

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Thursday, 12<sup>th</sup> September 2019

The House met at 2.30 p.m.

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

### PRAYERS

**Hon. Speaker:** Hon. Members, the Communication available will come a little later in the course of business. It refers to a specific business to be considered.

Let us proceed to the next Order.

### MESSAGES

#### PASSAGE OF BILLS BY THE SENATE

**Hon. Speaker:** Hon. Members, pursuant to the provisions of Standing Order No.41, I wish to report to the House that I have received Messages from the Senate regarding its decision on the following Bills:

- (1) The Local Content Bill (Senate Bill No.10 of 2018).
- (2) The Mental Health (Amendment) Bill (Senate Bill No.32 of 2018)

The first Message relates to the passage of the Local Content Bill (Senate Bill No.10 of 2018), which seeks to “provide for a framework to facilitate the local ownership, control and financing of activities connected with exploitation of gas, oil and petroleum mineral resources to increase the local value capture along the value chain in the exploration of gas, oil and other petroleum mineral sources”.

The second Message is in respect to the passage of the Mental Health (Amendment) Bill (Senate Bill No.32 of 2018), which is seeking to amend the Mental Health Act to realign the membership of the Kenya Mental Health Board to impose an obligation on each level of government and to address the issue of accessibility to mental health services including care, treatment and rehabilitation of persons with mental illness.

The Messages read in part: “That the Senate considered them and passed the said Bills with amendments on Wednesday, 24<sup>th</sup> July 2019 and now seeks the concurrence of the National Assembly.” Standing Order No.143 (1) (a) requires the Speaker to cause a Bill received from the Senate to be read a First Time upon conveyance of a message from the Senate. Accordingly, I direct that the Bills be read for the First Time during the next sitting of this House.

Standing Order No.143 (2) further provides:

“Following First Reading, the Speaker shall, within reasonable time, pronounce his or her opinion contemplated under Article 114 (2) of the Constitution.”

The opinion envisioned under Standing Order No.143(2) is a pronouncement by the Speaker as to whether a Bill originating in the Senate is a “Money Bill” in terms of Article 114 of the Constitution.

In this regard, I direct that, after First Reading, the two Bills be referred to the Parliamentary Budget Office to offer advice that will enable the Speaker to form the opinion contemplated under Standing Order No.143(2). Thereafter, I shall guide the House accordingly on how to proceed with the consideration of the two Bills.

## PETITIONS

### UNLAWFUL OCCUPATION OF ANCESTRAL LAND BY KDF SCHOOL OF ARTILLERY

**Hon. Speaker:** Let us have Hon. Josphat Kabeabea, the Member for Tigania East.

**Hon. Josphat Kabeabea** (Tigania East, PNU): Thank you, Hon. Speaker. This afternoon, I rise to present a Petition by the residents of Tigania East Constituency regarding unlawful acquisition of their ancestral land by the Kenya Defence Forces School of Artillery, which is also called the 78<sup>th</sup> Battalion.

**Hon. Speaker:** Hon. Members cannot follow what you are saying. Raise your voice.

**Hon. Josphat Kabeabea** (Tigania East, PNU): Thank you, Hon. Speaker. I rise this afternoon to present a Petition on behalf of the residents of Tigania East Constituency regarding the unlawful occupation of ancestral land by the Kenya Defence Forces School of Artillery, the 78<sup>th</sup> Battalion.

I, the undersigned, on behalf of concerned residents of Tigania East Constituency, draw the attention of the House to the following:

THAT, the Petitioners have lived on their ancestral land in Tigania East Constituency for years;

THAT, in 1977, the then county councils of Isiolo, Samburu and Turkana jointly hived off from the community land hundreds of acres and allocated it to the Armed Forces School of Artillery through Gazette Notice No.3210 of 31<sup>st</sup> October 1977 for purposes of expansion;

THAT, in 2015, the Kenya Defence Forces (KDF) encroached on and annexed more land belonging to residents of Tigania East Constituency and claimed ownership of approximately 20,000 acres in excess of what was allocated by the county councils of Isiolo, Samburu and Turkana;

THAT, the residents later learnt with shock that the Kenya Defence Forces had been hurriedly issued with an Allotment Letter Ref.189464/11 of 12<sup>th</sup> June 2018 in respect of the 20,000 acres belonging to the people;

THAT, the encroachment resulted in displacement of more than 40,000 people, closure of nine schools, two institutions offering special assistance to the vulnerable individuals in the community, three Administration Police camps, one dispensary and 13 boreholes used for irrigation by the community;

THAT, officers from the KDF forcibly accessed the land, demolished fences and structures and evicted residents from the said land thus rendering them homeless and condemning them to a nomadic lifestyle;

THAT, the displacement of people has increased animosity between the displaced residents and soldiers who have occupied their land;

THAT, the evictions have disrupted residents' lives, rendered them homeless and cut them off basic social amenities, including access to education by their children;

THAT, attempts by Petitioners to amicably resolve the matter at the grass-root level through consultative meetings with the KDF have not been successful;

THAT, the matters raised in this Petition are not pending before any court of law or any other legal or constitutional body.

THEREFORE, your humble Petitioners pray that the National Assembly, through the Departmental Committee on Lands:

(i) Inquires into the circumstances under which the KDF annexed an extra 20,000 acres of land belonging to residents in excess of what was allocated to it by the county councils of Isiolo, Samburu and Turkana in 1977 and the issuance thereof of an Allotment Letter on 12<sup>th</sup> June 2018 in respect of the 20,000 acres of land;

(ii) Intervenes through the Ministry of Land and other relevant Government agencies to cause survey of the land so as to clearly demarcate the portion of land that rightfully belongs to residents and that which was allocated to the KDF by the county councils of Isiolo, Samburu and Turkana in 1977;

(iii) Makes any other recommendation(s) that it deems fit in the circumstances of the Petitioners.

**Hon. Speaker:** You know you have taken too long reading that Petition until everybody has lost direction. The Petition is referred to the relevant Committee that you have directed to consider it.

The next Petition is by Hon. Gladys Boss Shollei.

#### WITHDRAWAL OF HARMFUL CHEMICAL PESTICIDES FROM KENYAN MARKET

**Hon. (Ms.) Gladys Boss Shollei** (Uasin Gishu CWR, JP): Hon. Speaker, I, the undersigned, on behalf of the representatives of the Biodiversity and Biosafety Association of Kenya (BIBA-K), the Kenya Organic Agriculture Network (KOAN), Resources Oriented Development Initiative (RODI KENYA) and Route to Food Initiative (RTFI), draw the attention of this House to the following:

THAT, there has been an increase in the prevalence of chemical pesticides in Kenya which pose a risk to human health and harmful effects to the environment;

THAT, the volume of imported insecticides, herbicides and fungicides has more than doubled in the last four years from 6,400 tonnes in 2015 to 15,600 tonnes in 2018 with a growth rate of 144 per cent;

THAT, despite this, there is no data available concerning the use of pesticides, concentration of pesticides in water, soil and food and their related impacts;

THAT, there are products on the Kenyan market that are certainly classified as carcinogenic (24 products), mutagenic (24 products), endocrine disrupter (35 products), neurotoxic (140 products) and many which show clear effects on reproduction toxicity (262 products); many of which have been banned in Europe, United Kingdom and USA;

THAT, this is worrying because the increase in pesticide use has not been accompanied by the necessary safeguards to control how they are applied and used;

THAT, during the pesticides registration process in Kenya, mainly the purity and the efficacy of the product is tested. Data on human and environmental health under the local

conditions is scarcely taken into consideration. The Pest Control Product Act Cap. 346 of the Laws of Kenya does not state environmental and/or human health as a possible concern during the registration process;

THAT, the Kenya Plant Health Inspectorate Service (KEPHIS) has been contravening Section 15 of the Pest Control Product Act by failing to publish available information on the actual levels of pesticides in food samples collected and putting in place regular monitoring systems;

THAT, there are no epidemiological health studies related to pesticide exposure on our health and their impact to the environment;

THAT, the Pest Control Products Board (PCPB) has not been following the World Health Organisation (WHO) and the Food and Agriculture Organisation (FAO) International Code of Conduct on Pesticide Management;

THAT, efforts have been made to address this matter with the relevant authorities to no avail.

THAT, the matters in respect of which this Petition is raised are not pending before any court of law, constitutional or legal body.

THEREFORE, your humble petitioners pray that the National Assembly, through the Departmental Committee on Health:

(i) Causes the Executive to order for an immediate ban of all products on the Kenyan market classified as carcinogenic, mutagenic, endocrine disrupters, neurotoxic and many which show clear effects on reproduction toxicity;

(ii) Causes the Government to withdraw all harmful and toxic pesticides in Kenya's market based on the active ingredients used that pose serious health risks to Kenyans and develops and implements a strategy to remove such harmful pesticides from the market, recognising that it can take several years for products to be completely unavailable through local shops and dealers;

(iii) Ensures that the Government establishes and strengthens monitoring system on the use of pesticides through increased data collection on food samples in the market and the level of pesticides contained;

(iv) Causes an amendment to the Pest Control Products law to include a list of pesticides that have been withdrawn from the market based on the serious health risks posed to Kenyans, and to make it mandatory for the Pest Control Products Board (PCPB) to assess data on environmental and human health impacts during the registration and re-registration process of products; and,

(v) Makes any other order that it deems fit in the circumstances of this petition.

And your Petitioners will ever pray. Thank you, Hon. Speaker.

**Hon. Speaker:** Hon. Members as you can see it is very difficult. I want to encourage as many of you as possible to avoid coming to consult me during debate because it forces me not to hear what has been said. There are some Members who want to comment. If you do not have a card, how do you comment? The best thing is for me to refer the Petition to the Committee and when they table their Report, there will be room for people to discuss, seek further information, clarifications and comments. So, we can move to the next Order.

**PAPERS LAID**

**Hon. Benjamin Washiali** (Mumias East, JP): Hon. Speaker, on behalf of the Leader of the Majority Party, I beg to lay the following Papers on the Table of the House:

The Reports of the Auditor-General and the Financial Statements in respect of the following Institutions for the year ended 30<sup>th</sup> June 2018, and the certificates therein:

- (a) Business Registration Service.
- (b) Kaimosi Friends University College.
- (c) Sacco Societies Regulatory Authority.
- (d) National Hospital Insurance Fund.
- (e) Kenya School of Government.
- (f) Institute of Human Resource Management.
- (g) Communication Authority of Kenya, and
- (h) National Cereals and Produce Board.

Quarterly Economic and Budgetary Review Report (Fourth Quarter) for the Financial year 2018/2019 from the National Treasury and Planning.

Thank you, Hon. Speaker.

**Hon. Speaker:** The Chairman of the Constitutional Implementation Oversight Committee.

**Hon. Jeremiah Kioni** (Ndaragwa, JP): Hon. Speaker, I beg to lay the following Paper on the Table of the House:

Report of the Constitutional Implementation Oversight Committee on its Consideration of the Representation of Special Interest Groups Laws (Amendment) Bill (National Assembly Bill No.52 of 2019)

Thank you, Hon. Speaker.

**Hon. Speaker:** Let us hear the Chairman of the Select Committee on National Government Constituencies Development Fund.

**Hon. Maoka Maore** (Igembe North, JP): Hon. Speaker, I beg to lay the following Paper on the Table of the House:

The Report on the Select Committee on the National Government Constituencies Development Fund on its Consideration of the National Government Constituencies Development Fund (Amendment) Bill, 2019.

Hon. Speaker, just a quick rider. We had concluded this Report and I do not want to revisit the sentiments expressed by the House yesterday. But, allow me to announce to Members that from next week, they will be able to have the official report for their fund managers to bring proposals. The final figure for the current financial year is Kshs137,067,724. As you can see from the time we came here, the budget was Kshs89 million. It went up to Kshs109 million and now it is Kshs137 million. That is why we can afford to ignore the mumbling and fumbling of yesterday.

**Hon. Speaker:** Next Order!

**ORDINARY QUESTIONS**

*Question No.383/2019*

IMPLEMENTATION OF THE SENDAI FRAMEWORK FOR DISASTER RISK REDUCTION

**Hon. Speaker:** Order Hon. Members! The first Question is by the Member for Busia County, Hon. Florence Mutua.

**Hon. (Ms.) Florence Mutua** (Busia CWR ODM): Thank you, Hon. Speaker. I rise to ask Question No.383/2019 to the Cabinet Secretary for Health.

What measures has the Ministry of Health undertaken to ensure that the Sendai Framework for Disaster Risk Reduction (2015 –2030) as adopted by the Third United Nations World Conference in Sendai, Japan, in March, 2015 is implemented, noting the recent Cabinet Secretary deployment did not give prominence to existing structures of the Division of Health Emergencies and Disaster Risk Management?

**Hon. Speaker:** Very well. The Question will be responded to before the Departmental Committee on Health. The next Question is by the Member for Mbeere North, Hon. Njagagua.

*Question No.391/2019*

CONSTRUCTION OF STALLED KIRITIRI-SIAKAGO ROAD

**Hon. Charles Njagagua** (Mbeere North, JP): Thank you, Hon. Speaker. I rise to ask Question No.391/2019 to the Cabinet Secretary for Transport, Infrastructure, Housing, Urban Development and Public Works.

*(Loud consultations)*

**Hon. Speaker:** Order Members! Order Members! Today is Thursday. So, those who are desirous of beginning the usual weekend antics, please quickly do so out there quietly. For us to transact business, please consult in low tones.

**Hon. Charles Njagagua** (Mbeere North, JP): Thank you, Hon. Speaker.

(i) Could the Cabinet Secretary explain why the tarmacking of Kiritiri –Siakago Road (C397) stalled in 2016?

(ii) Could the Ministry consider engaging a new contractor as the previous contractor has failed to meet his contractual obligations?

(iii) What measures has the Ministry put in place to ensure that the road is completed as soon as possible, considering it is an important road serving the people of Mbeere North and Mbeere South constituencies?

**Hon. Speaker:** The Question is to be responded to before the Departmental Committee on Transport, Public Works and Housing. Next Question is by the Member for Mwingi West, Hon. Charles Nguna.

*Question No.392/2019*

CRITERIA FOR RECRUITMENT AND PROMOTION OF TEACHERS BY TSC

**Hon. Charles Nguna** (Mwingi West, WDM-K): Hon. Speaker, I would like to ask the Teachers Service Commission the following Question:

(i) Could the Commission explain the criteria used in the recruitment and promotion of teachers?

(ii) How many teachers have been recruited and promoted in Kitui County in the last two years?

**Hon. Speaker:** The Question will be responded to before the Departmental Committee on Education, Research and Technology. Next Question is by the Member for Matayos, Hon. Geoffrey Makokha.

*Question No.393/2019*

PROCEDURE FOR ISSUING TAX EXEMPTION CERTIFICATES TO PWDS

**Hon. Geoffrey Odanga** (Matayos, ODM): I would like to ask the Cabinet Secretary for Labour and Social Protection the following Question:

(i) What is the procedure for issuance of tax exemption certificates for Persons Living with Disabilities (PWDs)?

(ii) Why is the procedure of acquiring and renewing the said certificate lengthy and tedious?

(iii) Could the Cabinet Secretary consider reviewing or doing away with the requirement for renewal of the said certificates?

**Hon. Speaker:** Hon. Members, let me not do administrative work from the Chair here. It is too much and it is not possible. Those of you who have issues that you have written, why do you not just deliver them to my Office? You know there is no way I can leave the Office without attending to anything that has been brought to me by a Member. I will express some opinion one way or the other and make a decision, so that I do not have to do a lot of administrative work from here. Some just came in when I was also coming in. Now we have to go and pick them and I come and start looking through them here. Please, just for the convenience of the House so that I am also able to follow what it is that Members are saying, it is a fair request. If you have something that wants my attention, and particularly those ones which are in writing...

*(Hon. Junet Nuh spoke off record)*

**Hon. Speaker:** The Whips and the leaders are at liberty because there are issues that happen in the Chamber. Thank you, Hon. Junet, for that reminder. It is true that there are things which will be happening in the House and in the Chamber, which require consultation. However, those ones where you have written - and some of you write very long and winding letters - for me to be able to address them, I can only do it when I am also in the office and not when I am also supposed to be listening. I am saying this because...

Sorry, the Member for Mwingi West. Your Question required a written answer. That is what I am informed. You need a written answer from the Teachers Service Commission. So, it is not referred to the Departmental Committee on Education, Research and Technology. The HANSARD should also be accordingly corrected. It is just because of this excessive administrative work. The Question by Hon. Odanga is to be responded to before the Departmental Committee on Labour and Social Welfare. The last Question by the Member for Igembe South is deferred at his request.

*Question No.394/2019*

## ELEVATION AND GAZETTEMET OF ISEMBE CAMPUS AS A UNIVERSITY

*(Question deferred)*

**Hon. Speaker:** That concludes the issue about Questions. There is an issue about statements. Hon. Pukose, your request for a statement has just been brought to me because it was brought to my Office when we were saying prayers here. That is why it was not indicated, but you may proceed. I have seen it.

**REQUEST FOR STATEMENT**

## FORCEFUL EVICTION OF RESIDENTS OF MOWLEM AREA

**Hon. (Dr.) Robert Pukose** (Endebess, JP): Thank you, Hon. Speaker. It is an honour for you to give me an opportunity to read this Statement.

This is a Statement on forceful eviction of residents of Mowlem area and killing of a minor, Daisy Cherop, from St. Andrews Nursery School by police in Endebess Constituency yesterday, 11<sup>th</sup> September 2019.

Pursuant to Standing Order No.44(2)(c), I wish to request for a Statement from the Chairperson of the Departmental Committee on Administration and National Security regarding the forceful eviction of residents of Mowlem area, Endebess Constituency, and killing of a nursery school child named Daisy Cherop aged five years on 11<sup>th</sup> September 2019.

A contingent of police officers led by the Sub-County Police Commandant, in an inhumane way, forcefully evicted residents of Mowlem area in Endebess Constituency while destroying property, crops and preserved food in stores worth millions of shillings, despite a court order issued by Justice Mwangi Njoroge of Kitale Environment and Land Court on 30<sup>th</sup> July 2019 stopping any evictions until the matter is resolved. This has caused unbearable pain, hunger, lack of housing and landlessness for the residents of the said area.

Further, during the forceful evictions, the family of Dan Kiptoo - a grandson to Chinja Kuku - and Sheila Chepkemoi, lost their beloved daughter, a minor and nursery school child named Daisy Cherop, aged five years from St. Andrews Nursery School who was shot and lost her life as a result of that mayhem. The family is in anguish for the loss of their beloved daughter. On that note, I wish to take this opportunity to convey my heartfelt condolences to the family and the constituency in general.

It is against this background that I seek a Statement from the Chairperson of the Departmental Committee on Administration and National Security on the following:

- (i) The actions being taken against the Sub-County Police Commandant for the unlawful and forceful evictions of residents of Mowlem area, Endebess Constituency, despite a court order being issued against eviction of the residents.
- (ii) Actions undertaken to ensure that investigations leading to the shooting and killing of the minor, the late Daisy Cherop, are carried out and action being taken against the police officer who shot and killed the said child.

(iii) What measures are in place to ensure court orders are respected and in the case of eviction, are done in a humane and orderly manner in the country, including not being used as punishment of local residents?

I thank you, Hon. Speaker.

**Hon. Speaker:** Let us have the Chair of the Departmental Committee on Administration and National Security. He is not here. What about the Vice-Chair. Your Statement request is referred to the Leader of the Majority Party. Leader of the Majority Party, both your Chairperson and Vice-Chairperson are absent. The responsibility will fall on the shoulders of the Leader of the Majority Party.

**Hon. Aden Duale** (Garissa Township, JP): Hon. Speaker, I will undertake to deal with that matter and report to the House next Tuesday.

**Hon. Speaker:** Hon. Members, allow me to recognise the presence of students from the following institutions who are in the Public Gallery. St. Peters Ndumberi High School from Kiambu Town, Kiambu County and those from St. Ulrich Lama High School from Subukia Constituency, Nakuru County.

They are welcome to observe the proceedings in the House. Next is the Leader of the Majority Party.

## STATEMENT

### BUSINESS FOR THE WEEK COMMENCING 17<sup>TH</sup> TO 19<sup>TH</sup> SEPTEMBER 2019

**Hon. Aden Duale** (Garissa Township, JP): Hon. Speaker, all is true about the power of a woman and more so the power of Hon. Rehema Jaldesa. She is a very unique Member of Parliament and the Secretary-General of Pastoralist Parliamentary Group.

Hon. Speaker, pursuant to the provisions of Standing Order No. 44(2)(a), I rise to give the following Statement on behalf of the House Business Committee (HBC), following a meeting which was held on Tuesday, 10<sup>th</sup> September 2019 at the rise of the House. I wish to take this opportunity to officially welcome Members back from the long recess. I am sure we are all re-energised and ready to execute the business set out for this third and final part of the Session this year.

The HBC has scheduled consideration of the following Bills in the Committee of the whole House on Tuesday next week:

- (1) The Presidential Reservations to the Parliamentary Service Bill (National Assembly Bill No. 6 of 2018).
- (2) The Public Finance Management (Amendment) Bill (National Assembly Bill No. 63 of 2019), and
- (3) The Independent Electoral and Boundaries Commission (Amendment) Bill (National Assembly Bill No. 35 of 2019).

Also being given consideration for Second Reading are the following Bills, should we not conclude them today:

- (1) The Petition to County Assemblies Procedure Bill (Senate Bill No. 22 of 2018).
- (2) The Early Childhood Education Bill (Senate Bill No. 26 of 2018), and
- (3) The County Government Revenue Raising Process Bill (National Assembly Bill No. 24 of 2018).

Hon. Speaker, we will also consider Sessional Paper No.1 of 2019 on the Policy Framework for Reforming Education and Training for Sustainable Development in Kenya and the Report of the Departmental Committee on Defence and Foreign Relations on the Agreement between the Government of the Republic of Kenya and the Government of the Italian Republic on Luigi Broglio Malindi Space Centre known as San Marco, should we not conclude that business today.

In accordance to the provisions of Standing Order No.42A (5) and (6), I wish to convey that the following Cabinet Secretaries (CSs) will appear before Committees next week:

- (i) The CS for Environment and Natural Resources will appear before the Departmental Committee on Environment and Natural Resources on Tuesday, 17<sup>th</sup> September 2019 to answer Question No. 364/2019 from Hon. Simon King'ara and Question No. 327/2019 from Hon. Muturi Kigano;
- (ii) The Cabinet Secretary for Transport, Infrastructure, Housing, Urban Development and Public Works will appear before the Departmental Committee on Transport, Public Works and Housing on Thursday, 19<sup>th</sup> September 2019 to answer the following Questions: Question No.348 from Hon. (Ms.) Sarah Korere, Question No.369 from Hon. Paul Nzengu, Question No.363 from Hon. (Ms.) Beatrice Adagala, Question No.371 from Hon. (Ms.) Sabina Chege, Question No.373 from Hon. Sharif Athman Ali and Question No.390 from Hon. (Ms.) Dennitah Ghati.
- (iii) The Cabinet Secretary for Sports, Culture and Tourism will appear before the Departmental Committee on Sports, Tourism and Culture on Tuesday, 17<sup>th</sup> September 2019, to answer Question No.177 from Hon. James Murgor.

The HBC will re-convene on Tuesday, 17<sup>th</sup> September 2019, at the rise of the House to schedule business for the rest of the week. I now wish to lay this Statement on the Table of the House.

Thank you, Hon. Speaker.

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

**Hon. Speaker:** Very well. Next Order.

## PROCEDURAL MOTION

### EXTENSION OF PERIOD FOR CONSIDERATION OF SPECIFIED PUBLIC PETITION

**Hon. Speaker:** The Chair, Departmental Committee on Justice and Legal Affairs, Hon. Cheptumo, you have the Floor.

**Hon. William Cheptumo** (Baringo North, JP): Hon. Speaker, I beg to move the following Motion:

THAT, notwithstanding the provisions of Standing Order No.227(2) (Committal of Petitions), this House resolves to extend the period for consideration of a Public Petition before the Departmental Committee on Justice and Legal Affairs regarding the funding of the Lesbians, Gays, Bisexual, Transgender, Queer, Intersex (LGBTQI) agenda by foreign organisations in Kenya by a further period of 90 days with effect from 20<sup>th</sup> August 2019.

Pursuant to Standing Order No. 227, the Petition regarding the funding of lesbians, gays, transgender and intersex agenda by foreign organisations in Kenya by Hon. (Ms.) Shamalla was committed to the Departmental Committee on Justice and Legal Affairs for consideration and report to the House within 60 days. While considering the Petition, the Committee resolved to invite the Chief Executive Officer (CEO) of the Non-Governmental Organisation (NGO) Coordination Board on the status and the annual funding of the LGBTQI agenda, Inter-Religious Council of Kenya (IRCK), Law Society of Kenya (LSK), among others, to seek their views regarding the LGBTQI agenda.

I wish to report to the House that the Petitioner, Hon. (Ms.) Shamalla, appeared before the Committee on 8<sup>th</sup> August 2019. Due to the mandate of the Committee, we conducted several public participation sessions on a number of constitutional amendment Bills even during the recess. Given that we operate within the time stipulated in the Calendar of the House, the Committee was unable to get views from the said stakeholders within the time which was prescribed. The matters raised in the Petition are of great public concern. There is need for us to listen to Kenyans and the institutions that I have talked about, so that we can get to the root cause of what is going on with regard to LGBTQI funding.

Standing Order No.256A (2) provides that the authority of the House to extend the period may be exercised only in exceptional circumstances and to be permitted by the Speaker. It is because of this reason that we want to seek your indulgence and request that you give us another 90 days to enable the Committee to receive comments and views from the institutions we have mentioned and listen to the public because, as I have said, the matters are of public concern. It is important that we obtain the views of Kenyans.

The faith-based organisations are very concerned. We request for more time to enable the Committee to conduct more public participation from the institutions and the members of the public. I beg to move and request Hon. Munene to second.

**Hon. Speaker:** Who is seconding the Motion? Is it Hon. Wambugu?

**Hon. Munene Wambugu** (Kirinyaga Central, JP): Hon. Speaker, I second.

*(Hon. Maoka Maore consulted with Hon. William Kisang)*

*(Hon. (Ms.) Esther Passaris and Hon. Wilson Sossion stood on the walkway)*

**Hon. Speaker:** Hon. Member, I am assuming that if we are all in the House, we would know where we are so that I can propose the Question. I must propose the Question. Member for Igembe North, you can go and talk to Hon. Kisang from there because it is easier. Member for Nairobi and Hon. Sossion, take your seats. Hon. Peter Kaluma is always available.

Hon. Members, before I propose the Question, let me recognise the presence, in the Public Gallery, of students from these two institutions: Mariene Primary School, Central Imenti Constituency, Meru County and Thaara Secondary School, Murang'a South Constituency, Murang'a County. They are welcome to observe the proceedings of the House.

Hon. Members, I hope that the Members followed what the Mover of this Motion has explained. Nevertheless, whether you followed or not, let me propose the Question because that is my duty.

*(Question proposed)*

**Hon. Member:** Put the Question!

**Hon. Speaker:** Let us hear the Leader of the Majority Party.

**Hon. Aden Duale** (Garissa Township, JP): Hon. Speaker, I oppose the extension. Each of the 349 Members of us swore either by the Bible or the Koran. What is before the House contradicts the teaching of the two holy Books!

**Hon. Members:** Yes!

**Hon. Aden Duale** (Garissa Township, JP): I oppose the extension. We should not extend time. If it is going to die, let it die. This House has no moral authority to discuss something that is contrary to the scriptures and the Constitution.

I oppose and ask the House to oppose the extension so that the matter dies!

*(Loud consultations)*

**Hon. (Ms.) Shamalla Jennifer** (Nominated, JP): On a point of order, Hon. Speaker.

**Hon. Speaker:** Hon. Jennifer Shamalla wants to rise on a point of order. It is also important to get the gist of the matter. It is not so much on the reference of the bodies, but the Petition was about the funding of those groups by foreign organisations. Hon. Shamalla, you have the Floor.

**Hon. Members:** It is dead on arrival!

**Hon. (Ms.) Shamalla Jennifer** (Nominated, JP): Thank you, Hon. Speaker. The Petition that was tabled on the Floor of this House was, indeed, to question the fact that in a country that recognises the Almighty and the supremacy of the Constitution, there are attempts to push an agenda through the courts for registration of lesbian, gays and whatever. The Petition that I presented before the Departmental Committee on Justice and Legal Affairs was for the Committee to investigate, through the organisation that registers societies how much money has been poured into the country to promote the agenda for gays, lesbians and others. Why do we want to know that? I asked the Departmental Committee on Justice and Legal Affairs to find out in whose interest it is to push the lesbian, transgender and gay agenda in the country and why? I asked the question because we are a country that upholds the Constitution which recognises a spiritual being. Do they want to bring down the populations of our countries starting with Kenya and other African countries? I state this because there is a political scientist called Dr. Hans Morgenthau who defines the powers of nations by area, populations and by resources. China is considered a superpower today because of its population. Who and why is funding being poured into the country to push the lesbian and gay agenda?

**Hon. Speaker:** Hon. Members, you must understand and appreciate the nature of the Petition. The Petition is questioning why foreign bodies are pouring money into these groups in the country and why any Government body would register such bodies from which they attract funding.

*(Hon. Cheptumo stood up in his place)*

Hon. Cheptumo, you are the Mover of the Motion. Allow others to contribute because you had the opportunity to explain it, but you did not. It is Hon. Shamalla who is explaining what you want to explain. Let us hear Hon. John Mbadi.

**Hon. John Mbadi** (Suba South, ODM): Hon. Speaker, many of us understand what the Petition is all about. We sympathise that the matter the petitioners are canvassing are weighty. But what those of us who are opposed to even discussing the issue here is what if someone

brings a petition to discuss whether God created me or not. As a Christian, I do not want to entertain that discussion. So, if the Departmental Committee on Justice and Legal Affairs wants to go and investigate who is funding that, they should go and do it. But as Christians and people who respect God, we do not want to even entertain discussing this in the House. Our rules are very clear. You can talk to the departmental Committee to go and do it outside our involvement. As a Christian and a professed Seventh Day Adventist, I do not want to sit here and listen to a discussion about lesbians and gays! Take such things to the relevant Committee to be discussed there. I do not want to extend the period for its consideration. When we extend time to discuss something you do not do it, in a way, you are saying that it is very important. We cannot allow the House to extend the discussion about something that is satanic.

I reject and oppose any extension or spending of public resources in discussing gay matters. I cannot support that. It is satanic and devilish. Those who want to discuss it should do that on their own, but not with the approval of the House.

Thank you, Hon. Speaker.

**Hon. Speaker:** Hon. Ichung'wah, you have the Floor.

**Hon. Kimani Ichung'wah** (Kikuyu, JP): Hon. Speaker, it is fair we listen to one another. I have taken time to listen to Hon. Shamalla. I appreciate the position taken by the Leader of the Majority Party and the Leader of the Minority Party. However, I take exception to what the Leader of the Minority Party has said - that we cannot discuss this matter. I agree with him that as a Christian, I would not like to be in a forum where this matter is being discussed. However, the question that is being put to the Hon. Speaker is whether this Petition was first rightly before the House. Hon. Speaker allowed the Petition to be considered by a Committee of the House and the Committee has come to seek for extra time to consider the work that was given by this House. We would be very unfair to Hon. Shamalla, if she is the one who brought the Petition, or to the Committee and to the Kenyan public, having spent public funds to consider it only to kill it at this stage. It is only fair we allow the Committee to have time to consider the matter and give us a report to address the very pertinent issues, especially on funding. Otherwise, if we do not allow the Committee and kill it at this stage, in essence, we will be saying one thing with our mouths and saying a different thing from the other corner of the mouth. If gays and lesbians or whatever else they are called are being funded by certain people here, and we have forces here that do not want us to know who are funding them and why they are funding them... It is only right that we allow the Committee to finish its work and give us a report. This House has a mandate to decide whether to stop the funding, ban them or take whatever action it chooses to take. It is up to us to decide once a report is tabled, but before a report is tabled, it is very unfair to shout here and not listen to each other. Let us be a House where we listen to each other and reason with each other, not shout at each other.

Thank you.

**Hon. Speaker:** Hon. Abdullswamad.

**Hon. Abdullswamad Nassir** (Mvita, ODM): Thank you, Hon. Speaker. The mood of the whole House is that this is something that is totally wrong. It is ungodly and unconstitutional. The ruling that you need to give is whether it is in order for this House to discuss a matter that is unconstitutional. The Petition that is being brought forward simply says that we want to find out the person funding these people. The question is whether this House is at liberty to go ahead and start discussing issues that are unconstitutional. You will need to give a judgment on that issue, so that we can know the way forward. But I am glad the voice of the people in the country is totally in agreement that this is something that we should not even be talking about at all.

**Hon. Speaker:** Hon. Members, to be fair to one another, you need to familiarise yourselves with the provisions of the Constitution and more particularly Article 119 that any Kenyan may petition Parliament to consider any matter that is within its authority. Indeed, it is within the authority of Parliament to even stop any foreign bodies from funding any such organisations. This Petition was approved by myself because it raised issues that if found to be correct or factual, then it is within the authority of this House to issue directives to whoever it is that is allowing this to happen in the country and take whatever action that the House may deem fit. So, it is not a matter that is unconstitutional.

On the second limb, to respond to Hon. Abdullswamad, I do not have to issue any ruling. Fortunately, based on the Constitution, I have no vote. The matter is brought to you, so that you can make a decision one way or the other. You will decide whether you want to extend the time that has been sought to consider these matters or you do not. I do not have to make any determination on this matter. This is a simple matter of decision. Do you extend the time or not? We can save time on this. This is a procedural issue. You have done this severally.

*(Question put and negatived)*

The net effect, Hon. Members, of your decision is that if the period of 60 days has expired from the date the Petition was committed, then the business is dead and it is no longer available to the Committee to consider. That is the net effect.

Next Order.

## MOTIONS

### REPORTS OF THE COMMITTEE OF THE WHOLE HOUSE

#### SENATE AMENDMENTS TO THE COPYRIGHT (AMENDMENT) BILL

THAT, this House do agree with the Report of the Committee of the whole House on its consideration of the Senate amendments to the Copyright (Amendment) Bill (National Assembly Bill No.33 of 2017).

**Hon. Speaker:** Hon. Members, debate on this Motion was concluded yesterday and what remained was for the Question to be put, which I hereby do.

*(Question put and agreed to)*

#### SENATE AMENDMENTS TO COUNTY GOVERNMENTS RETIREMENT SCHEME BILL

THAT, this House do agree with the Report of the Committee of the whole House on its consideration of the Senate amendments to the County Governments Retirement Scheme Bill (National Assembly Bill No.10 of 2018).

**Hon. Speaker:** Hon. Members, again, you concluded debate on this Motion.

*(Question put and agreed to)*

**BILL***Second Reading*

## THE PUBLIC FINANCE MANAGEMENT (AMENDMENT) BILL

*(Hon. Kimani Ichung'wah on 11.9.2019)**(Debate concluded on 11.9.2019)*

**Hon. Speaker:** Hon. Members, again, you debated this Motion and what remains is for me to put the Question.

*(Hon. (Ms.) Cecily Mbarire consulted loudly)*

Hon. Mbarire, please, let us be in the House for some time. You are a Whip. You are supposed to be familiar with the rules of this House. You are not just a Whip; you are a long serving Member.

*(Question put and agreed to)**(The Bill was read a Second Time and committed to a Committee of the whole House tomorrow)***MOTIONS**REPORT ON PUBLIC FINANCE MANAGEMENT (BIASHARA KENYA FUND)  
REGULATIONS AND RELATED SETS OF REGULATIONS

THAT, this House adopts the Report of the Committee on Delegated Legislation on its consideration of the Public Finance Management (Biashara Kenya Fund) Regulations, 2019 (Legal Notice No.78 of 2019); the Public Finance Management (Uwezo Fund)(Revocation) Regulations, 2019 (Legal Notice No.79 of 2019); the Public Finance Management (Women Enterprise Fund)(Revocation) Regulations, 2019 (Legal Notice No.80 of 2019); and the Public Finance Management (Youth Enterprise Development Fund)(Revocation) Regulations, 2019 (Legal Notice No.81 of 2019), laid on the Table of the House on Tuesday, 30<sup>th</sup> July 2019, and pursuant to the provisions of Section 18 of the Statutory Instruments Act, 2013 and Standing Order 210(4)(b) annuls in entirety-

- (a) the Public Finance Management (Biashara Kenya Fund) Regulations, 2019 (Legal Notice No.78 of 2019);
- (b) the Public Finance Management (Uwezo Fund) (Revocation) Regulations, 2019 (Legal Notice No.79 of 2019);

- (c) the Public Finance Management (Women Enterprise Fund) (Revocation) Regulations, 2019 (Legal Notice No.80 of 2019); and,
- (d) the Public Finance Management (Youth Enterprise Development Fund) (Revocation) Regulations, 2019 (Legal Notice No.81 of 2019).

*(Hon. (Ms.) Gladys Boss Shollei on 11.9.2019)  
(Debate concluded on 11.9.2019)*

*(Question put and agreed to)*

**Hon. Speaker:** Next Order. Those who want to move around can now do so.

MEDIATED VERSION OF THE DIVISION OF REVENUE (NO.2) BILL

**Hon. Speaker:** Let us hear the Chairman of the Mediation Committee on the Division of Revenue (No.2) Bill (National Assembly Bill No.59 of 2019).

**Hon. Kimani Ichung’wah** (Kikuyu, JP): Hon. Speaker, I beg to move the following Motion:

THAT, pursuant to the provisions of Article 113(2) of the Constitution and Standing Order No.150, this House adopts the Report of the Mediation Committee on the Division of Revenue (No.2) Bill (National Assembly Bill No.59 of 2019), laid on the Table of the House on Wednesday, 11<sup>th</sup> September 2019, and approves the mediated version of the Division of Revenue (No.2) Bill (National Assembly Bill No.59 of 2019).

The mediated version of the Division of Revenue (No.2) Bill and the Report that I tabled yesterday detail what the Committee of 18 - nine Members from this House and nine from the Senate - settled on. Members will appreciate that this has been a very long period of mediation from the first Division of Revenue Bill, whose mediation process collapsed before we embarked on a new mediation process following the re-publication of the second Division of Revenue Bill with an increment from the initial Kshs310 billion to a new figure of Kshs316.5 billion. The figure of Kshs316.5 billion is just the shareable revenue between the two levels of government; the national and the county governments. It does not constitute all the amounts that are to go to our county governments.

If Members would peruse through the Bill, even for the benefit of the entire country, in total, besides Kshs316.5 billion that is going to be the county equitable share, we have conditional grants and other conditional allocations that constitute a total figure of Kshs378,485,091,894. This includes the urban support programme for water and sanitation development (WSDP). It also includes the Kshs6.2 billion that had earlier on been removed, in the earlier Bill that had gone to the Senate. It had been removed by the Senators.

Allow me to take this opportunity to thank the Senators for having taken a position of leadership and patriotism in accepting to agree to the shareable share of Kshs316.5 billion. As I said in the Mediation Committee, it was not a process where we were to flex muscles and get winners or losers. We are all winners. The Kenyan nation, our county governments and the devolved system of governance, is a winner in this. I take this opportunity to, in a very special way, thank Members of the Committee led by Senator, the Chair of the Budget and Finance

Committee (BFC) in the Senate, Hon. Eng. Mahamud, and the other eight Senators who actively participated in the mediation process. I also thank Members led by the Leader of the Minority Party and the Leader of the Majority Party, and the other seven Members who were in the Mediation Committee.

As I mentioned, all these conditional allocations plus the shareable revenue including the Kshs6.2 billion for the leasing of medical equipment which has since been reinstated constitute a total figure of Kshs378.4 billion. Even as we speak about the amount of money that is going to the counties, we should bear in mind that it is not just the Kshs316.5 billion shareable revenue, but a total of Kshs378.4 billion, so that Senators hold the governors to account and the Members of the County Assemblies in the county governments know the kind of money they ought to oversee and the money that will be utilised by governors.

We agreed in the Mediation Committee on all these figures as I mentioned, namely, the Kshs6.2 billion that had been removed on leasing medical equipment. That was reinstated. We agreed and Senators agreed to step down from their earlier demand of Kshs335 billion to Kshs316.5 billion in terms of shareable revenue. There was also an element under the Water Tower Protection and Climate Change Mitigation and Adaption Programme that had been allocated Kshs395 million. Something worth noting is that this was not part of the mediation or the items that were subject to mediation. The National Treasury indicated, through a letter, that they have found an additional Kshs495 million. We were able to increase that amount to Kshs880 million shillings from the initial allocated amount of Kshs395 million.

It is also worth noting that yesterday as I tabled this Report and the mediated version of the Bill, I noticed that the version of the Bill that was being tabled in the other House had a small element that did not agree with what we had agreed in the Committee. I do not know how. I have never been to the other House, so I do not know how they work, but you know that I have been a stickler to rules and procedures since the 11<sup>th</sup> Parliament. Therefore, when I noticed that a matter that had been canvassed and agreed on in the Mediation Committee on the item of the commencement date of this Bill had a different commencement date from what was agreed, I contacted the Chairman, who was my Vice-Chair. We could not agree as to his basis of altering the Bill in terms of the commencement date. As I said, being a stickler to rules and procedures, when the matter came up, I have had opportunity to discuss this with a number of the Senators and this is a matter that was raised in the last mediation meeting yesterday morning. I even took liberty to get a copy of the HANSARD. The Committee meeting was covered by the HANSARD. From the printout of the transcribed HANSARD proceedings of yesterday, you will notice some things. I beg to table this because it is important. I will table it at some point. However, I want to point out the point at which the issue was raised. If you may indulge me, I want to read straight from the HANSARD Report that I am holding, Page Seven. The Chairman, Hon. Kimani Ichung'wah said:

“Hon. Members, we have amendments made on the wording by Senator Sakaja. We also have the amendment on the commencement date in Clause 1”

That is Clause 1 of the Bill. It is important to realise that as much as we were at liberty to table the Report, what is required by our Standing Orders is to table a mediated version of the Bill. That is why we pointed out that there was an amendment to Clause 1 of the Bill in the Report, so that we agree on what to amend during mediation for it to be captured in the mediated version of the Bill. The HANSARD Report goes on to say:

“That this Act may be cited as Division of Revenue Act, 2019. We amend that to read: And shall be deemed to come into force on 1<sup>st</sup> July 2019. On Page Two of the Bill - Short Title,

we amend that to read: Short title and Commencement, because of the commencement of the Bill.”

The Legal Department advised that we add: “And shall have been deemed to come into force on 1<sup>st</sup> July 2019. Legal Officer, please, go ahead to explain the justification.”

Hon. Speaker, that is what happened. The Legal Officer answered the Chair.

“We should have a commencement date in an Act of Parliament. This is in tandem with Article 116 of the Constitution and that is why we are introducing an amendment to Clause 1.”

That was the Legal Officer explaining the genesis of the amendment. The Vice-Chairman, Sen. Mahamud said:

“Going forward, do you think it is necessary to have that every time?”

The Legal officer said:

“Yes. Hon. Members, you will recall that in the Bill that was passed by the National Assembly, we had amended to read “upon publication”. The presumption was that the Bill was going to pass before 1<sup>st</sup> July, but it has now been passed beyond 1<sup>st</sup> July.”

This is common sense. The Vice-Chairman went to table another Bill in the Senate with a different commencement date. I do not know how it was altered outside the Mediation Committee meetings. He said okay to the explanation by the Legal Officer on the justification of the amendment. I am saying this because it is important. As I said, we are a House of rules and procedures. I want to believe that the Senate is similarly a House that is guided by rules and procedures. I, as the Chairman, cannot alter any Committee proceedings, its deliberations and decisions unless I reconvene the Committee to do so. Therefore, I am lost on how the Vice-Chairman was able to alter the commencement date on the Bill and table in their House a Bill that has a different commencement date from the mediated version Bill.

As I said, I will table a copy of this HANSARD Report which I have also shared with the Senate Members of the Mediation Committee and the Speaker of the Senate. It is important that we respect our committees. The Mediation Committee had a short period to tackle the issues that were referred to it. Once we were done with mediation, the life of that Committee ended with the end of the mediation process. How things were altered even after the term of the Committee came to an end is beyond my understanding. As a stickler to rules and procedures, I told myself that it will be important that I raise this matter, so that, even as we pass the mediated version of this Bill, we are cognisant of that fact that the Bill in the other House has that slight alteration. To me, that is unprocedural, illegal and uncalled for. Therefore, I want to beg, I know the Senate passed this Bill yesterday, through you, two things. One, you speak to the leadership of the other House to consider recommittal of Clause 1 to be in line with Clause 1 of the Bill before this House.

Two, I want to address you as the Chairman of the Parliamentary Service Commission (PSC). When the Legal Officer who raised this issue and made an explanation did so, the Legal Officer who advised the Chairperson of the Senate was seated in that meeting and she never raised any objection. She did not say anything when the Legal Officer of the National Assembly explained the genesis of this amendment. It was only after the meeting over lunch hour that the Chair from the other House, who was my Vice-Chairman, told me that he is being advised by their Legal Officer that the date should remain in the mediated version of the Bill that they have adopted in their House. Therefore, I beg you, as the Chairman of the PSC, to create some order within our staff. We cannot have a Legal Department that has officers serving one Committee where some are advising and others misadvising Hon. Members yet they sit in one office. I want to believe that the legal team in Parliament should have some semblance of working together.

I must congratulate the Parliamentary Budget Office (PBO). Something that we need to consider as a Parliament is for the Legal Department to work the way PBO works. The PBO does not advise this House as a partisan office or an office that is mandated to advise the National Assembly. It is the PBO and it gives objective advice and counsel to committees in both this House and the Senate. The advice they give us is the advice they give to the Senate. I would expect the same of our Legal Departments in both Houses. The advice that we get should be the same that they get in the other House. I know this is your profession. Lawyers have different interpretation of issues just like preachers in churches have different interpretations of the same text in the Bible. However, for the sake of good order and good working relations between the two Houses, they should speak the same language. They may create too many problems for nothing.

Therefore, I beg to move. I hope in your capacity as the Speaker and the Chairman of PSC, you will address those issues. I want to ask Hon. Mbadi to...

**Hon. Speaker:** You said you will table the copy of the HANSARD.

**Hon. Kimani Ichung'wah** (Kikuyu, JP): Yes, Hon. Speaker.

**Hon. Speaker:** We need to get it. So, you have tabled the HANSARD Record?

*(Hon. Kimani Ichung'wah laid the document on the Table)*

**Hon. Kimani Ichung'wah** (Kikuyu, JP): Yes, I have tabled the copy of HANSARD Report. I beg to move and ask the Leader of the Minority Part, Hon. John Mbadi to second.

**Hon. Speaker:** Hon. Mbadi.

**Hon. John Mbadi** (Suba South, ODM): Thank you, Hon. Speaker. I want to second the Motion on the approval of this mediated version of the Division of Revenue Bill. I want to start by thanking our nine Member team from the National Assembly who participated in the mediation together with our counterparts from the Senate who were also nine. However, towards the tail end, we had difficulty raising quorum from the Senate side. At least, our team was faithfully present. If I can remember, in our second last meeting, out of nine Members of the National Assembly, eight of us were present. For the Senators, only two of them were available for that meeting. In our last meeting, out of the nine Members of National Assembly, we were eight in attendance. That showed our commitment, devotion and responsibility to the work that we were given to execute. My take on this matter is that we did a good job in terms of discussing fundamental issues around this matter. Remember, this House passed Kshs310 billion as shareable revenue. The Senate wanted Kshs335 billion.

At one point, the Senate came down to Kshs327 billion and as the National Assembly, we decided and agreed to increase the amount to Kshs316 billion before the Executive finally accepted to add another Kshs0.5 billion. Finally, reason prevailed. This matter has been very controversial. It caught national attention. It went to the Supreme Court, although I do not really understand why budgetary issues, matters of allocating funds would find their way to the courts. This matter has become so controversial. It is my hope and prayer that going forward, we will not again find ourselves in this kind of situation. It was very difficult. Emotions ran high, but finally we agreed on this figure.

The other thing that we agreed on is the Kshs6.2 billion for leasing of medical equipment. Whereas we are all in agreement that this matter needs to be looked into, we could not just stop the funding because there are some contractual obligations that this country has entered into with

outsiders. Therefore, this matter needs to be investigated, so that value for money is realised. In our proposal, we have recommended an audit to look at this matter more seriously.

The other issue that I wanted to mention is that it is not correct to say that we are allocating only Kshs316 billion to county governments. There is additional Kshs13.9 billion that comes from the nationally-raised revenue, which is being given to county governments as conditional grants. Besides, there is the Kshs8.9 billion Fuel Levy Fund which is again allocated to counties. On average, each county should get about Kshs192 million. This is 15 per cent of the Fuel Levy Fund. The Kenya Rural Roads Authority and the national Government receive only 10 per cent. The county governments receive 15 per cent of this Fund. Therefore, whereas each constituency is getting Kshs21 million for roads out of the 10 per cent, the 15 per cent should be able to give, on average, each constituency about Kshs26 million to be used in the maintenance of our roads. So those are amounts that are outside the Kshs316.5 billion, which is equitable share of revenue.

A lot has been said, but before I go there, I want to also add onto what Hon. Kimani Ichung'wah spoke about. I want to speak to our colleagues in the Senate: Let us be honest when it comes to matters as important as passing legislation, especially where matters of the Budget are concerned. We did agree on a mediated version. The Constitution is clear in Article 113 that if the Mediation Committee agrees on a version of the Bill, each House shall vote to approve or reject that version of the Bill. The version of the Bill that is agreed on is what each House needs to vote on. So, it is dishonest to introduce in either of the Houses a version of the Bill that has not been agreed on at mediation. If that is what happened in the Senate, it is dishonest and it is not right. It is wrong. We need to condemn it. We discussed and agreed amicably and we left the Mediation Committee laughing yet I hear the other House changed the version of the Bill. And I know why. I think the Senate realised that if they add the date of 1<sup>st</sup> July as the effective date, that would be killing their case at the Supreme Court on the issue of the Appropriations Act.

However, I thought mediation is about give and take. It is about being honest with each other and moving forward. So, I find it really dishonest on the part of the Senate. It means that they did not wholeheartedly accept the Kshs316 billion that is going to the counties. That is not good. To me, I am not worried because, again, the Constitution gave us a solution that if both Houses approve the version of the Bill proposed by the Mediation Committee, the Speaker of the National Assembly shall refer the Bill to the President within seven days for assent. So, any other Bill that does not contain what we agreed on will not go to the President for assent. I do not expect you, Hon. Speaker, to be careless enough to take a Bill that we did not agree on. And there is the HANSARD. I know you are careful enough and you will make sure that the right Bill goes to the President for assent and will be assented to. So, I am not even bothered about asking the Senate to do some other things. It is clear, in my view, that you will take the correct version of the Bill that we agreed on. You are the one who will disappoint me if you take a wrong version of the Bill. The Bill that we agreed on is what we have tabled here. If you have doubt, you can check with the HANSARD and it will help you see the correct version of the Bill that we agreed on.

Finally, there is something I want to speak to. I know I have spoken about it previously, but I still want to talk about it. When we were discussing this Bill in the Mediation Committee, and many Kenyans have discussed this in the media and every other place about whether we are just being mean to our counties, I agree that counties need more money beyond even the Kshs378 billion that they are getting. We must also agree that all Government departments, ministries and State agencies need more money, but we do not have that money. The money is

not enough. In fact, I said here yesterday that there was this argument that the CRA did professional, thorough research, so that it is the National Assembly that is disagreeing with a professional body that has done research and has come up with a figure that is fool-proof, a figure that makes a lot of sense, that is the Kshs335 billion. But do you know what the CRA did? They took what they call average inflation rate for the first three years, at 6.5 per cent, and loaded that inflation rate onto the figure we allocated last year of Kshs314 billion and they came up with Kshs335 billion. That is something which even my Standard Four child can do. She can calculate 6.5 per cent of Kshs314 billion and add onto the Kshs314 billion. Is that a figure that is so researched that the National Assembly - people who have knowledge in finance like Mbadi - cannot interrogate? That is demeaning my intellectual capacity. We have the right to look at the budget in totality and the amounts.

This is what I want to say as I wind up. I have said that the thinking that we have so much money in this country is living a lie. We do not have money in this country. We are over-budgeting. And that is something that as a House, which has a responsibility of looking at the Budget, must start addressing. We must address it seriously because Kenyans have been complaining to us and blaming us as the House that approves a Budget that is so heavy that we cannot finance. We project to collect a total of Kshs1.877 trillion in terms of ordinary revenue. Out of that amount, there is the actual debt repayment, if you leave out the debt rollover, of Kshs585 billion. If you add that to the payments we give to constitutional office holders and the Consolidated Fund Services that we give to pensions of Kshs109 billion, and you add that to the money that goes to the constitutional commissions, including the Teachers Service Commission which takes Kshs252 billion, you add Kshs261 billion and you add the money that goes to Parliament, Judiciary and other independent offices like the offices of Director of Public Prosecutions, the Attorney-General and the Controller of Budget, which is Kshs73 billion, add that to the Kshs12 billion that goes to the Equalisation Fund and the Contingency Fund, you end up with Kshs1.41 trillion. Out of the revenue projection, which is just a projection, you have only Kshs506 billion left. If you take Kshs330 billion, which we give to county governments as sharable revenue and conditional grants from the national Government kitty, you are left with a figure of only Kshs506 billion.

The total recurrent expenditure of all ministries starting from internal security; the police, the Office of the President with Kshs8 billion added together with the National Intelligence Service (NIS) of Ksh37 billion, including the Ministry of Defence and other ministries it is over Kshs700 billion. This means we are borrowing money to cover our recurrent expenditure. Then, as a country, we sit somewhere chest-thumb and hold each other to ransom insisting that every place that needs more money must be given. It is not a must even with our domestic expenditure that any place that needs money in the household is always funded. Sometimes you cut the budget to your size, like someone cutting a cloth.

As a country, I think we need to hold conversation with each other and the National Treasury has let us down big time. Our projections are over-budgeted and we pretend that we can cover our Budget and end up borrowing more money, paying more interest and the cycle continues. The discussion is that the national Government is spending so much and being mean to counties yet there is no money. As I sit down, I want to say that I have realised from these figures that there is no money from our internally generated revenue which we spend on development in this country. Unless, it is money that goes to counties because we are overburdened with recurrent expenditure.

I want to plead with all of us who are responsible accounting officers to start being careful about our expenditure and talk to the counties. We give them money even from the Fuel Levy Fund of Kshs8.9 billion to maintain our roads by putting murrum yet they do not. The Members of Parliament will tell you that the rural roads murrum is from the Kenya Rural Roads Authority money which comes from the national Government. We do not know where the county money goes. What is wrong with our governors? Who has bewitched this country? Is it that we are having economic saboteurs as governors or what is the problem? Why are they making this country to look very bad?

When devolution started in 2013, it was very popular. In fact, even the whole country wanted the NG-CDF to be stopped because they thought it had lost relevance as a result of the devolved system. But today, one of the most popular funds in this country is the NG-CDF because people have compared it with the devolved units which are not performing. People have started saying that health should go back to the national Government because our counties are not doing what they are supposed to. I want to plead with our governors for heaven's sake, even before the Director of Criminal Investigations (DCI) comes, please, listen to your conscious and agree or disagree if what you are doing is good in the eyes of God.

Thank you, Hon. Speaker. I second.

**Hon. Speaker:** Of course, Hon. John Mbadi is quite aware that the oversight of national resources which go to the devolved units is governed by Article 96(3) of the Constitution. You can check and see who is supposed to oversee resources such as the ones you have said are from the shareable resources as well as Kenya Rural Roads Authority money and others from the national level. Whether those who are charged with the responsibility of overseeing are doing it, Article 96(3) of the Constitution is very clear whose role it is to exercise oversight of resources which come from the national level.

There are some other guys who are called County Executive Committees (CECs) who are supposed to exercise oversight over what they collect from the villages like licensing of morgues, Early Childhood Development Education centres (ECDEs) and others. Whatever is charged from licensing ECDEs, markets and others, the people who exercise oversight are the MCAs. They are the ones who are supposed to exercise oversight over local revenue collected in the villages. Another body is supposed to exercise oversight over the expenditure of the other funds which come from the national level, and you know who is supposed to do so.

*(Question proposed)*

Hon. Members, before I allow debate, allow me to recognise the presence in the Speaker's Gallery of pupils from Karindi Primary School, Mukurweini Constituency, Nyeri County. They are welcome.

The Leader of the Majority Party.

**Hon. Aden Duale** (Garissa Township, JP): Thank you, Hon. Speaker. My two colleagues, the Chair and the Leader of the Minority Party, have spoken. But just to add, I want to thank the Members of the mediation team from the National Assembly, Hon. Cecily Mbarire, Hon. Kimani Ichung'wah, who was our Chair, Hon. Makali Mulu, Hon. Mishi Mboko, Hon. Sankok, Hon. Kimunya, Hon. John Mbadi and Hon. Junet Mohammed, for a job well done.

We need to make it very clear that this mediated version of the Division of Revenue Bill seeks to provide a total allocation of Kshs378.1 billion to the 47 counties to share. So, this story of Kshs.316.5 billion and Kshs327 billion is neither here nor there. This afternoon, we are giving

counties Kshs378.1 billion. For those who want to listen to me, Kshs316.5 billion is the equitable share, the other Kshs61.9 billion is what we call conditional allocation both from donors and the national Government. So, the Kshs8.9 billion, Kshs2 billion for polytechnics and money for free maternity introduced under President Uhuru Kenyatta totals to Kshs19.3 billion to counties including road maintenance.

Kenyans must ask themselves which roads are maintained by the county governments based on the Kshs8.9 billion we are allocating. Which road is done by the Kenya National Highways Authority (KeNHA), the Kenya Rural Roads Authority (KURA) or Members of Parliament through the Kenya Rural Roads Authority Fund. So, there is a lot of overlapping and Kenyans must get value for their money. We cannot allocate Kshs.378 billion, as Hon. Mbadi has said, to devolution which is becoming very unpopular in our country. Many people including myself voted for the 2010 Constitution because of it. We need to go back to the Bomas, have a national conversation and ask ourselves the achievements and gains of devolution. There are people out there who say that we are killing devolution.

Budget is time bound and this is reflected in the Constitution in all its Articles concerning the budget-making process. Timelines are created when the Budget Policy Statement is supposed to be introduced, when the Committee is supposed to table its Report, when the Estimates of Revenue and Expenditure are to be brought to the House, when to expect the Cabinet Secretary to read the budget highlights and when to deal with the Finance Bill or the Division of Revenue Bill. These timelines are well documented in the Constitution and the Public Finance Management (PFM) Act of 2012. These timelines are well documented in the Constitution and in the Public Finance Management Act of 2012. Article 219 of the Constitution provides that the Division of Revenue Bill will be introduced in Parliament, at least two months before the end of every financial year. It is very critical. It says two months. So, the Senate or the National Assembly cannot have the luxury to play around.

Why do I say so? Today is 12<sup>th</sup> September 2019. The first quarter of this financial year is almost over and we are still discussing the Division of Revenue Bill. We are yet to conclude and even discuss the County Allocation of Revenue Bill. The Public Finance Management Act needs to be reviewed so that all these timelines which are provided for on the budget-making process are taken into consideration so that no House, individual, entity or agency in Government or in Parliament can play around with the budgetary timelines provided for in the Constitution.

Let me go to Article 201 that clearly defines what “equity” means when it comes to public resources. There must be equity. National resources are not kept somewhere that anybody can take. Equity is a key principle in this Constitution and even under Article 10 on national values. That is why the President is supposed to address the nation once every year. One of the things he needs to address is whether his Government has fulfilled the national values as enshrined in Article 10 of the Constitution.

There has to be equity in the manner in which we raise resources and the manner in which we distribute them along the three arms of Government, agencies and independent commissions. When it comes to sharing of resources, consideration should be given to how much we have raised, how much we will borrow and if it will affect the citizens of our country. That is why the Senate asked for an addition of over Kshs6.5 billion when we asked for an increase of Kshs6.9 billion. This is because the figure was Kshs310 billion. Now we have added Kshs6.5 billion. Having added that amount, at some point we must ask ourselves how we will get the Kshs6.5 billion that was added. Is it through more taxes to the people of Kenya? Is it through

more borrowing that increases our debt level? We put all these arguments to our colleagues in the Senate, but the Senate looks more popular.

For the first time, let me make it very clear that the Senate cheated the Council of Governors. They told them that they have the power to go and get them more money. The Senate has no role in the budget-making process and the Budget must balance. I am sure right now the governors must have realised they were duped. That is why the Governor of Machakos, who is not even in the category of donkeys in terms horse racing, wants to become president. I said there are horses and donkeys. He does not even fall in the category of donkeys. He falls in the category of zebras. Hon. Duale should excuse himself. When I try to educate him through my *twitter* handle, instead of him replying, his beautiful wife started twitting and replying to me but I did not respond because my wife is not on *twitter*. She is busy taking care of my children. I told her: “Now next time, I will ask my son to reply.”

The Governors were duped. They were told that they would be given money and then they went to the Supreme Court. The Supreme Court was an even more crazy action. If the Chief Justice can give you money, I am sure – and I have tabled his budget here – the Judiciary wants more resources. The Chief Justice could have given himself money. So, what the Chief Justice, for whom I have a lot of respect, said was: “This matter is not in my domain. Go back to the House and agree.” From the Floor of this House, I want to tell the Chief Justice that we agreed and on 16<sup>th</sup> September 2019, he will be given a report by the Litigation Department of the National Assembly that we have given the counties money. The Chief Justice kept on telling them: “You are in the wrong place. I do not play a role in the distribution of resources in this country. Mine is to interpret the law.” So, I think the Senate needs to be focussed.

Let me come to the serious matter raised by the Chair. I am a Member of the Mediation Committee, and I have signed this Report. I participated in the writing of the Mediation Report yesterday. In both plenary and committees of parliament in every parliamentary democracy, the HANSARD is the official record of the House. Today if you want to know what the late Tom Mboya or Mzee Jomo Kenyatta said when he was in this august House, you just need to go to the HANSARD Room. You will not just see the written, but you can hear their voices.

Hon. Speaker, you remember last year when we had the Value Added Tax matter where people said that Hon. Soipan made a different pronouncement, you went to the HANSARD and listened. Right now, if Hon. Baya wants to listen to what he said two months ago, he will get it both scripted and he will hear his voice.

The HANSARD of yesterday’s deliberation is here, and it is the Legal Officer who said:

“Mr. Chairman, we should have a commencement date in any Act of Parliament. This is in tandem with Article 116 of the Constitution. That is why we are introducing an amendment to Clause 1.”

That is what the Legal Officer said. The Vice-Chair and the Chairman of the Committee on Finance in the Senate, Sen. Mohamud, is a man I respect. We served with him in the 10<sup>th</sup> Parliament. He said:

“We did not have a commencement date on the original Bill before?”

The Legal Officer said, “No”. The Vice-Chair said, “Then going forward, do you think it is necessary to have that every time?”

The Legal Officer said, “Yes, Hon. Members. You recall the Bill that was passed by the National Assembly, which we amended to read “Upon publication” the presumption, was that the Bill was going to pass before 1<sup>st</sup> July and now we have passed it beyond 1<sup>st</sup> July.” Then the Vice-Chair said, “Okay. Can we proceed? Put it.”

This is the HANSARD. The Speaker of the Senate must protect the integrity of the Senate. He must sign alongside you, Hon. Speaker. We cannot have the shenanigans of the Senate in making sure that they avoid procedure. Let me call a spade a spade. Those Senators are not very intelligent. I want them to hear me today. They should have been intelligent yesterday when they were in the Mediation Committee. They should have rejected and raised an objection. Yesterday, they agreed to the commencement date of 1<sup>st</sup> July. They should have insisted on a commencement date “upon assent.” However, they agreed with 1<sup>st</sup> July. It is on record. When they came out, they realised that their case in challenging the Appropriation Bill is dead on arrival before a court of law. They were cheated by their Legal Officers.

I really thank the Budget Office. I thank the Legal Officers from the National Assembly. They have realised the shenanigans they were doing in court will not proceed on the Appropriations Bill with this amendment. I always tell them that the National Assembly has 349 Members, but there are a lot of intelligent people. We knew what we were doing. So, they have no choice. I challenge the Speaker of the Senate. He has no choice. After we finish with this Bill, he has no choice but to sign.

Hon. Speaker, before I conclude, let me say, as a Member of the Mediation Committee, that the text in Clause 1 as published in the Order Paper was the version agreed upon by the Mediation Committee. I invite you as the Chair of the Parliamentary Service Commission, to severely reprimand staff of this Parliament at whatever level; in either House of Parliament, who have caused alteration in that Report. That Staff must be indicted.

You are the Chairman of the Parliamentary Service Commission. This is gross misconduct. The officer who advised the Senate and altered the Report and misled part of the membership of the Senate on the content of this Report must be dealt with. This is unacceptable! I saw it in the other mediation where the legal counsel of the Senate gave a view. The Chairman of the Budget and Appropriations Committee said that there are different interpretations of the Bible, which is wrong. There is only one interpretation in the Quran. The Sheikh who is in Mecca and the one who is at the far end in my constituency will interpret a verse the way it is and this is the same in the Bible. Of late, he has been *tangatangaring*. So, he does not go to church. You cannot say that the Bible can be interpreted by different people differently. Am I right? I am sure Christians agree with me. The Bible cannot be interpreted by Hon. Ichung'wah and Hon. Wamalwa the way they want. The Quran's interpretation is the one which was left by Prophet Muhammad. Do not play around with the holy books. Play around with the manifesto of *Tangatanga* which, in one way, I am also part of.

Hon. Speaker, as Members of both Houses, we can play politics but the staff of Parliament cannot do it. They cannot side with any Member. They must be diligent to the Constitution and the principles governing them, as staff of Parliament. You must advise us. My office is one of our offices in this House that are advised by the staff of the National Assembly in the Clerk's Office, Legal Services Directorate, Parliamentary Budget Office and Directorate of Legislative and Procedural Services. They always advise me according to their professional undertaking. We must deal with that. For the counties to get money, take this Bill to the President for assent. I have been told that the Senators have gone to Kitui County. I do not know what is special in Kitui County.

Hon. Speaker, allow me to contribute for one minute. Some governors are lecturing us about corruption. There are some female governors who were Cabinet Secretaries (CSs) and their history is known. They are telling us to support the war against corruption. Shame on them. I have realised, and I am sure the ladies will respect me, that sometimes when we give key

positions to ladies, they become terrible. There are some female governors who are now lecturing us on corruption. When they were CSs in the 10<sup>th</sup> and 11<sup>th</sup> Parliament, they were... I have no problem with them. Hon. Speaker, allow me to contribute for one minute.

When we talk about men, they do not jump. So, there is no point of order. There are female governors whose histories are known. I agree that governors must be held to account by the Ethics and Anti-Corruption Commission (EACC). The Director of Public Prosecutions (DPP) must hold everybody in the national Government and county governments to account. Those who are making a lot of noise like Governor Alfred Mutua are the ones who are more corrupt than others. He must be dealt with. He is talking of *Chama cha...* Governors should not lecture me, Hon. Onyonka and Hon. Wamalwa when we know their history. When it comes to corruption, everybody should carry his or her cross. Governor Alfred Mutua should be the first one to be dealt with.

I beg to support the Bill.

**Hon. Speaker:** Hon. Wakhungu Wamalwa.

**Hon. (Dr.) Chris Wamalwa** (Kimini, FORD – K): Thank you, Hon. Speaker. I rise to support the mediated version of the Division of Revenue Bill. We have three arms of Government - the Legislature, Executive and Judiciary. It is very unfortunate because our colleagues decided to go to court on a matter of legislation. In the principle of separation of powers, we know very well that Parliament is there to legislate. The Judiciary is there for purposes of interpretation of legislation. The Executive is there for purposes of implementation of the legislation. It was very unfortunate when I saw our colleagues from the other House, Senators; go to court on a matter that it does not have any jurisdiction. This House is there to legislate. The courts are there to interpret the legislations.

I want to thank the Chief Justice for the advice he gave that on matters of revenue, they should go back to Parliament. I really salute him for that. We need to re-visit that Supreme Court advisory. Being a scholar and researcher, I read that judgement. I read clearly the dissenting views of Justice Njoki Ndung'u. I wish you had an opportunity to go and look at that judgement. This Division of Revenue Bill has created problems. We know very well that this House can debate on a matter that concerns the people. I do not know whether the Supreme Court should re-visit that judgement. When I read Justice Njoki Ndung'u's views, I really agreed with that lady. It was very unfortunate. That is why we have this confusion when it comes to matters of division of revenue. It is high time we got a lasting solution so that counties cannot get into problems again. The Senators were not honest. When the National Assembly determined the division of revenue at Kshs310 billion county shareable revenue, they were at Kshs335 billion. There was some informal negotiation which was headed by the Deputy President and they came down to Kshs326 billion. Then later on, I do not know what happened, they decided to go back to Kshs335 billion. This is to show that our colleagues from the other side were not honest. When it comes to negotiations, it is indeed important for the parties involved to be honest. You must go and negotiate with an objective of win-win situation.

I was surprised because some of the Senators, who went to negotiate, went to look at the other colleagues in their eyes. It was like a show off. When you negotiate, you must be flexible. That is one of the critical principles in negotiation. When you are going to negotiate, it must be a win-win situation. The moment you go to a negotiating table with a fixed attitude or mind, and then you are not a good negotiator... I want to thank the Mediation Committee. It is indeed good that you agreed on this amount. You can only share what you have. If you come and say that you

want to give Kshs335 billion to the counties which is a populist approach and when you are asked where you would get this money from...

The projected revenue from the advice of the National Treasury and Kenya Revenue Authority (KRA) was already there. When you demand that you want Kshs335 billion and yet you do not have it, where will you get it from? When we are going to the negotiation table, we must demonstrate openness. We must show a win-win situation. The National Assembly has played a very good role. It is important for the community to know that the amount of money that will go to the counties is Kshs378 billion. Kshs316.5 billion is county shareable revenue. There is so much money that goes to the counties and yet if you go to there ...

**Hon. Speaker:** Hon. Wamalwa, I will give you extra time. I want to alert the House that this Bill is so critical that I must have more than the normal numbers. It is important that you make a decision when you quorate.

Proceed, Hon. Wamalwa.

**Hon. (Dr.) Chris Wamalwa** (Kimini, FORD – K): Thank you, Hon. Speaker. I know the Hon. Members are around. They have gone for short call and tea. Immediately we finish, as a Whip, you will get them so that we ensure that we pass this Bill today.

Because of the aspect of time, I want request Hon. colleagues to move with speed and pass this Bill. When we take the Bill to the President for assent, we should use the... Our colleagues are not honest.

Hon. Speaker, the truth has set us free. Hon. Speaker, as you forward the Bill to His Excellency the President to assent it is, indeed, important that it should be accompanied by the HANSARD so that it is known who is saying the truth. Once 40 days are over, there is nowhere one can hide. I thank the Members who negotiated this.

I support. Thank you.

**Hon. Speaker:** Hon. Arap Ngeno, Member for Emurua Dikirr.

**Hon. Kipyegon Ngeno** (Emurua Dikirr, KANU): Thank you, Hon. Speaker. I also wish to support this Motion.

As much as there are many complaints, this Bill was in this House, it sent to the Senate and brought back again and taken for mediation. I wish Members who were dealing with the Bill would allow continuity so that counties can function. Many people claim that counties have stopped functioning and that some counties cannot pay their workers or employees.

As much as we would wish to commit ourselves to duties bestowed upon us by the Constitution, we also would wish, as Members of the National Assembly and the Senate, to make it clear so that everyone can know their role before indulging in the mess we saw. I would wish to support my colleagues, especially on the uses or misuse of the monies sent to counties as we argue over how much money is to be sent to the counties. The Constitution is clear on who is supposed to allocate the money horizontally and the other way. The National Assembly allocates money between the national Government and county governments. The function of the Senate is to share the money among the counties. So, the arguments raised by the Senate that it should be involved in the total sharing of money between the national Government and county governments should not arise.

The other issue is Members questioning the use or misuse of the money sent to counties. Obviously, we come from counties and sometimes we see when money is not spent properly. Sometimes you question the Members of County Assemblies (MCAs) and Senators who are supposed to oversee the use of the monies sent to counties. It is high time the Senators and MCAs told this country how much money is spent on development. They should have made a

law that would force governors to allocate a certain percentage of money for development so that a lot of money is not spent on recurrent expenditure and at the end there is no money used for development. That is the function of the MCAs and Senators. As Members of the National Assembly, we should not look at the money sent to counties alone. We should also look at the money that is left at the national level. We should scrutinise it properly so that, at the end of the day, we do not complain and beg the Government or the Executive to allocate money for certain functions.

There is a time Members of the House were complaining about health issues, how most hospitals are almost collapsing especially the referral hospitals. How do we complain when we are the people who make the Budget and allocate money specifically to those particular facilities? At the end of it, we should have a report to the effect that the money that was allocated, for example, to Kenyatta National Hospital, was not used properly.

It is time, as Members of the National Assembly; we looked at the money we normally allocate to national functions to see whether it is used properly. How much money do we leave with the national Government? How much money do we give the Executive? How much is spent? Do we see anything tangible in the village done by the national Government so that we do not just complain of counties when the national Government is also misusing money? The tarmac roads that I see were done by the Chinese using money loaned by the Chinese Government. I would also wish to know, because we normally allocate about Kshs200 billion for infrastructure, where the money goes. I have not seen a road constructed in my constituency using the money. I have only seen a road which was done by the Chinese using a loan from China. I want us to be honest to the nation that there is a lot of money that is lost so that when we make budgets and allocate money to counties and leave a certain amount to the national Government, we must be prudent to oversee how the money is spent.

The last thing I would wish to mention is that we do not have malice with Senators in their proceedings. Hon. Speaker, as you have said the HANSARD is very clear on what was discussed, what should be implemented, and what should be signed by the President.

I support. Thank you.

**Hon. Speaker:** Hon. Mutua Barasa.

**Hon. Didmus Barasa** (Kimilili, JP): Thank you, Hon. Speaker for giving me this opportunity to support this mediated version of the Division of Revenue Bill. As much as we know the role of the Commission on Revenue Allocation, it is important for the Commission to understand that it is this House that knows where the Government is going to get money from. Even as they decide how much money we should allocate to counties, they must listen to us because we are the people who understand where the Government gets the money from.

It is unfortunate that the Senate of the Republic of Kenya has done things unprocedurally. Even if the law says that the Senate participates in law-making processes, I do not know whether we should provide a framework on how they can participate in making such laws. HANSARD records are clear on what was agreed upon. By doing their own things, they are not doing good for this country. I support the sentiments made by the Leader of the Majority Party that the parliamentary staff who doctored the Report that was agreed upon must explain or action be taken against them because Parliament must be guided by the law and within what transpired during mediation. I tell our Senators that they have a responsibility to ensure that the money counties receive is properly spent. They owe the country an explanation on how every cent the Government has given is spent.

It is the mood of the House that we approve the Bill. I beg to support. Thank you.

**Hon. (Dr.) Robert Pukose** (Endebess, JP): On a point of order, Hon. Speaker.

**Hon. Speaker:** I see Hon. Kimunya wants to contribute, but before that let me hear what Hon. Pukose has to say. He has pressed the intervention button.

**Hon. (Dr.) Robert Pukose** (Endebess, JP): Hon. Speaker, I rise under Standing Order No.95. I know that this has been debated before and it went to mediation and I know Members are conversant with it. We are all in agreement especially on issues that have been canvassed on this matter. It is something the country is waiting for, more so the counties, to get resources to continue running.

I request that the Mover be called upon to reply. Thank you, Hon. Speaker.

**Hon. Speaker:** I had said Hon. Kimunya will make his contribution. What do you wish to say? Is it the same thing?

**Hon. Amos Kimunya** (Kipipiri, JP): Hon. Speaker, I would agree. Just to go on record because I was part of the Mediation Committee, what the Leader of the Majority Party said and tabled is exactly what we agreed, but there is something that the nation needs to know. The mischief the Senate wanted to do by changing the effective date has a major impact on when the counties will get the revenue. They pleaded with us in terms of fast-tracking the Bill so that we can get the County Allocation of Revenue Act which they said they will look at in Kitui. If we are going to base the County Allocation of Revenue Act on the Division of Revenue Act which will be based on a publication date in October or December, then it means that they will not do that next week. They will proceed on their trips abroad. We will end up delaying the disbursement of funds to the counties who are already starved of money. Besides, applying the date as different from 1<sup>st</sup> July could also interfere with the funds available. Those are some of the things that the public needs to know. The Senate in playing its games is actually putting the counties in jeopardy. This broad House must now protect those counties and protect devolution which Senate has failed miserably to protect.

Thank you.

**Hon. Speaker:** The Member for Endebess, Hon. (Dr.) Robert Pukose rose in his place and claimed to move under Standing Order 95 that the Mover be called upon to reply.

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

**Hon. Kimani Ichung'wah** (Kikuyu, JP): Thank you, Hon. Speaker. I beg to reply.

**Hon. Speaker:** Before I put the Question on this important Motion, as I had indicated earlier, I need to confirm that the House quorate, which I have confirmed. I also need to make this Communication.

## COMMUNICATION FROM THE CHAIR

### COMMENCEMENT DATE OF THE MEDIATED VERSION OF THE DIVISION OF REVENUE BILL

**Hon. Speaker:** As you are all aware, hon. Members, the mediated version of the Division of Revenue Bill (No. 2) (National Assembly Bill No. 59 of 2019) was tabled yesterday, 11<sup>th</sup> September 2019 during the afternoon sitting by the Chairperson of the Mediation Committee, Hon. Kimani Ichung'wah, who also serves as the Chairperson of the Budget and Appropriations

Committee of this House. Thereafter, while moving the Motion for adoption of the Report and approval of the mediated version of the Division of Revenue Bill earlier this afternoon, the Chairperson of the Mediation Committee brought to the attention of the House that his Senate counterparts in the Mediation Committee had tabled on the same day, Wednesday, 11<sup>th</sup> September 2019, the same Report containing a Bill that had a slight variance to the version of the Bill agreed by the Mediation Committee.

The said variance concerns Clause 1 of the Division of Revenue Bill (No. 2) of 2019 as agreed by the Mediation Committee. The Chairperson and part of the Members of the Mediation Committee drawn from this House, have this afternoon averred that the version of the Bill agreed to and proposed by the Committee contains Clause 1 which reads as follows:

“This Act may be cited as the Division of Revenue Act, 2019 and shall be deemed to have come into force on 1<sup>st</sup> July 2019”.

According to the Chairperson, the said variance emanates from the fact that the version of the Bill that was tabled in the Senate ostensibly provides that the commencement date shall be upon publication of the Act in the Gazette after assent. Following the concerns that have been raised both by the Chairperson and the Members of the Mediation Committee that have spoken to this Bill and other communication made to me, I undertook to verify the matter from the official records available.

In this regard, I have since confirmed what transpired in the Mediation Committee from the HANSARD Report of the proceedings of the said Committee in the meeting that adopted the agreed version of the Division of Revenue Bill that they were tasked to propose to the Houses. Indeed, I have since confirmed also that as per the HANSARD record of the said meeting of the Committee held in the morning of 11<sup>th</sup> September 2019, yesterday, Clause 1 providing for commencement was indeed amended.

A few procedural questions arise from the foregoing. The first of which is whether or not the report of the Mediation Committee was altered. I have indeed confirmed that the annexure to the report of the Mediation Committee was slightly altered with respect to Clause 1 to a version of a Bill outside what was proposed by the Mediation Committee. I have also confirmed from the record of the papers laid that the Chairperson of the Mediation Committee quashed the alteration and by way of a handwritten text, referred them to the text as adopted by the said Committee. This is authenticated by his signature which is appended against the correction before tabling the report of the Mediation Committee in the House yesterday afternoon.

In the absence of a clear record in the minutes and report of the Mediation Committee with regard to the text of Clause 1 of the Bill, as your Speaker, the question before me at the moment is twofold: One, what avenue remains at the Speaker’s disposal to ascertain the correct text of the said clause? Two, what is the correct text of the said clause and what remedy is available at this penultimate stage?

As you are without doubt aware, the HANSARD Report, as defined by Erskine May and as applied within other Commonwealth jurisdictions, is the official record of the proceedings of the House in either plenary or in its committee sittings, mediation committee included. As such, the HANSARD is a vital component of parliamentary records and is a sacrosanct document whose sanctity and infallibility ought to be continuously guarded and upheld at all times.

Secondly, does the version of the Division of Revenue Bill 2019 before this House reflect what was agreed by the Mediation Committee and proposed to the Houses of Parliament in furtherance to the provisions of Article 113(2) of the Constitution? Based on the HANSARD record of the meeting of the Mediation Committee and which is available for perusal and

verification by any Member or person as laid by the Chairperson of the Committee when moving the Motion this afternoon; it is clear that the Bill before us today is the correct version that was agreed upon by the Mediation Committee.

Hon. Members, it is also my considered view that the pertinent issue before me this afternoon is not about which version of Clause 1 stands out as legally superior, but rather which version of Clause 1 was agreed to by the Mediation Committee that the Speaker of the Senate and I appointed pursuant to the provisions of Article 113(1) of the Constitution.

Therefore, before I put the Question for adoption of the Report of the Mediation Committee on Division of Revenue Bill (No. 2) (National Assembly Bill No. 59 of 2019) and for the approval of the said Bill, I wish to confirm that the text of Clause 1 according to the correct and authenticated annexure to the Report as well as pages 7 and 8 of the HANSARD report reads as follows:

“This Act may be cited as the Division of Revenue Act, 2019 and shall be deemed to have come into force on 1<sup>st</sup> July 2019.”

I have no doubt, therefore, that this is the correct text as agreed by the Mediation Committee.

Indeed, the accurate text of the said clause is accurately captured in the version of the Division of Revenue Bill, 2019, as published by the Clerk of the National Assembly in Notice No.1 in today’s Order Paper. Therefore, that is the copy and true impression of the version of the Bill agreed on by the Mediation Committee and proposed to the Houses of Parliament.

Finally, we have a duty to protect the accuracy of our records and guarantee dependability of those employed to facilitate the work of this institution. In this regard, I call upon all officers facilitating various Committees of the House, including Mediation Committees, to always endeavour to guide Members accurately, from commencement to conclusion of all stages of Committees’ deliberations and resolutions to guarantee coordination of law-making, representation and oversight responsibilities of Hon. Members.

The House is accordingly guided. I thank you, Hon. Members.

*(Question put and agreed to)*

Next Order.

## BILLS

### *Second Readings*

#### THE PETITION TO COUNTY ASSEMBLIES (PROCEDURE) BILL

**Hon. Speaker:** Leader of the Majority Party. No, sorry. This is the Chairman of the Departmental Committee on Justice and Legal Affairs, Hon. Cheptumo.

Hon. Members, the Mover of Order No.14 not being present and there being nobody to move, that Order stands deferred. It will be dealt with next week. No problem. It is stepped down.

*(Bill deferred)*

Next Order.

THE EARLY CHILDHOOD EDUCATION BILL

**Hon. Speaker:** The Chairman of the Departmental Committee on Education and Research.

**Hon. Amos Kimunya** (Kipipiri, JP): Hon. Speaker, we deliberated on whether this Bill should be on the Order Paper. The Report is yet to be tabled. We had indicated that we would like it to be stepped down.

**Hon. Speaker:** Yes, the Leader of the Majority Party.

**Hon. Aden Duale** (Garissa Township, JP): Hon. Speaker, as much as I agree with the Vice-Chair, these are some of the Bills I submitted to the Liaison Committee. It is because Committee Chairs are taking too long to bring their Reports to the House. So, direct the Committee to table the Report by Wednesday or Thursday next week.

**Hon. Speaker:** Very well. Hon. Kimunya, your Committee is to table the Report not later than Wednesday next week.

*(Bill deferred)*

Next Order.

THE COUNTY GOVERNMENTS (REVENUE RAISING PROCESS) BILL

**Hon. Aden Duale** (Garissa Township, JP): Hon. Speaker, the Legal Department of the House has raised some constitutional issues over this Bill. I am consulting with the Attorney-General so that we agree on the way forward and then write to you on whether we will amend it, and they agree to the amendments or we withdraw the whole Bill as it is. I ask you to step it down until next week on Tuesday.

**Hon. Speaker:** Very well. It is taken out of the Order Paper.

*(Bill deferred)*

**MOTION**

REPORT ON FACT-FINDING MISSION ON WELFARE OF  
MIGRANT KENYAN WORKERS IN KINGDOM OF SAUDI ARABIA

THAT, this House adopts the Report of the Departmental Committee on Labour and Social Welfare on the Visit to Riyadh, Saudi Arabia, on a Fact-Finding Mission on the Welfare of Migrant Kenyan Workers in the Kingdom of Saudi Arabia from 27<sup>th</sup> February to 3<sup>rd</sup> March 2019, laid on the Table of the House on Thursday, 8<sup>th</sup> August 2019.

**Hon. Speaker:** Hon. Members, I am sorry. Regarding the Report by the Departmental Committee on Labour and Social Welfare, the Chairman has written to request that it be stood down.

*(Hon. William Cheptumo walked in)*

Chair of Departmental Committee on Justice and Legal Affairs, you are walking in now yet you were nowhere when we were calling you to move your Report. Prepare to move it next week. Hon. Ali Wario had indicated that he is out of the country and requested that his Report be stood down. I granted that request.

*(Motion deferred)*

### **ADJOURNMENT**

**Hon. Speaker:** Hon. Members, there being no other business, and the time being 5.09 p.m., the House stands adjourned until Tuesday, 17<sup>th</sup> September 2019, at 2.30 p.m.

The House rose at 5.10 p.m.