

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Thursday, 29<sup>th</sup> March 2018

The House met at 9.30 a.m.

*[The Deputy Speaker  
(Hon. Cheboi) in the Chair]*

### PRAYERS

**Hon. Deputy Speaker:** Order, Hon. Members! We do not seem to have the required quorum. I, therefore, order that the Quorum Bell be rung.

*(The Quorum Bell was rung)*

Hon. Members, now that we seem to have the quorum, settle down for business to begin. Order, Hon. Members! Hon. Leader of the Minority Party... There are a few Members who keep crossing from one side to another. I actually do not understand why the Hon. Leader of the Minority Party is getting unnecessary attention. Next Order.

What is it, Hon. Gikaria?

### POINTS OF ORDER

#### DELAYED RESPONSE TO QUESTIONS BY CABINET SECRETARIES

**Hon. Gikaria:** Thank you, Hon. Deputy Speaker. I need some guidance from you. I had taken some two petitions to the Clerk's Office but I was advised to ask Questions to the respective ministries. One was about the helicopter plane crash in Nakuru and secondly on the regulations regarding internship programme for graduates. It is now one month and a half since. I have not received any response. The Office of the Clerk advised that they have already written to the respective ministries regarding the helicopter crash in Nakuru and the other bit about matters concerning the internship of graduates.

**Hon. Deputy Speaker:** Did you say you had brought petitions?

**Hon. Gikaria:** I had brought a petition but they told me to just put a Question which I agreed. So, I withdrew the petition and the statement was done to the respective ministries. To date, it is almost one month and a half. Please give some direction regarding it.

**Hon. Deputy Speaker:** Well, I would not give direction on that one. The only thing I could do even if I know probably you have ambushed him, is that the Hon. Leader of the Majority Party needs to tell us if we are expecting Cabinet Secretaries (CS) to come and answer questions especially on those lines.

**Hon. A.B. Duale:** Hon. Deputy Speaker, from Tuesday, 10<sup>th</sup> April, the first CSs will appear before the respective committees. This afternoon, I will tell the House which Questions from which Members will be addressed and which CSs will appear.

**Hon. Deputy Speaker:** I hope the Member for Nakuru Town East will be available to ensure that his Question will be dealt with.

I see Hon. Okelo Oduyo, the Member for Nyando. What is it?

#### FAILURE TO HONOUR COURT ORDERS

**Hon. Okelo:** Thank you, Hon. Deputy Speaker for your indulgence. I am seeking your direction. This morning, I did a letter to the Clerk and the Hon. Speaker as regards the disobedience to court orders that has become quite prevalent lately in this country and, specifically, about the treatment of my constituent Dr. Miguna Miguna. I need your guidance on this because it is a fundamental subject of public interest. I cannot see it in the Order Paper. So, kindly guide me properly. Thank you.

**Hon. Deputy Speaker:** What is it that you want to get from them?

**Hon. Okelo:** Well, this is a matter of public interest. It is about the disobedience to court orders as a set, but a sub-set specifically on Dr. Miguna Miguna's treatment last night. He is now in Dubai, sick, drugged, very unstable and stateless at the same time. I need this House to ventilate on this most fundamental subject. I need your guidance because I have not seen it anywhere and yet, I had made a letter to the Clerk and the Hon. Speaker of this Assembly.

**Hon. Deputy Speaker:** First, even before I speak to it, let me hear what the Hon. Leader of the Majority Party has to say. Once you write letters, you know there is a process. If it is just writing letters, that might be a little difficult. But let us hear what the Hon. Leader of the Majority Party has to say.

**Hon. A.B. Duale:** Hon. Deputy Speaker, the Hon. Member for Nyando, who is also my very good friend, should know there are no letters. What is before the Hon. Speaker is that you are either asking an adjournment of the House to discuss that matter or you are sending Questions to be slotted for the CS, Interior and Coordination of National Government to deal with the matter. You know a letter between you and the Office of the Hon. Speaker cannot be part of the Order Paper. The Order Paper is prepared subsequent to the House Business Committee meeting. So, what he has presented could be an Adjournment Motion to discuss this matter which might come up in the afternoon. That is my reading.

**Hon. Deputy Speaker:** As I give the Hon. Leader of the Minority Party a chance also to say something, what was this letter about? Was it a protest? Is it that there is something you are seeking because you know what we do in this House?

**Hon. Okelo:** Hon. Deputy Speaker, the Hon. Leader of the Majority Party is right...

**Hon. Deputy Speaker:** Just a minute! Let me hear the Hon. Leader of the Minority Party first, then you will say something to it.

**Hon. Ng'ongo:** Thank you, Hon. Deputy Speaker. I have shared with the MP for Nyando. He has written to the Hon. Speaker requesting to move an Adjournment Motion under Standing Order 33 to discuss a matter that is urgent and of national importance. I think his fear is that this is the last day that this House is sitting before we break for recess later today. So, I think he is a bit anxious that if that matter will not be approved before the afternoon sitting, it may be overtaken by events or rather it may lose the salt because we do not know whether the Government will start behaving. The 10 days is quite some time. However, the matter is

important and your office needs to look at it favourably so that in the afternoon, the Nyando MP is allowed to request this House to allocate time for debate.

**Hon. Deputy Speaker:** Hon. Ng'ongo, you are a seasoned and very senior Member in this House.

If it is an Adjournment Motion, most of what you are saying should be canvassed at the point when he will be moving it. Of course, he should have the requisite number of Members to support his Motion, for the Speaker to make a decision one way or another. He has talked about a letter, and that is the problem I have. When making a request for an Adjournment Motion, the process is very clear according to the Standing Orders. But, he will have an opportunity, if he takes that position to canvass it this afternoon, if the Motion is approved.

**Hon. (Dr.) Pukose:** On a point of order, Hon. Deputy Speaker.

**Hon. Deputy Speaker:** What is your point of order, Member for Endebess?

**Hon. (Dr.) Pukose:** Hon. Deputy Speaker. If I heard the Member for Nyando correctly, he claims that Miguna is his constituent. Going by the last elections conducted in this country, Miguna Miguna was one of the contestants for the gubernatorial seat in Nairobi County. I think the Member is claiming somebody who is not his constituent. This is frivolous.

**Hon. Deputy Speaker:** Order! First, it is not frivolous at all. Even if that particular individual is not his constituent, as a Member of Parliament, you can speak on behalf of anybody. If you rose on a point of order to say the Member is misleading the House, that would be something else. But, looking at it generally, I do not think that is something that should arise. Let us pursue what we had agreed. He should proceed in the normal manner and, if the Motion is approved, he will bring it this afternoon. But, of course, he will have to seek for the numbers. So, let us not bring those sideshows.

**Hon. Ng'ongo:** On a point of order, Hon. Deputy Speaker.

**Hon. Deputy Speaker:** What is your point of order? You know when the Leader of the Minority Party rises on a point of order, it is one.

**Hon. Ng'ongo:** Hon. Deputy Speaker, Hon. Pukose is the one misleading this House. I do not know whether his knowledge of the past politics of this country is failing him. He should remember that Miguna Miguna contested the first time for the Nyando Parliamentary seat in 2007. The Constitution is very clear. You can contest anywhere. I can even contest in Hon. Pukose's constituency. By the way he is behaving, I will soon run against him. This is something so basic that an Hon. Member serving his second term should know. You can contest anywhere, as long as you are a registered voter there.

**Hon. Deputy Speaker:** Hon. Mbadi, you have said some few minutes ago that the Member for Nyando would like to bring a Motion on this so that it does not lose its saltiness. I think the Member for Endebess was adding some salt to it. There should be no major issue on this. These are sideshows, in my opinion. The most important thing is for the Member for Nyando to know the right procedure. This is the National Assembly and he will have an opportunity if he uses the correct procedure. So, start preparing yourself and the rest can be left for that opportunity. Let us not take too much time on it, unless you have finished with the salt and you want to add sugar.

**Hon. Tuitoek:** On a point of order, Hon. Deputy Speaker.

**Hon. Deputy Speaker:** What is it, the Member for Mogotio?

**Hon. Tuitoek:** Hon. Deputy Speaker, I just want to seek clarification on whether we can discuss a citizen of another country. It looks like Mr. Miguna Miguna is not a Kenyan citizen.

**Hon. Deputy Speaker:** Yes. I know we are now adding sugar.

**Hon. Waititu:** On a point of order, Hon. Deputy Speaker.

**Hon. Deputy Speaker:** What is it, Hon. Waititu?

**Hon. Waititu:** Hon. Deputy Speaker, I just want to remind the Members here that Miguna Miguna is my good friend. There is a time when he said that the former Prime Minister Raila Amollo Odinga will never be a President of this country but I corrected him.

**Hon. Deputy Speaker:** Is that not irrelevant?

**Hon. Waititu:** I am saying this because Miguna Miguna and I are different from the rest of the Members. Recently, I underwent a head operation just like Miguna. Do not fight him because the situation may be different from what he says. We should assist him and not fight him.

**Hon. Deputy Speaker:** That is completely out of order. We should stop there. We might end up bringing unnecessary issues. That is obviously out of order. Let us leave it at that, Member for Nyando. Follow the right procedure and you will be given an opportunity. Let us not bring in issues of whether he is a citizen or not. You can talk about that in the afternoon when you get an opportunity. There are things we can postpone for the right time. Members, let us leave it at that.

Let us proceed to the next Order.

## COMMITTEE OF THE WHOLE HOUSE

*(Order for Committee read)*

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

### IN THE COMMITTEE

*(The Chairman (Hon. Cheboi) took the Chair)*

#### THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) (NO.3) BILL

**Hon. Chairman:** Order Members! We are in the Committee of the whole House to deal with the Statute Law (Miscellaneous Amendments) (No.3) Bill (National Assembly Bill No.44 of 2017). Hon. Members, for the information of the House, we are going to start with the schedule because it contains amendments to various statutes contained in the Statute Law (Miscellaneous Amendments) Bill.

#### *THE PENSIONS ACT (CAP.189)*

**Hon. Chairman:** Hon. Limo, the Chair of the Departmental Committee on Finance and National Planning, you are the Mover of the amendment. That is the Schedule in respect to the Pensions Act (CAP. 189). Looking at the Order Paper, your amendment is on page 111.

#### *SCHEDULE*

**Hon. Limo:** Hon. Chairman, I beg to move:

THAT, the Schedule to the Bill be amended in the proposed amendments to the Pensions Act, Cap. 189 by deleting the proposed amendments to Section 5(3).

Hon. Chairman, the amendment seeks to delete the requirement that civil servants must complete 10 years before they qualify for pension as opposed to the current practice where they qualify at 5 years. Our Committee was of the opinion that given that this has been a controversial issue even in the National Assembly where to qualify for pension you must have served for more than five years, we leave it the way it is for the other civil servants. That is because this House has always been fighting to return to five years. The Leader of the Majority Party was proposing to move a further amendment to our amendment. I will ask the Leader of the Majority Party to talk about this before I finally move.

**Hon. Chairman:** No! You have already moved. I will, obviously, give the Leader of the Majority Party an opportunity to have a say on this because, in any case, he is the owner of the Bill. However, I really just want you to justify for purposes of Members to understand. You have just said that the Leader of the Majority Party had wanted to increase it to 10 years. You proposed that it remains at five years. Give us the justification and then I will propose the Question.

**Hon. Limo:** I had already stated, Hon. Chairman, that the justification for this is that this House has always been proposing to return to five years. Therefore, it was the feeling of the Members that we leave it at five years.

*(Question of the amendment proposed)*

**Hon. Chairman:** I will give the first shot to the Leader of the Majority Party.

**Hon. A.B. Duale:** Hon. Chairman, I tend not to agree with the Chair and I really want the House to listen to me. We must have uniformity in this country and we must not discriminate against different people. For a Member of Parliament to access pension properly, he must serve for two terms, which is 10 years. Why do we want to make other civil servants serve for five years and it is 10 years for MPs? The Bill comes from the National Treasury. It says we should have uniformity. Other civil servants access their pension after five years and MPs at 10 years. That is why I had a problem with the Chair of the Departmental Committee on Finance and National Planning. I read the report of the people who appeared before him who had a contrary view, but it is for the House to decide. Do we still leave it at five years for civil servants and 10 years for MPs? Things are not good. The turnover here is five years. So, for now, we can put it at 10 years and if we feel we can amend it later, then we shall include the MPs also for five years. However, on this, I oppose.

**Hon. Chairman:** On this one, I would want to give more Members an opportunity because I believe it has a lot of interest. Let us hear the Member for Mwea.

**Hon. Josphat Wachira:** My interest is on the other one.

**Hon. Chairman:** Okay. Let me give Hon. King'ola Makau if he wants to speak on this one. Hon. Oundo Ojiambo, do you want to speak on this one? Let us have Hon. Pukose.

**Hon. (Dr.) Pukose:** Hon. Chairman, I support the proposal by the Leader of the Majority Party on the 10 years on the same reasons that for MPs, you must have served for two terms. Therefore, the thinking of those who came up with the wisdom of the two terms is that, at least, you must have had a good period of working. Even when it comes to pensions in terms of other employees, you must have gone beyond 55 or 60 years for you to qualify for pension. So, limiting it to just five years will be going too low.

**Hon. Chairman:** So, are you supporting or opposing? You are supporting. Members, first let us be very clear. This has nothing to do with MPs. That is for sure. Let us look at what is in the Bill so that as you make your decisions, you make them from an informed point.

I will give a few more Members an opportunity. Hon. Gikaria.

**Hon. Gikaria:** Thank you, Hon. Chairman. I am a little bit confused when you say this has nothing to do with MPs.

**Hon. Chairman:** No, it does not.

**Hon. Gikaria:** I think I will also oppose because we are also looking at a country where the wage bill is too high. The other day, we were reading about it in the newspaper. On matters of payment of pension and retirement packages, it was continually going up. This is going to really affect the monies that are supposed to be used. Just like the Leader of the Majority Party has said, I think we also need, as a Government, to be a little bit careful on matters of finances and how best we can address some of these things.

Thank you, Hon. Chairman.

**Hon. Chairman:** I want you to be very clear, Hon. Members. Look at what is in the Bill where an officer has completed five years. So, if you increase it to 10 years... I am just clarifying because I can see Members are not clear about it. If an officer has served for five years, then he qualifies to be paid, although not immediately of course. It is at such time as may be determined by the Act. So, I want you to be open on that one so that you are clear and then when you make your decision, you make it having, of course, seen the facts correctly. I will give one more Member an opportunity and then I will put the Question. Is that Hon. Lentoimaga?

**Hon. Lentoimaga:** Thank you, Hon. Chairman. I oppose. That means I concur with the Leader of the Majority Party that 10 years is okay. One reason why I prefer 10 years is that, sometimes, civil servants need more training and experience when it comes to working in the Civil Service. If you compare a newly recruited civil servant in the counties at Job Group "S" and one who has served in the Civil Service at Job Group "K", you will find that the one in Job Group "K" who has worked for more than 10 years is more experienced than the one at the county. So, this gives civil servants more training if you stay for 10 years.

Secondly, if you put five years, you will encourage people to walk in and walk out. You can just work for five years and you earn your pension and go out. There is no retention.

**Hon. Chairman:** Hon. Olago Aluoch.

**Hon. Aluoch:** Thank you, Hon. Chairman. I wish to support the Leader of the Majority Party on this one. I oppose this amendment because if you reduce the period from 10 to five years, we will have serious financial implications on the Treasury. To that extent, therefore, we will need approval from the Treasury to do that. If there is need to reduce the period, then you need expert advice from actuaries who will then work on the figures and see whether they are viable or not. Five years looks popular but it is not lawful.

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

*(Provisions relating to the Pensions Act (CAP. 189) agreed to)*

*(Schedule agreed to)*

*THE PHARMACY AND POISONS ACT (CAP.244)**SCHEDULE*

**Hon. (Ms.) Chege:** Hon. Chairman, I have consulted with regard to this amendment and I wish to drop it to facilitate further consultations.

*(Applause)*

**Hon. Chairman:** The amendment is dropped as requested.

*(Proposed amendment to Pharmacy and  
Poisons Act (CAP. 244) by Hon. (Ms.) Chege dropped)*

*(Provisions relating to Pharmacy and Poisons Act (CAP.244) agreed to)*

*(Schedule agreed to)*

*THE CLINICAL OFFICERS (TRAINING, REGISTRATION AND LICENSING) ACT, 1988**SCHEDULE*

**Hon. (Ms.) Chege:** Hon. Chairman, I beg to move:

THAT, the Bill be amended in the Schedule in the proposed amendments to the Clinical Officers (Training, Registration and Licensing) Act by deleting the marginal note and inserting therefor the following new marginal note-

“The Clinical Officers (Training, Registration and Licensing) Act Cap.260”

This amendment is purely to correct an error that had occurred. The previous Act No. 9 of 1988 has since been repealed and the correct Act in force is Cap.260. The amendment, therefore, deletes the wrong numbering of the Act as No. 9 of 1988 and replaces it with the correct numbering of the Act which is Cap.260.

*(Question of the amendment proposed)*

**Hon. Chairman:** Would Members like to speak to this? I see that Members are not very interested. Just give us a minute.

*(The Hon. Chairman consulted with the Clerks-at-the-Table)*

Hon. Sabina Chege, you may have to come closer because there is something that you need to clarify.

Hon. Members, we are trying to clarify from the Chair of the Departmental Committee on Health whether the Act should be amended to Cap.260 instead of the Act that was passed last year. Hon. Members, please give us a few minutes. What do you want to say to it, Hon. Sabina?

**Hon. (Ms.) Chege:** Thank you, Hon. Chairman. I just want to be on record that we passed another amendment Bill in 2017 and so, I wish to change it from Cap.260 to the Act of 2017. That is the only amendment I want to make.

**Hon. Chairman:** If it is an error, we can correct it here. If you want to propose a further amendment, you have to move a Motion so that it is clear. Go on record that you want it to refer to the Act that was passed in 2017.

I will give an opportunity to two Members so that I am sure that they are up to speed. Hon. Mbui, do you want to speak to this? He is not here. I do not see very many people on that side. Hon. Wanjira Wangari, Member for Gilgil, do you want to speak to 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)*

*(Provisions relating to the Clinical Officers  
(Training, Registration and Licensing) Act, 1988 as amended agreed to)*

*(Schedule as amended agreed to)*

*(Provisions relating to the Environmental  
(Management and Coordination) Act of 1999 agreed to)*

#### *THE SALARIES AND REMUNERATION COMMISSION ACT, 2011*

#### *SCHEDULE*

**Hon. Limo:** Hon. Chairman, I stand to move amendment to the Salaries and Remuneration Commission, Act, 2011. Before I move, on the basis of new information that we received yesterday, the proposed amendments intended to delete:

1. The proposed amendment to Section 4 (3);
2. The proposed amendment to Section 7;
3. The proposed amendment to Section 7(10); and
4. The proposed amendment to Section 7 (11)

Hon. Chairman, I withdraw this amendment. I want to make a justification. Section 4(3) of the Bill proposes to make the commissioners of the Salaries and Remuneration Commission full time as opposed to the current situation where they are part time. The SRC has been very ineffective according to the eyes of the public, including this House. There have been a lot of queries on the reason. By the fact that they are part time, they take a lot of time to make decisions and they are never there, even for this House. The Speaker who is the Chairman of the Parliamentary Service Commission (PSC) faced a lot of difficulties when he wanted to talk to them about the terms of Members of Parliament because they were never there. This Bill seeks to make them full time, so that they can concentrate on their work. They will not have any excuses.

The other amendment seeks to allow the Chairperson of this very important Commission to be appointed by the President and approved by this House. Previously, the Commission was like a trade union. It was controlled by the civil society organisations, which are known for fighting this House. So, we want this House to play a key role in appointing the Chair.

**Hon. Chairman:** That is where you go wrong. You were bringing out your point very well. The SRC deals with salaries across board; whether it is this House, the Judiciary and any other place. You have brought out your point very well until you came back again to the House. Proceed in the way you were doing it. It was okay.

**Hon. Limo:** Hon. Chairman, I meant that this House will approve the Chairperson of the Commission because we are the representatives of the people of Kenya, including the civil servants. So, I want to support this Bill. Therefore, we withdraw our amendments and support the Bill the way it is.

**Hon. Chairman:** Hon. Limo, are you withdrawing your amendment?

**Hon. Limo:** We are withdrawing our amendment, Hon. Chairman.

**Hon. Chairman:** The gist of all that you have said is that you were preparing ground to withdraw it. That is fine. It is withdrawn as asked. You have a right to do it.

**Hon. Limo:** Thank you, Hon. Chairman.

**Hon. Chairman:** Can we have the Leader of the Majority Party?

**Hon. A. B. Duale:** Hon. Chairman, I really want to thank the Chair of the Departmental Committee on Finance and National Planning who subjected this Bill to public participation. He has made it very clear. The PSC has representation in SRC. Even in the 11<sup>th</sup> Parliament, when we, as leadership, engaged the Speaker, SRC was on part time. They said that we would meet the following month on a particular date. When they met on that date, they missed quorum and then they decided to meet another day. So, just like any other commissioners, we have agreed to let them be full time, so that all the bodies can have their time with the Commission on a daily basis like the PSC, Judicial Service Commission (JSC), Kenya Defence Forces (KDF) and Public Service Commission.

Two, there is nowhere in any commission where the President is not involved as the Chief Executive Officer (CEO) of this country. That is very important. In every commission, the President gets three names and he picks one. This was not the case with SRC. That is why the Bill is giving the President the power to choose the Chairperson because it is a serious Commission. Just like in any other commission, that power must be returned to the President. We want to make sure that the selection panel is good, it has merit and it follows the tradition of other commissions. I want to thank the Chair of the Departmental Committee on Finance and National Planning for agreeing to withdraw that amendment. We support the Bill.

**Hon. Chairman:** The Members have listened to you. The amendment has been withdrawn. We do not need to flog it too much. The Leader of the Majority Party has expressed his thanks to the Chair of the Departmental Committee on Finance and National Planning. The rest of the membership has been represented by the Leader of the Majority Party. So, we will proceed. The amendment has been withdrawn. It is fine now.

**An Hon. Member:** Give Hon. K.J a chance to contribute.

**Hon. Chairman:** No, I will not give him an opportunity to contribute now. We have finished that amendment which has been withdrawn. We cannot discuss something that has been withdrawn.

*(Proposed amendment to the Salaries and*

*Remuneration Commission Act, 2011 by Hon. Limo withdrawn)*

*(Provisions relating to the Salaries and  
Remuneration Commission Act, 2011 agreed to)*

*(Schedule agreed to)*

I have heard Hon. KJ making a decision by voting clearly.

*THE OCCUPATIONAL THERAPISTS (TRAINING, REGISTRATION AND LICENSING) ACT, 2017*

*SCHEDULE*

**Hon. Chairman:** We will reshuffle the Acts here since we have already mentioned the Occupational Therapists (Training, Registration and Licensing) Act. That is what we will discuss before we come back to the Statutory Instruments Act.

Hon. Sabina Chege.

**Hon. (Ms.) Chege:** Hon. Chairman, I beg to move:

THAT, the Bill be amended in the Schedule in the proposed amendments to the Occupational Therapists (Training, Registration and Licensing) Act, No. 31 of 2017 by deleting the proposed amendment to Section 4(1)(g).

Hon. Chairman, for clarification, the amendment proposed in the Bill is not necessary. It proposes to correct an error in numbering which does not exist in the Act. The paragraphs in Section (4)(1)(g) of the Act are already numbered as 1, 2, 3, 4 and 5 respectively. Thank you.

*(Question of the amendment proposed)*

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

*(Provisions relating to the Occupational Therapists (Training, Registration and Licensing Act)  
2017, as amended agreed to)*

*(Schedule as amended agreed to)*

*THE STATUTORY INSTRUMENTS ACT, 2013*

*SCHEDULE*

**Hon. Chairman:** Hon. Shollei, the Chair of the Committee on Delegated Legislation.

**Hon. (Ms.) Shollei:** Hon. Chairman, I beg to move:

THAT, the Schedule to the Bill be amended in the proposed amendment to the Statutory Instruments Act, (*No. 23 of 2013*) by inserting the following items in their proper chronological sequence—

*Provision      Amendment*

- s. 2            (a) Insert the following new definition in its proper alphabetical sequence —  
 “Public participation” means involvement by the regulation making authority of persons or stakeholders that the statutory instrument may directly or indirectly apply to;
- (b) delete the definition of “explanatory memorandum” and substitute therefor the following new definition—  
 “explanatory memorandum” means a statement, prepared by the regulation-making authority that explains the purpose and operation of the statutory instrument and it includes any documents incorporated in the statutory instrument by reference and indicates how they may be obtained;”
- s.5            Insert the following new section immediately after section 5 —

An explanatory memorandum to accompany every memorandum which shall contain—

5A. (1) Every statutory instrument shall be accompanied by an explanatory memorandum to accompany every memorandum which shall contain—

(a) a statement on the proof and demonstration that sufficient public consultation was conducted as required under Articles 10 and 118 of the Constitution;

(b) a brief statement of all the consultations undertaken before the statutory instrument was made;

(c) a brief statement of the way the consultation was carried out;

(d) an outline of the results of the consultation;

(e) a brief explanation of any changes made to the legislation as a result of the consultation.

(2) Where no such consultations are undertaken as contemplated in subsection (1), the regulation-making authority shall explain why no such consultation was undertaken.

(3) The explanatory memorandum shall contain such other information in the

manner specified in the Schedule and may be accompanied by the regulatory impact statement prepared for the statutory instrument.

*Provision      Amendment*

s.11(2)      Delete subsection (2) and substitute therefor the following new subsection-

(1) Notwithstanding subsection (1) and pursuant to the legislative powers conferred on the National Assembly under Article 109 of the Constitution, all regulation-making authorities shall submit copies of all statutory instruments for tabling before the National Assembly.

Insert the word “sitting” immediately after the words “twenty eight”.

Insert the following new sub-section immediately after sub-section (2)-

(3) Despite the provision of this Act or any other written law, where a time is prescribed for doing an act or taking a proceeding by the National Assembly relating to the handling of a statutory instrument, the National Assembly may, by resolution, extend that time by a period not exceeding twenty one days.

With your permission, I can justify briefly.

**Hon. Chairman:** Proceed, Hon. (Ms.) Shollei.

**Hon. (Ms.) Shollei:** Hon. Chairman, public participation is a requirement under the Statutory Instruments Act but, unfortunately, our experience has been that, sometimes, the regulation-making authorities are unable to do this sufficiently because of the description or the manner in which public participation should be undertaken is not clearly stated in the Act. Therefore, this amendment is to further clarify how public participation should be undertaken and ensure we do not have a failure by the delegated regulation-making authorities in this regard.

The other amendment relates to the explanatory memorandum. It is a requirement again of the Statutory Instruments Act that whenever a regulatory-making authority submits the regulations to the Committee on Delegated Legislation, they must have an explanatory memorandum. Many do not clarify the contents in the Statute and, therefore, we have received many inadequate explanatory memoranda which make it difficult for us to scrutinise the regulation. Therefore, this amendment is to further clarify so that we do not have the challenge of inadequate clarification. It further clarifies that the explanatory memorandum must indicate that consultation was undertaken and if it was undertaken, it must indicate in which areas and the stakeholders who were involved. Therefore, it is going to ensure we do not have a situation of nullifying many regulations on this account and ensure that, indeed, the law is followed.

The other amendment relates to the amount of time Parliament and Committee have to scrutinise the regulations. In this case, the current law in the Statutory Instruments Act requires that it should be done within 28 days. We are proposing an amendment to make it 28 sitting days in order to give us sufficient time. It will also take care of the challenge and mischief by regulatory-making authorities who bring the regulations the time Parliament goes on recess or like the case in the 11<sup>th</sup> Parliament, just before the end of the term of the 11<sup>th</sup> Parliament because the law says that once they submit the regulations, if Parliament does not respond to them, the

regulations take effect automatically. When they want to bypass the scrutiny of Parliament, that is what they do. So, we have asked for increase of time so that we have sufficient time to take care of this mischief by various authorities. That is why we have made that proposed amendment. We have learnt lessons from the 11<sup>th</sup> Parliament which was the first to deal with statutory instruments coming before it. We have learnt from our predecessors that it is necessary to have this amendment.

With that brief justification, I beg to move.

**Hon. Chairman:** I will leave it to Members to make a decision.

*(Question of the amendment proposed)*

**Hon. Chairman:** Leader of the Majority Party.

**Hon. A.B. Duale:** Thank you, Hon. Chairman. I support the proposed amendments and thank Hon. Shollei for proposing these amendments. I am sure other Chairs of Committees will pick from where she has left. It is a function of this House to make sure that laws are very clear and complied with. In amendment 5A she has specified the relevant documents that must accompany any statutory document that is sent to Parliament, like the statement of proof, a brief statement on all the consultations to show that consultation was done with stakeholders and a brief statement on the way the consultation itself was done. So, proper public participation has been defined.

The most important amendment is where the statutory bodies sending those documents were using them to violate the law. They would bring the regulations on a day like today when they knew that Parliament was going on recess for the next, maybe, one month. They knew that if Parliament does not handle them, then the regulations would become law. So, now it has been specified to 28 sitting days.

Hon. Shollei has not justified the last bit where a new sub-section is being inserted immediately after sub-section 2. It says:

“Despite the provision of this Act or any other written law, where a time is prescribed for doing an act or taking proceeding by the National Assembly relating to the handling of a statutory instrument, the National Assembly may, by resolution, extend that time by a period not exceeding twenty one days.”

So, everything has been given a time line. Even the Committee cannot have a blank cheque. Parliament has 28 sitting days. Because of constraints and volume of work, then the Committee has been given a further 21 days. I support the proposed amendment.

These are very important amendments that will help the Chair and Members of the Committee on Delegated Legislation to do their work in a more efficient and prudent way.

I support.

**Hon. Chairman:** Hon. Gikaria.

**Hon. Gikaria:** Thank you, Hon. Chairman. First, let me thank the Leader of the Majority Party. The Leader of the Majority Party has been an asset to the 11<sup>th</sup> Parliament and 12<sup>th</sup> Parliament, particularly to the Majority side. He has pointed to the last bit of the proposed amendment. He is very keen on the House proceedings. The last section of the amendment is very important and Hon. Shollei did not give its justification. That is very a good thing for us.

I support the amendments and thank the Committee on Delegated Legislation for the good work. We had an opportunity of going round for public participation. We had no format of conducting it. We would get people brought together by somebody who have an interest in the

matter without knowledge of what they are supposed to do. Involving relevant stakeholders has now been introduced as key in public participation. People will no longer be brought to advance interests of an individual without knowing.

This has been captured in Sub-clause 5A as she has explained. The inclusion of more people and Parliament coming in to play a key role is important. Most of these bodies were taking advantage by bringing regulations when they knew that Parliament was going on recess.

**Hon. Chairman:** You should wind up now because you are beginning to debate.

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

*(Provisions relating to the Statutory Instruments  
(Act No.23 of 2013) as amended agreed to)*

*(Schedule as amended agreed to)*

*(Clause 2 agreed to)*

*(Clause 1 agreed to)*

*(Title agreed to)*

**Hon. Chairman:** *Can we now have the Mover of the Bill to move reporting?*

**Hon. A.B. Duale:** Hon. Chairman, I beg to move that the Committee does report to the House its consideration of the Statute Law (Miscellaneous Amendments) (No. 3) Bill (National Assembly Bill No. 44 of 2017) and its approval thereof with amendments.

*(Question proposed)*

*(Question put and agreed to)*

*(The House resumed)*

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

## REPORT

### THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) (NO. 3) BILL

**Hon. (Ms.) Shollei:** Hon. Deputy Speaker, I beg to report that a Committee of the whole House has considered the Statute Law (Miscellaneous Amendments)(No. 3) Bill (National Assembly Bill No. 44 of 2017) and approved the same with amendments.

**Hon. Deputy Speaker:** Now, let us have the Mover, Hon. Leader of the Majority Party.

**Hon. A.B. Duale:** Hon. Deputy Speaker, you need to rein in on the Chair of the Budget and Appropriations Committee since he was confusing Hon. Shollei. He was purporting, like Miguna, to be the Chair.

**Hon. Deputy Speaker:** I am not sure I got what you said but any confusion of course is highly discouraged.

**Hon. A.B. Duale:** He just came in now from the airport to see off our friend.

Hon. Deputy Speaker, I beg to move that the House does agree with the Committee in the said Report. I request Hon. Ichung'wah, Member for Kikuyu and the Chair of the Budget and Appropriations Committee, to second the Motion for agreement with the Report of the Committee of the whole House.

**Hon. Ichung'wah:** Thank you, Hon. Deputy Speaker. I second the Motion. I must state that I am not from the airport to see off anybody. I am glad that the State has shown that the rule of law works in this country; that impunity is not one way, it has to be two ways. If there is impunity on the side of the State, there can also be impunity on those who purport...

**Hon. Deputy Speaker:** That is completely irrelevant to your seconding of the Motion.

*(Question proposed)*

**Hon. Deputy Speaker:** Members who wanted to speak like KJ and others can have their shot briefly. Hon. KJ.

**Hon. Waweru:** Thank you, Hon. Deputy Speaker. I am going to be very brief now that the Chairman has decided to drop the amendments. The thing I needed to note is the fact that the Salaries and Remuneration Commission (SRC) cannot operate as a part-time Commission. We all understand that labour issues are not part-time. We know the situation with the issues of a commission that has been given the powers to regulate matters that have to do with remuneration of people who are serving this country.

Hon. Deputy Speaker, you are very versed with our Constitution. You understand what the Constitution has to say about this particular Commission in Article 230. It says that the powers and functions of the SRC shall be to...

**Hon. Deputy Speaker:** Obviously, what are you reading is not the Constitution.

**Hon. Waweru:** I took some few notes, Hon. Deputy Speaker. Article 230(4) states:

“The powers and functions of the Salaries and Remuneration Commission shall be to—

(a) set and regularly review the remuneration and benefits of all State officers; and

(b) *advise the national and county governments on the remuneration and benefits of all other public officers.*”

My concern had been the amendment that sought to delete the provision in the Bill which would allow the members of the SRC to serve on a full time basis. To my mind, we could not, as a House, be seen to relegate such an important Commission to serve on a part-time basis while we know that this country over and over is faced with a myriad of challenges arising from an ever-ballooning wage bill. For this reason, I commend the Chairman for withdrawing these amendments. It sits well right now.

Thank you.

**Hon. Deputy Speaker:** I see few Members who have placed their cards and they are not here. Hon. Okelo Odoyo and Hon. Oundo Ojiambo are not here but Hon. Jimmy Nuru Angwenyi Ondieki is here.

**Hon. Angwenyi:** Thank you, Hon. Deputy Speaker. I rise to support this Bill on the account that these commissioners now want to become a secretariat. They have a well-established secretariat

which can do the technical work. So, I do not see any reason that makes us approve their request to be full time commissioners.

**Hon. Deputy Speaker:** Are you supporting or opposing?

**Hon. Angwenyi:** I am opposing.

**Hon. Deputy Speaker:** It is now time for comments. Opposing and supporting are not very useful.

**Hon. Angwenyi:** Okay. Let me make my comments. The commissioners should not work full time. In any case, in the last six years, they have hired consultants to do most of the work. The consultants have laid the groundwork for that Commission which can now be done mainly by the secretariat. Secondly, I would like to support the idea that the President can appoint the Chairperson through a panel or directly appoint and propose to Parliament for approval, the same way he has done with the Cabinet Secretaries and the Attorney-General.

With those few remarks, I oppose the Bill.

**Hon. Deputy Speaker:** Hon. Mbui, do you want to say anything on this one? Good to see you walking without any aid.

**Hon. Mbui:** No.

**Hon. Deputy Speaker:** That is fine. Let us have the Mover to move the Third Reading.

**Hon. A.B. Duale:** Hon. Deputy Speaker, I beg to move that the....

**Hon. Deputy Speaker:** Just a minute, Hon. Leader of Majority. We may not go that direction now because I have not put the Question and we do not seem to have the required numbers for that. So, let us leave it for the next opportunity.

*(Putting of the Question deferred)*

Next Order.

## MOTIONS

### DESIGNATION AND GAZETTEMET OF AREAS AND STREETS FOR DEMONSTRATIONS AND PICKETING

THAT, aware that Article 37 of the Constitution guarantees every person the right, peaceably and unarmed, to assemble, to demonstrate, to picket, and to present petitions to public authorities; noting that there is need to guarantee that the enjoyment of rights and fundamental freedoms by any individual should not prejudice the rights and fundamental freedoms of others; noting that demonstrations and picketing in cities and major towns in the country, particularly in Nairobi, Mombasa and Kisumu have on many occasions resulted in destructions, loss of lives and property, public disorder, and creation of an unfavourable business environment; noting that the rights and freedoms are not unconditional because the Government has a duty and responsibility to ensure maintenance of peace and public order, and protection of the rights, life and property of all its citizens; this House resolves that the Government should designate and gazette specific areas and streets for demonstrations and picketing with a view to ensuring that individuals enjoy their rights and freedoms as

enshrined in the Constitution without infringing on the freedoms and rights of others.

*(Hon. King'ara on 21.3.2018)*

*(Resumption of Debate interrupted on 28.3.2018)*

**Hon. Deputy Speaker:** We will proceed from where we had reached yesterday. We still have a balance of 2 hours and 37 minutes. Kubai Iringo had just spoken. I think he had finalised. Did you have a balance of seven minutes? I thought you finished. Okay. Proceed, Hon. Iringo. My recollection is that you had wound up.

**Hon. Kubai Iringo:** Thank you, Hon. Deputy Speaker for allowing me to continue from where I had stopped yesterday in regard to this Motion on gazettement of areas and streets for demonstrations and picketing.

I am supporting this Motion because we, Kenyans, have not interpreted our rights correctly. We have also not embraced the purpose of demonstrations and picketing. If you go to the developed world, the European countries or even America, people demonstrate in an orderly fashion against some things. It is mostly to express their feelings against a government's policy, order, or anything. They do placards and billboards and put on t-shirts to express their dissatisfaction or what they would like the Government or any other arm of a public body to do. Instead of shouting and making noise, the placards and t-shirts speak for themselves.

I remember some time back when we were in Washington DC, some people were demonstrating against the UN. They came with placards with inscriptions of the messages they wanted to pass. They had t-shirts which were equally inscribed with what they were complaining about. Nobody was making noise. Whoever passed by them read their t-shirts and placards and understood their ache. The delegates were reading the same. When we went to the conference hall, those issues were addressed. Some of them were taken positively.

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

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

In our country, if we have a problem even with a headmaster in a school, instead of going to the District Education Officer (DEO) or people concerned, people go to the streets, close roads, burn tyres and disrupt all forms of activities. That is very wrong. That is why I am supporting this Motion. When you close a road with boulders, stones and burning tyres, you are actually destroying the same tarmac you have been complaining that the Government has not put on roads. Two, we disrupt people who could be going to do some very noble tasks. We even disrupt ambulances taking sick people to hospitals and many other activities.

Therefore, we need to put sanity in demonstrations in this country. We need to put sanity in people who demonstrate. If we have an issue with an office in Embakasi, why do we come to the CBD to run about and throw stones, beat and molest people? Some of them even steal, pickpocket and destroy property. Last time when there were demonstrations here in Nairobi we saw on television a trader who was carrying soda and other beverages on a handcart being

attacked. All his items were thrown on the road and damaged yet that was his only livelihood. We do not know whether he would start his business again.

Hon. Temporary Deputy Speaker, once we decide where picketing or demonstrations should be done, people who are not concerned will go about their businesses; they will go about their chores; they will go about doing their things without bothering others. It does not help when you carry stones and run all over throwing them.

Secondly, we need to design these areas in a way people who demonstrate get protection and enough space – a place where their messages can be well articulated and heard. It should not be in the forest. It should not be somewhere nobody will notice. It should be somewhere they can be seen while picketing. More so, they can even drop memoranda to the concerned parties and offices quietly, without disrupting activities or movement of other people.

I support this Motion. It will bring sanity in the way we handle demonstrations in this country in future.

**The Temporary Deputy Speaker** (Hon. (Ms.) Tuyu): Member for Juja, Hon. Waititu. Is he here? Hon. Ondieki.

**Hon. Angwenyi:** Thank you Hon. Temporary Deputy Speaker for giving me a chance to contribute on this important Motion.

Upfront, I support this Motion. We have seen demonstrations being organised overnight in this country. People's property is destroyed. In fact, even lives are destroyed. If we have designated areas for demonstrations, the Government can provide adequate security to those areas. It is so that whenever people are demonstrating or protesting, they will be contained. They will just do their protestation and demonstration without affecting other citizens who want to carry on with their businesses.

I remember there was a demonstration here in Nairobi a few months ago. I was taking somebody to the Aga Khan Hospital. I came across demonstrators on Valley Road. In a sense, the demonstration made it impossible for me to drive on or back. That patient was really in pain. I really suffered. I had to come out and tell them to kill me if they wanted to so long as they allowed that person to be taken to hospital. That is how I came to take that person to hospital. It was after about three hours of being marooned by those demonstrators yet what they were demonstrating on had nothing to do with me or that patient. This is a very important Motion. I wish it was brought many years back so that this country is peaceful.

You have also seen that we use the same road to our upcountry homes. A vehicle, once in a while, hits and kills some three or four goats belonging to the Maasai. Then the Maasai community, the herders, come to the road and block it. You cannot travel through Suswa during such times. They also burn the road. The cost of repairing that road is much higher than the cost of the dead four or five goats. If we had designated areas, those Maasai friends of mine would not destroy the road; they would go there, demonstrate and pass a message to the authorities that they have been wronged. The country will continue being peaceful. People will be doing their business in a normal way.

With those few remarks, I beg to support.

**The Temporary Deputy Speaker** (Hon. (Ms.) Tuyu): Hon. Member for Nyando. He is absent. Can we have the Hon. Member for Funyula? Is he here?

**Hon. Oundo:** Thank you for this opportunity, Hon. Temporary Deputy Speaker. I stand to oppose the Motion as currently drafted and presented in this House.

I probably want to sympathise with the drafter of the Motion because he might not know the history of this country. Those of us who have been in this country for some time – those of us

who were around during the clamour for multiparty politics – know the need of not curtailing the freedom of expression and the freedom of association.

The framers of the Constitution of Kenya 2010 were people of good faith, good meaning Kenyans who knew exactly where we were coming from and where they intended to take this country. When they inserted Article 37 that allowed for freedom of expression, the right to picket and demonstrate, they were not doing it out of malice or ignorance; they knew where we have come from. For record purposes, if by any chance we did not have demonstrations whether violent or not, we would not be talking about the freedom we enjoy today. Those of us who were around in the 1990s when Hon. Kenneth Matiba, Hon. Shikuku, Hon. Jaramogi Oginga Odinga, Rubia and the rest took to the streets of Nairobi to demonstrate for reinstatement of multiparty politics would be ashamed to listen to any Member of Parliament, in this Parliament today who would surely stand up and support such a draconian Motion to basically curtail that freedom, we have yearned and looked for many years.

The purpose of a demonstration, picketing and any formal action is to draw the attention of people, the world and the oppressors to the plight of the people who suffer in this country. To even imagine and think that we can designate special places to picket and demonstrate is to lose the essence of Article 37 of this Constitution. We have seen it in this country that whoever is charged with the responsibility of designating places for demonstration can take us to Mau Forest, Karura Forest and probably the Department of Defence (DOD). What stops him? Honestly speaking, this is a bad Motion to this country and any attempt to implement it is unconstitutional. The framers of the Constitution were very clear that the right to picket is enshrined in the Constitution. The right to protest against an injustice is enshrined in the Constitution. We cannot have any other way out. I want to say this for record purposes and I want to probably sympathize with Hon. Angwenyi for the inconvenience he went through. Those people who are demonstrating were protesting against an inconvenience and an injustice.

I can tell you for sure that the NASA demonstrations were peaceful and purposeful. They only became violent when the so called Nairobi Business Community, the police and all armed forces joined the fray to basically molest, beat up people for whatever reason. Many of us were in Nairobi on 30<sup>th</sup> January when the People's President took his oath. There was no disruption or looting. Nothing was destroyed in this country. Essentially, the problem is not the demonstrators; the problem is the Government and the security forces. How come in many occasions we have had very peaceful demonstrations and there has been no damage. There have been nothing. You will go to the streets of Nairobi, you are holding demonstrations, and all over a sudden, the police throw teargas. If I may ask, what offence did Hon. Mbui commit for him to be beaten by the police to the point of breaking his foot? I rise to strongly oppose on behalf of the people of Kenya, the downtrodden and oppressed people of this country. Any attempt to give a blanket cheque to any Executive, to determine, curtail, delineate or even attempt to limit the enjoyment of Article 37 is unconstitutional and needs to be opposed by whatever forces that you can master in this country. It is even more worrying where we have a Government, a system that routinely disregards court orders. A Government that believes in impunity and that the rule of law is an alien concept that does not apply to them... I sincerely urge my colleagues from whichever side of the political divide you sit it; you are law makers and protectors of public interest and human rights. Do not even envisage, imagine and contemplate at any time to curtail the right of ordinary people to express their dissatisfaction, disapproval of any activity of any nature.

With those few remarks, I stand to oppose the Motion.

**The Temporary Deputy Speaker** (Hon. (Ms.) Tuya): Member for Westlands.

**Hon. Wetangula:** I thank you, Hon. Temporary Deputy Speaker for giving me a chance to speak on this Motion. Picking up from where Hon. Oundo has left, this is a draconian Motion that should not have seen the light of the day.

The Mover of this Motion should read the Bill of Rights in totality and understand it. When people are given the right to picket and demonstrate, you cannot gag them. You cannot start creating boundaries that they are supposed to demonstrate in this level and not the other level. When you are demonstrating, it means that there is something you are aggrieved about. You are sending a message that there is something that is not right. We could go outside the offices of IEBC and send a message that we are not happy about what was going on and we wanted something to be done. If you are unhappy about a certain officer, we can go to that corner, where that officer is doing his trade and deal with it from there. I therefore do not see how designated areas are going to work for people who want to demonstrate. Demonstrations have no limit or boundaries. In fact, the biggest violator of the human rights is the State. If we give the State a blank cheque to do whatever they want, the police will go and confine people in certain corners where they can clobber you senseless. This is not allowed. We cannot allow this. We are law makers, this is a House of record, a place where we are supposed to make laws to govern this country and we must give Kenyans good laws that can guide the development and bring order in the country.

We have come from far. During the KANU days in the 1980s, people were not allowed to do anything even in their own houses. People were arrested. What is happening to Hon. Miguna happened to a street preacher called Balala. He was flown all over the world and brought back. The Government is exercising impunity. I believe that individuals who were involved in the saga of Miguna will one day pay individually to what is happening. They are disregarding the law and if we give them leeway, they can do the worst. We have just come from a very acrimonious election which was hotly contested and ended up in demonstrations. We are demanding reforms and some of the things that we are enjoying today were achieved through demonstrations and public *barazas*. We should not take some of these things for granted. We must protect this Constitution, the Bill of Rights, citizens' rights and therefore, I oppose this Motion and request the Mover to withdraw it. I oppose and hope that all of us in this House will see the mischief in this Motion.

Thank you for allowing me to speak on this Motion.

**The Temporary Deputy Speaker** (Hon. (Ms.) Tuya): Member for Kathiani.

**Hon. Mbui:** Thank you, Hon. Temporary Deputy Speaker. Let me apologise for putting my card on intervention. There was a problem with the systems. In fact, since yesterday they keep going on and off, so we end up having a problem being spotted by the Speaker.

I want to begin by thanking the Mover of this Motion for giving us all an opportunity to interrogate the Bill of Rights upon which this Motion is based. The Bill of Rights is drawn from our very progressive Constitution, which puts us among the top in the land, other than a few grey areas in the Constitution which we expect that after that handshake maybe we will reach a point where as a country we can sort out those small issues.

Our Bill of Rights recognises and protects fundamental rights and freedoms for the benefit of ensuring that there is human dignity and communal dignity. These rights and freedoms belong to each individual and are not, I want to repeat, are not granted by the State or even by Parliament. These rights and freedoms are subject only to the limitations that are noted within the Constitution. When you read Article 24 on the limitation of fundamental rights and freedoms,

clause 2(c) says that legislation, like we are doing, shall not limit the right or freedom so far as to derogate from its core or essential content. Article 37 clearly says that every person has a right peaceably and unarmed to assemble, demonstrate, picket and to issue petitions to public authorities. For those reasons, I oppose this Motion. I think it is retrogressive. It is totally unconstitutional. It goes against Article 24(2)(c) of the Constitution.

The purpose for petitions or demonstrations is obviously either somebody or people are aggrieved or they want to celebrate. That is the freedom given in the Constitution. When people are supposed to be now designated specific areas, it means that even the enjoyment of their right of freedom and pass on petitions is curtailed. When you say that you are going to designate, then where are we going to say that people are allowed to go? The minute you give a blanket cheque like this one, it means the law might say that now we are allowed to go and picket in the desert. How then will it be able to be effective? Clearly, the reason for demonstration...like my colleague has just talked about IEBC... When we were aggrieved about IEBC and we are told to go and picket somewhere in Karura Forest, what effect will it have on the officers who will be enjoying the comfort of their offices not knowing that Kenyans are aggrieved? If something like an accident occurs, like you have just said that careless drivers are killing goats and cows on the highway, the Maasai have a right to demonstrate and say that they are unhappy about the usage of the road and carelessness of the drivers.

The issue that people do not get here is that the Government has a role to provide security. There is a difference between unarmed and peaceful demonstration and those ones which are violent. So if people are peaceful and unarmed, they should be allowed to demonstrate and picket in any corner of the country. When we talk about loss of property, I was involved in the celebrations when the Rt. Hon. Raila Amolo Odinga was coming back from Germany. I was part of the convoy that came to celebrate his grand return to the country. Unfortunately, it looks like the Jubilee regime does not want us to even celebrate the return of our hero. So they put blockades all over. We were attacked and beaten. People were killed. They broke my leg. Thank God I have recovered. I have been on crutches, now I am walking without them.

Hon. Temporary Deputy Speaker, please protect me from the Deputy Leader of the Majority Party. If you look at those demonstrations, it is true that sometimes they get violent, but in the case I am speaking of, it was peaceful until the police started attacking. It was unfortunate because throughout the day the violence you saw was being meted out by the police against innocent Kenyans. They threw teargas. They shot at us. They threw stones at us. We have evidence to that effect. It is unfortunate that if we are peaceful and the police are violent then people who are picketing are supposed to be on the wrong.

I want to ask that we withdraw this Motion in good faith for the sake of the citizens that we represent in this House and we allow them to picket as long as it is peaceful, as long as they are unarmed and as long as the police go to only keep peace and order, not to attack demonstrators. All of you have seen what has happened to our Kenyans. Right now as we talk about this, there are demonstrations in Kisumu because of the inhuman treatment meted out against a Kenyan by the name Dr. Miguna Miguna. It is so unfortunate. They are demonstrating where they are. If you say they should not demonstrate there and you pull them out of the highway, how will the world know that Miguna is being unfairly treated? How will the world know that this country can actually throw out a citizen and make him stateless in Dubai? Yet we all know that this is a Kenyan. He has stood for political office. This impunity has to come to an end. Members, irrespective of which side of the political divide you are, I think we have a role and responsibility to ensure that we move the country forward together.

With those few remarks, I oppose and beg my colleague to withdraw this Motion so that the country can move forward. After the handshake, we are now healing. We do not want more pain. Thank you, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. Ms. Tuya): Order Members. We need to give every Member a chance to freely express themselves. Let us not harass anybody who has an opposing view from yours.

Hon. Wanjira.

**Hon. (Ms.) Wanjira:** Thank you, Hon. Temporary Deputy Speaker. I want to appreciate the Bill of Rights in our Constitution. In fact, we are one of the most progressive countries in terms of an expansive and well drafted Bill of Rights. But if you read Article 27 of the Constitution, it talks to peaceful and unarmed demonstrations. Those of us who also read, even if we were not there in the 1990s, what we are witnessing in the new Kenya today is different from what was witnessed during that time. Demonstrations nowadays are being used as tools of economic sabotage. They are being used as tools of just causing inconvenience for the sake of looking for attention. That is exactly what has necessitated this Motion.

Even as we celebrate the handshake, it is quite an expensive handshake. Why? Because for it to even get there, it took lives being lost. It took the economy crawling literally just because we want the world to know so that we can have a case, just because we feel we want to catch the attention of other people. That has to stop. It may not be an easy thing to do, but it is necessary. Demonstrations that were there in the 1990s and yesteryears are not the same today. Today we just want to use this to just cause chaos. I want to refer to the whole of last year: There is little business that was done in this country. Why? Because one person felt he is not happy with an election. The same person who has now said we have buried the hatchet left many people dead and others disillusioned. Many businesses collapsed. That cannot be allowed and it cannot continue being encouraged just because of the Bill of Rights. If you infringe on my own rights then it is unconstitutional. Your rights end where mine begin. It cannot be so absolute that you can trample on my rights and I am not supposed to say anything. Where are my rights as a business person who is making an honest living in Nairobi or Kisumu or Mombasa or wherever else? Where are those people to protect those rights?

I have heard Hon. Mbui, but I have not seen a stone thrower who is a policeman. I have only seen demonstrators who are throwing stones to the police officers. That has gone on for so long. We have lost lives and it cannot just be left to be free for all. There must be a control. The reason I support this Motion is that we may not be able to implement it in the rural areas but at least in the main cities. This must be put into perspective.

In most of the developed countries, even when there is unrest, protests or impeachment of a sitting president or prime minister, you will be surprised to see people demonstrating in one corner as business continues. They will also get the attention they wish from the media and everyone else. This can also be done here, Uhuru Park or, those areas that have a history of the era when we fought for the freedom we enjoy today.

The gazettment will also come to this House in terms of regulations because anything else that would be done... I am imagining this will also affect some of the few Bills and Acts that we have like the Cities and Urban Areas Act. If that happens, the regulations will come to the Committee on Delegated Legislation of this very honourable House so that they interrogate them. It should not inconvenience the rights of other people who are honestly making their living, trying to provide for their children and enjoying some rights which are also embedded in the same Constitution.

With that, I beg to support and hope that we can get a way of getting the regulations to actually know how it would be done.

**The Temporary Deputy Speaker** (Hon. (Ms) Tuya): Hon. Tom Oluoch, the Member for Mathare, the Floor is yours.

**The Member for Mathare** (Hon. Andrew Adipo Oluoch): Thank you, Hon. Temporary Deputy Speaker for giving me this opportunity to speak.

Even though I have spoken before on the question of constitutionality of a certain Bill, this is my first opportunity to speak substantially. I want to first take this opportunity to thank the people of Mathare Constituency which is in Nairobi for giving me the opportunity to serve as their Member of Parliament. I promise to serve them diligently without fear or favour. Mathare Constituency is one of those cosmopolitan constituencies where you have the face of Kenya. We have the Boranas, Kikuyus, Rendilles, Kisiis, Luos and Luhyas. Basically, if you come to Mathare Constituency, you will find the entire Kenya there. As their Member of Parliament, I will not be serving them as Antony or as a member of my community but as a citizen.

Secondly, I rise to oppose this Motion. One of the key tenets of our Constitution, 2010 is on the question of the rule of law. As I speak to you, the reason I am making my maiden speech today is because about four months of my work as a Member of Parliament was curtailed. One Sunday I took my children to church but never saw them again for another 10 days. The reason that happened is because I went with His Excellency, my party leader, Hon. Raila Amollo Odinga to intervene in a situation in Mathare and Ruaraka Constituencies where residents were exercising their rights under Article 37 of the Constitution.

Hon. Temporary Deputy Speaker, even without this power that we now want to give the Executive and the police to limit these rights, the police have demonstrated that they can act rogue. Without provocation, peaceably and unarmed, the police fired teargas, water cannons and shot at me. As result, I had a broken leg that had me hospitalised at Nairobi Hospital for a period of more than 10 days.

My colleague who spoke before you, Hon. Mbui, also peaceably and unarmed, while welcoming His Excellency Raila Amollo Odinga from the airport, as I watched in the car just before him, was teargassed, shot at and as a result broke his leg. He, just like me, lost nearly four months of active ability to represent his people both in Parliament and in his constituency. So, as I rise to oppose this Bill, I first want to ask that we spend a little time thinking about the constitutionality of this law.

Hon. Temporary Deputy Speaker, everything that this House does is guided by the Constitution. Parliament is an organ and an entity created under the law and the Constitution. Article 37 of the Constitution states that every person has a right to peaceably and unarmed, to assemble, demonstrate, picket and present petitions to public authorities.

Article 24 of the Constitution and I want to concede this, allows for limitation of rights. However, it is important that we read the text of Article 24 of the Constitution. It says that a right or a fundamental freedom shall not be limited except by law. These powers that we want to give to the Executive through a Motion which if given effect by the national Government or the police does not have the foundation of a law or a statute - shall not be limited except by law. If you read further on this provision, it also says that even when you limit it, assuming that there was a law, by law I want to persuade this House that a Bill brought before the House, passed, acted and gazetted then becomes law... This Motion is going to give the power to the Executive without the foundation or basis of law. However, even if we had that law, it says that only to the extent that that limitation is reasonable. That is one condition. So it is not a *carte blanche*. It says you

may limit it but only to the extent that it is limited. That is one of the provisions. It also says that it must be justifiable in an open, democratic and transparent society.

The considerations that need to be taken into account are also delineated under Article No. 24. This Motion does not comply with Article 24(1) (a)(b)(c)(d) and (e). It says that that law, and I want to reassert that this is not law, and even if it was, it must state from the very outset the freedom that is being limited. It must underline the importance and purpose of the limitation, the nature and extent of the limitation and the need to ensure the enjoyment of the rights and fundamental freedoms. You also need to take into account the rule of law.

Article 10 of our Constitution underlines the question of the rule of law. We have seen it in the period intervening the elections to date. Most recently we have seen the case of the unlawful, unjustifiable, draconian, barbaric deportation of a Kenyan citizen by the name Dr. Miguna Miguna. More than eight court orders cannot be flouted. We cannot be flouting the law on one hand and say that the law requires you to stamp some certain documents. On the other hand, the Constitution says that we are founded on democracy and the rule of law. Court orders are part of the law of the Republic of Kenya. One arm of Government issues court orders and in turn the Government without blinking an eye disregards them on grounds that it is the law when a citizen of this country is being sent away because of some piece of paper saying that he needs to produce his passport.

Hon. Temporary Deputy Speaker, I am worried about the differential treatment by the police and the State agencies in enforcing the law. There are people who were demonstrating about charcoal burning in Kitui and the police did absolutely nothing. The entire Limuru-Naivasha Road, which leads to western Kenya was paralysed for 12 hours, but the police do not find that there was need for teargas. All of a sudden, they ran out teargas, but when a student in Meru and other people demonstrate for similar rights, they are shot dead. Hon. Mbui and I were lucky to survive police teargas, bullets and canisters.

**The Temporary Deputy Speaker** (Hon. (Ms.) Tuya): Order, Hon. Oluoch. You are confusing me a bit. You raised a very important issue on the constitutionality of the Motion. You have now gone ahead to do some freelance contribution to the Motion. I thought you would want us to ventilate on that very important issue that you brought out, dispense with it before we can go on to having general contributions by Members on the Motion.

**The Member for Mathare** (Hon. Andrew Adipo Oluoch): Yes, Hon. Temporary Deputy Speaker. I am guided. I raised an issue and if you mind to issue a ruling on the question of constitutionality, or to allow Members to ventilate on it, I will be most obliged. So, I will pose and ask that I freeze my contribution and save it to after your ruling to this matter depending on how it goes.

**The Temporary Deputy Speaker** (Hon. (Ms.) Tuya): Hon. Members, if you have listened clearly to the Member for Mathare, he has raised an important issue touching on the Bill of Rights. He has quoted Articles 24 and 37 of the Constitution. We cannot sweep it under the carpet. I would want to give a few Members sometime to ventilate on this before we have a clear way forward on it. I can see Hon. Mbui, you did contribute substantively to the Motion but this is for purposes only of the issues raised by the Member for Mathare on the constitutionality of the Motion. That should apply to the other Members. Let us have Hon. Mbui.

**Hon. Mbui:** Thank you, Hon. Temporary Deputy Speaker. I support my colleague in asking you to make a ruling on whether this Motion is correctly before the House. This is a Motion that infringes on the constitutional rights and fundamental freedoms that are vested in our Constitution. By discussing this and passing it, we will be breaking the law. The supreme law of

the land is the Constitution 2010 and this violates it. So, we seek your indulgence that you give us guidance.

**The Temporary Deputy Speaker** (Hon. (Ms.) Tuya): Do I see the Hon. Member for Igembe South, Hon. Mwirigi Paul? You want to speak to the issue raised by the Member for Mathare?

**Hon. Mwirigi:** Yes. Hon. Temporary Deputy Speaker. According to the Motion, we do not want to alter the Constitution but we want to designate and make restrictions. This is because there are people who get affected by the demonstrations and yet they are not directly involved. We want the ruling to be clear. It is not that we want to alter the Constitution, Article 37. We want to have other citizens enjoy their rights. Thank you.

**The Temporary Deputy Speaker** (Hon. (Ms.) Tuya): Hon. Member for Igembe Central.

**Hon. Kubai Iringo:** Thank you, Hon. Temporary Speaker. We are not changing the Constitution. When we talk of constitutionalism, we are trying to ensure that those picketing and demonstrating do not interfere with other people's rights. In as much as we want to say those who are picketing and demonstrating have their constitutional rights, they also should know that their freedom ends when they interfere with other people's freedom. When a demonstration is being done, it is not done by the whole country, city or community. It is that clique of people who want to demonstrate who should air...

**The Temporary Deputy Speaker** (Hon. (Ms.) Tuya): Order, Hon. Iringo. We are on a constitutionality issue raised by Hon. Oluoch. That is the one we want to dispense with before we move on. So, please, confine yourself to the issue because it is very weighty such that we can either continue with the Motion or not.

**Hon. Kubai Iringo:** Hon. Temporary Deputy Speaker, I strongly agree with you. I feel we need to continue with the Motion because we are just trying to limit the extent of the demonstrations but not interfering with people's freedom. We are not saying that demonstrations and picketing should not be there, but we are suggesting limits as to what extent this can be done.

**The Temporary Deputy Speaker** (Hon. (Ms.) Tuya): Hon. Kabinga. Again, confine yourself to the issue raised by the Member for Mathare.

**Hon. Josphat Wachira:** Thank you, Hon. Temporary Speaker. I would like to propose that we continue with this Motion. I do not see violation of Article 37. When such Motions come up, they enable us interrogate the various articles of our Constitution and not just one article. When we talk about Article 37 that provides for demonstrations and picketing, we need to look at that alongside others. I would like my brothers to also look at Article 27. As we organise demonstrations and other things, we must ensure that we do not violate Article 27 (4) which states thus:

“The State shall not discriminate directly or indirectly against any person on any ground, including race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth.”

When we organise demonstrations knowing very well that there is potential for violence, our disabled people will not participate, our pregnant mothers and the elderly will not participate. This is why this Motion is coming in, so that we can have order and designate areas. This does not mean forests. It can be a whole street in Nairobi where people can do whatever they want to do. So, we need to move on with this Motion because it is very important.

Some people forget that in the past we were fighting to get the Constitution that we now have so that we can follow it and have an orderly country. One where when you are getting in, you have proper documents, present them and you will not be harassed. However, when you

come with no documents and we have lawyers going to the airport to cause drama so that there can be some demonstrations, we need to run away from that.

**The Temporary Deputy Speaker** (Hon. (Ms.) Tuya): Order, Member for Mwea. Hon. Members, you have now deviated again. I need to bring to your attention the issues raised by the Hon. Member for Mathare. He has quoted Article 37 of the Constitution. I can see Hon. Kingara is here. You are the owner of the Motion. We have ventilated enough and so I am going to make my ruling but not without giving the Mover of the Motion a chance to speak to it.

I just want to brief you that Hon. Oluoch has raised an issue touching on the unconstitutionality of your Motion by virtue of the fact that the right to assemble, demonstrate, picket and petition is guaranteed under Article 37 of the Constitution. The only limitations imposed on such rights and others in the Bill of Rights are stated under Article 24 which according to the Constitution can only be limited by a law. It goes ahead, to give specific factors which are quite stringent upon a law.

Even if we have a law that is limiting rights guaranteed by the Constitution under the Bill of Rights, there are certain limitations under Article 24(1) (a) to (e) of the Constitution, which apply only within certain confines. This is the predicament we are faced with. Obviously, when we designate areas for picketing and demonstration that is a limitation to the rights guaranteed under Article 37 of the Constitution. Yet, we are doing it not by law but through a Motion by Hon. King'ara. I will give Members a few minutes to say something about this issue.

**Hon. Angwenyi:** On a point of order, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. (Ms.) Tuya): Hon. Angwenyi, what is out of order?

**Hon. Angwenyi:** On a point of order, Hon. Temporary Deputy Speaker. Before a Motion is brought here for discussion, it has to be scrutinised on whether it is in tandem with the Constitution of Kenya or any other law. Before, this Motion was brought here for discussion it had qualified through that process. We should not question whether it is constitutional or not. It is constitutional and that is why it was allowed to be discussed on the Floor of the House. What we can do is to either oppose or accept it.

**The Temporary Deputy Speaker** (Hon. (Ms.) Tuya): Hon. Angwenyi, I agree with you entirely, but it could also pass the scrutinisers because certain issues may slip through their fingers. We cannot by-pass this critical issue raised by the Member for Mathare. I can only give a few more Members time to contribute to this Motion but confine them to the constitutionality issue raised by the Member for Mathare. We cannot walk over it.

**Hon. Martin Wambugu:** On a point of order, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. (Ms.) Tuya): You know there cannot be anything out of order, not unless you want to speak to the issue raised by the Member for Mathare. I am the only one speaking and I cannot be out of order. Hon. Wambugu, very briefly speak on the constitutionality issue.

**Hon. Martin Wambugu:** Thank you, Hon. Temporary Deputy Speaker. I rise to speak to the constitutionality issue. My colleague, Hon. Oluoch has spoken about Article 24. He started with Article 37 and I agree with him. In fact, I am one of the few people who have an order from court confirming that aspect of the Constitution. We have Article 28 which speaks about the right to human dignity; Article 29 which speaks about freedom and security of the person; Article 39 which speaks about freedom of movement and residence and Article 40 which speaks about protection of right to property.

On the issue concerning constitutionality of the Motion, I have noticed that my colleague has either deliberately or by default decided to understand what we are discussing as a limitation to a right. As a House, we have been mandated by the Constitution to make laws. We have to begin from somewhere. Looking at the Motion we are discussing, we are doing this because as a country we have a history of this right being misused. For example, the fact that Hon. Oluoch is picketing does not mean that I cannot move or go to the airport as Ngunjiri because he has gone to meet his party leader. His right does not take away my right. When discussing constitutionality, we should understand that this Constitution is for all of us and not for those who want to demonstrate. In any given time, the people demonstrating are a very small minority in the country.

**The Temporary Deputy Speaker** (Hon. (Ms.) Tuya): Hon. Wambugu, you have made your point.

**Hon. Martin Wambugu**: Thank you, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. (Ms.) Tuya): I think we are skirting over the issue instead of confronting it. I will give one more Member from this side. Is that the Member for Nyando or Funyula? Where are you? Just give the microphone to the Hon. Member. Then, Hon. King'ara, will make a point and I will close this.

**Hon. Oundo**: Thank you, Hon. Temporary Deputy Speaker. Indeed, it is not the first time that the issue of constitutionality of a Motion or Bill has been raised in this House. Not so long ago, we raised the issue of constitutionality regarding the Nairobi Metropolitan Area Transport Authority Bill. Of course, common sense prevailed and it was withdrawn having noticed the danger it poses to the Constitution.

I want to draw your attention to Article 255 which is expressly clear that a proposed amendment to this Constitution shall be enacted in accordance with Articles 256 or 257 and approved in accordance with Article 255(2) by referendum, if the amendments relate to those matters and more so, the Bill of Rights. The essence of this Motion is to give the Executive the power to limit the enjoyment of the right. Article 29 is very clear concerning the freedom and security of the person. It states:

“29. Every person has the right to freedom and security of the person, which includes the right not to be –

(a) deprived of freedom arbitrarily or without justice cause.”

Limiting where I can protest, picket or confining me so that I cannot protest and raise issues against poor governance in any public forum is essentially limiting the rights of the people.

**The Temporary Deputy Speaker** (Hon. (Ms.) Tuya): Hon. Members, I am only going to give anyone speaking to the issue we are on, not more than two minutes. You cannot belabor the point. You are either in support of the issue raised by the Member for Mathare or against it without extrapolating the issues on the Motion. I think you have made your point, Hon. Member. Member for Emuhaya.

**Hon. Milemba**: Thank you, Hon. Temporary Deputy Speaker. I want to confine myself to the constitutionality of this Motion. I quickly want to indicate that it is wrong for the House to be informed and guided, as I earlier heard, that only just a small group of people look at the constitutionality of the Motions before they come here. That is a misguided approach. There is only one institution that can make a decision on the constitutionality of any law in this country and that is the Judiciary. Section 37 is very strong...

**The Temporary Deputy Speaker** (Hon. (Ms.) Tuya): Do not go to the substance of the Motion.

**Hon. Milemba:** Therefore, I quickly support the fact that this Motion is not proper and against our Constitution, which is supreme. At no time should this House look like it wants to meddle with the Constitution, unless we are handling a Constitutional Motion.

**The Temporary Deputy Speaker** (Hon. (Ms.) Tuya): Member for Tharaka Nithi.

**Hon. (Ms.) B.N. Nyaga:** Thank you, Hon. Temporary Deputy Speaker, for giving me this opportunity. We are not trying to change the Constitution of this country. We are just saying that those who want to picket or demonstrate should do it somewhere at a particular time unarmed and very peaceful. So, there is nothing of changing the Constitution of this country. It is very clear.

**The Temporary Deputy Speaker** (Hon. (Ms.) Tuya): Finally, let us have Hon. Manje.

**Hon. Manje:** Thank you, Hon. Temporary Deputy Speaker, for giving me this chance to also speak. It is clear that Article 37 of the Constitution says “peaceful assembly,” but how do you control if people go beyond that? Do you not see a way you can make them demonstrate and use the crude objects in a specific area which will not affect other people? If it is allowed to remain the way it is and you know the nature of demonstrations in this country is changing, it means people can come inside this Parliament and demonstrate because that will be within the law of demonstration. I think this is what the Motion is trying to curtail. People can demonstrate but in certain areas. They cannot go inside a church or court and demonstrate. Go to a specific area and demonstrate so that the country can continue. It is the nature of demonstration that is changing. Therefore, it requires the law to guide that.

**The Temporary Deputy Speaker** (Hon. (Ms.) Tuya): Hon. King’ara.

**Hon. King’ara:** Thank you, Hon. Temporary Deputy Speaker. If the House allows, I will just wish to give the Member for Gichugu just three minutes to put a word.

**The Temporary Deputy Speaker** (Hon. (Ms.) Tuya): Come again Hon. King’ara.

**Hon. King’ara:** Hon. Temporary Deputy Speaker, I request that I donate three minutes of my time. It is related to the same.

**The Temporary Deputy Speaker** (Hon. (Ms.) Tuya): You are not replying to the Motion, Hon. Member. I am just giving you a chance to speak to the issue raised by...

**Hon. King’ara:** My colleague does not have a card and he wants to put a point across because...

**The Temporary Deputy Speaker** (Hon. (Ms.) Tuya): It seems you want to have more Members inform you before you make your point.

**Hon. King’ara:** He has an important point but lacks a card.

**The Temporary Deputy Speaker** (Hon. (Ms.) Tuya): Okay, I will allow you to have another Member but you are not donating any time. I will give the Member who may have important information that may help you to say something. Let us have the Member for Gichugu.

**Hon. Githinji:** Thank you, Hon. Temporary Deputy Speaker. I rise to respond on the issues that have been raised on the constitutionality of this Motion. Firstly, Article 37 does not indicate the areas or the limit of picketing and demonstration. Article 24 of the Constitution talks about the limitation of the right itself and not the area where one can demonstrate or picket. My colleague and Member for Mathare is also economical with the truth because he conveniently avoided Article 25 of the Constitution, which specifically says which rights and freedoms cannot be limited.

Article 25 of the Constitution says:

“Despite any other provision in this Constitution, the following rights and fundamental freedoms shall not be limited”

The Constitution is very clear. The only rights that cannot be limited are:

“(a) freedom from torture and cruel, inhuman or degrading treatment or punishment;

(b) freedom from slavery or servitude;

(c) the right to a fair trial; and

(d) the right to an order of *habeas corpus*.”

So, it means that the same Constitution, which is also the supreme law, limits the other rights under Article 37. This Motion is in a proper place in this House because this right can be limited by the same Constitution. If you look at Article 39 of the Constitution, it is also a freedom under the Constitution and if a person also has a right and a freedom of movement, it means that that right also has to be protected under the Constitution. One of the areas that this Motion tries to bring out is that my right as a citizen and another person’s right of movement has been limited because of another right within the Constitution.

That is why I oppose the issues of constitutionality that have been raised by the Member for Mathare.

Thank you, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. (Ms.) Tuya): Member for Gichugu, you have put it very well. I think what the Member for Mathare is contesting is not whether rights can be limited under the Constitution; it is the manner in which this limitation should be done.

Hon. Members, now allow me to have the Mover of the Motion. I think you are ready now to say something.

**An Hon. Member:** On a point of information.

**The Temporary Deputy Speaker** (Hon. (Ms.) Tuya): Who are you informing, Hon. Member?

**An Hon. Member:** The House.

**The Temporary Deputy Speaker** (Hon. (Ms.) Tuya): No, you do not have that leeway to inform the House. I think we have belaboured on this enough. Hon. King’ara, are you ready? Is Hon. Nyamai also informing you?

**Hon. King’ara:** The Chair wants to say something on it, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. (Ms.) Tuya): No! No! I think we are belabouring too much on this. We need to move on with the business of the House. Hon. King’ara, say something about your Motion before we dispense with it.

**Hon. King’ara:** Hon. Temporary Deputy Speaker, I am not withdrawing the Motion.

**The Temporary Deputy Speaker** (Hon. (Ms.) Tuya): No, you cannot force the Member to withdraw the Motion. I am just giving you time to say something on the issue raised by the Member for Mathare. Please get me clear.

**Hon. King’ara:** Hon. Temporary Deputy Speaker, I am very worried.

**The Temporary Deputy Speaker** (Hon. (Ms.) Tuya): You should not be coerced to withdraw your Motion.

**Hon. King’ara:** Not even that, Hon. Temporary Deputy Speaker. I am just very worried. People just want to ruin their own country for reasons known to them. I have been listening to how fellow Members want to use the Constitution they have used before. They have even quoted people who are misbehaving and going against our Constitution and they think it is a right. Some

of those things which have been said are because somebody has refused to adhere to the Constitution.

I have not heard anybody raising the matter of those people who lost their lives and property because of other people's rights. I am left wondering who will protect our country if not this House. As much as we want to show how much we know, there should be order in this country. Where do we get these orders from? It is from us. How do we do it? We use the law. The laws which have been quoted there, even if I am not a lawyer, have limitations. I thought the much one would have done is, maybe, seek for an amendment because there must be law. There should be a point where even the tiniest misbecoming is protected. So, it cannot be a blanket confinement to the Constitution and others are left behind. Who will take care of those who have lost their right? Who will take care of those who have lost their property? Which law will guide us on how to do our business in order?

As I stand here, maybe people are demonstrating out there anyhow. One of the reasons which made me pursue this Motion is those people who take advantage of an issue and joyride. For instance, a demonstration may be taking place in one corner while other people are looting in the other corner. If there was order of whichever nature, we could sober up and engage in our business. If the Constitution they have touched on has limitations, it is within those limitations that we can continue with the business of this Motion.

**The Temporary Deputy Speaker** (Hon. (Ms.) Tuya): Order Members! Hon. Members, the Member for Mathare has raised two critical issues of importance relating to the constitutionality of the Motion - whose Mover is Hon. King'ara - on whether it offends Articles 24 and 37 of the Constitution relating to the appropriate manner of limiting the right to picket and demonstrate. Most of you who have spoken to the point of order admit that the Motion by Hon. King'ara seeks to limit the right to picket and demonstrate by urging the Government to designate suitable places for picketing and demonstrating. The issue before me is not whether this right can be limited or not but whether a Motion is a suitable vehicle through which to undertake such a limitation on the right to picket and demonstrate under the Bill of Rights. I am currently unable to make a determination on this issue at the moment. Under the circumstances, I order that this Motion be stayed until the Speaker makes a substantive ruling on this weighty matter.

*(Motion deferred)*

Let us move to the next Order.

#### WAIVER OF CHARGES AND ESTABLISHMENT OF EMPLOYMENT DATABASE

**Hon. (Ms.) Gitau:** Hon. Temporary Deputy Speaker, I beg to move the following Motion:

THAT, aware that the average youth population in Kenya is thirty five (35) per cent of the total population of the country; further aware that majority of this population is in the job market entry level; noting that Article 55 of the Constitution obligates the State to take measures to ensure that the youth access employment; concerned that this access is hindered by the requirement to produce numerous documentation including a tax compliance certificate (KRA), certificate

of good conduct (DCI), higher education loan clearance certificate (HELB), EACC clearance, credit reference certificate (CRB); further concerned that these documents cost not less than four thousand five hundred shillings (Kshs4,500) to acquire; deeply concerned that most of the jobseekers in the youth bracket cannot raise this prohibitive amount for purposes of job application; this House urges the Government, through the Ministry of Public Service, Youth and Gender Affairs to waive the payment of these fees by job-seeking youth in the country, and further urges the Ministry to immediately fast-track implementation of the National Employment Authority Act which requires the establishment and maintenance of integrated and up-to-date database of all persons seeking employment.

From the outset, I wish to state that the matter of youth and youth empowerment are central to the very development of the country. Without an enabled youth population, State development cannot be achieved in totality. Having said that, I wish to give several key data relating to the youth which, as a House, we need to be alive to:

1. The 2017 Human Development Index shows that Kenya's rate of unemployment is now equal to those of neighbouring Ethiopia and Rwanda combined. This highlights the irony of economic policies that have sustained growth without generating jobs leading to poor distribution of benefits of growth.
2. Nearly four in every 10 Kenyans (39.1 per cent) of those who have attained working age have no jobs - the worst level of unemployment in the region. This is compared to Tanzania's 24 per cent, Ethiopia's 21.6 per cent, Uganda's 81.1 per cent and Rwanda's 17.1 per cent.
3. Among the youth, unemployment is estimated to stand at 17.6 per cent compared to 6.3 per cent for Tanzania, 6 per cent for Uganda, 7.6 per cent for Ethiopia and 3 per cent in Rwanda.
4. More than 500,000 young people join the job market every year.

Those are grim facts that, we, as leaders, have to grapple with. The question that every youth is left pondering over is: What is in store for the Kenyan youth? What lies ahead? The Motion seeks to empower the youth in job seeking.

Whereas entrepreneurship and self-employment are encouraged, it is observed that not every school-leaving youth can be engaged in the informal sector. There will always be young people seeking employment in one way or the other. It is, therefore, on this basis that punishing young people for being unemployed should be vehemently opposed by this House. For example, when the Government requires to be paid for a certificate of good conduct, it seems like the Government is punishing the youth for not having a criminal record. In any case, it takes a very long time before those records are availed when sought. This being the age of technology, those records ought to be easily accessible through an updated database with the Directorate of Criminal Investigation (DCI).

I have met very educated youth from Ndaragwa to Kipipiri, Ol Jorok to Ol Kalou and Kinangop, who have lost hope of ever getting employed especially in Government institutions. You find one of the requirements being a credit reference bureau clearance report before employment. For a young person in Mandera, for example, that means travelling to Nairobi to acquire this clearance. However, this in itself does not mean that the person is guaranteed employment. They will make all the efforts but later fail to be picked. This is very disheartening.

On the other hand, Hon. Temporary Deputy Speaker, the Government knows whom it has loaned money for higher education. Why do job seekers need to prove that they have never

received any financing or have completed paying any loans issued? The Government should have a database for all loanees and who is paying and who is not. This is unnecessary baggage to the young persons and there is no logic in it. Besides that, more jobs come with a caveat of a minimum of three to five years experience. The youth are wondering how they can access employment when experience is sought at entry level grades. This is especially so for Government institutions.

Most undergraduates or students go through internship in organisations to gain job experience in their area of interest before they graduate. This in my view should be considered by employers. If we want to empower our youth, we need to consider how easy to make employment accessible. These bureaucratic measures only help to keep our youth, especially from low income settings, away from accessing gainful employment. It is of utmost importance to note that majority of the job seeking young people come from rural areas and raising bus fare to come to Nairobi or go to other towns to look for employment is a struggle. Parents are more often than not forced to sell their only cow, goat or sometimes their land to give money to their children in order to cater for all the charges required to produce these documents. Those without parents rely on well wishers. The ones with disabilities are even more affected, especially when they are moving from one institution to another in search of these documents. This is very punitive.

If we really want our country to be vibrant, we must empower our youth. We can only rely on them when it comes to advancing the current technology. They have the energy to discover new innovations and new skills in the job industry for more productivity at a lower cost. By supporting the youth, the country will develop socially and economically. Therefore, we must tap their energies by removing these bureaucratic measures that only keep their morale very low by keeping them out of employment. I therefore call upon all Members to support the Motion to waive these fees for job seeking youth.

Hon. Temporary Deputy Speaker, I beg to move and request, Hon. Kabinga Wachira, Member for Mwea, to second.

**The Temporary Deputy Speaker** (Hon. (Ms.) Tuya): Very well. Hon. Gitau, you can take your seat. Before we have the Seconder, I would like us to take time to welcome Chwele Girls Secondary School from Sirisia in Bungoma County who are in the Speaker's Gallery. *Karibuni.*

Member for Mwea.

**Hon. Josphat Wachira:** Thank you, Hon. Temporary Deputy Speaker. I rise to second this Motion which was well put by the Mover. The issue of youth unemployment in this country can longer be swept under the carpet. The Mover did a very good job in doing a good research. She talked to many youth but she forgot to come to Mwea and talk to my youth who also fall under the category that she mentioned.

The problems that our youth are facing need to be confronted. One of the things the Mover is suggesting is meant to remove all the impediments that confront our youth when they try to advance their career or interest in business. You are aware that one of the requirements in this country is to ensure that 30 per cent of our procurement goes to the youth. Because the youth face all these problems and they are required to have all these statutory requirements, they end up approaching the rich people who are able to buy the tenders for them. They are paid small amounts as the big fish continue to do business. So, the able people assist the youth to register companies so that they can use them to do business in the category of youth.

The youth continue to be used and they suffer. Look at the population that we are talking about. For example, in my constituency, I am aware that I have not less than 110,000 youth today who are not sure of how they will earn a living tomorrow. They end up going for cheap casual jobs because they are not able to access jobs that would otherwise be better for them. That is why we, Members of Parliament, struggle sometimes to look for companies that fall under the category of youth because they are not there. When we tell them to open companies, they have to come to Nairobi, as the Mover mentioned. Some of them lack fare to come to Nairobi to look for clearance from the Higher Education Loans Board and other statutory requirements. If we waive these requirements, we will tell our youth that they can now come together, form a group and register a company as quickly as possible. They can even come to me, as a Member of Parliament, and I will give them construction business. That way, one day we will see big companies like the ones which are mushrooming in our country from China. We can only do this by building from scratch. Therefore, it is important that we do everything we can to help our youth.

I am also of the opinion that even as we give these big jobs to these companies, one of the checklist should be on the area of mentoring our youth who have small companies. We want to see big companies mentoring our young men in the big building industry so that tomorrow they will tender for themselves, pick up jobs and earn a living from the construction industry.

**The Temporary Deputy Speaker** (Hon. (Ms.) Tuya): Wind up, Hon. Member. You have one minute.

**Hon. Josphat Wachira:** Thank you, Hon. Temporary Deputy Speaker. I want to second this Motion and urge our colleagues to bring amendments that can strengthen it. We need to talk more about components like mentorship, which I have just talked about. Big companies should mentor our youth who have small companies so that they can pick up jobs in the market. They can be mentored to tender and get jobs.

With those few remarks, I second the Motion.

**The Temporary Deputy Speaker** (Hon. (Ms.) Tuya): Hon. Members, I will go on to propose the Question.

*(Question proposed)*

Hon. Members, as we begin debate on this Motion, I wish to bring to your attention issues raised in the Procedural Motion moved yesterday 28<sup>th</sup> March 2018 concerning limitation of speaking time. We now have five minutes for a Member speaking to a Motion and a Motion will be debated for two hours. Take note of that.

We will start with the Member for Elgeyo/Marakwet. She is making her maiden speech. You have the Floor.

**The County Woman Representative for Elgeyo/Marakwet County** (Hon. (Ms.) Jane Jepkorir Kiptoo Chebaibai): Thank you, Hon. Temporary Deputy Speaker for giving me this opportunity to speak on this Motion. I congratulate the Hon. Members for introducing it because unemployment is a big problem in Kenya. The youth looking for jobs have a problem getting them because they do not have the required certificates.

Before I continue, I would like to thank the people of Elgeyo Marakwet for electing me as their woman representative. I promise that I will work to serve them effectively. I thank them very much.

The documents the unemployed youth are required to have when applying for a job should be in one place and be given to the youth free of charge. Database of unemployed youth and their suitability should be given to potential employers. The Kenya Revenue Authority, for example, in their database should have names of all people who have completed their schooling so that they do not have to go to universities or the Ethics and Anti-Corruption Commission. In their database, they should have information that the candidate who has come to look for a job has completed repaying their loan and does not have a criminal record.

With those few remarks, I beg to support the Motion. Thank you.

**The Temporary Deputy Speaker** (Hon. (Ms.) Tuya): Let us have the Member for Suna West, Hon. Masara

**Hon. Masara:** Thank you, Hon. Temporary Deputy Speaker. I rise to support this Motion. As we are aware, the majority of youth do not earn a living, therefore, it is very important to waive this fees to enable them try their luck. Applying for a job does not guarantee being given the job. Therefore, when they are charged for these services yet they do not have money, some will struggle to borrow money but eventually, when they do not get the job, they find it difficult repaying whatever they borrowed.

The waiver is very possible. Some time back when we used to apply for prequalification for tenders, like in the Kenya Rural Roads Authority (KeRRA) people used to pay a certain fee, but it was scrapped. The majority of contractors are enjoying these rights. I congratulate Hon. Faith Gitau for bringing this Motion in the House so that we can protect and help our youth to enable them to apply for jobs which they really need.

Majority of population of this country are the youth. They need to be supported a lot so that they become future leaders. We even need to introduce more Motions so that any employment being done in Kenya from today should include youth. So, when one is employing at any given time, we should say 30 per cent of those people getting employed must be youth. The youth who are applying for jobs are denied their rights. Fortunately, we have the Bill of Rights. All youth have a right to apply for a job. Those who do not have money to secure these particular documents it means they cannot apply. So, to me, it means we are denying them their right to apply for jobs.

I urge this House and particularly the leadership, the Speaker and his panel to urge the President to... In the recent employment we approved in this House, very few of them were young. Majority of the people we have approved here are outside the age bracket of 35 years and below. Youth need to be given equal rights in this country. If we do so, we guarantee them the right to be employed.

These institutions need to scrap these fees. The youth are paying a lot of money when applying for documents that are required for them to apply for employment but eventually they end up not getting the jobs

With those few remarks, I support the Motion and urge all Members to support it so that come the next financial year, all job seekers should not pay any fee when applying for a job.

Thank you, Hon. Temporary Deputy Speaker, for the time you have given me.

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

**Hon. Njagua:** Thank you, Hon. Temporary Deputy Speaker. I was not prepared to contribute to this Motion, but since I am a youth and I was elected to represent the youth, I cannot lack one or two things to add on the Motion.

First of all, I thank the Mover of the Motion. It is timely. I remember last week I went round my constituency and asked the youth if they had gone for the National Youth Service

recruitment exercise that was done a week ago. Most of them told me that they did not have the money to apply for the documents required by the National Youth Service. Most of them said they were willing to join the NYS but they could not afford the amount of money required to get the required documents.

I support the Mover of the Motion for intending to make sure that the fees are scrapped so that the youth of this country can feel they belong to it.

I also call on county governments to take note that most of the youth are unemployed and as such opt to start small-scale businesses. But when they start them, they cannot afford to pay for the licences required. Most of the time they open small businesses like car wash or barber shops, but after one month, the city council law enforcers close them leaving them with nothing to do.

I also call on the Government to set up technical institutions in every constituency. There are some youth who did not go to school and did not join technical schools yet they have skills. An example is mechanics who work along Kirinyaga Road which is in my constituency. Most of these people have skills having been trained by their uncles and friends. With time they have become very good mechanics.

If you go to a country like China which is constructing our railway line, those who are not learned work there because they are trained and have supervisors who are learned coordinating the whole process. Here in Kenya, the youth who were trained by their uncles and friends cannot be employed anywhere. I request that we build technical schools where the youth who have been trained to be mechanics or technicians can be tested and be issued with certificates. This will enable them get employed in big companies. If you go to big companies, you will find that some of the trained mechanics who have gone to universities cannot match the skills of the youth who have not gone to the university.

With that, I support the Motion.

**The Temporary Deputy Speaker** (Hon. (Ms.) Tuyu): Hon. Member for Turkana Central.

**Hon. Nakara:** Thank you, Hon. Temporary Deputy Speaker. I stand to support this Motion by Hon. (Ms.) Wairimu. All of us know that in this country, youth form the largest population. If we encourage such kind of activities like waiving of fees, many youth will get into self-employment. It also encourages innovation and investment. The little money that we give to the youth, instead of misusing them, can make them invest in little businesses. It is tiring and discouraging when you get youth coming to us leaders asking for money for these certificates so that they can apply for a tender. After graduating, students have knowledge and skills but they lack capital to start their businesses. It is upon us, Members of Parliament, to waive these fees and licences so that we can encourage youth to engage in business. This will also remove idleness among the youth.

One of the things that this country is experiencing is lack of capital. Some countries give capital to the youth to start their businesses. We want to encourage the county governments to put aside some money to give the youth to start businesses. We can also do that with the National Government Constituencies Development Fund (NG-CDF). That will make this country prosperous and our youth will be good investors. The reason many youth engage in criminal activities is because they are idle. They have nothing to do. The issue of 30 per cent that the Act has given to women, youth and disabled is not being implemented in the national Government and the county governments. We need to enforce this law so that it is indicated in the tender that it belongs to the youth. If you make it open for the general public, the guys who have money can

discourage the youth from applying for such tenders. So, we need to enforce the law that we have. The 30 per cent should be designated to the youth so that they compete according to their strength.

I support it. Thank you.

**The Temporary Deputy Speaker** (Hon. (Ms.) Tuya): I will now take this time, hon. Members, to recognise and welcome students from Kirungi Primary School, Mukurweini Constituency in Nyeri County. On that note, let us have Hon. Mukami.

**Hon. (Ms.) Rahab Wachira:** Thank you, Hon. Temporary Deputy Speaker. I rise to second this Motion on the waiver of charges and establishment of employment database.

**The Temporary Deputy Speaker** (Hon. (Ms.) Tuya): Are you seconding?

**Hon. (Ms.) Rahab Wachira:** Yes, I am seconding.

**The Temporary Deputy Speaker** (Hon. (Ms.) Tuya): You are supporting it. It was already seconded.

**Hon. (Ms.) Rahab Wachira:** Yes, I am supporting it. Indeed, Article 55 of the Constitution requires the State to take measures to ensure that the youth access employment. That is the reason why we have money like the Youth Enterprise Development Fund. As women, we have money to empower our youth because we understand that most of them have finished their education but they are unable to access jobs. For these youngsters searching for employment, considering our Government wants to create as many jobs as possible, it is unfair to charge for clearance certificates which cost them about Kshs5000. Most of them are hustlers; they cannot afford to put food on their table.

There is an outcry from youngsters complaining about the charges they are required to pay in order to obtain clearance from public bodies. Most of our youth are poor. They come from very poor backgrounds. They can barely afford transport to the offices where they are required to drop job applications, leave alone to the offices they should get these clearance certificates. Most of our poor youth do not even make job applications because they lack money to obtain these clearances. It will be prudent for the youth to be able to access these clearance certificates without paying anything so that they are encouraged to make job applications which ultimately led to youth empowerment, job creation, elimination of crime because idle youth engage in criminal activities to earn a living and pass time. Youth employment will lead to improved economy as the youth will pay taxes. It will also lead to social development and generally improved standard of living due to improved health, food and security.

Requiring unemployed person to spend so much money in order to apply for a job is unfair, oppressive and exploitive. It must be put to an end. The National Employment Authority Act requires a person seeking employment to register with the Authority free of charge. While this provision in the National Employment Authority Act is good and will expose the unemployed youth to job opportunities, it is important for the public to be enlightened about the database and various programmes to assist those youth who may be computer literate. It should be implemented in each county or as the Authority deems fit.

With that, I thank Hon. (Ms.) Faith Gitau for tabling this Motion and also urge all honourable Members to support it for the benefit of our youth.

Thank you.

**The Temporary Deputy Speaker** (Hon. (Ms.) Tuya): The Member for Kathiani.

**Hon. Mbui:** Thank you, Hon. Temporary Deputy Speaker, for giving me the opportunity to contribute to this Motion on the waiver of charges and establishment of the employment database. Three things come to mind as I rise to support. First, there was a Motion similar to this

one in the 11<sup>th</sup> Parliament. Unfortunately, we seem to deliberate on Motions which end up in the archives. Implementation is zero. We hope that once we discuss this one, the relevant committees of the House can take responsibility and ensure that it is implemented.

The other issue that I have observed is on the drafting of this Motion. The average youth population in Kenya is indicated to be 35 per cent. The last time I checked the statistics, it was way beyond 50 per cent. I do not know whether we are not giving birth enough but I thought the percentage is definitely an issue.

The other issue I have with this is on the waiver of the charges. The youth bracket starts from 18 to 35 years. It makes a lot of sense that we have this waiver. By the time people reach 30, many of them are already working in organisations. This Parliament has a lot of Members who are in their 30s. We also have to be specific on those we are targeting so that we do not benefit Members of Parliament who have salaries and are CEOs in their own private firms.

I support the young ones straight from colleges. They require support from the nation. They require to be employed so that they can also participate in nation building. It is obvious that a lot of our youth come from humble backgrounds and obviously if they are not supported, then the education that we take them through might not bear fruits. So, it is important that we support them.

Hon. Temporary Deputy Speaker, I want to talk about the effectiveness of the institutions a lot of employers insist on people getting clearance. The Kenya Revenue Authority, for example, giving clearance to somebody who has not even registered to get a Personal Identification Number (PIN) certificate, straight from school is ridiculous. The certificate of good conduct from the DCI makes a lot of sense because people could be committing crimes even when they are at the age of 18. The Higher Education Loans Board cannot give clearance straightaway after someone leaves university. The clearance certificate is only given when they complete repayment of the loan. Clearance from HELB cannot be a prerequisite for someone seeking employment. The Credit Reference Bureau would apply to people who have been in business and have been borrowing money from banks and financial institutions. That does not make sense for a jobseeker who is straight from the university or college. The Ethics and Anti-Corruption Commission mostly deals with people in public office who could abuse office and get proceeds from where they work. That also does not apply.

As we deliberate on this or talk about waiving the charges, we may need to consider to ask employers not to seek these requirements from people below a certain age so that it is clear that if you are about 20 to 23 years old, there is no requirement at all, from any employer in this country, to ask you to give them clearance from the HELB and all these other organisations because you have not worked yet.

When we talk about these institutions, even Members of Parliament seeking public office are supposed to get clearance. We have seen people who have no degrees being cleared by these bodies. We have seen people being cleared by the Independent Electoral and Boundaries Commission (IEBC) and they have certificates of good conduct yet we get to hear stories - I do not know how true they are - of people who ran away from prison then they seek elective office. That means they got some kind of clearance.

We have recently been told that...

**The Temporary Deputy Speaker** (Hon. (Ms.) Tuya): Wind up, Hon. Mbui.

**Hon. Mbui:** Thank you, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. (Ms.) Tuya): Is it that the lights are not working? Members, try and time yourselves. You only have five minutes each. Let us have Hon. Marania.

**Hon. (Ms.) Teyiaa:** Thank you Hon. Temporary Deputy Speaker for giving me this opportunity to also speak on this issue of youth.

First, I thank the Hon. Member who has brought the Motion. It is very timely because we have seen our youth struggling while seeking for jobs out there. We know our country is based on the youth. If the youth do not have work, our country is going nowhere. Most of them are just coming from zero. Being asked for that money is unfair. Some of them are really complaining that they are not given work because they do not have money.

If this fee will be waived it will be of benefit to our youth and us leaders because we have a hard time looking for them, assisting them each and every time they need money to go for these papers. Sometimes it is even worse. They could be going for manual work but the documents are required so it is hard for them. Some do not even get food to eat – not even Kshs500 to pay for a paper.

I support the Motion that the fees be waived for them so that they are able to acquire the papers. Thank you. I support.

**The Temporary Deputy Speaker** (Hon. (Ms.) Tuya): Member for Ol Jorok, Hon. Mwangi.

**Hon. Muchira:** Thank you very much, Hon. Temporary Deputy Speaker. I rise to support this Motion and commend the Mover who happens to be my Woman Representative.

The rate of youth unemployment in Kenya is already high, as we have heard. It therefore beats purpose when we introduce the fee that makes it a barrier for youth to access employment in Kenya.

We all know the problems that are associated with youth unemployment in Kenya – rising crime, drug abuse and other social crimes. For us to solve these crimes and improve security in Kenya, we have to reduce the rate of youth unemployment in Kenya. One of the ways to reduce it is by supporting this Motion of scrapping the fees that are charged to get those documents that are requirements to get jobs in Kenya. As a matter of fact, I propose that these fees are transferred to employers. If employers require these documents, let them pay on behalf of the youth.

For us to grow the economy of this country, we have to tap into the innovativeness and creativity of our youth. We know our youth are very creative, energetic and innovative. We need to tap into this so that our economy or the Gross Domestic Product (GDP) grows in double digits as expected.

I also support the Motion in as far as getting proper statistics of the rate of unemployment in Kenya is concerned. We all get different figures; we get 25 per cent unemployment and others say it is 10 per cent. We need to create a good database so that we have a clear figure of the number of youth who are unemployed in Kenya. I support this Motion. Thank you.

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

**Hon. (Ms.) Wanyama:** Asante sana Mhe. Naibu Spika wa Muda kwa kunipa nafasi hii ili nichangie mjadala huu wa kusema tusaidie vijana wetu waondolewe baadhi ya pesa zinazooongezwa wakienda kupata vyeti vyao.

Namshukuru Mhe. Faith kwa kuleta Hoja ili tuichangie.

Vile wenzangu wamesema, ni kweli ukitembea sehemu nyingi katika nchi yetu ya Kenya utaona kuna vijana wengi. Hawa vijana hawana kazi. Iwapo wanapewa kazi mahali, ni kweli

wanaitisha baadhi ya hivi vyeti ndiposa wapewe kazi. Tuko na maskwota katika eneo langu la Trans Nzoia. Hawa maskwota wanaishi maisha ya upweke; maisha wasiyoweza kupata pesa za kulipia watoto wao mahitaji yao. Hata ikija kwa upande wa kupewa vitambulisho, utaona vijana wetu pia wanaumia. Wao husema: “Leta pesa, nenda ujitambulisha unatoka wapi.” Inanyanyasa vijana wetu katika nchi yetu ya Kenya. Ndiposa Mhe. Sakaja, katika Bunge la Kumi na Moja, alileta Mswada. Tulifikiria kwamba watatekeleza mambo yaliyokuwemo katika Mswada ule lakini hayakutekelezwa. Kwa vile Mheshimiwa ameleta huu mjadala tena, nina imani utatekelezwa vilivyo.

Nataka nigusie Huduma ya Vijana kwa Taifa. Vijana wamekosa nafasi kwa sababu wanaulizwa kuleta hizi stakabadhi. Tulileta *Huduma Centres* katika nchi ya Kenya ili kuondoa msongamano wa watu na kuhakikisha wanapata nafasi nzuri ya kuhudumiwa vizuri. Nina imani iwapo hii itatekelezwa, vijana wetu watapata nafasi nzuri ya kujimudu katika maisha yao.

Najua uchumi wetu utaimarika tukihakikisha kuwa vijana wamekaa vizuri. Usalama wa nchi yetu hautakua mbaya. Vijana wetu hawataendelea kunywa pombe ama kutumia mihadarati. Naelewa kwamba kuna vijana wetu ambao wako kwenye vyuo vikuu ambao hawana baadhi ya hizi stakabadhi. Masharti ambayo yamewekwa hayawasaidii vijana kupata nafasi za ajira. Kuna baadhi ya ndugu zetu ambao wako kaskazini mashariki mwa nchi ambao wana miaka 40 ilihali hawajapata vitambulisho. Iwapo hii Hoja itapita, ninaomba Serikali ihakikishe imetekeleza yale vijana wetu wanataka.

Nashukuru sana, Mhe. Naibu Spika wa Muda.

**The Temporary Deputy Speaker** (Hon. (Ms.) Tuya): Member for Kilome.

**Hon. Nzambia:** Thank you, Hon. Temporary Speaker. I take this opportunity to thank you for giving me this time to contribute. I congratulate Hon. Faith Wairimu who has brought the Motion on issues about the youth. I support the Motion on waiving of charges and establishment of employment database so that our youth can attain what is needed when looking for jobs.

I think over 50 per cent of the people in this country are youth. We need to consider the youth who have gone to school but have not been successful in getting jobs because they do not have enough money. On the issue of employment, I think we have to combine a lot of factors in it. When we talk of Government giving opportunities to the youth, it is known that 30 per cent of tenders for projects should go to the youth. We have to combine some of these factors so that we can waive the fees charged in the registration of business names or companies. That way, we will help the youth get contracts.

Lastly, I would like to propose that for us to assist the youth and get a clear database, we should do it from the constituency level. If we do that, we will be able to tell the exact number of youth who are seeking employment.

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

**The Temporary Deputy Speaker** (Hon. (Ms.) Tuya): The Member of Bungoma County, Hon. Wambilianga.

**Hon. (Ms.) Wambilianga:** Thank you, Hon. Temporary Deputy Speaker. I rise to support this Motion by Hon. Faith about the waiver of fees. As I support this Motion, I am looking back at the students who are in school. Most students complete school, but with arrears in terms of school fees. They go to college still with the burden of unpaid fees. In fact, they get admission to colleges by using result slips and not the actual certificates.

The real problem comes when they are through with school and they want to start their own businesses or do something that can enable them get something of their own. At this point, these youth are subjected to a number of things. They get to borrowing. They go to M-Pesa. Like

now we are aware there is M-Shwari and stuff like that, where youth and other people, even ourselves, borrow from. Once they borrow, most of them are not able to pay up, especially on time. They get listed with CRBs. At the time they apply for any job, they cannot be cleared. That is not my point. My point is: CRB certificate should be one of the waivers these youth need to be given.

On another note, when these want to get HELB clearance certificate it is not possible, because they have virtually worked nowhere for them to be able to pay up the HELB loans. If this is waived, it will be of a lot of importance especially to those of us who deal with youth. All of us know that youth need this waiver. Tax compliance, like I have already mentioned, is very tricky. They cannot comply when they have companies and they have not paid.

Again, I wish to look at the youth and their being misused. Most of the youth are used by these big dons who have companies. They take advantage of the youth who have companies to go and apply on their behalf or once they get jobs they go ahead and buy them from them. This is misuse of our youth. This Motion is going to help youth acquire jobs without being misused. What do I mean by this? It is just simple that if the amounts they are supposed to pay for the papers are waived, the youth will be cleared and they will get whatever papers they need for the job market.

On this note, I feel as a House we should look forward to waive these major taxes for these youth. I support on that note.

Thank you.

**The Temporary Deputy Speaker** (Hon. (Ms.) Tuya): Hon. Members, I want to bring to your attention that this Motion still has a bit of time. We have a balance of close to one hour. The last speaker for now will be Hon. Abdullahi Sheikh, Member for Mandera North.

**Hon. Abdullahi:** Waiver of these fees is very good. What happens to these youth who every year leave colleges and universities and are not absorbed into the job market? It is saddening that we educate them, they come out with papers, some of them with good qualifications yet they cannot find employment.

If I look at the housing sector, which is part of the...

**The Temporary Deputy Speaker** (Hon. (Ms.) Tuya): Hon. Member, are you using a microphone? I can see that the microphone is off. You can use the one next to you.

**Hon. Abdullahi:** Thank you. As I stand to support this Motion, I want to talk about the youth who are largely unemployed. They come out of universities and colleges every year. Unfortunately, they are not absorbed. Which begs the question: Why are we asking these kids to go to school, get educated, come out and then they cannot find jobs?

Every year we are building huge projects. Unfortunately the state departments are not directly doing it. They outsource to companies. The sad part is that these companies do not absorb the electronic engineers and those who have the right papers. A lot of projects are out there by the Government but the youth are not getting employed. They go to state department for road and they are told the work is being done by companies. The companies do not have capacity to employ some of these guys. They are given a road project yet they do not employ the qualified youth. This begs the question: Who is supposed to take care of these youth? I would have gone ahead and said, let the Government be forced to pay a stipend for any qualified youth from colleges and universities and cannot find employment. It is not their problem. The Government should pay a stipend until they find employment by the respective agencies. We call upon the private companies which are taking these jobs on behalf of state departments to ensure that they employ qualified youth in their midst. We are aware, a number of contractors

do not have engineers on the ground. They might be having them on paper but none on the ground. This is important, but equally the State should think about how to remunerate a youth who has gone to school, studied and came out with good papers. How come an engineer cannot find a job in this era when we are talking of expanding our projects and facilities?

I support this and urge the Government to create employment, if not they should pay a stipend until the youth get employed by State agencies and private companies.

### ADJOURNMENT

**The Temporary Deputy Speaker** (Hon. (Ms.) Tuya): Hon. Members, the time being 1.02 p.m, this House stands adjourned until this afternoon at 2.30 p.m.

The House rose at 1.02 p.m.