

NATIONAL ASSEMBLY

OFFICIAL REPORT

Thursday, 28th July, 2016

The House met at 2.30 p.m.

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

PRAYERS

COMMUNICATION FROM THE CHAIR

DELEGATION FROM PARLIAMENT OF ZIMBABWE

Hon. Speaker: Hon. Members, I wish to introduce to you a delegation of Members of Parliament from the Parliament of Zimbabwe, who are Members of the Committee on Legal Affairs. The delegation is seated at the Speaker's Row and comprise of the following:-

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|-------------------------------------|---|----------------------|
| (i) The Hon. Jonathan Samukange, MP | - | Leader of Delegation |
| (ii) The Hon. Ziyambi Ziyambi, MP | - | Member |
| (iii) The Hon. Fortune Chasi, MP | - | Member |
| (iv) The Hon. Innocent Gonese, MP | - | Member |
| (v) The Hon. Funganyi Jessie, MP | - | Member |
| (vi) Ms. Gladys Pise | - | Staff of Parliament |
| (vii) Mrs. Nosizi Khumalo | - | Staff of Parliament |

Hon. Members, the delegation is in the country to share experiences and broaden their understanding and knowledge on the workings of our Parliament. On my own behalf and that of the House, I wish to welcome them to the National Assembly and wish them fruitful deliberations during their stay in the country.

I thank you.

GUIDANCE ON PRESENTATION AND REPORTING OF PETITIONS IN THE HOUSE

Hon. Speaker: Hon. Members, this communication relates to a matter that has come up very frequently in the House, and which needs to be addressed. It is a matter of presentation and reporting of petitions in the House.

One of the core functions of legislators is to deliberate on and resolve issues of concern to the people, as envisaged in Article 95(2) of the Constitution. As you may be aware, our constitutional dispensation bestows to the people the right to petition public authorities, including Parliament and, indeed, this House, as contemplated under Article 37 of the Constitution in the Bill of Rights. For the case of petitions to Parliament, this provision is actualized through the Petitions to Parliament (Procedure) Act, 2012, read together with Part XXIII of our Standing Orders on petitions.

Hon. Members, my office has noted the steep increase in the number of public petitions being presented to the House on various matters. Indeed, a reflection on the weekly reports to this House by various Departmental Committees regarding business pending before them reveals that an overwhelming bulk of that business constitutes considerations of petitions. As at Wednesday, 27th July, 2016, the number of petitions that were before this House stood at 108.

Unfortunately, some of those petitions have been pending before the relevant committees of the House for far too long, with some dating back to 2013, oblivious of the 60 calendar days prescribed by Standing Order 227. This is partly because some committees have not been according them due attention. I wish to remind the House that the core reason for citizens opting to present their prayers to this House for intervention on various matters is informed by the failure by relevant authorities to address these concerns. The unprecedented increase in petitions to Parliament, and delays in consideration of the same by the relevant committees, invites the Speaker to guide this House on how best it may handle petitions, going forward. I therefore wish to guide the House on the matter.

For predictability and harmony in processing of petitions, I have designated certain days for presentation and reporting as follows:-

- (i) Tuesdays and Wednesday afternoon Sittings shall be designated for presentation of petitions received; and,
- (ii) Wednesday Morning and Thursday Afternoon Sittings shall be designated for Committees to report to the House on consideration of petitions referred to them.

I therefore direct that, pursuant to the provisions of Standing Order 225(1), a schedule of all petitions to be presented or reported to the House on a particular day be appended to the Order Paper of that day. As you may have noticed from the Order Papers from Tuesday, 26th July, 2016, this requirement has already taken effect.

Hon. Members, upon tabling reports on petitions, chairpersons of the relevant committees shall be required to apprise the House on the contents of the said reports. For clarity, the brief by chairpersons shall be confined to the subject of the petition, the prayers sought by petitioners, summary of the views and evidence gathered and the findings or recommendations thereof. Thereafter, Hon. Members interested in the petition may make brief comments on the report. Such comments by the chairperson shall be limited to a maximum of 10 minutes and the total time shall not exceed 30 minutes. This guidance is meant to breathe life into the provisions of Standing Order 226.

Hon. Members, to keep the petitioners' prayers in abeyance is against the Constitution and our own Standing Orders and tantamount to denying them justice. In this regard, committees that have not reported to the House on petitions referred to them within the requisite period of 60 days, and have not sought leave of the House to have that prescribed time extended for justifiable reasons, are in breach of the provisions of Standing Order 227.

I am also aware that most committees are unable to dispose of their business because they have elected to operate without delegating some business to sub-committees, yet the Standing Orders permit them to do so. For avoidance of doubt, Standing 183 provides that a select committee may establish such sub-committees as it may consider necessary for the proper discharge of its functions.

Chairpersons of committees are therefore encouraged to embrace the spirit of this provision and utilize the window for establishing sub-committees with a view to expediting transaction of business, particularly business with timelines.

I thank you.

PAPERS LAID

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

The Legal Education (Accreditation and Quality Assurance) Regulations, 2015 and the Explanatory Memorandum.

The Report of the Auditor-General and Summary on the Appropriation Accounts, Public Accounts and the Fund Accounts of the Republic of Kenya for the year 2014/2015.

The Report of the Auditor-General on the Financial Statements of the State Department of East African Affairs for the year ended 30th June, 2015 and the Certificate therein.

Hon. Speaker: Hon. Members, the Legal Education (Accreditation and Quality Assurance) Regulations 2015 and the Explanatory Memorandum are referred to the Committee on Delegated Legislation for consideration. It is fair that the Committee acts within the timelines given.

The Report of the Auditor General on the Appropriations Accounts, Public Accounts and Fund Accounts of the Republic of Kenya for the year 2014/2015 is referred to the Public Accounts Committee.

Chairperson of Departmental Committee on Lands.

Hon. Mwiru: Hon. Speaker, I beg to lay the following Papers on the Table of the House:-

The Report of the Mediation Committee on the Land Laws (Amendment) Bill (National Assembly Bill No.55 of 2015).

The Report of the Mediation Committee on the Community Land Bill (National Assembly Bill No.45 of 2015).

Thank you.

Hon. Speaker: Chair of Departmental Committee on Lands, you were part of the team that was doing mediation between the National Assembly and the Senate.

Hon. ole Sakuda: Yes, Hon. Speaker.

Hon. Speaker: If you look at the provisions of Article 113(2), it envisages a situation where the Mediation Committee will present both the report and a version of the agreed Bill. I hope your report is annexed to the version of the Bill that the Mediation Committee agreed on. Is that correct, Hon. Sakuda?

Hon. ole Sakuda: Yes, Hon. Speaker. That is very true. Annexed to our report is the Bill.

Hon. Speaker: Remember it has to be a Bill that incorporates the views, both of this House and of the Senate, plus what has been mediated and agreed to by your Committee.

Hon. ole Sakuda: Correct, Hon. Speaker.

Hon. Speaker: Very well. The Chairperson of Departmental Committee on Education, Research and Technology.

Hon. Melly: Hon. Speaker, I beg to lay the following Paper on the Table of the House today, Thursday, 28th July 2016:-

The Report of the Departmental Committee on Education, Research and Technology on its consideration of the Universities (Amendment) Bill, 2015.

Hon. Speaker: Very well. The Chairperson of Departmental Committee on Environment and Natural Resources.

Hon. (Ms.) Abdalla: Hon. Speaker, I beg to lay the following Paper on the Table of the House today, Thursday, 28th July 2016:-

Report of the Departmental Committee on Environment and Natural Resources on its consideration of the Mediation Committee Report on Water Bill (National Assembly Bill No. 7 of 2014) and the Petition by Hon. James Mwangi Gakuya, MP on the massive dumping of soil in Ngong River on Reuben side opposite St. Elizabeth Primary School.

Hon. Speaker: Next Order.

NOTICES OF MOTIONS

ADOPTION OF MEDIATION COMMITTEE REPORT ON COMMUNITY LAND BILL

Hon. ole Sakuda: Hon. Speaker, I beg to give notice of the following Motion:-

THAT pursuant to the provisions of Article 113(2) of the Constitution and Standing Order 150, this House adopts the Report of the Mediation Committee on the Community Land Bill laid on the Table of the House today, Tuesday 28th July 2016 and approves the mediated version of the Community Land Bill, National Assembly Bill No. 45 of 2015.

ADOPTION OF MEDIATION COMMITTEE REPORT ON LAND LAWS (AMENDMENT) BILL

THAT, pursuant to the provisions of Article 113(2) of the Constitution and Standing Order 150, this House adopts the Report of the Mediation Committee on the Land Laws (Amendment) Bill laid on the Table of the House today, Thursday 28th July 2016 and approves the mediated version of the Lands Laws (Amendment) Bill, National Assembly Bill No. 55 of 2015.

Hon. Speaker: Hon. Amina Abdalla, could you as you give notice confirm that you have annexed the mediated version of the Bill?

Hon. (Ms.) Abdalla: Thank you, Hon. Speaker. We do not have a Bill; we have a mediated version of the clauses under discussion.

Hon. Speaker: You do not have a report?

Hon. (Ms.) Abdalla: You said a full Bill?

Hon. Speaker: Yes. You are supposed to present a Bill.

Hon. (Ms.) Abdalla: The report has a mediated version of the clauses that were under discussion.

Hon. Speaker: They need to be incorporated into a Bill.

Hon. (Ms.) Abdalla: We will organise to have that but for now it is not a copy of this report.

Hon. Speaker: Before debate, your Committee should work together with the Senate. That is the requirement. There should be a Bill. There are certain clauses that may have been in contention but after you have sat and agreed to them, they need to be incorporated in the Bill.

Hon. (Ms.) Abdalla: Much obliged but that has not been the procedure in the past. We have always brought the version but I would organise to have that.

Hon. Speaker: Very well.

ADOPTION OF MEDIATION COMMITTEE REPORT ON WATER BILL

Hon. (Ms.) Abdalla: Thank you, Hon. Speaker. I beg to give notice of the following Motion:-

THAT, pursuant to the provision of Article 113(2) of the Constitution and Standing Order 150, this House adopts the Report of the Mediation Committee on its consideration of the Water Bill, National Assembly Bill No. 7 of 2014, laid on the Table of the House today, Thursday 28th July 2016 and approves the mediated version of the Water Bill, 2014.

Hon. Speaker: Hon. Members, before we go to the next Order, allow me to recognise the presence of, both in the Speaker's Gallery and in the Public Gallery, students and pupils from the following institutions: Njuri High School, Chuka/Igambang'ombe Constituency, Tharaka Nithi County; Cardinal Elementary School, Embakasi East Constituency, Nairobi County; Shani Angaza School, Dagoretti North Constituency, Nairobi County; Kilimo Primary School, Njoro Constituency, Nakuru County; Kamiruru Primary School, Igembe Central, Meru County; Mukindu Primary School, Ol Kalou Constituency, Nyandarua County and Kimoning Primary School, Moiben Constituency, Uasin Gishu County.

They are all welcome to observe the proceedings in the National Assembly.
Next Order.

STATEMENT

BUSINESS FOR THE WEEK COMMENCING 2ND TO 4TH AUGUST 2016

Hon. A.B. Duale: Thank you, Hon. Speaker. Pursuant to Standing Order 44(2)(a), on behalf of the House Business Committee (HBC), I rise to give a Statement regarding the business appearing before the House the week beginning Tuesday, 2nd August 2016.

The HBC met on Tuesday this week at the rise of the House to prioritise the business for consideration. On Tuesday next week, we will consider the Senate amendments to the Forest Conservation and Management Bill, the mediated version on the Water Bill, the Senate amendments to the Natural Resources (Classes of Transactions Subject to Ratification) Bill, National Assembly Bill No. 54 of 2015.

The House will also consider the Second Reading of the following Bills if they are not concluded today:-

1. The Betting Lotteries and Gaming (Amendment) Bill, 2015;
2. The Kenya Defence Forces (Amendment) Bill, 2015;
3. The Proceeds of Crime and Anti-Money Laundering Bill, 2015;
4. The Universities (Amendment) Bill, 2015;
5. The Kenya Regiment (Territorial Force) (Repeal) Bill, 2015;
6. The National Youth Service Bill, Senate Bill No. 26 of 2014; and
7. The County Early Childhood Education Bill, Senate Bill No.23 of 2014

In the course of the week, the HBC has also considered to give priority the Committee of the whole House for the Kenya National Examinations Council (Amendment) Bill and the Controller of Budget (Amendment) Bill, 2015. I request all Members with proposed amendments to the said Bills to present them to the Office of the Clerk in good time to avoid last minute rush.

Through you, Hon. Speaker, and in accordance with the provisions of Standing Order 227(2) which you have made a Communication this afternoon, I urge the respective committees to submit their reports on petitions to the Office of the Clerk because the Office has received numerous calls from petitioners complaining that some of their petitions have taken more than 60 days. I urge the Chairpersons with pending petitions before them to finalise their consideration and table the reports as directed by the Speaker this afternoon.

On the Questions before committees, the following Cabinet Secretaries (CSs) are scheduled to appear before various committees on Tuesday 2nd August, 2016:-

- (i) The CS for Health at 10.00 a.m. before the Departmental Committee on Health, to answer Questions from Hon. Stephen Mule, Hon. Kabando wa Kabando, Hon. Joseph Gitari, Hon. Esther Mathenge, Hon. Jacob Macharia and Hon. Peter Kaluma.
- (ii) The CS for Agriculture, Livestock and Fisheries at 10.00 a.m. before the Departmental Committee on Agriculture, Livestock and Cooperatives to answer Questions from Hon. Abdullahi Diriye, Hon. Ronald Tonui and John Nyaga.

Finally, the HBC will reconvene on Tuesday 2nd August at the rise of the House to consider business for the coming week. I now wish to lay the Statement on the Table of the House.

(Hon. A.B. Duale laid the document on the Table)

Hon. (Eng.) Gumbo: On a point of order, Hon. Speaker.

Hon. Speaker: What is your point of order?

Hon. (Eng.) Gumbo: Hon. Speaker, this point of order is on the Statement of the business appearing before the House next week. While I appreciate that the Auditor-General has finally submitted the report for the Financial Year 2014/2015---

Hon. Speaker: Hon. Gumbo, I suspect that since I cannot hear what you are saying, the other Members are unlikely to hear except the Member for Balambala who is seated next to you.

Hon. (Eng.) Gumbo: Hon. Speaker, I am saying that I appreciate that the Leader of the Majority Party has just tabled the report of the Auditor-General for the Financial Year 2014/2015 and the report shall be coming before the Public Accounts Committee (PAC). Last week, I had requested we debate and adopt the report of the Financial Year 2013/2014 that we tabled about two months ago. It would have been nice for the House to debate and adopt that report before we embark on this other report. Once again, I would wish to call, through you Sir, that this report which we have tabled before the House be given priority so that it can be brought here and debated.

Thank you.

Hon. Speaker: At least the one on the special audit has already been fast-tracked.

Hon. (Eng.) Gumbo: Yes, the one on the special audit is in the Order Paper and I thank you. But it would be nice for us because if we start now looking at the Financial Year 2014/2015 before we get 2013/2014 out of the way, that would amount to a backlog.

Hon. Speaker: The point is made.

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

Hon. Speaker: Yes, Hon. Chepkong'a. What is your point of order?

Hon. Chepkong'a: I rise pursuant to Standing Order No. 83. Hon. Gumbo has raised this question of the special audit report. He wants it to be prioritised. As you know, there is an agreement in the HBC that all matters touching on the IEBC be deferred until such time when

the Joint Select Committee that was formed by this House submits its report. If he insists, then our report which we graciously agreed to be deferred until that time should be brought before this because it has precedence. Ours has a timeline, his does not. If that is the general agreement, then we should not see this report in the Order Paper.

Thank you.

Hon. Speaker: We shall deal with this matter when we sit in the House Business Committee (HBC). Maybe Hon. Gumbo has not seen the Auditor-General's Report for the Financial Year 2014/2015. I had the advantage of going through it early this morning because it came to me. I know some issues we have dealt with are still referred to in the Report which I have just referred to your Committee again. Perhaps, because of issues that are being raised, allow us to deal with this matter in the HBC then we can agree one way or the other. It seems like there is that agreement that we do not do anything that touches on that commission but let us sit as the HBC as opposed to us canvassing here but we will definitely come up with a decision which we will communicate. However, I am quite alive to the fact that both Reports have been lying for a long time. That applies also to the Public Investments Committee whose Chair has also written a long letter listing the number of special reports which are also pending. I think we need to address all of them and see whether we can dedicate a whole week to debating the reports. Just allow us time to sit in the HBC.

Hon. (Eng.) Gumbo: Hon. Speaker, I have no problem with that. Actually, it had been requested and it was in agreement. However, this morning we sat as Public Accounts Committee and we had requested the Members to be in the House specifically to debate the IEBC Report. I just wanted to know if that statement implies that it would be stood down so that those Members who have other businesses can leave the Chamber.

Hon. Speaker: Well, but to the extent that already there is a report which is here in the Order Paper, let us see how much ground we can cover. More importantly HBC will be in a position to come up with a decision one way or the other as opposed to I making the decision alone.

Hon. (Eng.) Gumbo: I thank you, Hon. Speaker.

Hon. Speaker: Next Order!

MOTION

PROVISION OF HONORARIUM FOR VILLAGE ELDERS

THAT, aware that village elders play a critical role in facilitating the work undertaken by chiefs and assistant chiefs namely in solving disputes, addressing petty crimes, handling security issues and generally promoting development initiatives; concerned that the Government is yet to adequately recognise their vital roles by way of facilitating their work; further noting that these hardworking citizens are crucial in the dissemination of Government policies and plans to the grassroots, this House urges the national Government to consider giving a monthly or annual honorarium to village elders as a means of appreciating their services and encouraging them to uphold their dedication to the community.

(Hon. Injendi on 20.7.2016)

(Resumption of Debate interrupted on 27.7.2016 - Morning Sitting)

Hon. Speaker: Hon. Members, debate on this Motion was concluded yesterday. What remains is for me to put the Question which I proceed to do.

(Question put and agreed to)

Next Order!

BILLS

Third Reading

THE BANKING (AMENDMENT) BILL

Hon. Speaker: The Hon. Member for Seme, I do not want you to continue freezing. Welcome back to the House and to the country. Hon. Members, again business on this Bill was concluded yesterday. What remains is for me to put the Question.

(Question put and agreed to)

(The Bill was accordingly read the Third Time and passed)

Hon. Speaker: Next Order!

Second Reading

THE PUBLIC APPOINTMENTS (COUNTY ASSEMBLIES APPROVAL) BILL

(Hon. Chepkong'a on 27.7.2016)

(Resumption of Debate interrupted on 27.7.2016 - Afternoon Sitting)

Hon. Speaker: Debate was concluded and what remains is for the Mover to reply. Is it Hon. Waiganjo or Hon. Chepkong'a who is replying?

Hon. Chepkong'a: Thank you, Hon. Speaker. First and foremost, I would like to thank all the Members who contributed to this very important Bill that will ensure that there is order and due process is conducted while approving public appointments at the county assemblies. I noticed that most Members spoke with regard to the issue of giving powers to the county assemblies that will be equivalent to those of the High Court and similarly to those which have been given to this House and the Senate. As you know, I totally agree with Members who spoke in opposition of this issue. I will be moving an amendment. As you know, the High Court has jurisdictions across the country. The county assemblies are territorial in nature. Their jurisdictions are confined within the counties. So, they cannot have the powers like that of the High Court because they cannot be summoning people from Mombasa if their county assembly

is based in Eldoret. So, their powers should only be limited to the counties in which they exercise authority. Therefore, we will be moving an amendment to state that they will have equivalent powers to that of a magistrate since we know the magistrates' powers are also territorial in nature. They are just limited to the areas in which they have been appointed.

Hon. Speaker, with those few remarks, I beg to move.

(Question put and agreed to)

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

Hon. Speaker: Next Order!

MOTION

APPOINTMENT TO THE CHAIRPERSON'S PANEL

Hon. A.B. Duale: Hon. Speaker, as I begin, I wish to state clearly that the Speaker has allowed me to move the Motion in an amended form pursuant to Standing Order No. 48 and to give more clarity to the action that is required by the House. I therefore beg to move the following Motion: -

THAT, pursuant to the provisions of Standing Order No.17 and further to the resolution of the House on 23rd April 2013, on the appointment of Members of the Chairperson's Panel, this House approves the replacement of Hon. T.J. Kajwang, M.P. with Hon. Christopher Omulele, M.P. as a Member of the Chairperson's Panel.

Hon. Speaker, Standing Order No.16 stipulates that after the election of the Deputy Speaker of the National Assembly following a general election, the Speaker shall in consultation with the leaders of parliamentary parties, which we have done, submit a list of four Members for consideration by the HBC and later by the House through an approval.

Two, the Chairperson's Panel exists to assist the Speaker and the Deputy Speaker in presiding over and managing the affairs of the House including the Committee of the whole House. Pursuant to Standing Order No. 17(1), after a notice was given to HBC of discharge of the third Chairperson in April 2016; the Speaker consulted the Coalition for Reforms and Democracy (CORD) and asked them to submit a replacement as shown in the minutes of HBC of that day.

Hon. Speaker, Standing Order No. 17(2) provides seven days of receipt of a new nominee and notice of Motion to replace the Member being discharged. However, to date, almost four months down the line, CORD is yet to provide any candidate for consideration. It is important to assist the Speaker in the running of this House through a well established Chairperson's Panel. This has necessitated the Motion before this House today. I, therefore, urge Members to support the replacement to ensure the smooth running of the House is maintained.

Hon. Speaker, Hon. Christopher Omulele, is a lawyer by profession. From what we have seen, he is quite diligent. He sits not far from where you sit and I am sure he fits in the category in which he has been appointed as any other Member can fit.

Hon. Speaker, you have been very diligent because you have given both the coalition and HBC adequate time. Most of us who sit in HBC will agree that four months is a long period and four months as per the Standing Orders, this House must have four Chairpersons. With the kind of workload that we have, Hon. Rachel Shebesh who is a Member of Pan-African Parliament (PAP) at times goes out. So, we need more Members to sit either in the plenary or in the Committee of the whole House. He might be a new Member, but from the character and behaviour he has exhibited, I am sure Hon. Omulele will not come with a *firimbi* to this House. I can vouch for him. He does not look like anybody who can cause gross disorder unless he gets out of his mind which is rare. I am sure he will behave and discharge his duties in a manner that is not partisan. He will follow and obey the Standing Orders and he will make sure each one of us gets an opportunity to participate in this House. This is a small matter. It will not take us a lot of time. We just give him the job. I approve and ask my colleague, Hon. Katoo ole Metito to second and then we dispose of it and go to a more serious matter.

I beg to move.

Hon. Speaker: Hon. Katoo.

Hon. Katoo: Hon. Speaker, I stand to second this Motion.

(Loud consultations)

There is another *Kamukunji* chaired by the Member for Kikuyu.

In seconding this Motion, I want to congratulate you for choosing Hon. Omulele who has been in this House for only three years but has presented himself as an understanding Member. He is not extreme on either side. The Chairperson's Panel is the Committee that is supposed to hold this House together. A Member of that Panel should be a neutral person and one who can guide the House in the right direction. I have no doubts that Hon. Omulele is up to the task.

Standing Order Nos. 16 and 17 talk about the Chairperson's Panel. As the Leader of the Majority Party has put it, the notice of discharge in accordance with Standing Order No. 17(1) was issued on 12th April 2016 and on 23rd April 2016. The minutes of the House Business Committee (HBC) show that the matter was raised. Let me read part of the response of Coalition for Reforms and Democracy (CORD): "The Committee was informed that the Coalition for Reforms and Democracy (CORD) was yet to submit a replacement for the third Chairperson of Committees to the Speaker's Panel. The leadership of the coalition undertook to submit the name of the Member to replace Hon. Kajwang'." That was in April, and we only have four days to August. The Speaker showed leadership by nominating a Member for the House to decide.

It is good for Members to know that Standing Order No. 16(4) states: "Whenever a Motion for approval under Paragraph (3) is moved in the House, no objection against the proposed membership on the Chairperson's Panel of any particular Member shall be permitted and objections, if any, shall be formulated and considered against the proposed membership as a whole." In my view, there shall be no objection to the name of Hon. Omulele as a person but should there be any, it should be to the entire Chairperson's Panel. This goes hand in hand with the Communication that you made yesterday with regard to Standing Order No. 16(5) that, in nominating the members of the Chairperson's Panel, the Speaker and the HBC shall have regard to the relative party majorities in the House and shall ensure, so far as shall be practicable, that at least one member of the panel is from either gender. Through your wise counsel, the composition of the entire Committee will be 50 to 50 in terms of gender. I think all parties in the coalitions have been taken care of.

I want to second and plead with my colleagues that we formulate and conclude the formation of this important Committee.

(Question proposed)

Hon. Speaker: Hon. Midiwo.

Hon. Midiwo: Thank you, Hon. Speaker. Hon. Katoo ole Metito has said that Standing Order No. 16 states that when the list of membership of your committee is tabled here, no member can be individually opposed unless you reject the whole list. That has been the tradition even in other Committees. In the recent past there have been attempts to alter but he has given a correct interpretation of that Standing Order. I hope that stands for the future. I will not oppose Hon. Omulele sitting in your Panel. I, however, stand to oppose this Motion. It is not about Hon. Omulele.

(Hon. Angatia consulted loudly)

Hon. Speaker: Hon. Members, allow Hon. Midiwo to make his contribution.

Hon. Midiwo: Hon. Savula, respect the House. A few months ago, as it has been said by the Leader of the Majority Party, you wrote to us in the HBC. CORD was asked to give a recommendation. That has not been forthcoming because of our own considerations. Standing Order No. 16 states that in that appointment, there shall be consultation with the leadership of the parliamentary parties. I raised that issue yesterday. I have since spoken with Hon. Nyenze and nobody consulted him. Hon. Mwadeghu was with me in the HBC but he was not also consulted. Hon. Wamalwa and I have not been consulted. This is a House of rules. I will keep my trend of thought if you protect me from Hon. Savula.

Yesterday, the Leader of the Majority Party moved a Motion on the Floor that we never saw in the HBC. Today, he has brought the same Motion in an amended form before it is moved. This is a House of rules and procedures. We understand you can have your way. After this Motion was moved and I contested that we needed to do it procedurally, off the record, the Leader of the Majority Party and the Deputy Chief-Whip, Hon. Washiali were saying that: "We have done it so that you can deal with the Luhya." It is good to play politics but this is our slot

Hon. A.B. Duale: On a point of order, Hon. Speaker.

Hon. Speaker: Hon. A.B. Duale, what is your point of order? You have been mentioned by Hon. Midiwo.

Hon. A.B. Duale: Hon. Speaker, I asked whether the Member is in order to say that. Firstly, the Luhya community is not mentioned in this Motion. We are talking to the Luhya communities humbly. That should be extended to the Mulembe community by our colleagues. I have never said it on the Floor of the House. I am not in *The Hansard*. This Motion is on behalf of the House Business Committee (HBC). The Motion was discussed in the HBC; unless the Member was away. Ours is either to approve or reject it. There is no way you can separate Hon. Omulele from the Motion. So, you have no choice, Hon. Jakoyo, but to support Hon. Omulele and reject the Motion. You must live by your conscience. If you do not want a Member of Parliament from Western Kenya to be a Member of the Chairperson's Panel, please say so, so that others can contribute. If you do not want the President, the Chairman of the Public Accounts Committee (PAC) and a Member of the Chairperson's Panel to come from the Luhya community, you better say so. We can adopt them and give Hon. Omulele a chance.

(Laughter)

Hon. Midiwo: Hon. Speaker, I thank the Leader of the Majority Party for the entertainment. He is the third most important person in the Jubilee Government. Luhyas have only one and a half ministries in the Jubilee Government; one is a Luhya woman who is a wife from Central Kenya, and the other one is Hon. Eugene Wamalwa. So, you have never done that to anybody.

(Applause)

(Several Members stood up in their places)

Hon. Speaker: Order, Members! Hon. Members, the only person who is supposed to be on his feet is Hon. Midiwo. So, when I see others standing in their places, I do not know what it is they are doing, unless they are behaving in a manner to breach the Standing Orders.

Hon. Midiwo: Hon. Speaker, protect me.

Hon. Speaker: What is your point of order, Member for Lugari? You cannot be standing all the time.

Hon. Angatia: Thank you, Hon. Speaker. I would like to ask my friend, Hon. Midiwo, whether it is in order for him to abuse the Luhya community. Your party leader, Hon. Raila Amolo Odinga, said we are *pumbavu*, and you are confirming in Parliament here that we are stupid. We will not play this game any more in this country.

(Applause)

Hon. Speaker: Order, Members! Order, Member for Tigania East! Hon. Members, let us discuss this Motion on its merits. Let us leave out the politics out there because I am not required to preside over that aspect. I am only required to preside over the business of the House. Hon. Midiwo is raising some technical issues. We need to give him a hearing so that I can make a ruling that takes into account his objections. Hon. Midiwo, let us do away with politics and deal with the procedural issues that have been raised.

Hon. Midiwo: I will, Hon. Speaker. Hon. Speaker, Standing Order No.16 requires you and expects your good office to consult us - who are sitting on this Bench. That consultation did not take place. I need to bring to the attention of this House the fact that when you wrote the letter, Hon. Omulele, whom we do not mind sitting in the Chairperson's Panel, approached our party leader. The Leader of the Majority Party is rushing to pass this Motion because our party leader had directed that Hon. Omulele replaces Hon. T.J. Kajwang' in the Chairperson's Panel. All we are contesting is the procedure which was used to appoint him.

I want you to address Standing Order No.1. It provides that the Speaker shall have the discretion to issue guidelines where there is no express provision. There is express provision in this case in Standing Order No.16. I said yesterday that the Leader of the Majority Party was moving a frivolous Motion, because it has not been debated by the HBC. The name of the person who was to replace Hon. T.J. Kajwang' was supposed to come to us through consultations. When we appointed Hon. T.J. Kajwang', you personally called me, and I consulted the leadership of my party. That is when we wrote to you and said that we have appointed Hon.

Jessica Mbalu and Hon. T.J. Kajwang' to sit in the Chairperson's Panel. You are expected to consult and be part of the appointment, so that you can have people whom you are comfortable with and you can work with. We understand that you concur with us that you can work with Hon. Christopher Omulele. We approve him. However, there are rules and procedures which should be followed. I want to plead with you, because you are comfortable with Hon. Christopher Omulele. Please, let us not open a window where Standing Order No.1 is used where there are express provisions in the Standing Orders. If you set this precedent, we will get a rogue Speaker in future, who will make sure that procedures are not followed in Parliament.

I oppose the Motion, Hon. Speaker.

Hon. Speaker: Hon. Members, for avoidance of doubt, it is fair when other Members are speaking, others listen. Hon. Katoo ole Metito, in seconding this Motion, read out minutes of a meeting of the HBC held on 23rd April 2016. If anybody heard what he read out, the issue about consultations must have been put to rest. The minutes clearly show that the Coalition for Reforms and Democracy (CORD) was consulted, and they said they would submit a name to the Speaker in the course of that week. Today is 28th July, 2016.

(An hon. Member walked on the gangway while the Speaker was on his feet)

This is the problem.

(Laughter)

Hon. Members, I do not need to refer to anything because I am aware of those minutes. I have consulted them. That is why Hon. Katoo ole Metito has read it out clearly. It shows that CORD has not been forthcoming. For avoidance of doubt, let me say that Standing Order No. 17(3) provides that the discharge of a member of the Chairperson's Panel shall not take effect until the House has approved the Motion for replacement. The Speaker has the discretion to give notice to the HBC in Standing Order 17(1) to replace a member in the Chairperson's Panel. Having given notice to the HBC within seven days according to Standing Order No.17 (2), then we should get a Motion. It is for that reason that there was this consultation up to a point when I had to raise it in the HBC as the Chair that this is becoming embarrassing. We are supposed to have four Members in the Chairman's Panel. The minutes are very clear on what CORD said and it was taken to be an honest and truthful expression of what the coalition was thinking; that within that week, they would supply us with a name for onward transmission to the House.

It is also a fact – and let me say this - that Members of the Chairman's Panel enjoy responsibility allowance because they do extra work. The discharge of a Member of the Chairman's Panel only takes effect after this House approves it. Then, it means the person whose notice was given as being discharged continues to enjoy responsibility allowance without performing any responsibility. It is a fact that we cannot continue to have that kind of situation pertaining. It raises audit queries about a person being paid responsibility allowance without performing that particular responsibility.

It is dishonest when minutes of the HBC clearly show that the coalition offered to present a name on 23rd April, 2016, which has not happened up to now. Therefore, the Speaker cannot be expected to be sitting idle. It is true Standing Order No.16 requires the Speaker to consult the parties representing the House. Indeed - and I want to say this again for record purposes - even

the appointment of Hon. T.J. Kajwang' was initiated by me and I consulted CORD. I did that also for the other Members of the Panel. I consulted the coalition and they said they would give a name within a week and nearly three months down the road, they have not.

I chair the Parliamentary Service Commission (PSC). It is the Commission that pays those responsibility allowances. When audit queries come, they will not come to CORD. Hon. Members, there is nothing for me to be addressed on. I can see some of you want to address me on this. I am merely giving reasons for overruling Hon. Jakoyo Midiwo and directing that debate continues. We debate the Motion, you approve it or not. Let us not try to put roadblocks where there are none. Hon. Chepkong'a.

Hon. Chepkong'a: Thank you, Hon. Speaker. I notice that you have spoken well with respect to what happened. You know this is what I call exuberant and exorbitant hypocrisy. People attend House Business Committee which I am not a member. Then they come here and bring those issues. This is part of the 20 per cent bad laws in the Standing Orders, which we must amend. If all the Chairs of Committees sat in the HBC, we would not be having this dancing. We would have resolved this. When people sit in the HBC, they come here appearing like they are carrying all the responsibilities. We are misled to imagine that there were no consultations. More importantly, I stand in support of Hon. Omulele. Hon. Speaker, there is too much consultations going on here.

(Loud consultations)

Hon. Speaker: The Member for Mwingi Central, you have not been in the House for a long time and that is why you are shaking hands with everybody. There are Members consulting loudly here.

Hon. Chepkong'a: They should use the rooms behind you.

Hon. Speaker: The three Hon. Members! The Member for Lugari, the next thing is for you to be thrown out of this place. Let us listen to the Member, so that as you support or oppose, you do it from a point of knowledge and information.

Hon. Chepkong'a: Hon. Speaker, I think it is important for Members of Parliament to be fair to others. I listened to Hon. Midiwo in silence, but when I am speaking, he is interfering with me. We are all not of the same temperament. A little bit of noise interferes with my thoughts. I should be heard in silence. In fact, I agree with Hon. Ichung'wah that it is a question of age. It looks like Hon. Midiwo's age is a problem, as much as mine is. He needs to concentrate. Hon. Midiwo, why are you annoyed? Which law has been broken?

Hon. Midiwo purported to quote the Standing Orders, and looking at the word 'shall' there is a comma after it. If you remove the rest, there is no consultation that you were required to undertake. In fact, the word which is in brackets is 'may'. What you are required to do is to present the name and not dwell on consultations. For some of us who studied English, we know that it is not a requirement. What I have heard here has surprised me. In fact, HBC should be apologising to us. In fact, you are required to present to us a Motion within seven days after you give notice of the discharge of that Member.

The Standing Orders must provide a penalty, for those who breach it. Clearly, the Standing Orders have been breached because seven days have elapsed and the notice was not brought. Hon. Midiwo ought not to complain and say that we should take back the Motion. First and foremost, as a Member of that HBC, he should be apologising to us. In fact, he has no legs to stand on here. He was speaking while standing on quick sand and should not be opposing. We

are all in agreement that the Standing Orders have been breached. Why should he tell us that he is opposing? Opposing what? The Standing Orders are very clear.

With regard to Hon. Omulele, I am here to support him, because he is my friend. We serve together in the Committee on the Implementation of the Constitution (CIO) under the able chairmanship of Hon. Njoroge Baiya. As you know, Hon. Omulele is an advocate like me. The only difference is that he is my junior and a very able person. Do not take him for granted. He believes in the ideals of ODM. In fact, severally, I have made attempts to persuade him to cross over to Jubilee, but he is very firm with a lot of decorum. In fact, he is one gentleman who will reject you with a smile. Not like Hon. Mbadi, who is looking at me without smiling. I have known Hon. Omulele to be very firm and considerate. This is the kind of person that we need to sit in that panel. When he sits there, he will tell you “no”, but with a lot of mercy. He is one gentleman that we needed like yesterday. When anyone sits on your seat, Hon. Speaker, he does not sit there as a Member of the Orange Democratic Movement (ODM). He sits there as a Member of Parliament so that he can regulate debate in the House. It is not intended that he represents the interests of anyone. At least when I speak here, I represent some interest. But for this, I represent the interest of the Law Society of Kenya (LSK). I hope they are listening.

The other day, I heard the LSK, including its president who I thought is supposed to be a serious lawyer, purporting to say that they will come up with criteria on how the next Chief Justice (CJ) will be nominated. Some of those lawyers should read like Hon. Omulele. They should know that Article 249 of the Constitution provides that the members of the Judicial Service Commission (JSC) are independent and they cannot act under the authority or direction of anyone. The LSK cannot think that because they are lawyers, they can sit down and become a court of law. No! They must do so under the Constitution.

I have known Hon. Omulele. He will not behave in the manner in which those lawyers are behaving. I know he is a sober man who understands the law. That is why I support him. I do not support him, like others have claimed because he is a Luhya. Although Luhyas are my neighbours, I do not support him for that reason. I support him because he has the capacity and competence that is required to discharge the responsibilities of a member of the Chairperson’s Panel.

I thank you, Hon. Speaker. I support.

Hon. Speaker: I can see there is a lot of excitement. Let us hear the Leader of the Minority Party.

Hon. Nyenze: Thank you, Hon. Speaker. Protect me from the Leader of the Majority Party. This is a small matter and I do not want us to take a lot of time discussing it. The reason is, frankly speaking, there were no proper consultations, but because there is word from the---

Hon. Speaker: The Leader of the Minority Party, I would bar you from saying that because I have already ruled on that. I have said that what is in the minutes of the House Business Committee (HBC) shows there were consultations. So, it is discourteous for anybody to say that there were no consultations.

Hon. Nyenze: Thank you, Hon. Speaker. I withdraw.

Hon. Speaker: Hon. Nyenze, and any other person, avoid going that route! If you want to oppose, do it for whatever other reasons.

Hon. Nyenze: Hon. Speaker, because---

(Hon. Ababu walked into the Chamber)

(Applause)

Hon. Speaker: Proceed.

Hon. Nyenze: Hon. Speaker, since there is a direction from the CORD principals that Hon. Chris Omulele should replace Hon. T. J. Kajwang' and it has been communicated after a lot of consultations, it is only fair for us to support this Motion and support Hon. Chris Omulele to replace Hon. T.J. Kajwang'.

However, there is something that I am not happy with as the Leader of the Minority Party. The members of staff of Hon. Kajwang' were withdrawn two or three months ago. It seemed like there was bad intention. It could have waited until he was replaced and then they would be removed for there to be good rapport. Otherwise, I strongly support this Motion because Hon. Chris Omulele is a very qualified lawyer and a very vibrant contributor to the proceedings in this House.

Thank you.

(Applause)

Hon. Members: Put the Question.

Hon. Speaker: Is it the mood of the House that I put the Question?

(Loud consultations)

Let me hear one person from this side and another person from the other side.
Hon. Maina Kamanda.

Hon. Members: Hon. Ababu.

Hon. Kamanda: I have been given this chance, *Waheshimiwa*. Thank you, Hon. Speaker. I want to commend your decision. Even if you had given CORD another three or four months, there is no way they could have agreed on a name. Hon. Omulele is a member of my Committee. If you go through the attendance record, Hon. Omulele has never missed any Committee meeting.

(Applause)

Besides that, Hon. Omulele has been playing the role of a lawyer of my Committee. At one point, I asked him whether he wanted to leave my Committee and join the Chairperson's Panel. I could have prevailed on him not to leave, but he told me he was not leaving the Committee. I want to plead with our brothers that you have a very good Member of Parliament. It is on record he never misses Committee meetings. I want to confirm that this is the man who will never miss any meetings of the panel. He is a committed Member. He is one of the members who whip others to attend Committee sittings. I want to commend him. Congratulations my brother for being given another position.

I support the Motion, Hon. Speaker.

Hon. Speaker: Hon. Dalmas Otieno.

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

Hon. Speaker: The Member for Laikipia East is on a point of order.

Hon. Kimaru: Hon. Speaker, I would like to urge you to exercise your discretion according to Standing Order No.1 and give the king of the *Omulembe Republic*, Hon. Ababu Namwamba, an opportunity to comment because his concerns are valid.

(Applause)

Hon. Speaker: Hon. Mutahi, sit down! Hon. Members, I think we better deal with the Motion as it is.

Hon. Anyango: Hon. Speaker, we have heard that the party approves Hon. Omulele. We have also heard that the issue is consultation, but we also know that adequacy of consultation has not been defined anywhere in our laws. So, as far as this House is concerned, it would be for the Speaker to determine the adequacy of consultations.

I support. You can put the Question.

Hon. Speaker: Hon. Members, I think the House should decide on this matter so that we can go to other business.

(Question put and agreed to)

(Applause)

(Loud consultations)

Hon. Speaker: Order, Hon. Members! Order, Member for Lugari! The House will degenerate into something different. Allow me to recognise pupils from Ngenia Primary School, Laikipia North Constituency in Laikipia County and Upper Hill Academy, Litein, Bureti Constituency in Kericho County.

They are all welcome to observe the proceedings of the House, including this debate. What is your point of order, Hon. Ichung'wah?

Hon. Ichung'wah: Hon. Speaker, I want to seek your guidance in relation to something you have just said. In view of the Motion that we have just passed, I do not intend to take the House back. Indeed, a Member of this House who has been sitting on the Speaker's Panel might have been drawing responsibility allowances through the Parliamentary Service Commission (PSC). Being a House that is charged with the responsibility of overseeing Government and public expenditure, I seek your guidance whether the PSC that you chair, is in order to pay sitting allowances or responsibility allowances to a Member who is not exercising the responsibility that he has been charged with.

I seek your guidance because as the Vice-Chair of the Public Investments Committee (PIC), every now and then, we are confronted with situations where people have drawn allowances. Very often, we adopt Motions in this House where we surcharge other Government and public officers for drawing allowances that they were not entitled to. I, therefore, seek your guidance as to whether the PSC, which you ably chair, will be moving to surcharge and recover all allowances that might have been paid - I use the word "might" because I am not sure - to Hon. T.J. Kajwang' or any other Member for responsibilities that they were not exercising.

I also wish to take this opportunity to thank you on the guidance you have given on the issue of consultation. Hon. Dalmas Otieno has put it very well. There is no definition of what consultation is. That is a hang-over of the *nusu mkate* Government of yester-years. You

remember also that at the beginning of this term in 2013, we were confronted with the same problem when setting up the Public Accounts Committee (PAC) and the Public Investments Committee (PIC).

This is a pointer to the Parliamentary Select Committee on electoral reforms and to some of the things that we should do as a country. We should make sure that we consult with those who do not sit in this House. Maybe we can get ways to see that those who lose presidential elections sit in this House and become the Leader of the Minority Party, like Hon. Nyenze or the Leader of the Minority Party in the Senate. Consultations should not take so long. We should not consult people as they attend conventions in the United States of America (USA) or somewhere else.

(Hon. Ng'ongo raised his hand)

Hon. Speaker: Hon. John Mbadi, Member for Suba, why is your hand raised up? Do you want to respond to that? The Standing Order No.17(3) is very clear that the discharge takes effect upon the adoption of the Motion for replacement.

It is perhaps high time that, even as we review the Standing Orders, we also review provisions relating to payment of allowances to those who do not contribute in the House or in Committees. This also applies to those who, when they are invited for workshops for which the House has paid, they absent themselves, yet we have paid for hotels and accommodation. It is a whole gamut of many things.

As Members of PAC and PIC, it is up to you to look at this provision in our Standing Orders relating to the effective date of discharge and other areas. One may want to target an individual, but we also need to look at ourselves. We must begin with ourselves. We should not say that a Member who attends a Committee meeting, sits for 10 minutes, pretends that he is answering a phone call and disappears after having signed the attendance register, should be paid. These are all governance issues that we have to address. We are charged with that responsibility.

I urge that we should not deal with this as a debate on Hon. T.J. Kajwang'. I will not allow any discussions on Hon. T.J. Kajwang'. We will leave that matter to be handled by the Auditor-General and the PSC.

(Hon. Ng'ongo spoke off the microphone)

There is nothing out of order, Hon. John Mbadi. Hon. John Mbadi has a habit of thinking that he needs to address the Speaker in funerals and other gatherings out there. I want to encourage you that whenever you want to address issues that you think need to be addressed, just sit here. However, when you go out there in villages and you want to tell the Speaker what you want him to do, he will not hear you. Even now, the Speaker can decide not to hear you, but because the Speaker is considerate, Hon. Member for Suba, can you speak for two minutes?

Hon. Ng'ongo: Thank you, Hon. Speaker. On a light touch, you heard me and that is why Hon. Wandayi is back in the House.

Let me now address the issues that I wanted to address. Sometimes we have to address you as our Speaker even in the villages because we still want you to know that we exist, especially when Parliament is not in session. How do I interact with my Speaker?

There are two issues that I want direction on from the Speaker. Hon. Dalmas made a comment that really worried me that the level of consultation is at the discretion of the Speaker. That is not correct. I will be correct. Consultation is envisaged to be in writing. Let us cultivate a culture where we communicate.

Hon. Speaker: Hon. John Mbadi, what are you debating?

Hon. Ng'ongo: Hon. Speaker, I am just asking whether Hon. Dalmas Otieno was correct to insinuate that consultation does not have to be in any form that would be verifiable.

Hon. Speaker: Hon. John Mbadi, because there is no Motion to debate or discuss the meaning of the word "consultation", you can only approach Dalmas Otieno or his English lecturers and debate that. If you want, you can even introduce a Motion for this House to resolve that consultations shall mean "ABC" up to "Z", if need be. We will be going back to something which is water under the bridge.

Hon. Ng'ongo: Hon. Speaker, I have heard you. The other issue that I wanted to raise with humility is that when a Member of Parliament is suspended from the House, is it the Member who is suspended or the office belonging to that constituency? A lot of times when MPs are suspended, the office is closed and the staff sent home.

My understanding is that even though I am suspended, the people of Suba still need to have an office in Parliament. The staff we have employed to work for constituencies are employed by the PSC to discharge the responsibilities relating to that constituency.

A directive needs to be given to our orderlies and the Serjeant-At-Arms that, if Hon. Mbadi is suspended for whatever number of days, the office of Suba Constituency should remain open. The only issue is that Hon. Mbadi should not be able to access it. The Standing Orders says that a Member should not access Parliament precincts during the time of suspension. It is not right for the office to be closed and the people of Suba cannot even call to find out what is happening in the office. It is unfair for the people who are being represented. Even though their Member is suspended, the constituency is not suspended. It still exists. That is my concern and I wanted you to give guidance on that. If you agree with me, then give directive that that should not happen.

Thank you, Hon. Speaker.

Hon. Speaker: Well, it is a gratuitous advice. Since there is no Motion for me to guide on, it is not fair for me to begin guiding on Members who desire to claim to address matters which have not been canvassed.

Hon. John Mbadi, you are at liberty to bring a Motion or even a legislative proposal which will address the issues of employees which you have raised. An important aspect you have raised is that the Standing Orders, which you took part in crafting, do not address the issues you have raised. Since we are almost coming to the tail end of this Parliament and for posterity, you could give those ideas to the drafters of the new Standing Orders, so that there is clarity.

Indeed, the Committee on Powers and Privileges has come up with some very good proposals of addressing punishment, which I believe will be adopted by this House. That could address even the issue you have raised. You can even write to the Committee on Powers and Privileges and give those proposals to be incorporated. If the Committee agrees with you, they will take them on board.

Next Order.

BILLS

Second Reading

THE BETTING, LOTTERIES AND GAMING (AMENDMENT) BILL

Hon. Midiwo: Hon. Speaker, I rise on an important issue regarding the subject of the Bill we are about to discuss. This is a Bill of 2015 and it was meant to address certain issues. Since 2015, this country has gone and is still going through issues of gambling and betting. I have looked at this Bill and it does not adequately address the issues the public tells us.

Under Article 95, this House needs to approach this issue differently. We asked the Chairman of the Departmental Committee on Finance, Planning and Trade about this issue. I raised the issue about the Report and public hearing and we even discussed it in the House Business Committee (HBC).

Every day, we read in the Press about Kenyans who have gambled their lives away. The latest one is about students who are gambling their school fees away. This is a matter which this House must address differently. It is a serious national issue. Gambling has become a way of life. Kenya is becoming a nation that gambles. This House has a responsibility to look at and scream about this gambling under Article 95 of our Constitution.

I request the Chair to guide the House, so that issues of money laundering are stopped. The amount of money that is exchanging hands in gambling, particularly online gambling, must be so big at a time when this country needs taxes and money. You cannot have unregulated gambling. This Bill does not address the current form of gambling and betting.

Yesterday, the *Daily Nation*, a leading newspaper carried a story on the second last page about sports betting. The story was about money collected in Kenya going to sponsor Hull City Football Club at the tune of Kshs6 billion. I have been around the world and usually, the State uses gambling to raise money. We do not know who these people are. There is even insinuation that one of the big ones, which Kenyans are waking up to or not even sleeping because of gambling, is owned by some Bulgarians. This is *mafia*.

We are in a state where we can only raise half our Budget through the Kenya Revenue Authority (KRA) and we borrow the rest. We are going to borrow painfully, but somebody is collecting and repatriating. This is not a small thing. I am told some of them are making a whooping profit of up to Kshs3 billion to Kshs4 billion a month. This is really a crisis in our country.

The other week I read about school girls who left home with school fees and went and gambled the money away. They were embarrassed to go home and they got married to some slum guy. The guy was really fortunate. I cannot say he was lucky, but in Hon. Duale's culture, he would be very happy to get two for nothing.

(Laughter)

The parents of those two girls did not know where they were. In this case, the boy got them for nothing. A neighbour of that slum guy was curious and called the police. We should not debate this Bill as it is. It has been here since 2015 and this shows laxity and lack of worry in the Committee that is concerned.

I want to ask Chair to do something unusual for the sake of our country. We should use the Mover of the Motion, who is the Leader of the Majority Party, so that you can give us one week to form a very small Select Committee to conduct public hearings for two to three days and

within seven days, bring proposals on how we want it done to the House. We should know who is licensing these people. I have seen in the media somebody purporting to give regulations. You give regulations on how people repatriate money out of our country? It is not a very small matter. You have seen even the media have gambling numbers. Who is giving them those numbers? Who is permitting people to gamble their property and lives away?

In our constituencies, and many Members know it, if you go to a town or a village, you find people gathered somewhere on sports days very busy with their phones. They are doing something which is unregulated.

Lastly, you know how cases of burning of schools began. What ignited fire at Itierio Boys High School was that the head teacher refused to let the students watch the Euro League. This is not because they love soccer, but because they wanted to watch their money grow or disappear.

I plead with the Leader of the Majority Party to buy my idea if he feels as I do. If we let this trend go on for a long time, we shall not have a tax system for our people. A situation where money can virtually be repatriated to banks abroad is not good. Do you know why gambling is so much in Kenya and not in our neighbouring countries?

Hon. Speaker, it is for the same reason that even Ugandans, who do not really grow much sugarcane, export sugar to Kenya. We are a working economy. What is here is not in our neighbours. Those are poor countries. This country is good, but it is mismanaged. Let us help this country to be managed properly. Let us help the situation. For purposes of quickness and cohesion, let him choose the people he wants, a number of five to nine, an odd number, and give them seven days to do this. It is critical and urgent, but we shall have saved our country from this nonsense.

Hon. Speaker: Hon. Duale is shown as the Mover of the Bill. It reads 15th June 2015. I am looking at the Memorandum of Objects and Reasons and it, *inter alia*, provides that the Bill formulates the proposal announced in the Budget of 2015/2016 relating to the liability to and collection of taxes and for connected purposes. Hon. Members may want to just debate the Bill, but you must look at the Objects and Reasons as to why it is there. The Leader of the Majority Party could respond.

Hon. A.B. Duale: Hon. Chepkong'a, hold your horses. We are not dealing with petitions.

Hon. Speaker, I agree with you. There are some aspects of the Bill which are still relevant. It will deal with areas to protect members of the public against fraud and many other issues. Part of it is relevant.

After what happened in the House Business Committee (HBC) on this matter, I went into soul searching. I went and read and found out that this matter is very weighty. Why am I saying it? A few years ago, gambling and betting were perceived to be a preserve of the risk-taking breed of the rich willing to gamble big money and casinos were opened everywhere in Kenya. That is not any more. With the spread of betting platforms like mobile-based sports gaming, Lotto and betting kiosks in every city estate, the wave seems to have caught even the lowest income earners in this country. So, it is no longer a small matter. Betting is becoming a booming business in our country. In fact, I asked myself questions which I want you to ponder upon as you rule. Is Kenya turning into a gambling nation? That is the question we must ask ourselves. What are the activities of these betting companies shrouded in secrecy?

To many, it has turned to be an obsession or a mere game to an income generating activity. There are over 30 of these companies. There is Sportpesa, Betway, Betin, Elitebet, Betyetu, Justbet, Easybet, Lucky2u and Kenya Sports Bet. These are some of the companies that

are allowed to use mobile betting. The latest entrant, which is barely a month old, is one called Pambuzuka National Lottery and Lotto which promises Kenyans a guarantee of a Jackpot of Kshs100 million. You can imagine the money involved.

There is Betting, Lotteries and Gaming (Amendment) Bill before this House, the one we have just read. It is aimed at introducing fairness and equity in the tax regime. This is where I have a serious issue. First, this Bill wants to deal with equity in the tax regime. It is supposed to protect members of the public against fraud and is supposed to stimulate economic tourism and create employment as well as eradicate illegal gambling through the promotion of responsible gambling, but the issue is bigger than that. Due to the many stringent laws and increasing regulatory pressure in Europe and America, many of them are coming to Africa to have branches. They see Africa as the emerging market for gambling. This cannot take place in Europe and USA because there are very strong regulatory measures which this Parliament must put in this Bill.

The Betting Control and Licensing Board has stated in the media, and I have just seen it, that it wants the Government to do away with withholding tax of 20 per cent. That is what they want to do away with and introduce a gambling levy which targets the gross revenue of an operator. The withholding tax was introduced in the Income Tax last year through an amendment to the Finance Act of 2013. Under this law, every cent an individual wins in lottery, gambling or raffle is taxable at the rate of 20 per cent, but this does not happen. People are just paying money and are losing yet the National Treasury does not get that tax. So, everything is done informally.

I agree that we need to interrogate this. We need to call the Kenya Revenue Authority (KRA) and the many betting companies and interrogate their books. They need to give us their tax compliance certificates. We need to know how much they have earned and how much they have given. This must even lower the Budget deficit in our country. If you can give Kshs6 billion to a club in the UK, that is the tax Mr. Rotich and Mr. Njiraini should have earned.

Sportpesa is arguably the biggest sporting business in East Africa. I have confirmed that it has a very strong presence in Kenya with over one million registered users. On Monday, Sportpesa signed a multimillion pound scholarship deal with the UK club Hull City. The partnership comes after what is seen as a vicious expansion strategy by the book markers. So, the Kshs6 billion that has been signed, in my opinion, is part of a scheme or strategy to divert attention from the taxman that Kshs6 billion of our money has gone there. What do we deal with? This has been seen to enter into deals in Kenya. They have entered another deal with the Kenya Rugby Union of Kshs607 million, Kshs450 million with Kenya Premier League, Kshs325 million with Gor Mahia and Kshs225 million with AFC Leopards totalling Kshs.10 billion. So, it is not only with Hull City. The question that this House must ponder is whether they are paying taxes. Is this part of money laundering that we must fight? Can this money be used to finance terrorism? We must ask ourselves this.

Is our country and children turning into a gambling nation? Even the burning of schools that is taking place has an element of this gambling. You will find all your children in the evening in their rooms with telephones betting. They use school fees to bet. When they go to school and cannot come back to their parents or their teachers, they burn schools. Why are the activities of these betting companies shrouded in secrecy?

Concerns have been raised of possible money laundering activities being disguised in betting. Through betting companies, there might be emergence of the infamous Artur brothers of foreign militia or *mafia* in our country.

Hon. Speaker, this is an important Bill, but as Members agree, maybe, you need to give us direction in terms of how we need to approach this matter. As the sponsor, I have no problem if the amendments that will be brought will be based on public participation where the players of this business, the users and all other stakeholders are given opportunity to appear and give their views. I rest my case and wait for your direction.

Hon. Speaker: Hon. Chepkong'a.

Hon. Chepkong'a: Thank you, Hon. Speaker.

Hon. Speaker: Before you contribute, allow me to recognise pupils from Kiproroget Primary School, Chepalungu Constituency, Bomet County and those from Nkoilale Primary School, Narok West Constituency, Narok County. You are welcome to observe the proceedings of the National Assembly.

(Applause)

Hon. Chepkong'a: Thank you, Hon. Speaker. Yesterday, Hon. Midiwo seconded my Motion to defer the Independent Electoral and Boundaries Commission (Amendment) Bill. I also rise to second Hon. Midiwo that we defer this Bill. I rise pursuant to the Standing Order No. 40(2) that this matter be withdrawn. This is a very serious matter. The Constitution is very clear. Article 95 of the Constitution states:-

“The National Assembly deliberates on and resolves issues of concern to the people.”

Article 109 gives us the power to introduce any Bill to this House in seeking to resolve any issues of concern to the people. The matters that have been raised by the Leader of the Majority Party and the Deputy Leader of the Minority Party are very serious and, indeed, very weighty.

We have read in the newspapers of incidences concerning Sportpesa. I read about a young man from Nyanza who was given Kshs80,000 for school fees and instead of going to pay school fees, he went and gambled with Sportpesa. The gamble was on the Euro football competition. The match was between Belgium and Switzerland and people were to bet who was going to win. He split the money into two and put Kshs40,000 on Belgium and Kshs40,000 on Switzerland. What he never anticipated was that there was going to be a draw. There was supposed to be a winner because those were knockout stages. Part of the conditions was that the gamble did not include the extra time. So, there was a draw and the football teams went for extra time and penalties. Of course, there was a winner, but that was not included in the gamble. So, he lost the Kshs40,000 he had placed on Belgium and the other Kshs40,000 he had placed on Switzerland. He was left a destitute. In fact, I think he searched his soul. It was a very sad situation. He wondered how he was going to explain to his parents. If he has a parent like me, who entertains no nonsense from his children, I am sure he would not come back home. That is what this young man chose to do. He chose not to go back home. It was very unfortunate because he had to hang himself. He took his life because he did not know what to do. That is how serious gambling is.

This Bill is very urgent. It was drafted in 2015. There are many things that have been overtaken. Sportpesa is like when mobile telephony was introduced in Kenya in 2000 and things were moving so fast that it became difficult for even the law to catch up with it. The Leader of the Majority Party has read the names of those who are participating in gambling. They have very interesting names, which are very attractive to the young people. They are very attractive to

people who are downtrodden in terms of the ability to spend. There are some who cannot even afford two meals a day, but they are gambling because they hope that Kshs100 million will land on their laps someday, which may not be true. They gamble all their money and it disappears.

What is of interest is one of the institutions that are involved in gambling. They are even sponsoring a football club in the United Kingdom (UK) to the tune of Kshs6 billion. That is a very serious thing. That is what we call drain of our hard earned foreign exchange from this country. We earn between Kshs15 billion and Kshs16 billion of foreign currency from Kenyans living outside this country. We want to take back this money to those countries. We should only be receiving money from countries in the West. As you know, the West committed a lot of atrocities to Africa. They should pay us. We should not be suffering. For those of us who are students of history, they took all our raw materials. The African Continent has suffered because of the transfer of raw materials, which we never benefited from. We are doing the same thing. Money has come into this country and we are transferring it in a very easy manner. The electronic system has made it very simple to transfer money undetected because people do not know. That is why the President closed those shops. Unfortunately, they appear to have been reopened. They were all closed because they had perfected the art of wiring money to even terrorist organisations.

So, this is a very serious matter. I support Hon. Midiwo's proposal that a Select Committee be formed. However, it should be done in an orderly manner. I propose that Hon. Midiwo brings a formal Motion to the House proposing to form a Select Committee. This is a very serious matter. We will pass it, so that we can conduct public hearings in a very bipartisan manner, so that those who are interested can participate. We will then come up with a law that will seal all these loopholes and save Kenyans the agony of losing children and money. The only thing I did not agree with Hon. Midiwo is when he said that our economy is mismanaged. It is not a mismanaged economy. It is a growing economy. When you go to growing economies, people build on the river banks and do all sorts of things. This economy is growing so fast that the law is unable to catch up with so many developments. It is not a mismanaged economy. This is the biggest single economy in Eastern Africa. So, we must guard against foreigners who seek to fly in by the night and fly out in the morning before we know who they are.

I support the Leader of the Majority Party and Hon. Midiwo that a Select Committee be formed. Since he is the one who proposed, I would like to request him, with your permission, that he presents a Motion, possibly on Tuesday. He is a very intelligent man and he will burn the midnight oil.

Hon. Speaker: Hon. Members, so that we do not appear to be debating the aspect of what Hon. Chepkong'a brought as provisions of the Standing Order No.40(2), is it the understanding of the House that, for the convenience of the House, before debate can commence on this Bill, we take it out of the Order Paper for today so that the House can bring a Motion to deal with the particular issues you have raised, some of which could be partly addressed in this proposed Bill? If the House is in agreement, for the convenience of the House, we can take this Business out of the Order Paper because it has not been moved. The Leader of the Majority Party has not moved debate on the Bill. Therefore, you cannot discuss it.

Hon. Speaker: Member for South Mugirango.

Hon. Nyamweya: Thank you, Hon. Speaker. We are discussing a very serious matter. We talk about Safaricom making money, but the gambling in this country is bigger than the revenues that it earns per day. Poor people including workers in my house spend their time gambling. It is the biggest economic activity that has taken centre stage. It is not a small matter

and I am glad that the Leader of the Majority Party has proposed that it be postponed. Gambling is like drug addiction. People are addicted to it and they are doing all manner of things to get money for gambling. People gamble with school fees, salaries, land and cars. Parents are going through a lot of pain with their children who are addicted to gambling. People surrender their salaries for gambling and they cannot even go to work. They are given a consolation that when one loses, they get a better bet the next day. People should know that you cannot make money from gambling.

There is need for public education. The Act is very simple, but we are talking about internet banking, *Mpesa* and means of communication. This issue needs to be looked into, so that the Government can get money.

I support the idea that a Select Committee be formed to come up with better regulations to deal with gambling because with the new technology, the issue has gone beyond what it is used to be.

Hon. Speaker: Member for Igembe North.

Hon. M'uthari: Thank you, Hon. Speaker. I support the idea of having a Joint Select Committee. Betting has destroyed many children and families. Looking at this matter in a serious manner will help our country and what is proposed as tax may not cushion or be of value compared to the destruction caused by this emerging issue. In almost every village that has a canteen, betting is taking place and children run away from school to go and bet. The time spent in betting is creating a gambling nation as the Leader of the Majority Party puts it. It is serious and the owners of these companies might not even be Kenyans yet they are taking money and impoverishing people thus increasing people's suffering. Withdrawing this Bill to form a Committee to look at this issue in a more thorough way is good. They should come up with proper regulations to govern this industry.

Hon. Speaker: Member for Budalang'i.

Hon. Ababu: Thank you, Hon. Speaker. In February 2013, as the then Minister for Sports, I stood and urged this House to pass the Sports Act. Among the key elements of that Act, which I remember stressing passionately before this House, was the framework to allow sports betting. It is under that framework of sports betting that we now have mushrooming companies and businesses undertaking that increasingly lucrative business of sports betting. When we were drafting the Sports Bill and debated it in this House, the motivation behind sports betting was to help generate revenue that we believed could be reinvested in sports through sponsorship deals that we have witnessed by firms like Sportpesa. We never envisaged at that time as we proposed that legislative framework that we would be facing a crisis that we are witnessing today. As we talk about the spectre and the challenge of addiction to betting that is now afflicting school children, and I speak with a lot of awareness that students in the galleries are following these proceedings, I believe we are also sending caution to them that we do not want them to be addicted to gambling. It is a bad idea. It is destructive because they are wasting their school fees, pocket money, resources and time.

Hon. Speaker, let us not condemn sports betting because as an idea, it was motivated by very good intentions. We should, however, look for a way to deal with the mischief and negative elements that have accompanied an initially very good idea. I was shocked to see Sportpesa, a firm that has risen to be the premier sports betting firm in this country, shelling out Kshs6 billion in a sponsorship deal with Hull City, an English Premier League club. Swiftly, in the footsteps of that historic deal, they have also announced another deal with Southampton, another premier league club. The figure that Sportpesa is shelling out in those sponsorship deals is not loose

change. It is billions. While this company is perfectly in order to market its brand in the English Premier League and across Europe, one wonders what really should be the priority. As we passed the Sports Bill in this House, the idea was to support local sports. It is a shame to see a business firm domiciled in Kenya spending billions sponsoring English football clubs while the Kenyan Premier League and football clubs like Gor Mahia, AFC Leopards, and other communities clubs are barely surviving on little resources available to them. It runs contrary to the spirit behind the very good intentions of sports betting as provided for in the Sports Act.

Therefore, we must use this opportunity to put in place stringent measures that can answer to this mischief and addiction. In that respect, we must place an age limit and protect our children from betting. It will be perfectly in order to declare in a piece of legislation such as this that anybody below the age of 18 should not be allowed to engage in sports betting.

Hon. Speaker, even movies have parental guidance provisions or guidelines, where it is said children or persons below certain age are not allowed to access or to watch such movies. Therefore, we will be perfectly in order to amend the Betting, Lotteries and Gaming Act. I said previously that when we sit in this Chamber, we are Hammurabi, the law giver. We can make, unmake and remake any law. It is perfectly in order for this House to relook at the betting law, and use this opportunity to answer the mischief which is arising out of it.

I want to submit that we do not need a select committee to deal with this matter. I believe it is a matter which is fairly straight forward. If we proceed under Standing Order No. 40(2), then the Leader of the Majority Party can be allowed to withdrawal this Bill, and then consult widely within this House, the State Law Office and with the Ministry of Sports, Culture and Arts. I deliberately started with the Sports Act because that is where we initially established the legal framework to allow sports betting. Through those consultations, they can then bring a more comprehensive amendment Bill for debate.

I do not believe that it is necessary to go the route of a select committee. However, let this message go out clearly to betting firms that we will not tolerate their bad manners. We will not tolerate the manner in which they are corrupting young minds. They are basically wrecking the resources of this country by taking Kshs6 billion to sponsor an English Premier League team. That is money from kids who are using their school fees to gamble. That is the money of the *mama mbogas*, *makangas* and *boda boda* riders, and it repatriated to the English economy. This is unacceptable. This House must send a very clear message to Sportspesa. We shall not allow them to rip the resources of this country, and repatriate the same to other economies. We shall not allow the children of this country to gamble. We will not sit back, as responsible parents, and allow the children to suffer the addiction of gambling. We will protect them decisively through proper legislation.

I support the Motion, Hon. Speaker.

Hon. Speaker: Like I said earlier on, the Leader of the Majority Party who is the owner of the Bill agrees with the proposal. We do not know how to make laws. Since he has not moved the Bill, even if you contribute to it, there will be no effect. There is no purpose for debating this Bill. If the Mover stands the Bill down, you cannot tell him to move the Bill because you wanted to say something. The Leader of the Majority Party supports the request to stand down the business.

The Leader of the Majority Party.

Hon. A. B. Duale: Hon. Speaker, I agree with the sentiments expressed by Members. I withdraw the Bill from the Order Paper until another time.

Hon. Speaker: The Members who have views will express them then at that time. So, business appearing as No. 12 has been withdrawn from the Order Paper.
Next Order!

Second Reading

THE KENYA DEFENCE FORCES (AMENDMENT) BILL

Hon. A. B. Duale: Hon. Speaker, I beg to move that the Kenya Defence Forces (Amendment) Bill, 2015 be now read a Second Time.

First and foremost, I take this opportunity to pay tribute to the men and women in uniform for their tireless work in defending the external territorial integrity of our country. The Kenya Defence Forces (Amendment) Bill 2015 deals with the Kenya Defence Forces (KDF) Act. Clause 2 of the Bill deals with definitions. Some of the definitions of “torture” from Section 270(4) in the principal Act are inserted into Clause 2 of the Bill. It is a reorganisation. The same applies to Clause 3. It deletes Section 8(3)(4) of the KDF Act. This section is being enacted under a new section 31(2)(3) of the Act under Clause 13 of the Bill. This is basically rearrangement of the sections in order to place them within the appropriate section of the Act which deals with internal security operations by KDF.

Clause 4 of the Bill is intended to realign the strategic management of KDF. The current provisions under Section 10(d) of the principal Act provide that the Cabinet Secretary (CS) responsible for defence shall perform such functions as necessary for the control and administration of the KDF. Control is an aspect of command which the President exercises by virtue of his status as the Commander-in-Chief. The constitutional function cannot be delegated by the President. So, the CS cannot purport to take the function of the President as the Commander-in-Chief. So, Clause 4 is intended to realign the strategic management of the KDF.

Section 12(b) of the KDF Act empowers the Chief of the KDF to lawfully administer the KDF as a disciplined force. Section 10(d) of the principle Act grants concurrent powers to the CS to administer the KDF, which is likely to create uncertainty in the command. The command structure of the KDF must be very clear. Section 12(b) empowers the Chief of KDF. He is the person who is lawfully allowed to administer the KDF as a disciplined force, but not the CS who is given the powers under Section 10(d) to administer the KDF. The CS is supposed to deal with the civilian policy obligation of the KDF. The day today command of the KDF lies with the Chief of KDF. That is the lacuna in law which this amendment is trying to clear.

The CS for Defence, as the Chairperson of the Defence Council, remains responsible for policy formulation. The function of the CS is to formulate policy. Parliament exercises a critical function of oversight over KDF. It retains the constitutional function assigned to the CS over the KDF through legislation. All the legislations, policies and regulations which will come to Parliament will be under the direction of the Cabinet Secretary (CS). Section 10(h)(i) and (ii) of KDF Act requires the CS for Defence to submit to Parliament and the President a Report by the Chief of Defence Forces (CDF) on each Service on; expenditure, accountability and accomplishment under Article 132. It presupposes that the CDF then has no role in the financial expenditure control. The financial expenditure of all the various services of KDF will be managed by the PS in the Ministry of Defence as the accounting officer.

This amendment seeks to remove the possibility of having the CDF engaging in financial affairs within the KDF. The Parliamentary scrutiny of the expenditure of KDF is still retained,

but the accounting officer responsible to Parliament is the PS and not the Chief of Defence Forces. The Chief of Defence Forces will be in-charge of the daily operational command of the KDF. The funds used to facilitate the work of KDF are managed by the Ministry through the accounting officer. It is being made clear that the CDF is not an accounting officer and does not hold or keep financial records.

Once this law is passed, the oversight role of the Ministry of Defence will lie with the accounting officer who is the PS. Clause 5 seeks to amend the existing Clause 11. Again, this is to remove the ambiguity of delegation of powers of the CS to the Chief of Defence Forces and a member of the KDF. Clauses 6, 7, 8 and 9 seek to take account of the chain of command in the monitoring of policies, activities and delegation of duties within KDF. This is to create clarity between the role of the Chief of Defence Forces, CS, service commanders and the President.

This Bill has gone through the Committee and Clause 30 seeks to amend Section 2(13) by reducing the mandatory rank of the Director of Military Prosecution from a Brigadier to any one not below the rank of a Major. This is to avoid the possibility where there is no officer of the rank of a Brigadier to perform the function of the Director of Military Prosecution. So, it further seeks to extend that office. It should not only be pegged at a Brigadier level, any other officer can take that role.

Clause 31 seeks to amend Section 243 to increase the retirement age by two years to 64 years. The retirement age of officers in the KDF is pegged on rank. The proposed increment in the retirement age could afford a full General Officer the opportunity to put their experience in the service of the country. Clause 33 seeks to grant the Defence Council the opportunity to consider application for resignation of commissioner or request for discharge and to provide that resignation takes effect after receipt of the communication from the Defence Council. Because of many reasons that clause deals with the procedure on how an officer can exit the Defence Forces.

Clause 34 and 35 specify parts that deal with discipline of officers. It may constitute auxiliary reshuffles of the KDF during the President's recall. It is important because after one retires from the military they still have the expertise and when the nation needs them, they can be recalled. Clause 41 seeks to empower the Chief of Defence Forces and the subordinate commanders to make Standing Orders. So, it is the work of the CDF and his service commanders to create and change the Standing Orders that are used in the running of KDF. This is to ratify the omission in the KDF Act. It was left when we were creating the KDF Act, 2012, before the power to make Standing Orders was available to the CDF.

Having said all this, this is a very important Bill, which is also long overdue because it was here in July 2015. The Chair of the Departmental Committee on Defence and Foreign Relations and Members are here. We will deal with it, and possibly before recess we take it to the Committee of the whole House.

With those many remarks, I beg to move and ask the Chair, Member for Tetu to second.

The Temporary Deputy Speaker (Hon. Cheboi): Let us have the Member for Tetu.

Hon. Gethenji: Thank you, Hon. Temporary Deputy Speaker. I wish to join the Leader of the Majority Party in giving morale, support, thanks and congratulations to all the men and women in uniform who continue to put their lives on the line in our defense and that of this great Republic.

The Kenya Defence Forces (Amendment) Bill, 2015 was published on 24th July, 2015 and read the First Time on 18th August, 2015. Thereafter it was committed to the Departmental Committee on Defence and Foreign Relations for consideration pursuant to Standing Order No.127. In processing the Bill, the Committee invited several comments from the public by

placing advertisements in the daily newspapers on 18th August, 2015 pursuant to Article 118 of the Constitution. The Committee also met the sponsors of the Bill, officers from the Ministry of Defence and several stakeholders whose views were captured in our Report and contained in the Report tabled on the Floor of the House.

Among those we interviewed and had sessions with was the Ministry of Defence, the Kenya National Commission on Human Rights (KNCHR), the Transparency International-Kenya, Parliamentary Initiative Network, Independent Medico-Legal Unit, Mr. Zedekiah Kagame and his team, the Rokibbs Enterprises, the Institute of Social Accountability, the Director and Managing Partner of Winnerman CT, Usalama Reforms Forum and Mr. Thomas Silvester Masare.

The Committee held several sessions and I wish to thank the Members some of whom are seated here; the Minority Whip and the Deputy Leader of Minority Party for their diligence and attention paid in those particular hearings. The majority of the Committee Members adopted the Report and this was done on 19th October, 2015. The Amendment Bill is an Act of Parliament to amend the KDF Act No.25 of 2012 to ensure the smooth implementation of the Act.

A number of clauses to the Amendment Bill were agreed to by the Committee Members. For brevity I will read the clauses we agreed to before I move to the amendments which were proposed by the Committee Members. We agreed with the title, Clauses 1 and 2. Since the Report is with the House, I will not bore you with the actual details. Members can look at the Report to see the actual clauses referred to in the Bill. Clause 3, 6, 7, 8, 10, 14, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 31, 35, 36 and 40 were agreed to by members of the Committee.

The proposed amendments by the Committee to the Bill are as follows--- I will take time to read the clauses and give the justification for the amendments. Clause 4 as proposed in the Bill seeks to remove the oversight role of Parliament which is contrary to Article 95 of the Constitution. Therefore, the Committee proposed an amendment that seeks to retain the oversight role of the National Assembly. That was a popular amendment because parliamentary oversight is critical and in line with the Constitution.

We proposed an amendment to Clause 5 by inserting the words “to an employee of the ministry” immediately after the word “act”. The justification and net effect of that amendment is to give the Cabinet Secretary (CS) the discretion to decide who to delegate his or her powers to. The current provision in the Act has the potential to erode civilian oversight over the Kenya Defence Forces (KDF). However, Clause 5 did not cure the mischief intended to be cured as the amendment is still ambiguous and does not bar the CS from delegating to military officers. The proposed amendment by the Committee, therefore, seeks to cure this by providing that the CS may delegate only to an employee of the military and, therefore, retain that delegation within the civilian authority of the Ministry of Defence.

Clause 9 seeks to give service commanders the power to delegate without eroding civilian oversight over KDF. The Committee’s proposed amendment to Clause 9 seeks to ensure that the delegation is in line with the chain of command and does not fall outside the chain of command as would have been the case without that amendment by members of the Committee.

Clause 11 seeks to give the President the powers to extend the term of Office of the Chief of Defence Forces, the Vice-Chief of Defence Forces and service commanders by a period not exceeding one year. However, the amendment as it is presently captured may arguably inhibit upward mobility. The concept of preservation of institutional memory is also likely to be abused. The proposed amendment by the Committee seeks to ensure that the extension of the term of

office may only be done under extraneous circumstances such as in times of war, emergency or during other extraneous security circumstances or exigencies.

Clause 13 removes the need for the CS to inform the National Assembly where the KDF are deployed and where expenditure is incurred or will be incurred. This is in violation of Article 201 of the Constitution, which outlines openness and accountability as some of the guiding principles in financial matters. The proposed amendment by the Committee seeks to include expenditure incurred or to be incurred during deployment of KDF as one of the items that the CS should disclose to the National Assembly.

The proposed amendment to Clause 15 seeks to ensure that the respective commanders in joint operations retain the administration and command of forces while the Inspector-General (IG) of Police shall be left in charge and in control of the overall superintendence of any operation. That is to cure the issue of joint command and oversight in internal operations by the IG where the military is called in to assist.

We also proposed an amendment to Clause 16(1) by deleting the expression “241(3)(i)” and inserting various substitutions which are very lengthy. I just wish to speak to the justification for the same. This was done to retain the role of the National Security Council (NSC) in approving deployment of KDF in support of the National Police Service and further extend those powers to the President. This was not clear in the amendment in the Bill.

We also sought to insert a new clause after Clause 26. The proposed amendment seeks to allow a person who has been convicted by a court martial to make subsequent appeals to any other superior court in line with Article 50 of the Constitution. We also sought to make a further amendment to Clause 30. The proposed amendment seeks to relax the strictness of the requirement of a major to a lieutenant colonel.

Clause 32 was also amended by members of the Committee. The proposed amendment seeks to ensure that a member of KDF is entitled to treatment for injuries sustained while on military service beyond a member’s service contract. Further, the amendment seeks to allow a member of KDF, while on treatment, to receive pay and allowances during such period of treatment and to protect the right of KDF members to be compensated if they lose their lives or suffer disabilities while in military service and/or training.

We also sought to amend Clause 33 to remove the ambiguity as to when resignation is approved and takes effect. That was deemed to be quite ambiguous in the current format. Further, the amendment seeks to allow the service commanders to consider application for resignation by an officer or a service member.

The amendment proposed by the Committee to Clause 34 gives the President the powers to order auxiliary reserve forces to be part of KDF, which arguably may give room for militarisation of the Kenya Forest Service (KFS), Kenya Wildlife Service (KWS) and National Youth Service (NYS). Further, pursuant to Article 241 of the Constitution, KFS, KWS and NYS do not form part of KDF.

The proposed amendment to Clause 37 seeks to ensure that the funds of KDF are in a separate vote. The proposed amendment to Clause 38 seeks to ensure that KDF keeps proper books of accounts and records of income, expenditure, assets and liabilities of KDF. Further, the proposed amendment seeks to ensure that the accounting officer in the Ministry shall submit to the Auditor-General the accounts of the KDF within a period of three months after the end of each financial year, together with a statement of income and expenditure for that year and a cash flow statement. This will ensure transparency and accountability in the manner in which funds of KDF are utilised, which is in line with the Constitution. This will ensure transparency and

accountability in the manner in which funds within the Kenya Defence Forces (KDF) are utilised which is in line with our Constitution.

We also sought to amend Clause 39; the justification being the amendment seeks to ensure that the Defence Council prepares an annual report for each financial year and submits it to the President and Parliament. This amendment retains the oversight role of Parliament particularly in financial matters.

Clause 41 was amended and the justification was that the proposed amendment seeks to delete paragraph (e) in light of the deletion of Clause 34 which had provided for auxiliary reserve forces. Further, the amendment seeks to ensure that the Standing Orders to be made by the Chief of Defence Forces or by the commander of a service of the Defence Forces or the commandant of the constabulary are not inconsistent with the principal KDF Act, 2012.

Having given those amendments, the input of all the Members is very much appreciated. The work done and all the submissions given by the people who presented themselves before the Committee are greatly appreciated. We assure you that we have taken enough time and done enough due diligence of the Act and the amendments proposed to ensure that the usability of the new law will be functional for the user and in line with our Constitution and help the KDF in delivering their service to this great Republic.

With that, I beg to second.

(Question proposed)

The Temporary Deputy Speaker (Hon. Cheboi): Let us have Hon. Midiwo.

Hon. Midiwo: Thank you, Hon. Temporary Deputy Speaker for giving me the chance to support the Kenya Defence Force (Amendment) Bill. Let me congratulate my Chair for putting it in an orderly fashion. I sit on the Departmental Committee on Defence and Foreign Relations and we did a lot of work and consultation with regard to this Bill. My Chair has really improved lately. You have to congratulate this Committee. Since you became the Speaker, I do not think you have seen a Committee Chair present a report like this with proposed amendments. That requires some kind of accolades. He used to be very bad. However, this morning I congratulated him for conducting the meeting correctly.

Even as we support the Bill, there are some issues which were raised. So that I do not run the risk of repeating what my Chair has enumerated, I only want to talk about Clauses 11, 13 and 34 of the Bill. We thought that the KDF was trying to do what they should not do in the 21st Century. Things have changed across the world and we want to be lawful. An attempt to try to haphazardly extend the term of the Chief of General Staff would not make sense. Those issues we raised. Further, where the KDF would, through the Cabinet Secretary, inform the National Assembly after deployment of the forces is outrightly unconstitutional. It is required that this House approves any deployment. It beats logic to inform us after you deploy the forces. That would be the norm of the day. It is very important.

I had a very big issue with this Bill in Clause 34 where there was an attempt by the KDF to make the National Youth Service (NYS) and the Kenya Forest Service (KFS) auxiliary forces that are deployable in combat situations. I have been making a lot of noise in this House. One day the Parliamentary Service Commission (PSC) will say Midiwo was right if they will be there to say it. Somebody decided that we need the NYS to be part of the security of this House. We are given security by the State. This is a national institution that the State security organ needs to be in charge of. We should not be in a scenario where we are not the ones who command police

that guard this building and do not know how they protect us. The reason why the United States of America has something called the Secret Service is that they are secret to everybody. That is how they have managed to protect their country to near perfection.

In Parliament, a police officer stands with an AK47 or G3 rifle while a civilian searches vehicles coming to Parliament. The PSC does not have that capability. That cannot be part of the Commission's duty. I know they are trying. I have taken occasion to talk to members of the security department. It is forced on them. If you talk to any of these policemen, they are very unhappy. The uniformed officers are very unhappy because somebody else is doing their job and they can do nothing about it although they are rightfully provided to this institution by the State.

Part of the problem about crime in this country, and we have said it here time and again, is that when you go to the countryside and all across the country the Administration Police has refused to report to the command of the regular police. If you talk to any police officer, they will tell you that it has caused a *lacuna* that has created a lot of insecurity around the country. It is happening there. We do not need to create another force to oppose the State. It makes Parliament to be at loggerheads with the State security organs. Members of this House, look at the mess. They say they have an order. I have never heard anybody tell Members that somebody can look at your briefcase when you are coming here to the extent that a civilian tells your bodyguard to step out of your car. Some of these things are ridiculous. That is when crime occurs.

I have taken my time to talk to the head of security. He showed me a letter which was an instruction which was read in the Senate. This is not the Senate. We are the majority here. The Senate does not control the PSC. This House must deal with the incompetence of the PSC Commissioners in terms of security and other matters. We will be raising those issues. It is the competence of our Parliamentary Service Commissioners. We should find out if they are working for us or they are against us. I am addressing my mind to it, we will reason and members will understand us. We will begin with what is happening, their composition, where they came from and who made the decision. If we do not want the Kenya Police to protect us, it must be debated here and the House must tell the police to go away.

(Applause)

That would be the right thing. Somebody cannot sit somewhere and take kids from their villages and bring them here and purport to make them security officers. This is somebody fighting the State and exposing Members of Parliament, the House and the institution of Parliament. We cannot allow that to happen.

In this Bill, the proposal that you can take the NYS to go and work in Somalia where there are soldiers in combat was ill-advised. Sitting in this Departmental Committee on Defence and Foreign Relations Committee, I got a chance to visit military institutions. How I wish we could have more generals in positions because of their discipline! We should have more soldiers in positions because of the training they go through. We cannot take untrained people and give them responsibilities which they are not disciplined or trained on.

I really support and encourage all of us not to touch Clause 34 of this Bill. Imagine the scenario of El Adde if you had officers from the KWS there. It is like saying: "Please, send them with the coffins." This is because they have no idea of that scenario. I really support and I congratulate the Committee. We have done a good job.

Thank you.

The Temporary Deputy Speaker (Hon. Cheboi): Let us have Hon. M'eruaki who will be followed by Hon. Rasso, just for purposes of preparation.

Hon. M'uthari: Thank you, Hon. Temporary Deputy Speaker, for this opportunity to speak to this Bill.

At the outset, I support this good Bill. It is a good Bill because it clarifies a number of issues within the Kenya Defence Forces Act. It also makes clarifications around the issue of torture. I have issues around court martial. At times, human rights are not respected. I have a case of one of my constituents who has been in the Kenya Defence Forces but had a health challenge. With the health challenge, they put him under duress, stress and in custody for more than 18 months. They then dismissed him without paying his dues. I will not discuss that because I have brought a Petition to that effect.

I applaud our KDF for their exemplary work especially in defending our country, for the good job they are doing in defending our borders and for the discipline they have exhibited.

We also applaud the generals like our former colleague, Hon. Nkaissery, who have been given responsibilities. He was given the role of a Cabinet Secretary for Interior and Coordination of National Government. He has done a great job in terms of improving security. We thank him for the good job.

The various amendments proposed are going to create alignment in terms of management and policy direction within the KDF, especially the roles in the military given to civilians like our current Cabinet Secretary for Defence. It is important to distinguish these roles clearly. It helps in management and policy direction. Strengthening the role of the KDF is important. Giving them specific roles also helps in terms of giving direction to the other service commanders. It streamlines all aspects.

However, I was speaking about the question of having the Committee. We appreciate the discipline and the way the KDF conduct their roles. But, it is also important to respect human dignity when it comes to a person. It is important to respect a person. For example, the person I was talking about who is a young man – Nesbon Kibara Mbaabu – has suffered for several months. He has been sick. Instead of being observed properly and taken for medical care, the person is tortured and thrown out of the service like a dog. They throw him out without giving him his dues and medication. Even a dog is treated better. Anybody, including the bosses can suffer. If somebody suffers, he does not have to be treated so unkindly and unfairly.

This amendment to the KDF Act is very important. The amendment under Part IV provides for the KDF to engage people from other services. It can have as reservists people from other services who have been trained. These people can be given opportunity to participate. The country may be in a crisis and may require more human resources. In that case, harnessing the other human resource available is, in my opinion, a good idea. It can help increase the personnel, especially where the country is in a situation of disaster or war and it is necessary to have more personnel. In that case, the President can have a leeway to have that.

The other provision is on the involvement of this House during deployment of the KDF personnel to areas that may have challenges. The approval of this Parliament is important to strengthen that aspect so that our oversight role is given due prominence and preference. We are here to protect the nation. We are also here for the interest of Kenyans. We are here to ensure that within our oversight role, nobody is taking over the mandate that is for the greater good of the Kenyan people.

With those few remarks, I support this Bill. Thank you.

The Temporary Deputy Speaker (Hon. Cheboi): Very well. Let us have Hon. Rasso. Hon. Wamalwa should be preparing.

Hon. Dido: Thank you very much, Hon. Temporary Deputy Speaker.

I rise to support this Bill. I also want to thank the Chairman of the Departmental Committee on Defence and Foreign Relations. He has really provided leadership, particularly when the Committee was working through this Bill.

As a former soldier, I want to pay tribute to our men and women who are out there in the frontline doing the most arduous task by putting their lives on the line so that this country is safe.

Under Article 241 of our Constitution, the KDF is responsible for the defence and protection of the sovereignty and territorial integrity of the Republic. Under the same Article, it is said that the composition of the KDF shall reflect the regional and ethnic diversity of the people of Kenya.

The KDF is the last line of defence in protecting the sovereignty of the Republic. For anything to do with the Kenya Defence Forces in terms of command control, administration and in military jurisprudence there should be no ambiguity in terms of how the generals; the military side of defence, and civilian side of defence headed by the Cabinet Secretary should function.

Hon. Temporary Deputy Speaker, as a Committee we have looked at this Bill for a couple of months and also sat with the KDF. The Chairman has elaborated almost section by section areas we showed reservation. One of the areas we wish to further look at is the retirement age of the officers; men and women. It has been found to be very contentious because there are those who reach mandatory retirement age and if their service is extended, they block the promotion and rise of others. Therefore, in the Third Reading, this is an area we must seriously consider without jeopardising the rights of the rank and file within the military system.

The other area is military prosecution where we have the court-martial and summary trials of individuals by the commanding officers of the appropriate superior authority. We found that the military prosecutor is a uniformed officer. Where does the Chief Justice or the Judiciary come in, in terms of fairness or fair play in providing justice to the men and women in uniform? Therefore, we saw the need that the military prosecutor must be independent and that independence must be real, not artificial such that high ranking officers can dictate the sort of sentences to be passed to individuals. We saw that if the Military Prosecution is of a low rank, the senior officers at the top may interfere with their work.

Hon. Midiwo and the Chairman talked about the auxiliary reserves. I strongly feel that if the military would wish to have a reserve, which is really important, they cannot pick from the existing forces which have either constitutional mandate or properly assigned mandate where even during war or crisis, they cannot be pulled out from that task. Clearly, we know why we have the Kenya Forest Service, Kenya Wildlife Service or even the National Youth Service.

The other area is on recruitment. The KDF is an own voluntary force. That being the case, recruitment must reflect the face of Kenya. Within the Bill there is the issue of where the recruitment centres should be. Is it at the county, constituency or district? It should not have any ambiguity where recruitment centres should be so that people's representatives know that when there is recruitment, whether those they represent are adequately taken care of.

The other area is about financial probity. There was an attempt within the Bill to remove areas of responsibility or individuals answering for the funds they use. It is important that at every level Authority to Incur Expenditure (AIE) holders must be accountable to the taxman.

Finally, I want to also congratulate the KDF for this Bill. It is a progressive Bill. The amendment is an attempt to seal the flaws and gaps in the KDF Act of 2012. I also want to add

my voice to what Hon. Midiwo was saying. The super bureaucracy of defence, the training and military culture is what has been demonstrated by individuals like Maj.-Gen. Nkaisery and Maj.-Gen. Kihalangwa in Immigration. We must tap into the experience, training, discipline and culture they have brought to those offices where they are working.

With those remarks, I beg to support.

The Temporary Deputy Speaker (Hon. Cheboi): Let us have the Member for Kiminini and next will be Hon. (Ms.) Dennitah Ghati.

Hon. Wakhungu: Thank you, Hon. Temporary Deputy Speaker. From the outset, I support this Bill. I want to thank the Departmental Committee on Defence and Foreign Relations, which I sit under the chairmanship of Hon. Gethenji, for work well done. It is, indeed, true that our Chairman has really improved. We want to congratulate him for that. We realise that there were people who were moving around him who were confusing him. We warn them not to come back. Personally, some time back---

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

The Temporary Deputy Speaker (Hon. Cheboi): What is your point of order, Hon. Gethenji? Do you want to tell us about this confusion?

Hon. Gethenji: Is it in order for my good friend, Member for Kiminini, to suggest that anyone has the capacity or capability, including himself, of confusing the Chair of the Departmental Committee on Defence and Foreign Relations? Can he please substantiate or withdraw?

Hon. Wakhungu: Hon. Temporary Deputy Speaker, Colin Powell, who was US Secretary of State, once said that if you want to know the character of someone, you look at the people he moves around with. As Committee Members, I am saying this because some time back, I brought a Motion in our Committee to remove our Chair because of some issues but, of late after we summoned him, he has improved. Some Members somewhere, he knows but I do not want to go to the details---

The Temporary Deputy Speaker (Hon. Cheboi): We can leave out the issue of confusion and proceed.

Hon. Wakhungu: Yes, we can leave out the issue so that he continues with the good work he has been doing.

This Bill has been very controversial. I am happy we are debating it when the temperatures have gone down. There were so many interests. This was about six months ago. I also want to thank the KDF because they organised sessions with our Committee and Chair till Members were made to understand the issues. I also thank the CS, Ms. Omamo. She was very committed. She also showed her drafting skills which we appreciate. She is a hands-on CS when it comes to matters of drafting and legislation. When you look at this Bill, particularly Clause 10(gb), it says: "Shall develop the criteria for recruitment, promotion and transfer of members of the Defence Forces." This is very important for purposes of accountability and openness. However, as we say this, in KDF, we also have regulations which are discriminatory against women and people with disabilities as far as promotions are concerned. As we speak right now, we have a Petition by Hon. Rose Mitaru, the Embu County Women Representative, because when it comes to promotions and opportunities for training, the regulations are against women. This violates the Constitution which says that every Kenyan must have an equal opportunity and freedom from discrimination. An example is the issue of promotions for the female counterparts. As a serious Committee, we are really looking into it under our able chairman. I am sure we will

resolve that very soon. So, that criteria must not have ambiguities or any discrimination whatsoever.

When we go to the Committee of the whole House, we will bring some amendments because this is not provided for in the Bill. We also have a Petition by Hon. Wangwe, the Member of Parliament for Navakholo, which we were deliberating today. Constituencies are now sub-counties. For purposes of equity, it will be nice for every constituency to have a recruitment centre for the military people. We are here representing the constituencies and the moment we move away from there, we are likely to have issues of bias. Every MP is here for purposes of representation. Even the MP for Tetu, who is the Chairman of the Departmental Committee on Defence and Foreign Relations, will be happy to see that there is a recruitment centre in his constituency. My people of Kiminini will also be happy to see a recruitment centre in Kiminini. This is for purposes of equity.

Clause 13 says:

“Where the Defence Forces are deployed for any purpose contemplated in sub-section 1 (a) or (b), the Cabinet Secretary shall inform the National Assembly promptly---”

The issues that he or she is supposed to inform the National Assembly include reason for such deployment so that we know if it meets the threshold. Other reasons are to avoid cases of abuse, the place where the defence forces are being deployed and the period for which they are expected to be deployed.

Many people have talked about the neighbouring country, Somalia. We know our forces are there but we do not know for how long they are going to be there. I know that sometimes we cannot predict such issues but in circumstances where you can predict, it is important that that must be part and parcel of the information that is given to this House as the representatives of the people.

I am happy about the oversight role of Parliament. As a Committee, we sat down and said that you cannot take away the oversight role of Parliament. My Chairman talked about it. As we move on, we are going to handle that accordingly.

Clause 34 is where there is a problem. It talks about the creation of an auxiliary reserve force. Hon. Temporary Deputy Speaker, you will agree with me that the members of the Kenya Forest Service (KFS), Kenya Wildlife Service (KWS) and the National Youth Service (NYS) have not even been trained on how to use a gun. It becomes very dangerous to say you are going to pick them to be part of that force without proper training. I am happy that we saw this as a Committee. We do not want to militarise the country. It is important to have an auxiliary force in cases of shortages but people must be recruited in this auxiliary force from a team where people have been trained properly, particularly when it comes to the use of firearms. That is why my Committee, under the able chairmanship of Hon. Gethenji, has given that proposal that as we move on, we want this part to be deleted because we do not want to militarise this State. That can be dangerous especially when it comes to cases of robbery. That is why we sat down as a Committee and realised that we must look into this issue so that militarisation can be minimised.

A lot has been said. However, I want to look at Clause 39, where we have the proposal to delete. We are deleting this to ensure that the Defence Council prepares an annual financial report to be presented to the President and Parliament. This helps us to retain our oversight role. Otherwise, much has been said as far as this is concerned.

They also create their standing orders. It has been emphasised here that the standing orders must be consistent with the KDF Act for purposes of harmony and synergy. That harmonisation must be there.

As I conclude, I thank the KDF because they were very committed. They were available at the time the Committee wanted them to come. We managed to work together as brothers and sisters for purposes of benefiting this particular Bill. This is an important Bill. It is going to provide a clear framework under which our KDF is going to work.

Thank you, Hon. Temporary Deputy Speaker. I support. Committee Chair, continue with that good spirit.

The Temporary Deputy Speaker (Hon. Cheboi): Top on the list is Hon. Irungu Kang'ata but I will first give the opportunity to Hon. Dennitah Ghati and then come to Hon. Kang'ata.

Hon. (Ms.) Ghati: Thank you very much, Hon. Temporary Deputy Speaker, for considering gender in terms of discussion around the military and the KDF.

At the outset, I want to say that I am a member of the Departmental Committee on Defence and Foreign Relations. What the Chair has presented is the truth. I thank KDF because they took us through a lot of understanding of the Act. This is exactly what we are talking about here.

The provision I am very happy with in this Bill is that the KDF is looking at the issue of the health of their officers very seriously. The Act talks about KDF officers who sustain wounds, injuries or contract illnesses while on military service. These officers are entitled to be provided with medical, dental, psychological or other treatments that arise in the course of duty. In very many centres and circles, this is an issue. When somebody sustains injuries or becomes disabled while on duty, that usually becomes the end. I am very happy that this Bill is seriously looking at the issue of compensation of the officers who sustain injury while on duty and also compensate their families. This is because their families have sacrificed a lot for these officers. Second is the issue of recruitment.

Hon. Temporary Deputy Speaker, allow me to talk about the issue of gender. It is a well-known fact that the military of Kenya or any other place is highly masculine. The issue of gender in the military is never considered. The issue of gender is very strict and so the military usually locks out a lot of women in terms of even rising in positions of leadership. I will support amendments that ensure that recruitment centres for the KDF are devolved to the constituency or sub-county level. We have chiefs, Deputy County Commissioners and other leaders at the grassroots level who are able to identify people so that we recruit members into the military. The issue of gender and quotas for women should be a very serious issue. We have to ensure that we have quotas for women such that every constituency has and knows that they have several slots. We can even have five slots for women so that women are able to join the military. In Migori County where I come from, we have slots for women but we have many stringent requirements. They have to run. We call it positive discrimination. We have to positively discriminate to make sure we reach the quotas for women who join the military. I will suggest such an amendment to ensure that recruitment centres go to the local people so that slots for women from Got Kachola, Nyatike and Timaru in Kuria East are known.

I want to support the amendments to the Kenya Defence Forces (Amendment) Bill with suggestions that will ensure that there are known quotas for women who want to join the military. We are not putting stringent measures for women who want to join the KDF.

I want the Chair to listen because we want to ensure that recruitment centres are devolved to the constituency level, and that positions that are meant for women are basically filled by local women. We have had cases where people recruit in my constituency and if they do not get women, the slots are filled at certain levels. These slots should be given to women and they should be filled in various constituencies.

I will support amendments that ensure that the military is feminised. The military is highly masculine. We should have women in our KDF.

The Temporary Deputy Speaker (Hon. Cheboi): Let us have the Member for Kiharu.

Hon. Kang'ata: Thank you, Hon. Temporary Deputy Speaker. Allow me to support this Bill and congratulate the Chair of this Committee for coming up with very good amendments to the original KDF Act of 2015.

I would like to raise some few issues. The first issue relates to Clause 12 of the Bill which proposes to amend Section 28(3) of the Act so as to ensure easy access to recruitment in all counties. I would like to ask the Chairperson to agree that we add the word "sub-counties" instead of counties. Why do I say so? My constituency is the largest in terms of size and population in Muranga County. When you designate counties as the entities---

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

The Temporary Deputy Speaker (Hon. Cheboi): Member for Nakuru Town East, what is your point of order?

Hon. Gikaria: On a point of order, Hon. Temporary Deputy Speaker. Would I be in order to request that we be given at least three or five minutes? Can you exercise your powers using Standing Order No. 1?

The Temporary Deputy Speaker (Hon. Cheboi): The circumstance under which the Speaker can invoke Standing Order No. 1 is when the matter is not clear. Unfortunately, that will fall on its face because that can only be done at the beginning. You are raising it late. I sympathise with your position because I can see there is quite a lot of interest but unfortunately, we cannot do it at this point. I will not invoke Standing Order No. 1 in this issue because it is quite clear.

Hon. Kang'ata: Hon. Temporary Deputy Speaker, when you say counties, it is unfair for large counties like Kiharu. It should be sub-counties so that constituencies with two or three sub-counties like Kiharu which has two sub-counties is catered for. It is unfair for us who have huge and vast constituencies to share almost equal slots with small constituencies.

Hon. Temporary Deputy Speaker, the second point I refer to is Clause 25 of the Bill which proposes to amend Section 157(2) of the principal Act to deal with the mischief of persons opting for court martial trial for petty offences that can be tried summarily. I refer you to Section 157(2) which is being proposed to be amended. That section is very fair. It provides:

"If an accused opts to be tried by a court-martial, the commanding officer or appropriate superior authority, as the case may be, shall refer the charge to the Director of Military Prosecutions."

The new proposal is to add to that clause the following words:-

"who shall be the final authority in deciding whether the charges shall be dealt with by court-martial or referred back to summary trial."

In essence, what this new law is proposing is that if you are an accused person, and you make a choice to be court-martialled, that is not enough. It means some senior people still have the power to decide whether you can be court-martialled, or be subjected to summary trial. That

is unfair. It gives those people wide and discretionary powers. I am of the view we retain the original law because it gives an accused person the power and freedom to opt between the two.

The third clause I propose we recheck is Clause 33 of the Bill. It proposes to amend Section 249 (7) of the principal Act to address the ambiguity as to when a resignation is approved and takes effect. Allow me to read Section 249 (7) as provided for in Clause 33 of this Bill:-

“An officer or service member may by notice in writing to the Service Commander or Defence Council as applicable request to be discharged from service or resign his or her commission and the Service Commander or Defence Council, as the case may be, shall determine the request and communicate the decision within reasonable time.”

This expression, “reasonable time” is very wide and ambiguous. The Chair should consider specifying what time. Is it one week, two weeks or one month? I say so because I am aware of people who have made an effort to resign not only from the Kenya Defence Forces (KDF) but also from other Government entities, but it takes time for their request to be considered. It makes sense for us to clearly express that consideration will take one month, or two weeks instead of having very ambiguous expression in the law.

Another clause which I would urge the Chair to consider is Clause 34 of this Bill. It proposes to amend the principal Act by inserting a new Section 260(A) to provide an auxiliary reserve force. In short, this new auxiliary reserve force will be comprised of the National Youth Service (NYS) and the Kenya Wildlife Service (KWS) members. In case, we have civil disturbances, it can be called upon to do civil duties. That is a very good idea. The only problem I have with that clause is the involvement of NYS in this auxiliary reserve force. I say so because we all know that members of NYS are not paid. They are young people who have semi- military skills. Once they do their course, they are usually dispatched to join the civilian population. When you have an auxiliary reserve force that comprises of the KDF and KWS members who are on Government payment, it is very demoralising to the members of NYS.

As a country, we need to discuss and agree that the National Youth Service be paid and probably make them permanent, which is irrational because it defeats the purpose of their existence. Better still, we consider giving NYS graduates a preferential treatment when they apply to join the armed forces. Probably we can give them better incentives to serve in this auxiliary force. We can say any graduate of NYS will be given preferential treatment when applying to join the armed forces. That way it will be fair even when we compel them to work or serve in this auxiliary reserve force as per the proposal contained in Clause 34 of this Bill.

Allow me to also raise an issue regarding Clause 39, which proposes to repeal Section 290 of the Act to avoid publication of Defence Council matters which would be prejudicial to national security. I understand that security matters are sensitive. Again, I draw the attention of the Chair to Article 35 of the Constitution which allows for freedom of information. I am not so sure whether this clause is constitutional because it may be offending provisions of Article 35 of the Constitution.

Finally, Article 40 of the Bill proposes to amend Section 304(1) of the Act to effect Article 66(1) of the Constitution that allows the State to regulate the use of land in the interest of defence. That is a good clause but then again I am of the view that this is an issue that touches on land use. Land use is something that is now vested---

The Temporary Deputy Speaker (Hon. Cheboi): Your time is over. Let us have the Member for Kiambu.

Hon. (Ms.) Gathecha: Thank you, Hon. Temporary Deputy Speaker for recognizing gender and giving me the opportunity to contribute on this.

The Temporary Deputy Speaker (Hon. Cheboi): I actually did not recognise what you have just said but your rank in the queue.

Hon. (Ms.) Gathecha: From the outset, I want to thank our able Chair for working hard to bring this Amendment Bill. I am a member of the Committee and I must commend him for the endless hours the Committee spent out of town. Let me also commend the members of KDF who made their presentations to us and the CS.

The amendments will bring the Kenya Defence Forces Act in line with the Constitution and make it accountable and clear. It will ensure there is no disruption of the established chain of command in the disciplined force. Our disciplined force is one of the best in the region given its size, and that is commendable. All officers in line of duty work diligently to protect our borders and the citizens of Kenya. They ensure that our territorial boundaries are intact and continue to maintain peace and stability with our neighbours. We recognise their work in ensuring that we are not threatened by Somalia and commend them for that good work.

Clause 34 states that the auxiliary reserve force will be made up of the Kenya Forest Service (KFS), Kenya Wildlife Service (KWS) and the National Youth Service. Forces are expected to go through military training. They carry weapons in the deployment of their duties. It only makes sense that we have a very competent and well trained military. Should they require reinforcement, the auxiliary forces of Kenya Wildlife Service and Kenya Forest Service would be able to give them support that is required. Whereas there is a lot of concern with the National Youth Service, they also receive paramilitary training that would ensure that they are disciplined. The training that they acquire during training is one that can be used not necessarily in direct combat, but in providing additional services should they be required.

Clause 41 on the protection, preservation and use of land and installations occupied by the Kenya Defence Forces is important. In order to train the military we require enough space. In an era that continually infringes on availability of free space and where there may be invasion of any open land, it is important that we are able to protect and preserve land where the forces are able to train. In order for them to be the excellent-trained force that they are, they require their grounds to be protected. It can be a big shame that we would require them to pay or for the land to be taken up by those who are only interested in a myopic view of commercial development and who do not look at the issue of national security.

The proposed new Section 305A says:-

“The Chief of Defence Forces or the Commander of a Service of the Defence Forces or the Commandant of the Constabulary may make general, special, routine and standing order with respect to all or any of the following matters in respect of the Forces, Service or Constabulary, as the case may be—

- (a) discipline, control, good order and guidance;
- (b) organisation, administration and duties;
- (c) distribution, posting, transfer, attachment and inspection of personnel;
- (d) administration, control and command of the reserves;
- (e) exit and re-integration of the members of the auxiliary reserve forces back to their respective services, which shall not be inconsistent with this Act and shall not be published in the Gazette.”

In the past there have been serious inequities when it comes to posting and promotion in KDF. In the past it took a while before people were promoted. It took a while to distribute---

Hon. Gikaria: *(Inaudible)*

Hon. (Ms.) Gathecha: Hon. Temporary Deputy Speaker, please protect me from the Member for Nakuru East.

It is important that we are able to maintain the chain of command when it comes to dealing with the disciplined forces. When we put the service commanders in charge of their budget, allocation of resources, transfer and posting, it means they are able to control their budgets and they are able to speak out for what they require. This means that whereas in the past certain areas received more funding and others got a little less and were unable to effectively present their forces with the necessary equipment and updates that they required, this requirement that each service commander presents their budget and are in control of their areas makes it a lot easier for them to be able to represent the interests of their commands.

Hon. Temporary Deputy Speaker, with those few remarks, I support.

The Temporary Deputy Speaker (Hon. Cheboi): The Member for South Mugirango.

Hon. Nyamweya: Thank you, Hon. Temporary Deputy Speaker, for giving me a chance to contribute on this Bill. First and foremost, I want to thank the Committee for doing a good job. I have a concern on Clause 31. I wish the Chair could listen to this. When reading this, I thought it was referring to when young people are recruited and join the service. Clause 31 states that Section 243 of the Principal Act in sub-section (1) be amended by deleting the word “62” and substituting therefor the word “64”. I thought that we were increasing the age limit for young people who want to join the service to 28 not the other way round. I do not understand the relevance of this clause. Probably the Chair knows and will answer on that. I find that it is not correctly phrased. We should increase the age limit for young people who desire to join the armed forces from 26 to 28. That would be more accommodating. In the new Constitution, even the Head of State has a term of five years with the option of another term of five years. The maximum is 10 years.

There is another clause which asks the Head of State to increase the period a Service Commander can stay in the armed forces. Unfortunately, this is taking us backwards. However good you are, you should exit so that you allow other people to take over. If the President can only serve for two terms, why on earth should we allow another person to extend his term? This is what I find to be negative.

Overall, the Bill is a tremendous improvement especially on the issue of justice. It is good that they have appreciated the issue of torture, inhumane and degrading treatment in the military. They have come up with solutions to the problem.

A more important point that the Bill has addressed is compensation for our soldiers when they die protecting this nation. The Bill proposes compensation for their families. That is the most important thing that this Bill has proposed. These are men and women who protect our boundaries. They have sacrificed their lives and leave their families to protect this nation. It is important that we compensate them.

The Bill is a step in the right direction. I wish that as we discuss the Bill, compensation would be adequate to ensure that those who are left behind are properly compensated. This will ensure that kids and spouses are able to carry on life in a normal manner. Another point my colleague raised is---

The Temporary Deputy Speaker (Hon. Cheboi): What is it, Hon. Tongi?

Hon. Tongi: Thank you, Hon. Temporary Deputy Speaker. I just wanted to bring to the attention of the House that when we say that we would wish to extend the period of the commanders, we have in mind---

The Temporary Deputy Speaker (Hon. Cheboi): Are you not contributing? That is not a point of order.

Hon. Tongi: It is a point of order. I am only giving a preamble so that I can explain my point of order.

The Temporary Deputy Speaker (Hon. Cheboi): Start with the point of order so that I can be able to judge whether it is really a point of order.

Hon. Tongi: The point of order is that we have heroes who have come back from Somalia and others are still in Somalia. In that arrangement, there are some commanders who have done a wonderful job. As a country, we are thinking of how to engage the military to construct roads, bridges, water-boreholes and such. If we have the commanders---

The Temporary Deputy Speaker (Hon. Cheboi): Order, Hon. Tongi. I know you came a little later than the many Members in this House. That is obviously not a point of order. It is not even a point of argument. It is a point of contribution, if there was anything of that nature. I will rule you out of order. You might have succeeded in putting something on record. It is not a point of order.

Hon. Tongi: Hon. Temporary Deputy Speaker, I am guided.

The Temporary Deputy Speaker (Hon. Cheboi): Proceed, Hon. Nyamweya.

Hon. Nyamweya: Thank you, Hon. Temporary Deputy Speaker. We are not passing this Bill for an individual when we participate in the National Assembly. He is referring to soldiers in Somalia. Let me be specific on this clause. I am referring to Clause 11. The Kenya Defence Forces (Amendment) Bill proposes to amend Section 24 of the Kenya Defence Forces Act so as to give the President authority to extend terms of office of the Chief of Defence Forces, the Vice Chief of the Defence Forces and the Service Commanders. What I am saying is that this Bill is not in the spirit of the Constitution we passed. We are moving away from that as a country and yet we have come up with a situation where, if our President wins the next election, it will be the end of it.

Hon. Gethenji: On a point of information.

Hon. Nyamweya: We promote young people.

The Temporary Deputy Speaker (Hon. Cheboi): What is it Hon. Chairman of the Departmental Committee on Defence and Foreign Relations?

Hon. Gethenji: It is just a point of information.

The Temporary Deputy Speaker (Hon. Cheboi): If it is a point of information, you know it is different. I will be interested in knowing whether Hon. Nyamweya will be interested in it.

Hon. Nyamweya: Hon. Temporary Deputy Speaker, I am not interested.

Hon. Gethenji: Please be informed because you are arguing a point which has already been amended.

The Temporary Deputy Speaker (Hon. Cheboi): No! No! If you rise on a point of information, there has to be concurrence from the recipient.

Hon. Nyamweya: That is fine.

Hon. Gethenji: Thank you, *Mheshimiwa*. I just want to inform you. May be you missed when I was seconding the Motion. Clause 11 has been amended by the Committee. When we come to the Committee of the whole House and you see the amendments the Committee has proposed, you will see that they are in line with what you are saying. It is just for your information so that you do not argue too much on something that we have already taken time to change.

Hon. Nyamweya: Thank you. Hon. Temporary Deputy Speaker, that is why they say this is a good Chairman. That is why he is also doing a good job. Congratulations for that. I concur with you.

I was talking about security.

The Temporary Deputy Speaker (Hon. Cheboi): You have three-and-a-half minutes now.

Hon. Nyamweya: Thank you. That will be enough time for me to bring out my points.

Another point which is critical for us is about recruitment of our soldiers. They have done very well. They have mentioned they want to go to counties but it is good they carry an amendment to serve counties. When they recruit, there is need to not only have a fixed number. They can say we are going to every sub-county or county to employ five persons irrespective of the population of that area. Therefore, you find the formula very unfair. We need the armed forces to come up with a system which will serve equity; a system that will make every Kenyan feel they are represented when there is recruitment. We are proud of the armed forces and the work they are doing. In the recruitment process, we need to make it more open. They should take into account the population of an area and the rate of unemployment. That is so, so that more people from regions of high unemployment can be employed.

Another point I wanted to bring up is about resignation. I hope the Chairman will look at that section. When you read it, it remains ambiguous. It should be clear. If somebody wants to leave, let them go. Why hold the person who is not doing anything in office and he is anxious for you to make a decision? You make the person who wants to resign look like a criminal. There should be a simpler way. There must be time limits because this is security. If a person is senior in the Government, they need to do clearance within a timeline. Let the clearance be for, say one month, and the person is allowed to leave. This is so, so that it does not become endless and witch-hunting. If you resign and somebody says we are going to decide or think when you are going to leave, it is not fair. It is as if one is on trial when it should not be so.

With those few remarks, I support this. Our forces are becoming more progressive. Let us carry this forward. Let us carry it so that we can do the necessary amendments when we reach the Committee of the whole House stage.

Thank you, Hon. Temporary Deputy Speaker. *Asante.*

The Temporary Deputy Speaker (Hon. Cheboi): Okay. Let us have the Member for Limuru Constituency, Hon. Kiragu.

Hon. J.K. Chege: Thank you, Hon. Temporary Deputy Speaker for giving me the opportunity. Without repeating what my colleagues have recommended, I would like to start by saying that I support these amendments. I know that the Kenya Defence Forces is a very important organ in our country and even as we propose various amendments, it is important that we make sure the amendments provide a smooth and effective way of giving our commands. We must note that we cannot allow ourselves to be naïve particularly with the challenges that are occurring around the world. We know there conventional and non-conventional challenges which require us to realign our KDF to handle these challenges.

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

The Temporary Deputy Speaker (Hon. Cheboi): Order, Hon. Member! What is it Hon. Gikaria?

Hon. Gikaria: Hon. Temporary Deputy Speaker, with all due respect to my friend Hon. Member for Limuru, he started by saying that he does not want to repeat. If you look at Standing

Order 106--- I stand on Standing Order No.95 to request that the Mover to be called upon to reply.

The Temporary Deputy Speaker (Hon. Cheboi): You are perfectly in order to make that kind of observation. I also agree that we are beginning to repeat ourselves but I will allow Hon. Member for Limuru to wind up so that I can dispense of with that.

Hon. J.K. Chege: Thank you, Temporary Deputy Speaker. One of the key things that I would like to emphasise here is that even as we discuss the KDF role, I would recommend that we also allow them to be involved in research, production and training in relevant areas where they have interest. We know that in many countries industrialisation has been pushed by the military. We should also provide our KDF with opportunities to ensure that in areas where they have interest, they can be involved, particularly in maintaining critical infrastructure in the country.

We know that the KDF has interest in water, air and land. It is important, as a developing country we make sure we also provide a way where, if they so wish, they can develop their own ammunitions so that this country does not have to depend entirely on foreign supply.

Thank you.

The Temporary Deputy Speaker (Hon. Cheboi): I will dispense of Hon. Gikaria's request.

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

We will have the Mover responding. You have a few minutes. It is up to you if you want to finalise today or you want to move it to the next sitting.

Hon. A.B. Duale: Hon. Temporary Deputy Speaker, I want to finalise today because this is a Bill of July 2015. I am sure Members have immensely contributed and their contributions are valid. They will be transformed into amendments to enrich the Bill before it goes for assent.

Finally, I want to take this opportunity again to thank our men and women in uniform for the role they play when they are called upon to deal with a matter locally and when they are called upon to defend our external borders. I am sure when history will be written, the KDF will be remembered for the contribution they have made to stabilise part of Somalia. I am sure that with their colleagues from the African Union Mission in Somalia (AMISOM), one day they will pacify and stabilise Somalia and it will join the countries that are enjoying democracy.

With those many remarks, I beg to reply.

The Temporary Deputy Speaker (Hon. Cheboi): Obviously, I am not going to put the Question for reasons that we do not have the requisite quorum.

ADJOURNMENT

The Temporary Deputy Speaker (Hon. Cheboi): Order, Members! The time being 6.30 p.m., this House stands adjourned until Tuesday 2nd August 2016 at 2.30 p.m.

The House rose at 6.30 p.m.