

**PARLIAMENT OF KENYA****THE NATIONAL ASSEMBLY****THE HANSARD**

Thursday, 30<sup>th</sup> July 2020

The House met at 10.00 a.m.

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

**PRAYERS****QUESTIONS AND STATEMENTS**

**Hon. Deputy Speaker:** Under that particular Order, we will start with Questions. We will start with Questions by Private Notice. Starting us off is Hon. Martin Owino.

**QUESTIONS BY PRIVATE NOTICE**

*Question No. 015/2020*

**OPERATIONS OF SUKARI LIMITED IN NDHIWA CONSTITUENCY**

**Hon. Martin Owino** (Ndhiwa, ODM): Thank you, Hon. Deputy Speaker. Pursuant to the provisions of Standing Order No. 42A (5) I rise to ask Question No. 015/2020 to the Cabinet Secretary for Agriculture, Livestock and Fisheries:

- (i) Could the Cabinet Secretary explain why Ms Sukari Industry Limited in Ndhiwa Constituency is not purchasing cane from sugarcane farmers in Homabay County, having promoted sugarcane farming in the area, thereby neglecting the said farmers and their produce?
- (ii) Could the Cabinet Secretary undertake to investigate the allegations that Ms Sukari Industry Limited imports sugar at the expense of development and production of sugar by the local sugarcane farmers in Ndhiwa Constituency?
- (iii) Last one and very important, could the Government explain measures in place that encouraged sugar millers such as Sukari Industry Limited...

**Hon. Deputy Speaker:** Which one is that? I am trying to follow you.

**Hon. Martin Owino** (Ndhiwa, ODM): That is No. 3

**Hon. Deputy Speaker:** Do you have the Order Paper, Hon. Member for Ndhiwa? What I am seeing is different from what you are asking.

**Hon. Martin Owino** (Ndhiwa, ODM): Hon. Speaker, this is what I was sent to by the Table Room.

**Hon. Deputy Speaker:** Now, you have done the first two, three is what you have started with which is: What is the policy in place regarding private sugar millers? Is that what you have?

**Hon. Martin Owino** (Ndhiwa, ODM): Exactly, but it was updated according to the paper I have.

**Hon. Deputy Speaker:** Proceed, maybe you put flowers to your Question.

**Hon. Martin Owino** (Ndhiwa, ODM): Thank you Hon. Speaker for that, it is regarding policy actually.

- (iv) Could the Cabinet Secretary put measures in place that encourage sugar millers such as Sukari Industry Limited to maintain access roads in their areas of operation as a corporate social responsibility.

I thank you, Hon. Deputy Speaker.

**Hon. Deputy Speaker:** That will be replied before the Departmental Committee on Agriculture and Livestock. That Question for Hon. Member for Ndhiwa will be answered as is in the Order Paper because that is the one which was approved.

I want to encourage Members to sit in designated seats because those are the areas where the advice has been given by the health personnel in terms of social spacing. So, please, sit on designated seats. I really do not want to mention names but I can see one violater. We will proceed.

We will go to the Member for Nyeri, Wachira Rahab.

#### *Question No. 016/2020*

#### BENEFICIARIES OF THE PERSONS WITH DISABILITIES FUND

**Hon. (Ms.) Rahab Mukami** (Nyeri CWR, JP): Thank you, Hon. Deputy Speaker. I would like to direct the Question regarding people with disability to the Cabinet Secretary for Labour and Social Protection:

- (i) What is the criterion used in determining the beneficiaries of the Persons with Disabilities Fund in the country, and in particularly Nyeri County?
- (ii) When will the 11,000 beneficiaries of the Persons with Disabilities Fund in Nyeri County be paid noting that they have not been paid despite having been registered?
- (iii) Could the Cabinet Secretary explain how households with more than one person with severe disability, orphans, and vulnerable children are facilitated to receive funds under the Cash Transfer programme?

Thank you, Hon. Deputy Speaker.

**Hon. Deputy Speaker:** That one will be replied before the Departmental Committee on Labour and Social Welfare.

We will now go to the Ordinary Questions. We will start with the Member for Kathiani, Hon. Mbui.

#### ORDINARY QUESTIONS

#### *Question No. 110/2020*

#### DELAYED UPGRADING OF KENOL - MITABONI - KATHIANI - KAANI ROAD

**Hon. Robert Mbui** (Kathiani, WDM-K): I rise to ask Question No. 110/2020 to the Cabinet Secretary for Transport, Infrastructure, Housing, Urban Development and Public Works:

- (i) Could the Cabinet Secretary explain inordinate delays in the implementation of the upgrading of Kenol - Mitaboni - Kathiani - Kaani Road to bitumen standards yet funds were allocated for the same?
  - (ii) What is the current status of the contract in view of the fact that the completion dates have since lapsed and the project is yet to be completed?
  - (iii) What measures are in place to ensure speedy completion of the said road and when is this project expected to be completed?
- Thank you.

**Hon. Deputy Speaker:** Very well, that will be replied to before the Departmental Committee on Transport, Public Works and Housing.

Next is the Member for Kaloleni, Hon. Paul Katana.

*Question No. 114/2020*

DISBURSEMENT OF FUNDS FOR IMPLEMENTATION OF  
PROJECTS UNDER THE EQUALIZATION FUND

**Hon. Paul Katana** (Kaloleni, ODM): Thank you, Hon. Deputy Speaker. I rise to ask Question No. 114/2020 to the Cabinet Secretary for National Treasury and Planning:-

- (i) Could the Cabinet Secretary explain why funds earmarked for implementation of various projects under the Equalization Fund as contemplated under Article 204(2) of the Constitution have not been disbursed for the last four (4) consecutive financial years that is, 2016/2017 to 2019/2020 yet most projects in schools, health facilities, roads and water provision across the country have stalled?
- (ii) When will the funds be disbursed to various Ministries and Departments to enable revival of the stalled projects and ensure their completion?

**Hon. Deputy Speaker:** That Question will be replied to before the Departmental Committee on Finance and National Planning. Luckily, the Chair is seated very close to the Member asking the Question.

Let us hear the Member for Butere, Hon. Tindi Mwale.

*Question No. 121/2020*

DEPLOYMENT OF MORE POLICE OFFICERS IN BUTERE

**Hon. Nicholas Mwale** (Butere, ANC): Thank you, Hon. Deputy Speaker. I rise to ask Question No. 121 of 2020 to the Cabinet Secretary for Interior and Coordination of National Government:

When will the Ministry deploy more police officers to Butere Constituency considering their reduced number as a result of the transition of Administration Police officers to the Kenya Police Service?

Thank you, Hon. Deputy Speaker.

**Hon. Deputy Speaker:** That Question will be replied to before the Departmental Committee on Administration and National Security. Now we go to the Member for Emuhaya, Hon. Omboko Milemba. From my records, Hon. Tindi, you have a seat in the Chamber. You seem to have come from elsewhere. I believe there is a seat designated for you in the Chamber. And we are about 15 minutes after the hour, so we must start giving out the seats that have not been occupied.

*Question No. 123/2020*

TRANSFER OF TVET TRAINERS FROM TSC PAYROLL TO PSC

**Hon. Omboko Milemba** (Emuhaya, ANC): Thank you, Hon. Deputy Speaker. I wish to ask Question No. 123 of 2020 to the Cabinet Secretary for Education:

- (i) Could the Cabinet Secretary explain why Technical and Vocational Education and Training (TVET) trainers were transferred from the Teachers Service Commission payroll to the Public Service Commission in February/March 2019 without having in place a scheme of service for the said trainers, causing them to miss out on the Phase III and Phase IV of the TSC Scheme of Service under the Collective Bargaining Agreement of 2016?
- (ii) Why were the said trainers not issued with new employment/appointment letters upon being transferred from the Teachers Service Commission payroll to the Public Service Commission?

Thank you, Hon. Deputy Speaker.

**Hon. Deputy Speaker:** This Question will be replied to before the Departmental Committee on Education and Research. But I notice that there are quite a number of modifications and additions by the Member. They should be captured. In future, should there be issues that really add quite a number of matters into a Question that has already been dispatched to a Ministry, the better way is to make the Question appear in the Order Paper as required. On this Question, we will use the *Hansard* to capture the modifications.

Let us proceed to the next one by the Member for Tarbaj, Hon. Bashane Gaal.

*Question No. 126/2020*

PROVISION OF WATER TO RESIDENTS OF TARBAJ

**Hon. Ahmed Gaal** (Tarbaj, PDR): Thank you, Hon. Deputy Speaker. I would like to ask Question 126 of 2020 to the Cabinet Secretary for Water, Sanitation and Irrigation:

- (i) Could the Cabinet Secretary give the status of provision of water to residents of Tarbaj Constituency?
- (ii) Could the Cabinet Secretary give the reasons for delays in the implementation of Tarbaj Water Supply Project in Tarbaj Constituency?

- (iii) Could the Cabinet Secretary explain what caused the elevated steel water tank for the said project to collapse twice and give the measures taken by the Ministry to ensure that the tank is constructed to the set standards and becomes operational?
- (iv) Could the Cabinet Secretary confirm that the Northern Water Board is competent enough to manage this project and other similar future projects?
- (v) What measures are in place to ensure that the project is completed as soon as possible?

Thank you, Hon. Deputy Speaker.

**Hon. Deputy Speaker:** That Question will be replied to before the Departmental Committee on Environment and Natural Resources. The last Question this morning is by the Member for Kinango, Hon. Benjamin Dalu Stephen Tayari. That looks like two Members in one.

*Question No. 127/2020*

REHABILITATION OF DESTROYED SECTIONS OF MWACHE FOREST

**Hon. Benjamin Tayari** (Kinango, ODM): Thank you, Hon. Deputy Speaker. I rise to ask Question 127 of 2020 directed to the Cabinet Secretary for Environment and Forestry:

- (i) Could the Cabinet Secretary explain how and who authorised for quarry mining in Mwache Forest despite the area having been listed as a gazetted forest?
- (ii) What measures are in place to ensure urgent rehabilitation of destroyed sections of the forest area is carried out with a view to ensuring its restoration?

I thank you, Hon. Deputy Speaker.

**Hon. Deputy Speaker:** That Question will be replied to before the Departmental Committee on Environment and Natural Resources.

Let us go to the next Order.

**BILL**

*Second Reading*

THE REFUGEES BILL

*(Hon. Amos Kimunya on 2.7.2020)*

*(Debate concluded on 2.7.2020)*

**Hon. Deputy Speaker:** Debate on this Bill had been finalised. What remained was the Question to be put. Having confirmed that we have the required quorum within this Chamber and the holding areas, I proceed to put the Question.

*(Question put and agreed to)*

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

### COMMITTEE OF THE WHOLE HOUSE

*(Order for the Committee read)*

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

#### IN THE COMMITTEE

#### THE PUBLIC FINANCE MANAGEMENT (AMENDMENT) BILL

*[The Temporary Deputy Chairman  
(Hon. Patrick Mariru) in the Chair]*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Order Members. We are now in the Committee of the whole House. The Public Finance Management (Amendment) (No. 2) Bill, 2020 is a fairly straightforward Bill. I guess we will not take very many minutes on it.

#### *Clause 2*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): There is a proposed amendment by the Chair of the Departmental Committee on Finance and National Planning. Hon. Wanga.

**Hon. (Ms.) Gladys Wanga** (Homa Bay CWR, ODM): Thank you, Hon. Temporary Deputy Chairman. I beg to move:

THAT, the Bill be amended in Clause 2 in the proposed definition of the phrase “medium enterprise” by deleting paragraph (a) and substituting therefor the following new paragraph—

(a) whose annual turnover is between five million shillings and one hundred million shillings;”

This is basically to clean up the clause. Currently, the Bill defines a medium enterprise as that whose annual turnover does not exceed Ksh100 million, but it does not provide a lower limit. The upper limit for a small enterprise is Ksh5 million. So, we are just clarifying that the range for a medium enterprise will be Ksh5 million and 100 million. So we are just including that. Now, the range will be between Kshs.5 million and Kshs.100 million. For small enterprises the upper limit will be Kshs 5million, for medium enterprises the range will be between Kshs.5 million to Kshs.100 million. There are no major alterations; it is just a clean-up.

*(Question of the amendment proposed)*

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

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

*(Clause 2 as amended agreed to)*

**Hon. (Dr.) Chris Wamalwa** (Kiminini, FORD-K): On a point of order, Hon. Temporary Deputy Chairman.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Wamalwa, what is your point of order? What is your seat number?

**Hon. (Dr.) Chris Wamalwa** (Kiminini, FORD-K): Thank you, Hon. Temporary Deputy Chairman. That which the Chair of the Departmental Committee on Finance and National Planning, Hon. Wanga has proposed is not really a demarcation. It should have been, more than Kshs.5 million and less than Kshs.100 million.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Order, Hon. Wamalwa, are you speaking to the clause that the House has made a decision on?

**Hon. (Dr.) Chris Wamalwa** (Kiminini, FORD-K): Because there is a problem and confusion. You are not seeing it but it is a good intervention.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Very well, if you want an intervention on it, Hon. Wamalwa, there is a procedure of returning it. The House has made a decision.

**Hon. (Dr.) Chris Wamalwa** (Kiminini, FORD-K): It should be more than Kshs. 5 million and less than Kshs.100 million.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): There is a procedure of returning the clause, if you want it returned.

*Clause 3*

**Hon. (Ms.) Gladys Wanga** (Homa Bay CWR, ODM): Hon. Temporary Deputy Chairman, I beg to move:

THAT, the Bill be amended in Clause 3 in the proposed new subsection (3A) by deleting the word “Parliament” appearing immediately after the word “when” and substituting therefor the words “either House of Parliament”.

Hon. Temporary Deputy Chairman, this is another clean-up for consistency because what the published Bill says; “Notwithstanding the provisions of subsection 2, the Cabinet Secretary shall with respect to credit guarantees extended to private borrowers who are micro, small or medium enterprises provide the information specified in Section 59 A (2) when Parliament makes a request” but the preceding clause speaks to, when any of the Houses of Parliament or either of the Houses of Parliament. So, we are just cleaning this clause so that it is consistent with the preceding clause.

I beg to move.

*(Question of the amendment proposed)*

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

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

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Order Members! Hon. Kanini you must give space to the Leader of the Majority Party so that he can vote.

*(Clause 3 as amended agreed to)*

*Clause 4*

**Hon. (Ms.) Gladys Wanga** (Homa Bay CWR, ODM): Hon. Temporary Deputy Chairman, I beg to move:

THAT, the Bill be amended in Clause 4 -

(a) by deleting the proposed sub-section (5) and substituting therefor the following new sub-sections-

(5) Notwithstanding the provisions of sub-section (2)(c), the Cabinet Secretary may guarantee credit which is extended to a private borrower, for enterprise development or such other purpose as the Cabinet Secretary may prescribe, where the borrower does not have sufficient security.

(6a) The Cabinet Secretary may only guarantee credit which is extended to a borrower under sub-section (5), if the borrower-

(a) is a micro, small or medium enterprise;

(b) is registered as a business or company under the relevant laws;

(c) is a registered taxpayer and is in compliance with the relevant tax laws;

(d) is registered by a county government and holds a valid business permit or trade licence;

(e) is not part of any group or related to any enterprise which would otherwise not be eligible for credit guarantee under this section; and

(f) agrees in writing to comply with the provisions of this Act and any conditions that may be imposed by the Cabinet Secretary.

(b) in sub-section (8) by -

(i) inserting the words "or varied" immediately after the words "be liquidated" in paragraph (g);

(ii) inserting the following new paragraphs immediately after paragraph (g)-

(ga) the maximum percentage of the Scheme funds which may be used to guarantee any individual borrower;

(gb) mechanisms to ease access to credit guarantees by enterprises owned by women, youth and persons with disabilities;

(gc) mechanisms for recovering the money from the borrower where the credit guarantee is liquidated;

(gd) a limit on the period of default to a maximum of six months;



Clause 4 as drafted has some drafting challenges because it does not come out expressly. If you look at Clause 4 (5), it says, “Notwithstanding the provisions of subsection (2) (c), in the case of private borrower to whom credit is extended for enterprise development or other purpose as may be prescribed by the Cabinet Secretary and does not have sufficient security for the loan, the Cabinet Secretary shall not guarantee the credit extended to such a borrower under subsection (1) unless...”

What we want to say is actually what the Cabinet Secretary may do, not what he may not. So, the redrafting is to provide for what the Cabinet Secretary may guarantee. The redrafted one says, it has been divided into two portions: “Notwithstanding the provisions of subsection (2) (c), the Cabinet Secretary may guarantee credit which is extended to a private borrower, for enterprise development or such other purpose as the Cabinet Secretary may prescribe, where the borrower does not have sufficient security”.

Then part (b) gives conditions. So, what we have done is clean it up but also add a few conditionalities and one of those is that the micro, small and medium enterprise that is being guaranteed should be a registered enterprise or company under the relevant laws. What we had earlier was registered by county government. Then what we have also added is a registered taxpayer and is compliant with the relevant tax laws. What we had earlier on is that the borrowers had complied with the relevant tax laws. We have also added one other part, part (e), which is not part of any group or related to any enterprise which would otherwise not be eligible for credit guarantee under this section. What that does is protect the SMEs from large enterprises which will now decide to register micro enterprises related to them for purposes of benefiting from these credit guarantees. That is what it protects there.

I beg to move.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Let us have two Members. Hon. Sankok.

**Hon. David ole Sankok** (Nominated, JP): Thank you very much, Hon. Temporary Deputy Chairman. I may not be as excited as Hon. Kaluma who is taking photos of the first Chair of the Finance Committee. I really did not understand these changes of guarantee because it may be open to abuse especially given what happened to guarantees of AFC loans in the early 1980 and 1990s. The Government had to clear the AFC loans because they were guaranteed based on tribal lines and who is who in that administration at that time. So, I still think the Chair should come out clear. How would we protect the Government from guaranteeing individuals based on tribal lines?

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Chair, you will take a stab on that but before then, let us have Hon. Makali.

**Hon. Makali Mulu** (Kitui Central, WDM-K): Thank you, Hon. Temporary Deputy Chairman. I want to say that even as I support this amendment, I wish to make some observations for record purposes. Even as you want to make sure that money goes to the micro, medium and small enterprises it is important not to open gates where the money could end up with the wrong people, and basically the wrong institutions. I would therefore propose that given that the Cabinet Secretary has a lot of powers.... I think during the Second Reading we said that it is important as we go to the implementation stage, we start thinking of a board which will start looking at these things rather than an individual. In the past, such powers have been abused; we need to make sure that they are not abused. I second.

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Thank you, Hon. Temporary Deputy Chair.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Before Hon. Mbui, let us have the Minority Leader.

**Hon. John Mbadi** (Suba South, ODM): Hon. Temporary Deputy Chair, I want to support this amendment. One, I think I agree with the Committee and the Chair completely that you need to define what the Cabinet Secretary is supposed to do, not what he is not supposed to do. Leaving it too open is not fine. In matters finance, you need to declare under what conditions the micro, small and medium enterprise would qualify for the loans. I think that to me, is tidy enough.

There is also part (b), where it is clear that it is women, youth and persons with disabilities. Under part (ga) the maximum percentage of the scheme funds which may be used to guarantee any individual, I agree with that but I just hope that in the regulations we will spell out the percentage guarantee that can be given to an individual borrower out of the requirement. Each individual borrower will also determine how much the maximum vote can be guaranteed, otherwise if you just leave it open, some people may even ask for far too much beyond what their capacity is.

Thank you, Hon. Temporary Deputy Chair, I support.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Mbui. We can have two other Members and then we make progress. Hon. Chair, I will give you a second chance on this towards the end. Hon. Mbui.

**Hon. Robert Mbui** (Kathiani, WDM-K): Thank you, Hon. Temporary Deputy Chairman. This is the point at which this law has actually been made and we have to be very careful with how we handle it. Maybe we need to be careful not to rush it. I know that there is a bit of pressure to finish. When the Chair was given an opportunity, she explained it very well. However, this last part that the Leader of Minority Party has raised is very critical and I think what you have done is very commendable. This is because not only have you in the first part stated the groups that should benefit and those that cannot and how to avoid having people benefiting indirectly but you have also specified how this money should actually be shared. This is because you have said that there has to be a maximum percentage of the scheme that may be given to any individual person, which makes a lot of sense. Moreover, you have also stated the mechanisms for access to this money, which is important, and you have mentioned the women and the youth, which is also legal, and people with disabilities and in addition, even mechanisms for recovering the money. I think these are things that were very important. You have also stated that the period of default is six months. Therefore, I was just saying that the Chair needs to be given time to explain her amendments properly so that we do not rush as we contribute.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Very well. Hon. Members, let us make progress on this. However, it seems to have a bit of interest. If we could get one minute each, I could then give the Chair the Floor. I will give you Leader of Majority Party. However, before the Leader of Majority Party takes the Floor, allow me to give Hon. Rasso.

**Hon. Ali Rasso** (Saku, JP): Thank you very much, Hon. Temporary Deputy Chairman. I have a problem with this particular law. I am happy the gracious Chair has been able to explain. However, I think there is very little safeguard in terms of the law that is suggested before us. If you go to parts (c), (d) and (e), it is actually so nebulous. This taxpayers' money will be available to individual groups and companies. If there is no safeguard really, it is like throwing away good money and we need to really be seized of that matter.

Thank you, Hon. Temporary Deputy Chairman.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Very well. Hon. Leader of Majority Party.

**Hon. Amos Kimunya** (Kipipiri, JP): Thank you, Hon. Temporary Deputy Chairman. I think there is a... I obviously support the amendment, which is an enrichment of Bill. I actually see from the comments made by the Members that there...

*(Hon. Members consult loudly)*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Order, Hon. Majority Leader. There are very high note consultations. There are Members who are consulting very loudly outside. Hon. Sankok is calling it "high voltage" consultations. Could the Serjeant-at-Arms let the Members consult in low tones, those who are outside the Chamber. Yes, Hon. Leader of Majority Party.

**Hon. Amos Kimunya** (Kipipiri, JP): Thank you Hon. Temporary Deputy Chairman. I see two bits of confusion that Members may be reacting to.

The Chair for the Committee on Finance and National Planning has only moved part (a) and not (b). Therefore, we are debating something that has not been moved and explained.

I also wish to say that - and I think we brought this out during the Second Reading- this is not a fund to be distributed or dished out. This is a credit guarantee scheme that is available for people who borrow from the banks and the Government undertakes to guarantee in case of default.

Typically, if you think of the number of defaulters, it will be about 10 per cent of the borrowers. Therefore, the Government is only saying, if one falls within that 10 per cent, they will guarantee to the bank that, that defaulter will be paid for the money. Therefore, the banks can then multiply. So, it is not money being distributed like the Uwezo Fund or the Women Enterprise Development Fund. This is money that is being put aside to guarantee a potential defaulter. There may never be a defaulter, especially with the safeguards that were there in the Bill and what the Committee has added. Members may need to look at the Bill and the intention to appreciate the full safeguards that have been put there, which I am very happy with.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Very well, Hon. Majority Leader. Given that guidance, Hon. Tindi, do you not want the Chair to speak to this? If you could then have one minute then we make progress on this really.

**Hon. Nicholas Mwale** (Butere, ANC): Thank you, Hon. Temporary Deputy Chairman. I rise to support the amendment considering the fact that it is going to favour people who are just freshly starting business, especially the women and youth. We have had situations where bureaucracy has always made the youth and women not to do very well in business. I just want to ask my colleagues to accept this amendment because it is going to give those start-up entrepreneurs an opportunity to grow their business and overall, the economy of the republic will grow. Therefore, I support the amendment. Thank you.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Chair, if you could take a second to explain yourself on all the sub-clauses under that Clause 4.

**Hon. (Ms.) Gladys Wanga** (Homa Bay CWR, ODM): Thank you, Hon. Temporary Deputy Chairman. I want to thank all the Members because they have debated it well. It is me who inadvertently did not explain the amendments in part (b) but I should have before I moved. Therefore, let me just explain that in sub-clause (8) of the Bill where it provides: "(8) The Cabinet Secretary shall prescribe regulations for operation of the scheme under subsection (7) which shall provide for the following..."

Those are provided in the Bill but we are adding that in doing the regulations, the Cabinet Secretary should also look at the maximum percentage of the scheme funds which may be used to guarantee an individual borrower. Here we are trying to deal with the concern of Members that some large borrowers can take most of the money and then the micro-enterprises end up with nothing. Moreover, we have also said there that we must have mechanisms to ease access to credit guarantees by enterprises owned by women, youth and persons with disabilities. I am sure nominee 001 will agree with me on that one.

Hon. Temporary Deputy Chairman, on mechanisms for recovering the money from the borrower where the credit guarantee is liquidated, there were many concerns raised of people getting the guarantees then the guarantee is liquidated and they just walk away. So, here there must be mechanisms within the regulations to know that if you default and the government guarantee is liquidated, you do not just walk away scot-free. We must find mechanisms for recovering that money so that the contingent liability for Government is also not raised unnecessarily.

Hon. Temporary Deputy Chairman, the limit period of default to a maximum of six months is just so that there is not too much room for people to default and keep getting away.

So, I just wanted to explain that and also say to Hon. Makali on the concerns that he raised both in the Second Reading and now that, there is the Micro, Small and Medium Enterprises Authority which is already up and running and they will definitely have a role on how this scheme is rolled out. Therefore, I think that is already covered.

So, thank you very much, Hon. Temporary Deputy Chairman.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Very well.

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

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

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

*(Clause 4 as amended agreed to)*

#### Clause 5

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): We have an amendment, Hon. Chair.

**Hon. (Ms.) Gladys Wanga** (Homa Bay CWR, ODM): Thank you, Hon. Temporary Deputy Chairman. Clause 5 is basically about reporting and there were many concerns raised by Members as to the issue of reporting.

**Hon. Member:** Move the amendment.

**Hon. (Ms.) Gladys Wanga** (Homa Bay CWR, ODM): Hon. Temporary Deputy Chairman, I beg to move:

THAT, the Bill be amended in clause 5 in the proposed new section 59A (2) by inserting the following new paragraphs immediately after paragraph (d) –

da) information on the total value of credit guarantees, disaggregated into the number of enterprises owned by women, youth and persons with disabilities which have been guaranteed;

(db) information on the total value of credit guarantees, disaggregated into the number of micro, small and medium enterprises guaranteed and by the respective regions;

Now I can explain the import. Thank you Leader for shepherding me along. It is my maiden...

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): You are doing very well, Hon. Chair.

**Hon. (Ms.) Gladys Wang** (Homa Bay CWR, ODM): The Cabinet Secretary should provide not just aggregate information but information on the total value of credit guarantees, disaggregated into the number of enterprises owned by women, youth and persons with disabilities which have been guaranteed. He should also give information on the total value of credit guarantees, disaggregated into the number of micro, small and medium enterprises guaranteed and by the respective regions.

This is so that we know and hold the Cabinet Secretary accountable to those guarantees that have been provided in (db). We do not want a situation where the medium enterprises have taken everything and the micro enterprises have nothing. Also, we want that by respective regions. This was an issue that was raised a lot in the Second Reading that guarantees could go to just one place. So, we would like that report to disaggregate how this has been done and by region.

Hon. Temporary Deputy Chairman, I beg to move.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Order Members, let me propose the Question then I will give two Members or so the Floor.

*(Question of the amendment proposed)*

Let us start with the Hon. Leader of the Minority Party, Hon. Mbadi.

**Hon. John Mbadi** (Suba South, ODM): Hon. Temporary Deputy Chairman, let me thank and congratulate the Committee for bringing this amendment. When we were contributing in the Second Reading of this Bill, I talked about possibility of the Cabinet Secretary having been given a lot of powers through this Bill to which looking back may be necessary.

However, there is need for accountability. We have previously had cases where people in public offices favour certain regions with public resources in terms of allocation. So, I am very happy and excited if the Committee has brought this amendment, at least there will be disclosure of how much goes where and even disaggregate it in terms of small, micro or medium enterprises. Also, they will find out how many youth, women and enterprises of people living with disability have benefited from this guarantee. This is because, this is the scheme being set up from public funds. So, congratulations to the Committee and thank you very much for a job well done in bringing this amendment.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Let us have the Hon. Majority Whip. I will get a few more Members to speak to this because of the interest.

**Hon. Emmanuel Wangwe** (Navakholo, JP): Thank you, Hon. Temporary Deputy Chairman. I thank the Committee for this amendment and I support it. Most Cabinet Secretaries do not disclose what is happening under their control. The Committee has considered this and reading it together with Article 35 of the Constitution on disclosure of information, it will give the country and the people a wider knowledge on what is happening and where the money will be

allocated. The money will not go to one region as it belongs to the entire country. Everyone regardless of his status will know how much has been used and where it has been used. I thank you.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Let us have Hon. (Dr.) Chris Wamalwa.

**Hon. (Dr.) Chris Wamalwa** (Kiminini, FORD-K): Thank you, Hon. Temporary Deputy Chairman for this opportunity. I thank the Committee for that particular amendment. It is going to confirm whether there is going to be accountability and matters integrity. There was a critical segmentation in terms of the elderly, youth, women and people living with disabilities. How I would have wished that we also had for the elderly. This is because the elderly are endangered. There is this money given out to the elderly and we are told certain regions receive different amounts from other regions. So, the issue of regional balancing can be relooked at and see whether there are aspects of accountability and a reflection of the face of Kenya.

Otherwise, I support the amendment.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Let us have Hon. (Dr.) Pukose.

**Hon. (Dr.) Robert Pukose** (Endebess, JP): Thank you, Hon. Temporary Deputy Chairman. I support this amendment. You find that even with the passage of the law to guarantee that we give 30 per cent to the youth, women and people living with disability it has not been happening. It has proved to be a grey area when you ask ministries to account for the 30 per cent to see whether it has been given appropriately. So, this amendment is an improvement in the right direction. It goes further to explain that we must disaggregate and indicate the regions so that every region can benefit. That is the way we should move as a country. I thank you.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Let us have Hon. Masara.

**Hon. Peter Masara** (Suna West, Independent): Thank you, Hon. Temporary Deputy Chairman. I support this amendment because information is power. Through these amendments, the information will be availed for people to make decisions. The amendment will increase fairness in distribution since the people concerned will be aware of the information regarding how it was guaranteed or distributed. This will be out in public and so there will be fairness. This amendment will also correct some historical injustices. When we talk about regions, when we went back and looked at how the Agricultural Finance Corporations (AFC) funds were distributed, you realise that some areas never benefitted but with such amendments put in the Bill, all regions will benefit.

I thank the Committee through the Chair for making this amendment a reality. I thank you.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Let us have Hon. Tim Wanyonyi.

**Hon. Tim Wanyonyi** (Westlands, ODM): Thank you, Hon. Temporary Deputy Chairman. I also support the Committee for this amendment especially now that persons living with disability are guaranteed. The mention of regions spreads out the benefit to the whole country and so I support the amendment.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Members, why can we not make progress on this? Let me give two Members. Let me start with Hon. Ogutu.

**Hon. (Prof.) Zadoc Ogutu** (Bomachoge Borabu, Independent): Thank you, Hon. Temporary Deputy Chairman. I want to thank the Committee for considering this portion on reporting. I have no problem with the category that is to be covered in the section of reporting. My problem is on an element that has excited everybody on this Floor - regional balancing. I notice that we are bringing in the region on reporting but we have not demanded that the Cabinet

Secretary ensures regional balancing when funds are being disbursed. You cannot report what you have not demanded. So, we have to think about that.

Secondly, we have to be very clear whether the Cabinet Secretary is helping this country to work towards clear targets. I am sure the Committee may want to look at this and come up with targets so that we can hold the Cabinet Secretary accountable. I support.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Members, let us have Hon. Gikaria.

**Hon. David Gikaria** (Nakuru Town East, JP): Thank you, Hon. Temporary Deputy Chairman.

First, I thank the Committee for bringing this amendment. The amendment as it is talks about information but it does not give timelines. Is it quarterly, half yearly or yearly? I think it is important for us to know. Sometimes as we seek for accountability and other things, it is up to the Committee to be clear with the information that they need and the timelines. There is not much information that will be given after a long time yet, a mess has already been done. So, we wish to have a period under which this information should be availed to the Committee for purposes of correction. Otherwise, if you have information for one year and a mess has already happened then it cannot help.

Thank you, Hon. Temporary Deputy Chairman. I support the amendment.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Gikaria I am not speaking for the Chair but I thought Section 59A(2) states once every year.

**Hon. David Gikaria** (Nakuru Town East, JP): I stand guided. Thank you.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): As and when the House requests. Let me give the Member wearing a mask since I cannot tell who it is. Yes, Hon. Atandi.

**Hon. Samuel Atandi** (Alego-Usonga, ODM): Thank you, Hon. Temporary Deputy Chairman. Let me begin by congratulating the new Chair of the Departmental Committee on Finance and National Planning for such intelligent presentation of this Bill.

I want to go straight and support the amendment. I like safeguards that have been put on the question of ensuring there is regional reporting. My concern is that we are not sure whether this law has put other safeguards to ensure that a businessman in Siaya will be given this guarantee scheme. What if for instance, we wait for the reports and the Cabinet Secretary says: "We did not get businessmen from Kisumu and Siaya to partake of this credit scheme"?

I think this needs to come out in this law so that we are sure that everybody was given an opportunity to benefit from this scheme. This is something I think some Members are concerned about and I do not think is very clear in the Bill.

Thank you, I support.

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

*(Clause 5 as amended agreed to)*

*(Title agreed to)*

*(Clause 1 agreed to)*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Members, we are done with the Bill. Congratulations to Hon. Wanga this being your first Bill to move. The Leader of the Majority Party.

**Hon. Amos Kimunya** (Kipipiri, JP): Hon. Temporary Deputy Chairman, I beg to move that the Committee doth report to the House its consideration of the Public Finance Management (Amendment) (No.2) Bill (National Assembly Bill No.23 of 2020) and its approval thereof with amendments.

*(Question proposed)*

*(Question put and agreed to)*

*(The House resumed)*

*[The Temporary Deputy Speaker  
(Hon. Christopher Omulele) in the Chair]*

### CONSIDERATION OF REPORT AND THIRD READING

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Chairperson.

**Hon. Patrick Mariru** (Laikipia West, JP): Hon. Temporary Deputy Speaker, I beg to report that a Committee of the whole House has considered the Public Finance Management (Amendment) (No.2) Bill (National Assembly Bill No.23 of 2020) and approved the same with amendments.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Mover.

**Hon. Amos Kimunya** (Kipipiri, JP): Hon. Temporary Deputy Speaker, I beg to move that the House doth agree with the Committee in the said Report. I also request Hon. Wanga the Chair of the Departmental Committee on Finance and National Planning to second the Motion for agreement with the Report of the Committee of the whole House.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): The Member for Homa Bay.

**Hon. (Ms.) Gladys Wanga** (Homa Bay CWR, ODM) seconded.

*(Question proposed)*

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Is it the mood of the House that we put the Question.

**Hon. Members:** Yes.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Very well.

*(Question put and agreed to)*

Mover.

**Hon. Amos Kimunya** (Kipipiri, JP): Hon. Temporary Deputy Speaker, I beg to move that the Public Finance Management (Amendment) (No.2) Bill (National Assembly Bill No.23 of 2020) be now read the Third Time. I also request Hon. Wanga the Chair of the Departmental Committee on Finance and National Planning to second.

**Hon. Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Wanga.



**Hon. (Ms.) Gladys Wanga** (Homa Bay CWR, ODM): Thank you, Hon. Temporary Deputy Speaker. I rise to second the Third Reading of this Bill.

I would like to thank the Members for their very important input into making this Bill better. I also thank the Members of my Committee, who despite the very short notice managed to come together to make this happen, the staff of the Committee as well as the Clerk's Office. I hope the National Treasury has taken note of the debate of the Members and will ensure this particular guarantee scheme reaches as many people as possible in every region of this country.

Thank you, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Well done, Hon. Wanga. Do we have a comment from the Leader of the Minority Party?

**Hon. John Mbadi** (Suba South, ODM): Propose.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Members, these special times have rusted some of us of these processes.

*(Question proposed)*

This is the time we can now have a comment from the Leader of the Minority Party, Hon. Mbadi.

**Hon. John Mbadi** (Suba South, ODM): Hon. Temporary Deputy Speaker at this stage, I have some short quick comments to make on this Bill. This is because the Bill was extensively debated during the Second Reading.

From some of the contributions, I realised that probably, we need to understand the import of this Bill properly. This Bill seeks to provide a credit guarantee scheme and the borrowing will be through financial institutions. So, let us not leave this place and start telling our constituents who own enterprises that the Government is now going to give them loans.

The Government is setting up a fund to guarantee and make it easy for these micro, small and medium enterprises to access loans, they would otherwise not access if there was no credit guarantee given to them. This is what I wanted to emphasis.

The Chair of the Committee while explaining one of the amendments came out very clearly that this is a credit guarantee scheme. I want to thank the Government for taking this step at this time. I hope this scheme will be administered properly to realise its very objective for which it is set-up.

Thank you, Hon. Temporary Deputy Speaker. I support.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Thank you for that clarification, Hon. Mbadi. The next comments will be by Hon. Masara Francis.

**Hon. Peter Masara** (Suna West, Independent): Thank you, Hon. Temporary Deputy Speaker. The Bill is timely because we are facing the coronavirus pandemic and many businesses will close down. Therefore, so many might not get an opportunity to get guarantees.

So, when such a Bill is in place it will enable small and medium enterprises to access loans to revamp their businesses and participate in rebuilding the economy. Such a move will enable many people who have not invested so much get access to loans for capital.

Thank you, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Ogutu Abel, Member for Bomachoge Borabu.

**Hon. (Prof.) Zadoc Ogutu** (Bomachoge Borabu, Independent): Thank you, Hon. Temporary Deputy Speaker. If this country has to transform in line with Vision 2030, I think a

number of sectors need to improve the way they respond and act towards SMEs. In this particular case, I want to look at those who receive services especially from the people in the SMEs. The payment for these services has been a big challenge especially by the county governments. As the Committee continues to look at ways to improve the financing of SMEs, we also need to look at the way the people who receive the services from SMEs handle them in terms of their payments. I think this is a major loophole that is frustrating the youth and the people with disabilities in the rural areas who are attempting to contribute to the national economy and yet they are not being assisted through the devolved systems.

I support the Bill.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Next is Hon. Rasso, Member for Saku.

**Hon. Ali Rasso** (Saku, JP): Thank you, Hon. Temporary Deputy Speaker. I thank the Chair of the Departmental Committee on Finance and National Planning for this Bill. She eloquently presented it. If we must grow the economy, many Kenyans should be able to borrow money, pay taxes and do business. We are getting an experience with the Chinese who are doing business in Kenya. Actually, we are told that their banks in their home countries guarantee them loans. They are getting money from their government and that is why they are able to do much more business in our country than our own countrymen and women. I think this Bill will go in the right direction.

Finally, it is about safeguard for this money because for many years, Kenyans have borrowed money and they have not been able to return it. Thank you, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Sankok.

**Hon. David ole Sankok** (Nominated, JP): Thank you very much, Hon. Temporary Deputy Speaker, for giving me this opportunity. It seems the new Chair of the Departmental Committee on Finance and National Planning, Hon. Gladys Wanga, has started on a high voltage. In fact, she has started with what we call economic recovery post COVID-19. This is because after COVID-19 we will realise that so many SMEs will crumble but with such a guarantee that the Government will guarantee loans to the youth, persons with disability and women who traditionally do not have assets... Some of them do not have title deeds to be able to guarantee themselves loans. So, this is a nice idea.

However, I want to caution the National Treasury. This should not be like the Access to Government Procurement Opportunities (AGPO) by the three categories of the marginalised groups or the affirmative action group. This is because in the AGPO, the tenders allocated to youth, women and persons with disabilities do not give any economic empowerment to the youth or to the persons with disabilities because they reserve tenders of supply of toothpick, toilet paper and newspapers to that category. The mega tenders are set aside to those who are known or to who is who in the society. So, I hope the guarantee will be equitable and it will guarantee all persons with disabilities, women and youth on equal measures without the basis of who is who and be regionally balanced so that somebody from Lamu is given a guarantee that somebody from Marsabit and Kisumu is given. Even if the Cabinet Secretary comes from a certain region, we would like to see all regions treated fairly.

Thank you very much, Hon. Temporary Deputy Speaker. I do support and I once again congratulate Hon. Wanga for being the first female Chairperson of the Departmental Committee on Finance and National Planning. I am sure Hon. Mbadi is now shaking because the gubernatorial race in Homa Bay will be a big race.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): That is enough, Hon. Sankok. Finally, we shall have Hon. Wanyonyi, Member for Westlands.

**Hon. Tim Wanyonyi** (Westlands, ODM): Thank you, Hon. Temporary Deputy Speaker. I also thank the Committee and the Chair for bringing this amendment especially giving guarantee to these marginalised groups. What is killing our businesspeople in this country is lack of access to a cheap and accessible credit. This guarantee will enable them to access credit that can enable them to do business. So, this is a very good amendment. I support it.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Members, so that we can make progress, allow me to put the Question. I have confirmed that the House is properly constituted for purposes of making this decision.

*(Question put and agreed to)*

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

Next Order!

## BILL

### *Second Reading*

#### THE COUNTY LAW COMPLIANCE AND ENFORCEMENT BILL

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Let us have the Chairperson of the Departmental Committee on Justice and Legal Affairs.

**Hon. Clement Kigano** (Kangema, JP): Thank you, Hon. Temporary Deputy Speaker. I seek your indulgence to combine my statement with Order Nos. 10 and 11. This is because the answer is the same.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Chair, I give you leeway to do that so that we can deal with others.

**Hon. Clement Kigano** (Kangema, JP): Thank you, Hon. Temporary Deputy Speaker. When the Senate Bills No. 27 and 25 were remitted to the House and my Committee, there was no report on public participation. Consequently, we requested the Clerk to advertise for public participation on 11<sup>th</sup> March this year and 30<sup>th</sup> June this year respectively. This has been done. No reports on public participation and no response has been received by my Committee. Consequently, my Committee will now sit to consider these two Bills and then give a report to this House. So, I am asking for two weeks to enable my Committee deliberate and give a report to this House.

Again, if you allow me, this is the first time I am representing my Committee in this House. I wish to thank the leadership of the House, the Speaker and my colleagues for bestowing this responsibility on me, my Vice Chair and my Committee.

Secondly, I thank the previous Chair, Hon. Cheptumo, for steering the Committee for the last two years or so. Finally, I assure and allay fears expressed by my colleague, Member for Alego-Usonga, the other day. He was alluding to age. I want to remind him that in a Committee like this, the older you are, I can assure him, the more experience and wisdom is obtained.

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I wish to give an example of the late judge Lord Baron Denning. He was so famous even in parliamentary circles. At the age of 87, when he retired, the British judge was perhaps, the greatest judge in the Commonwealth in the last century. It is at that age of 87 years that he was giving the very best equitable judgements. So, I will allay those fears about my Committee which has senior Members of this House. They are capable. I think we shall deliver.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Congratulations the new Chair of the Departmental Committee on Justice and Legal Affairs. Indeed, the Temporary Deputy Speaker is well versed with Lord Denning. The master of the royals, he of the famous quote of, whatever dwelth in a man's mind. You will remember that Chair. Only the devil...

*(Hon. Clement Kigano spoke off record)*

You do? It is an honourable task that you have, but we are confident that your shoulders are sufficient to shoulder the duty that this particular Committee is called upon to shoulder for this country. We are confident. The reasons for seeking a deferment are sufficient and are good. I, therefore, agree that the business that is listed as Order Nos.10 and 11 be deferred. Therefore, we shall move to the next Business of the House.

#### THE COUNTY LAW COMPLIANCE AND ENFORCEMENT BILL

(SENATE BILL NO.25 OF 2018)

*(Bill deferred)*

I have heard the voice of Hon. (Dr.) Chris Wamalwa, the Member for Kiminini, on a Point of Order. Proceed, Hon. (Dr.) Chris Wamalwa.

**Hon. (Dr.) Chris Wamalwa** (Kiminini, FORD – K): Hon. Temporary Deputy Speaker, I rise to seek your indulgence pertaining this matter that Hon. Clement Kigano, who I know very well has the capacity and capability to lead that Committee, raised. This goes back to the House Business Committee. At these extraordinary times and, indeed, last time, we agreed that the Bill should not come to the Second Reading ---

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. (Dr.) Chris Wamalwa, which business are you speaking to?

**Hon. (Dr.) Chris Wamalwa** (Kiminini, FORD – K): The same one, the one you have ---

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): No. Hon. (Dr.) Chris Wamalwa, you know the rules. That horse has fled. I have already deferred that business. So, just hold your horses until it comes again and then you may have a bite at it.

We will move to the next business, which is Order No. 12.

#### THE PRESERVATION OF HUMAN DIGNITY AND ENFORCEMENT OF ECONOMIC AND SOCIAL RIGHTS BILL (SENATE BILL NO. 27 OF 2018)

*(Bill deferred)*

## MOTION

### INQUIRY INTO THE STATUS OF DAMS IN KENYA

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): The Chairperson of the Departmental Committee on Environment and Natural Resources, you have the Floor.

**Hon. Kareke Mbiuki** (Maara, JP): Thank you, Hon. Temporary Deputy Speaker. I beg to move:

THAT, this House adopts the Report of the Departmental Committee on Environment and Natural Resources on its inquiry into the status of dams in Kenya, laid on the Table of the House on Thursday, 17<sup>th</sup> October 2019.

The Departmental Committee on Environment and Natural Resources pursuant to Standing Order No. 216 (5) (a), embarked on inquiring on the status of dams in Kenya. This was necessitated by the fact that there were various dam projects across the country, which had been allocated funds year after year. The Committee set out to establish the status of these dams against the resources allocated. In the course of the inquiry, the Committee held meetings with the Cabinet Secretary for Water and Sanitation and Chief Executive Officers of various water agencies — which were formally called Water Service Boards — from across the country. The Committee also conducted inspection visits to various dam projects across the country, to assess their status. The Committee visited the following dams, Itare Dam, which has already stalled; Chemususu Dam, which is completed; Northern Collector Tunnel; Kariminu II Dam, which is ongoing; Thwake Dam, which is ongoing; Umaa Dam, which stalled many years ago; as well as Mwache Dam, which is awarded but has not yet commenced.

Hon. Temporary Deputy Speaker, the Committee also sought for written submissions for other dams across the country, to understand the progress made so far. The Committee wrote to the Ministry of Water, Sanitation and Irrigation, the National Treasury, the Rift Valley Water Works Development Authority and the Athi Water Works Development Authority, seeking for additional information on various water projects being implemented. The Committee's inquiry into the status of dams in Kenya was guided by the following objectives:

- (i) To conduct physical inspection to establish the status and progress of works for dams to be visited.
- (ii) To identify any discrepancies that may be notable between the paper reports and the actual physical situation on the ground.
- (iii) To establish the reasons for the slow progress of the construction of dams in the country.
- (iv) To recommend effective implementation strategies for the construction of the dams.
- (v) To report on specific recommendations on the way forward for the ongoing projects and the stalled ones.

During the inquiry, the Committee noted that the construction of various dam projects was slow and this was attributed to a number of factors, which included, inadequate financial resources, primarily, counterpart funding, inefficient and costly financing models and unsettled resettlement action plan issues. It was further observed that various dam project's financial commitment had been done before acquisition of the project land. This led to the delays in the implementation of the projects and huge costs in idle time and equipment.

Hon. Temporary Deputy Speaker, the Committee further noted that, whereas substantial resources were committed to construction of mega dams across the country, there were no plans

in place to ensure that the Last Mile Connectivity was achieved. A case to illustrate this problem is Chemususu Dam in Baringo County, which was completed in the year 2014 and it took five years to have the Last Mile Connectivity initiated.

The Committee also observed that the National Treasury was engaging foreign private commercial banks to borrow money to finance the projects. This is a matter of great concern, considering that these loans came with high interest rates, costly insurance requirement, disclosed negotiation fees and other hidden costs. The resultant effect is that these loans were more expensive than the usual conventional loans, which are usually negotiated with church and private institutions that are likely to charge low rates, thereby making the loan facilities very exorbitant.

It was also noted that the procurement process and the construction of most of these dams was carried out under the Engineering, Procurement, Construction and Financing Scheme (EPCF) model. In this financial model, the contractor is not only responsible for engineering, procuring and constructing the project, but was also responsible for financing it. The contractor does all the preliminary works of the geotechnical investigation, interpretation, final designs and, eventually, the actual construction of the dam. As a matter of fact, this model is more or less single sourcing and, therefore, may be prone to abuse and value for money as it may not be effectively realised.

Hon. Temporary Deputy Speaker, it was further observed that the Ministry had constructed various dams such as Chemususu Dam, Kiserian Dam and Maruba Dam through Government of Kenya (GoK) funding. This indicated that with proper planning, siting, management and monitoring, project implemented through local funding could be more cost effective than through external borrowing. There is, therefore, need for Government to fund its projects from feasibility study, initial design, land acquisition process and final designs, until project implementation phase through exchequer funding.

The Committee also noted that there was need for proper public participation and engagement before the implementation of dam projects so as to ensure that the needs of the local communities are factored in at the project implementation stage. It was further observed that Itare Dam has stalled as the project contractor CMC Di Ravenna had filed for bankruptcy proceedings in Italy. Consequently, there was equipment that included bulldozers and excavators which is lying idle at the site and is worth more than Kshs1 billion. In addition, other equipment are rotting on site. All these plant and equipment were part of what was purchased using money advanced to the contractor by the Government of Kenya. In the event that this equipment is left in disuse, it would be a direct loss of public funds.

The Ministry of Water, Sanitation and Irrigation together with the National Treasury engaged the Itare Dam contractor to ensure that the project implementation was not affected by the bankruptcy proceeding in Italy. It was also observed that the contractor had performance board and advance payment guarantees that were almost expiring. Therefore, there was need to review the contract to ensure that the project implementation of Itare Dam which is in Nakuru County continues to completion.

The Committee further observed that the Government needed to come up with an inter-ministerial approach at the design stage of the project so as to reduce the delays resulting from wayleave at the implementation stage. Having engaged various stakeholders and visited various dams construction sites, the Committee consequently recommends that the Government should, as a matter of priority, first and foremost acquire land for the construction of dams long before the project implementation and before making any financial commitment with donors and other development partners to avoid huge costs that accompany delays in the implementation stage. We realised that the Government has gone ahead to sign contracts with the various contractors yet it

has not acquired land for those particular dams leading to serious idle time. Where a full acquisition of land for a dam project is not possible for one reason or another, the Committee recommends that at least the land for construction of dams must be available before any funding negotiations are initiated.

The Committee also recommends that the National Treasury and the line ministries should forthwith stop implementing any new projects through EPCF model of financing due to the high costs associated with this model. The Government should ensure that the financing models considered for project implementation are efficient, cost-effective and give value for money to Kenyans. The benefits of the bilateral loans acquired from the African Development Bank and the World Bank outweigh the commercial loans procured through the EPCF model whose costs are bound to be exorbitant due to hidden costs. This is in public domain arising from what we have heard in the Kimwarer Dam scandal and other dams in the country.

The Ministry of Water, Sanitation and Irrigation together with the National Treasury should urgently put in place measures to help the works for the construction of Itare Dam either by sub-contracting or assigning it to another contractor. This is so as to forestall the huge loss that may be incurred if the plant equipment that is currently on site remains unused for a long time. Otherwise, they should terminate the contract before the expiry of the performance board guarantee.

At the same time, the National Treasury should encourage line ministries to implement projects with proper management and monitoring to the last phase by utilising local resources as was the case in Chemususu and Kiserian dams. Further, the National Treasury should ensure there is adequate funding for such locally-funded projects to avoid stalling.

The Ministry of Water, Sanitation and Irrigation, through its implementing agencies, should ensure that proper background checks on contractors are done before being awarded the contract. Further, upon engagement of the contractor, the consultants should conduct continuous due diligence to ensure that the financial capacity of the contractor has not shifted in the course of the project life. The Ministry of Water, Sanitation and Irrigation, through its implementing agencies, should ensure better monitoring of dams' technical, financial and economic performance considering the huge financial outlays involved. This will enhance project implementation with minimal delays and idle time.

The national Government, through the Ministry of Water, Sanitation and Irrigation, should develop a collaborative framework between the national Government and the county governments to ensure sustainable resource management. The Government, through its ministries, should ensure an inter-ministerial approach at the programme design stage to ensure that the relevant ministries are made aware of the wayleave requirement. Unfortunately, sometimes you find that the Government has procured contractors yet...

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Chair, I am sure you must be alive to the resolution that the House made on 28<sup>th</sup> July that in moving this kind of report, you only have 10 minutes. I will allow you to finish because you are the Chair and the first person who has been caught up in this new resolution of the House. Just complete your presentation in the next two or three minutes.

**Hon. Kareke Mbiuki** (Maara, JP): Thank you, Hon. Temporary Deputy Speaker for giving me that opportunity.

In conclusion, various Government agencies should work together. We realised that some of those dams are situated within forests. We realised that the Ministry of Water, Sanitation and Irrigation moves ahead and secures the contractors yet at the same time, the Ministry of

Environment and Forestry is not able to give wayleave for some of those projects to be undertaken within the framework.

The Committee finally recommends that the Office of the Auditor-General should within six months, upon the adoption of this Report, undertake a performance audit of all the dam projects that have been implemented through the EPCF model to assess the cost benefit analysis, completion rate of the project and viability of this model in the future with the view of establishing whether there is value for money for expenditure of the public resources incurred under the model.

The Committee is thankful to the offices of the Speaker and of the Clerk for giving us the opportunity to execute this investigation.

Having said that, I beg to move and call upon Hon. Francis Chachu to second this Motion.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Let us have the Member for North Horr, Hon. Chachu.

**Hon. Chachu Ganya** (North Horr, FAP): Thank you, Hon. Temporary Deputy Speaker for this opportunity to second this Report. I second the Report of the Departmental Committee on Environment and Natural Resources on the Inquiry into the Status of Dams in this Republic.

Dams are a critical infrastructure in our nation. In 2016, over 13 million Kenyans did not have access to clean water or adequate sanitation. Kenya, being a water scarce nation, the Government can only alleviate this critical need by investing in such critical water infrastructure. Dams are a critical infrastructure in the development and management of water resources. They enable water supply. They are necessary for control, irrigation, navigation, water quality and production of clean energy among others. In addition, dams are major assets in climate change mitigation. They enhance water storage. They also enable us to produce clean energy in terms of geothermal.

As a Committee, we noted that there were about 24 dams under construction when we did the inquiry. Two dams in particular failed. These are Badasa and Umaa dams. I want to note Badasa Dam as a case study of a failed dam. It failed because it was designed to fail from the beginning. This dam cost Kenyans Kshs2.3 billion. Even though we had experts in dam construction, we had the....

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Chachu, why are you stating on record that particular dam.... Which one is it?

**Hon. Chachu Ganya** (North Horr, FAP): It is Badasa Dam in Marsabit County.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Why have you said that it was designed to fail?

**Hon. Chachu Ganya** (North Horr, FAP): I clearly or categorically said that, Hon. Temporary Deputy Speaker. At the outset, it was designed to fail. This dam had project consulting engineers and a panel of dam experts to support its technical work. These experts whom we invested in could not even get the design of the dam right from the beginning. There was a major design flaw which was noted at the construction of this dam. The delay in reviewing the original design cost the taxpayers additional Kshs1 billion in variation cost.

Clearly, at the outset, it was designed to fail. This is due to corruption in this country. Unfortunately, up to today, this dam is a stalled project. That was almost eight or nine years ago. As a Committee, we made some observations. The dams in this country are largely very expensive. In Morocco, the dams are constructed for half of this cost. Again, there is corruption. There were few distributions of dam projects across Kenya. Some very deserving counties, especially in Northern Kenya, were not even considered. However, there are few which are ongoing now and we appreciate.



Due diligence was not done. Some companies which were declared bankrupt in Italy were given work to construct some dams. If due diligence was done, it would not have happened. The Government was making financial commitments in billions before it even secured land for the dam construction. There are other considerations and factors at play but not necessarily because of the dam. I strongly urge the Ministry of Water and Sanitation to create a Directorate of Dam Engineering which will spearhead all the dam projects from conceptualisation, through geotechnical works to design and supervision. If this institution is in place, Badasa and Umaa dams would not be designed to fail, at the outset. This is a solution to that critical need.

Through our inquiry or investigation, we were not able to assess whether Kenyans were getting value for their money as most of these dams cost billions of money: Kshs24 billion, 34 billion and even more. Most of them were external funding. They were invading taxpayers' money or our exchequer to fund these dams. I can categorically say that there were serious elements of corruption in management, construction and design of those dams at the outset. I hope the Ethics and Anti-Corruption Commission, Directorate of Criminal Investigations (DCI) and others will do the necessary work to unearth the realities and ensure that Kenyans get value for money.

I second the Motion, Hon. Temporary Deputy Speaker.

*(Question proposed)*

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Chachu, I hope that your submissions on this Motion, with the concurrence of your Chair and Committee, will find its way to the Public Accounts Committee (PAC) of this House, so that an inquiry into those very serious assertions that you have made on this Floor can be properly investigated. If billions of shillings in the amounts that are detailed in this Report were allowed to fall into the cracks of incomplete Umaa and Badasa dams, then there must be Government agents who must be held to account.

The first person who has shown interest in this Motion is Hon. Mbuyi, the Member for Kathiani.

**Hon. Robert Mbuyi** (Kathiani, WDM-K): I thank you, Hon. Temporary Deputy Speaker. I rise to support this Report by the Committee. The issue of dams is something that we really need to take seriously because they deal with water which is life.

Normally, when the rains are heavy, a lot of times, our constituents complain about the condition of roads and then soon after they are over, they start complaining about hunger. If we construct dams all over the country in a proper manner, then we will deal with hunger which is basically one of those projects that the Government has set out to ensure that it achieves. There are several problems that I have noted.

I have listened to the Chair of the Committee. They seem to have a proper Report that captures the issues that Kenyans have noted about the dams that we have in this country. The first one is the cost. Many times, when you look at the cost implication of the dams that are constructed starting from the mega ones even up to the small ones, there seem to be always an element of inflated cost. That is why you find that a lot of corruption goes into projects that are involved with dams. For example, Kimwarer and Arror dams in Elgeyo Marakwet County where even the people did not know where the dams were to be constructed. The Government had not been given the land on which the dams were to be built, and yet money had already started being spent. So, it is really important that we figure out a way which we can bring down the cost, so that we ensure that Kenyans get value for money.

The other issue is the speed of construction of these dams. Dams which are constructed by Government agencies are largely very slow compared to the ones that are constructed by Non-Governmental Organisations (NGOs). We have dams all over the place which are constructed by NGOs and Government. How come when an NGO is constructing a dam, it takes a very short time? Within no time, people start benefitting from that project. However, Government agencies construct dams year in, year out. We construct them for years. People kept hearing about Thwake Dam from I do not know which year. We continue talking about it every year. Our people down there expect that when they hear a Government project, within a year, they can start benefitting from it. So, it is important that we note that the speed of construction of dams has to be dealt with.

The other problem I have noted is fairness in the distribution of these dams, particularly Government-funded ones. Every part of Kenya requires dams. Even though we know that some places are hard-pressed for water, it is important to note that every part of Kenya is involved in paying taxes. Therefore, no area should be segregated or left behind when it comes to the provision of dams. That is one of the things that the Ministry needs to look at. It does not have to be based on who goes to the Ministry offices more than who. It has to be just fair. If there is money for dams, let us be sure that we are giving every region its fair share.

There is also a bit of a confusion in who is given this responsibility to construct dams in this country. We know that water is devolved to the county governments. However, the national Government, through its various agencies, does similar projects. One dam in one corner is built by one agency and in another corner, it is built by another agency. It is important to coordinate all these projects under one agency in the national Government and county governments.

*[The Temporary Deputy Speaker (Hon. Christopher Omulele) left the Chair]*

*[The Temporary Deputy Speaker (Hon. Patrick Mariru) took the Chair]*

Finally, when we construct these dams, it is important to ensure security. There is one thing that I have noted. In the recent past, I have lost three of my constituents through drowning because dams are put up and then unfortunately, they are not secured properly. It is one of the things that the Committee needs to deal with to ensure that all dams are secured, especially at this time when our children are not in school. In fact, a week ago, I lost a young man—a form three boy—because he went to swim in the dam but he did not know how to swim. He did not understand the depth of the dam. Unfortunately, he lost his life just because this dam was put up for the good intention of ensuring that people can irrigate their farms but it was not secured. So, he accessed it and lost his life.

With those few remarks, I support the Report of the Committee. This is a great opportunity for us to discuss this issue.

Thank you, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Let us have Hon. Iringo Kubai.

**Hon. Kubai Iringo** (Igembe Central, JP): Thank you, Hon. Temporary Deputy Speaker, for giving me this opportunity to air my views on this Motion. I stand to support it and thank the Committee for having brought such a detailed Report on dams in Kenya despite the fact that it is not really exhaustive because they only touched on a few of them but there are so many other dams in the country which are either stalled or have been done but have not benefitted the people as expected.

Hon. Temporary Deputy Speaker, many of our resources in this country go to waste because of poor planning. This is not only in dams but you will find that so much money is used in projects in Kenya compared to other countries and at the end of the day, we do not reap from the said projects. Even putting up roads in Kenya, one kilometer of tarmac costs more than twice in Ethiopia and some other countries. I do not know where we went wrong.

A dam is supposed to be constructed, water collected and that water put into proper use for irrigation, for animal use, for domestic use or any other use. It is very unfortunate then if we build a dam, let say in a forest, we clear the whole forest of indigenous trees but the dam does not benefit anybody. This is quite unfortunate. I have an example in mind of a dam in my constituency called Ura Dam in Nyambene Forest. That dam was built on almost one square kilometer of land and a lot of indigenous trees were cut down for the purpose of putting up the dam. Everything was done and up-to date, four years down the line, not a drop of water has ever been collected in that dam because River Ura that was set to feed that dam has never been directed to the dam. Therefore, it is just a white elephant.

There are too many examples. Even water pans are dug in our arid areas, especially in my constituency, but they are never serviced. Once it rains, they are filled with silt and they flatten again and all the effort just goes to the drain. We need to revisit our priorities, especially when it comes to these projects. Proper feasibility studies should be done, proper funding and more so, the extent of the usage of where that water is going to be collected and who will benefit from it should be known. We cannot just go digging dams here and there and they are not helping anybody. These are taxpayers' monies that is supposed to do other things.

On issues of security, as one of my colleagues has mentioned, these big dams and water pans are very dangerous. They are left without securing them and it becomes very risky for the children and even passersby to slip and fall into those dams. So, when a project is done, let it be done properly from A to Z. Let everything be known. If land has been acquired, is it public land and what the benefits. What would be more beneficial? Would it be the indigenous trees that are cut down? How do we secure the dams?

That is why, when we talk about Kenyan companies being given these works to do, we are letting ourselves down because foreigners are doing it better than us. Therefore, it just becomes ridiculous that we cannot do things for ourselves correctly, honorably and prudently but foreigners are doing it for us. We will then complain that the youths, women, people with disabilities (PWDs) and hustlers, those who do not have a lot of resources are not given jobs, but when they get these jobs, they do not do them.

Hon. Temporary Deputy Speaker, we even have a problem with electricity; the Rural Electrification Authority (REA)...

*(Hon. Kubai Iringo's microphone went off)*

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Clerk, please, make sure you remember to alert the Members when their time is gone. Hon. Iringo, your time is gone.

**Hon. Kubai Iringo** (Igembe Central, JP): Hon. Temporary Deputy Speaker, I was not alerted.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): I will give you one minute but you have already taken your five minutes. Please conclude that thought.

**Hon. Kubai Iringo** (Igembe Central, JP): Thank you, Hon. Temporary Deputy Speaker. As you have said, I was not alerted but thank you.

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I was talking of rural electrification whereby briefcase companies are being given this work just to erect poles and give people power. It takes three to four years and yet nothing is happening. You will just see poles, cables and transformers but there is no power. When you follow up with the contractors, you find that they do not have offices, you cannot trace them and they do not even know where the place was. They just sent some quacks to do the job, ran there and got the money. This is very unfortunate for this country and it should end in due course.

Thank you.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Hon. Maanzo, you may have the floor.

**Hon. Daniel Maanzo** (Makueni, WDM-K): Thank you, Hon. Temporary Deputy Speaker, for giving me this opportunity to contribute on this important matter. First, I want to thank the Committee for having visited Thwake Dam in Makueni Constituency, and also for having visited other dams and given a very good Report.

Luckily, for us, the Committee was very helpful when it came on the ground; there is some progress on Thwake Dam. At least a third, close to 40 per cent has been done and the money so far, is commensurate to that. Although there have been complaints from local contractors and the local people not benefiting from the dam, we are hopeful that once the dam is complete, we will be able to produce electricity and most parts of Kitui, Makueni, Machakos and Kajiado upon construction of Konza City, will get water for irrigation.

This is good progress, but we have challenges. Currently Ksh5 billion has been allocated to this dam in this Financial Year. If we do so, then it will take many years to complete the dam. We need a double allocation if we are to complete this dam by 2022. Also, when the monies have been allocated and contractors have worked, it is increasingly becoming very difficult to get the monies moved from the National Treasury, the African Development Bank (ADB) and from the Ministry of Water to the contractors and the grassroots. I am hoping to work with the Ministry of Water and that of the National Treasury to make sure that Thwake dam is taken care of and is funded on time so that we do not have frustrations on the ground especially during this COVID-19 times.

One of the companies which has been troublesome there is called JTG Engineering. At times, because they have not been paid on time, they have problems with paying their workers and repairing their machinery which is broken down, and that is really wasting on time. Recently, the Cabinet Secretary (CS) for water visited the dam, and I condole her family. I am doing my level best to make sure that whatever she proposed to the leadership and the contractor there is implemented. Although we had reduced workers during the COVID-19 situation, they can be brought back. We can take care of the youth and the local people, so that they can be able to get some contracts which will benefit them so that the project can be completed as soon as possible. We are looking forward to that.

Hon. Temporary Deputy Speaker, I must talk about corruption which has been going on with dams. I want to agree with your sentiments that investigations have to be done on Umaa Dam in Kitui County and Badasa dam because a lot of money has been stolen through dams and people have walked away free. Some of them have gone back to re-election using the same money and are chest-thumping that no one can take them anywhere. We have PAC and the EACC. These monies must be recovered from these thieves and be brought back to the nation so that they can be properly utilised.

Now that we see a lot of sobriety on the Floor of this House, we can now do business seriously. All government institutions are free to work. People who have stolen from Government coffers should be held accountable. We hope that this Report is going to be implemented and that the PAC, PIC, the EACC, the DPP and the DCI will take action without fear or favour so that we can recover what has been stolen. We can then begin afresh to make sure that no one, in future, dares to steal funds allocated for dams.

If we were to irrigate our country as it was originally proposed by the Government, I believe we would be doing better than Israel. The Israeli firm came here to help us and they are doing a lot of work on the Galana-Kulalu Food Security Project, and now Thwake Dam will provide constant flow of water to control floods.

Finally, we must make sure that there is no fault in dams which are being constructed and especially, these mega ones where billions of shillings have been spent. This is because once they crack or there is a mistake such that the water washes people downstream, we have no mechanism other than to sue some people or prosecute them. We have to make sure that proper science and engineering is used to ensure that these dams do not break down.

I thank you, Hon. Temporary Deputy Speaker as well as the Government of Kenya for the project of Thwake Dam and I am looking forward to local-local...

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Let us now have, Hon. (Dr.) Robert Pukose.

**Hon. (Dr.) Robert Pukose** (Endebess, JP): Thank you, Hon. Temporary Deputy Speaker, for allowing me to contribute to this Report. At the outset, I thank the Chairperson and the Members of the Departmental Committee on Environment and Natural Resources for having worked tirelessly with the support of the Office of the Speaker to ensure that this Report is done well. It is a good Report and it has looked at various areas.

If you look at the issues that have been raised in this Report, they include writing the cheques as well as making sure that the contractors who are supposed to be given work to do must have the capacity to deliver. Unfortunately, in the case of this Italian company which was facing issues of bankruptcy, you will find that either the consultant or the Government slept on their jobs or once people had gotten their kickbacks, as Hon. Chachu Ganya put it, at times it is decided at the initial stage for that dam to fail. When people engage in that kind of thing with engineers who have gone through various training of designing something to fail, it is a very immoral thing

With the recommendations of the Committee, we are hoping that the EACC and the DCI should be able to make arrests and prosecute the offenders so that we have the recoveries of assets from them. If you look at the equipment which is at Itare Dam, it is worth billions of money. There is something called disuse. Even a vehicle is supposed to be running on the road. If you park your vehicle for a long time without it moving on the road, other things in the vehicle will fail. You will have failure from even the battery itself; a simple thing like that. There will also be other failures within that vehicle.

With an equipment which has caused taxpayers billions of shillings lying idle at Itare Dam, it is something that those who are charged with the responsibility should make sure that these equipment are safe and put into better use. We have other departments that at times... If you look at even our country, we are not at war now and we have the military and the National Youth Service (NYS) that have technical knowhow. Why can we not utilise these Government institutions to make sure that we do something in areas that we can salvage issues? I have worked in Baringo County in Tiaty Constituency. We used to see the Kenya Army constructing water pans for the locals. So, these are things that can be done. The Kenya Army can build bridges, dams and water

pans. This also applies to the NYS. Why are we just giving them works that are not even of their ability?

This is a very good Report and I hope that with the recommendations, within a period of six months once this House approves it, the Auditor-General should immediately set in, do the audit report and forward it to the relevant Committee of the House, either the PIC, PAC or even the Special Funds Account Committee. It will be relevant depending on the Speaker's ruling.

Thank you, Hon. Temporary Deputy Speaker. I support.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Let us now have Hon. (Ms.) Ibrahim Sahal.

**Hon. (Ms.) Nasri Ibrahim** (Nominated, FORD – K): Thank you, Hon. Temporary Deputy Speaker, for giving me this opportunity to contribute to this important Report of the Committee. As a Member of the Departmental Committee on Environment and Natural Resources, among other objectives we set out to establish the status of the dams against the resources allocated, we conducted inspection visits to Itare Dam, Chemususu Dam, Northern Collector Tunnel, Kimwarer Dam, Thwake Dam, Umaa Dam and Mwache Dam.

During the inspection visits as a Committee, we noted that the construction of most of the dam projects were slow and it was attributed to crosscutting issues namely inadequate financial resources and primary counterparts funding, inefficiencies and costly financing models and unsettled resettlement action plans.

On the unsettled resettlement action plans, it was observed that various dam projects financial commitments had been done before acquisition of projects and land resulting into implementation delay and huge cost of construction delays with issues of resettlement of persons affected. I support the Committee's recommendation that the Government should as much as possible acquire land for the construction of dams long before the project implementation or making any financial commitment to donors and partners to avoid huge costs of delayed implementation and related costs.

On inefficiency and costly financing models, the Committee observed that the procurement model adopted by the National Treasury in most of the dams under Engineering, Procurement, Construction and Financing Scheme (EPC-F) was more or less single sourcing and, therefore, subject to abuse and value of money may not be effectively realised. The foreign private commercial loans through EPC-F Model came with high interest rates, costly insurances, requirements, undisclosed negotiation fees and hidden costs resulting to the loan facility being very exorbitant. I strongly support the Committee's recommendation that the National Treasury and the line ministry should, therefore, stop implementation of the projects.

Thank you, Hon. Temporary Deputy Speaker. I support.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Hon. (Dr.) Oundo Ojiambo, the Floor is yours.

**Hon. (Dr.) Wilberforce Oundo** (Funyula, ODM): Thank you, Hon. Temporary Deputy Speaker, for giving me this opportunity to contribute on this Report. I have had an opportunity to go through the recommendations from No.1 to 13.

I must commend the Committee for the wonderful job it did within the constraint of time and technical ability. Nevertheless, as I stand here, I stand from a point of knowledge having been involved in a number of these dam projects through preparation of resettlement action plans. Some of the areas highlighted as the point of concern are true. One of the greatest challenges we have had in this country is the process leading to the conceptualisation of the project, all the way to implementation. Many a times the Government or implementing agencies start to conceptualise

the project without having put aside a budget for land acquisition and resettlement action plans for the people being affected. We end up with a project which has counterpart funding from the donors yet there are no local funds to compensate. Of course, as you are aware, for the past few years, there have been very many cases in court involving misappropriation of funds or unethical conduct by the people charged with acquiring land for this dam.

Nevertheless, I believe the Government and the implementing agencies at various levels took into considerations the recommendations of the Committee. Probably the case of stalled projects, especially dam projects, will be a thing of the past. It is a very simple straightforward model. As much as they might have issues with the financing model that is being adopted, truth be told that a number of these projects probably with proper cost-benefit analysis have a positive NPV. If the project is properly structured, then we should be able to have a cost recovery both directly and indirectly.

Hon. Temporary Deputy Speaker, let me also concur with my colleague who said that a number of dam projects are designed to fail from the word go. I say this because there is a small dam in my constituency. It is under the Lower Nzoia Sector 5 Project. It was designed literally to fail from the word go. It was designed knowing very well there is no water inflow. The water inflow of the main stream has dried up because of deforestation and climate change. The engineers at the National Irrigation Board (NIB) designed hoping the water will come from heaven and just fall there. Indeed, water comes, fills through runoff but cannot support more than even 100 households. As we stand, the project has stalled since 2016 without any work being done there. I and *Mheshimiwa* Bunyasi have been to the NIB countless times yet nothing happens. We are simply being tossed up and down as if it does not really matter. That is why we need to be very clear that as we design and implement these dam projects, there must be adequate technical studies. Some of these people design while seated in their offices, probably using outdated google maps to design projects. That will not take us anywhere. Let us go to the ground, pick the details there and talk to the people. Most of them rely on streams or rivers. Things change over time. It is the locals who know.

So, obviously, it is a good Report. We sincerely want the Government to move with speed and implement these recommendations. It is because these dams are part of the food security programme that we must have as a country. We must become food sufficient. These dams are critical.

With those few remarks, I support the Report.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Shall we now have Hon. ole Sankok David?

**Hon. David ole Sankok** (Nominated, JP): Thank you very much, Hon. Temporary Deputy Speaker. From the onset, I would like to congratulate the Committee for coming up with a Report that is exhaustive and well thought.

When discussing the issue of water, I expected this House to be full because water is life – either as drinking or bathing water or water for swimming in or even as intravenous fluids from the doctor or even water for irrigation of our farms. Water is life. So, this is a very important Report that we should discuss soberly so that we can save our people.

For a long time, instead of this water becoming important and a blessing to our people, it has become a curse through runoff during floods where we have lost many lives and property. It is because the Government is not putting in place measures to mitigate the adverse effects of climatic change with which come floods and such issues. Water has ended up destroying our infrastructure. It is because we have not mitigated the effect of this runoff water. There are too

many ways to do this. I would like the Committee, through the Chairman, to approach this issue of dams in various ways. We have megadams. Equally important are the water pans. Water pans may be small and they are less costly, Kshs100,000 for each. So, the Kshs23 billion that was wasted in Arror and Kimwarer dams could have constructed 230,000 water pans in Northern Kenya and parts of the South Rift where it is semi-arid. It could have supported many of our citizens.

The Government should also be innovative sometimes. I remember in the construction of the Narok-Maasai Mara road, as leaders from Narok, we approached the contractor and requested him to scoop murram from various farms and scoop a way that would construct some water pans on private farms along that road. Today, we have 152 water pans serving different farms along that road, at no cost.

Our Government should be innovative. Hon. Pukose had said we have the military and we are not at war. We may not be at war in the near future. We also have the NYS with enough machinery and personnel or human resource, with adequate human knowhow. There are engineers in the military. There are also engineers in the NYS. Why do we not utilise them in constructing? The other day, as the Members of the Departmental Committee on Labour and Social Welfare, we were approached by the NYS. We had a Bill to try and make ways for the NYS to make money. That is why we came up with an NYS council. It is so that it can also venture into commercial activities. One of them was competing with *matatus* here in Nairobi, in the transportation industry. It is not commercially viable.

We should have had innovation of them becoming a company, a construction company, so that tenders to build the dams and construct our roads can be awarded to them. Some of these Chinese companies have the same name, meaning they may be companies of the Government from China. On the white elephant projects that were talked about by the Committee, this country is risking many billions of money through white elephant projects. Phase 2B of the SGR has ended up in a small remote area called Emurtoto with only one butchery and one shop, only 12 kilometres to Narok Town, instead of completing the 12 kilometres to Narok Town so that we have a catchment area....

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Very well. Hon. Sankok, I do not know what research you did to know that there is only one butchery where the SGR ends. You know. I am sure Hon. Tunoi will be interested to visit the area.

Hon. Wamalwa.

**Hon. (Dr.) Chris Wamalwa** (Kiminini, FORD-K): Thank you, Hon. Temporary Deputy Speaker, for this opportunity.

I have looked at the Report. Unfortunately, the Report has dwelt more on generalities than specifics. The core business of this House is to legislate, to represent and to oversight. This Report, in my submission, is dwelling more on aspects of oversight. If the Committee looked at this and from the word go said the projects have been designed to fail, there must be consistency. That is an observation or a conclusion which must be consistent with the recommendations.

The issue is, who is culpable? In this report, the Committee has denied justice. I expected some specifics. I have served in the Public Investments Committee and I know that when it comes to dams, we have a problem with the National Irrigation Board (NIB). I expect the board members to be accountable but the Report shuns away from the specifics. It is a general report. They have used the taxpayers' money and we cannot come here and have a public relations Report.

**Hon. Kareke Mbiuki** (Maara, JP): On a point of order, Hon. Temporary Deputy Speaker.



**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Order, Hon. Wamalwa. Hon. Mbiuki, what is your point of order?

**Hon. Kareke Mbiuki** (Maara, JP): Hon. Temporary Deputy Speaker, it is quite unfortunate for Hon. Wamalwa to mislead the House. The Committee was investigating construction of dams in general to find out why some of the projects have stalled. While carrying out this investigation, the NIB that he is alluding to was not part of our docket but was under the Departmental Committee on Agriculture and Livestock. The Committee has also recommended that the Auditor-General...

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): What is out of order?

**Hon. Kareke Mbiuki** (Maara, JP): Hon. Wamalwa is misleading the House that the Committee...

**Hon. David ole Sankok** (Nominated, JP): He has not read the Report.

**Hon. Kareke Mbiuki** (Maara, JP): Maybe he has not read the Report as I am being informed here.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Why is Hon. Sankok giving you more issues to raise with Hon. Wamalwa? Hon. Mbiuki, your point of order is more of a piece of information to Hon. Wamalwa that NIB was not under your scope. You seem to have used the point of order to give him information.

Hon. Wamalwa, please proceed.

**Hon. (Dr.) Chris Wamalwa** (Kiminini, FORD - K): The Chairman is not in-charge. He is relying on Hon. Sankok. I have read the Report...

**Hon. (Ms.) Sophia Noor** (Ijara, PDR): On a point of order, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Hon. (Ms.) Noor, what is out point of order?

**Hon. (Ms.) Sophia Noor** (Ijara, PDR): In line with what my Chairman has said, Hon. Wamalwa, whom I respect has not gone through the whole Report and he is misleading the House. The report recommends that the Director of Criminal Investigations (DCI) further investigates...

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Hon. Noor, you are gravitating towards contributing. I will give you a chance. Hon. Wamalwa, please proceed.

**Hon. (Dr.) Chris Wamalwa** (Kiminini, FORD - K): Hon. Temporary Deputy Speaker, as you can see, the Committee is not coordinated.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Order, Hon. Wamalwa. Do not go to uncharted waters.

**Hon. (Dr.) Chris Wamalwa** (Kiminini, FORD - K): I have read the Report. When you are doing an inquiry into the status of dams, common sense dictates that you involve the implementers. In this case, you cannot leave out the NIB because it is the implementing agency. I am speaking from a point of knowledge. There are so many complaints regarding dams in the Coast and from Members of Parliament from Turkana and Busia. The implementing agency is the NIB. You cannot do an inquiry into the status of dams in this country without touching on the NIB. That is bad ignorance. The NIB is critical as far as the issue of dams is concerned.

Hon. Temporary Deputy Speaker, dams play a critical role when it comes to food security. These dams are normally used for irrigation purposes. The NIB is the Government agency in-charge of irrigation. We do not want to waste taxpayers' money. I want to note that the Committee has done a good job when it comes to observation. Speaking from an academic perspective, when it comes to report writing, there must be consistency where you move from observation, conclusion

to recommendation. The observation is good where you noted that the project was designed to fail. Where is the conclusion and the recommendation? Why are you shying away from touching on this Government agency? I am not saying that they did a bad job but going forward, we must have consistency.

Hon. Temporary Deputy Speaker, dams have been used as loopholes for corruption. This is an area where taxpayers are losing their money. When it comes to procurement, we have been told it was single-sourced which is contrary to the public procurement law. There is no value for money. In this case, there was a conspiracy to commit corruption so that the public loses money. When such a report comes to the Floor, we do not expect generalities. We expect specifics so that either the Directorate of Criminal Investigations or the DPP can act on them. You have very good observations but there are shortcomings when it comes to your recommendations. We have heard about the Kimwarer Dam and the others in Turkana and Budalangi being used as loopholes for corruption.

Hon. Temporary Deputy Speaker, I expected the aspect of Monitoring and Evaluation (M&E) to come out in the Report. Those people who are involved in project management should be trained on project management and monitoring and evaluation. This is a problem that we have been facing.

Hon. Temporary Deputy Speaker, the Report should also tell us whether it has the face of Kenya because it is designed in some regions and others are left out. When it comes to financing, why are we using private commercial banks that are very expensive yet we can use concessional loans which are cheaper and can give us value for money? You did a good job but you need to pull up your socks. You can do better things for the Report to have teeth so that this House can act.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Very well. Let us have Hon. Paul Mwirigi.

**Hon. John Paul Mwirigi** (Igembe South, Independent): Thank you, Hon. Temporary Deputy Speaker. I rise to support this Report. Water is very important in this country. Many families suffer by going for long distance in search of water. The Government had proposed dams for construction but seven years later, construction is yet to commence. According to the Report, I want to concur with them that there is an urgency for the Auditor-General to conduct an audit of all constructed dams in the country. Most of these dams are stalled projects yet they were valued at billions. Money is lying out there without benefiting Kenyans. The Auditor-General should do an audit so that we can know where the money for the dams is.

Hon. Temporary Deputy Speaker, we use a lot of money to do water projects but there is nothing on the ground to show the same. While constructing dams in any part of the country, it is important that the Government carries out due diligence. A feasibility study should be done in good time and owners of the land where the dam is to be constructed are compensated first before the tender is issued.

In the case of the dams which we are talking about, the tenders were issued even before compensation for the land was done. This brought a lot of problems and delay in commencement of the project. There is also need for the Government, before establishing these projects, to work closely with the Kenya Forest Service (KFS). When dams are being established in forests, there is a problem in accessing the sites hence delaying launching of the projects. Also, there is supposed to be a framework for the Government to work with the local people so that at least it can get information from the ground on how the river on which they want to establish a dam flows and which season the river is in full capacity, so that these dams can be of benefit to the people of this

country. In my constituency of Igembe South, there is a dam which was supposed to be established in the year 2016; up to now that project is yet to commence. It is high time the Auditor-General took up the matter and audited these dam projects.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Hon. Noor.

**Hon. (Ms.) Sophia Noor** (Ijara, PDR): Thank you so much, Hon. Temporary Deputy Speaker, for giving me this chance. First and foremost, I must thank the members of the Departmental Committee on Environment and Natural Resources, who have done a lot and have sacrificed their time going round this country to look into most of the dam projects. The Committee embarked on inquiring into the status of these dams in the country because of many factors. One of the factors that necessitated our looking into the dam projects is that every year we pump a lot of resources into dams. Other parts of this country do not have any resources. We approve over Ksh60 billion to these water projects, but there are many parts of this country that did not benefit from the resources. Those are some of the reasons. The other reason is that many Members of Parliament were asking about water in their counties and constituencies. The other reason we went to various parts of the country is that there was a national debate on dams that was going on in this country. So, as a Committee, we felt that we needed to inquire into the construction of those water pans. Immediately we went to the sites to look into those projects, we felt those projects were taking a longer period to complete because of various factors that we needed to highlight so that when government ministries plan for projects, they would be able to take into consideration the recommendations in our Report.

Some of the challenges that made these projects take long was financial challenges. The other thing was the costly and open-ended model that was used. It is not a model that you can say is the best to be used in this country. The other challenge was poor planning from the start. You will see a project that you have gone and negotiated for resources, sat with donors and partners but you do not have the counterpart money from our Government to finance it. So, that again delays the project.

The other thing is you have awarded the project but you do not have land. There is land crisis which gives the contractor a challenge. The resettlement and land allocation is in itself a nightmare for project implementation. That is why at the outset, some of the projects are poorly planned.

Hon. Temporary Deputy Speaker, I had an opportunity to lead a team to Morocco to look at how projects work there and the dams they have constructed. I was shocked by the kind of projects that have been implemented and the kind of resources they use which is about 30 per cent of the resources that we use in Kenya. They use about 30 per cent of what we use and yet they complete all the projects which sometimes are bigger than the ones we implement in this country. We have given a recommendation that we need a directorate of engineering that can properly mobilise all engineers of this country. We have many engineers who are not doing anything and whose skills are not being used properly in this country. We are asking a directorate to be created where all engineers come and put their heads together so that we can have value for resources we allocate to some of the projects.

Hon. Wamalwa talked of the NIB. Unfortunately, NIB...

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Before I get to my left, let us have Hon. Gichimu. Members in this list who have registered interest to speak will still get a chance. It will still go to the end.

**Hon. Gichimu Githinji** (Gichugu, JP): Thank you, Hon. Temporary Deputy Speaker for that opportunity to rise and support the Report by the Committee.

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I want to thank the Chair and his Committee for having done a splendid job. Dams play a pivotal role in this country in terms of water provision for both domestic and industrial use as well as provision of water for irrigation. That is in line with the Government's Big Four Agenda on food security. What needs to be done is the maximisation of this scarce water resource. In Kirinyaga, we have a dam called Thiba which is being constructed in Gichugu Constituency. The effect and target benefit is the lower part of Kirinyaga which is well known for rice irrigation. When these projects are being constructed, we need a very good environmental impact and assessment report. When I went through the Report that was prepared for Thiba Dam, it indicated that the effects on the local community surrounding the dam was of negligible factor, to the persons who prepared it. However, we have seen that while the dam was being constructed, there were so many negative and adverse effects to the local community including some houses and schools around developing cracks because of the loud noises that come up while construction is being done.

Anybody tasked with the mandate of preparing those reports should look into the matter. We are seeing a likelihood of conflict between the locals and contractors because their rights have to be taken care of. It is an issue about corporate social responsibility (CSR). According to the Constitution, which mandated the legislation of the Environment Management and Coordination Act under Article 71, the local community must also benefit. Therefore, it must be taken to account that across and around dams, the local communities, say, through the National Irrigation Board, which is the primary Government agency, should be considered. There must be projects that also benefit the local community. The natural resources must be utilised to their benefit.

Another area that needs to be looked at is the easement of the bureaucracies when Government is doing projects and ensuring that the tax exemptions required are fast-tracked. Like in Thiba Dam, we took about six months following up on the list of exemptions on taxation, which has really delayed the construction of the dam. Therefore, the Government should not be an impediment to its own projects when it comes to tax exemptions and those bureaucratic procedures including Pre-Export Verification of Conformity (PVOCs) and those kinds of stuff. As I wind up, I would like to say that where corruption has been detected in construction of any projects- not only dams in this country- the Government through Ethics and Anti-Corruption Commission (EACC) should move with speed so that it can arrest situations that can cause loss of public funds through corruption and other means

Hon. Temporary Deputy Speaker, I do support the Report and thank you for the chance.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): We shall now have Hon. Hassan Hulufu Oda.

**Hon. Hassan Hulufu** (Isiolo North, KPP): Thank you very much, Hon. Temporary Deputy Speaker. I stand to support the adoption of this Report. I am also a member of this Committee. We have tried our best to visit as many dams as possible. Of course, we were constrained. Some of the dams which we wanted to visit did not fall under our Committee and that is why one of the recommendations we have made as a Committee is such that all water-related works be put under one ministry and there be a directorate to deal with dams. If we look at observations, there are some observations which we made. One of the key ones that I would like to talk about is generally poor funding of water sector by the National Treasury and this has actually forced us as a country to go for expensive loans through this funding model we are calling Engineering, Procurement, Construction and Financing (EPCF) contract. This is where a private entity- most of the times an entity which is not a Kenyan entity- actually does the engineering work. Moreover, it does the procurement work and it also seeks for financing.

Therefore, as a country our Government may not be in a position to do proper due diligence and we end up with a situation like the one we have found out with the case of Itare where a company- which in its own home country is bankrupt- has been given a multi-billion contract to do a pan in our country. Another thing we have also seen is that even when we look at our own engineers in the Ministry of Water and Sanitation, which we oversee, we realise that there are times particularly when the design is poorly done and as a result of that the dams are poorly sited. The sites of dams have to be changed, for example, in the case of Badasa. This was so in Badassa after millions of shillings went into construction.

At times we have delays as a result of problems related to land acquisition. Contracts are entered into, companies are awarded contracts but cannot work because the land owners, be they private or communities, are not ready to give the land for the projects. These arises out of two main reasons: some of these big pans are constructed in one place and yet the water is meant for use elsewhere. Therefore, the local community may not give out land willingly. For example, most of the mega pans meant to supply water to the City of Nairobi are located in neighbouring counties of Murang'a, Kiambu and others. So, the local farmers who are displaced may not have a good reason why they have to give up their land unless they are adequately compensated for water to be supplied to people living elsewhere. This is why we have suggested to have the inter-ministerial committee to deal with the issue of siting, engaging communities, discussing compensation and acquisition of land before design is made. It beats logic that we can contract a company to do a dam when the land is not available; that should be the first step. Appropriate location of the dam and whether that land is available should be the first thing before we engage.

Since I am running short of time, one of the key recommendations that we need to emphasise is the importance of funding the water sector adequately. This House has a responsibility of approving budgets. Water is essential and I appeal to my colleagues that we allocate enough resources to the water sector so that we can do away with this very expensive mode of financing which...

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Your time is gone. Let us have Hon. Nangabo Janet.

**Hon. (Ms.) Janet Nangabo** (Trans Nzoia, CWR, JP): Asante sana Mheshimiwa Naibu Spika kwa kunipa fursa hii kuongelea juu y hii ripoti kutoka kwa kamati ya mazingira katika Bunge letu.

Ninaungana na wenzangu kushukuru kamati hii. Imekuwa muda haya mambo ya mabwawa yameleta utata mno. Isingelikuwa ni hii kamati imechukua hiyo nafasi, hatungejua kinachoendelea kuhusu mabwawa haya. Nataka kuungana na wale wamesema kwamba haya mambo ya mabwawa yalikuwa chini ya Kamati ya Kilimo. Ni ukweli hatungejua ni nini kinaendelea. Namshukuru Mwenyekiti na timu yake kwa kutambua kwamba hizi shida zenye Wabunge wametambua katika Bunge hili ni kweli ni shida zile ziko kule chini na haikuwa ni makosa ya wale walikuwa wanauliza bali ni makosa ya mipangilio sambamba kuhusu haya mambo ya mabwawa.

Umesikia kule Budalang'i vile wamesema. Ni ukweli tusipo kuwa na wataalamu wakatambua kwamba hili bwawa linatakikana litoke wapi na liende wapi tutakuwa tunamaliza wakati wetu an hizo pesa zinatakikana kutolewa na serikali zitakuwa zinaangulia patupu. Ukiona sehemu za Turkana mahali ambapo wanasema ni sehemu kame... Iwapo mtu atapewa kandarasi ya kuchimba kisima au bwawa katika eneo hilo pasipo na ujuzi tutakuwa tunamaliza wakati wetu.

Ninamushukuru Mhe. Chachu. Amesema hapa kwamba kuna wale ambao walikuwa wamepewa fedha za kutengeneza bwawa. Unaona mtu akikula karibu asilimia sabini bila kufanya

kazi. Ndiyo naunga mkono hii Kamati na kusema kwamba Mkaguzi Mkuu wa Hesabu za Serikari achukue hatua na kuhakikisha kwamba mtu akipewa kazi lazima aikamilishe.

Hatuwezi kusema kwamba wananchi hawajajitokeza. Wananchi wako tayari katika sehemu zao. Wabunge kama waakilishi wao wakiona bwawa litajengwa katika sehemu yao wana nafasi ya kuongea na wananchi na kuhakikisha kwamba bwawa nzuri limejengwa. Hatuwezi kuwa tunasema waziri fulani ama kandarasi inatolewe na mtu fulani. Hii ni kwa sababu hawa ni wale watu tu wanaotafuta kazi za maji na wakitoka hapo wanaenda hospitalini ilikujinufaisha wao binafsi. Sio kwamba wanawanufaisha wananchi ambao wanangojea huduma zao kama Wabunge.

Kulingana na kazi ya Kamati ni vizuri tuwe na mipangilio ya kuhakikisha kwamba serikali za kaunti kwa sababu ndio zinasimamia mambo ya maji ziko na mipangilio mizuri na kwamba wananchi wanapata haki zao. Wajengewe mabwawa ya kuwasaidia kwa ajili ya kilimo na manufaa yao.

Kwa hayo machache, nasema asante na kuunga mkono Kamati.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Is Hon. Kwenya present?

**Hon. Zachary Thuku** (Kinangop, JP): Thank you, Hon. Temporary Deputy Speaker for giving me an opportunity to add my voice to this Report. From the outset, I want to pass my congratulatory message to the Chair of the Departmental Committee of Environment and Natural Resources and his team.

The title of the Report is an Inquiry into the Status of Dams in Kenya. I expected this Report to capture present, historical and futuristic nature of proposed dams. So, we would have a Report that is surely an inquiry into the dams status in Kenya. I happen to come from a constituency where we host a dam that serves Nairobi, that is Sasumua Dam. It is interesting that we are some of the people who suffer some serious historical injustices. This is because the water comes from my constituency yet, my constituents do not enjoy the same water.

This is an issue that needs to be addressed. I hope the Chair, because he is seated in the Chamber, will look at this and see how best to deal with it. So, we do get a resource from a certain constituency or county yet, the people there do not benefit from it. Many recommendations have been made by this Committee which I support especially on the formation of Directorate of Dam Engineering. This is very important because we see most of these projects like the old saying 'putting the cart before the horse' because they are not well thought out.

What comes into the mind of the initiators of these projects is how they will benefit as persons. They forget about the millions of people who will benefit from such projects once well thought-out and implemented. The Directorate of Dam Engineering will reduce the cost of bidding whereby we will get a bidder design, construct and commission the same. If we have our own in-house designs, we will reduce the cost and time that implementation takes.

There is also the issue of land compensation. This is what I am saying about putting the cart before the horse. We procure projects having not adequately compensated land owners. In my constituency there are proposed dams that is Kija Dam and Upper Chania and nothing is happening on the ground in terms of land compensation so that once the contractor sets in, he will have no hurdles in implementing the same. This is something that really needs to be well thought. It is something that we really need to debate as a House so that we do not have a situation where we are contracting before this has been done.

The other issue is that of bureaucracy. You find that there is a lot of infighting within Government circles like if a project is being done in my constituency, we have to get clearance from NEMA, the Kenya Forest Service (KFS) and Kenya Wildlife Service (KWS). We get all manner of back and forth movements, therefore, delaying the implementation of these projects.

Finally, water is an economic and social right that is envisaged in our Constitution in Article 43(1)(d). It is a right for every Kenyan to access clean water in adequate quantities. However, the kind of funding that we give the Ministry of Water is not commensurate with the demand that is on the ground. Therefore, as a House and as one arm of the Government, we need to relook into our budgets and make sure that we increase allocations for water like now when we have this COVID-19 pandemic. It is so serious that many homes cannot access clean water. It is not only in rural areas but also in Nairobi. We really need to rethink and see how best we can fund water. Maybe after education and health, the next to be funded should be water.

Therefore, I support the Report and hope that the Chairman will look into the issues that Members are raising. I thank him for sitting in the Chamber when we are debating this. We do not see this coming from chairmen of committees. I congratulate him.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Hon. Were, you have the Floor.

**Hon. Charles Ong'ondo** (Kasipul, ODM): Thank you, Hon. Temporary Deputy Speaker. I congratulate the Committee and myself, who is also a Member, for a job well done. You have noted the Report is too comprehensive and we had made Kenyans know first the dams were procured and the process was a failure. It is through this Report that Kenyans can now know that the Government entered into a very expensive financial model. It is through this Report that Kenyans can know that constructing a dam in Kenya is also too expensive.

As my colleague has indicated earlier, I also had an opportunity to attend a water conference in Egypt. To our surprise, doing a multipurpose dam in Egypt cost around Ksh6 billion in comparison with Ksh30 billion spent to construct the same in Kenya which serves as a single source. In Egypt, a dam which is done at Ksh6 billion and done by the local engineers serves for irrigation, power generation and local water consumption. They have even constituted a water policy to take care of the dams. Even the communities living around dams enjoy the benefit of water from such dams.

We have also noted that there is no equity in Kenya in the distribution of dams. We can say they are designed to benefit particular regions. I want to give an example of Soin-Koru Dam, which the Government approved. It has even taken years for approval and it is only one of its kind in that region.

So, the Report is quite elaborate. We have also noted in the Report issues of bankruptcy of a firm in Italy, which raised a lot of questions. This is because when procurement or evaluation is done, a company cannot just become bankrupt within one year from the commencement of work. We believe in procuring of contractors for such a firm. Financial evaluation must be taken into consideration. This entails the cash flow and property investment, which once combined, brings financial soundness thus qualifying the company to be awarded. But, in this case, we were surprised. Was it in evaluation? Was it only a cash flow? Was the capital investment taken into consideration? If capital investment is taken into consideration, then a company cannot just be bankrupt within a very short time, less than a year.

We have also made Kenyans know that contracts for construction of dams were done and awarded without consideration of the land issue, where the dam is to be constructed. For example, Kariminu II Dam, where a contract was awarded, over Ksh7 billion was paid as down payment, and nothing has been done three years down the line. It did not look well. So, our recommendations are well searched and if the House could approve, then it will assist Kenyans to get value for money.

I, therefore, support. Thank you.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Let us have Hon. (Ms.) Dennitah Ghati.

**Hon. (Ms.) Dennitah Ghati** (Nominated, ODM): Thank you, Hon. Temporary Deputy Speaker, for this opportunity to support the Report of this inquiry by the Departmental Committee on Environment and Natural Resources.

Water is an essential item. It is a basic need. It is, therefore, important that when we are talking about water, we talk about water that takes care of over 50 million Kenyans. This country has 50 million Kenyans who actually depend on water. If you look around, you will realise that majority of Kenyans, and especially those in rural areas, do not have access to clean and quality water.

I am happy that this Report by the Committee has looked at the whole issue of auditing. We know that we have dams in this country that are not clear. Most Kenyans are not clear about which are Government dams and the ones that are constructed by donors. You will realise that even in this country, we have water that is taken care by donors, development partners and well-wishers. The World Bank, from where I come from, has all the time been constructing dams. That tells you that we have not put a lot of emphasis on dams as a country, in terms of the allocation and funding. We, as a country, have not put in a lot of effort in terms of allocating money to support dams in this country. We have left it to the churches, the World Bank and donors, to look at the issue of clean water in this country.

I support this Report because if you look at the issue of water, it is the women and the girl child who leaves the comfort of their homes every day, in search of clean water. You will realise that girls and school going children leave schools to go with their *mitungi* to look for clean water. That is a lot of time wastage. I come from the County of Migori. Migori County has also had its own share of problems with water. We have dams in this country but the dams in Migori keep collapsing all the time. People are losing lives and things like that. I think we have a lot of money in this country that goes into other uses. We have not prioritised the need and the use of water in this country, to ensure that every homestead has access to good and quality water.

Hon. Temporary Deputy Speaker, in Kuria East, where I come from, we have dams like Kebarisia Dam. In Nyatike Constituency, which is in my county, we have Gogo Dam. We have another dam in Suna West called Nyamoe Dam. These are dams that have been constructed by the county government; it is also not clear whether they have been constructed by the county government or national Government.

As my colleague, Hon. Were, said, we as a Parliament must ensure that in terms of our national budget, we prioritise the issue of water. Apart from health and education, the third sector that we, as a country, need to focus on is the issue of water. The Ministry of Water, Sanitation and Irrigation must also have a clear budget so that they are also able to deal with our concerns.

We are living during the Coronavirus period. The issue of water becomes extremely important to ensure that families and homes have enough water to sanitise. We cannot talk about sanitisation and cleaning of hands when we do not have enough clean water to use.

The Committee's recommendations to conduct an audit of all the dams in Kenya is important. There are counties or constituencies in this country where you will not find dams.

Community participation is also important. The reason you see construction of dams falling and collapsing is because the community has not been engaged.

We must also stop politicising water in this country. That is why you see the issue of Kimwarer Dam. All the politics and corruption that have got into water are killing the good intentions that we have in terms of water.



The recommendation of having an inter-ministerial committee that does feasibility studies to ensure that the community is benefitting from the various water pans and dams that we have is important. Having said that...

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Very well, Hon. Dennitah. Let us have Hon. Tuitoek Kamuren.

**Hon. Daniel Tuitoek** (Mogotio, JP): Thank you, Hon. Temporary Deputy Speaker for giving me this opportunity. This is a very important Report. From the outset, I support the Report.

The mandate of the Ministry of Water, Sanitation and Irrigation includes creating dams for water storage, water supply, irrigation, sanitation and also control of floods. Listening to my friend Hon. Wamalwa, he over-relied on the National Irrigation Board (NIB) constructing major dams. Major dams fall under the Ministry of Water, Sanitation and Irrigation.

The Report is very good. I have just perused it. Recently, we had problems with big dams because of the financing model. I do not think the design has a problem but we have not enforced the procedures for financing and constructing a dam. The role of the National Environment Management Authority (NEMA) is to ensure that there is a proper design before approving the construction of a dam. If you look at most of the big dams that we have, you will find that the financing model has essentially been EPCF, which refers to Engineering, Procurement, Construction and Financing by a particular financing institution. Therefore, most of the time you find that there is a lot of collusion in terms of the feasibility study and design of a particular dam. This Report has tried to address that. It proposes that we bring all those processes under one roof so that we look at the financing model, design and even the implementation aspect.

The Committee also recommended that the Water Service Boards, which are about eight, should not be the ones constructing those dams. They should only be involved in the last part. I agree with the Report of the Committee.

The major issue is that on the financing model for those dams, the Government should set aside adequate money before constructing the dams. One of the reasons why we compare ourselves with Morocco and others is because most of our projects do not have complete funding. We start a project and say that we shall fund it as we move ahead. That model is not very good and brings in a lot of variation. If you look at Badasa and Umaa dams, you will find that those two big dams have major problems because of the financing model. They do not have adequate funding, and the contractor will not complete work on time. Even Thiba Dam which is under the National Irrigation Board in Mwea has problems of construction. The financing model is not very good. This is partially because the Exchequer comes late and even the aspect of taxation comes in. All these issues need to be looked at carefully before we approve the construction of a dam. We should set aside adequate funds for a particular project so that we reduce variation. If you look at most of those dams, you will find that it is the variation which is messy.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Order, Hon. Kamuren! As you can tell, it is 1.00 p.m. Do not worry. You will have a few minutes. The next time this item is scheduled, you will have two minutes to finish that thought because we must end now. For the Hon. Members whose interest is still clear, the good news is that this item is not done. When the House Business Committee schedules it again, Hon. Members will have an opportunity to speak to it.

**ADJOURNMENT**

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Hon. Members, the time being 1.00 p.m., this House stands adjourned until Thursday, July 30<sup>th</sup> at 2.30 p.m.

The House rose at 1.00 p.m.