2013.

There was no reservation placed on the Treaty when the Committee looked at it and talked to various partners. Further, the ratification of the Marrakesh Treaty does not involve additional expenditure of public funds that is foreseen in its implementation.

The Committee is thankful to the offices of the Speaker and the Clerk of the National Assembly for the support that was accorded to it during the sitting. On behalf of the Departmental Committee on Defence and Foreign Relations, I want to urge this House to approve our Report and ratify the Marrakesh Treaty.

Finally, I want to say in line with what I said at the beginning that Commissioner Josephine Sinyo narrated to the Committee her life journey from Ngandu Girls Secondary School to the Kenya School of Law. She said how, as a blind person, she was able to struggle to become the first woman lawyer who is completely blind.

In my constituency of Saku, I came across a young girl who graduated from the Thika School for the Blind after her high school. Her name is Grace Tume Wario. She was taken to that school by her father. In the community where I come from, a young girl who is blind or disabled is destined for nothing, possibly even marriage. However, I am extremely grateful to her parents. She was not the only girl in that family but they decided to take the young blind girl to school.

Hon. Temporary Deputy Speaker, Grace Tume Wario will be joining a teachers training college to be a teacher in future. Because of those two individuals, I personally felt that there are laws that are important not just for everybody, but for the few who are struggling in our society and who need all the help they can get from those of us who are clear sighted.

With those remarks, I beg to move and ask Hon. Sunjeev Birdi to second the Motion.

Thank you, Hon. Temporary Deputy Speaker.

Hon. (Ms.) Sunjeev: Thank you, Hon. Temporary Deputy Speaker for giving me this opportunity. It is very important to realise that this world is made up of various types, colours and creeds of human beings. This is what makes the society that we are in.

In seconding this Motion, I would like to make a few important points for this House to note. Hon. Rasso has just mentioned some important issues practically. Of course, he has quoted some examples of people who are visually impaired. We all know this is a constitutional right but the fact of the matter is that words and letters in black and white only make sense when they are properly implemented. I would like to say that this Treaty is addressing what we call “a global book famine”. In my opinion, an educated society is a prosperous society.

What are the numbers that we are talking about in our country when we talk about visually impaired persons? The Kenya Society for the Blind notes that there are 45,000 children who are blind. From statistics, there are 224,000 people who are blind and 750,000 visually impaired people in our country. If we combine these statistics, we will realise that if all these people were in one constituency, they would make a big number.

These people, individuals or children are living in various parts of our country. They all face one problem of not getting access to a basic right which is education. That is why this Treaty is making it possible for the visually impaired to access education. The famous saying goes that disability is not inability. The reason behind that saying is to ensure that people understand that if one is disabled in any way or form that should not stop him or her from promoting his or her life and the lives of those around him or her.

I would also like to say that there are millions of books printed worldwide but only 1 to the ratio of 7 is made available to people who are blind. The figure comes to 285 million. I am giving figures because 90 per cent of these people live in low income countries. Our country is part of those countries. I do not see any reason why we should not extend that helping hand to people that matter in our country. We should do everything possible to give access so that these people can be better citizens in the society. Who knows? One of the visually impaired might end up in a senior position somewhere and contribute to the wellness of the society.

It is also important to note that what I am talking about are the benefits of signing this Treaty. They include, improving the awareness of challenges faced by visually impaired people, access to education, most importantly enhancing social integration and alleviating poverty and increasing national contribution to the economy. When all these benefits are put together, we cannot help but notice that we should have passed this Motion long time ago. However, it is better late than never. As I said before, I would like to second and support this Motion.

Thank you very much.

(Question proposed)

QUORUM

Hon. S.A. Ali: On a point of order, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): The Member for Lamu East, what is your point of order?

Hon. S.A. Ali: Thank you, Hon. Temporary Deputy Speaker. I think we are discussing a very important Motion today and yet we are only four members in this Chamber. I do not think we can proceed with this important Motion for our country while we are only four Members. The decision that will be made from this Motion will affect this country and it is wrong for only four members to make it. I do not think we have quorum under Standing Order No.35 to proceed with this Motion.

Thank you.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Members, it is true that we do not have quorum. I order that the Quorum Bell be rung.

(The Quorum Bell was rung)

ADJOURNMENT

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Members, there being no quorum, the House stands adjourned until Tuesday, 21st March, 2017 at 2.30 p.m.

The House rose at 5.05 p.m.