

NATIONAL ASSEMBLY

OFFICIAL REPORT

Wednesday, 16th November 2016

The House met at 2.30 p.m.

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

PRAYERS

PETITION

Hon. Speaker: The Member for Turkana North, Hon. Nakuleu is absent and not desiring to be present or assuming that the House starts at 4.00 p.m.

Hon. Members, I appreciate that the fixed date of every second Tuesday in the fifth year seems to be having a toll on the House. I thought after the two weeks there would be less demand. Anyway, the Member could be doing some very useful work on behalf of his people. For the time being, we defer the Petition to tomorrow.

(Petition deferred)

PAPERS LAID

Hon. Speaker: Let us have the Leader of the Majority Party.

Hon. A.B. Duale: Hon. Speaker, I beg to lay the following Papers on the Table of the House today Wednesday, 16th November, 2016:

The Annual Report and Financial Statements of Jomo Kenyatta University of Agriculture and Technology Enterprises for the year ended 30th June, 2015.

The Annual County Governments Budget Implementation Review Report for the Financial, Year 2015/2016 from the Controller of Budget.

The Report of the Auditor-General and Financial Statement in respect of the following institutions for the year ended 30th June 2015 and the Certificate therein:

- (i) The Kenya Agricultural and Livestock Research Organisation (KALRO)
- (ii) The Kenya Development Corporation.
- (iii) Kenya Forest Research Institute.
- (iv) Water Resource Management Authority.
- (v) Kenya Wildlife Service.
- (vi) Lands Limited.

Hon. Speaker, through your indulgence, the Controller of Budget has been sending to this House Annual County Governments Budget Implementation Review reports and you have been sending them to the Departmental Committee on Finance, Planning and Trade. Four or three-and-a-half years down the line, the Departmental Committee on Finance, Planning and Trade has

not tabled any report of this very important document. The county governments are of great concern to us. We want to know how their budget implementation review is.

Hon. Speaker, I really want you to order that the Departmental Committee on Finance, Planning and Trade calls a session specifically for members who have issues, after we study this Report so that we face the Controller of Budget one on one in a session where Members can ask individual questions about their counties, and finally, a report is brought to the House for tabling.

Hon. Speaker, I need your guidance.

Hon. Speaker: I think most of them have been referred to the Budget and Appropriations Committee. Therefore, it is that Committee that really needs to invite the Controller of Budget to take them through those reports. This is with a view to either getting them better explained for consumption of the majority of the membership that may not be technically savvy in the field of financial management.

I do not see either the Chair or the Vice-Chair. Do I see some active Member? Hon. Makali Mulu, this is a very important issue. In keeping with the constitutional requirement, the Controller of Budget has been forwarding these reports. This is the Annual County Governments Budget Implementation Review Report for the 2015/2016 Financial Year. Of course, there are other Reports that have happened in the past. We refer them to the Budget and Appropriations Committee, which is supposed to digest them and report to the House its consideration of the Controller's reports, just like the Public Accounts Committee (PAC) and the Public Investments Committee (PIC) deal with reports from the Auditor-General. Those reports they table here are their own digestion and explanations of what it is the Auditor-General has reported on in the case of PAC, mainstream government and government ministries and in the case of PIC, with regard to State corporations and other agencies where the Government has invested and what they make of the reports from the Auditor-General.

So, with regard to this, we had expected, as a House, that the Budget and Appropriations Committee would be the appropriate committee that would delve into the details contained in that Report and come up with a report which the House would then debate and, perhaps, adopt. I am sure even though the Chairman of the Committee and his deputy are not present this information is in safe hands of Hon. Makali Mulu. Is that not correct? Should we expect that it is in safe hands? I believe that it is in very safe hands. Please try and do something and then give us a report.

Hon. Mulu: Yes, Hon. Speaker.

POINT OF ORDER

TRIBUTE TO HON. OTUOMA'S SON

Hon. Speaker: Hon. Midiwo, do you want to say something?

Hon. Midiwo: Hon. Speaker, you realise we have a stranger in the Front Bench here in the name of Hon. Makali.

Hon. Speaker, I wanted to request you to allow me to bring to the attention of our colleagues the demise of Hon. Otuoma's only son which happened on Friday night at Nairobi Hospital. Obviously, our condolences and hearts go out to him. Because Members were away, Hon. Otuoma has decided to bury his son as soon as possible and we have been asked to inform Members who may be interested to attend the burial. The body will be laid to rest on Saturday at

his Funyula home. We also have a gathering to help him defray the medical costs because the death was sudden. We shall be meeting today at United Kenya Club at 6.00 p.m.

It is good to say that this was an adult Kenyan who was 19 years old. He was doing his first year in university. That is the sad news the family is faced with. I just needed that indulgence. I know many Members did not seem to understand. We will be passing a list and a condolence book for signature and support that Members may wish to give as we go to help our colleague.

I thank you.

Hon. Speaker: Very well. Do I see the Member for Mukurwe-ini?

Hon. Kabando wa Kabando: Thank you, Hon. Speaker. On my own behalf and that of my family and the people of Mukurweini, I would like to send condolences to Hon. Otuoma's family. The young man was my friend. I had an occasion to visit them at their home. We used to popularly call him "Junior". He was very jovial and very bright just like the mother and the father. It is very sad to have lost him at that very tender age. His dad was my senior. He was my Minister when we were serving together in the Ministry of Youth Affairs and Sports. You can say he is one of the individuals who exemplifies a lot of bipartisan engagements and serious professionalism.

As a father, through that child, Malcom, he proves that he had dedicated serious mentorship and parentage. Therefore, even for the many who are not able to speak like I do, who served under Hon. Otuoma and who had occasion to meet his son, we share in the grief and we give our solidarity to the family and the people of Funyula. I completely and unreservedly endorse what Hon. Jakoyo Midiwo has suggested because in life we live for each other. A friend is priceless and also an unending treasure.

May his soul rest in peace.

Hon. Speaker: Yes, the Member for Kiminini.

Hon. Wakhungu: Thank you, Hon. Speaker. On behalf of my family and on behalf of the great people of Kiminini, I would also like to send a message of condolences to the Otuoma family. We serve with him in the PIC. He is a very committed Member. In the Luhya community, to lose an only son is a big loss. We are praying for him. I know he is crying wherever he is. The Bible says in the book of Revelations Chapter 7, Verse 17, that it is only the Lord who will wipe all of our tears. It is our prayer that the Almighty God gives the Otuoma family strength and comfort during this difficult time.

Thank you.

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

Hon. Kubai Iringo: Thank you, Hon. Speaker. Let me take this opportunity on my own behalf and on behalf of my family and the people of Igembe Central to send my heartfelt condolences to the Otuomas. I knew Hon. Otuoma even before I came to this Parliament because he is married from my place. The mother to the deceased is a daughter to the late Erastus Mbaabu who was a former Provincial Commissioner and they neighbour my constituency. I have also known Hon. Otuoma for a while because my own daughter is married in Funyula. When I went to pay dowry for my daughter, Hon. Otuoma is the one who welcomed me in Funyula. I feel sorry for the family and especially the boy. I had met him. It is unfortunate he is gone but let God give the family fortitude. Hon. Members, let us pray for the family. *Pole sana.*

Hon. Speaker: You have the Floor, the Member for Vihiga.

Hon. Chanzu: Thank you, Hon. Speaker. On my own behalf and on behalf of my family and the people of Vihiga as a whole, I also wish to convey my condolences to the family of my

friend and brother, Hon. Paul Otuoma on the loss of his only son. It was very abrupt and tragic. I do not know how it happened, but I am told it happened so abruptly on Friday. We have not even been able to know the cause.

It is more tragic for a first year university student to die. We want the youngsters to grow up so that they can take care of us when we age or “expire”. It is unfortunate that the opposite happened to the family of Otuoma. We want to join him in support. As *Mheshimiwa* Jakoyo has said, we want to contribute towards the medical expenses and any other expenses.

Pole sana.

Hon. Speaker: Member for Makueni.

Hon. Maanzo: Thank you, Hon. Speaker. On my own behalf and on behalf of my family and the people of Makueni, I would like to pass my condolences to the family of Hon. Otuoma. I knew Hon. Otuoma the time I was campaigning to be elected to this House the first time. He has also been very useful to the people of Makueni when it comes to land issues, especially those ones propagated by the Departmental Committee on Lands.

He was a Member of the Departmental Committee on Lands and led a team to Makueni Constituency at a place called “Manooni”, where there has been a long standing land issue that has now been sorted out and a Report presented to this House. On behalf of the people of Makueni, I wish to say *pole*.

Hon. Speaker: Let us now have the Member for Tiaty.

Hon. Abongotum: Thank you very much, Hon. Speaker. On behalf of my family and the people of Tiaty who are great friends of the family of Otuoma, I would like to send my condolences to the family of Hon. Otuoma. I had the privilege of hosting Hon. Otuoma in my place when he was a Minister together with Hon. Washington Jakoyo Midiwo. At that time, he had just jetted in from Angola and we had a very good *Harambee*. From that time we have had a very close relationship with his family. I have been to Funyula where he had a very big function to empower women. I heard this news from my wife that Hon. Otuoma had lost his son. We are, therefore, saying *pole* to his family. I echo the words of my colleagues that we should support him. Let us circulate that paper and support him. If we get time, let us go to Funyula to support the family.

I thank you, Hon. Speaker.

Hon. Speaker: Yes, the Member for Kisumu. You do not have to shout since the machines are working.

Hon. (Ms.) Nyamunga: Thank you, Hon. Speaker for giving me this opportunity to convey my condolences to the family of Hon. Otuoma as a Member of the Orange Democratic Movement (ODM) and being the Deputy Chair of our party. I would like to convey my heartfelt condolences. I may not understand the level of the loss, but I know it is a great loss to lose a child more so a son in the African set up. So, we join him and we want to urge all Members to support him during this difficult time.

Thank you, Hon. Speaker.

(Hon. Keynan raised his hand)

Hon. Speaker: Hon. Keynan, you do not know how to use the machines? There should be an intervention. I can see you now.

Hon. Keynan: Thank you, Hon. Speaker. As a Muslim, we always believe that death is a must. The Koran says: “Every soul shall test death”. It is a reality. I am also a firm believer in

one of the tenets of Islam, predestination. Every human being shall go through whatever God has designed for them. Therefore, I want to take this opportunity on my behalf, on behalf of my family and the people of Eldas to convey my condolences to the family of Dr. Otuoma.

Dr. Otuoma is a Member of my Committee, the PIC. Since 2008 when I first interacted with him when he was the Minister for Youth and later the Minister for Local Government, we nicknamed him “The-ever-happy-Minister.” Right now, those of us who have been privileged to be his colleagues in the PIC, have appreciated that he is one Member who is highly skilled, ever patient and always willing to interact and appreciate not only the presence of his colleagues but also the contributions of every Member in that Committee. To that extent, I want to say that whatever has befallen him has befallen all of us.

As Members of the 11th Parliament at this particular time, and as our term is almost coming to an end, this is the time when we begin to appreciate one another. This is the time when we should see the clear manifestation of the bond and the familyhood of the 11th Parliament. Because of the sad thing that has happened to Dr. Otuoma, I hope and pray that it will not happen to any other Member of this House or any other Kenyan. I hope that all of us will be available to assist Hon. Otuoma at this difficult time.

Thank you for the leadership you have provided. There are very many Members who have been affected but through your leadership as the Chair of the Commission, the Commission has stood and assisted Members in difficult times.

Thank you, Hon. Speaker.

Hon. Speaker: Hon. John Olago Aluoch, you have the Floor.

Hon. Aluoch: Thank you, Hon. Speaker. I wish to join my colleagues in supporting Hon. Jakoyo Midiwo’s sentiments in passing my condolences to Hon. Otuoma and his family at this very sad moment. Hon. Otuoma is a personal friend to my family. When I got the news of his son’s demise, I talked to him and he sounded strong. Let us pray that he shall continue to be strong. As I say this, Hon. Speaker, allow me to thank you and the entire Parliament fraternity for the assistance and condolences that you passed when I lost my daughter a few weeks ago. It was also a very trying moment for me and it is a pity that I serve in the PIC with Hon. Otuoma. This is now the second death that we are having in that Committee. Let us pray that God will give us strength. I agree that as the Parliament fraternity, let us get together to pass our condolences to Hon. Otuoma’s family.

Hon. Speaker: I can see almost everybody wants to pass their condolences, but let us agree that we cannot all speak.

The Member for Kieni, you have the Floor.

Hon. Kanini Kega: Asante, Mhe. Spika. Ningependa kuungana na Waheshimiwa wenzangu ili nitoe risala za rambi rambi kwa jamaa na marafiki wa Mhe. Paul Otuoma ambaye tunafanya kazi naye katika Kamati ya Ardhi. Tulipokea habari hizo katika Kamati kwa mshangao mkubwa kwa sababu kijana wake amekua rafiki wa karibu wa Kamati yetu. Wakati tulikuwa tukitembea hapa na pale, alikuwa anakuja kutusalimia. Kwa hivyo, hili ni jambo ambalo linashtua sana. Wazazi wote wangependa watoto wao waje kwa mazishi yao. Hakuna hata mzazi mmoja ambaye anangependa kumzika mtoto wake. Kwa hivyo, tunajua ni pigo kubwa lakini tunamuomba Mola, tunaionbea familia yake, and wale watu wa Funyula ili wawe na utulivu.

Mungu aiweke roho yake mahali pema peponi.

Hon. Speaker: We all heard what Hon. Midiwo said and I am sure, later, Hon. Mwadeghu is going to pass some documents that we have agreed on. Let us all rise to the

occasion because Hon. Otuoma is one of us. Let us see how much we can assist.

Hon. Members, before we proceed, allow me to introduce two guests who are parliamentary staff from the Parliamentary Budget Office of Uganda, who are in the Speaker's Gallery. They are Prossy Busagwa and Douglas Dickinson Ewongu.

The two Members of staff are on attachment to our own Parliamentary Budget Office for a short while. Welcome to observe proceedings in the National Assembly.

Let us move on to the next Order.

BILLS

First Reading

THE COUNTY GOVERNMENTS (AMENDMENT) BILL

(Order for First Reading read - Read the First Time and ordered to be referred to the relevant Departmental Committee)

Second Readings

THE COUNTY ASSEMBLY SERVICES BILL

(Hon. Abongotum on 15.11.2016)

(Debate concluded on 15.11.2016)

Hon. Speaker: As you are aware, Hon. Members, the Debate on this Bill was concluded yesterday. What remains is for the Question to be put which I hereby do.

(Question put and agreed to)

(The Bill was read a Second Time and committed to a Committee of the whole House tomorrow)

THE CONSTITUTION OF KENYA (AMENDMENT) BILL

(Hon. Chepkong'a on 25.10.2016)

(Resumption of Debate interrupted on 26.10.2016 – Afternoon Sitting)

Hon. Speaker: Mover, reply. Yes, Hon. Chepkong'a.

Hon. Chepkong'a: Thank you, Hon. Speaker, Sir. I thank the Members who contributed to this Bill. In fact, I hear loud sounds in the House that after the election of Donald Trump in the United States of America (USA), this matter should be laid to rest in the manner in which it had been proposed.

(Applause)

Hon. Speaker, I beg to reply and wish to thank all the Members who contributed, particularly the women. They were very effective in terms of their contributions. They actually assisted in furthering the progress of this Bill. Their contribution was very important and weighty that I sat here and felt that they were expressing that which was in their hearts. Unfortunately, men think with their heads and that is the way God has made us. I would like to bring to the attention of this House the fact that this is a very serious matter.

As you know, the Supreme Court has expressed itself on this matter. It directed, in its advisory opinion, that Parliament enacts legislation to realise the two-thirds gender rule as required in Article 27(8) of the Constitution. You know there has been an attempt to do so through the “Duale Bill”. Unfortunately, we did not have quorum twice. In fact, you went out of your way to put the Question twice; that was out of the ordinary.

In love for women, you said this matter must be put a second time. Unfortunately, the women themselves were not able to raise the quorum. In fact, the men are being blamed for not doing what they were supposed to do. I sat in this House and if you had allowed me to vote twice I would have done so. However, you know that would amount to lack of integrity and it would be unconstitutional. We tried our best but did not succeed because we did not have quorum. When that failed, we were left with no other alternative other than to move the amendment of Article 81(b) to provide for progressive implementation of this rule as quoted by the Supreme Court.

In the ruling dated 27th August, 2015 there is a majority opinion under paragraphs 79 and 80 and it states that Parliament should put in place the required legislation for giving effect to the two-third gender principle under Article 81(b) of the Constitution and in relation to the National Assembly and the Senate, failure to which the High Court would be dully moved to issue appropriate orders and directions in accordance with the terms of the transitional and consequential provisions in Article 261(6)(7)(8) and (9) of the Constitution.

Hon. Speaker, the Supreme Court also observed and noted that the absence of a specific requirement for the gender rule in relation to the two-thirds of the two Houses of Parliament implied that unlike in the case of county assemblies, the two-third gender principle was amenable only to progressive realization in relation to the two Houses of Parliament. It further states: “It could not, therefore, be enforced immediately.”

Hon. Speaker, those are not the words of this House, these are the words of the Supreme Court, which is another arm of the Government. I wish to table the Petition by one Wilbert Kipsang Choge as filed against the National Assembly and the Senate seeking for declaratory orders that this House has failed to comply with the two-third gender amendment law that was required by the Constitution. So, I would like to urge Parliament to consider this Bill very seriously. The petitioner is seeking and relying on the Constitution, particularly the transitional provisions in which he has stated that Parliament has grossly violated the Constitution.

Hon. Speaker, for us to be said to have violated the Constitution when we have the power to amend the Constitution is very unfair. Someone cannot go to court and say we have violated the Constitution. We are the keepers of this Constitution. This Constitution went through this House. It did not go through the Judiciary or the Executive; it went through this House. This House has power to amend this Constitution in the manner in which we have proposed.

The petitioner also states in his prayers that the Constitution has been violated by Parliament for its failure to enact the required legislation to give effect to the two-third gender principle with regard to the Senate and the National Assembly. He states in paragraph five of his

Petition that the Constitution has been threatened with violation by this House. He says it is because of our failure to do anything. The truth is that we have not failed. In fact, we have made serious attempts only that we were not able to succeed.

Hon. Speaker, if we do not do anything this House will be disbanded and another House will be reconstituted in accordance with the transitional provisions of this Constitution. So, I wish to table this Petition so that Members know if they are planning for their next month's salary then they should also be planning not to have a salary for the next, including the women Members of Parliament. It is not going to affect only the men; the women will also go without a salary. So, they must know that this is a middle ground and the only way we can preserve the sanctity and independence of this House. We may be very annoyed and upset but we must engage in realistic thinking. There are many possibilities and I would like to ask women Members who are walking in looking very---

Hon. (Dr.) Pukose: They are catwalking!

Hon. Chepkong'a: Hon. Speaker, I will not repeat what Hon. Pukose is saying here because it is malicious.

(Laughter)

It is important that this House passes this Bill. We considered about 16 scenarios as the Departmental Committee on Justice and Legal Affairs. We reduced them to four scenarios and considered how the two-third gender amendment rule could be implemented. The first proposal that was placed to us by the National Gender and Equality Commission (NGEC) is lifting the provisions of Articles 177(b) and (c), 97 and 98 of the Constitution. This means that we will increase the number of women in this House from the current number to 151 Members. We shall have brought an additional 104 women to this House. We considered this proposal and we thought if we were to do that against all proposals that people have been placing in this House and particularly the Constitutional Implementation Oversight Committee (CIOC)--- We have had very many proposals such as “*punda amechoka*” and others. There are proposals that state that we are too many Members. In fact, our numbers should be reduced.

I was in Eldoret over the weekend and I met a gentleman. It was the first time I was meeting him. I was looking for a spare part. I walked round and by the time I came back he gave me a paper to bring to the National Assembly. He was proposing how we can reduce the number of Members from the current 349 to 222.

(Applause)

The gentleman that I had just met said: “You guys are too many. You are bloated and we cannot afford to pay you.” We are saying that we should increase the number in this House by lifting Articles 177, 97 and 98 of the Constitution so that we can bring in other Members of Parliament and increase the current number of 349 by 104.

I do not know whether we will be reasonable in doing so. So, while considering this option, we considered that the House will be extremely bloated; we will have too many legislators in this House and in the Senate. You can see how many of us are seated here. Out of the 349, if we were very serious we would be full here. If it is a question of representation, we should be having all the 349 Members of Parliament. In particular, we should have all the 47

Members of Parliament representing counties. I do not see them here. I have just counted and they are not more than five.

An hon. Member: There is only one.

Hon. Chepkong'a: I have seen four in the House out of 47. So, if it is a question of representation, this is not. It is a question of cost.

The other one that we must consider is increasing the number of county women seats in the National Assembly. That, again, will lead to doubling the number of women elected in the counties. That would make 94 women come to this House as an additional number. Several countries in the world have implemented this concept of preserving seats in their electoral systems. Kenya is one of them and Article 97(1) talks about 47 County Women Representatives (CWR). Other countries have done that.

In Uganda, they have reserved 39 seats from 39 districts. If you look at the Parliament of Uganda, you will find that it has not achieved the two-thirds gender rule but they are happy with it because they have done something called "affirmative action". They have brought in 39 women who would never have been there.

In Tanzania, they have reserved 15 seats for women out of 255. In Eritrea, they have reserved 10 seats out of 105 Members of Parliament. In Bangladesh, they have reserved 50 out of 350 Members of Parliament. So, they have 300 men, and women do not have a problem with men representing them there.

In Afghanistan, they have reserved 64 seats in the lower house for women and in Belgium, the most progressive democracy they have reserved 17 seats for the Flemish and minority communities which includes women. In Argentina, they have reserved 30 per cent of the seats for women. What it means is that we also need to increase the number of women by 104 and that is untenable as we have given reasons. It is going to be a bloated Parliament as it is. The only viable option that we consider is that which has been proposed by the Departmental Committee on Justice and Legal Affairs of progressive implementation of legislations to realise the two-thirds gender rule which we think is the most realistic in the circumstances of this country.

Hon. Speaker, the question we asked ourselves, as Members of the Departmental Committee on Justice and Legal Affairs is whether we should increase the number of people to represent people who are poor and who have no roads, or do we tarmack the roads first. I have serious problems with roads in my constituency. We also have serious problems with schools. If we want to ensure that there is 100 per cent transition rate from primary school to secondary schools, we need to build more secondary schools. We also need to employ more teachers. As you know, we have a shortage of 80,000 teachers. We do not have a shortage of representatives in this House. I think we have sufficient representation. In fact, we are over-represented in this country. We are 49 million but have 349 Members as representatives.

With those remarks, I beg to reply.

Hon. Speaker: Hon. Members, I think you have forgotten the Constitution. Those of us who were involved in crafting this document know very well that we advised against putting certain things in the Constitution, like quorum for putting Questions. That is a matter for Standing Orders in any house. Travel round the world and you will see that. Anyway, for the same reason, we are not able to put the Question. You can see how many of you are around.

Hon. Members: There are no women!

Hon. Speaker: No women? The issue of representation is always a vexing one in a number of countries we have visited. Not many countries have been able to address it in the

manner and with the vigour with which I can see we are trying. Indeed, let me congratulate Hon. Chepkong'a. He is really trying to make sure that there is something. But of course whatever happens, the provisions of Article 261 - whoever wants to invoke them - are not automatic. Whatever order comes, the order that can come would be "please, pass the law."

So, we want everybody to move with speed to make sure we get that order so that as we struggle to try and implement the order, the date of 2nd Tuesday will be with us and, therefore, we may not necessarily have to do anything. If you read the same Article 261, you will see that the incoming Parliament would be required to, again, pass the law within the same period of five years which is the period that they will be in office. After that, there is no other requirement.

That provision of Article 261 is on consequential legislation. Look at it. It is the one that deals with consequential legislation. You cannot have consequential legislation permanently as a feature of your constitution. So, it must come to an end and if you look at it, it contemplates that one parliament which fails can extend by one year, which we have done. If for whatever reason we are compelled to enact and we are not able to, then it will fall upon the other parliament.

If you look at that Article 261, I think Clause 7 or thereabouts, you will see it says that even that other Parliament, which will be the 12th Parliament, will have exactly five years within which to struggle like Hon. Chepkong'a has to try and pass. After that the matter rests, whether they pass or not, it will no longer be of consequence.

I believe we have done our best. Even the Senate is trying. They also have something similar. So we should not get tired. Hon. Chepkong'a, just keep trying. What you need to do is to make sure that you have not less than 233 before I can put the Question the next time. Do you want me to have the matter on the Order Paper? Whip Members and I am sure Hon. A.B. Duale will help together with Hon. Washiali, Hon. Midiwo, Hon. Chris Wamalwa and Hon. Mwadeghu. They will all help to make sure that we have not less than 233 Members present. That, of course, as we move closer to 8th August 2017 looks like a fairly tall order. I can see Hon. Wandayi is quite happy. Help us to also bring that number.

An Hon. Member: He knows *baba* will be in the Speaker's Gallery.

Hon. Speaker: Very well. Before we move on to the next Order, as we have agreed, we are not putting the Question on that since we do not have quorum.

(Putting of the Question deferred)

Hon. Keynan was to move some Motion on behalf of the Parliamentary Service Commission. That is Order No.13. Hon. Keynan, I am told you have something to say about that Motion.

MOTIONS

APPOINTMENT OF M/S BAKER TILLY MERALI TO AUDIT ACCOUNTS OF AUDITOR-GENERAL

THAT, pursuant to the provisions of Article 226(4) of the Constitution, this House approves the appointment of the Audit Firm of M/S Baker Tilly Merali's, to audit and report on the accounts of the Auditor-General for the year 2014/2015, 2015/2016 and 2016/2017.

Hon. Keynan: Thank you, Hon. Speaker. Pursuant to Standing Order No.51, I seek to withdraw this particular Report so that we can re-introduce it at a later date. This is because some material facts concerning this Report have not been brought to my attention and I would like to familiarise myself with a number of issues. Therefore, I seek the indulgence of the House to withdraw this.

Hon. Speaker: The Leader of the Majority Party, what is your point of order?

Hon. A.B. Duale: On a point of order. Hon. Speaker, I want to thank Hon. Keynan for that withdrawal. However, through you, I want to ask the Commission to ensure that this firm is not awarded the contract since the National Assembly - this Chamber - has not appointed them through the approval of the Report. I read the Report and there is indication that even as we debate this Motion, already this firm has a contract. That is what I wanted to raise concerning those issues substantively. However, now that he has withdrawn the Motion, I want you to direct that the Commission should not award this firm the contract pending the approval of this House. If they have awarded the contract then it must be revoked.

Hon. Ichung'wah: On a point of order, Hon. Speaker. I wish to thank Hon. Keynan for that withdrawal. Even as it does that, I want to concur with what the Leader of the Majority Party has said. More fundamentally, I would like to say this as an accountant, someone who has been audited and has been involved in the audit processes. I can see my colleague, Hon. Mwadeghu, CPA, shaking his head from the other side. There are certain fundamental errors, be they procedural, abuse of office or whatever that could emanate from the Report that the Chair tabled yesterday.

Hon. Speaker, one of the main issues is constitutional. I beg that we look at Article 226(4) of the Constitution regarding this.

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

Hon. Speaker: He is on a point of order. Remember our rules. I know 8th of August 2017 is harassing you and so we keep forgetting these rules.

Hon. Ichung'wah: Thank you for that protection. I was drawing your attention to Article 226(4) of the Constitution which clearly stipulates the work of appointing an auditor. The Leader of the Majority Party has alluded to the fact that, that auditor probably could even have been appointed and contracted to do this work. The Constitution is very clear that this is a mandate solely of the National Assembly. I think the drafters of the Constitution are very clear. It was drafted and put in print that a qualified accountant will be appointed by the National Assembly and not Parliament.

Hon. Keynan sits in the Commission and with all due respect to your Office as the Speaker and the Chair of the PSC, I think the PSC has taken over the mandate of this Assembly because that role of appointing the auditor should be vested in the National Assembly and not any other constitutional body that has representation of Members.

The Commission that you chair and which Hon. Keynan sits in has other Members who are not Members of the National Assembly. I seek your guidance on what could be a procedural error. I know it is something that started way back in 2013 when this House appointed the audit firm. More fundamentally is the fact that the audit firm that we are being asked to come and rubberstamp is an audit firm that was given work to do by this House in 2013. We have never seen a single report of the work done by that audit firm.

More fundamentally, and I will say this as an accountant and somebody who has been audited and also has been involved in the auditing processes, you cannot be given work as an auditor to go and audit an organization and then you get consultancy work within the same

organization that you are expected to audit. There has been gross misconduct and professional misconduct by the audit firm that now purports to be given this work. This is because they were given work to go and audit the Office of the Auditor-General. Around the same time, they went and got consultancies in the same office. Therefore, it would actually be an abuse to this House for Hon. Keynan and the Commission to be asking us to come and rubberstamp a process where one, we are contravening the Constitution, and two, we are rubberstamping a process where there has been gross and professional misconduct.

I beg Hon. Keynan, as I thank him, to withdraw that Motion to really go back to the Commission and look into these things. I ask the Office of the Speaker of the National Assembly to protect our mandate as the National Assembly that was given to us by the Kenyan people through this Constitution. We should not cede that to any other body. Otherwise tomorrow other busy bodies out there will also purport to come and participate in the vetting of Cabinet Secretaries (CS) and PSs that we do here.

I, therefore, beg that you protect our mandate as enshrined in this Constitution.

Hon. Speaker: Remember that Hon. Keynan under Standing Order No.51 withdrew this Motion whose notice he had given. Hon. Ichung'wah, as much as you have raised fairly fundamental constitutional issues that would require to be addressed, I have nothing to address. Hon. Keynan having withdrawn the Motion would be something that would obviously excite all of us. We will all claim to show our prowess and our understanding of the Constitution. However, I cannot rule on it because there is nothing. Hon. Chepkong'a, is it on the Standing Order? Clause 2 of that Standing Order says that any other Member---

Hon. Chepkong'a: Hon. Speaker, I do not intend to give notice. I rise pursuant to Standing Order No.83 as read together with Standing Order Nos.16 and 28. As you know, the withdrawal is with the leave of the House once it has been placed on the Order Paper.

Hon. Speaker, I am seeking your direction on this matter. I have just looked at the Report and Standing Order No.216. This Report has been prepared by the PSC. It is not one of the committees that are anticipated in the Standing Orders.

I think the right thing that should be done as you did with the amendment of the PSC Act which was referred to my Committee--- It was not brought by the PSC. It was referred to the Departmental Committee on Justice and Legal Affairs and we prepared the Report based on the proposed amendments.

Even as Hon. Keynan withdraws this Motion, this matter should be placed before the relevant Departmental Committee which I believe must be the Finance Committee or to Hon. Langat so that we can bring a Report to this House which we can then discuss in accordance with Standing Order No.216. Any paper should not move in this House without following due process. That is the only thing regarding the Standing Order.

Thank you.

Hon. Speaker: Nevertheless, all that is being said is perhaps very useful but at a different time. Hon. Keynan has withdrawn his Motion. Unless you want to ---

An Hon. Member: Same Standing Order.

Hon. Speaker: I am unlikely to rule on it to the extent that it will touch on the Motion that is already withdrawn. Hon. Midiwo, say your bit.

Hon. Midiwo: Hon. Speaker, you may pardon us for being very interested in this particular matter. When Hon. Keynan said he was withdrawing, he said certain matters have come up. I have been around this Parliament for a very long time and excuse me for being very curious at a time when there is too much noise about corruption in our country.

I beg to be excused.

Hon. Speaker, PSC is a quasi-commission. I have forgotten the proper phrase. It is not an ordinary Committee of the House. It cannot enjoy the same privileges like the Chair of the Departmental Committee on Defence and Foreign Relation, the Chair of the Budget and Appropriations Committee or the Chair of the Departmental Committee on Justice and Legal Affairs. They can bring a Motion here and withdraw it hiding behind the Standing Orders. They can only withdraw it under Standing Order No.51(2) which says “with leave of the House” in which case we must debate why he is withdrawing it. That is my understanding of the Standing Orders. If we do it the way Hon. Keynan wants us, and we are not accusing him of anything, without debating the other issues which may have come up and which he has put on record, we may be contravening the same Standing Orders.

Hon. Speaker: Are you sure that Standing Order No.51(2) does not refer to a Special Motion? Can you look to see if it does not use the word “special”? Let us be on the same page.

Hon. A.B. Duale: You have been caught!

Hon. Midiwo: No.

Hon. Speaker: Hon. Midiwo, you know it is good---

Hon. Midiwo: Hon. Speaker, we may then have to define what a Special Motion is.

Hon. Speaker: It is defined. A Special Motion is defined in the Standing Orders. In fact, a Motion to impeach the Speaker is a Special Motion although there is no word of impeaching the Speaker which we should put in the next Standing Orders.

Hon. Midiwo: Hon. Speaker, what makes me think that it is a Special Motion is that it is a Motion questioning the accounts of Parliament, that is a constitutional body. It is also a Motion by a Member of the Commission. It is not an ordinary Motion of this Parliament. It may not have been defined in the Standing Orders. I want to withdraw and say that it is not defined, but I know the good judge and arbiter you are, you know that this fits within the meaning of the word “special” because it is questioning us.

Hon. Speaker, I beg you that it would be nice to ask Hon. Keynan to tell this House the reason of withdrawing the Motion. This firm which has been withdrawn, maybe, he can withdraw it, but we can bring a Special Motion to discuss the activities of the firm.

(Applause)

It is his choice to either clear the air or we will ask for a Special Motion---

Hon. Speaker: Hon. Midiwo, if you just move ahead and go to Standing Order No.61, you will find that the definition of a Special Motion is very clear. So, if you want to bring a Special Motion it must fall within Standing Order No.61 otherwise the one you are suggesting, unless it is included later in the new Standing Orders, will not fit. This is unless there is another Motion passed by the House creating a Special Motion outside Standing Order No.61.

Hon. Midiwo: Hon. Speaker, I have said that in the meaning of Standing Order No.61, it is not special. But this Motion does not fall under the ordinary meaning of a Motion. This is about self-audit. If that is not special, I beg you to use Standing Order No.1 to find this Motion special so that Hon. Keynan can let us debate it.

(Laughter)

Hon. Speaker: We need to go to the definition within Article 226, the one that Hon. Ichung'wah read on what it means for the National Assembly to appoint. That is what we will need to discuss. What does it mean for the National Assembly to appoint an auditor who audits the Auditor-General and not the Commission? That is the issue as understood by Hon. Ichung'wah.

Hon. Keynan, do you want to say the last word? Your Motion is withdrawn, is it not?

Hon. Keynan: Hon. Speaker, having invoked the provisions of Standing Order No.51, is it in order for Hon. Midiwo and my good friend, my Vice-Chair, Hon. Ichung'wah to anticipate debate of a Report that has already been withdrawn in line with the Standing Orders?

Hon. Speaker: Hon. Keynan is actually the one who is in order because you cannot debate that which has been withdrawn. So, the Motion appearing as Order No.13 is withdrawn from the Order Paper. So, we proceed to the next Order.

(Motion withdrawn)

APPOINTMENT OF THE CHAIRPERSON OF NACADA

Hon. Abongotum: Hon. Speaker, I beg to move the following Motion:

THAT, this House adopts the Report of the Departmental Committee on Administration and National Security on the vetting of the nominee for appointment to the position of Chairperson of the Board of the National Authority for the Campaign Against Alcohol and Drug Abuse (NACADA), laid on the Table of the House on Tuesday, 15th November 2016, and pursuant to the provisions of Section 6(1)(a) of the NACADA, Act, 2012 and Standing Order No.45, approves the appointment of Lt. Col. (Rtd) Julius Ayub Githiri as Chairperson of the Board of the National Authority for the Campaign Against Alcohol and Drug Abuse.

In moving this Motion, I wish to inform the House that on Tuesday 18th October 2016 and pursuant to Standing Order No.42, the Speaker of the National Assembly conveyed a Message from His Excellency the President that Lt. Col. (Rtd.) Julius Ayub Githiri had been nominated for appointment to serve in the position of Chairperson of the Board of NACADA and the name of the nominee and his curriculum vitae were, therefore, forwarded to the Departmental Committee on Administration and National Security to conduct approval vetting.

The Committee held a preliminary sitting on Thursday, 27th October 2016 to prepare for the vetting and consider the memoranda received. The Committee further held two meetings at which the nominee appeared and was vetted in accordance with the Public Appointments (Parliamentary Approval) Act No.33 of 2011. Another meeting was held to consider and adopt the Committee's Report.

In conducting the hearings, the Committee was guided by among other documents, the Constitution, the NACADA Act of 2012, the Public Appointments (Parliamentary Approval) Act No.33 of 2011 and the Standing Orders. The nominee has significant experience in public service having served for two decades in the military and 19 years in the corporate security sector. He has no integrity issues. He is tax compliant and has been cleared by the Kenya Revenue Authority (KRA) and the Higher Education Loans Board (HELB). He has also been cleared by the Ethics and Anti-Corruption Commission (EACC) and the Directorate of Criminal Investigation and Credit Reference Bureau.

At the close of business on Tuesday, 27th October 2016, the Office of the Clerk of the National Assembly had not received any submissions touching on the suitability or otherwise of the nominee for appointment to serve in the position of Chairperson of NACADA.

Briefly, the Committee made observations as follows:

- (i) The nominee has significant experience in public service having served for many years in the military and in the corporate security sector.
- (ii) The nominee has very good working knowledge of the public service and has exhibited this by his service in the military and private sector where he worked in close coordination, cooperation and collaboration with Government security agencies.
- (iii) The nominee has the requisite leadership experience having facilitated major security conferences, forums and workshops including crisis and disaster management programmes in 2007 and 2008. As a representative of the oil industry, he was part of the inter-ministerial security coordination team. He is also the founder and executive director of the Institute of Professional Security Studies (IPSS).

The nominee exhibited excellent communication and interpersonal skills. He came across as an eloquent and articulate individual. For those of you who have the report, the nominee has been exposed to several courses especially in the United States of America (USA) and Asia. I take note of a recommendation letter that was written by the Lieutenant-General serving in the Army of Pakistan who really commended him for being a great team player and a very efficient military officer.

The nominee has no integrity concerns as indicated in his records. The nominee has also a lot of experience in the private sector as the chairperson of Kenya Private Sector Alliance (KEPSA), a very serious team in this country that is involved in ensuring that the private sector operates within a very good business climate. He is also on the sub-committee of security in KEPSA and has participated in the development of Secure Kenya concept that will be valuable in enhancing the participation of the business community in the campaign against alcohol and drugs.

Very briefly before I conclude, the work of the Chairperson of NACADA is very important in this country. As Kenyans, we all know that one of our greatest challenges is the consumption of illicit brews and proliferation of hard drugs that have really consumed many young people. This position is very important because the Chairperson has to work extra hard to ensure that drugs are eradicated in our cities, especially in Mombasa and Coast Province, parts of Nairobi and in our major cities.

The candidate should know that he must eradicate drugs and consumption of illicit brews in this country. Those illicit brews are killing more Kenyans compared to terrorism. It is one of the greatest enemies of this country. I reckon that the Act has several weaknesses especially when it comes to enforcement of laws having to do with chasing drug barons in this country. We are ready, as a Committee, to ensure that the NACADA Act is amended so that this Authority is given real teeth to deal with drug barons.

Lastly, I want to thank Hon. Mututho, the former Chair of this Authority. He worked very hard and with a lot of zeal to ensure that consumption of illicit brews is controlled in this country. It is unfortunate that there were some loose ends and they were not able to work closely with the secretariat. As they say, a new broom sweeps better. I hope the new broom will work very closely with the secretariat to deliver on their mandate.

I wish to conclude by saying that the Committee, having considered the suitability, capacity and integrity of the nominee; and pursuant to the provisions of Section 6(1)(a) of the NACADA Act Cap.2016 and Section 8(2) of the schedule to the Public Appointments (Parliamentary Approval) Act No.33 of 2011, the Committee recommends that the National Assembly approves the nomination of Lt. Col. (Rtd) Julius Ayub Githiri for the appointment to the position of Chairperson of the Board of the NACADA. I want to call upon my deputy, Hon. Alois Lentoimaga to second. I want to appeal to Members to take a lot of interest in this Motion.

Hon. Speaker: Let us have Hon. Lentoimaga.

Hon. Lentoimaga: Thank you very much, Hon. Speaker for giving me this opportunity. As my able Chairman has just said, this nominee appeared before the Committee and we interviewed him. We found that he is fit going by his records, experience and personal integrity in the society, including his discipline. He has served in the military service for a long time. Rising from a Cadet Officer to Lieutenant Colonel is not an easy task. He must have exhibited very strong capabilities to be able to rise to that level. A Lieutenant Colonel is a Chief Executive Officer (CEO) and somebody who is able to manage a battalion of very many people. Being able to manage people also means that he can manage resources and security issues. Since this nominee comes from a discipline background, he can also work well with the people who enforce the eradication of alcohol and drug abuse.

In this country, we know that the law enforcers are disciplined people. The chiefs, County Commissioners, Deputy County Commissioners, the police and the Administration Police (AP) are the ones we normally look up to, to ensure that they eradicate this menace. Having a chairman in NACADA who has that background--- I am very sure he will work well with people who are disciplined. I am sure he also exhibits a lot of strength in terms of personal relationships between him and those who are in the Civil Service. It will be easy for the nominee to help this country to eradicate the menace of alcohol and drug abuse. It is public knowledge that alcohol and drug abuse is a serious menace in this country.

Illicit brews have not spared any community member or family. All communities and families have one or two members who are affected by this menace. When we were interviewing the nominee, we also found out, through his records with the Ethics and Anti-Corruption Commission, that this is a man of high integrity.

If someone is of higher integrity, we are sure that he will deal with this menace. Alcohol and drug abuse is a big issue in this country. It is not something that you can just wish away. There are serious cartels behind the supply and brewing of alcohol. There are very rich companies that use money and resources to make sure that the manufacture and supply of alcohol and drugs does not cease.

With his qualifications, the Committee is certain that Lt. Col. (Rtd) Githiri will fight that menace to conclusion. That menace has also spread to rural areas like Samburu North Constituency, Samburu County. A year ago, the elders in my area decided to curse those who brew, supply and consume *Chang'aa*. After they cursed it, the consumption levels dropped in some areas. If we approve this nominee, we are going to stop that menace even in areas like Samburu. Illicit brews and drugs have destroyed our economy: The young people are not productive. They do not have families because of that menace. We should approve this nominee. We should also go ahead to support him once he has been appointed. We want the new Chairman to do better than what Mr. Muthuto did. I am hopeful that he will help us eradicate alcohol and drug abuse in this country.

With those few remarks, I second. I would like to ask Members to approve Lt. Col. (Rtd) Githiri because he is the right candidate.

(Question proposed)

Hon. Speaker: Hon. Makali Mulu.

Hon. Mulu: Thank you, Hon. Speaker for giving me this opportunity to contribute to this important Motion. I want to join my Chairman and Vice-Chairman in supporting the appointment of Lt. Col (Rtd.) Githiri. We interacted with him during vetting. We are aware that drug abuse is a serious issue in this country. During the vetting, we tried to find out whether he has what it takes to handle that important docket. Based on his experience, I was convinced that Col. (Rtd.) Githiri has what it takes to take the National Authority for the Campaign Against Alcohol and Drug Abuse (NACADA) to the next level. When you look at his experience in the private sector, Col. Githiri has been involved in community work. He is a member of a welfare organisation in his estate. That shows that he can interact with the public. He can come up with strategies to make sure that he penetrates the grassroots when addressing that menace.

Lt. Col. (Rtd) Githiri has a lot of passion in ending that menace. At one point, he volunteered to be a member of NACADA. That was about six years ago. He was a senior officer and yet, he volunteered to support NACADA without earning any allowances. In my view, that was a clear demonstration of passion in addressing the drug abuse menace.

He worked in the armed forces and went through a number of trainings. Looking at what he has been trained on, he brings in a lot of skills to that institution.

There has been a lot of infighting between the management and the board of NACADA. We asked him how he can solve those issues. From his explanation, we found out that he is a team player. If given a chance, he will make sure that NACADA works as a team. He has good recommendations from his previous employers. I am sure he will help us deal with the issue of drug abuse. We also tried to find out how he can relate with the youth since they are the ones who are mostly affected by drug abuse. From his explanations, we found out that he has good strategies in helping the youth deal with that issue. He also talked about mentorship and making sure that there is networking so that the youth from different parts of this country can share their experiences. I found that to be a good approach. That showed us that he had thought through the process in dealing with the menace.

I would like to ask my colleagues to approve the appointment of Lt. Col. (Rtd.) Githiri as the Chairperson of NACADA.

As you have said, we know there is the issue of regional balancing and all that as we get to those national appointments. Let us also not lose track of that. As we continue proposing names to this House, I plead that the appointing authority does not lose track of the fact that we really need to have the national image in terms of these national appointments.

With those remarks, I support this appointment.

Hon. Speaker: Let us have Hon. Sakwa Bunyasi.

Hon. Bunyasi: Thank you, Hon. Speaker, for giving me this opportunity to contribute to this Motion. The principle of filling up a vacancy like this is very important. Those who sit in the Committee have had a chance to interact with the appointee in detail. Obviously, they have something to say. They are saying good things. I would like to use this opportunity to comment on the substance of what it is that the chairman is being appointed to do – the control of alcohol

and drug abuse. I do not know whether this will be a mission that will ever succeed. I say that with great confidence because I do not think that the goals have been clearly defined.

Recently, we had a spike in these issues and we had vigilante groups that went around destroying alcohol around the country. It was clear that some of it was mischievous and intended to suppress certain entrepreneurs. For as long as we have that kind of confusion, we will not succeed in an important area like this. The process of control must not be driven either by faith-based organisations or by extreme opinions. We have to define clearly whether we are chasing a health objective so that our population is not embroiled in these problems, or whether we are playing to the whims of, perhaps, foreign investors who spent the entire history of this country - not just after Independence - trying to suppress local entrepreneurship in respect of alcohol production and distribution so that the colonial brands would be promoted. We have not yet come out of this and clearly defined what exactly we want. We must not allow this to continue to suppress the local industry.

For example, in Uganda, *Chang'aa* was widely produced and instead of going down with the hammer, they industrialized the production of that commodity and managed to bring it to the mainstream where there is standardization. It was then produced at consistent levels whose normal consumption was consistent with fair health standards.

It is very important for us to ask ourselves where we can do promotion and where we can use the law. I do not think that we should be driven by the narrow interests but divergent. As I said, it might be used as a way of frustrating the efforts that are in place. We have problems as the peri-urban and certain rural areas have unique challenges on this issue in Kenya. It is not true that it is the same all over the country. I think that generalization is, again, another cover up simply intended not to come out clear and say: "Here, we have a problem. Here we have a similar problem but of a different nature." If we do that, we will get solutions that deal with those problems in the areas where they occur.

Where I come from, there is a lot of production of *Chang'aa* and they call it illicit, but it is not a killer brew. You can die drinking beer, water or tea. I think we have to look at it carefully, define our goals and help NACADA implement this goal successfully. As it is now, we are simply filling up a parastatal opportunity that I fear will not achieve the goals.

I support the appointment of Lt. Col. Githiri. I know that by virtue of his upbringing, he is going to bring discipline-driven approach to this. However, perhaps, beyond discipline-driven approach to this, we should think clearly about science-driven approach as well. We should think about an approach that is health-driven and the counselling and guiding approach and not one of raiding facilities. I think that is a pretty basic way of trying to manage a national level programme. I think the good Lt. Col. Githiri will be well placed in terms of defining goals and matching resources.

As I finish, I do not think that even the most genius of chairmen that we might get can drive this agenda by themselves. It will all depend on the board and the management team that is in place. It is sad that in the previous dispensation of the previous Chairman, there were conflicts between the Chair and the Board and the Board and the management. There is something out there that is not right. It might not just lie in the chairmen, no matter how good they are. It is important that the Committee also looks deeply at how to get the NACADA administration and agency working up and down with the cohesive goal that needs to be defined so that when we get the chairman, he is a team captain for a working team. I think we are putting too many expectations on this chairman. I do not see how this chairman will succeed when these other things are not in line.

With those comments and cautions, I wish to support this Motion.

Hon. Speaker: Member for Kisauni.

Hon. Bedzimba: Ahsante sana, Mhe. Spika kwa kunipatia fursa hii ili nipenyeze sauti yangu kwa Hoja hii muhimu. Nawasihi Wabunge wampitishie ndugu yetu Julius Ayub Githiri kwa haraka kwa sababu ni jambo ambalo linaathiri taifa hili pakubwa, hasa katika sehemu ya Kisauni ambayo naiwakilisha. Vijana wameathirika pakubwa na mambo ya dawa za kulevya na ni vyema sana tumpitishie mwenyekiti huyu haraka ili aingie na aanze kazi yake ya kuwasaidia vijana.

Taifa hili kama ninavyojua liko mikononi mwa vijana ambao, kwa idadi kubwa, wanaendelea kuathirika kupitia kwa mambo ya dawa za kulevya na ulevi, hasa kama ilivyokuwa katika mikoa ya Pwani na Kati. Maeneo hayo yameathirika pakubwa.

Mhe Spika, niruhusu nisema kuwa kumpitisha mwenyekiti sio kwamba tutakuwa tumemsaidia. Bunge hili linapaswa kupitisha fedha za kutosha kuhakikisha kuwa mwenyekiti anawajibika katika kufanya kazi zake.

Baada ya vijana kutumia dawa za kulevya, inakuwa kama ugonjwa wa kutibiwa. Kumchagua mwenyekiti bila kumpa fedha za kutosha itakuwa kazi ya bure kwa sababu anatakikana kutengeza mahali ambako vijana wetu watatibiwa ili watoke katika maradhi yale. Pia, Mwenyekiti wa NACADA awe na uwezo wa kuwapatia vijana fedha za kuanzisha miradi midogo midogo ili baada ya kutoka katika dimbwi la dawa za kulevya na ulevi, wawe na uwezo wa kujishughulisha na mambo mengine.

Kwa hivyo, ni vyema sana kwa Bunge hili kumchagua Ayub Githiri kwa haraka kwa sababu anahitajika kule chini. Lakini pia tunapomchagua, tuhakikishe kuwa tunampa fedha za kutosha. Hii ni kwa sababu taifa letu liko mikononi mwa vijana ambao wanaendelea kuathirika; wake kwa waume.

Ni hatari kubwa sana kama jambo hili halitaingiliwa ndani na Serikali na kuweka fedha za kutosha ili isaidie NACADA. Likipewa fedha za kutosha, shirika hilo litakuwa na nguvu za kuwasaidia vijana watoke katika maradhi ambayo wako nayo.

Kwa hayo machache, ama mengi, nasimama kuunga mkono Hoja hii. Nawaomba ndugu Wabunge wapitishie kwa haraka Hoja hii ili bwana huyu aanze kazi yake.

Ahsante sana.

Hon. Speaker: Hon. Member for Mukurweini.

Hon. Kabando wa Kabando: Thank you, Hon. Speaker. I rise to support this Motion on the appointment of Julius Ayub Githiri. I had occasion, nearly a decade ago, to interact with that gentleman in Mukurweini. He had a hospitality investment and he displayed humility. He is a person who is dedicated to relationships. Lt. Co. (Rtd.) Julius Ayub Githiri left a mark among the people of Mukurweini at Wajee Nature Camp because of his serious dedication to conservation and for his serious commitment to interactive engagement with professionals, particularly in the security sector. I remember the particular period when he worked around the County of Nyeri. The security system within the vicinity, even though we never knew that he was trained in security matters, was elaborate and good. We were very appreciative of his engagement with us because we benefitted from him.

Realising the kind of image that my home County of Nyeri has had in the past, and particularly Mukurweini Constituency on issues of drugs and illicit alcohol--- We have had very negative publicity in the past. We appreciate the action that was taken by His Excellency President Uhuru Kenyatta. I know the Coast region is also benefiting from that initiative by the President. In fact, we in the Mount Kenya region are getting more jealous that the President is

going to invest more in Mombasa in terms of the rehabilitation of the youth. He is actually engaging both the county government and the national Government security officers on the ground.

If there is something that the President is appreciated for within the Mt. Kenya region where I come from, then it is his singular directive to mobilise his troops. He engaged Members of Parliament to go on the ground and work with the MCAs, the County Commissioners, the Deputy County Commissioners, the chiefs and assistant chiefs in order to deal with the question of illicit brew and dangerous drugs. It is because he realized that we are dealing with a generation that is in serious peril. It is a generation that has been put on the margins economically. We know of the presence of drugs in schools and in shopping centres. That presents a danger to our youth. NACADA was on the spot when we went to State House. The President had hosted us after we decried the escalation of the danger of illicit brew and drugs in our region. We made a request as leaders from the Mt. Kenya region to meet him.

I remember there was even a unanimous demand from Members of Parliament from Mt. Kenya region that NACADA should be disbanded. The President, because of his respect for institutions, was very reluctant to do so. It is upon him to respect institutions and so, he would not make that declaration. However, he indicated that all was not well and that was accepted. When we went to the ground, the President tracked us. I remember him even calling us when he was out of the country to check on our progress. This challenge is still on the ground and, more so, in Mukurweini. Even two weeks ago, my Deputy County Commissioner had a serious meeting with the MCAs and chiefs in a certain village because people who are being arrested are being released by courts. Last week on Thursday, we had a meeting where we made a courageous statement that if the Judiciary is going to be the stumbling block to the fight against dangerous drugs and illicit brew, we will face it politically. A generation cannot be extinguished because of the greed of certain institutions.

Lt. Col. (Rtd) Julius Ayub Githiri, with his seriousness and impeccable professional credentials, comes at the right time. He will bring sanity to NACADA because all has not been well at that agency. He is bestowed with the obligation to ensure that dangerous drugs and illicit brews being made by people who have more greed than Satan himself, are done away with. Those people are not human; they only want to make money at the expense of the livelihoods of the young people of this country. Indeed, the appointment of Ayub Githiri comes at the right time. The President has made the right choice. He has our support. Those who have known Julius Ayub Githiri know that he is capable of cracking the whip, particularly at the secretariat so that it stops being a citadel of extortion. He will stop those who extract profits from that irregular business. Some have been unhappy with us and have even taken us to court. Members of Parliament, particularly from the Central Kenya Parliamentary Group, have been sued by some of the people who have been getting rich from the illegal business. However, wealth without humanity is nothing to celebrate about. We love business and we are enterprising, but we want our youth to be secure and our country to be safe.

I congratulate Lt. Col. (Rtd) Julius Ayub Githiri and I thank the President for that astute and necessary choice. I support.

Hon. Speaker: Member for Muhoroni.

Hon. Oyoo: Thank you, Hon. Speaker for recognising my face. I want to take the opportunity to congratulate the Committee that did the vetting. Although I am not privy to their report, I believe they did a good job because this is a very important job. We are missing the

talents of leadership. Young boys, because of economic hopelessness, are turning into serious drug abuse. They are fast becoming zombies.

That appointee must find his fold very fast and come up with some favourite concepts that must make his tenure different from what we know. The problem of illicit brew and drug abuse should not necessarily be brought to the fore only when there is hue and cry from the citizens and the President has got wind of it. We should take action before our youth are brought down. He should be busy working on schemes on how to wipe out the menace of illicit brews and harmful drugs that are pulling down the good future leaders that we have. Since this thing is everywhere in the country, I want to urge the new leader to come up with programmes that could make his presence felt in every corner of the country. He should not merely have the head office in Nairobi. He needs to be more present on television and in newspapers and, more so, when there are problems.

There is hue and cry in the country because of the economic crunch. We have many constitutional bodies that are working in duplicity. We have bodies like NTSA which is merely doing what the traffic police are doing. When people talk outside there, they only think that the biggest consumer of the Exchequer is Parliament. People who have the opportunity to work must make their presence felt and must make the President proud by interpreting their job description properly. They ought to discharge their duties diligently by making sure that they come up with programmes that touch the hearts of citizens. Those programmes actually should be intended to benefit the citizens.

I wish to take this opportunity to congratulate the new appointee and tell him that we will keep our eyes open and make sure we give him support where it is relevant. Also, we urge the Committee that is supposed to oversee him to keep him on his toes. It has to ensure that no Exchequer money is spent on retreats and Press conferences that do not add value to the very fabric for which the concept was formed.

I support and once again congratulate the Committee.

Hon. Speaker: Member for Westlands.

Hon. Wetangula: Thank you, Hon. Speaker. At the outset, I want to say that I am also a Member of the Committee that vetted Lt. Col. (Rtd) Julius Ayub Githiri for this particular assignment. The problem we are having in this country is putting too many expectations on an institution that does not have the capacity to deal with issues of alcohol and drug abuse. We need to expand that scope of operation and take it down to the lowest level, the grassroots level of our country, the level of chiefs and all the Government functionaries. This will ensure that the issue of alcohol and drug abuse is dealt with at the lowest level of Government.

What the National Authority for the Campaign Against Alcohol and Drug Abuse (NACADA) has achieved so far since it came into place, is very little because as it is, there is something missing. Either it is financing or the political will that will enable them to operate and deal with the menace. Now that the former Chairman has already left, we are putting so much on the new Chairman's shoulders and we are expecting that he will come up with measures that will deal with alcohol and drug abuse in our country. Most of us who represent urban constituencies have been confronted with this monster that is consuming our youngsters. Children as young as 13 years have completely lost it. They are not in school. They are just languishing on the roads as early as 10.00 a.m. We are losing a generation of youngsters that are supposed to be the future of this country. As a country, we must confront this issue with the seriousness it deserves.

We must also look at the barons. Those are the people who are sneaking in drugs and selling them to the young people. It is also important to note that corruption at the ports is one of

the reasons that is allowing those people to get away with it. You will never hear of people who have been arrested. They only arrest the “small” people and the consumers, but not the suppliers. We need to deal with the suppliers, the sources that are supplying those illicit brews and drugs to our youngsters.

There was also a concern in the Committee with regard to the Ministry of Interior and Coordination of National Government. There is an attempt to militarise that authority. The head of Immigration Department, the Cabinet Secretary and now the Chair of NACADA are all retired military officers. We have people in other departments who can serve in those positions. I am not watering down the capability and the capacity of that retired military officer. I am just saying that we can look elsewhere other than the military. We also need to try the civilians and people from other sectors of Government.

I want to support the appointment of Lt. Col. (Rtd) Julius Ayub Githiri to take up that job because it is very important. We also urge the Government to give him the necessary support.

Hon. Dido: On a point of order, Hon. Speaker.

Hon. Speaker: Hon. Rasso, you put in an intervention.

Hon. Dido: Thank you very much, Hon. Speaker. I rise on a point of order. As a matter of fact, there are generals who have been employed by the Government in the recent years. They have been doing a good job. There are thousands of institutions in this country and those generals have shown that those from the military are professionals and have delivered in those dockets. We must be grateful rather than saying they do not deserve to be employed. They are part of the larger body of Kenyans and they deserve to be employed.

Hon. Speaker: What is out of order?

Hon. Dido: Hon. Speaker, for Hon. Wetangula to say that the Jubilee Government is militarising Government appointments, he is out of order.

Hon. Speaker: He is entitled to his opinion and he needs to be heard. He should not hold those views in secrecy.

Hon. Dido: Thank you, Hon. Speaker, I am guided.

Hon. Wetangula: Thank you, Hon. Speaker. I think the General is also out of order as you ruled. I never said Jubilee Government, I said there is an attempt. This was a concern raised. That was on a light note, though.

Hon. Speaker, I support the appointment of the retired colonel for that position.

Thank you very much.

Hon. Speaker: Member for Kisumu East.

(Hon. S. S. Ahmed delayed to contribute)

Hon. S.S. Ahmed: Hon. Speaker, I was resting my eyes.

Hon. Members: You have the microphone!

Hon. S.S. Ahmed: I am sorry.

(Laughter)

I beg your pardon, Hon. Speaker. I have developed a very serious toothache and it is hurting quite a bit.

Hon. Speaker, we are very pleased that the Committee has now been able to identify a suitable person. NACADA has a very important place for the future of our society. The previous

Chair was very enthusiastic and an extrovert. We needed him to get some of the major issues put in the light. Now, it is time to consolidate some of the work that has been done, that need to be captured with empathy and needs a dignified logical progression. I feel that it is very important that the Chair of NACADA is institutionalised. This means that the Chair is not the person but the institution of the Chair and the person who actually occupied that particular position does it in such a way that NACADA is developed and not the person. Depression and frustration has hit most counties at this moment in time. There is so much depression and frustration among our youths. They have started giving up on the desires that they had to do in this society.

The country recognizes that time has come for us to try and deal with that particular problem. However, we must deal with it with a sense of empathy and understanding. That is so that those who have gone into alcoholism or drugs can be understood and helped. Such people need to be taken into institutions that will help rehabilitate them. The National Authority for the Campaign Against Alcohol and Drug Abuse (NACADA) used to arrest unlicensed alcohol manufacturers and sellers. We went a little bit overboard, but the message was sent. The retired Lieutenant Colonel should remember that as much as we need the efficiency of the army, the attribute of empathy is important. We need to understand the situation and try to develop a procedure and policy that would be inherited by his predecessors.

I beg to second.

Hon. Speaker: Member for Baringo.

Hon. (Ms.) Kiptui: Thank you, Hon. Speaker, for giving me this opportunity. I am also a Member of the Committee that vetted the nominee. I can assure you that going by his demeanor, the way he answered questions and his past experiences, I believe that he will deliver. However, we all know that not one individual can eliminate the problem of alcohol and drug abuse in the country. So, as much as we urge our colleagues to approve him, we know that he needs a lot of support. The previous Chairman came in with a lot of enthusiasm. When an individual is not given proper support, be it financial or otherwise, the impact may not be felt much.

Hon. Speaker, it is important that the nominee has a background in security. I am sure that will definitely help him in the delivery of his mandate. As my colleague Hon. Wanyonyi has said, we need to target the suppliers of drugs and alcohol. As a country, we need to be conscious that if we are not careful, we may lose the future generation of this country. It is everybody's business to fight alcohol and drug abuse. The young people are very enthusiastic and would want to be kept busy but, we all know that in our country, we have many young people who are unemployed and they become a target of those drug suppliers. That means that parents and leaders should take these issues seriously. They ought to discourage the young people from taking alcohol and drugs. We have no choice but to be very good role models for the young ones. We cannot harp that young people should stop abusing alcohol and drugs and yet, we ourselves are abusing the same.

I am glad and I urge my colleagues to support the appointment of that nominee. We should, however, know that not one Kenyan can clear that problem. We have seen, in the past, the appointment of blue-eyed politically correct people dubbed "members of the dream team" and yet, the problem has never been solved. It is because an individual cannot clear the problem. It has to be through the concerted efforts of all Kenyans. That way, we will achieve our targets.

Hon. Speaker: Let us have the Member for Butula. You must have changed seats.

Hon. Onyura: Hon. Speaker, I have not changed seats. I have been having problems since morning. Whenever I try to speak, I have to move to the next microphone.

Thank you, for giving me this opportunity. I would also like to support this Motion. The Committee that dealt with this matter has given him a very good Report. I flipped through the Report and realized that Lt. Col. (Rtd.) Julius Githiri has very good qualifications. He rose through the ranks in the army and retired occupying a fairly senior position. We know that to rise to that kind of position in the army means that one has exhibited diligence and leadership qualities. It also means that he has a lot of potential. I am also happy to note that he is the Chairman of my residents association. I know that the committee of our residents association has been doing a very good job over the last couple of years. So, I am sure that given a chance, he will transfer some of those leadership skills and qualities that he has garnered in various places to NACADA.

This is a very important job, particularly in the times that we live in. Drug abuse is a big problem. That is something that affects all families, both from the lowly to the most affluent. They are faced with problems of drug abuse. Our youth get derailed because of it. I think it is not so much an issue of law enforcement. I hope that the good Colonel will look at it the way I am doing. I think it has more to do with education and awareness as opposed to policing. In order to be effective, it is most advisable that they involve all the stakeholders and work with them fairly closely. We should work with the schools, churches, parents, parents' associations and youth organizations. That is because in order to curb drug abuse and drug-related problems, awareness and education play an important role.

There is something that surprised me as I was flipping through the pages of the Report. During the public participation exercise, nobody came up to give their comments. This surprised me. I was just wondering why that was the case. Is it because the public did not see the advertisement? Perhaps, we could learn something about public participation from the Frequency Modulation (FM) stations.

Whenever I tune in to those FM stations, whatever topic that is up for discussion is very well contributed to and very well participated in.

(Hon. Abongotum gestured to Hon. Onyura)

I do not know what is disturbing the Chairman of the Departmental Committee on Administration and National Security.

That surprised me. I thought there could have been something. Maybe, it was not noticed by members of public. This could be something, not necessarily just for this Committee, but others as well. You get that the response, increasingly, is not as encouraging or forthcoming as one would like to see. I am just saying we try to look for other ways that can solicit more public participation in some of these issues.

Another thing I hope the nominated Chairman will pay attention to is what, at one time, nearly threatened NACADA. It is the issue of corruption. This is something that is rampant in nearly all the agencies and corporations. With his background, I hope he will ensure that some of the loopholes that may have created those opportunities of stealing money from NACADA will be sealed effectively.

Hon. Speaker, I would like to suggest that he looks at the various traditional liquors. I think I have noticed that there probably could be some misunderstanding in some areas. If he applies a blanket approach to every part of the country, we may be interfering with some age-old practices that have very significant roles in communities. I noticed that even issues of traditional

liquors and so on are at times over-policed. You will find very brutal and completely uncalled for raids on them from the police. It is because---

Hon. Speaker: Hon. Onyura, this Report is about the suitability or otherwise of the nominee. There is nothing about traditional liquor. I know you may be passionate about traditional liquor, but just deal with this one and then you can deal with the issue of traditional liquor.

Hon. Onyura: Hon. Speaker, I am just saying this because it also falls within the mandate of NACADA and they are supposed to be educating the public on issues that are drug-related. I am just encouraging the incoming chairman to look at these things holistically. Let him be sensitive to some of the local practices and not just apply unnecessary raids that I have seen in other places.

I also look forward, given the experience and the level of operation of the incoming chairman, to him being able to forge good teamwork and good team spirit within NACADA; both the secretariat and the commission.

I support the Motion. Thank you.

Hon. Speaker: Hon. Onyura, you raised some very interesting point about public participation and responses by the public. The same institution, the National Assembly, advertised for positions of people who want to become commissioners of the Independent Electoral and Boundaries Commission (IEBC). Over 800 applied. You advertise for memoranda to be submitted on the suitability or otherwise of candidates nominated into offices and nobody responds. Those who will respond write just a sentence like they have written regarding proposals to nominate certain Members of this House to be given certain awards. Some of them will just say: "This one makes a lot of noise in public rallies." Those are then some of the responses. That is how we get the public to participate. So, it is up to them; the public. Parliament will go out of its way and ensure there is a notification or advertisement. As to whether the public responds, we leave it to them. For us, we have made an effort. There is nothing else we can do. We cannot go and hold our sittings in Uhuru Park. It is unfortunate on this one you notice that either the response was missing or wanting.

Member for Vihiga Constituency.

Hon. Chanzu: Thank you, Hon. Speaker for giving me the opportunity to support the Report of the Committee.

Hon. Speaker: What is the intervention from the Member for Tharaka Nithi County?

Hon. (Ms.) B.N. Nyaga: Thank you, Hon. Speaker. I stand under Standing Order No. 95. When you listen to what Members are saying, they are just repeating themselves. Can you call upon the Mover to respond?

Thank you.

Hon. Speaker: Let us hear the Member of Vihiga Constituency and then I will put the Question.

Hon. Chanzu: Thank you, Hon. Speaker for giving me the opportunity to support the Report by the Departmental Committee on Administration and National Security recommending the appointment of Lt. Col. (Rtd) Julius Ayub Githiri as Chairperson of the Board of NACADA. This is a very important position because, over time, it was eventually realised that we need to have an organisation or institution which can take care of the aspect of alcohol and drug abuse. Kenya, being a growing nation with more than 70 per cent of its population being young people who happen to get very affected by this, it is important we have such an institution in place. Then, we have the kind of leadership and headship that can steer the institution to cover all

aspects that need to be addressed in order to address this problem. When you look at the Curriculum Vitae (CV) of Lt. Col. (Rtd) Githiri, the other aspect you will find is that he has experience in various aspects of the work that he acquired while in employment in the armed forces. That is when you look at the local aspect. Again, looking at the CV, you will find that there are various areas he has served not only in this country, but others. That gives enough exposure to deal with some of the aspects that we see. You have seen that abuse of drugs and alcohol is not just a local problem. There are those who come in with drugs. There is a lot that happens. You just discover it at the airport. I am normally very surprised when I look at what happens at the port. Containers packed with drugs pass through and they come the whole way. They are loaded on the other side. When they come to the port here, you find some products coming out of the discoveries made by the various agencies of the Government. So, the vast experience he has is going to be an added advantage.

The other thing is that in the forces, he was involved in intelligence and security aspects. The military intelligence and security is also going to help him. There is a lot of knowledge you need in terms of intelligence. You need to detect some of the consumers of those drugs and alcoholic beverages which are prohibited. There have been instances where youngsters even in classrooms would take something like a sweet. You may not know what they are consuming when you look at them, but it is there.

We need somebody who is able to lead an organization in terms of detection and who knows how to handle issues as they emerge. It is not only a matter of detection. Some of them live in those dens and it is impossible to arrest them. Some of them disappear. You are not able to apprehend them. That, with time, can lead to many more casualties. We need somebody who has security intelligence knowledge to handle such situations in a much more organized and humane way.

The future of this country and any other country relies on the youth. That is because they are the future of the nation. So, we must have proper leadership in that institution in order to address that problem so that our youth can grow up being disciplined and being the future of the nation.

The wide knowledge of the colonel that we are proposing for the chairmanship of NACADA will be handy to run the institution. He will create awareness. He will be in a position to run the organization and create enough awareness through public institutions, schools and recreational areas where the youths mostly go.

I believe the professional aspect in the skills that he has will help in addressing the problems that we have. There is diversity in his qualifications and that will help. There are a number of aspects to be dealt with. It is not only what we see. There are a number of aspects that need diverse training. He will lead the institution with good administration and proper operational guidelines. It is a delicate issue.

With those few remarks, I wish to support the appointment of Lt. Col (Rtd) Julius Ayub Githiri to be the Chairperson of NACADA. Thank you.

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

Hon. Speaker: Mover.

Hon. Abongotum: Thank you, Hon. Speaker. As the Departmental Committee on Administration and National Security, we have taken cognizance of all the issues that have been

raised by Hon. Members. Since this Committee will work very closely with that organization, we will make sure that all your observations will be transmitted there.

Issues of corruption which are a cancerous phenomenon in this country have to be dealt with in one way or the other. The issue of team work has been raised. We will make sure that, that organisation works in sync and not in discordance. Therefore, we will make sure that all the information is relayed.

I spoke to the former Chairman of The National Alliance (TNA) Party and raised the issue of--- He really wanted to contribute because of the issue of law enforcement. He has a lot of passion on youth issues. He even came up with the procurement aspect. So, the enforcement of laws on drugs will be re-looked into with a view to having some amendments in that respect.

Hon. Speaker, I want to respond to what the Hon. Member has asked, as to why no people came to either oppose or support the nominee. I think the Office of the Speaker of the National Assembly gave sufficient time for people to respond to this, and we never heard a negative comment. However, if you have the Report – there is one special Report written by one Lt. General Commandant of the Military of Pakistan, General Said Hussein Makfi. This is what he had to say about the officer:

“He is a confident and self-assured officer who accepts responsibility with zeal and enthusiasm. He makes an effective member of a team and contributes positively to attain the assigned goals.”

I want us to give him the benefit of the doubt.

Lastly, I want to say that most Members have raised the issue of proliferation of so many illicit drinks and drugs. We want to appeal to the Kenya Bureau of Standards (KEBS). When you look at the number of alcoholic drinks that are being approved by KEBS, it is in the range of 300. Who is going to consume that? Those illicit brands are so many that when you go to the villages, some of them are so lethal that when young people consume them, it takes like five minutes and the young person is unable to walk. Therefore, we will look into that.

I had the privilege of visiting Murang’a Rehabilitation Centre in Kambirwa where we had over 700 youths being rehabilitated. It is helping people who have consumed illicit drinks. About 700 people in a rehabilitation centre is an epidemic. Therefore, we just want to warn that institution and the Chair that he has a lot of work to do, and he must deliver on his mandate. There are no two ways about it. He has to work hard and we need results as the House and as a Committee.

With those remarks, I beg to reply. Thank you.

Hon. Speaker: Very well. Putting of the Question is deferred until tomorrow.

(Putting of the Question deferred)

Next Order! The Chairman, Select Committee on Delegated Legislation, Hon. Cheptumo.

REPORT ON THE PARLIAMENTARY SERVICE
(SENATE MONITORING AND EVALUATION)
(PROCEDURES FOR MANAGEMENT OF FUNDS)
REGULATIONS

Hon. Cheptumo: Thank you, Hon. Speaker. I beg to move the following Motion: -

THAT, this House considers the Report of the Committee on Delegated Legislation on the Parliamentary Service (Senate Monitoring and Evaluation) (Procedure for Management of Funds) Regulations, 2016 laid on the Table of the House on Thursday, 27th October 2016 and pursuant to the provisions of Section 18 and 19 of the Statutory Instruments Act, 2013 and Standing Order No. 210(4)(b), resolves to annul the Regulations entirely.

Hon. Speaker, the Select Committee on Delegated Legislation is established under Standing Order No. 210 and the mandate of the Committee is set out in Standing Order No. 210 (3)(a) to (q) and Section 13 of the Statutory Instruments Act. Those are the provisions that set out the mandate of the Committee.

Hon. Temporary Deputy Speaker, Standing Order No.210(3) and Section 13 of the Instruments Act outline what should guide the Committee in considering any instrument which is referred to the Committee for consideration. I request that I refer to that particular Standing Order because it is important for Members to appreciate the mandate of the Committee.

Standing Order No.210 (1)(2)(3)(a) provides as follows:

“(1) There shall be a select committee to be known as the Committee on Delegated Legislation.

(2) Whenever a statutory instrument is submitted to the Assembly pursuant to the Constitution, any law or these Standing Orders, the statutory instrument shall, unless a contrary intention appears in the relevant legislation, be laid before the Assembly by the Chair of the relevant departmental Committee, or any other Member, and shall stand thereafter stand referred to the Committee on Delegated Legislation.

(3) The Committee shall consider in respect of any statutory instrument whether (this is very important) it:

(a) is in accordance with the provisions of the Constitution, the Act pursuant to which it is made or other relevant written law.”

That is the Standing Order that guides the Committee. Standing Order 3 (a) to (q) sets out the various grounds or aspects to be considered by the Committee when dealing with these regulations.

Standing Order No. 210 (4) (a) again provides for what the Committee should do if an instrument or regulation does not comply with the provisions of the Standing Order, the Constitution and the relevant Act of Parliament under which it is made or any other written law. The Committee has the mandate under Standing Order No. 210 (4) to either annul the entire instrument or part of it and if it annuls it, the Committee shall table a Report in the House for it to consider. If they approve the Regulations as published, it will be the business of the Clerk of the House to communicate that decision to the regulation-making authority in which case there will be no tabling of the resolution of the Committee before the House. So, that distinction is very critical. We only bring a resolution of the Committee before the House where we either annul a portion of it or the entire instrument.

In considering the current Regulations before the House, this Committee, as I said earlier, was guided by three very important legislations. One, the Standing Orders of this House, the Statutory Instruments Act, 2013, Parliamentary Service Commission Act and the Public Finance Management Act Regulations of 2015.

It is important for this House to know that the initial Regulations that were tabled before the House, which were done by the Parliamentary Service Commission, were brought under

Section 24 of the Public Finance Management Act of 2012. Upon going through the Regulations, we noted that the relevant law should have been the Parliamentary Service Act and, therefore, we had a lengthy discussion among us as a Committee. It is important for this House to know that we have a Committee in the Senate dealing with the monitoring and evaluation led by Hon. Kiraitu Murungi and we had a meeting with them. It is chaired by Hon. Kiraitu Murungi and the Deputy Speaker, Kembi Gitura. We discussed with them and finally agreed that they need to reform those regulations and come up with fresh ones under the Parliamentary Service Commission Act. That was done. The Regulations before the House are what was published after revoking the previous ones.

It is important for my colleagues and the House to note that these Regulations attached to the Report have seven parts. Part I deals with the citation and interpretation. Part II deals with general provisions, that is, on monitoring, evaluation and objectives. I do not intend to go through all this because Members have done so. We have attached it to the Report. Part III deals with the administration of the Fund. All the way to Part VII deals with miscellaneous provisions. We have two schedules. Schedule 1 deals with the formula for allocating monies among the elected Senators and Schedule 2 deals with conditions for disbursements.

We, therefore, went through these Regulations as a Committee and it became clear to us that the objectives are very noble and good. They are intended to enable the Senate to oversee the county governments in ensuring that they spend the taxpayers' money in a way that is prudent. They are very noble because we know in this country that we have had serious cases where public funds have been misused. Many governors have appeared before the Committee of Senate to answer questions on misuse of funds. So, this is a very noble idea. Unfortunately, noble and good as it appears, there are certain provisions of the law that these Regulations have not complied with.

I would like to refer Members to page 11 of the Report. If you read Item No.61, Public Finance Management Regulation 15 Section 207 of the Public Finance Management Regulations 2015, any fund established in that nature and any other fund that is established must comply with certain requirements. Let me refer to a few of the aspects raised in Regulation No.207 of the Public Finance Management Regulations of 2015. The Cabinet Secretary (CS) is required to certify in writing that the functions and public services to be delivered through the fund cannot be delivered through the structure of budget appropriations.

Hon. Temporary Deputy Speaker, as a Committee, we were not supplied with certification in writing from the Cabinet Secretary (CS) to confirm that the Fund cannot be delivered through the structure of Budget appropriations. The establishment of the Fund shall provide clear justification as to why a fund structure is deemed appropriate for improved service delivery in light of the legislative and policy mandate of the national Government entity. The administration cost of the Fund shall be a maximum of 3 per cent of the approved Budget of the Fund. More importantly is Item No.5 of Regulation 207 which states that the CS responsible for the national Government entity functions shall confirm in writing that the establishment of the Fund and its continued existence will not depend on annual financing from the national Exchequer. The entire provision of Regulation 205 was not complied with when these Regulations were being prepared. I do not want to go down. If you read from Item one to six, it is clear that there are very fundamental provisions which should have been complied with by the regulation-making authority.

As I read earlier, if the Committee is satisfied that the Regulations do not comply or are inconsistent with the Constitution, the parent Act under which they are made or with any other

written law, we then have to invoke the Standing Order No.4. It is the Committee's finding that these Regulations are not in accord with the provisions of the Public Finance Management Regulations, 2015 and are, therefore, in contravention of Section 13 of the Statutory Instruments Act. They are also inconsistent with the Standing Order No.210(3) of this House. It is, therefore, clear that whereas the idea of having this Fund is a noble one and should be supported, it can only be done if it is done in accordance with the law. Our mandate is clear. We are not supposed to legalise what is illegal or allow a law that permits expenditure of public funds if that law or regulation does not follow the due process of law.

As I conclude, on Page 13, based on the observations and findings under Paragraph 5 of the Report, this Committee recommends to the House that the Parliamentary Service (Senate Monitoring and Evaluation) (Procedure for Management of Funds) Regulations, 2016 be annulled in its entirety. I want to be clear as the Chair of this Committee, and some of my Members are also present, that this House should not be seen to be engaging in a war with the Senate. We are not denying the Senate any request to apply for funds. What we are requesting only is that the law should be applied. If they follow the due process and come up with proper regulations that comply with the law, we would have no problem with it. Not only the Senate, but every institution in this country which has the responsibility of creating regulations has no option, but to follow the due process of the law, so that we are a country that believes in the rule of law. As a House, we have to be the ones to set an example in following the process of law.

With those remarks, I want to request my colleague and Member of the Committee, Hon. Kabando, to second.

Hon. (Dr.) Nyikal: On a point of order, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. James Nyikal, the Mover is still moving. Unless he is unprocedural in his moving, I would request that we have the Seconder then maybe you will have a chance to raise your issue as we debate. This Report is not yet an asset of the House. They are still moving the Motion. After the seconding, I will propose the Question and the Members of Parliament will be able to debate it. I will give you a chance to raise your issues after the Report becomes an asset of the House.

Hon. Cheptumo: Thank you, Hon. Temporary Deputy Speaker. I will request my colleague, Hon. Kabando, to second.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Kabando to second.

Hon. Kabando wa Kabando: Thank you, Hon. Temporary Deputy Speaker. I rise to second this Motion. Our Chairman has very ably elaborated the reasoning and justification on why we made the conclusion.

The delegation from the Senate was very elaborate and passionate about the need to initiate this financing. As it were, if any section of any established law or the Constitution is violated or not adhered to, then it simply means that the Committee on Delegated Legislation, whatever other interests or intentions, cannot make a recommendation that will run contrary either to the Constitution or subsidiary legislations. That is our mandate. That is essentially why the Committee is established. Having gone through the various reasoning and having reviewed all the other attendant legislations like the Public Finance Management Regulations and the Statutory Instruments Act, we concluded that it is not practical that this Fund be permitted.

Just to read two parts to reiterate what the Chairman has said on the Public Finance Management Regulations, 2015, Regulation 207 states that the CA for the National Treasury shall demonstrate how the activities of the proposed public fund shall fit in the overall medium-term plan and the Budget Policy Statement. That is a requirement. It is not an option. It is not a

dispensable regulation such that because of the need and the justification by the requesting authority or agency that we can dispense with this. The CS is obliged by established law to demonstrate and, therefore, this is to validate the activities of the proposed public fund in the overall medium-term and the Budget Policy Statement. This is not the case and, therefore, it runs counter.

As the chairman said, the Committee observed that the making of the Regulations did not adhere to the requirements of the Public Finance Management Regulations, 2015. The Committee further observed that Section 13(a) of the Statutory Instruments Act, 2013, provides that statutory instruments should be in accord with the Constitution. Therefore, the Act being pursuant to the regulations that are made and any other written not being acceded to means that we will be abrogating the spirit of the Constitution.

Having said that, there is also the need to have the courage to deal with the politics of the Fund and the timing. Budgetary and appropriation process is also about the public spirit in terms of what ought to be done and what should be done. We appreciated very much in our Committee the need to have stronger Senate programmes in the counties. Everybody in this country agrees that our other Chamber, the Senate, has been without the teeth to do its work of monitoring, evaluation and anchoring their oversight roles in the counties. Therefore, much of the work they have received are Committee hearings, sometimes even running parallel hearings that are being done by the county assemblies, sometimes countering what has been initiated by the National Assembly. So, we understand that there is a problem.

Moving forward, there is need for this country to be seized of the reality that the Senate as currently constituted in terms of the architecture of the Constitution---

(Hon. Wandayi consulted Hon. Ng'ongo)

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Order! Hon. Opiyo, every time you are in the House, you like being noticed. We notice you, but please, be orderly.

Hon. Kabando wa Kabando: The ODM Chairman has a particular gravitas around there which is not in tandem with the proceedings in the House.

That reality is there. Apart from what is captured in this Report, we had lengthy, friendly, very solid and detailed discussions with the delegation from the Senate led by the Deputy Speaker of the Senate and a veteran of this Parliament, Hon. Kiraitu Murungi, and we agreed that there are those challenges and they need to be reviewed.

Going forward, we should consider making constitutional amendments that will allow the Senate to have a greater role. No wonder you see very many Senators - every week you learn of a Senator - running for the seat of a governor. The reality is that the Senate, which is popularly elected by hundreds of thousands of votes cast to Senators in the counties, is completely unable to control the runaway corruption and impunities in the counties. Members of the county assemblies sometimes submit petitions like it happened in Nyeri County. It comes to the national level then there is frustration, not because people do not want to act, but because they are toothless.

In conclusion, I repeat the politics of timing. We are in November 2016 and elections are in August 2017 at the earliest. These activities, even if permitted, and I am saying this is not why the Committee passed this, the recommendations of the Committee are based on law and the Constitution, but I am just adding that the public spirit cannot be separated completely from the budget-making process and from appropriations. We must be conscious of and sensitive to the

realities of the country. Even if we were to pass the regulations, it would mean that we are just budgeting and financing for the Senate to work at the tail end, not at the beginning. They are going to deal with questions of 2013/2014, 2014/2015, 2015/2016 and 2016/2017 Financial Years. And around March or April of the coming year, I am talking about barely four months to go, everybody in elected position in this country will be back to the trenches in the backyard seeking renewal of their mandate or contesting for a different seat.

In the next Parliament, we need to embrace the need to review the constitutional architecture and the attendant subsidiary laws in order to remedy a serious question that will enable the Senate to have the controls and mechanisms that will enable it to monitor the activities in terms of development at the grassroots. Otherwise, we feel for this, but I strongly second this Motion.

(Question proposed)

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Members, I have three requests on this.

Hon. (Dr.) Nyikal: On a point of order, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Nyikal, you are on intervention. Is it a point of information or something is out of order or you want to debate the Motion?

Hon. (Dr.) Nyikal: Thank you, Hon. Temporary Deputy Speaker. I rise to seek your guidance on the process that has brought this important Report in the House. The Report acknowledges how important it is that the Senate oversees county governments. I think that cannot be overstated and if clarification is made on what I want, I will probably discuss that much later.

What I need guidance and clarification on, maybe because I am not a legal mind, is that the Committee Report starts by saying that at the beginning, these regulations were brought under the Public Finance Management (PFM) Act. The Committee then discussed this with the Senate Committee and they agreed that the proper way to do it is to bring them under the Parliamentary Service Act. The Committee then does that and brings them under the Parliamentary Service Act, but then the main finding that now seems to annul this is lack of compliance with the PFM Act under which the Committee had said it should not be brought.

For my mind, I need legal clarification and your guidance as to whether that in itself is not contradictory. Once that is done, and if you allow, then I will make my contribution on this matter. That seems important in my mind.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): You are seeking clarification on issues that are not clear to you. As I said, this is a Report from a Committee, not from an individual. It is important to get that. It is a Report for adoption or refusal from the Committee on Delegated Legislation and the Motion is as stated on the Order Paper. The Chairperson is here.

Hon. Chairperson, the Member seeks a clarification to understand better where you are coming from and heading to. As you prepare on that, allow me to give this opportunity to the Member for Nambale. He is not in. The Member for Bomet Central, as you debate, maybe it can become clear. Before the Chairperson, I have given opportunity to Hon. Tonui, Member for Bomet Central. He is not in.

Your clarification will be given by the Chairperson first. Hon. Bunyasi. He is not in. Members, you are advised not to just leave your cards logged in. Let us have the Member for Ugunja as the Chair gets ready with a clarification.

Hon. Wandayi: Thank you, Hon. Temporary Deputy Speaker. Of course, I will wait for the clarification sought by Hon. Nyikal even though in my mind, that could come in the debate proper.

I wish to start by stating that I oppose this Motion. I oppose it vehemently. The Committee on Delegated Legislation, to my understanding, has got the power to rectify, vary, or amend any regulations that come before it. It can also, of course, reject it in totality, but with sound reasons. The reasons being advanced by the Committee in rejecting these regulations do not satisfy me.

We must understand the role of the Senate in the new constitutional dispensation. The Senate has got one key role. Apart from the role of impeaching governors once sent to them by county assemblies or impeaching the President once we initiate the process here, the Senate has only one other cardinal responsibility of protecting the counties and their governments. How does the Senate do this? I want to say also very clearly before I get to that that the Senate has got no role in overseeing the county Executives. That must be made very clear. There has been some confusion. That work belongs to county assemblies. In exercising their role of protecting the counties and their governments, how does the Senate effectively perform that function?

In my view, the Senate needs to have a clear understanding of the workings of county governments on a day-to-day basis. How would they understand these workings if they have no capacity to visit these counties and interrogate their activities regularly if they are not facilitated? In my view, this House has a cardinal responsibility, because it is the only House that appropriates funds, to ensure that the Senate is facilitated properly to undertake its constitutional responsibility. The money they are asking for is small change. It is small change in the sense that this country is losing billions of shillings nearly on a daily basis through corruption sanctioned by the Executive and presided over by the Executive agents and the owners of the ruling parties.

We need to reject this Motion and compel the Committee to go back and bring to us recommendations which will make it possible for the Senate to be properly financed and facilitated to undertake its responsibility of overseeing the happenings in the counties so that they are able to effectively protect the counties and their governments. That is what we are being asked to do.

I do not want us to portray ourselves as people still steeped in sibling rivalry with the Senate. It will be myopic for us, as Members of the National Assembly, to view this matter as some form of contest between the National Assembly and the Senate. That will be very juvenile, allow me to say so. As legislators, we must legislate with posterity in mind. We cannot continue to legislate by looking at the immediate-term issues of who is superior to whom. That would be most unfortunate.

It would be quite unfortunate. I respect the Committee's Chairperson, a respected senior legal mind. I am sure this could not have been his idea, but he leads a Committee, whose ideas, he must abide by. I want to plead with him that once we reject this Motion, he goes back and pleads with his Committee to look at it afresh with more clear minds. It is pointless to legislate on the basis of what their interests are at the moment. I might be the Senator of Siaya tomorrow and I want to be able to discharge my duties and responsibilities effectively by being facilitated by the National Assembly. The question of the law they are citing as having been violated by this regulation which could be the Public Finance Management (PFM) Act is a non-issue. Any

regulation coming before this House must abide by all the existing laws and the Constitution. I agree with the Committee on that. The contradiction on this regulation and any other part of the law must be rectified. The only way to cure it is not to throw the baby with the bath water because of just one or two violations. Parliament should not work that way.

I would like to plead with my colleagues to look at this Motion with sobriety and a sense of nationalism. This Motion is supposed to unlock funds to Senators to discharge their duties. Let us look at this Motion with a sense of nationalism so that we are not engaged endlessly in sibling rivalry with our brothers and sisters in the other House.

I oppose.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Cheptumo, can you, please, clarify the issues that have been raised?

Hon. Cheptumo: Thank you, Hon. Temporary Deputy Speaker. The debate on this Motion has already started and I will restrict myself to the issue raised by Hon. (Dr.) Nyikal. How did we move from the Public Finance Management Act to the Parliamentary Service Act, and use the provisions of the previous Act that we rejected to amend these regulations? The law is very clear. If we look at the regulations under the Parliamentary Service Act, the law requires that they comply and should be consistent with the Constitution, the Act under which it is made or any other relevant written laws. The PFM Act and the regulations thereof is what we refer to as any other written law. The fact that you moved away from that Act to this other one does not divorce the fact that you should comply with the other law. It is only the creation of the Fund that can be done under the Parliamentary Service Act.

(Hon. (Ms.) Nyasuna crossed the Bar without bowing)

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. (Ms.) Wanga, can you do the necessary? This is a House of rules and decorum.

(Hon. (Ms.) Nyasuna went to the Bar and Bowed to the Speaker)

Hon. Cheptumo: Hon. Temporary Deputy Speaker, my colleague is asking a very valid question. That is the way the law operates given the nature of our mandate as a Committee. That issue will form our reply after the Motion is debated by the House.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): The House can either adopt or reject the Report of the Committee. The Chairperson has given the import of the Committees' resolutions to this effect. I will leave it to the Members to debate.

Member for Garissa Township.

Hon. A.B. Duale: Thank you, Hon. Temporary Deputy Speaker. From the outset, I would like to state that I support the Committees' recommendation that the Parliamentary Service (Senate Monitoring and Evaluation) (Procedure for Management of Funds) Regulation be annulled. This House must respect the Constitution and the rules that govern this country. I want to thank the Chairman of the Select Committee on Delegated Legislation for doing a very good work. I really wanted the Senators to get the Kshs1 billion. I do not want to seek clarifications from the Chairman because he has tabled a Report and I would like to ask the Members to look at it. The Chairperson is saying that the Parliamentary Service (Senate Monitoring and Evaluation) (Procedure for Management Funds) Regulations, 2016, did not

adhere to the requirements of Section 13 of the statutory Act, 2013, which states that statutory instruments should be in accordance with the Constitution, the Act pursuant to which they are made, and any other written law if they are to be acceded to. This is very clear. I respect the rule of law. When we go to our constituencies, we do not use the Constituencies Development Fund (CDF), but mileage given to us by the National Assembly, to monitor and evaluate projects. Who pays us? Why should the Senate be paid? That is a fundamental question. I am happy that Hon. (Ms.) Wanga is here because the Affirmative Fund complied with this law. It came from the National Treasury. Am I right?

Hon. (Ms.) Nyasuna: Yes.

Hon. A.B. Duale: The Chairperson is saying that we can give the Senators Kshs1 billion, but there must be consultations with the National Treasury. It is very clear that the making of the regulation did not adhere to the requirements of Regulation 207 of the PFM Act, 2015. Hon. Wandayi is a lawmaker. He should amend that section if he wants to give the Senators Kshs1 billion. Do not play politics.

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

Hon. A.B. Duale: You had your time to contribute. You should listen to the leader when he is speaking. You are a junior Member of this House and I am a ranking Member of the House.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. A. B. Duale, it does not matter and that is why I have given you priority to speak.

Hon. A.B. Duale: Thank you, Hon. Temporary Deputy Speaker. You gave me priority to speak because of my ranking in the House. I wanted to make it clear to my friend, Hon. Wandayi. I saved him when he was chased from this House. We talked with Hon. Mbadi and the leadership of the House. He should pay me back.

This man is my friend and I have a lot of respect for him. I look at this Report and what the Chairman is saying is that, yes, all of us wanted to give the Senate these funds, but we cannot be the House that makes laws and then breaks it. So, the establishment of this Fund shall be initiated through a proposal by the CS responsible for the National Treasury. There are living examples of that like Hon. Wanga, Hon. Mitaru and the Member for Tharaka Nithi. They did a lot of lobbying.

In my community, they say that the route that you get lost at night, come back during the day and use the same route. *Barabara unayoipotea usiku, njoo mchana uitumie tena.*

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Again, Hon. Duale, I know you are ranked very highly and you are aware of the procedure.

Hon. A.B. Duale: I agree with you. I should not---

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Allow me to speak. You are now out of order. Let me give you directions. I know where you are rated, but that does not give you a blanket to mix Swahili and English.

Hon. A.B. Duale: I am out of order only that that translation can only be done in Swahili. This is the Queen's language.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): You are guided.

Hon. A.B. Duale: Hon. Temporary Deputy Speaker, you know I am one of the supporters of a man called Donald Trump. I am so happy. I supported Donald Trump and I have no apologies to make. One of the reasons I supported him is when he said Americans must solve their problems in their country and they should not meddle in other countries. He told the Americans to reclaim their country. I am so excited this week. Today, we are naming the Cabinet in the United States of America. He is sitting with the Vice-President now.

I switched to Swahili because that saying is in my community and I could not say it in English. There is a concern here of conflict of interest in Regulation 13 on the establishment of the Senate Monetary and Evaluation Committee. The membership of the Committee could compromise some Members who could be directly responsible for receiving and distributing funds. I think the Committee on Delegated Legislation has done a good job. It is now for us. I am sure once we reject it, we will form a Joint Committee of both Houses. That is the route. Once we agree with the Report, then the next route is to form a Joint Committee of the whole House and I am sure that Joint Committee will give us a way forward on how to deal with this matter.

It is very clear. I thank Hon. Cheptumo. This is a very clear matter. You wanted to do everything, but the wall that we faced is the law, namely, the Public Finance Management Act.

I support.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. James Nyikal, you can now go ahead. You have the clarification of the Chair.

Hon. (Dr.) Nyikal: Thank you, Hon. Temporary Deputy Speaker. I just sought clarification. Now I am making my point.

I come out to oppose this Report for a simple reason that I do not see the Committee as being sincere. On the first instance, they noted that legally, it was proper that it comes under the Parliamentary Service Act and they advised the Senate as such. The Senate goes ahead to act as advised, but again, they make a legal or technical error. They do not comply with the requirement. I do not see why the same Committee cannot sit with the Senate Committee and tell them that, once again, you have not got it right. You have got it in the right Act, but you have not complied with other requirements. If it was in good faith, that is how it would have gone, but to wait and then come and completely negate the whole regulation while initially they were in the mood of consultation, I find that not acceptable. Therefore, I see a bit of malice in what the Committee is doing.

I would have sought the Committee to go for more consultation because of the nature and importance of these regulations. It is about devolution. We know devolution is the most important factor in our new Constitution. We know how we are struggling with devolution. We have problems at the counties and we have to strengthen oversight. Therefore, I expected the Committee to play more of a guiding role than making the whole regulation fall.

The Senate needs to be given the capacity to oversee the counties. In this House, we have come up with many Bills after realising that counties have been operating in a legal vacuum. Just yesterday, we were debating the County Assembly Services Bill. Just before we went to recess, we had a Bill on the privileges of county assemblies. All these indicate that we need to look at the whole process of devolution. We need to look at the whole process of guiding the operations of counties. Therefore, the Senate, according to the Constitution, has the mandate to look at the issues affecting counties and should be supported.

Therefore, I reject this Report merely on the fact that I did not see goodwill on the part of the Committee. With those remarks, I oppose the Report.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Member for Suba.

Hon. Ng'ongo: Thank you, Hon. Temporary Deputy Speaker for giving me this opportunity to contribute to the Motion before us. We are being asked by the Committee on Delegated Legislation to reject these regulations on the procedure for management of Funds, namely, the Senate monitoring and evaluation. I also want to join my colleagues who are opposing the Motion. My opposition to this Motion is based on the Report of the Committee.

I see that the Committee bases its decision on three grounds. The first ground is that there is lack of compliance with the Public Finance Management Regulations, 2015. Remember, we are talking about one regulation not being in compliance with another regulation. It is not the Public Finance Management Act, the way I read it, unless it is a mistake. But why would one regulation strictly be in compliance with another regulation? There is no law anywhere that insubordinates a regulation to another regulation. Even the strict reading of the Public Finance Management Regulations, 2015, does not provide any ground for disagreement between these two regulations.

The Committee tells us, and they have picked this from the regulations, that one of the requirements is that the establishment of the Fund shall be initiated through a proposal by the CS responsible for the national Government entity under which the functions of the Fund shall fall, clearly setting out the justifications, and submit to the CS. My understanding is that the Fund we are setting up is for the Senate. The Senate does not fall under any CS. The Senate falls under Parliamentary Service Commission. These regulations are based on the Parliamentary Service Act. So, in my view, I do not see any inconsistency between the requirement of this regulation and what the Senate has done. There are other provisions in the Public Finance Management Regulations, 2015, but I do not see any conflict that the Committee has ably elaborated on for us to make a decision. The Committee states that it observed that the making of the regulations did not adhere to the requirements of the Public Finance Management Regulations, 2015 as outlined above. The Committee has not explained how.

They have just listed the provisions of the Public Finance Management Regulations, 2015, but they have not given us the details as to how there is inconsistency. The other two grounds are very flimsy. Regulation 13 on the establishment of the Senate Monitoring and Evaluation Committee provides for the establishment of the Senate Monitoring and Evaluation Committee whose function is to oversee money allocated to the Fund. The Committee observed that this would create conflict of interest since the membership of the Committee comprises the same Members who would be directly responsible for receiving and distribution of the Funds' money

On the NG-CDF, we have a Committee of the National Assembly overseeing it. I do not see any complaint because this is a Select Committee of the Senate. It is not mandatory that there is supposed to be a committee to oversee, but they have seen it fit to appoint a Committee to oversee that Fund. I do not see anything wrong with that neither do I see any inconsistency. As a House, we can not only appropriate money, but we can also oversee the implementation of that money on the ground as a House. There is no conflict in my view. This is what we have been arguing with the CDF. We are overseeing its implementation at the constituency level. As an individual Member of Parliament for Suba, I oversee and again as a Member of the National Assembly.

The third and last one is that the Regulation provides for the disbursement of money allocated to the Fund through the county office. The Committee observed that this will be a duplication of a structure put in place by the Parliamentary Service Commission. So, what if there is duplication? What is the problem with that? The Committee is not fair to us. The Committee has not given us a detailed report to explain exactly why they are rejecting this Regulation. I also want to concur and agree with Hon. Nyikal, that in my view, we are becoming petty as a House. I am saying this because we are the ones who insisted that the Senate must come up with these regulations under PSC and not under the Public Finance Management (PFM) Act. After they have done the same, we are now shifting the goalposts and we are now insisting

that these regulations must comply with the PFM Regulations. It is high time we came to the realisation that the Senate is an important House. Senate is an important House and I have said it before that sometimes I find Senators doing things that they are not supposed to do, but when they want to do what they are supposed to do, we are blocking them from doing it. We are complaining of misuse of funds at counties and then we blame Senators for not overseeing our counties properly. When Senators want to be given capacity to deliver to the people of Kenya and ensure that devolution works, we again erect roadblocks.

Hon. Temporary Deputy Speaker, even under NG-CDF, there is a provision for monitoring and evaluation money. That money is supposed to be spent to monitor and see how projects are being implemented. Why are we asking the Senate to monitor and evaluate projects in counties and when they are asking for finances, we say no to the same? Let us be fair. I want to tell the Committee on Delegated Legislation, with all due respect, please, let us allow these regulations. There is no legislation that will ever be perfect. I also blame the Legal Department. The Senate operates within Parliament and we have a Legal Department which has worked on these regulations and you are telling us that our Legal Department is not up to the task. How then would we get regulations presented to this House if those regulations have issues with matters of law? Either we are not being honest or then the PSC, and I can see Commissioner Wanga is here, need to crack the whip and ask our Legal Department what they are doing. They are embarrassing the Senate and they will embarrass the National Assembly.

I am shocked to read in this Report that the grounds upon which the Committee on Delegated Legislation is rejecting the regulations are matters of law and procedure. What is this? Does it mean that we do not have capacity in this Parliament? Do we not have people who can draft regulations that comply with the law?

In my view, we are going to do a lot of disservice to ourselves as a House and to expose ourselves as petty, fighting the Senate for no good reason. The fight we have had is enough. We are almost coming to the end of this Parliament. Why do we not, at this point in time, agree to be magnanimous, as a House, and allow these regulations to proceed? If there are issues, the regulations can be amended once they are implemented. We can amend the regulations.

I oppose the Report of the Committee on Delegated Legislation and with a lot of respect to Hon. Cheptumo. I know he is a polished lawyer in this country. So, I am not undermining his Committee, authority or intelligence, but I am just saying that let us be fair to our sister House. This Parliament is bicameral and we must facilitate each other. Let us not abuse the powers that we have as the National Assembly in terms of appropriating money and allowing legislation to that effect.

Thank you and I oppose.

The Temporary Deputy Speaker (Hon. Mbalu): Hon. Members, I have one more request. Hon. Sakwa Bunyasi is not in the House. Hon. Olago Aluoch, there is nothing out of order. I have the Member for Homa Bay County on my request list.

Hon. (Ms.) Nyasuna: Thank you, Hon. Temporary Deputy Speaker. I rise to oppose this Report. I have great respect for the Chairman of the Delegated Legislation Committee, Hon. Cheptumo, as well as the Members of the Committee, which has some of the best brains in terms of legal matters in this House.

The Senate has travelled a very long and bumpy road to get to where it is today. You might remember that the first time Kshs1 billion was allocated to the Senate for purposes of monitoring and evaluation, that money ended up being removed by this House and re-allocated for other purposes when there was tug of war between the National Assembly and the Senate.

After that, another allocation was made to the Senate of about Kshs300 billion to proceed with monitoring and evaluation. Because of regulations and other reasons, that also did not see the light of day.

I sit in the PSC and I know that it has been quite a journey to get the regulations to where they are today. I know that the Committee of the Senate that is spearheading this matter is also led by a very senior lawyer, Sen. Kiraitu Murungi. There has been a lot of discussions between the Kiraitu-led Committee and the Committee on Delegated Legislation to try and iron out some of these issues that have been emerging. We cannot run away from the fact that we now are in a bicameral Parliament, namely, the Senate and the National Assembly. The PSC has a responsibility, as provided in the Constitution, to ensure that both Houses run effectively, so that Parliament is able to do its duty.

With regard to the reasons for the annulment of these regulations, I know they were created under the Parliamentary Service Commission Act. This is what has gone back and forth to the Committee on Delegated Legislation. It did not seem to be an issue until the Senators proposed and made all the amendments. Ultimately, they were told that the regulations were now being annulled.

Hon. Temporary Deputy Speaker, I would like to point out that even the money that we spend within our constituencies and counties, the regulations operate under the Parliamentary Service Act. These funds are appropriated under the Parliamentary Service Commission (PSC).

The National Assembly cannot be seen to be fighting, in perpetuity, with the Senate. At some point, we must say that Senators must be facilitated to do their duty. Senators are people of very great respect in this country. When they walk around and they sometimes have to be subdued by governors who have a lot of money and who they are trying to oversee, it does not look good. We say that counties are losing resources through corruption yet we know very well that many of our county assemblies have not shown capacity to effectively offer oversight to the county governments. We need to be fair. Again, as the National Assembly, we take away facilitation from the Senate to do this. For you to oversee and move around, you need resources. You cannot be able to meet people, talk to them and ask them whether they are enjoying the projects with your mileage funds. Honestly, is it possible? Nairobi County, for example, has no mileage funds. The counties that surround Nairobi have no mileage funds. So, how are the Senators in these areas going to effectively oversee county governments?

I want to agree with my colleagues that I see no good faith in the rejection or annulment of these regulations. Just the same way there has been back and forth in adjusting the regulations, I want to urge the Committee on Delegated Legislation to sit down with the Senate Committee as we have done. Let us point them to exactly where we need them to make correction. Let them make that correction. Let us pass these regulations. Let us give Senators this money. Let them do their job. Time is running out, as somebody correctly pointed out. Honestly, we do not expect to run out of this Parliament and into the next. The PSC is all the time, including our Speaker who chairs the PSC, accused of favouring the National Assembly and sidelining the Senate. We do not want this to also appear as one of those areas where we are being told we do not equally serve our sister House or our brother House, the Senate.

With those many remarks, I would like to oppose and urge the Committee to kindly sit down with the Senate Committee and iron out any pending issues. Let Senators receive money to do their work. Thank you.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Thank you, Hon. Wanga. You oppose. From where I sit and as you are aware, the Speaker has no vote from this position. I can

neither express my dissatisfaction nor express satisfaction on this. It is a House of rules. It is a House of voting and, of course, debate. I see no other request to debate on the consideration of the Report. I am sure Members have spoken to it.

I call upon the Mover to reply. Maybe the Mover may be convinced or not by the sentiments from the contributions of Members.

Hon. Cheptumo: Thank you, Hon. Temporary Deputy Speaker.

I wish to thank my colleagues for their presentations. I really appreciate their concerns. This is a House of debate. We have a mandate, as a Committee, which we have been able to execute. We have been able to table our Report. We are convinced that the reasons for rejecting the regulations are valid. Our mandate is very unique. We do not assist. Once they are published and tabled on the Floor of the House, we do not amend or vary. We consider as tabled.

In my submissions earlier when I was moving the Motion, it should not be seen that we are opening another door for competition with the Senate. If the aspects of law that we have raised are addressed, we have no business delaying these regulations for a day. This is now the business of this House. There are those opposing and those who are supporting. Ultimately, the Question will be put and the Noes and Ayes will have their way. Therefore, it is important that we engage in discussing these issues the way Members have done. I assure my colleagues that my Committee is very certain that any argument to portray the Report as malicious and as meant to fight the Senate is not true. I want to be on record. We value our brothers and sisters in the Senate.

I would like to thank all our Members who have managed to give their views on this. Either way, whatever the decision the House will make, we will abide by it.

Thank you, Hon. Temporary Deputy Speaker. I would also like to thank all my colleagues for the comments they have given.

The Temporary Deputy Speaker (Hon. Ms. Mbalu): Hon. Members, the Mover has replied. It is very unfortunate that such good Motions and reports have few Members' support. This is not a small piece of legislation or a Report for adoption in the House. For the obvious reasons, I am not able to put the Question. I direct that the Question be put at the right time and the most appropriate Sitting as per the direction of the Speaker.

Next Order.

STATUS OF IMPLEMENTATION OF PHASE I AND II
OF THE STANDARD GAUGE RAILWAY

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Members, those who were not in, you are aware that Hon. Aden Keynan withdrew Motion No.13. We are now on Motion No.14.

Let us have the Mover.

Hon. Kamanda: Hon. Temporary Deputy Speaker, I beg to move:-

THAT, this House adopts the Report of Departmental Committee on Transport, Public Works and Housing on the inquiry into the status of implementation of Phase I and II of the Standard Gauge Railway(SGR), laid on the Table of the House on Tuesday, October 4, 2016.

The Committee, on its own motion, resolved to undertake inquiry into the development and status of the implementation of the SGR. This is in accordance with the provisions of the Standing Order No.216(5)(a). While inquiring into the matter on the development of the SGR,

the Committee held meetings with the CS, Transport, Infrastructure, Housing and Urban Development and the Managing Director of the Kenya Railways Corporation (KRC). The meetings were aimed at affording the CS and the Managing Director (MD) an opportunity to assist the Committee to conduct its inquiry by informing the Committee on the issues surrounding the development of the SGR.

The SGR is part of the greater Mombasa-Kampala-Kigali-Juba SGR, which is one of the projects under the Northern Corridor Integrated Project, for which Kenya, Uganda, Rwanda and South Sudan have signed and ratified the SGR Protocol. The SGR is one of the critical flagship projects under the Kenya Vision, 2030. It is envisaged in transforming the country's transport infrastructure with the view of positioning its regional transport hub for Eastern and Central Africa.

Owing to the importance of the project which falls within the Committee's oversight mandate, the Committee on its own motion, pursuant to the provisions of Standing Order No.261(5)(e), resolved to undertake and inquire into the development and status of the implementation of Phases I and II of the SGR.

The key objectives of the inquiry were:

- (i) To find out the status of implementation and the quality of work done on Phase I of the SGR being Mombasa-Nairobi railway line.
- (ii) To establish the status and financial negotiation and funding agreement arrangement for the development of Phase II of the SGR.
- (iii) To establish the institutional framework for management, operational and maintenance of the SGR upon completion.
- (iv) To report to the House the Committee's observations, findings and recommendations.

To achieve these objectives, the Committee undertook a review of the relevant materials on the SGR at its disposal to acquaint itself with the details of the project. The Committee also invited the CS for Transport, Infrastructure, Housing and Urban Development; the MD, KRC; the Director-General, Procurement Oversight Authority and the Attorney-General to apprise in the key areas of the inquiry. Further, the Committee undertook an inspection visit to the Mombasa-Nairobi and Nairobi-Naivasha sections of the SGR to ascertain the progress made on the ground.

The Committee established that at that time, the contractor had done a commendable job on Phase I which was 70 per cent complete. In addition, the contractor was progressing at a pace that would see the section completed by June 2017 which would be four months ahead of the contractual time. The Committee also noted that the project had integrated local suppliers and workers thereby being beneficial to the country's economy.

The Committee confirmed that the financial agreement for Phase IIA, which is Nairobi-Naivasha, was signed on 3rd December 2013 between the Government of Kenya and Exim Bank of China in South Africa. The Exim Bank is in the process of fulfilling the condition of disbursement of the funds. I want to report to this House that as I speak, Phase II has already started and on 19th October 2016, it was commissioned by His Excellency the President.

Based on its findings, the Committee made a raft of recommendations requiring the Ministry of Transport, Infrastructure, Housing and Urban Development to undertake due diligence on the China Communications Construction (CCC) to confirm the company's competence to undertake operation of the Mombasa-Nairobi SGR after the completion of the construction. Already, the Government has entered into an agreement for the consideration to undertake the operation of the SGR for a minimum period of five years. The other

recommendation that the Committee made was to fast-track the development of the Nairobi-Naivasha section, which has already started. Thirdly, to fast-track the development of the Nairobi-Kisumu-Malaba section of the SGR. The SGR link will serve the region through Lake Victoria in case of delay in the development.

This is the first railway line that is being built in our time and it is good that Members of this House visit the route. I urge my friend, (Dr.) Nyikal and all the Committees of the House, to take this opportunity to visit the railway line. The Committees should ask their Members to, at least, visit the SGR. It should not only be the Members of the Departmental Committee on Transport, Public Works and Housing, but all the Members should visit the SGR to see what is happening and what the Government is doing for its citizens.

To conclude, I beg to move this Motion and request Hon. Mahamud, who is my Vice-Chairman, to second.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Mahamud, where is your card?

Hon. (Eng.) Mahamud: I have no card. It refused to work. Thank you, Hon. Temporary Deputy Speaker. I will be very brief.

Let me take this opportunity to second this Motion. The Nairobi-Malaba SGR is part of the Northern Corridor Integrated Project which was initiated between Kenya, Uganda, Rwanda and South Sudan. Under that Protocol, Kenya was supposed to do its part from Mombasa to Malaba. We are aware that the section between Mombasa and Nairobi is already on track. In fact, it has already started and by June next year, it will be operational. The Inland Container Depot (ICD) in Nairobi has been started. It will be a main station which will be seen on the railway line in Nairobi.

The project has been done such that Phase 1 is what we are doing now in Mombasa-Nairobi. Phase II will have three surfaces. Phase IIA is Nairobi-Mai Mahiu-Suswa, which is also referred to as the Nairobi-Naivasha line. The second one will be Phase IIB, which is from Suswa-Narok-Bomet-Sondu-Ahero and Kisumu. Phase IIC will be from Kisumu-Yala-Mumias-Malaba. It is important that this line continues because if you only do it up to Nairobi, then, that connectivity is not there. We looked at the preparedness of the Ministry of Transport, Infrastructure, Housing and Urban Development and we saw that they have initiated Phase IIA, which is Nairobi-Suswa.

The Committee's recommendation to the House is very simple. We need to fast-track the development of the Nairobi ICD, which is being done, and the Nairobi-Naivasha section to serve the proposed Naivasha Industrial Park. For the other section between Naivasha-Malaba, we need to initiate the process for funding.

With those few remarks, I beg to second.

(Question proposed)

An Hon. Member: Put the Question.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Nyikal, do you want to contribute? You do not. Hon. Sakwa Bunyasi is not in.

Hon. Members, please, let us not leave our cards logged in. You are confusing the Speaker. Hon. Nyikal is not ready to speak on this. I do not have any other request on this. The mood of the House, as I can hear from the Members, is that I put the Question.

I will proceed to make a statement to the effect that I am not in a position to put the Question because of obvious reasons. This is a House of procedure. The Speaker cannot put the Question before the Mover replies. I call upon the Mover to reply. Are you ready Chairman? I call upon the Chairman to reply now that there is no request to debate this.

Hon. Kamanda: Hon. Temporary Deputy Speaker, I want to thank the Members. I appreciate that they did not want to ask questions on this matter because they understand it very well. They know how far the SGR has taken this country. We want to assure the Members from western Kenya that this Committee is working day and night to see that the SGR is fast-tracked from Naivasha to Malaba.

I also want to take this opportunity to ask the Clerk of the National Assembly to allow the staff to do this work because it will take almost 100 years for another project to come up, so that everybody can see what we are doing.

With those few remarks, I beg to reply.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Members, I am not in a position to put the Question. I give direction that the Question be put in the next Sitting at the most appropriate time.

Next Order!

BILLS

Second Reading

THE CONTEMPT OF COURT BILL

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Members, the Mover of the Bill is not in. I direct that Order No.15 be stood down.

Next Order!

(Bill deferred)

Second Reading

THE NATIONAL YOUTH SERVICE (AMENDMENT) BILL

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Members, the Chairperson of the Departmental Committee on Labour and Social Welfare is not in the House. I am sure they did not expect us to do the business of the House so well today. I direct that this Order also be stood down.

Let us move to the next Order!

(Bill deferred)

Second Reading

THE PERSONS WITH DISABILITIES (AMENDMENT) BILL

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Members, the Chairperson of the Departmental Committee on Labour and Social Welfare is not in. I direct that this Order also be stood down.

(Bill deferred)

Second Reading

THE NATIONAL HONOURS (AMENDMENT) BILL

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Members, the Chairperson of the Departmental Committee on Administration and National Security is not in the House. I direct that the Order No.19 be stood down.

(Bill deferred)

Second Reading

THE NATIONAL FLAG, EMBLEMS AND
NAMES (AMENDMENT) BILL

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Members, the Mover of this Bill is not in. I, therefore, order that it be stood down.

(Bill deferred)

Second Reading

THE ELECTIONS LAWS (AMENDMENT) BILL

(Hon. Chepkong'a on 4.5.2016)

(Resumption of Debate interrupted on 30.6.2016)

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

An Hon. Member: He is not in.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Sakwa Bunyasi.

An Hon. Member: He is not in.

ADJOURNMENT

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Members, the time being 6.30 p.m., this House stands adjourned until tomorrow, Thursday, 17th November 2016 at 2.30 p.m.

Thank you, Hon. Members.

The House rose at 6.30 p.m.