

# PARLIAMENT OF KENYA

## THE NATIONAL ASSEMBLY

### THE HANSARD

Wednesday, 30<sup>th</sup> June 2021

The House met at 2.30 p.m.

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

#### PRAYERS

#### PETITION

**Hon. Speaker:** Hon. Members, make your way into the Chamber.

#### HUMAN-WILDLIFE CONFLICT AT MTITO ANDEI AREA

Hon. Members, Standing Order No.225 (2) (b) requires the Speaker to report to the House any Petition other than those presented by Members. Further, Article 119 of the Constitution provides for the right of any person to petition Parliament to consider any matter within its authority, including petitioning the House to enact, amend or repeal any legislation.

Hon. Members, in this regard, I wish to report to the House that my office has received a Petition from a group calling itself “Mtito Andei Disaster Control Self-Help Group” led by one Mr. Abednego Musyoki calling for urgent intervention in the ongoing wildlife crisis in Mtito Andei occasioned by negligence by the Kenya Wildlife Service (KWS).

In their Petition, the petitioners aver that they are farmers specialising in livestock keeping and cultivation of short rain crops such as maize, beans, sorghum, millet and green grams which are, unfortunately, routinely invaded and destroyed by marauding elephants and other wild animals from Tsavo East and Tsavo West national parks. Their livestock are also attacked and eaten by hyenas, leopards, cheetahs and lions, which also inflict serious injuries and even cause death to residents attempting to save their livestock from the wild animals.

Hon. Members, further, the petitioners assert that KWS partners such as David Sheldrick Wildlife Trust, Richard Molla, Kravoss and Marcus Dunn misuse their permits by intentionally releasing wild animals under their care into residents’ farms to ensure that the wild animals access food near Mtito Andei as opposed to venturing deep into the parks in a bid to attract tourists to Mtito Andei market centres. The petitioners claim that the said KWS partners routinely transport wild animals from other parks and dump them into Mtito Andei farms to feast on residents’ harvest, and also regularly beat up area residents without cause despite the presence of local administrators. In addition, the petitioners state that no single Mtito Andei resident has ever received any compensation for farm losses, injuries and loss of lives primarily because their names are deliberately omitted from the KWS compensation data.

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The petitioners seek the intervention of this House in urgently addressing this ongoing crisis by securing the erection of an electric fence from Athi River to Mtito Andei Town, compelling the KWS partners to respect farmlands and to undertake requisite corporate social responsibility, including provision of water to all surrounding towns and villages, securing the degazettement of the Ngai Ndethya Settlement Scheme which is gazetted as a game reserve despite having people living in it, and securing the timely compensation of all affected Mtito Andei residents.

Hon. Members, pursuant to the provisions of Standing Order No. 227 (1), this Petition stands committed to the Departmental Committee on Environment and Natural Resources. The Committee is requested to consider the Petition and report its findings to the House and to the petitioners in accordance with Standing Order No. 227(2).

Thank you.

Do these Members want to make comments? I will give you two minutes each but do not debate.

Member for Mavoko,

**Hon. Patrick Makau** (Mavoko, WDM-K): Thank you, Hon. Speaker. I agree with the petitioners because the issue of human-wildlife conflict is real, particularly with the grazers; the zebras, wildebeests and the dik dik. Most farmers who are bordering the national parks and reserves are really suffering. Every year, Parliament sets aside money for compensation of farmers. Last week, Hon. Pukose woke up to ask a Question on the amount of money that had been spent on compensation. It is very painful and it has cost farmers their livelihoods. Very near here in Mavoko, farmers do not harvest because of the grazers and the KWS must do something to compensate them. With these climatic changes, there is very little that can be salvaged from the farms. It is a national concern when the very little that is harvested is destroyed and farmers are not compensated. The Kamba community relies on agriculture as their main source of livelihood. I want to urge the Committee to ensure speedy compensation to those farmers because if one farmer kills a zebra or even a dik dik, they are sent to jail without recourse. We must have a balance between compensation by the KWS and farmers' benefits. We want to coexist with the animals, but our farms and people are suffering. The Ministry must compensate our farmers.

**Hon. Speaker:** You said that Hon. Pukose woke up!

**Hon. Patrick Makau** (Mavoko, WDM-K): Sorry, Hon. Speaker. I meant he stood up in this House seeking to know how much money has been set aside.

**Hon. Speaker:** Hon. Sankok, are you also waking up?

**Hon. David ole Sankok** (Nominated, JP): Thank you very much, Hon. Speaker. I am not waking up; I have been here. Human-wildlife conflict is there and real. I support the petitioners. In Kajiado, for instance, there is Amboseli National Park. Wild animals get out of Amboseli and invade our farms, kill our people and livestock and yet, it is the national Government that charges park fees. Recently, snake bites were removed from the compensation list by the KWS. We must get serious. For us the Maasai, we know how to live with wild animals. We have been living with them ever since we came to this planet called earth. We have survived with them. We know how to manage them. But we must benefit from them, so that we are tempted to take care of them more than what the law says. That can only be realized if compensation is done timely. If you kill a wild animal, you will be jailed. If you are not jailed, you will be charged a bull or Ksh5 million if you are found with elephant tusks. Yet, when a person is killed, his family is compensated with Kshs50,000. Do we now value wild animals more than human beings? We must be serious as a country. We must value our people.

Thank you very much, Hon. Speaker. I support the Petition. I had also requested Hon. Mbadi to produce Hon. Junet Mohamed alive. He is here alive. Thank you very much. He has been produced.

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

**Hon. (Dr.) Chris Wamalwa** (Kiminini, FORD-K): Thank you, Hon. Speaker, for giving me the opportunity. I think this Petition has been on the Floor of this House in the form of a Question. It has been coming here repeatedly. So, the question is: Does it mean we have not had any commitment from the Executive? I have just come from Arusha and I visited a place called Ngorongoro Conservancy. When we tried to ask about human-wildlife conflict, we realized that there is always civic education offered. When it comes to compensation, it is timely. Maybe, it is the highest time relevant authorities went to Tanzania to learn and benchmark. The level of conflicts there has really been mitigated.

Those farmers rely on the crops for their livelihoods. When wildlife destroys their crops, compensation is not done on time. It is really a big issue. We request the Committee in charge to move with speed. This matter is not coming here for the first time. It has been on this Floor so many times. The matter should be handled once and for all.

Thank you, Hon. Speaker.

**Hon. Speaker:** Indeed, the issue has been raised by Hon. Jessica Mbalu. She is on record on it. So, it is a matter that is true. Let us hear the Member who was said to have woken up, Hon. Pukose.

**Mhe. (Dkt.) Robert Pukose** (Endebess, JP): Ahsante sana, Mhe. Spika. Jambo hili ambapo wanyama wa pori wanavamia na kukula mimea ya wananchi ni jambo ambalo tumelizungumzia sana katika Bunge hili. Hasa, mimi nimezungumza kuhusu eneo Bunge langu la Endebess ambapo tuko na Mbuga ya Wanyama ya Mount Elgon. Jambo ambalo limeniguza katika hii *Petition* ni kwamba wamesema askari wanapiga wananchi. Hiyo ni ukweli kabisa. Kwa hivyo, nataka Kamati inayoongozwa na Mjumbe wa Maara, itakapochunguza hili jambo, tunataka kujua kwa nini askari wa hifadhi za wanyama pori wanashambulia wananchi. Kwa nini wanapiga wananchi? Hilo ni jambo ambalo ni nzito sana. Askari hao hata kule Endebess wamehusika katika kupiga wananchi, hata wamama ambao huenda kuokota kuni wanapigwa. Kwa hivyo, ni jambo ambalo linatafikana kushughulikiwa. Tunataka kujua ni hatua gani Wizara itachukua kwa wale askari wanaopiga wananchi. Sijui kama hiyo pia ni kati ya kazi za kuchunga wanyama ama namna gani. Kamati itakapokaa, tungependa sisi ambao tunaishi karibu na hifadhi za wanyama watuite.

Ahsante, Mhe. Spika.

**Hon. Speaker:** Member for North Imenti.

**Hon. Rahim Dawood** (North Imenti, JP): Thank you, Hon. Speaker. I want to support this Petition. Three months back, I brought a Question which was answered before the Departmental Committee on Environment and Natural Resources. Many a time, compensation is being approved and some requests are being thrown out for reasons which people do not understand. In Meru County, we have claims of over Kshs212 million. From that, only Kshs66 million has been paid. Over Kshs140 million is pending bills. As per what Hon. Duale was saying yesterday, the Treasury and other Ministries need to make a point of paying those pending bills. For how many years will we have those pending claims? People have been killed by wildlife and yet, the claims have not been paid by KWS because of funding or other reasons. Over the past nine years, the only amount of compensation which has been paid is only Kshs1.7 billion whereas the claims amount to more than Kshs5 billion. So, the Budget and Appropriations Committee needs to look at this matter so that people are paid on time.

The other point is that KWS needs to get serious because when people lodge their claims, they are not being told why the claims are rejected. We have to follow up and find out if there are small errors in the claims leading to their rejection. So, I wish to support the Petition and urge the Committee to look into the matter further.

Thank you, Hon. Speaker.

**Hon. Speaker:** Member for Emuhaya.

**Hon. Omboko Milemba** (Emuhaya, ANC): Thank you, Hon. Speaker. This is a matter that has been on the Floor of the House so many times, coming from Members of Parliament representing people around those areas and now from the people themselves. I would wish that, possibly, you empower the Committee, if there are any such powers, like you recently did with the Departmental Committee on Energy. You spoke to them to deliver. Otherwise, this is a matter that is always talked about here. Many a time, I hardly speak on it because I do not come from such areas. But I notice this House will become a talking shop for us to speak and no action is taken. So, if there are such powers, it would be very good to help those people who are affected by human-wildlife conflict.

Thank you, Hon. Speaker.

**Hon. Speaker:** Member for Igembe Central.

**Hon. Kubai Iringo** (Igembe Central, JP): Thank you, Hon. Speaker, for giving me this opportunity. Let me add my voice by saying that I support the Petition. I think we have discussed this matter many times. We have had petitions and questions. Unfortunately, and I remember saying it here another time, there is a problem with KWS. They do not take those compensation requests very seriously. They ask people to fill assessments forms, but the forms are just filed there. The last time I went to Lang'ata to check on forms from my people, they said that they do not receive any budget for compensation. But I told them whatever money they receive from the Treasury, they should set aside some for compensation. The other day, I saw the Cabinet Secretary somewhere in Baringo issuing some compensation money. It does not have to be the Cabinet Secretary paying compensation. It should be by the book and everyone should be compensated.

There is also the issue of snakes. They say that they do not compensate for snake bites because some people keep snakes as pets. So, they would not know whether it is a wild snake or your own snake that bit you. There are so many claims of snake bites from Meru National Park, but KWS says it does not compensate for snake bites. I wonder if snakes are not wild animals. So, the matter should be looked into seriously.

Thank you.

**Hon. Speaker:** Member for Marakwet West.

**Hon. William Kisang** (Marakwet West, JP): Thank you, Hon. Speaker. I also want to make some comments on this particular Petition. We have talked about it several times in this House. We have existed for a long time with wild animals.

However, in the recent past, I do not know what is happening. Our crops, especially those along the riparian line where we are neighbouring the Rimoi Game Reserve, have gotten lost and there is no compensation. I think as a House, what we need to do when appropriating and doing the estimates, is to allocate good money to Kenya Wildlife Service. If it is that Kshs5 million, let us allocate it to them and they pay once and for all. This is so that every year we give an annual estimate of maybe Kshs2.5 billion so that farmers and also those killed by wild animals are given compensation. However, if we only continue to lament and we are the ones appropriating the money, then we are going nowhere.

Therefore, thank you Hon. Speaker.

**Hon. Speaker:** Member for Kangundo.

**Hon. Fabian Muli** (Kangundo, Muungano): Thank you Hon. Speaker for giving me this opportunity to add my voice to this Petition. We have had many petitions and questions on matters of conflict between wildlife and human beings. If you look at our country, we have really gained a lot from tourism in terms of making money through animals. Those animals - the wildlife - are managed by human beings and we are the ones who are gaining and yet, we are unable to manage them. Therefore, this is a problem that is caused by individuals. It is high time that people took their responsibilities seriously. There is no way lions in Nairobi National Park will take care of themselves. The people getting money from the wildlife are the same people who manage the KWS. This is the same way the economy is getting money through tourism. Therefore, we need to add our voices in terms of taking care of our wildlife and trying to solve the conflict between human beings and the animals.

Additionally, in many areas where we have game parks, game wardens do not take care of the animals. They are doing jobs that they are not assigned. In some areas, you get roadblocks erected by Kenya Wildlife Service wardens instead of taking care of animals. Therefore, it is high time this Committee visited all the parks and checked on the responsibilities of the wildlife officers and how they take care of the wildlife.

I support.

**Hon. Speaker:** Member for Nakuru Town East.

**Hon. David Gikaria** (Nakuru Town East, JP): Thank you Hon. Speaker. I rise to support the Petition. However, it is also important for this House to realize the importance of budgets. Irrespective of what we say, the Petition and the recommendations by the Committee, if you remember in the last Parliament, Hon. Amina Abdalla – and I think she was the Chairperson of the Departmental Committee on Environment and Natural Resources - at one point rose on her feet and advised the House that there is nothing much that can be done by the Ministry if there is no budget for that.

Therefore, I think as much as we speak here as Members of Parliament, there is need for us now to increase the money we give to the relevant Ministry. It is unfortunate because the budget-making process has elapsed. Without a budget, the Ministry will be unable to do that. Therefore, I want to believe that it is important for the House, as we discuss, to agree on budgetary matters. Otherwise, without a budget, there is nothing that can be done.

Hon. Speaker, I remember when we were passing the Wildlife and Conservation Act I tried to push for the removal of monkeys. In my constituency at a place called Lakeview, monkeys have become a nuisance and bite people. People have to call KWS. Again, those are some of the things that we need to address. However, without a budget, it will be difficult for us to address them.

Thank you.

**Hon. Speaker:** Member for Kanduyi.

**Hon. Wafula Wamunyinyi** (Kanduyi, FORD-K): Thank you Hon. Speaker. I also wish to support the Petition. As we are all aware, the question of human-animal conflict has been with us for some time. It is important that we come up with a structured manner; a good way of ensuring that we deal with this problem once and for all. It is something that we have seen people around the parks complaining about. Even in Bungoma, animals descend from the Mt. Elgon region, which Hon. Kapondi represents, to destroy food. They steal goats and cows and they also kill people.

The compensation expected has not been forthcoming. We have been told how much has been expended on compensation of people who have suffered loss of property or even injuries. Most importantly again colleagues, we should ensure that the people expected to preserve and protect animals should not harass *wananchi*. They should not go beating up *wananchi* wherever they are. They should help *wananchi*, protect the animals and make them their friends. This is so that they can help in ensuring that this important resource of our country is protected and penetrates the entire country.

I thank you, Hon. Speaker.

**Hon. Speaker:** Hon. Obo Mohamed.

**Hon. (Ms.) Ruweida Obo** (Lamu CWR, JP): Ahsante Mheshimiwa Spika kwa kunipa nafasi hii ya kusema katika hilo Ombi. Ombi hili ni muhimu na naliunga mkono. Kwa hakika, watu wengi wanapata shida pande zote za Kenya. Lamu sisi ndio tuna shida zaidi. Kuna hiyo *park* ambayo iko hapo lakini haitusaidii bali hutuumiza. Afadhali sehemu zingine kama Maasai Mara angalau wanasaidika kwa upande mwingine. Sisi kwetu katika pesa ambazo zimetolewa za malipo, zaidi ya miaka kumi saa hii, zimetolewa milioni sita peke yake na kuna watu wengi wameathirika na wanyama. Kisha wanatumiza zaidi. Sisi ni watu wa bahari. Wanyama karibu wote wa bahari waliwatoa kwenye orodha ya malipo.

Ukienda ukifika baharini ukipigwa na mnyama anayeitwa yeda, haulipwi. Ukipatikana na papa, hulipwi. Na kule tuna wanyama msituni na wanyama baharini. Na saa zingine wanaenda baharini na wanapata hata mamba ndani ya bahari kwa sababu wako karibu na maji ya mto. Kwa hivyo, sisi tuna shida nyingi. Lakini huyu Waziri naye anatoka *Coast* huko lakini hata sijui ni kwa nini huko Lamu amekusahau. Sijui ni kwa sababu vile kuko mbali. Watu wanalipwa na ikibakia kidogo ndio inarushwa Lamu. Nataka Waziri Balala ajue kwamba Lamu ni Kenya na Lamu ni Pwani.

Ahsante, Bw. Spika.

**Hon. Speaker:** The Leader of Majority Party, do I see that you want to, maybe, respond?

**Hon. Amos Kimunya** (Kipipiri, JP): Thank you Hon. Speaker. I actually do not want to respond. I am one of the complainants. I want to join in supporting this Petition and this is because I think KWS needs to come out clearly. It is not only about the budget. They need to come out and tell the people what they are doing. In Kipipiri in the last two months, about 50 animals have been killed by hyenas and KWS appears clueless in terms of what to do and even telling the people what they should do. Now, hyenas are not the kind of wildlife that attracts tourists. Therefore, there is something that is amiss. Either they are overwhelmed or I think as a House we need to also let...

*(A phone rung)*

**Hon. Speaker:** Members, who... Serjeant-at-Arms, can you locate that gadget and confiscate it. Throw it away.

*(Laughter)*

**Hon. Amos Kimunya** (Kipipiri, JP): Sorry about that. I think it just shows how a small irresponsibility can disrupt the whole House. However, the point I was making is that KWS has been mandated to take care of wildlife, protect people and avoid conflict. This is a matter that has been discussed in this House for a long time. However, the fact that we have raised complaints every now and then shows that there is a failure somewhere. Therefore, I would like to urge...

*(The microphone went off)*

My time was taken by the phone. However, as the Committee looks into that specific area, I think they need to look at the generic issue of why there are complaints across the entire country and what needs to be done. That is so that we avoid this issue of farmers losing their livestock and crops to animals and yet, there should be some co-existence organized through an institutional framework with KWS for protecting the wildlife and end its interference with the people. It is painful and I can see the photographs that have been sent showing the animals that have been mauled by those hyenas. It is painful and you can see the people are being deprived of their livestock by those hyenas and there is nothing much they can do. Moreover, KWS seems to be saying: "There is nothing much we can do." Therefore, what are the people supposed to do? I would like the Committee to actually get deeper into that budget. Let them come out and explain to Kenyans what they should do if KWS cannot do anything.

I thank you, Hon. Speaker.

**Hon. Speaker:** Hon. Members, there have been sufficient comments. Let the Petition go to the Committee. I know that there are many others who are willing to comment, especially the Members from Narok. I can see there are very many of you, but this is not a debate. This was merely a time for comments. It is limited. You look at our Standing Orders. In this House, we cannot talk endlessly. We follow the rules.

Next Order.

### PAPERS LAID

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

**Hon. Amos Kimunya** (Kipipiri, JP): Thank you, Hon. Speaker. I beg to lay the following Papers on the Floor of the House:

The Price Stability Target and Economic Policy of the Government for the Financial Year 2021/2022 Budget.

The Report of the Auditor-General's Financial Statements in respect of the TVET Curriculum Development Assessment and Certification Council for the year ended 30<sup>th</sup> June 2020, and the certificate therein.

I thank you, Hon. Speaker.

**Hon. Speaker:** Chairman, Departmental Committee on Transport, Public Works and Housing.

**Hon. David Pkosing** (Pokot South, JP): I thank you, Hon. Speaker. I beg to lay the following Paper on the Table of the House:

Report of the Departmental Committee on Transport, Public Works and Housing on its consideration of a Petition regarding the Approval, Application and Use of New Guild's Low Cost Construction Technology.

I thank you, Hon. Speaker

**Hon. Speaker:** It should be new bills and not the way it is written here.

Next Order.

### NOTICE OF MOTION

**Hon. Speaker:** Hon. Wamunyinyi.

## APPROVAL OF NOMINEES FOR APPOINTMENT TO CONSTITUENCY COMMITTEES

**Hon. Wafula Wamunyinyi** (Kanduyi, FORD-K): Thank you, Hon. Speaker. I beg to give notice of the following Motion:

THAT, pursuant to the provisions of Section 43(4) of the National Government Constituencies Development Fund Act, 2015 and paragraph 5 (2) and (10) of the National Government Constituencies Development Fund Regulations 2016, this House approves the list of nominees for appointment to the following two constituency committees of the National Government Constituencies Development Fund, laid on the Table of the House on Tuesday, 15<sup>th</sup> June 2021:

- (i) Kipipiri Constituency.
- (ii) Matungu Constituency.

I thank you, Hon. Speaker

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

## QUESTIONS AND STATEMENTS

**Hon. Speaker:** I have got the first segment and there has been a special request made by the Hon. Member for Kwanza to be allowed to ask his Question first. The request has been granted.

Let us have Hon. Wanyonyi

## ORDINARY QUESTIONS

*Question No.219/2021*

## STATUS OF DE-SILTATION OF DAMS IN KWANZA CONSTITUENCY

**Hon. Ferdinand Wanyonyi** (Kwanza, FORD-K): Hon. Speaker, I wish to ask the following Question to the Cabinet Secretary for Water, Sanitation and Irrigation.

- (i) Could the Cabinet Secretary provide the status of de-siltation of Kapsito, Aseka and Marinda dams in Kwanza Constituency?
- (ii) What other projects has the Ministry planned regarding construction of dams and water pans in Kwanza Constituency so as to provide water for irrigation and household use?

I thank you, Hon. Speaker

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

We revert to the order. Next Question is by the Member for Konoin.

*Question No.207/2021*

## MEASURES TO ADDRESS THE PLIGHT OF TEA PLUCKERS IN KERICHO AND BOMET

**Hon. Leonard Yegon** (Konoin, JP): Thank you, Hon. Speaker. I beg to ask the following Question to the Cabinet Secretary for Labour and Social Protection:



- (i) Could the Cabinet Secretary state the immediate plans put in place by the Ministry to address the impending retrenchment of over 50,000 tea pluckers in Bomet and Kericho counties in view of the introduction of mechanisation of tea plucking by multi-nationals such as M/s. Unilever Tea (K) Ltd, James Finlay (K) Ltd. and Williamson Tea (K)?
- (ii) What measures has the Ministry put in place to ensure that the implementation of the planned mechanisation does not lead to the collapse of the Small and Medium Sized Enterprises (SMEs) and the overall economy of the region?
- (iii) What steps has the Ministry taken to safeguard the production of high quality tea in the region, considering that the hand plucked tea is of superior quality and fetches higher prices as compared to the mechanically plucked product which is said to be of low quality?
- (iv) What mitigation steps, if any, has the Ministry caused the multi-nationals firms to put in place so as to protect the health of tea workers given the health risks posed by excessive and continuous exposure to hazardous fumes emitted by the tea plucking machines and continued use of the machines?

I thank you Hon. Speaker.

**Hon. Speaker:** The Question will be replied to before the Departmental Committee on Labour and Social Welfare.

Next Question is by the Member for Belgut, Hon. Koech.

*Question No. 211/2021*

POLICY GOVERNING FORM ONE ADMISSION

**Hon. Nelson Koech** (Belgut, JP): Thank you, Hon. Speaker. My sincere apologies. This Question has come up twice and I have not been there. I apologise.

I wish to ask the following Question to the Cabinet Secretary for Education:

- (i) With regard to the recent Form One intake, could the Cabinet Secretary explain the policy pertaining to students who are unable to travel to the secondary schools of their admission due to long distance, and what is the role of the schools' management on such admissions?
- (ii) Could the Cabinet Secretary further consider advising all county and sub-county schools to admit students who are within their locality but are unable to travel to schools in distant areas?
- (i) (iii) What measures has the Ministry put in place to address the huge number of students admitted to secondary schools which lack necessary infrastructure to accommodate the expansion, particularly students admitted to Belgut Starehe Boys and Belgut Starehe Girls considering that those are special schools initially meant for orphans and needy students from within Belgut Constituency?
- (iii) What immediate steps has the Ministry taken to ensure that huge number of students admitted to Belgut Starehe Boys and Belgut Starehe Girls are provided with the necessary facilities in form of dormitories, classes and teaching staff?

I thank you Hon. Speaker

**Hon. Speaker:** Question to be replied to before the Departmental Committee on Education and Research. Next Question is by the Member for Changamwe. Hon. Omar Mwinyi.

*Question No.216/2021*

## REVIVAL OF AKAMBA HANDICRAFT AND SOAPSTONE CARVING INDUSTRY

**Hon. Omar Mwinyi** (Changamwe, ODM): Thank you, Hon. Speaker. I wish to ask the following Question to the Cabinet Secretary for Tourism and Wildlife: What measures has the Ministry put in place to revive the Akamba Handcraft Industry and Soapstone Carving Business which is on the verge of collapse due to the myriad of challenges facing the cottage industry?

I thank you, Hon. Speaker.

**Hon. Speaker:** The Question will be replied before the Departmental Committee on Sports, Culture and Tourism. Next Question by the Member for Mwingi West, Hon. Charles Ngusya.

*Question No.217/2021*

## STEPS TAKEN TO UPDATE THE ELDERLY CASH TRANSFER PROGRAMME DATABASE RECORD

**Hon. Charles Nguna** (Mwingi West, WDM-K): Thank you, Hon. Speaker. I wish to ask the following Question to the Cabinet Secretary for Labour and Protection:

- (i) Could the Cabinet Secretary explain why the Elderly Persons' Cash Transfer Programme database record has not been updated since 2017 in Mwingi West Constituency?
- (ii) What urgent steps is the Ministry taking to rectify errors, update databases and synchronise all data following the migration from manual exercise to the new bank card-based payment, including reinstatement of more than 176 beneficiaries who were left out during the 2018 migration?
- (iii) Could the Cabinet Secretary state the amount of money allocated to the said programme with respect to Mwingi West Constituency during the Financial Years 2016/2017, 2017/2018, 2018/2019, 2019/2020 and 2020/2021 and explain how the funds were utilised?

I thank you, Hon. Speaker.

**Hon. Speaker:** The Question will be replied to before the Departmental Committee of Labour and Social Welfare. The last Question by the Member for Rabai. Hon. Kamoti Mwamkale.

*Question No.218/2021*

## STATUS OF CONSTRUCTION OF MZIMA II WATER SUPPLY PROJECT

**Hon. William Mwamkale** (Rabai, ODM): Thank you, Hon. Speaker. I rise to ask Question No.218/2021. My Question is directed to the Cabinet Secretary for Water, Sanitation and Irrigation.

- (i) What is the status of construction of Mzima II Water Supply Project and when is it expected to be completed considering the dire need of water supply in Rabai Constituency and surrounding areas?

- (ii) Could the Cabinet Secretary explain whether there are any other plans to expand the capacity of old Mzima Water Supply Project in Rabai Constituency, which was constructed before independence and can barely support the current population?
- (iii) Could the Cabinet Secretary also explain the status of completion of Mwache Dam in Kwale County, which is expected to serve the residents of Kwale, Mombasa and Kilifi counties?

**Hon. Speaker:** The Question is directed to the Departmental Committee on Environment and Natural Resources. Very well. Members, we move to the next segment of that Order, which is Requests for Statements. We start with the request from Hon. Godfrey Osotsi.

## REQUESTS FOR STATEMENTS

### STATUS OF COVID-19 VACCINATION IN THE COUNTRY

**Hon. Godfrey Osotsi** (Nominated, ANC): Hon. Speaker, pursuant to Standing Order 44(2)(c), I wish to request for a Statement from the Chairperson of the Departmental Committee on Health regarding a comprehensive vaccination plan against COVID-19 Pandemic.

Hon. Speaker, COVID-19 Pandemic continues to cause significant negative impact to the Kenyan economy that has led to massive job losses, unemployment, poverty, collapse of businesses and loss of lives particularly in western Kenya, where we have an average of five funerals in a village per week. This has raised concerns about the containment measures as well as the efficiency and accuracy of the testing kits in light of the new COVID-19 variant.

Kenya has received about 1.02 million doses of the AstraZeneca Oxford COVID-19 Vaccine through the COVAX programme that mainly targeted health workers, older people and individuals with underlying health conditions, representing approximately 3 per cent of the population. However, the number of vaccines received is far below the targeted population. Globally, vaccination is now the most strategic measure to contain and manage the spread of the virus. The first vaccination phase was not done systemically to cover the categories that are vulnerable, thus exposing them to further danger.

Hon. Speaker, it is against this background that I seek a Statement from the Chairperson of the Departmental Committee on Health on the following:

- (i) Could the Chairperson explain the status of COVID-19 vaccination in the country, indicating the number of Kenyans vaccinated per county and to what extent county governments are involved in the vaccination programme?
- (ii) Could the Chairperson explain the measures put in place to ensure efficiency and accuracy of the testing kits in light of the new COVID-19 variant?
- (iii) Could the Chairperson provide the death rates since the outbreak of COVID-19 and whether the Government is aware of the increasing cases of death and burials in the rural areas that are related to COVID-19 symptoms?
- (iv) Could the Chairperson explain the cost-benefit analysis of the containment measures towards the economy?
- (v) Could the Chairperson provide timelines set by the Government in order to achieve a target of 100 per cent vaccination?
- (vi) What diplomatic strategies has the Government deployed to source for more vaccines from its allies or partners?

Thank you, Hon. Speaker.

**Hon. Speaker:** Is the Chair of the Departmental Committee on Health present or the Vice-Chair? Your request will be channeled through the Office of the Leader of the Majority Party. Next is the request by the Member for Kuresoi South, Hon. Joseph Kipkosgei.

LIFTING OF CAVEATS ON TITLE DEEDS OF FORMAL SETTLEMENTS  
WITHIN MAU FOREST COMPLEX

**Hon. Joseph Kipkosgei** (Kuresoi South): Hon. Speaker, pursuant to the provisions of Standing Order No.44(2)(c), I rise to request for a Statement from the Chairperson of the Departmental Committee on Lands regarding the caveat imposed on the title deeds of formal settlements within the Mau Forest Complex, Kuresoi South Constituency.

*(Hon. John Kiarie crossed the Floor without bowing)*

**Hon. Speaker:** Hon. Kiarie, what have you done? You walked from there, crossed this way and now you are crossing again. This is the Floor of the House.

Proceed, Hon. Kipkosgei.

**Hon. Joseph Kipkosgei** (Kuresoi South): Hon. Speaker, in 2003, the Government imposed a caveat on the title deeds of formal settlements within the Mau Forest Complex affecting residents with valid land ownership deeds. The affected areas cover above 67,500 acres of land in Olenguruone, Kiptagich, Tinet and some parts of Keringet Ward areas rendering the said title deeds worthless for any financial or any other transactions as well as public and private infrastructural developments. This has adversely affected the socio-economic and physical developments in the region, particularly those who depend on loans from financial institutions to grow and develop agribusiness.

Hon. Speaker, it is on this background that I seek a Statement from the Chairperson, Departmental Committee on Lands on the following:

- (i) Could the Chairperson explain the circumstances that led to imposing of caveat title deeds for over 67,500 acres of land, in Olenguruone, Kiptagich, Tinet and some parts of Keringet Ward areas in Kuresoi South Constituency?
- (ii) What urgent steps is the Government taking towards lifting of the said caveat considering that it has negatively affected the socio-economic developments in the region, particularly those who depend on loans from financial institutions to grow and develop agribusiness?

Thank you, Hon. Speaker.

**Hon. Speaker:** Certainly, the Chairperson of the Departmental Committee on Lands is not in the House. Who is the Vice-Chair? Does that Committee have a Vice-Chair? It is Hon. Khatib Mwashetani. Now that both are absent, let the request be channeled through the Office of the Leader of the Majority Party. The next request is by the Member for Isiolo, Hon. Rehema Jaldesa.

MEASURES TO ADDRESS BANDITRY ATTACKS IN ISIOLO COUNTY

**Hon. (Ms.) Rehema Jaldesa** (Isiolo CWR, JP): Thank you, Hon. Speaker. Pursuant to Standing Order No.44(2)(c), I seek to request for a Statement from the Chairperson of the Departmental Committee on Administration and National Security regarding the resurgence of banditry attacks and killings in Isiolo County.

Hon. Speaker, the insecurity situation in Isiolo County has escalated and reached alarming levels. The residents of Isiolo County can no longer participate in meaningful economic activities due to fear of banditry attacks. The attacks have resulted in loss of lives, loss of livestock and destruction of property. Over the last one month alone, several incidences have been reported to authorities but no action has been taken by the Government. The incidences are as follows:

1. On 1<sup>st</sup> June 2021, a raid took place at an area called Chaffa Gafarsa where 500 goats belonging to one Sugow Mohamed were stolen.
2. On 12<sup>th</sup> June 2021, a raid took place at the same area where five persons namely Idriss Godana, Galgalo Wario, Abdulahi Nuno, Ali Yarrow and Abdikadir Nurrow were killed and 800 goats belonging to Nurrow Kullow and Galle Bulle were stolen.
3. On 12<sup>th</sup> June 2021, five people were killed in an attack at Buffalo Springs.
4. On 23<sup>rd</sup> June 2021, another attack took place at a place called Mado Wale where five people, including three women, were killed. Those people are Hadija Kosar, Sharu Boru, Molle Hussein, Shararo Abdi and Abdiaziz Adbi. They were killed and a generator was burnt to ashes.
5. On the same day, another raid took place at an area called Kom where 60 goats belonging to one Guyo Bagaja were stolen.
6. On 25<sup>th</sup> June 2021, another raid took place at a place called Boji Dera where one person namely Alio Mohamed was killed and three people namely Ali Adan, Yussuf Wario and Rashid Roba were injured.

Hon. Speaker, the continued laxity by the security agencies in Isiolo County and its neighbouring counties has seen loss of many lives and livestock, which is a source of livelihood for the majority of the population. Therefore, urgent intervention from the Government is required to end those clan attacks. It is against this background that I seek a Statement from the Chairperson of the Departmental Committee on Administration and National Security on the following:

1. What measure is the Government taking to address the resurgence of raids and banditry in Isiolo County?
2. What efforts are being put in place to arrest the perpetrators of the recent attacks and recover the stolen animals?

Hon. Speaker, we know those attacks are well planned, coordinated and even at some point, financed by the Government. Therefore, our heart is bleeding.

**Hon. Peter Kaluma** (Homa Bay Town, ODM): On a point of order, Hon. Speaker.

**Hon. Speaker:** What is the point of order, Hon. Kaluma?

**Hon. Peter Kaluma** (Homa Bay Town, ODM): Hon. Speaker, the Whip of the Majority Party was consulting and I know this might not have attracted your attention. The honourable Member has mentioned that the attacks, the subject matter of the Petition out of the request for statement, are being organized and funded by the Government, and she is asking this question to the Government. Could such details be given if they exist? She has said that the Government is funding and perpetrating the attacks, the subject matter of the Petition.

**Hon. Speaker:** So, the response will be that the Government is not. The point Hon. Kaluma is making is if you expect the Statement then to come from Government and you have said the Government is the one that is organizing, then the Government will just give an answer that the Government is not organising. Hon. Jaldesa, you addressed quite a number of serious incidences and I thought they would require very detailed responses. But you know, sometimes, we are also the authors of our own misfortunes occasionally and, maybe, inadvertently. Had you finished your

request or you already knew the answer that the Government is the one that is funding, in which case then there is no need of making the request?

**Hon. (Ms.) Rehema Jaldesa** (Isiolo CWR, JP): Hon. Speaker, I did not blame the entire Government, but I said there is one well known person who is behind the organization, mobilisation and funding of the killing of my people. That is what I want the Government to investigate. When they do that, they will know. Otherwise, there is no way in a span of about five days, the County of Isiolo will lose more than 15 people. It does not make sense. So, I want the Government, through the Chair, to investigate and if possible, I would like to be present on the day when this request will be responded to so that I can ask further questions.

Hon. Speaker, you know I am very emotional because those killings happen even to women and people I know, and who are innocent.

**Hon. Speaker:** Hon. Jaldesa, you have a reason to be emotional but you know some of those long faces, leading questions, misleading and supplementary questions can sometimes put us into some trouble. Hon. Jaldesa, you have sought a request for a Statement. Unless your request is such that you would want the Cabinet Secretary responsible for Administration and National Security to appear before the Committee and not give the Chairman a written response... Hon. Jaldesa, perhaps you could say something.

**Hon. (Ms.) Rehema Jaldesa** (Isiolo CWR, JP): Hon. Speaker, in the interest of the number of people involved, I would really appreciate your kind intervention if the Cabinet Secretary could appear before the Committee so that I can also get an opportunity to sit through and listen and, if possible, even substantiate some of the things I have said. Remember I said this is well coordinated, planned and organized.

**Hon. Speaker:** Let me help you. This issue touches on the loss of human lives and I think that, in itself, is a serious matter because the Statement you sought was under Standing No.44 (2) (c). I think we should convert this into a Question under Standing Order No. 42. The details you have given should be converted into a Question, so that the Cabinet Secretary appears to respond. You will be notified of the day and time so that then you can shoot supplementary questions. There will be no need for you to make substantiations because then you will have taken it upon yourself to respond. But in the supplementary of course, you can make all the allegations or statements desiring a response from the Cabinet Secretary. I think that will assist that situation because it is a grave one. It is not a light matter that about 15 lives have been lost. So, that request for Statement should be converted into a Question.

Hon. Mwathi, that is converted into a Question and the Cabinet Secretary should appear and respond, so that the matter can be better interrogated. We may get a written answer and there will be so many supplementary questions that may not be responded to in the House.

Hon. Mwathi.

**Hon. Peter Mwathi** (Limuru, JP): Thank you, Hon. Speaker. I sympathise with the Hon. Member for the loss of lives and theft of livestock. At the same time, I want a direction from you whether the Statement that has been sought now stands as a Question or she needs to rephrase it in terms of the various questions that she needs addressed so that then, as you have rightly said, the Cabinet Secretary will appear before the Committee and she will have time to give details. I just wanted that clarification.

**Hon. Speaker:** I have said that it be converted from a Statement request into a Question so that staff will now redraft it as a Question directed to the Cabinet Secretary under Standing Order No.42 as opposed to request for a Statement under Standing Order No. 44 (2) (c).

*(Hon. Omar Mwinyi rose on a point of order)*

**Hon. Speaker:** No! There is nothing out of order. We are still in the process of... A point of order is not an occasion for people to start raising issues about everything under the sun. There must be something which is not in order. Now, whatever I have done is within my power under Standing Order No. 1, because it is not provided for. It was first styled as a request for a Statement under Standing Order No. 44 but, listening to the issues the Hon. Member has raised, I feel that the issues can be best addressed in a question-answer session at which the Cabinet Secretary is present and responding. Hon. Mwinyi, there is nothing out of order with that.

*(Hon. Omar Mwinyi spoke off-record)*

Just relax. We are not engaging in an argument. The next request is by Hon. Peter Kaluma.

STATUS OF SIX JUDGES RECOMMENDED FOR APPOINTMENT  
BY JUDICIAL SERVICE COMMISSION

**Hon. Peter Kaluma** (Homa Bay Town, ODM): Thank you very much, Hon. Speaker.

Hon. Speaker, pursuant to Standing Order No. 44(2) (c), I wish to request for a Statement from the Leader of the Majority Party regarding the status of the appointment of Justice Weldon Korir, Justice Aggrey Muchelule, Justice Joel Ngugi, Justice George Odunga, Mrs. Judith Omenge and Mr. Evans Makori who were recommended to be appointed to the Court of Appeal and other superior courts.

**Hon. Speaker:** Your request may be directed to somebody who may not ...

**Hon. Peter Kaluma** (Homa Bay Town, ODM): It is very critical.

**Hon. Speaker:** The Leader of the Majority Party, he has said the request is directed at you. I can see the Member for Mumias East is...

**Hon. Peter Kaluma** (Homa Bay Town, ODM): Hon. Speaker, for his sake, I will repeat.

Hon. Speaker, pursuant to Standing Order No. 44(2) (c), I wish to request for a Statement from the Leader of the Majority Party regarding the status of the appointment of Justice Weldon Korir, Justice Aggrey Muchelule, Justice Joel Ngugi, Justice George Odunga, Mrs. Judith Omenge and Mr. Evans Makori who were recommended to be appointed to the Court of Appeal and other superior courts.

Hon. Speaker, Article 172 of the Constitution provides for the functions of the Judicial Service Commission, the principal of which is to recommend to the President persons to be appointed as judges. Article 166(1)(b) obligates the President to appoint judges of the superior courts in accordance with the recommendations of the Judicial Service Commission.

Hon. Speaker, on 3<sup>rd</sup> June 2021, His Excellency the President of the Republic of Kenya appointed 34 Judges out of the 40 Judges recommended to him for appointment by the Judicial Service Commission.

Hon. Speaker, it is noted that six persons were not appointed by the President including: Justice Weldon Korir, Justice Aggrey Muchelule, Justice Joel Ngugi, Justice George Odunga, Mrs. Judith Omenge and Mr. Evans Makori for no stated reasons. While risking judicial independence and the rule of law, this omission is hurting the career of the affected persons while undermining the administration of justice by the courts in which some of them serve.

Hon. Speaker, it is against this background that I seek a Statement from the Leader of the Majority Party on the following:

- i. Reasons for the failure by His Excellency the President to appoint the six persons recommended for appointment as Judges of the Court of Appeal and other superior courts by the Judicial Service Commission; and,
- ii. Action being taken by the Government to ensure the appointment of the said six persons to serve as Judges in the Court of Appeal and other superior courts in accordance with the Constitution.

I, thank you, Hon. Speaker.

**Hon. Speaker:** The Leader of the Majority Party, the request is directed to you. I do not know how soon you want to...

**Hon. Amos Kimunya** (Kipipiri, JP): Thank you, Hon. Speaker. I have listened to Hon. Kaluma. I will make the necessary consultations and bring the Statement within the next two weeks.

*(Technical hitch)*

**Hon. Speaker:** I suspect that Hon. Kaluma is happy. There is a small challenge here. The IT people, give Hon. Kaluma the microphone.

**Hon. Peter Kaluma** (Homa Bay Town, ODM): Thank you, Hon. Speaker. This is a very serious matter. I would have wished for a shorter time than two weeks. Some of us still go to court. The administration of justice, particularly in those courts being presided over by persons sitting as judges within this group, is so badly affected. Just a short while ago, I was before one of those judges and a person who did not want to proceed just shot up and said: "I want you to recuse yourself. No ground. The President did not appoint you". It gets that embarrassing. It is unjustly denying the due administration of justice because of the consultations involved and the level where they will be undertaken.

I will accept two weeks but it should be noted that this request is going to what the Government is doing, not just the Executive. I expect a response bringing together what even as an institution, as Parliament, we can do to mediate over that matter. It is something that is adversely affecting the rule of law and administration of justice. I will go by the two weeks. I am happy the Leader of the Majority Party takes this matter seriously, given its weight.

**Hon. Speaker:** Of course, I suspect there could be *sub judice* appearing in that matter, if we all live in this country.

**Hon. Peter Kaluma** (Homa Bay Town, ODM): We will see when it gets there.

**Hon. Speaker:** I suspect that, since we all live in this country. Even as they sort out the technical hitches, the next one is a Statement which was sought by the Member for Dagoretti South regarding the status of the 100 stimulus package that was allocated... Is it 100? The way staff write these things, I do not know! Can you get the staff who are writing these things? They all need to leave. This is not right. I will have them sacked. They cannot write something like this for me. What is: "Status of the 100 stimulus?" Even whoever approved this to come to me, what is 100 stimulus? How can people in the Directorate of Legislative and Procedural Services write this?

Sorry! The Statement is on the status of the 100 million - I do not know a million cows or a million goats, again - stimulus package allocated to artists to cushion them against the COVID-19 pandemic.



Hon. Patrick Makau, the Chair of the Committee, I have looked at this response. It is 30 pages. Just give us the highlights. I hope you have given Hon. John Kiarie a copy so that you can just give us the highlights. If we waited for you to read through the entire 30 pages, we will be here until the cows come home.

**Hon. Patrick Makau** (Mavoko, WDM-K): Hon. Speaker, I have done so.

**Hon. Speaker:** Just give us the highlights.

STATUS REPORT ON STIMULUS PACKAGE TO CUSHION  
ARTISTES AGAINST EFFECTS OF COVID-19 PANDEMIC

**Hon. Patrick Makau** (Mavoko, WDM-K): Hon. Speaker, on 9<sup>th</sup> June 2021, pursuant to Standing Order No.44 (2) (c), the Member for Dagoretti South, Hon. John Kiarie *alias* KJ, sought a Statement from the Chairperson of the Departmental Committee on Sports, Culture and Tourism regarding the status of Kshs100 million stimulus package allocated to cushion artists and musicians during the COVID-19 Pandemic period. In particular, the Member sought the following information:

- (i) a list of all artists, actors and musicians who benefitted from Kshs100 million stimulus package;
- (ii) the criteria used to shortlist the participating artists;
- (iii) a detailed breakdown of how the stimulus package was utilised and disbursed, indicating the amount paid to each artist and other contracting agencies or individuals; and,
- (iv) establish whether the Fund achieved the intended purpose of supporting the artists whose trade was adversely affected during the pandemic.

Hon. Speaker, as regards parts (i) and (iii) of the Statement request, I hereby table the list of the artists, actors and musicians who benefitted from the Kshs100 million stimulus package and the detailed breakdown as requested – that is Annexure 3. Indeed, I need to indicate that the Member has been furnished with copies of the same.

*(Hon. Patrick Makau laid the document on the Table)*

I wish to notify the House that the Kshs100 million was disbursed and because you have asked me to give the highlights, that money was disbursed to different State departments as follows:

- (i) the State Department of Culture, Kshs18,780,000;
- (ii) the Permanent Presidential Music Commission, Kshs32, 950,000;
- (iii) the Kenya Film Commission, Kshs8,500,000;
- (iv) the National Museums of Kenya, Kshs21,400,000;
- (v) the Kenya Cultural Centre, Kshs18,120,000; and,
- (vi) the headquarters remained with a balance of Kshs50,000.

In total, Kshs100 million was disbursed.

Hon. Speaker, the Hon. Member wanted to know the criteria used. First, it is important for Members to know that there was *Culture TV* which was introduced to reach all artists. There were also *webinars* which were established. There were *hashtags* of all sorts that were given out by the Ministry to make sure that every Kenyan got the information. The Ministry said that the eligibility criteria developed by the departmental committee required that the applicants:

- (a) must be Kenyans with an identity card (ID) or a passport;
- (b) each artist must have submitted their profile with proof of artistic endeavours in the last six months; and,
- (c) they must not have been a beneficiary of any other funding released by the Government to fight the COVID-19 Pandemic.

Such funding was not limited to artists paid by the Collective Management Organisations (CMO) and cash transfers to the elderly, youth or women. The messaging was to revolve around the Government and the World Health Organization's measures to contain the spread of the COVID-19. The classes which were considered were visual arts, comedy and all other artistes who had applied.

In Question 4, the Member wanted to know whether the stimulus package achieved its mandate or intended purpose of supporting the artistes. It did as per the attached list that was given by the Ministry. I will table it in the House. I am sure once the Member goes through the list, his question will be answered.

As a Committee, we checked on how the funds were disbursed. As usual, most Kenyans never got the information, either because they are in remote areas or did not know about the funds. However, after questioning the Ministry and the relevant agencies that were involved, they alluded to the fact that they passed on the information and were sure that every artiste who applied received the same amount.

With your permission, allow me to table the recipients from each sector that I mentioned before. They have been annexed according to the different categories from one through to five. With your permission, allow me to table this, so that any Member who may have questions can get a copy of the list from the Table Office.

**Hon. Speaker:** Very well. Let us have Hon. Kiarie.

**Hon. John Kiarie** (Dagoretti South, JP): Thank you very much, Hon. Speaker. I would like to first thank the Committee, under the leadership of *Mheshimiwa* and the Members, for the quick response.

The reason why I sought this Statement is because the intent of the Kshs100 million stimulus package was to shield and cushion artistes during the pandemic period. As we all realise, the pandemic, lockdowns and curfews are still here with us. That means that the people who were working in the hospitality industry, the entertainment industry, visual or performing artistes are still out there in the cold not working. For the Ministry to respond and tell us that the intended purpose has been achieved is to not be very generous with the truth. I received a very voluminous response and I am still combing through the documents, up to and including a number of artistes who are said to have been paid.

More importantly, during this exercise of the disbursement of the Kshs100 million, there are many questions that still remain unanswered. First, how do we identify an artiste in this country? What qualifies one to be an artiste? Secondly, does such a database exist? If such a database existed, we would have gone back to the Ministry and said that out of all these people, the beneficiaries were the ones that you have listed.

Finally, and most importantly, so that it does not find itself in a similar situation, the Ministry will need to do the hard work. The hard work includes putting up an intellectual properties policy. We can make laws here like we did with the amendment of the Copyright Act, however, the laws should follow policy. We are putting the cart before the horse. Until we have an intellectual properties policy, we shall still be grappling in the dark on matters to do with performers.

I would like to authoritatively say that the intent that was envisioned by the Head of State in giving this cushion to artistes was not achieved. The Kshs100 million is a drop in the ocean for the hundreds of thousands of artistes who are suffering right now in the prevailing COVID-19 situation.

We will take up the follow-up issues through the necessary channels because the Ministry has given us a response. We will take up the other questions through the relevant channels. Much appreciated, Hon. Speaker.

**Hon. Speaker:** Very well. Hon. Pukose, are you also a performing artiste?

**Hon. (Dr.) Robert Pukose** (Endebess, JP): Thank you, Hon. Speaker. Whenever many of us drive along the roads, we see some performing artistes trying to earn a living in one way or another. Those people have been reduced to beggars yet they were earning their livelihoods in clubs and other places where they used to perform.

I listened to the response from the Chair and he said that Kshs32 million went to the Permanent Presidential Music Commission. That is the bulk of the money. When you look at the division amongst the various groups, those are corporations that have budgetary allocations within the National Treasury. Did this money really reach the performing artistes? Previously, those artistes were getting a lot of money. They could pay their rent, take their children to school and feed themselves. Now they have been reduced to performing on the roads, so that they can get our sympathy. It is something that touches all of us as Kenyans and human beings. The President should still do something that can reach those people. That is my prayer.

**Hon. Speaker:** Why are you raising your hand or finger, Hon. Shamalla?

**Hon. (Ms.) Jennifer Shamalla** (Nominated, JP): Thank you, Hon. Speaker. I am not sure if the Statement pointed it out, but I heard Hon. Kiarie talk about databases. What is clear is that we have databases under the name collective management organisations (CMOs). Those CMOs are for producers, performers and various artistes. It would be interesting to know what proportion of the money went to the registered artistes under those listed categories and whether the artistes are registered in those various organisations. I am not sure whether the Statement captured that. That would also be a very important aspect. Which formula or methodology did the Ministry use? Did they liaise with the CMO or societies?

**Hon. Speaker:** There is another Member who is raising his hand up. I will deal with the ones who know how to use the gadgets. Those who are raising their hands up, please, learn. I told you it takes a very short time to learn how to use the gadgets. Now you have your fingers and hands up. That is not the way you catch my eye. Do not raise your hands up.

Let us have Hon. Wanga. What is the problem with the microphones?

*(Technical hitch)*

**Hon. (Ms.) Gladys Wanga** (Homa Bay CWR, ODM): It is on, but it is not working.

Thank you, Hon. Speaker. I thank Hon. K.J for bringing up this issue of artistes and how they shared in the stimulus package. I thank the Chairman for that response.

We need to do more in support of our artistes. It is just the other day that we were speaking about the issue of performing artistes, especially musicians. They create content and then it is used as ring back tunes such as the *skiza tunes* that we have on our phones. However, the sharing formula is such that the artistes get peanuts while the communications companies get almost three or four times more than what the artistes, who are the content creators, get.

As we move forward, this House needs to take this matter of the artistes seriously and do as much as possible to support them. We will be moving forward to bring amendments to the Copyright Act, so that artistes get their fair share when they put in effort.

**Hon. Speaker:** I can see that the Member for Funyula wants to weigh in.

**Hon. (Dr.) Wilberforce Oundo** (Funyula, ODM): Thank you, Hon. Speaker.

**Hon. Speaker:** The Member for Gatanga does not know how to use the intervention button. He just walked on his two feet without the card.

**Hon. (Dr.) Wilberforce Oundo** (Funyula, ODM): I must commend my colleague, Hon. K.J., for bringing this issue. Those of us who interact with the youths from our constituencies who are performing artists know that they are really suffering. Their audience is mostly live performances. They deal with social events like weddings and churches where they get some little stipend or money to support their lives.

The Kshs100 million stimulus package that was provided is truly a drop in the ocean. I suppose and trust that in the fullness of time, the Budget and Appropriations Committee and the relevant committee will consult further with the relevant ministry to see what we can do to support the performing artists. I know there is a programme in the Ministry about recording and doing those kinds of things. However, it is underfunded and unable to reach all parts of the country. We hope that the relevant departmental committee will address and look into this issue with time.

Thank you, Hon. Speaker.

**Hon. Speaker:** I can see the Member for Gatanga has been shown it is done.

**Hon. Joseph Nduati** (Gatanga, JP): Thank you very much, Hon. Speaker for giving me a chance to make my contribution. You are a great beneficiary of our cash crop which is music.

*(Laughter)*

Gatanga is known for producing a great number of musicians from Central Province. We have over 3,000 registered musicians. We have produced great stars like the late John De' Mathew, Peter Kigia, Timona Mburu, Kariuki wa Kiarutara, Daniel Kamau (DK), Wamuge, Gachathi wa Thuo, Njeri wa Gatanga and Kui K.

When these payments were made, I want to confess that people did not benefit. I have looked at the list which was given by the Chairman of the Committee and I have seen all the musicians who were paid Kshs10,000. They should have categorised them. When the President said that Kshs100 million should be paid to the musicians, some people, including some of our friends, recorded a song the next morning. I can see them in the list which is not fair. As Hon. K.J. said, the Ministry does not have any data of the musicians. When I met with the musicians from my place, they told me that they did not receive anything, apart from two. That is very unfair. I can see the list has been spread to far-flung places where we do not have musicians. They continue to suffer a lot. With the closure of bars, they do not perform *mugithi*. Our people are really suffering.

As we come up with our COVID-19 protocols, we should find a way to assist the artists. I would like to request the Ministry of Health to allow some of these people to perform during lunch time up to about 7.00 p.m. They have nothing to eat. They invested their lives to produce music which entertains you. When you went to the Mukurwe wa Nyagathanga Shrine the other day to be crowned as a Kikuyu elder, it was unfortunate that we did not entertain you. When you go to a forest somewhere next time, make sure you invite us, so that we can entertain you.

With those few remarks, thank you very much.

*(Laughter)*

**Hon. Speaker:** Member for Kilifi North.

**Hon. Owen Baya** (Kilifi North, ODM): Thank you. We will also invite you, Hon. Speaker. The closure of entertainment places and the way our artists are treated have made them beggars.

Where I come from, we have Watamu Town, which is an entertainment town. It is completely dead today. Tourists are not there. The bars are closed. Local tourists who go to that town are not there. The Leader of the Majority Party remembers Mtwapa Town, but my focus is on Watamu Town.

*(Laughter)*

The Kshs100 million was supposed to be given to the artists. I remember a team from the President's Office came to my town and talked about Kshs100 million. The leader of the team was Mr. Big Ted. They stayed there and talked to the young people. They left without giving them even a shilling and yet they had said they had brought Kshs100 million. It created a lot of excitement in the town. The artists were there. They planned to go and perform to get the money. However, they were not given the money. When I called the guys, they had already gone to Nairobi. That is the story of the Kshs100 million. Nobody saw it. I did not see it in my constituency and Kilifi County.

I thought the President would open some of the counties that had not been affected by COVID-19 drastically yesterday. Malindi Town and Watamu Town are dead completely. People have no jobs. They have nothing to eat just because of the COVID-19 protocols. I also want to ask the President to give us more money. It should pass through the National Government-Constituencies Development Fund (NG-CDF) this time and we will give it to the people.

I thank you, Hon. Speaker.

**Hon. Speaker:** I thought you debated the Budget. That is the time you should have raised that issue. A lot of these organisations, through which the funds were channeled, receive normal budgetary allocations. I can see the State Department of Culture, Permanent Presidential Music Commission, the Kenya Film Commission, the National Museums of Kenya and the Kenya Cultural Centre in the list. The National Museums of Kenya got Kshs21,000,600. All these are organisations that receive normal budgetary allocations. Therefore, if it is through them that the artists, who are supposed to benefit are registered, then normally, one expects that they should get greater allocation from Members when you are making the budget.

Hon. Sankok.

**Hon. David ole Sankok** (Nominated, JP): Hon. Speaker, you have almost stolen words from my mouth. As you can see, I am holding that list. I am shocked because the State Department of Culture was given Kshs18 million, the Permanent Presidential Music Commission Kshs32 million and the Kenya Film Commission Kshs8 million. You can imagine all this money was given to Government institutions. You cannot give with this hand and take with the other one. What does it mean? It did not go to the real artists.

I thank Hon. K.J., being a member of the Redykyulass team, he understands what these people go through. There are artists with disabilities. There is a guy with one leg who plays football. He does not even have arms. We no longer have entertainment. We do not go to weddings and other social places.

*(Hon. (Dr.) Robert Pukose spoke off record)*

Hon. Speaker, protect me from Dr. Pukose who has become a prefect in this House. I do not need a prefect in this House. The footballer does not have arms. He has only one leg which he uses to play football. I will give you his name. Allow me to bring him here, so that he can play football using his leg. He will even draw your image using one leg because you are a popular figure in Kenya. That is an artist. They are now forced to perform in our streets. How can a person with disability perform in the street in the middle of cars, especially when we have crazy drivers like Hon. Pukose?

*(Laughter)*

The Kshs30 million should have been given to the National Council for Persons with Disability, so that artists living with disabilities can be given the money because they have a register. This money should also be channeled to anywhere else they register.

Lastly, if you divide Kshs100 million by 290 constituencies, you realise that it is just peanuts. So, we request our President to allocate at least Kshs500 million towards that. It will still not be enough, but it will be something that we can pride ourselves in. It should be channeled through elected Members of Parliament. They know the artists and they can give the money to them.

What is the administration cost? Hon. Baya has just said that they visited Watamu. Did they go to Watamu to enjoy the money that was supposed to go to the artists? They did not want to give the money to anybody. What was the allocation of the administrative cost? We need to know because this money was just spent by those Government officers. We need to adhere to the World Bank instruction that administrative cost of any fund should be below 15 per cent. On this one, they used almost all the money on administration.

I support and I feel it is high time we supported our artists. Thank you.

**Hon. Speaker:** Hon. Members, this is not business. Let us not take too much time.

Hon. Atandi, you have one minute.

**Hon. Samuel Atandi** (Alego-Usonga, ODM): Thank you, Hon. Speaker. I just wanted to say that the Government does not understand how some of these artists ply their trade because if they did, they would not be allocating a mere Kshs100 million as a stopgap measure towards mitigating COVID-19 effects on artists. As an example, where I come from, if you look at the way our artists operate, they are a team. You find that a band has more than 50 people. Artists are known. You cannot say that because you want to mitigate on the COVID-19 issues, you want to start inviting artists. Everybody will begin to become artists. Even me I will become an artist. So, the Government needs to find a way of mitigating and helping the artists.

I like what the Chairperson, Departmental Committee on Finance and National Planning, has said, but that is going to be long-term. For the short-term, we need a new package to help them. Some of the artists are dying because they cannot pay rent and other bills. Life is very difficult for them. So, the Chairperson, Member for Mavoko, try to urge the Government to renew a new package for the artists, so that we can make their lives better as a Government.

Thank you.

**Hon. Speaker:** I can see the Member for Chepalungu has also made a request.

**Hon. Gideon Koske** (Chepalungu, CCM): Thank you, Hon. Speaker. On the issue about artists, this House should have the first priority in protecting them because most of them are the ones who entertained our electorates and made us to be here. Almost 80 per cent of the Members, in one way or another, passed through the hands of artists. Chepalungu is known in Kenya to be the best in terms of Kalenjin songs by a music group called Sweet Sons. They sing across the Rift Valley.

Hon. Speaker, you once came to my constituency when you were a Member of Parliament and you were entertained by the late Kipchamba and other artists. The biggest trouble for artists come from bodies like the Music Copyright Society of Kenya (MCSK) and the Kenya Association of Music Producers. There is another one called Brisk and others. All these bodies have taken the largest share of money that could have benefited the artists.

On the *skiza* tunes, a mobile service provider like Safaricom remits the correct figures to bodies which have signed contracts with the artists. So, the bodies take the larger share in the name of being the ones who fight for their shares, but in reality, songs of the artists are the ones that are making them get the money.

Right now, in my constituency, Chebunyo Market is the biggest. The market is one of the hotspots of the Coronavirus. Before, in a week, we could hear of only one person being infected with the virus. So, the market has been shifted to the neighbouring Narok County, three hundred metres away from Chebunyo Market, and there is a new market. So, since we cannot have this virus killing people in Chebunyo, it has now shifted to Narok County which is not our mother county. We need to fight for the artists.

Thank you.

**Hon. Speaker:** Hon. Members, if all of you take that route of going to every village, you will find all manners of clowns performing all manners of things.

*(Laughter)*

Let us have Hon. Lesuuda.

**Hon. (Ms.) Naisula Lesuuda** (Samburu West, KANU): Thank you, Hon. Speaker. I thank my colleague, Hon. Kiarie, for requesting for this Statement. I just wanted to point out two things: One, Kshs100 million, as my colleagues have said, is a drop in the ocean. This was a one-off payment of Kshs10,000 per artist yet the Coronavirus has been here with us for over a year and we still have the curfew, which we do not know how long it will go. As much as we are the budget making House, the same spirit that His Excellency the President gave this stimulus package, it is in my opinion that the Ministry and the Committee should engage further, so that we can get more money. The Kshs10,000 is not enough for someone who is paying school fees, rent and buying food.

Looking through the list, there is only one Samburu. There is a list that Samburus gave me as well as the Ministry. There is also a stereotype in this country that musicians only come from certain parts of this country. Just go to YouTube and check the artists that we have from across this country. The Ministry should look at its database in totality and look at artists from across the country, so that there is no part of this country where artists are left behind.

This is something that we can follow up and push for. It should not just be done for only the artists, but generally, we should also look at all the people who have been affected by the Coronavirus in different segments to see how the country can cushion against the effects of COVID-19 Pandemic.

**Hon. Speaker:** Let me hear something from the Member for Mandera South, Hon. Haji.

**Hon. Ali Adan** (Mandera South, JP): Thank you, Hon. Speaker. I wish also to join my colleagues in thanking Hon. John Kiarie for bringing this very important matter on the Floor. I am very disappointed that from those parts of the country especially the northern and north-eastern parts, there is no representation and there have been no beneficiaries from the stimulus one-off package. Has COVID-19, indeed, not affected this part of the country the same way it has affected the rest of Kenya? Does it mean that we do not have artists in this part of Kenya like we have in Mount Kenya region? We need equity and recognition of artists all over the country. Therefore, the Ministry should endeavour to look through the list again and try to cover this part of the country just like it has covered the rest of the country.

Our region very often does not benefit from stimulus packages such as this one or many others that have been given under the COVID-19 Pandemic. So, we ask the Executive and the relevant Ministry to endeavour to distribute these resources equitably, so that people from Mandera South can also benefit from the stimulus package.

Thank you, Hon. Speaker.

**Hon. Speaker:** Of course, this one has already been distributed and finished. This was a one-off. That is why the power is still with you. When this was given, you said that there were some people who went to a place called Watamu because *kuna watamu*.

*(Laughter)*

Hon. Owen Baya has explained how it happened there. *Pale kulikuwa kutamu na hela zikatumika nyingi. Hizo zimeisha. Mhe. Makau atakuwa wa mwisho.*

**Hon. Patrick Makau** (Mavoko, WDM-K): Thank you, Hon. Speaker. I hear some of the Members' concerns that come with it. However, you have just crowned it by saying that this was a one-off. It is important for Members to know that this money did not go to the various ministries. All those artisans, musicians, sculptors, actors and everybody who applied through the Department of Culture received the money. Others went through the Permanent Presidential Music Commission and others through the Kenya Film Commission. Others went through the National Museums of Kenya and others through the Kenya Cultural Centre. So, it does not mean that the money went to back to the ministry. These recipients received the money through the medium they applied.

What is going to clear this is, maybe, we pray that this pandemic comes to an end and hotels and entertainment joints are opened, so that our artists can have a place to do their thing. I like the artists who are performing on the streets because hard times call for hard decisions. It is only the tough ones who get going during tough times. So, I encourage more to look for ways of doing their thing wherever they can. Even if it is by the roadside, I think it is important.

Members are saying that there must be a way of cushioning everybody in this country. That lies with us. We should have thought about that when we were in the budget-making process. So, we must think about that next time. Right now, we are even saying that money for the National



Government Constituency Development Fund is not there. Are we going to, again, say that this money is not there? In future, every Member, out of the 290 constituencies, should propose that we put that in the budget, so that we can cushion every person in our constituencies.

**Hon. Speaker:** Remember it is still within your powers to propose amendments to the National Government Constituency Development Fund Act to include supporting such endeavours. You are the ones who make the law. That is your Act. So, thinking progressively, you can propose amendments to it, so that you can free the NGCDF to also chip in. Nothing stops this House from proceeding in that manner.

Very well. Hon. K.J. indicated that he was going to take up the matter. Hon. Kiarie says that policy should have been followed by the law. But now that we have the law on intellectual property, it is, again, the House to interrogate that law to see ways it could be having shortcomings relating to policy on the ground. Again, they say, in Kiswahili, *kazi kwenu. Kazi kwako*, Hon. Kiarie.

**Hon. (Dr.) Robert Pukose** (Endebess, JP): *Kazi ni kazi.*

**Hon. Speaker:** *Kabisa. Hata hiyo ni kazi.*

*(Laughter)*

Very well. Let us move to the next Order.

## COMMITTEE OF THE WHOLE HOUSE

*(Order for Committee read)*

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

### IN THE COMMITTEE

*[The Temporary Deputy Chairman  
(Hon. Christopher Omulele) took the Chair]*

### THE PUBLIC PRIVATE PARTNERSHIPS BILL

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): Hon. Members, order! We are now in the Committee of the Whole House to consider the Public Private Partnerships Bill (National Assembly Bill No.6 of 2021).

*(Clause 3 agreed to)*

#### *Clause 4*

**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 4 by inserting the following new sub-section immediately after subsection (2)-

“(3) Without prejudice to the generality of subsection (2), the provisions of the Public Procurement and Assets Disposal Act, 2015 shall-

(a) not apply to a public private partnership project, if all the monies for the project are from the private party;

(b) apply if there is counterpart funding that is, including public funds, for the public private partnership project.

This clause exempts PPPs from the Public Procurement and Assets Disposal Act. So, it is meant to specify that in the event that public money is used, the Public Procurement and Assets Disposal Act should apply.

*(Question of the amendment proposed)*

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

*(Clause 4 as amended agreed to)*

*(Clause 5 agreed to)*

#### *Clause 6*

**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 6 by-

(a) deleting paragraph (c) of sub-section (1);

(b) deleting the word “one “appearing in paragraph (f) of subsection (1) and substituting therefor the word “two”;

(c) inserting the following new subsections immediately after subsection 1-

(1A) The Committee shall co-opt the Principal Secretary responsible for the contracting authority whose public private partnership project is the subject of discussion at a meeting.

(1B) The Committee may co-opt any person or public officer whose knowledge or experience is necessary for the public private partnership under discussion.

(1C) A person who is co-opted shall not vote at a meeting and shall only be a member of the Committee for a period not exceeding one year.

This relates to composition of the PPP committee. The first amendment there is that instead of having one person nominated by the Council of Governors, we propose to have two. This was already agreed upon when this Bill went for mediation. So, we did not want to leave it without resolving it. Then it is also to provide for co-option of the principal secretary responsible for a relevant area. If that area is not already represented in the committee, we are providing for co-option of someone in an *ex-officio* capacity to give skill in that specific area.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): The Hon. Nyikal.

**Hon. (Dr.) James Nyikal** (Seme, ODM): I think I missed some point because the amendment is deleting. That means the PS will not be. It is not clear.

**Hon. (Ms.) Gladys Wanga** (Homa Bay CWR, ODM): The amendment is in two parts. The first part is by deleting paragraph (c), removing the PS in charge of industrialisation. What we are saying is that you could easily have all PSs in that committee. But we are saying that we should have the one for finance and the one for planning. The rest should be co-opted on a need basis. That is what the amendment is trying to do.

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

*(Question, that the word 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 6 as amended agreed to)*

*(Clauses 7 and 8 agreed to)*

#### *Clause 9*

**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 9 in subsection (1) by –

(a) deleting paragraph (b) and substituting therefor the following new paragraphs-

(b) is removed from office for breach of the provisions of chapter six of the Constitution;

(ba) is deregistered by a professional body for professional misconduct;

(b) inserting the following new paragraph immediately after paragraph (d)-

(da) is convicted of an offence under Section 78 of this Act.

This relates to vacation of office. The Bill provides: “Is otherwise unable or unfit to continue serving as a member of a Committee”, but the Committee is deleting that and inserting, “(b) is removed from office for breach of the provisions of Chapter Six of the Constitution or is deregistered by a professional body for professional misconduct.” We are trying to be a bit more specific as to the reasons for vacation of office. There are some offences that are listed in Clause 78 and we are bringing them here, so that if you are convicted over an offence in that clause, then you should vacate office.

Hon. Temporary Deputy Chairman, 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)*

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

*(Clause 9 as amended agreed to)*

*(Clauses 10, 11, 12, 13, 14 and 15 agreed to)*

*Clause 16*

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

THAT, the Bill be amended in Clause 16:

(a) in subsection (1) by inserting the following new paragraphs immediately after paragraph (c) (ca) engineering;

(cb) project management;

(b) in subsection (1) by deleting the words “as the Cabinet Secretary may determine.” appearing in paragraph (d);

(c) by inserting the following subsection immediately after sub-section (1)- (1A) The Director General shall be competitively recruited and appointed by the Public Service Commission.

Hon. Temporary Deputy Chairman, this relates to the qualifications of the Director-General of the PPP Unit. The Committee agreed that we should add engineering and project management on top of finance, economics and law. We should also say, “any other related and relevant field and not as the CS may determine”. We should not leave it to the determination of anybody. The Bill did not speak to how the Director-General shall be recruited and we are proposing that he shall be competitively recruited and appointed by the Public Service Commission and it can even be through headhunting.

*(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 be inserted,  
put and agreed to)*

*(Clause 16 as amended agreed to)*

*Clause 17*

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

THAT, the Bill be amended in Clause 17 by deleting:

(a) the word “The” appearing in subsection (1) and substituting therefor the words “Subject to Sections 31 and 37 of the Public Service Commission Act (PSC), 2017 the”.

(b) subsection (2).

Hon. Temporary Deputy Chairman, we are trying to come up with a law on recruitment of staff. The law was saying that the CS shall in consultation with the DG appoint staff of the directorate. We felt that this should be left to the Public Service Commission. The amendment provides that the staff should be appointed subject to Sections 31 and 37 of the Public Service Commission Act.

We are also deleting subsection (2) which says that the staff of the directorate shall be appointed on such terms and period as the Cabinet Secretary may determine. We want all that to be done in line with the PSC Act.

*(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 17 as amended agreed to)*

*(Clause 18 agreed to)*

*Clause 19*

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

THAT, the Bill be amended in Clause 19 by:

(a) deleting paragraph (c) appearing in subsection (1) and substituting therefor the following new paragraphs-

(c) guiding and advising contracting authorities in project structuring, procurement and tender evaluations;

(ca) leading contracting authorities in contract negotiations and deal closure;

(b) inserting the following subsection immediately after subsection (2)

(2A) The Directorate shall issue standard bidding documents for use by contracting authorities.

Hon. Temporary Deputy Chairman, this amendment seeks to put some clarity because it relates to the functions of the directorate. Part (c) states as follows, “leading contracting authorities in project structuring, procurement, tender evaluations, contract negotiations and deal closure”. For example, having KeNHA as a negotiating authority. There must be clarity on who conducts procurement. The deletion we are making is to say that the Directorate at PPP, which is at the National Treasury, will guide and advise contracting authorities in project structuring, procurement and tender evaluations, so that their role is only related to guiding. We lead contracting authorities in contract negotiations and deal closure because that is the work of the PPP Unit; to negotiate with willing partners and close deals, but not to lead procurement.

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)*

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

*(Clause 19 as amended agreed to)*

*(Clause 20 agreed to)*

*Clause 21*

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

THAT, the Bill be amended in Clause 21 by:

- (a) renumbering the existing provision as subsection (1);
- (b) inserting the following new subsection immediately after the new subsection (1)-
- (2) Without prejudice to the periods specified under the Second Schedule, a contracting authority shall not enter into a public private partnership arrangement for a period exceeding thirty years.

Hon. Temporary Deputy Chairman, this is fundamental because it is about the PPP arrangement. The Committee is recommending that any PPP arrangement should not go beyond a period exceeding 30 years. It can be less, but it should not be more than a generation so that no generation is responsible for debts of another one. We want to put a cap, so that the period within which money should be recovered in a PPP does not go beyond 30 years. It could be or three, five or 10 years, but nobody should put a PPP of 40 or 50 years or longer than a generation.

I beg to move.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): Hon. Nyikal.

**Hon. (Dr.) James Nyikal** (Seme, ODM): Hon. Temporary Deputy Chairman, I rise to support the amendment. I want to seek some clarification. If you get to 30 years and what was supposed to be recovered has not been fully recovered, is there a provision in the Bill that deals with that kind of eventuality?

**Hon. (Ms.) Gladys Wanga** (Homa Bay CWR, ODM): Hon. Nyikal's point is valid. There is a section of the Bill that deals with application for an extension. In the event you have not fully recovered the money, you can apply for extension.

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): Hon. Baya Yaa.

**Hon. Owen Baya** (Kilifi North, ODM): Hon. Temporary Deputy Chairman, while I support the amendment, my fears are with what Hon. Nyikal has raised. Currently, the mortgage arrangement in the country attract about 30 years yet it is not a big project. The PPPs are big projects that will require huge financing and, therefore, the repayment period should be longer.

Therefore, I think it would not be very prudent to put a cap of 30 years. I would rather we put a cap of 50 years because we are looking at huge projects. People in this country pay mortgage for 25 years. Why do you want to cap a PPP project at only 30 years? We need to relook at that proposal.

**The Temporary Deputy Chairman** (Hon. Cristopher Omulele): Very well, Hon. Baya. Hon. Obo Mohamed, Member for Lamu, do you have something to say to this amendment?

**Hon. (Ms.) Ruweida Obo** (Lamu, JP): Not on this one. Thank you.

**The Temporary Deputy Chairman** (Hon. Cristopher Omulele): Hon. Members, if you want to say something, kindly press the intervention button. I will see your request. The Leader of the Majority Party.

**Hon. Amos Kimunya** (Kipipiri, JP): Thank you, Hon. Temporary Deputy Chairman. I have taken the sentiments from Members who have said that 30 years may be short, but it is a long time. What we may need to figure out, in response to what Hon. Gikaria was saying, is that at the point of project identification and negotiation, all those numbers will be taken care of. But 30 years protect the public interest in the projects. That is almost one and a half generations. Even our Constitution requires a balance between current generations and future generations on the issue of debt. Because these projects have an in-built contingent liability, you need to be cognisant of that constitutional requirement to protect commitments that affect future generations. So, I think 30 years is a good balance.

**The Temporary Deputy Chairman** (Hon. Cristopher Omulele): Hon. Makali Mulu.

**Hon. Makali Mulu** (Kitui Central, WDM-K): Thank you, Hon. Temporary Deputy Chairman. I totally agree with what Members are saying about 30 years. Whether we agree it is a generation and a half, we also need to be careful because depending on the level of investment, if the period is shorter, then the charges are likely to be higher. They might end up hurting the same citizens we are trying to protect. So, there is a bit of a balancing act to be done. I just imagine that by putting a cap of 30 years, we are not also limiting the level of investment. We may have a huge investment which might attract higher charges.

Thank you, Hon. Temporary Deputy Chairman.

**The Temporary Deputy Chairman** (Hon. Cristopher Omulele): Hon. Ngugi Nduati.

**Hon. Joseph Nduati** (Gatanga, JP): Thank you very much, Hon. Temporary Deputy Chairman. I also want to support and say that 30 years is a short time, especially for civil works. As Hon. Baya has said, we need to extend the period to about 50 years.

**The Temporary Deputy Chairman** (Hon. Cristopher Omulele): Hon. Nzengu Musyimi, Member for Mwingi North.

**Hon. Paul Musyimi** (Mwingi North, WDM-K): Thank you, Hon. Temporary Deputy Chairman. I want to join the rest of the Members who have raised issue with the period of time. I think 30 years is a little bit too short. When you consider certain projects that require a lot of capital investment and many years of construction, for the private investors to recoup their money and hand over a project to the public, 30 years is too short. I would rather we go for 50 years. Remember

the investors who want to invest their money may be discouraged by the period within which they are required to recoup their investment.

Thank you.

**The Temporary Deputy Chairman** (Hon. Cristopher Omulele): Hon. Maero, Member for Butula.

**Hon. Joseph Oyula** (Butula, ODM): Thank you, Hon. Temporary Deputy Chairman. As much as I would consider 30 years to be a short time, there is a provision for renegotiation and further request for extension. So, if we fix it at 50 years, it would be bad. But now that there is a provision for asking for extension of the period, I think we should leave it at 30 years and leave room for people concerned to ask for extension.

Thank you.

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

*(Clause 21 as amended agreed to)*

*Clause 22*

**The Temporary Deputy Chairman** (Hon. Cristopher Omulele): Chair.

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

THAT, the Bill be amended in Clause 22(1) by inserting the following paragraph immediately after paragraph (j)—

(ja) ensure there is public participation on a project;

This is just to add a clause, so that one of the duties of a contracting authority is to ensure that public participation is conducted on a project.

I beg to move.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Hon. Cristopher Omulele): Hon. Sankok, do you have something to say on this amendment or it was on the previous one?

**Hon. David ole Sankok** (Nominated, JP): I really wanted to say something on the previous amendment.

**The Temporary Deputy Chairman** (Hon. Cristopher Omulele): We have already concluded it. Hon. Makali Mulu.

**Hon. Makali Mulu** (Kitui Central, WDM-K): Thank you, Hon. Temporary Deputy Chairman. Maybe we need your indulgence on this matter. I remember yesterday when we were discussing an amendment to the County Governments (Amendment) Bill, there was the issue of public participation. We are saying it is a constitutional requirement. So, do we need to keep mentioning it in all Bills? I think it must automatically be done. We were asking whether we need to put such small details about public participation, gender inclusivity and all that in Bills.

Thank you.

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**The Temporary Deputy Chairman** (Hon. Cristopher Omulele): Hon. Makali, there is no harm. In law, there is something called being abundantly cautious. So, it has no harm. Public participation is a constitutional imperative in this country, yes, but it is good to just make sure that it is done. Hon. Nyikal

**Hon. (Dr.) James Nyikal** (Seme, ODM): Hon. Temporary Deputy Chairman, I support that the amendment is good. It has no harm. I am just wondering about the numbering. Why are we numbering it as (ja) instead of just numbering it as paragraph (k) at the end?

**The Temporary Deputy Chairman** (Hon. Cristopher Omulele): Hon. Nyikal, the clean-up of the script will be undertaken by the secretariat. It should not worry you. The Chair.

**Hon. (Ms.) Gladys Wanga** (Homa Bay, ODM): Thank you, Hon. Temporary Deputy Chairman. I am just recognising what Hon. Makali is saying, which you have also alluded to. Somebody must have responsibility, so that if it is not done, there is a place you can go to. Like in this case, we are saying the contracting authority will have the responsibility to conduct public participation. Everybody will assume that the other person will conduct public participation and then it ends up not being done. That should be part of the clarity to Hon. Makali.

**The Temporary Deputy Chairman** (Hon. Cristopher Omulele): Hon. Shaban.

**Mhe. (Dkt.) Naomi Shaban** (Taveta, JP): Mhe, Naibu Mwenye Kiti wa Muda, nilitaka tu kuunga mkono. Kuna umuhimu wa washika dau pamoja na umma kuhusishwa kwenye shughuli hizi ili wawe wanaelewa kinachoendelea wakati sheria zinapotengenezwa. Naam.

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

*(Clause 22 as amended agreed to)*

*(Clauses 23 and 24 agreed to)*

*Clause 25*

**The Temporary Deputy Chairman** (Hon. Cristopher Omulele): Chair.

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

THAT, the Bill be amended in Clause 25—

(a) by deleting subsection (2) and substituting therefor the following new subsection—

(2) A contracting authority shall not submit a project list unless the projects are part of the national development agenda.

(b) in subsection (4) by deleting the word “periodically” and substituting therefor the words “bi-annually”.

This regards submission of projects lists to ensure that projects that are listed are part of the national development agenda so that if right now we are talking about the Big Four Agenda, and we have the national development priorities, we should not come up with a project that is

completely outside the national priorities and put it in the projects list. This is to ensure that the national Government is in line.

We also seek to amend the Bill in Clause 25 as follows:

(b) in subsection (4) by deleting the word “periodically” and substituting therefore the words “bi-annually”.

“Periodically” is not a period. Therefore, we have decided to say “bi-annually” to specify the period.

I beg to move.

*(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 25 as amended agreed to)*

#### Clause 26

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): Departmental Committee Chair, you have an amendment to this clause.

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

THAT, the Bill be amended in Clause 26 by inserting the following new subsection immediately after subsection (1) -

(1A) Subject to subsection (1), the national list shall be published on the Directorate’s website and the contracting authority’s website.

What we are saying is that the list should not be a secret. Therefore, the national list shall be published on the Directorate's website and on the contracting authority's website. We will be making further recommendations on this matter with regard to the involvement of Parliament.

I beg to move.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): I see interest from Hon. (Dr.) Shaban Namsi.

**Hon. (Dr.) Naomi Shaban** (Taveta, JP): Mheshimiwa Naibu Mwenyekiti wa Muda, nakubaliana na marekebisho hayo. Hatutaki Serikali kuu ikae ikiotea miradi na kuamua kuwa miradi mikubwa inaweza kuiotea na kuifanya wakati wowote ule ili wananchi na wanauma wote wajue kuwa muradi ule utafanywa na Serikali kuu.

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): Very well. Hon. Duale, Member for Garissa Township.

**Hon. Aden Duale** (Garissa Township, JP): Hon. Temporary Deputy Chairman, this is not the first time. It is a good amendment because we want to make it public. However, you know, this is the routine. The President said that procurement and tenders must be published on the websites of the procuring entities but nothing has happened. He said all pending bills must be paid

but they have not been paid. This is a very good amendment. We will know the parties involved right from the acquiring entity and from the Directorate. Every Kenyan can access the kind of PPE projects that we are undertaking. It is important but we keep on making laws but at the same time nothing happens.

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

**Hon. David Ole Sankok** (Nominated, JP): Hon. Temporary Deputy Chairman, this amendment is very important. I support it because, first, it will reduce corruption. Once this information is published, it will be accessible to many members of the public. We will know the parties involved in advance. Lastly, we will get to know what has been done by the national Government and what has been done by the county governments. Currently, some county governments launch projects that were launched by the national Government the previous week. It is good for the public to know so that they can scrutinize.

Thank you.

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): Could you key in again, Hon. Esther Passaris, the Member for Nairobi County.

**Hon. Esther Passaris** (Nairobi CWR, ODM): Thank you, Hon. Temporary Deputy Chairman. We just talked about public participation. At the same time we are looking forward to the Directorate publishing the information on their websites. If we do not conduct public participation and we just publish the information on the websites, how many Kenyans have access to websites? How many Kenyans will actually get to know about what has been published on the websites? The Government spends a lot of money on media coverage. We should also have public participation because these are big projects. Look at the Expressway under construction on Mombasa Road. Did we have public participation on that project? The Expressway will probably cost so much more. Even though it is going to serve us, the Government is going to lose a lot of money in terms of what Kenyan will be paying. The money will not be recouped quickly. We should also look at the electronic media. When it is public participation of a certain value, why not also make sure that we have it broadcast on radio and television so that Kenyans at large can be informed and be able to make decisions? Using websites is actually not doing justice to this country. Many things happen and no one gets to know about them.

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): Very well. Hon. Mizighi Mnene, Member for Taita.

**Hon. Haika Mizighi** (Taita Taveta CWR, JP): Asante Mheshimiwa Naibu Mwenyekiti wa Muda. Pia mimi nataka kuchukua hii fursa kuunga mkono mabadiliko haya ili wananchi wapate kujua Serikali kuu inapanga kufanya miradi gani na pia kuweza kutofautisha miradi ambayo inafanywa na serikali zetu za kaunti na miradi inayofanywa na Serikali kuu ili kuweza kuboresha utendakazi.

Asante.

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

*(Clause 26 as amended agreed to)*

*(Clauses 27, 28, 29, 30, 31 and 32 agreed to)*

*Clause 33*

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): Hon. Chair, you have an amendment to this one.

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

THAT, the Bill be amended in Clause 33 by inserting the following new subsection immediately after subsection (1)-

(1A) The Directorate shall submit an evaluation report together with its recommendations to the Committee

Hon. Temporary Deputy Chairperson, this amendment speaks to the issue of approval of feasibility reports. It says that a contracting authority intending to implement a project through a PPP shall submit a feasibility report under section 32 to the Directorate for evaluation. What we are adding is just saying that the Directorate will submit an evaluation report together with its recommendation to the Committee and the Committee will make a decision based on that report. What we are adding is just the part of the Directorate submitting recommendations because it was just moving straight from the contracting authority to the Committee. It was not clear what the Directorate should be doing. We are just tidying it up to ensure efficient implementation.

I beg to move.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): I see no interest in this one.

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

*(Clause 33 as amended agreed to)*

*(Question put and agreed to)*

*(Clauses 34, 35 and 36 agreed to)*

*Clause 37*

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

THAT, the Bill be amended in Clause 37 by inserting the following –

(a) new paragraph immediately after subsection (1) (c) –

“(d) restricted bidding.”

(b) new subsection immediately after subsection (2) –

(2A) A contracting authority shall use standard bidding documents issued by the Directorate in all public private partnership procurement.

Hon. Temporary Deputy Chairman, this regards procurement methods. During our public participation, PPOA Kenya submitted that in addition to direct procurement, privately initiated

proposals and competitive bidding, we should also add “restricted bidding.” In this regard, we are amending this by adding “restricted tendering or restricted bidding.”

In part (b) of the amendment, we are introducing Clause 2A to compel any contracting authority to use the standard bidding documents issued by the Directorate in all public private partnership procurement.

I beg to move.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): I see interest from Hon. (Dr.) Nyikal.

**Hon. (Dr.) James Nyikal** (Seme, ODM): I have a little concern with (b). When you talk of restrictive bidding, unless you qualify it, you open opportunities where bidding can be in such a way that it favours certain people. So, I am not sure whether the Committee looked at this in detail and why it was not there in the first place. I would propose that we remove this amendment of restricted bidding.

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): Hon. Ngugi Nduati.

**Hon. Joseph Nduati** (Gatanga, JP): Thank you, Hon. Temporary Deputy Chairman. I just wanted to support the Chairperson on 2(a). I am a Member of the Public Accounts Committee and we are seeing instances where the National Treasury is coming up with their own standard documents and they are messing up the standard documents such that if we are to implement that contract, the Government loses a lot.

I support.

**The Deputy Chairman** (Hon. Christopher Omulele): The Hon. Sankok.

**Hon. David ole Sankok** (Nominated, JP): Hon. Deputy Chairman, I oppose this issue of restrictive bidding even though I know the Public Procurement Act allows this one. However, this is where corruption meets the road. So, we should rethink as a House, since from the first draft, there was no restricted bidding. So, let us remain with the first draft instead of amending to add restrictive bidding. This is very dangerous.

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): Hon. Makali.

**Hon. Makali Mulu** (Kitui Central, WDM-K): Thank you, Hon. Temporary Deputy Chairman. While bidding is allowed in procurement law, with the level of investment of most of the projects under PPPs, we need to push for open tendering, so that we do not have the business of restrictive bidding.

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): Hon. Obara Akinyi.

**Hon. (Ms.) Eve Obara** (Kabondo Kasipul, ODM): Thank you, Hon. Deputy Chairman. I support the Committee. This is a method of a select number of suppliers who are shortlisted because of their expertise. This method eliminates brokers and briefcase businessmen, so that we have people who are specialised in those areas of bidding and we do not waste time with brokers.

So, I support the Committee. Thank you.

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): Hon. Mboni Mwalika, Member for Kitui Rural.

**Hon. David Mboni** (Kitui Rural, CCU): Thank you, Hon. Temporary Deputy Chairman. I support this amendment because restrictive tendering occurs when there are very few suppliers for services or goods. At times, they can occur and it is very important to provide for them, so that when we have few suppliers for such projects, we can have this method in use.

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): Hon. Mbadi John, Member for Suba and the Hon. Leader of the Minority Party.

**Hon. John Mbadi** (Suba South, ODM): Thank you, Hon. Temporary Deputy Chairman. We need to also understand PPP. If you find there are people with...

Hon. Temporary Deputy Chairman, I wish Hon. Sankok could listen.

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): Hon. Sankok, kindly listen to others also as they listened to you.

**Hon. John Mbadi** (Suba South, ODM): By the way, we are still in Parliament even if it is the Committee of the whole House.

When you want to develop a project through this initiative, there could be individuals who have money and can do it. It is not something that you float like any other tender or supplies of goods and services. This is something you can particularly target individuals who have the capacity to do it. So, you can end up with a restricted tender. A restricted tender is not a bad idea, unless abused. However, in case of the PPP arrangement, we need to allow restricted tendering because it is a unique kind of arrangement. It is not something you will ask Hon. Mbadi to bid for construction of the Express Way. I cannot. I have no capacity. Even if you gave it to me at the highest amount possible with best terms, if I do not have the capacity, that is it.

So, I support that amendment.

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): Hon. Duale. Hon. Members, if you want to contribute, press the intervention button.

**Hon. Aden Duale** (Garissa Township, JP): Hon. Temporary Deputy Chairman, people should not raise their hands. We are not in a primary school, Member for Kikuyu.

Hon. Temporary Deputy Chairman, I had the same worry about this amendment. However, the New Clause 44(a) solves our worry, for those of us who wanted to oppose. At least, restricted tendering has been made very clear under the New Clause 44(a). Why do I support that? That is why we have a problem in Mumias. The only people who can buy Mumias as a private entity must be people who have history in sugar milling.

So, if you do not do that, then someone like me who is very good in camel rearing will bid for the sugar factory because I have resources, but I might not have the expertise. However, the Chairperson has done so well. With Clause 37, she has done a New Clause 44(a), which I want us to read.

Let us support and move to the next one.

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): Hon. Teddy Mwambire.

**Hon. Teddy Mwambire** (Ganze, ODM): Thank you, Hon. Temporary Deputy Chairman. I am in support of the amendment because I think the guidelines normally give restricted tendering with a certain amount. It is not all the amount that will be taken through restricted tendering. So, I would like Members not to have any worries because there must be guidelines for that. We need to accept such situations because even those companies which will bid, must be prequalified. So, it is not anybody to bid. So, the need of having companies prequalified must be accepted when it comes to a certain amount whereby someone can be called to bid for a restricted tender.

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): Hon. Mbai, Member for Kitui East.

**Hon. Nimrod Mbai** (Kitui East, JP): Thank you, Hon. Temporary Deputy Chairman. I support the Committee for the good work they have done, but on matters restricted tendering, I oppose. This is an avenue for giving a few individuals a chance to make decisions which involves

some big sums of money. It is a good gesture and I suggest that we get an amendment that restricted tendering will only come after prequalification.

It is at the prequalification level where the companies are evaluated and one can tell which one is competent and that is the way to work. We, however, cannot go straight. Even the current law that provides restricted tendering provides for a list of companies which have already been prequalified through a procurement process.

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): Very well. The Leader of the Majority Party.

**Hon. Amos Kimunya** (Kipipiri, JP): Hon. Temporary Deputy Chairman, I support the Committee on this. What Members of the Committee need to appreciate is that this amendment is not coming in isolation. If you look at the Order Paper, you will see a new clause will be introduced. Once you agree to this, there will be a New Clause 44(a) that defines the circumstances under which restricted tendering would take place. The sentiments that have been expressed by Members are all captured in terms of it being complex, specialised, the time and cost, and evidence to show that there is only a few suppliers.

I want to give the Deputy Chairman a guide. When we were doing the optic fiber cable, the East African Marine Systems, there were only two companies that could do the surveying for the cable. However, if you advertised, you would get all manner of brokers who would say that they would do it, and then they would go and negotiate with the two companies. You might end up with a broker who may end up not doing it. Knowing globally there are only two companies that can bid they go to them; get the time and efficiency because the cost does not change. So, in these kinds of situations we know for such projects there can be such people. I think this is deletion of direct procurement but we are now restricting. People must have been pre-qualified and this is already included here. Let us allow this to move on and when we get to New Clause 44, Members will interrogate and see it is provided for. I think that is the best route to go than try to lock this out.

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): Very well, Leader of the Majority Party. Hon. Ichung'wah, Member for Kikuyu.

**Hon. Kimani Ichung'wah** (Kikuyu, JP): Thank you, Hon. Speaker. I want to begin from where the Leader of the Majority has stopped with the example of the East African Marine Cable. If we get all manner of brokers as he has said and any of them can offer a better deal and negotiate with those two providers then, why not? We are talking about public funds being used and we must ensure it is in the most prudent and efficient way. I can hear the Leader of the Majority Party saying these are private funds. They are private funds which private investors are coming to invest in public assets and goods. At the end of the day, the public will pay through taxes. When you build a road, you will charge the public a toll for it.

I do not want to oppose but think we should be careful with what we are doing. If you look at the Bill itself, it provides for direct procurement which to me is more evil than restricted tendering. But the conditions which matter is the ones under which you allow direct procurement and restricted tendering. I want to implore the Chair when she gets to Clause 44A, even as I support her to look at the Bill on direct procurement. It allows for direct procurement if there is an urgent need for the works or services when any other procurement method is impractical. This is a sure avenue to direct corruption and not procurement.

The same way clause 44A(b) says it will allow restricted tendering if the time and cost required to examine and evaluate large number of tenders will be disproportionate to the value for works or services to be procured. Again, to me this opens another avenue for people to manipulate

the processes. I want to ask the Chair to consider moving a further amendment on Clause 44A by deleting (b) and also under direct procurement to remove the issue of urgency.

Urgency is created and Hon. Mbadi has probably suffered under this with the Independent Electoral and Boundaries Commission (IEBC). Why restrict and go for direct procurement because of urgency and time required? You have all the time to determine what you need. There is no private investor who will walk into this country and get into some contracts with some urgency without having evaluated what is required. I support but I urge the Committee and the Chair to consider deleting clauses 44A (b) on restricted tendering and (f) on direct procurement.

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): Hon. Nyenze.

**Hon. Edith Nyenze** (Kitui West, WDM-K): Thank you, Hon. Temporary Deputy Chairman, mine is brief. I just want Members to know that these methods, direct procurement and restricted tendering are provided for in the Public Private Partnerships Act. Even if they are not written here, they are still in the Act and will be followed. If they are in the Act, it means they are proper methods of procurement. Thank you.

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

**Hon. (Ms.) Gladys Wanga** (Homa Bay CW), ODM): On a point of order, Hon. Temporary Deputy Chairman.

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): Chair what is out of order?

**Hon. (Ms.) Gladys Wanga** (Homa Bay CWR, ODM): On a point of order, Hon. Temporary Deputy Chairman. I am a bit overtaken by events but I wanted to move a further amendment just for cleaning up. This is because up there it states restricted bidding and down it states restricted tendering. I wanted to move a further amendment so that we are on the same page. This is what is in Clause 37 but what is in Clause 44 is correct. So, we must list what is correct as in Clause 44A.

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): Chair, let me advise you, we shall recommit so that we can clean it up.

**Hon. (Ms.) Gladys Wanga** (Homa Bay CWR, ODM): Much obliged, Hon. Temporary Deputy Chairman.

*(Clause 37 as amended agreed to)*

*(Clauses 38,39,40,41,42,43,44,45,46,47,  
48,49,50,51,52,53,54 and 55 agreed to)*

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): I want to inform Members that I have 30 Members who are interested in speaking to any of the issues here. So, you cannot quarrel the Chair that he has not given you opportunity. You will have opportunity Hon. Oduol, do not worry.

*Clause 56*

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): Chair.



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

THAT, the Bill be amended in clause 56 by deleting the numbers “38, 40 or 45” appearing in subsection (1) (a) and substituting therefor the following numbers “38, 40, 44A or 45”;

This is just an issue of numbering in anticipation of some new clauses. I beg to move.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): Hon. Oduol Adhiambo.

**Hon. (Prof.) Jacqueline Oduol** (Nominated, ODM): Thank you, Hon. Temporary Deputy Chairman. Since this is a House of records, I would like it to go on record that the reason I came over was to ensure the system was working. Earlier on the system was not working and since you advised us to put our hands up, I did not put mine up. When you did not pick me, I had no way of knowing that you had 30 people. I think it is not fair to have it on record that I was complaining while in fact it is the system that was not working.

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): Hon. (Prof.) Adhiambo, you are one of the most consistent Members participating in this particular aspect of law making in this House. I will be the last person to castigate you since you have been participating quite well. I have no reason to find fault in you because you are correct within the House and your participation is well appreciated.

*(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 56 as amended agreed to)*

*(Clauses 57, 58 and 59 agreed to)*

#### *Clause 60*

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): Let us have the Chair.

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

THAT, the Bill be amended in clause 60 by –

- (a) renumbering the existing provision as subsection (1);
- (b) inserting the following new subsections immediately after the existing subsection-
  - (2) A private party that executes a contract under subsection (1) shall commence the project within twelve months from the date of execution of the contract.
  - (3) If the private party fails to commence the project in accordance with subsection (2), the contracting authority shall terminate the contract and no liability shall be attached to the contracting authority or the Government.

This is essentially to put a timeline to how much time a private party and the contracting authority have to begin a project after the contract is signed. It says within 12 months of the date of execution of the contract, the contractor should have begun, failure to which the contracting

authority shall terminate the contract and no liability shall be attached to the contracting authority or the Government. This is because some people come with privately initiated proposals. They are agreed on. A lot of work is done, they sign and then they disappear. This is just to make sure that if you disappear within that period, then the Government has no liability to terminate the contract. These are new sections. Earlier on, we had thought of six months but we are putting it at 12 months.

Thank you, Hon. Temporary Deputy Chairman.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): I see a lot of interest in this. We will start with Hon. Mboko, Member for Likoni.

**Hon. (Ms.) Mishi Mboko** (Likoni, ODM): Thank you, Hon. Temporary Deputy Chairman. I also support this amendment because everything which is done has to have a timeline. If you have a timeline, it will be very effective in terms of the projects. We are also going to avoid additional costs for the Government. There are so many projects which do not abide by the timeframe as indicated. So, after a period of time they add extra costs just to ensure that that project commences. So, this is a good proposal and I support it.

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): Hon. Oundo Ojiambo, Member for Funyula.

**Hon. (Dr.) Wilberforce Oundo** (Funyula, ODM): Hon. Temporary Deputy Chairman, I would imagine the thinking behind the amendment is good and it is plausible. The only danger I see, and I thought it could be cured under Sub-section (3), is where there is existing litigation in respect of, probably, National Environment Management Authority certification, and county government certification. Normally, there are delays in approval of the plans by the county governments and those kinds of things. For it to have a very definite statement, that is, “shall terminate”, probably, it might render the whole process a bit untidy. We could have a discretion where the procurement entity can look at the mitigating factors and probably negotiate on the project implementation timelines. Those are my thoughts.

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): Hon. (Dr.) Nyikal.

**Hon. (Dr.) James Nyikal** (Seme, ODM): Hon. Temporary Deputy Chairman, I also agree with the principle as Hon. Oundo has said. There are issues that will relate to the Government itself and its processes. What about if there are issues that are actually beyond the people involved, which normally would go under *force majeure* or something unpreventable? I know it is not my area but I have heard it before. Do we need to bring that one in? It could be an issue that you sign a contract and then there is a flood or some uprising. How do we handle those occurrences? I just wanted to know how those issues can be handled.

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): Hon. Nyikal, I hear Hon. Shamalla speaking to *force majeure*. I will give her an opportunity to speak to this.

**Hon. (Ms.) Shamalla Jennifer** (Nominated, JP): Thank you, Hon. Temporary Deputy Chairman. It is my considered opinion that issues that are *force majeure*, unforeseen circumstances, would be addressed within the contract. They always are addressed within the contracts and not within the legislation.

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): Very well spoken. Next is the Member for Nairobi, Hon. Passaris.

**Hon. (Ms.) Esther Passaris** (Nairobi CWR, ODM): Thank you, Hon. Temporary Deputy Chairman. The Government is intending to do big projects. If you take the example of the

expressway, to mobilise equipment and get all the necessary approvals will require say, 12 months. So, I support the Committee in its proposal of ensuring that this goes to 12 months, but which should safeguard the Government from legal action by the contractors. I think the Government has got a lot of contracts that it has done and people have actually extended the contracts. For instance, we have seen the Kenya Pipeline Company and the Zakhem issue. There are pending bills. So, when it comes to the public private partnership, I think it is important to also protect the Government and ensure that there is limited time within which a contractor is supposed to implement the project.

So, I support the Committee.

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

*(Clause 60 as amended agreed to)*

*(Clause 61 agreed to)*

*Clause 62*

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): Hon. Duale, you have an amendment.

**Hon. Aden Duale** (Garissa Township, JP): Hon. Temporary Deputy Chairman, after consulting and looking at this Bill in view of my amendments which were touching on the independent power producers, I have realised that there is an inquiry ordered by the Speaker on this matter. So, I will wait for the recommendations of the Departmental Committee on Energy.

Secondly, I have also realised that these independent power producers... In fact, theirs are individual contracts with the Ministry of Energy. So, it is not within the public-private sector framework *per se*. So, I intend to withdraw all my amendments for now.

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): Very well, Hon. Duale, but they were very exciting. I was personally excited by your proposals but it is well.

**Hon. Aden Duale** (Garissa Township, JP): Hon. Temporary Deputy Chairman, I agree with you. Many people were waiting. It was very interesting and very exciting but you know as a seasoned and ranking Member, I weigh between excitement, the law and rationale. So, the law supersedes the many excitements. But, I am sure they will wait for the report of the Committee. When it comes, we will put it as part of the recommendations of the Committee.

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): So, Hon. Members, the proposed amendment by Hon. Duale stands dropped. Thank you for taking the law as it is.

*(Proposed amendment by Hon. Aden Duale dropped)*

There is no amendment to this.

*(Clause 62 agreed to)*

*(Clauses 63 and 64 agreed to)*

*Clause 65*

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): Chair, you have an amendment to this one.

**Hon. (Ms.) Gladys Wang** (Homa Bay CWR, ODM): Thank you, Hon. Temporary Deputy Chairman. Let me also thank Hon. Duale for dropping some of his amendments in favour of the law and reason.

I beg to move:

THAT, the Bill be amended in clause 65 by—

- (a) renumbering the existing provision as (1);
- (b) inserting the words “for inclusion in the published national list of projects under section 26” at the end of subsection (1);
- (c) inserting the following new subsection immediately after subsection (1)—
  - (2) A county government or county corporation shall not submit a project list unless the projects are part of the County Integrated Development Plan.

Hon. Temporary Deputy Chairman, this amendment regards the county project list. So, what we are saying is that a county government that intends to implement PPP projects shall submit a list of projects to the directorate.

We are adding, “for inclusion in the published national list of projects under Section 26”, the ones that we had done earlier.

Secondly, the same condition that we put on the national Government, that any project done should be part of the national development plan. We are saying that any projects done by the county government under public private partnership should be part of the County Integrated Development Plan so that it is not just a project that has been drawn from anywhere. This will ensure that we are sure that this is what the public wants.

Hon. Temporary Deputy Chair, I beg to move.

*(Question of the amendment proposed)*

**Hon. David ole Sankok** (Nominated, JP): Hon. Temporary Deputy Chairman, as much as I want to support; surely, by the county government having public private partnership, we will be risking because very soon you will find everything within county governments and counties are owned by private individuals. I will therefore request the Chair and the Majority Leader, with due respect, let us go slow on this because we are already overburdened by debt. If we go in this direction... The expressway is costing us around Kshs 61 billion meaning, we are spending around Kshs 2billion per kilometre. We will go into this arrangement with county governments and knowing the way our governors behave, we are at risk. We may not be able to repay.

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): Hon. Wangwe.

**Hon. Emmanuel Wangwe** (Navakholo, JP): Thank you, Hon. Temporary Deputy Chair. I rise to support the proposal by the Chair. It is important to include all operations of the county government in the County Integrated Development Plan because this is the main document that enables us to know where the county government lies in terms of development. Therefore, it will be good that even if the county government has entered into any kind of public private partnership, let it be known to Kenyans, especially through a structured document like County Integrated Development Plan.

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

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): The Leader of the Majority Party.

**Hon. Amos Kimunya** (Kipipiri, JP): Hon. Temporary Deputy Chairman, I just want to comfort the Hon. Nominee No. 001 that this House has already pronounced itself that public private partnership should take place in the county governments. It is important that we empower the county governments to enter into public private partnerships. I will give you a typical example. If a county government wants to do a specialised hospital in a county and they do not have money, they could well contract a certain university to come and build the hospital through a public private partnership framework and organise on how they do it, so that people can get and pay for these services without having to wait for the Government to give them money. This is the kind of opening we are trying to create. However, approval has to be done by the National Treasury. That is why there is a requirement that even county programme must appear on the national list. They must also be in the country integrated borrowing plan. It is not something that comes from the air. Let it be harmonised within the national framework. The safeguards are there. The important thing is that this amendment is actually saying that if it is done at the county, it must be reported to the national level. It must also be in consonance with the County Integrated Development Plan. That is the amendment. It is a good amendment.

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): The Hon. Baya Yaa.

**Hon. Owen Baya** (Kilifi North, ODM): Hon. Temporary Deputy Speaker, I agree entirely with what the Leader of the Majority Party is saying and I want to support the amendment.

*(Hon. Aden Duale consulted loudly)*

Hon. Duale, allow the Chair to listen to me. The County Integrated Development Plan in a county is a ten-year plan. Emerging issues come in. For example, COVID - 19 has come in. It is not part of that County Integrated Development Plan. If you want to tie public private partnership in the counties to County Integrated Development Plan, we are actually telling them that there will not be any, because there are emerging issues that come out and need intervention and public private partnership would be the only solution to that intervention. Therefore, we should not tie public private partnership at the county to County Integrated Development Plans. We should not. It is actually stifling the ability of the counties to actually engage in public private partnerships. I submit.

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): Hon. Angatia.

**Hon. Ayub Angatia** (Lugari, ANC): Thank you, Hon. Temporary Deputy Chairman; I also add my voice to this amendment. I would like to disagree with my brother here that County Integrated Development Plans are very integral part of planning within a county government to streamline projects. These guys from the county governments get their cash from the National Treasury, why should they give them a leeway to do their own things without going through these structures? This allows the public private partnerships to be controlled, the operations to be streamlined and be made effective. If you eliminate corruption, the cartels surrounding the governors, everything will be coordinated at the national level through one institution. The issue of involving the County Integrated Development Plan is to ensure that the projects are within the parameters or the structures of that law.

Lastly, I support the Committee and congratulate the Chair. You have done a wonderful job with the Committee Members.

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): The Hon. Duale.

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**Hon. Aden Duale** (Garissa Township, JP): Hon. Temporary Deputy Chair, you know we have to be very careful.

*(Loud consultations)*

Tell the aspirant for Kakamega gubernatorial seat to listen to me. We know our governors; we have lived with them. I want the Chair to have the last chance to speak to this. Unless the National Treasury or the public private partnership committee will have an overriding power in the approval, it is very dangerous to give governors and county governments a free cheque to look for anybody. It must be anchored in law because these are people who cannot pay the pending bills of our people. Tomorrow, they themselves will own the projects. A good example is the governor for Murang'a with the milk and the cashew nuts cooperative that he started. Let us be very careful that if the committee at the national level is vetting, and is approving, which the Leader of the Majority Party has brought to my attention, then we are comfortable. We should not give current and future governors sitting in this House a blank cheque. They must be approved by certain...

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): Hon. Members, so that we can make progress, let me allow the Chair to have the final say on this.

**Hon. (Ms.) Gladys Wang**a (Homa Bay CWR, ODM): Thank you, Hon. Temporary Deputy Chairman. I think the concerns raised by Members on this matter are valid.

*(Hon. Owen Baya consulted loudly)*

I wish Hon. Baya Yaa could listen.

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): Hon. Members let us have order, so that ....

**Hon. (Ms.) Gladys Wang**a (Homa Bay CWR, ODM): The concerns raised by the Hon. Members are valid because sometimes, if you give the counties a blank cheque people may end up borrowing. Every public private partnership has contingent liability on Government. So, I just want to assure the Hon. Members that if you look at Clause 6 of this Bill, you will see the constitution of the public private partnership committee. It consists of the Principal Secretaries from the National Treasury and Planning and representatives of the Council of Governors. The improvement that the committee was making at that point was to say that just the same way we said that any projects coming through public private partnership should be part of the national development plan, is the same way they should be part of the County Integrated Development Plan, so that it is not just the governor who has met an investor and has decided "yes, your idea is very good, let us do it." It cannot be at the whims of the governor. The governor must go back to the County Integrated Development Plan. He must see that the project is part of the County Integrated Development Plan that was approved by the county assembly or by the House in this case. This is just to make it better. I request Members to support this amendment. I submit.

*(Question, that the words to be inserted*

*be inserted, put and agreed to)*

*(Clause 65 as amended agreed to)*

*(Clauses 66, 67 and 68 agreed to)*

*Clause 69*

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

THAT, the Bill be amended in Section 69 by inserting the following Subsection immediately after Subsection (1)-

“(1A) Notwithstanding Subsection (1), every project agreement shall make provision for the revenue sharing mechanisms and thresholds between a private party and the Government, where a project’s revenue performance meets and exceeds the target return on investment negotiated under a project agreement.”

Clause 69 is speaking to the issue of minimum obligations of parties to a project. What the Committee is adding is that every project agreement shall make provision for the revenue sharing mechanisms and thresholds between a private party and the Government, where a project’s revenue meets and exceeds the target return on investment negotiated under a project agreement.

Hon. Temporary Deputy Chairman, we are just taking caution here. Sometimes you have agreed that in 15 or 30 years the investor will raise their money, but in 10 years, and the Expressway is an example, he raises the money. There should be room for negotiations so that they leave earlier than the required period. The money can have been raised and the negotiation was already done and the investor stays even after they have already met their revenue targets. So, we were just putting in a clause to ensure that the Government is shielded in the event that revenues are raised especially earlier than targeted.

I beg to move.

*(Question of amendment proposed)*

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

*(Clause 69 as amended agreed to)*

*(Clauses 70 and 71 agreed to)*

*Clause 72*

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): Chair, you have an amendment to this.

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

THAT, the Bill be amended in Clause 72(1) (e) by deleting the word “periodic” and substituting therefore the word “bi-annual”.

This is just removing the word “periodic” because it means almost nothing and replacing it with the word “bi-annual” so that it is definite.

I beg to move.

*(Question of amendment proposed)*

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

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

*(Clause 72 as amended agreed to)*

*(Clauses 73, 74 and 75 agreed to)*

Clause 76

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): Hon. Members, there was a proposed amendment by Hon. Aden Duale but he has dropped his amendments and we thank him. So, the only amendment that is there for consideration is the one by the Chair.

*(Proposed amendment by Hon. Aden Duale dropped)*

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

THAT, the Bill be amended in Clause 76 by inserting the following new subsections immediately after Subsection (2)-

(2A) The Auditor General shall audit the accounts of a project company, where there is counterpart funding for a project including public funds.

(2B) Where all the monies for a project are provided by a private party, the accounts of the project company shall be audited annually by a reputable audit firm, appointed in consultation with the National Treasury.

This is the issue of auditing of the project company. The project company is the private investor and the contracting authority which is a Government institution coming together and forming a project company for purposes of moving the project forward. So, what we are doing here is to have a balance. We had a big debate around this issue of auditing by the Auditor General for the project company. So, what we have said is, where we found a balance, that the Auditor General shall audit accounts of the project company where the counterpart funding for a project includes public funds. Where all monies for the project are provided by a project party, the accounts of the project company shall be audited annually by a reputable audit firm appointed in consultation with the National Treasury.

I beg to move.

*(Question of amendment proposed)*

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): I see interest from Hon. Kimani Ichung'wah, Member for Kikuyu.

**Hon. Kimani Ichung'wah** (Kikuyu, JP): Thank you, Hon. Temporary Deputy Chairman. I oppose this amendment. My reason is simple, as I had stated earlier. Yes, you are putting private



capital but this private capital is expected to be recouped from public funds not through profits from some enterprise. Therefore, it is important and imperative that the Office of the Auditor General is involved in audit of any project where public money is being used, whether it is at the beginning of the project, at inception or at the end of the project.

I want to give the example of this Expressway from Jomo Kenyatta International Airport (JKIA) to ABC Place, Westlands. As much as it is China Road and Bridge Corporation (CRBC) or whoever it is that is putting their private capital into that project, if you fail to involve the Auditor General, what will happen is that a private entrepreneur who is in that project for profit will come and expend billions of shillings. You remember, the leader of FORD-K, Hon. Moses Wetangula, the other day in the Senate giving statistics of how much money was projected to be spent on that project during the Mwai Kibaki regime, and how much, almost three times, is being expended today under the Jubilee Administration. Had we involved the Auditor General in determining what amount of money would go into that project, we would make sure that Kenyans get value for money.

Therefore, I strongly oppose any insinuation that we can have the public spend their money on projects that are actually public assets without the involvement of the office that constitutionally is charged with ensuring that Kenyans are getting value for money.

I strongly oppose that amendment.

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): The Leader of the Minority Party.

**Hon. John Mbadi** (Suba South, ODM): Hon. Temporary Deputy Chairman, first of all, I am a bit disturbed with the argument by the Member of Parliament for Kikuyu, both of us being accountants. When you talk of a reputable audit firm, why do we want to believe that the Auditor General is more reputable than a private audit firm? I do not understand that.

Secondly, if the Government has already signed a contract for the development of a project and that contract includes the cost, I do not see why we should be bothered if the Government is not putting any money for the construction of that project and the money is coming from a private individual. Why would we be bothered with accounting for that money within? It is the duty of the party which is providing the money to ensure that the money is well spent so long as the project, itself, is delivered to us. We had already agreed on the price so, how will this change?

The change which Hon. Moses Wetangula was referring to is where around 10 years ago, we wanted to spend so much on this project and there was an agreement, now 10 years later it is three times. Where you have agreed on the cost, I do not see why we should involve the Auditor General who is so busy with looking at how our public funds are spent.

The argument that anything the public is paying for should involve the Auditor-General is not true. The public is paying for Safaricom but we do not send the Auditor-General to audit Safaricom just because the Kenyan public buys credit from Safaricom. I do not see why there is a problem with this amendment.

I support it.

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): Let us have Hon. Obo Mohamed.

**Hon. (Ms.) Ruweida Obo** (Lamu CWR, JP): I support the Committee.

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): Let us have Hon. Oundo.

**Hon. (Dr.) Wilberforce Oundo** (Funyula, ODM): Hon. Temporary Deputy Chairman, I find this amendment a bit interesting so to speak. While I have no problem with 2A, I have a

serious problem with 2B in the sense that we are inducting the project appraisal team, not having been able to determine the casualties and everything involved in the project.

Secondly, if the parameters have already been agreed upon, why do we again need to get involved as the national Government in auditing as long as we get what we are supposed to as prescribed in the Constitution? I do not understand the import of the amendment in 2B

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): Let us have Hon. Duale.

**Hon. Aden Duale** (Garissa Township, JP): Hon. Temporary Deputy Chairman, let me first bring to the attention of the House that the Auditor-General, under the Public Audit Act, has no mandate to audit private entities. Let us start from there.

I agree with the amendment in 2A. Where public funds are involved, the Auditor-General should come in. Where a single cent of public resources has not been put in, the Auditor-General, under his own Act, will not get involved.

The Committee did very well. If the Hon. Member for Kikuyu were to listen to me, the issue he is raising is a situation where somebody builds a project but Kenyans pay for it. For purposes of due diligence, the Committee has stated that a private audit firm of the private company's choice, be it Deloitte and Touche or any other, can conduct the audit, but with consultation with the National Treasury to protect the interests of Kenyans.

If you give an opportunity to Hon. Ngugi he would tell you that as Members of the Public Accounts Committee, Telkom Kenya, in which the Government of Kenya has a share, is audited by a private entity. I think the audit firm is Deloitte and Touche. The Public Accounts Committee, chaired by Hon. Wandayi, has been asking for their certified accounts for the last six months. That is why there is that element of consultation with the National Treasury, so that the National Treasury can come in where an entity has refused to provide those details.

Let us not bring in the element of the Auditor-General. The Auditor-General has a mandate under the Public Audit Act and the Constitution.

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): There has been enough debate.

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

*(Clause 76 as amended agreed to)*

*(Clauses 77, 78, 79, 80 and 81 agreed to)*

*Clause 82*

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

THAT, the Bill be amended in Clause 82 by-

(a) inserting the following paragraph in subsection (2) immediately after paragraph (g)-

(ga) the financial reports of projects which have been completed and are being operated by a private party;

(b) inserting the following subsection immediately after subsection (2)-

(3) The Cabinet Secretary shall submit a copy of the annual report to Parliament.

This is with regards to the issue of the annual report. Our worry was around financial reports that as part of the annual report, we should have financial reports of projects which have been completed and are being operated by a private party. What is being operated by the private party must be part of the annual report. If you are collecting money from the Expressway and are collecting tolls and you are a private company, those details will not be part of your private records. Those must be included as part of the annual report.

The other important thing I wanted to mention, and I wanted Hon. Ichung'wah and the House to listen, is that the other very important amendment that we are making here is that the private company must also bring their financial reports as part of the annual report, so that we are able to tell how much money they have raised from that project. The other important thing we are adding is that the Cabinet Secretary shall submit a copy of the annual report to Parliament, so that Parliament is seized of the matter and what is happening in each and every area. The Committee has also taken that into consideration, so that the role of Parliament is not lost.

I beg to move.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): I see interest from Hon. Nzengu Musyimi.

**Hon. Paul Nzengu** (Mwingi North, WDM-K): Thank you, Hon. Temporary Deputy Chairman. I appreciate the thinking of the Committee on this particular item. I support them, particularly because they have appreciated the role and involvement of Parliament. Sometimes we leave the Executive to do their own things and we sit and watch. I support the amendment.

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): Let us have Hon. Nyikal.

**Hon. (Dr.) James Nyikal** (Seme, ODM): There are three things that I have observed where I see inconsistencies. When we started with the procurement, we excluded private entities from the public procurement laws on that account. When we came to Clause 76, we excluded them from public audit. When we now come to Clause 82, we are bringing them back to Parliament. I do not see many private companies that would want this. I see a few inconsistencies there. I would like an explanation of why private companies were excluded from public procurement rules, public audit rules in Clause 76, yet now we are bringing the financial reports back to Parliament.

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): Let us have Hon. Ngugi. You wanted to comment on the earlier amendment. Okay. Let us have Hon. Shamalla.

**Hon. (Ms.) Jennifer Shamalla** (Nominated, JP): Hon. Temporary Deputy Chairman, I am convinced that the reasons we have removed the bottlenecks in the earlier clauses is for ease of doing business, so that we can fast-track the negotiations, but still be accountable at the level in Clause 82.

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): Very well. Let us have Hon. Sankok.

**Hon. David ole Sankok** (Nominated, JP): Thank you very much, Hon. Temporary Deputy Chairman. I support this amendment because it has allayed my fears of a company which was supposed to collect funds for 10 years extending it to 20 years. That would mean that they get an extra 10 years of collecting our revenue. If the report of their accounts is brought to this House and is considered by the Public Accounts Committee, we will then be able to know that they have

collected their money, so they can finish up. I support this amendment. It has allayed my earlier fear. Therefore, I withdraw my “nay” in the earlier amendment.

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

*(Clause 82 as amended agreed to)*

*(Clauses 83, 84, 85, 86 and 87 agreed to)*

*New Clause 21A*

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): This is where Hon. Ichung’wah, Member for Kikuyu, has proposed some amendments. We will start with him. Move your amendment.

**Hon. Kimani Ichung’wah** (Kikuyu, JP): Hon. Temporary Deputy Chairman, I beg to move:

THAT, the Bill be amended by inserting the following new Clause immediately after Clause 21-

Attorney General to certify  
projects.

21A. (1) Subject to the provisions of Part III and Part VI, the Attorney-General shall have power to determine whether a proposed project concerns county government.

(2) A contracting authority or county government which intends to enter into a public private partnership shall apply to the Attorney-General for a determination as to whether the proposed project concerns a county government.

(3) The Attorney-General shall issue a certificate of the determination in accordance with this section.

The intention of this Clause is to reinforce what is already in the Bill. Parts 3 and 6 of the Bill categorise Public Private Partnership (PPP) agreements into those that also concern county governments. I want to give authority to the Attorney-General to have the power to determine whether a project concerns a county government. We have issues with Bills in this House and the Senate between the two Speakers of the two Houses in determining whether a Bill concerns the county governments or not. Therefore, I want clarity. The Attorney-General will determine whether a project concerns the county governments. As the former Leader of the Majority Party, Hon. Duale, said, this will prevent cases where a governor decides to engage into projects that necessarily do not involve county governments or where a contracting authority gets into projects that touch county governments.

Any contracting authority or county government that intends to get into a PPP agreement will then apply to the Attorney-General to give a determination as to whether the proposed projects concern a county government. Thereafter, a certificate will be issued.

Hon. Temporary Deputy Chairman, I beg to move.

*(Question of the new clause proposed)*

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*(New clause read the First Time)*

*(Question, that the new clause be read a Second Time, proposed)*

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): I will give the first opportunity to the Chair and then to the Leader of the Minority Party.

**Hon. (Ms.) Gladys Wanga** (Homa Bay (CWR), ODM): Thank you, Hon. Temporary Deputy Chairman. Hon. Ichung'wah is my very good friend. You should note that this Bill is coming back a second time. The purpose of the Bill is to reduce bottlenecks. If we are making any amendments to increase bottlenecks and yet we have a Committee that has representatives from the national Government and county governments where a project is submitted for determination of all these factors. If we say that a project has to go to the Attorney-General who single-handedly determines the county government dispute, then we will just get into further disputes.

*(Hon. Members raised their hands)*

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): Hon. Members, you do not need to raise your hands. Press the intervention button and I will see you.

**Hon. (Ms.) Gladys Wanga** (Homa Bay (CWR), ODM): I am constrained to ask Hon. Ichung'wah to re-consider this amendment, so that these proposals will go to the Project Committee which has representatives from the Council of governors whom we have increased their numbers. It has the Principal Secretaries. They make a determination and the project proceeds. If we do not want to have PPPs, we will add these bottlenecks.

Hon. Temporary Deputy Chairman, I am constrained to oppose this amendment.

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): Leader of the Minority Party followed by the Leader of the Majority Party.

**Hon. John Mbadu** (Suba South, ODM): Hon. Temporary Deputy Speaker, the Chair of the Committee has taken words from my mouth. Let me just re-emphasise that we do not want too much bureaucracy. If you look at the composition of the Committee, there is a place for the Solicitor General who gives legal advice to this team. He is from the Attorney-General's office. I do not see why we should again create another level where now before you start the process, you write to the Attorney-General. This amendment is well-intentioned but it does not serve any useful purpose.

Hon. Kimani Ichung'wah, we will either defeat your amendment or you withdraw it.

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): Leader of the Majority Party.

**Hon. Amos Kimunya** (Kipipiri, JP): Hon. Temporary Deputy Chairman, the first thing that we must agree on when defeating this amendment is that the Attorney-General has power. We will not give him more power.

The Constitution is very clear on the functions of the county governments and national government. We have also agreed here that the county governments shall give their lists to the national Government. They will be very clear. They must be approved by the national Government. The devil is in the detail here. The proposed amendment in new Clause 21A (2) states that a contracting authority or county government which intends to enter into a PPP shall apply to the

Attorney-General for a determination as to whether the proposed project concerns a county government. Any county government can argue that an expressway concerns Kisumu County because vehicles will move on it. Another one will be in Mombasa. Before you get concurrence, the person who is undertaking the PPP project will be taken through rigmarole because everyone will say that it affects their counties. They must come and make a presentation to approve the project.

People will say that a project in Turkana County to construct a windmill affects other counties because electricity will be transmitted there.

*(Hon. Kimani Ichung'wah spoke off-record)*

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): Hon. Ichung'wah, just relax. You will have an opportunity to contribute.

**Hon. Amos Kimunya** (Kipipiri, JP): Let us avoid these issues that can create uncertainty and situations where no project will ever be completed because everyone will claim that it affects them. We were taken to court by the Senate. They said that the Appropriation Bill affects counties because money is spent there. People can extend this issue of what concerns counties to dilly-dally and kill very good projects. Let us defeat this amendment because Hon. Ichung'wah does not want to withdraw it. Let us take a vote. I urge that we do not add any more bureaucracy than we already have.

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): Hon. Kandie Joshua, Member for Baringo central.

**Hon. Joshua Kandie** (Baringo Central, MCCC): Thank you, Hon. Temporary Deputy Chairman. I agree with the Leader of the Majority Party. I totally oppose this new Clause 21A. Hon. Ichung'wah knows the work that the Attorney-General has. The intent of this Bill is to fast track PPPs in Kenya. Therefore, we need to ask the people who are interested to invest their money in projects in Kenya. I urge my friend, Hon. Ichung'wah, to withdraw this amendment and we proceed.

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): Hon. Nyenze.

**Hon. (Ms.) Edith Nyenze** (Kitui West, WDM-K): Thank you, Hon. Temporary Deputy Chairman. I stand to oppose Hon. Ichung'wah amendment because it creates more bureaucracy. The project committees will do the work. Let us not take it back to the Attorney-General.

I oppose the amendment.

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): Finally, Hon. Ichung'wah.

**An Hon. Member:** Say "Chair" but not "share".

**Hon. Kimani Ichung'wah** (Kikuyu, JP): Hon. Temporary Deputy Chairman, I am from Kiambu County but not Nyeri County. I know the difference between Chair and share.

*(Laughter)*

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): It is allowed.

**Hon. Kimani Ichung'wah** (Kikuyu, JP): Those Members who are shouting do not know where I went to school.

*(Laughter)*

Hon. Temporary Deputy Chairman, I want to respond to two issues. One is on the role of the Attorney-General. According to the Constitution, he is the legal adviser of the Government. Therefore, I seek to give authority to the Attorney-General, who is the Government's sole legal advisor, to make a determination. This will ensure that we avoid the very issues that the Leader of the Majority Party is talking about – that, tomorrow somebody will claim that the Expressway from Jomo Kenyatta International Airport (JKIA) to Rironi and ABC passes through the Counties of Machakos and Nairobi, and therefore, it involves county governments.

To clear that mischief, it is exactly what I intended to do with this New Clause 21A that the Government's legal advisor will make a determination, *ab initio*, that a particular project does not involve county governments. This will ensure that tomorrow nobody will go to court to argue that that Expressway passes through Machakos but the people of Machakos were never consulted; or that it touches Kiambu or Nairobi but the people were never consulted.

I do things for posterity. I do not do things to excite anybody. I do not legislate in this House to even please the Executive or those who are in power today. Therefore, I will still stand with this amendment. It is for posterity. It is the right thing to do. I wish those people will invoke their conscience to support it.

*(Question, that the new clause be read  
a Second Time, put and agreed to)*

*(The new clause was read a Second Time)*

*(Question, that the new clause be added to  
the Bill, put and agreed to)*

*New Clause 59A*

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): Hon. Ichung'wah, Member for Kikuyu.

*(Loud consultations)*

**Hon. Kimani Ichung'wah** (Kikuyu, JP): Thank you, Hon. Temporary Deputy Chairman. I was being disrupted by those who were being mobilised to oppose even without knowing what they are opposing.

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): Hon. Ichung'wah, withdraw that part of the statement.

**Hon. Kimani Ichung'wah** (Kikuyu, JP): Hon. Temporary Deputy Chairman, I beg to withdraw.

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

**Hon. Kimani Ichung'wah** (Kikuyu, JP): I was saying that, moving forward, I beg to withdraw that. It is the unnecessary distraction that I was referring to.

Hon. Temporary Deputy Chairman, I beg to move:

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THAT, the Bill be amended by inserting the following new clause immediately after clause 59...

*(The Temporary Deputy Chairman (Hon. Christopher Omulele) consulted with the Clerk-at-the-Table)*

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): Just hold on, Hon. Ichung'wah.

*(Loud consultations)*

We have New Clause 44A by the Chairperson. However, Hon. Ichung'wah, this is just an advice from the Chairperson here that you consider your further amendments in New Clauses 59A and 65A. Just relook at them because they have a correlation to the New Clause 21A that has just been rejected. This is so that when we reach them, you make the right decision.

We will have the Chairperson to move New Clause 44A.

*New Clause 44A*

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

THAT, the Bill be amended by inserting the following new clause immediately after clause 44-

Restricted  
Tendering

*Restricted tendering*

**44A.** (1) A contracting authority may use restricted tendering if any of the following conditions are satisfied-

(a) competition for contract, because of the complex or specialized nature of the works and services is restricted to prequalified tenderers;

(b) the time and cost required to examine and evaluate a large number of tenders would be disproportionate to the value of the works or services to be procured;

(c) if there is evidence to the effect that there are only a few known suppliers of the whole market of the works or services;

(d) an advertisement is placed, where applicable, on the procuring entity website regarding the intention to procure through limited tender.

(2) A contracting authority may engage in procurement by means of restricted tendering in such manner as may be prescribed.

This relates to the discussion that we had earlier around the types of procurement. I wish to ask for your guidance, given the fact that in Clause 37 we listed (d) as "restricted bidding", on whether we can change this title now to "restricted bidding" so that it is consistent with what we amended in Clause 37.

Hon. Temporary Deputy Chairman, let me get your guidance on that.

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): Yes, you need to move that New Clause 44A be now read a second time.

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**Hon. (Ms.) Gladys Wanga** (Homa Bay CWR, ODM): I have already done that.

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): You have done that. Are you comfortable with your explanation?

**Hon. (Ms.) Gladys Wanga** (Homa Bay CWR, ODM): Hon. Temporary Deputy Chairman, I am seeking a further amendment that rather than “restricted tendering” it should read “restricted bidding” so that it is consistent with what we have listed in Clause 37. It is just to introduce restricted bidding and explain the circumstances under which restricted bidding can be used as a method of procurement.

I beg to move.

*(Question of the new clause proposed)*

*(New clause read the First Time)*

*(Question, that the new clause be read a Second Time, proposed)*

*(Question, that the new clause be read a Second Time, put and agreed to)*

*(The new clause was read a Second Time)*

*(Question, that the new clause be added to the Bill, put and agreed to)*

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): Hon. Chairperson, you note that you have moved the New Clause 44A in an amended form. So, you do not need to go back to Clause 37 that we had purposed to reconsider. So, it is well done.

*New Clause 59A*

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): Hon. Ichung’wah, what do you want to do with this?

**Hon. Kimani Ichung’wah** (Kikuyu, JP): Thank you, Hon. Temporary Deputy Chairman. I was consulting with the Leader of the Minority Party. We are both accountants and very diligent. So, we have to keep consulting.

I will move the New Clause 59A in an amended format. This is based on the glorious fall of New Clause 21A. So, I want to remove 59A (1) for the New Clause to read:

“THAT, the Bill be amended by inserting the following new clause immediately after clause 59.”

Part (2) now becomes (1), which reads:

“(1) The contracting authority shall submit a copy of the public private partnership agreement, the project financial and risk assessment reports to the National Assembly.”

It is followed by (2), which reads:

“(2) The National Assembly shall consider and approve...”

The Order Paper reads “approve or reject.” I want to remove “or reject” so that it reads “consider and approve the project agreement within thirty days.” It should be 30 days instead of the 90 days that appear on the Order Paper.

So, I beg to move:

THAT, the Bill be amended by inserting the following new clause immediately after clause 59-

Approval by  
National Assembly of  
National  
Government  
Projects.

59A. (1) The contracting authority shall submit a copy of the public private partnership agreement, the project financial and risk assessment reports to the National Assembly.

(2) The National Assembly shall consider and approve the project agreement within thirty days.

(3) The approval by the National Assembly may include its reservations or recommendations.

(4) If the National Assembly does not make a decision on the project agreement within the thirty days, it shall be deemed to have been approved.

(5) The parties to a public private partnership shall review the Project agreement to take into consideration any reservations or recommendations made by the National Assembly before execution.

(6) The Clerk of the National Assembly shall—

(a) keep a register of all public private partnership agreements submitted; and,

(b) cause a list of all public private partnerships to be published on Parliament’s website.

My basis of this amendment is simple. All these public private partnerships, as I have alluded to earlier, involves public assets. Members of the National Assembly are the ones, under Article 94 of the Constitution, who have been given powers to represent the people. These same people are the taxpayers who will take care of the costs of many of these projects. What I am asking is that at least in every PPP agreement that is entered into, as MPs, through our respective Departmental Committees, we have an opportunity to interrogate those PPPs.

*(Hon. Amos Kimunya spoke off-record)*

Hon. Temporary Deputy Chairman, protect me from the Leader of the Majority Party. I wish to state again to him that I am not here to legislate for him. He should give me my time. He will have his say.

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): Hon. Ichung’wah, just address the Chair. Do not worry. You are on record.

**Hon. Kimani Ichung’wah** (Kikuyu, JP): Thank you, Hon. Temporary Deputy Chairman. Because I came and sat next to him, he assumes that he can intimidate me. He knows that I can never be intimidated, least of all, by somebody from Kipipiri.

*(Laughter)*

I was saying that the basis is just that the National Assembly, being the people's representative, needs to have an opportunity to interrogate these PPP agreements. If we were in other countries, these agreements would be good to pass as they are where public scrutiny of agreements is open. I have stated without any fear of contradiction that we are in a country where State capture by the Executive is not imagined. It is real. There is actual State capture.

Many of the PPP agreements that come into effect are agreements that are designed not for the benefit of the country and taxpayers, but for the benefit of private enterprises and private business people in this country. The only way through which we can protect the public interest is by the National Assembly, being the House that is constitutionally charged with the responsibility of appropriating people's resources in this country, having a role in the scrutiny of these agreements. This will enable us to ensure that we get public assets that are done efficiently, where value for money is protected by the people's representatives.

I have had time with the Leader of the Majority Party and the Leader of the Minority Party to discuss some of these amendments and even the further amendment to reduce the number of times. That is why we are seated next to each other. We are being told that this Bill in its entirety is to reduce bottlenecks. If Members of the National Assembly will today view themselves as a bottleneck yet they have a constitutional duty and responsibility to Kenyans to offer oversight over public assets, then we must really question ourselves as to what our role as the Members of Parliament (MPs) is. If we will be used as rubberstamps by the Leader of the Majority Party, we want recourse. I really want to beg that, even as Members contribute, we look at our role in terms of being legislators who have a constitutional responsibility to oversee and also be cognisant of the country that we are living in—a country where state capture by the Executive, where decisions in this country...

*(Loud consultations)*

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): Hon. Ichung'wah, we need to make progress.

**Hon. Kimani Ichung'wah** (Kikuyu, JP): I really want to beg, as I move, that we look into this issue devoid of emotions and politicking. We know where to politic if we want to. But, look at our role as MPs or as the people's representatives and our oversight role as a House.

I beg to move.

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): Hon. Ichung'wah, you must always remember that all these Members are here as equals. We are all Members. Before I propose the Question, Hon. Ichung'wah, I just need some clarification from you. You have proposed to move this in an amended form so that your No. 2 now becomes your No. 1. What do you want to do with that part about the certificate issued under Section 21A which has failed, has been rejected?

**Hon. Kimani Ichung'wah** (Kikuyu, JP): I said we remove that one because it is now moribund since 21A fell. That is why I am renumbering.

*(Question of the new clause proposed)*

*(New clause read the First Time)*

*(Question, that the new clause be*

*read a Second Time, proposed)*

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): I see interest from the Leader of the Minority Party. Hon. Members, you know he has priority. So, he will speak. The Leader of the Minority Party will speak then the Leader of the Majority Party.

**Hon. John Mbadia** (Suba South, ODM): He has priority but the Hon. Temporary Deputy Chairman saw me first.

In just a minute, I just want to say that I am very reluctant in mixing the roles of the three Arms of Government. That is why I am concerned about what I feel is judicial overreach. The same Parliament should restrict its responsibility on legislation, representation and oversight. Let us not get involved in approving Government programmes. Really, where will we end? We will start approving vouchers here, before they are paid.

*(Laughter)*

The amendments that have been carried here previously allowed Parliament to be getting reports about these projects. There is nothing that stops any Committee of Parliament or even Parliament as a whole in requiring the Executive to supply us with information.

Therefore, without belabouring the point, I oppose this amendment.

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): The Leader of the Majority Party.

**Hon. Amos Kimunya** (Kipipiri, JP): Thank you, Hon. Temporary Deputy Chairman. I just want to underscore, to reject this amendment, and oppose it, on the issue of the fundamental separation of responsibilities between Parliament and the Executive. Immediately we start conjoining these two, we are getting ourselves into a quagmire. I beg that the House rejects this amendment for purposes of moving on.

*(Question, that the new clause be read  
a Second Time, put and negatived)*

*New Clause 65A*

**Hon. Kimani Ichung'wah** (Kikuyu, JP): In the interest of time... Hon. Temporary Deputy Chairman, can you tell this Jubilee Whip not to try to intimidate me?

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): Hon. Ichung'wah, you can never be intimidated. You are in the House. You have the full rights.

**Hon. Kimani Ichung'wah** (Kikuyu, JP): You know it is only you who can protect me, not the Leader of the Minority Party who is telling me that I am seated in the wrong place. There is no right place and wrong place. I can even sit where you are.

I was saying, in the interest of time, I see time and the House having defeated the New Clause 59A and the others consequential to 59A, it will be a waste of the taxpayer's time to even purport to be moving the other but let me express my disgust that the House has refused. I only sought the House to have recommendations and reservations on those PPP agreements to be considered at the time of execution of those agreements. Posterity and the future will judge me right and judge you very harshly for voting for the Executive.

As I finish, I want to say that it has nothing to do with the three Arms of Government; it has everything to do with interdependence and oversight which is our role as people who are charged with the responsibility of oversight. With that, thank you for also protecting me from many of these people who are heckling with no substance.

*(Loud consultations)*

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): The Hon. Ichung'wah, you need to withdraw the New Clause 65A.

**Hon. Kimani Ichung'wah** (Kikuyu, JP): Yes. I indicated that it is the New Section 65A that I beg to withdraw.

*(Hon. Kimani Ichung'wah withdrew his proposed New Clause 65A)*

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): That is well done.

*(First Schedule agreed to)*

### *Second Schedule*

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

THAT, the Bill be amended in the Second Schedule –

(a) by inserting the words “for a specified period of time not exceeding thirty years” at the end of item 4;

(b) in item 8 by inserting the words “not exceeding thirty years” immediately after the words “specified period”

(c) by inserting the words “for a specified period not exceeding thirty years” at the end of item 9;

(d) by inserting the words “for a specified period not exceeding twenty years” at the end of item 10;

(e) in item 12 by inserting the words “not exceeding 30 years” immediately after the words “specified period”;

(f) in item 14 by inserting the words “not exceeding 30 years” immediately after the words “specified period of time”;

(g) in item 16 by inserting the words “but not exceeding thirty years” immediately after the words “over time”.

Amendments to the Second Schedule are to carry what we had agreed earlier, that every PPP arrangement is capped at 30 years on the upper side. So, we are just adding 30 years wherever time was not specified.

*(Question of the amendment proposed)*

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

*(Second Schedule as amended agreed to)*

*(Hon. Kimani Ichung'wah consulted loudly)*

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): The Hon. Ichung'wah, we need order. And the mask. Hon. Ichung'wah. Hon. Members, let me just say this: The Hon. Ichung'wah, I have noted that you have very little regard for this House. It is not the Speaker or the Chair in this House that you are respecting.

*(Hon. Kimani Ichung'wah consulted loudly)*

Hon. Ichung'wah, I am speaking to you. You have to respect this House. There are some things that are sacred. This House belongs to Kenyans. It does not belong to Omulele or to any of the Speakers. So, when you speak in this House and the way you behave in this House, it is an exact way that you want to behave to the people of Kenya. So, let us be respectful in the way we conduct ourselves in the House.

*(Applause)*

*(Third Schedule agreed to)*

*(Clause 2 agreed to)*

*(Title agreed to)*

*(Clause 1 agreed to)*

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): Hon. Members, we have completed that job. I want to call upon the Mover.

**Hon. Amos Kimunya** (Kipipiri, JP): Hon. Temporary Deputy Chairman, I beg to move that the Committee do report to the House its consideration of the Public Private Partnerships Bill (National Assembly Bill No. 6 of 2021) 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]*

## **REPORT AND THIRD READING**

### **THE PUBLIC PRIVATE PARTNERSHIPS BILL**

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Leader of the Minority Party, you will do this for us.

**Hon. John Mbadi** (Suba South, ODM): Hon. Speaker, I beg to report that the Committee of the whole House has considered the Public Private Partnerships Bill (National Assembly Bill No. 6 of 2021) 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 do agree with the Committee in the said Report. I also want to request Hon. Wangwe to second the Motion in agreement with the report of the Committee of the whole House.

**Hon. Emmanuel Wangwe** (Navakholo, JP): Hon. Temporary Deputy Speaker, I second.

*(Question proposed)*

*(Question put and agreed to)*

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

**Hon. Amos Kimunya** (Kipipiri, JP): Hon. Temporary Deputy Speaker, I beg to move that the Public Private Partnerships Bill (National Assembly Bill No. 6 of 2021) be now read a Third Time. I also want to take this opportunity to thank Members for their contribution and vibrant debate that we have had over this Bill and I am sure that Kenyans will be better off because of the actions of this House. I want to request the super Chairperson of the Departmental Committee on Finance and National Planning, Hon. Wanga, to second.

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

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

*(Question proposed)*

**Hon. Members:** Put the Question.

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

**Hon. Members:** Yes.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Members, having confirmed that we have the requisite quorum in the House for purposes of making this decision; I proceed to put the Question.

*(Question put and agreed to)*

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

**ADJOURNMENT**

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Members, I want to thank you for the great effort that we have made this afternoon to consider this Bill.

The time being 6.30 p.m., this House stands adjourned until Wednesday, 30<sup>th</sup> June 2021, at 7.00 p.m.

The House rose at 7.00 p.m.