

**PARLIAMENT OF KENYA****THE NATIONAL ASSEMBLY****THE HANSARD****Wednesday, 4<sup>th</sup> August 2021**

The House met at 2.30 p.m.

*[The Speaker (Hon. Justin Muturi) in the Chair]***PRAYERS****ADMINISTRATION OF OATH**

**Hon. Speaker:** Hon. Members, I can see an Hon. Member who is trying to do a jig. Let me remind you that we are in the National Assembly.

*(Applause)*

**Hon. Kimani Ichung'wah** (Kikuyu, JP): Hon. Speaker, on behalf of the people of Kiambaa and the entire hustler nation in the Republic of Kenya, I have the honour to introduce to you the Member of Parliament-Elect for Kiambaa Constituency in Kiambu County, Hon. John Njuguna Wanjiku.

*(Applause)*

**Hon. Speaker:** Order Members! The Member must take the oath in silence.

The Oath of Allegiance was administered to Mr. John Njuguna Wanjiku.

*(Applause)**(Several Hon. Members chanted)*

Order! That is enough! Order, Members! You might teach the new Member bad manners. He might think that that is the way business is transacted in the House. That was just a brief period of noise, otherwise known as cacophony. So, let us go back to business. Can those Members who are standing up, please take their seats?

**PETITION****REVIEW OF LEGAL FRAMEWORK GOVERNING MARKING  
AND RELEASE OF NATIONAL EXAMINATIONS**

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**Hon. Speaker:** Hon. Members, Standing Order 225(2)(b) requires the Speaker to report to the House any petitions, other than those presented by a Member. 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. In this regard, Hon. Members, I wish to report to the House that my office has received a petition signed by Ms. Mary Njoki of ID No. 0582470 and Mr. Isaac Njoroge of ID. No.13406495 on behalf of their minor children, Mary Wanjiru Njoroge and Boniface Muriithi Maina, respectively. The petitioners, who sat for the Kenya Certificate of Primary Education (KCPE) Examinations in the 2020 class, claim that an extensive analysis of results of the KCPE 2020 examination that was released on 15<sup>th</sup> April 2021 is indicative of a pattern of possible manipulation of results that skewed the general performance in favour of candidates from public schools at the detriment of candidates from private schools.

Hon. Members, the petitioners state that although learning during the academic year preceding the examinations was largely disrupted by the COVID-19 pandemic, private schools heavily invested in ICT and deployed alternative learning methods, including online classes, which ensured that candidates from private schools were better prepared for the KCPE examinations as compared to those in public schools, that lacked capacity to ensure seamless continuity of the learning process. The petitioners were therefore puzzled that contrary to the logical expectation, the 2020 KCPE results were skewed to reflect better performance of public schools and a drastic drop in the performance by candidates from private schools.

Hon. Members, the petitioners have attached progress reports to demonstrate that the marks they were awarded at KCPE reflected a drastic negative deviation from the average scores they and their colleagues in private schools had been posting in continuous assessment tests, including the assessment done by the Kenya National Examinations Council (KNEC) after resumption of learning post-COVID-19 to ascertain the state of preparedness of candidates to sit for KCPE examinations. Indeed, they aver that, even the KNEC in its report on ‘Monitoring Learner Achievement at Class 7 Level Primary School Education’ admitted that pupils from private schools achieved higher mean scores in all subjects than their counterparts in public schools.

Hon. Members, the petitioners are concerned that the process of marking and release of KCPE examinations lacks transparency and is shrouded in mystery due to the limitation imposed on the right to access information by Section 42 of the Kenya National Examinations Council Act. Further, the petitioners are faulting Rule 19 of the Kenya National Examinations Council (Marking of Examination, Release of Results and Certification) Rules, 2015, that prohibits access to an examination script by any candidate, institution, teacher or any other third party representing the interest of the candidate, once the script has been marked. While the petitioners are inclined to believe that they were not fairly scored in KCPE, they are frustrated that the foregoing provisions make it impossible for them and other aggrieved candidates, institutions or their representatives to verify, from the examination scripts, the authenticity of marks that a candidate scored.

Hon. Members, the petitioners therefore pray that the National Assembly, through the Departmental Committee on Education and Research:

- (1) inquires into allegations of possible external influence to the process of marking the KCPE examinations, which resulted in candidates from public schools being awarded higher scores than their counterparts in private schools, even when progressive assessment demonstrated that candidates from private schools were better prepared for the exams and had posted better results in pre-KCPE assessments;

- (2) reviews the legal framework governing marking and release of national examinations, particularly Rule 12 of the Kenya National Examinations Council (Marking of Examination, Release of Results and Certification) Rules, 2015 and amends the Kenya National Examinations Council Act with a view to securing the process of external influence by stakeholders and the Ministry of Education and to permit the right of access to information by aggrieved candidates and,
- (3) makes any other recommendations the Committee may deem fit in addressing the plight of the petitioners.

Hon. Members, having determined that the matters raised by the petitioners are well within the authority of this House, I order that pursuant to the provisions of Standing Order 227(1), this Petition be committed to the Departmental Committee on Education and Research. The Committee is required to consider the Petition and report its findings to the House and the petitioners in accordance with Standing Order 227(2).

I thank you!

Next Order! Yes, Hon. T. J.

### POINT OF ORDER

#### CONSIDERED RULING: DRESS CODE FOR MEMBERS OF PARLIAMENT

**Hon. T. J. Kajwang'** (Ruaraka, ODM): Thank you, Hon. Speaker. We are very happy that you are in the Chair today. This is because it looks like an eventful day and Members are very happy and pleased for some reason. You can see this House has some very well-dressed Members. They are undoubtedly very pleasantly dressed for sure and somehow, they are coping from you because they are taking the strips of your gown. Whereas the meaning of that is unknown, I can also see the former Leader of Majority Party has also succumbed to this temptation of wearing very colourful ties.

I am addressing myself to the Order in plenary. Those of us who have been here for a little longer have come to know the tradition of attire, decorum and proceedings of the Assembly. Also, many of us who have not been here for a longer period are learning. But is it in order that a general group of MPs find themselves dressed in a particular manner, so as to suggest their political affiliations and aspirations in terms of political parties? This is the National Assembly of the people of the Republic of Kenya. These Members represent not only their constituencies but the nation as a Republic.

When we come to this Assembly of course, we come with our political persuasions at heart but we do not express them. This is because we express the nation as assembled and this is the essence of Articles 1 and 10 of the Constitution, that we are the people. When we come here, we do not show our partisan approach to issues. We show that wherever we are and the divergent extractions we find ourselves in, expressly we are the people of the Republic of Kenya. When I see the Member of Garissa dressed as he is and that nominated Member, I do not know which constituency he represents, but I suppose he represents a very important community called people living with disabilities. When I see them in equal attire, I start imagining how a ranking Member decided to descend himself to the position of a junior Member, so as to show the Speaker his or her political persuasions.

I think this is out of order. I think this is bringing this House into disrepute. Given an opportunity, if this is how we are going to proceed... You know that Members of this side are

better dressed than you anyway. As a matter of preference, I know for me orange is more colourful than yellow but I have chosen not to bring my orange dress to the House because when I come here, I am representing the people of the Republic. This is a very important issue. It is not only constitutional... Yes, it is constitutional. I have referred to Article I and Article 10 on national values. These are principles that we hold dear and we come here to protect the Constitution. All of us are here and we swore to protect the Constitution one of which is Article 10.

If the Members would tolerate the discussion, this is a debating chamber and so I request you, Hon. Speaker, to make a considered ruling within the law and within the Standing Orders applicable whether Members who are adorned in a particular colour which suggests their political affiliation that we know in the public, are properly dressed and they are properly before the National Assembly in the manner in which they appear. The thought that went into making the robes that you wear was a patriotic and thoughtful decision. You are representing the nation and the National Assembly of the Republic but when these Members behave the way they are including the masks they wear... I cannot see some of them because they are in some apparels that I am unable to see. They can continue but I even suppose that the undergarments must be yellow today for all I care. So, Hon. Speaker, I request you to make a considered patriotic constitutional decision treating this issue not as a pedestrian discussion but giving it the respect that this House stands for. Otherwise, all of us would one day come and say what we must say and show all our political persuasions and our political shades of this House.

Hon. Speaker, I beg for your ruling.

**Hon. Speaker:** Sorry! Hon. Members, I think as we head closer to the end of the 12<sup>th</sup> Parliament, it appears like most of you have forgotten the rules of debate. I suspect there is something in the air which is causing a lot of excitement and causing Members to forget very quickly. Hon. Kajwang' has requested for a considered ruling. There is nothing to ventilate on. I will do that. Hon. Members, this is not business. I had seen Members who had put their interventions. My assumption was that since I had just read out the public petition, the comments that were going to come were with regard to that petition. Remember it is also time bound. If you look at Standing Order No. 225, it is time bound. So, I am going to assume that the interventions which I am seeing are with regard to the petition. You will not be able to assist me to do that. I will be able to do it without your input. Let us not discuss that. That altercation is not going to help anybody. I can only allow the Member for Garissa Township and Nominee 001 because he is the one who was mentioned. The rest were not mentioned. Just stick to what Hon. T.J. addressed. He addressed the issue of dress. So, let me allow Hon. Duale to say something.

**Hon. Aden Duale** (Garissa Township, JP): Hon. Speaker, thank you very much. I really want to thank Hon. T.J. Kajwang'. His opening remark was that he has been around. Let me say I have been around more than him. Let me jog his memory because I was the founder member of ODM, his current party, and in the 10<sup>th</sup> Parliament when we were electing Speaker Marende, and Members like Hon. Washiali will agree with me, under the direction of his party leader, we came to this House. First, we were put in a hotel in Karen KCB Leadership Centre. We came to this House wearing the orange colours and voting in one direction. So, it is not the first time. It was started by your party.

Secondly and more fundamental, this is the same Hon. T.J. Kajwang' and others who brought, in a State of the Nation Address by His Excellency the President Uhuru Kenyatta, paraphernalia like the *firimbi* and many others. It is the same T.J. Kajwang' who is telling us to protect and defend the Constitution. This is the same T.J. Kajwang', contrary to the basic structure and the eternity clauses of the Constitution, committed treason and went to Uhuru Park and

purported to swear in *Baba* contrary to the Constitution. Let us not have double standards. Hon. Speaker, you know the mode of dress. I want to say it for free. If the yellow ties and the dresses are a problem to you, you have to prepare yourself psychologically because you are going to see it in the near future. It is the current and the future. Thank you, Hon. Speaker.

*(Hon. Kipsengeret Koros raised his hand)*

**Hon. Speaker:** Hon. Koros, please you are in the National Assembly. That behaviour of walking here with hands raised up is a village one. It is very pedestrian. Refrain from doing that. I said as the tail end of this Parliament draws, it looks like Members are forgetting. You were rather a very orderly Member. I do not know what has suddenly gotten into you. Do not repeat that. If you want to say something, you know what to do. Hon. Duale, are you through?

**Hon. Aden Duale** (Garissa Township, JP): Hon. Speaker, I was finishing. I am a ranking Member. I have been here since 2008. That is why in your wisdom, you did not follow what the Speaker of the Senate did to allow the Senator for Narok... I will wear my mask. It is a good day for me today. You did not allow the way the Speaker of the Senate allowed the Senator for Narok to come with his *shuka*. None of the Members is wearing a *shuka*. The ladies are dressed nicely and beautifully in yellow. The men are dressed in one of the best suits with the best ties. Hon. Speaker, history will judge us. There are many people who today are not sleeping because KaWanjiku is in the House. It is not me. It is the people of Kiambu.

So, Hon. Speaker, as you retreat to discuss, and I know with your experience, you do not need to give a ruling. When I come with my Kaunda suit, you have always asked that I button it. When Members come here with a jacket, like the one Hon. Halima Mucheke at one time came in, a jacket that looked like the one worn in the farm, you threw her out. I am a good friend of T. J. Kajwang'. Yesterday he said, when you want to raise something, go back to your memory lane. Do not have double speak. You are the one who shouted at the President of the Republic of Kenya, and coming with a paraphernalia from outside. So, I really want to ask that we go to the substantive matter. I am a ranking Member. I asked my beautiful wife to go to my wardrobe and find me a tie that resonates well with my party, UDA, the party of the future, the party that will form the next Government. So, do not blame me. You blame my family. I bought this tie long time ago. I have ties that are even orange that I used to wear when I was in ODM. Tomorrow if I come back to ODM, Hon. T. J will welcome me. I have enough ties of URP, Jubilee and ODM. By the way, from the way Hon. Kiraitu spoke last night, if you are in this House and you want to vie under a Jubilee ticket, you are signing your death warrant politically.

Thank you, Hon. Speaker.

*(Laughter)*

**Hon. David ole Sankok** (Nominated, JP): Thank you very much, Hon. Speaker. I have been adversely mentioned by Hon. T.J. Kajwang' whom we know very well as *CJ bonoko*. He is the last person to comment on such matters. He is somebody who has sworn in an illegal president. He committed treason. If it was not for the handshake, Hon. T. J. Kajwang' was a good candidate for Kamiti, yet he is the one pointing fingers. It is funny how in Kenya, people keep on pointing fingers at others without going back down memory lane. His Excellency Hon. Aden Duale has just enumerated occasions in which Hon. T.J. Kajwang' misbehaved and was totally out of order, within and outside of this House. I do not know why people are so much excited because of the

yellow colour. I have been wearing green, which is associated with a village party called FORD-K. Nobody has ever complained. I have been wearing a red suit, associated with my Jubilee Party and nobody complained. I have been wearing a white suit associated with an amorphous political Non-Governmental Organisation called National Super Alliance and nobody complained about that particular dress code. Why are they so much concerned about yellow? You have the yellow strip in your official dress. Just above you, there is the coat of arms which has the yellow colour. We have 70 political parties in this country. Each political party has an official colour. Supposing now we say, we cannot come with colours that associate with political parties, does it mean that we have to come to this House naked because all colours have been taken by political parties? It is totally shameful to hear somebody who claims to be a ranking... In fact, I am better than him. My friend, Hon. Junet who is very intelligent and a ranking Member and I respect him very much has come dressed in yellow.

**Hon. Members:** Orange.

**Hon. David ole Sankok** (Nominated, JP): I think his wife did not see very well that he needed orange, now he came with yellow. Welcome to the club. To sum up, you should not be so much excited because of the win of Hon. Njuguna Wanjiku. Hon. T.J. Kajwang', or *CJ bonoko*, you can as well take Kariri Njama to Uhuru Park and swear him in. I hear for the first time in the history of this country... I am a Member of the Jubilee Party, the ruling party. Imagine the whole Government and the ruling party going to court claiming that votes were stolen! It has never happened anywhere in the world. It is so funny. I think it is because of what we started with Hon. T. J. Kajwang' and their handshake.

Lastly, Hon. Speaker, I would like to congratulate you. Yesterday you were in Murang'a attending a burial ceremony. You delivered a condolence message on behalf of the first in command. You know the pecking order. The first in command is Hon. Uhuru Kenyatta, the second is Hon. William Ruto and the third is... From all indications, in 2022 the first in command will not be on the ballot box. There will be the second and the third. So, the race will be between two horses, the second and the third. The rest are *punda milia*.

Thank you very much, Hon. Speaker.

**Hon. Speaker:** Hon. Members, it is a sad moment that the time allocated for comments on the Petition is actually running out. Hon. Ichung'wah, on the petition.

**Hon. Kimani Ichung'wah** (Kikuyu, JP): Thank you Hon. Speaker. I rise to support this Petition by Hon. Isaac Njoroge and Ms. Mary Njoki on behalf of their children, Mary Wanjiru and Boniface Muriithi. The issues that the petitioners have raised in the Petition are not just weighty issues relating to the education of our children, but are very critical especially this time when we are confronted with a period where the curriculum of the candidates who will sit their KCPE and Kenya Certificate of Secondary Education (KCSE) exams this year, that was to be covered in two years, will be covered in about one -and-a-half years.

I also rise because I happen to have served as the Chair of the Budget and Appropriations Committee. If there was any department and ministry that we appropriated a lot of money because of the COVID-19 pandemic, it was the Ministry of Education. It is indeed true that the results that came out of the KCPE marking for this year, the 2020 class, were indeed skewed against students or pupils who attended private schools.

*(Loud consultations)*

Hon. Speaker, protect me from Hon. T.J. Kajwang'.

**Hon. Speaker:** Order Members, we are back to business. Those of you wishing to withdraw, just do it quietly.

**Hon. Kimani Ichung'wah** (Kikuyu, JP): Thank you, Hon. Speaker for protecting me from Hon. Kajwang' and those who are exiting. Hon. Kajwang' is kindly advising them to exit to Uhuru Park. Maybe he has a plan of swearing in the failed Jubilee candidate, Kariri Njama at Uhuru Park.

I was saying, this Petition is indeed true. There was a lot of skewed marking of last year's KCPE exams. The issue that I want to bring to the attention of the Departmental Committee on Education and Research and why I mention the budgetary allocation that we allocated to the Ministry of Education is simple. I have no fear of contradiction when I state before this House that if there is a headquarters of corruption in Government today, it is in the Ministry of Education and Jogoo House in particular. The skewed results are not a reflection of failed systems in public schools but it is because the Ministry was not able to facilitate public schools to be able to teach children during the seven months or nine months that they were at home, while private schools continued teaching them online. Remember how embarrassed and ashamed I am standing here, having been elected on a Jubilee ticket in 2013 and having promised the children of Kenya laptops and tablets. Nine years down the line the tablets that were provided to schools are now gadgets that rot in stores and small cupboards that were built in those schools. I am speaking about the rot in the Ministry of Education.

I had occasion this recess to visit Karai Day Mixed Secondary School in my constituency. Last year, we appropriated some money in this House for construction of extra classrooms to ease congestion in order to comply with the COVID-19 protocol of keeping social distance. When I visited that school, I was ashamed to find that the Ministry sent a contractor to build a super structure, which is basically a shell – just the masonry walls with no plastering or windows, and just roofing – at a cost of Kshs1.2 million. This is the same amount of money that the Members of this House use to build classrooms to completion at less than Kshs1 million shillings.

I chaired the Budget and Appropriations Committee and when we asked the National Treasury to set aside the money to be disbursed for construction of extra classrooms in secondary schools as a conditional grant to the National Government Constituencies Development Fund (NG-CDF), the Ministry of Education objected. I will, in the coming week, be bringing a request for a statement to get the Departmental Committee on Education to go and occasion a forensic audit of all the infrastructure funds that were allocated to the Ministry of Education.

Hon. Speaker, we allocated money for desks last year, if you remember. The desks that I saw at Nachu Primary School are made out of chipboards. Only two months after being delivered, the metal parts and the cupboard parts are falling apart. This Petition is a pointer to the failure that persists in the Ministry of Education and the massive corruption that is going on there. Even as we welcome the new Member for Kiambaa – I had occasioned to lead the campaign as the chair of the campaign of UDA in Kiambaa – I was ashamed at the state of public schools in Kiambaa. It is indeed a challenge to my brother. We have offered, together with Hon. Ndindi Nyoro, to the people of Kiambaa good benchmarking in Kikuyu and Kiharu for them to see how they can utilise the NG-CDF to change the lives of the children of Kiambaa.

I congratulate the Member for Kiambaa and urge him, as he joins this House, not to carry the bad manners of swearing people in, not to carry the bad manners of shouting in the Chamber but to engage in meaningful debate that will change the lives of the people of Kiambaa. I discover that there is a big problem of unemployment in Kiambaa. There is also a big problem of drug and alcohol abuse. The Member, as we welcome him, has a huge responsibility within the next one year. I encourage those in Jubilee not to follow the likes of Hon. T.J. Kajwang' and their leaders

and instead accept defeat when they are defeated in an election and allow the people of Kiambaa to be served by their very able Hon. John Njuguna Wanjiku alias KaWanjiku.

I support this Petition and ask that the Committee expedites and concludes its work in the shortest time possible.

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

**Hon. Omboko Milemba** (Emuhaya, ANC): Thank you, Hon. Speaker, for this opportunity. I want to make my comments on the Petition by Mary and Isaac Njoroge, on behalf of the young ones. This is a very good Petition because in the first several weeks after the marking of exams, there was a lot of talk within the social media, other media and even on the streets that the marking process may have favoured public schools against private schools. This has gone on and it was almost dying. I am happy that this Petition has come up so that we can have a forensic audit of the processes that were undertaken during the marking.

The teachers who mark examinations are professionals and are trained to mark. Therefore, there is a particular way in which marking is done. I am a trained examiner. The examiners are very professional. I also want to indicate that originally, there was a style and belief of marking where after marking, a normal curve was produced by calculating what is called in marking “the grade point average”. The grade point average produces a normal curve. In the process, those who score very highly are moderated and those who score very lowly are equally moderated. When the former Cabinet Secretary for Education, Hon. Fred Matiang’i joined the Ministry, he removed the idea of grade point average. So, there is no moderation in marking nowadays. I am happy that even though that is no longer happening, we shall have a chance as the Departmental Committee on Education and Research to scrutinise the process and see if there was any other method that was used apart from the normal marking methods that are used.

Hon. Speaker, there has been a lot of imagination that public schools cannot perform. This, again, should get out of the thinking of Kenyans because with the improved infrastructure, which the Government continues to do, if we get more teachers for our schools – in fact, the most serious problem in public schools is lack of teachers – we shall actually have public schools performing better. There is no correlation between mock examinations and online learning on one hand and the KCPE results on the other as indicated in this Petition. Therefore, as we face this Petition as the Departmental Committee on Education and Research, I would wish that it is done appropriately so that finally a proper report can be given on the results of the 2021 Kenya Certificate of Primary Examination in order to disabuse the notion that the teachers who were marking the exams have done anything that is against the marking norms of exams. Surely, they are trained examiners.

I thank you.

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

**Hon. Kubai Iringo** (Igembe Central, JP): Thank you, Hon. Speaker, for giving me a chance to add my voice on this Petition. I support the Petition. Exams are set for all the children of this country and there should be no discrimination as to where one went to school so that they can get special favours or get special sheets of papers. In national examinations all students and learners should be treated equally. The complaint shows that there is a weakness in the Ministry of Education, whereby there are no proper standards to ensure that learners in both public and private schools compete equally.

Hon. Speaker, most of our primary schools are poorly furnished and the infrastructure is so poor that even the teachers are demoralised. Teachers in public schools are poorly remunerated and some schools are understaffed. Therefore, children in public schools might not get proper teaching. Teachers in public schools may not cover the syllabus unlike their counterparts in private

schools. The infrastructure in public schools is poor. The money that is supposed to be used to put up infrastructure in public schools as well as that meant to support free primary and secondary education is not released on time. The Ministry will say that they have disbursed the funds but they will take six months before they actually release the money. By the time they release the money, head teachers will have sent the children home several times to look for fees, which they cannot get from their parents because of the poor economy. It is high time that the Ministry of Education gave a serious look into the affairs of public schools so that they can at least match the standards of private schools.

Finally, there is the issue of school fees which is being charged every term. Last term was only one month but parents had to cough a whole three months' fees. This academic year will last only seven months but parents are paying the same amount of fees they were paying when the syllabus used to be covered in a year. This arrangement is very unfair; it is hurting parents. It is hurting the economy. This should be looked into. The Cabinet Secretary of the Ministry of Education should come in and address all these issues so that at least we have a uniform way of running our curriculum and syllabuses.

Thank you, Hon. Speaker

**Hon. Speaker:** Member for Kiminini.

**Hon. (Dr.) Chris Wamalwa** (Kiminini, FORD-K); Thank you, Hon. Speaker. This is a very serious Petition. The Departmental Committee on Education and Research must pay attention on it.

Article 119 of the Constitution provides that anybody can petition Parliament on any matter of national importance. Integrity of exams must be protected. We have had this complaint going on. Exams are set to assess the extent to which students have achieved their academic objectives. When it comes to schools, whether one has gone to private or public school, there should be no biasness. We do not expect any skewness. We are aware that the people who mark the exams come from all over the country. I have no doubt that the examiners are trained professionals. But the question we ask is: At what interval were the exam results interfered with? Normally when an exam has been marked there is moderation. Who does the moderation of the exam? Ordinarily, when an examination has been done and results tabulated, ideally, we should have a normal distribution curve. The normal distribution curve is a phenomenon that applies across the board. Even here in this Parliament, if we sit for an exam, it must portray a normal distribution curve. We have those who will fall in the extreme left, others on the extreme right and the majority will be in the middle. This is a study which was carried out and it has never been challenged. If it is true that the results of private schools do not portray a normal distribution curve, then it is obvious something was done. Whoever was responsible in compromising the integrity of exams should be taken care of. It should be audited. We cannot allow exams in this country to be compromised.

Education is the only success factor. It is said that the key to success is education. It is only education that makes us equal but has no equal. When doing an exam, your background, religion and who your parents are do not matter. It is only exams that make us equal but have no equal. If it is found out that somebody somewhere, whether in Jogoo House or at the Kenya National Examinations Council (KNEC) compromised the integrity of the exams, action must be taken against them. I call upon the Departmental Committee on Education and Research to do a proper audit and if the Cabinet Secretary has slept on the job, he should be impeached immediately for compromising the integrity of the exams. It cannot be compromised. Nelson Mandela said that education is the only weapon that you can use to change the world. Today when subjected to an exam, we want to ascertain to what level or extent to which you have understood the objectives of

the exam. It is like rigging a general election and some people have been rigged in and brought using the backdoor. So, we call upon the Ministry of Education, KNEC and the relevant bodies to put an inquiry in place or do a thorough audit and for people who will be found culpable, action must be taken against them.

As I conclude, the timeframe is too short. I am happy the Chairlady is here and noting. We want this thing to be done thoroughly by an inquiry being put in place and the Cabinet Secretary in charge of Education to be called to appear before the Committee and even the bosses of the KNEC. We salute CS Magoha. When he was the Chairperson of the KNEC, the level of cheating went down. However, as we look at this, it does not necessarily mean that when you have gone through a public school, you cannot perform and score grade 'A'. Some of us went through public schools because we come from different economic backgrounds. So, we want to ensure that education and examinations have no equal. It makes us equal but has no equal. Anybody involved in compromising the integrity of the exams should be brought to book. However, subject it to tabulation and see whether it yields a normal distribution curve or it is skewed to the left or right.

Thank you, Hon. Speaker. I call upon the Departmental Committee on Education and Research to move with speed and bring the culprits to book.

**Hon. Speaker:** The last comment from the Member for Endebess.

**Hon. (Dr.) Robert Pukose** (Endebess, JP): Thank you, Hon. Speaker. At the outset, I thank the two petitioners for presenting this timely Petition. Unfortunately, they are petitioning because they are hurt. As the Committee looks into the Petition, it is important that it goes further to look into the allegations with data and find out whether the marking schemes have been favouring certain institutions. Whether a child is in a private or a government institution, all children are equal. It is only that as much as we strive to make sure that public institutions are as good as private ones, the challenge might be quality which is caused majorly by the number of teachers posted in some of the schools.

It is important that once the Committee looks at it, it is also fair to look at whether a child in in Garissa, Endebess, Moyale and Homa Bay. The child is a Kenyan and is equally entitled to all the basics. When we look at the examinations, children in certain conditions are always disadvantaged. Why do they perform poorly while children in other places perform better? It will be an opportunity for the Departmental Committee on Education and Research to look at whether there is fair distribution in terms of teachers, infrastructure and all the basic things all over the country and what can be set as a minimum for each school and child to compete effectively in the country.

This is fair enough. I support the Petition. Thank you, Hon. Speaker.

**Hon. Speaker:** The very last one, Member for Seme.

**Hon. (Dr.) James Nyikal** (Seme, ODM): Thank you, Hon. Speaker. This is an extremely important Petition. We would like the Committee to look at the details in a scientific academic manner and bring out the truth. The concern that seems to come from us, Members of Parliament, is that private schools have not done well and perhaps something was done and that is why they did not do well. However, look at what we are saying. For years when public schools were not doing well, we never raised a Petition. It is as if it was accepted that public schools should perform poorly. Leaders of the nation are not concerned if that happens but if private schools perform poorly, then obviously the leaders come out. That is what I want to raise.

When Prof. Magoha eliminated examination cheating, in fact, it was clear that private schools seemed to have been affected more. Some of us have been teachers and have seen students who have come with grade 'A' from private schools not performing in the universities but students

who come with grade 'B' doing well. In fact, some of us can tell this House that several years after Independence, it is the public schools that were doing well; they were the gold standard. In reality, it is private schools that should perform poorly. Public schools should be the gold standard but let us find the truth. However, should it come out that actually the feeling is that private schools should do better, then as a House and as leaders we would have let our people down because we should be more concerned when public schools where the children of poor people are the majority are not doing well.

This is parallel to what I have also seen in the health sector. I worked in this country when we were transferring patients from private hospitals to public hospitals. I transferred patients from the Aga Khan Hospital to the Kenyatta National Hospital (KNH). I admitted ministers to the KNH. It is now an accepted fact that those facilities are just for poor people. We must try, as leaders, to make sure that the gold standard is the public facilities, so that all people, whether they are poor or their parents are poor, will get the best services available. We cannot accept, even by implication that it is okay if public schools or public facilities are not doing well as long as private ones are doing well. That is the message that has actually irked me because it was the message that we were giving to the country and to the world with the way we were talking. However, let the Committee bring out the facts.

Thank you, Hon. Speaker.

**Hon. Speaker:** I can see that the hand of the Member for Tinderet is up. Why is your hand up?

**Hon. Julius Melly (Tinderet, JP):** Hon. Speaker, I wanted to contribute to this Petition because it is a very important one. That is why I was trying to catch your eye.

This Petition is quite important knowing very well that there are issues concerning private schools. I want to bring to the attention of the Members that we do not have private students and public students. We are all Kenyans. The fact that exams are marked in a manner that would suggest that they are skewed is very worrying and disturbing for parents across the board. Parents with children in private and public schools all augment one another. The Government should look at private schools as augmenting the lack of resources by the Government and, therefore, assisting the Government to provide education in this country. I do not want them to look at private schools as competitors of public schools. In this sense, a person establishing a private school could otherwise...

Students in private schools are about 500,000. If those students are offloaded to public schools, it will be a total disaster. Currently, 100 per cent transition is a problem in almost all schools in this country. I would like to ask Members to note that every year, there is an increase of between eight and 10 per cent of students joining Form One. Therefore, even if we put in more money into the NG-CDF, we will always have a shortage of classrooms in all the years to come unless we come up with a very serious Marshall Plan where we invest over Kshs20 billion to have enough classrooms in this country.

The fact that we need to mark exams and bring integrity into the education sector is quite important. I remember that before the Matiang'i education reforms of 2015, the Departmental Committee on Education and Research went to South Africa and found that some universities were trying to give Kenyans pre-university exams because of lack of integrity. However, because of that surgery that took place at that time, we actually gained back our respect in the international society. So, if the issue that the petitioners are raising actually exists, we need to look at it and make sure that exams retain the integrity that is required in the Republic and Kenyans will have a name even in the international society.

I support the Petition and ask the Departmental Committee on Education and Research to investigate and level the playing field in the education sector. A child in a public school and a child in a private school should be treated fairly and equally.

**Hon. Speaker:** Why should it be a problem if it can be established how much is required to construct proper and sufficient primary schools or classrooms? Why should we take pride in private schools? In days gone by, if you heard that somebody was in a private secondary school, you would think that they must be failures.

*(Laughter)*

We should be proud of where the majority of the pupils and students go to learn. That is where the parents are.

*(Applause)*

The Departmental Committee on Education and Research and also the Budget and Appropriations Committee have a huge task to look at the issues that the petitioners are raising and see how to address them. Anyway, you will be commenting later.

Let us move to the next Order.

### PAPERS LAID

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

**Hon. Emmanuel Wangwe** (Navakholo, JP): Thank you, Hon. Speaker.

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

Report of the Auditor-General and Financial Statements of the Orange Democratic Movement (ODM) for the year ended 30<sup>th</sup> June 2020, and the certificate therein.

*(Applause)*

Reports of the Auditor-General and Financial Statements in respect of the following institutions for the year ended 30<sup>th</sup> June 2019, and the certificates therein:

- (a) National Employment Authority;
- (b) The Nairobi Centre for International Arbitration;
- (c) The National Council for Persons with Disabilities;
- (d) The National Council for Law Reporting;
- (e) Child Welfare Society of Kenya;
- (f) Kenya Veterinary Board;
- (g) Kenya Dairy Board;
- (h) The Small Enterprise Finance Company Limited;
- (i) National Research Fund;
- (j) Orange Democratic Movement;
- (k) National Transport and Safety Authority’;
- (l) Kenya Citizens and Foreign Nationals Management Service; and
- (m) School Equipment Production Unit.

Thank you, Hon. Speaker.

**Hon. Speaker:** Let us have the Chairperson of the Departmental Committee on Communication, Information and Innovation, Hon. Kisang.

**Hon. William Kisang** (Marakwet West, JP): Thank you, Hon. Speaker.

Hon. Speaker, I beg to lay the following Paper on the Table of the House:

Report of the Departmental Committee on Communication, Information and Innovation on its Consideration of the Computer Misuse and Cybercrimes (Amendment) Bill (National Assembly Bill No. 11 of 2021).

Thank you, Hon. Speaker.

**Hon. Speaker:** Let us have the Chairperson of the Departmental Committee on Environment and Natural Resources, Hon. Kareke.

**Hon. Kareke Mbiuki** (Maara, JP): Thank you, Hon. Speaker.

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

Reports of the Departmental Committee on Environment and Natural Resources on its Consideration of:

- (i) Irrigation (Amendment) Bill (National Assembly Bill No. 13 of 2021).
- (ii) Sessional Paper No. 1 of 2021 on the National Water Policy.

Thank you, Hon. Speaker.

## NOTICES OF MOTIONS

**Hon. Speaker:** Let us have Hon. Kareke.

### ADOPTION OF SESSIONAL PAPER ON NATIONAL WATER POLICY

**Hon. Kareke Mbiuki** (Maara, JP): Thank you, Hon. Speaker.

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

THAT, this House adopts the Report of the Departmental Committee on Environment and Natural Resources on Sessional Paper No. 1 of 2021 on the National Water Policy, laid on the Table of the House on Wednesday, 4<sup>th</sup> August 2021, and further approves Sessional Paper No. 1 of 2021.

Thank you, Hon. Speaker.

### ADOPTION OF SESSIONAL PAPER NO.1 OF 2021

**Hon. Kareke Mbiuki** (Maara, JP): Hon. Speaker, I beg to give notice of the following Motion:

THAT, this House adopts the Report of the Departmental Committee on Environment and Natural Resources on Sessional Paper No.1 of 2021 on the National Water Policy, laid on the Table of the House on Wednesday, 4<sup>th</sup> August 2021 and further, approves the Sessional Paper No.01 of 2021.

## QUESTIONS AND STATEMENTS

**Hon. Speaker:** The first segment is a Question by the Member for Wundanyi, Hon. Mwashako. The Member is absent. The next Question is by the Member of Mwingi West. No, this Question was asked. Is it so? Yes, it has already been asked.

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The third Question is by the Member for Lamu, Hon. Ruweida. Hon. Member, please, press the intervention button.

*Question No.264/2021*

MEASURES TO ADDRESS GENDER BASED VIOLENCE

**Hon. (Ms.) Ruweida Obo** (LAMU CWR, JP): Hon. Speaker, I rise to ask the Cabinet Secretary for Interior and Coordination of National Government the following Question:

- (i) Could the Cabinet Secretary outline measures that the Government has put in place to effectively address Gender Based Violence (GBV) cases in the country?
- (ii) What intervention measures are in place at the various police stations and police posts to handle GBV cases and support victims of GBV?

**Hon. Speaker:** That Question is to be replied to before the Departmental Committee on Administration and National Security.

Next is the Member for Ndhiwa.

*Question No.278/2021*

MEASURES TO CONNECT NDHIWA CENTRAL TO THE NATIONAL GRID

**Hon. Martin Owino** (Ndhiwa, ODM): Hon. Speaker, I rise to ask the Cabinet Secretary for the Energy the following Question:

- (i) What measures has the Ministry put in place to ensure that all areas in Ndhiwa Central Constituency are connected to electricity power through the National Grid under the Last Mile Programme, Streetlights Programme and power connectivity to schools, health facilities, other public institutions and places?
- (ii) What steps is the Ministry taking to ensure that all health centres in Ndhiwa Constituency are also connected to electricity power noting that without power the said facilities are negating on the Government's efforts of implementing Universal Health Care (UHC) for the area residents?
- (iii) What action is the Ministry taking to ensure the replacement of over 84 faulty transformers at various areas of Ndhiwa Constituency?

**Hon. Speaker:** That Question is to be replied to before the Departmental Committee on Energy.

For the second time, the Question by the Member for Wundanyi, Hon. Danson Mwashako. The Member being absent, he does not desire to ask the Question. So, the Question is dropped.

*Question No. 261/2021*

NAMES OF ALL FIRMS OWNING COMMUNICATION  
MASTS/INSTALLATIONS AT VURIA HILL

*(Question dropped)*

**Hon. Speaker:** The next segment is on Request for Statements. The first Request is by the Member for Runyenjes.

## REQUESTS FOR STATEMENTS

### DISAPPEARANCE/DEATH OF TWO YOUNG MEN IN RUNYENJES

**Hon. Eric Njiru** (Runyenjes, JP): Hon. Speaker, pursuant to the provisions of Standing Order 44 (2) (c), I rise to request for a Statement from the Chairperson of the Departmental Committee on Administration and National Security regarding the alleged disappearance and death of two young men in Runyenjes Constituency.

On Sunday, 1<sup>st</sup> August 2021, at around 10.00 p.m., police officers from Manyatta Police Station arrested two students, namely, Benson Njiru Ndwiga of ID No.36754431 aged 22 years, a student at Kabarak University; and, Emanuel Mutura Ndwiga of ID No.39126996 aged 19 years, a student at the Don Bosco Institute of Technology in Karen. The two were arrested at Kianjakoma Market during curfew time. Their parents were alerted about their arrests and they went to camp at the police station seeking their release but they did not get any help.

On Tuesday 3<sup>rd</sup> August 2021, the parents of the two students were informed by police officers from Runyenjes Police Station that two bodies of young men had been discovered at Embu Level V Hospital Mortuary, several kilometres away from the market. Upon arrival, they confirmed that the two bodies were of the two students who had previously been arrested.

Hon. Speaker, the security situation in Kianjokoma has deteriorated with several other incidences having been reported recently. It is against this backdrop that I seek a Statement from the Chairperson Departmental of the Committee on Administration and National Security on the following:

(a) Why did it take so long for the police officers at Manyatta to relay the correct information to the parents?

(b) Can the Inspector-General of Police come out and explain to the members of the public what exactly happened?

(c) Could the Cabinet Secretary for Interior and Coordination of National Government assure Members of their security given that businessmen and women have started fleeing Kianjokoma market citing insecurity?

Hon. Speaker, allow me to pass my condolences to the family of Mr. and Mrs. Ndwiga Kamonyoti. I confirm to this House that the two students are not just young men from Runyenjes Constituency, but they are sons of the same parents. It is now a very sad story in my constituency. I can confirm that the entire of Kianjokoma market is mourning the loss of these two hardworking men.

Hon. Speaker, about three months ago, we had a similar incident, where a young lady passed on near Kaputeri Police Post, next to Kianjakoma Market. Three weeks ago, thugs attacked a shop at the same Kianjokoma Market, killing one person and leaving another one for dead.

I would like to say that we are having a very difficult time in terms of security and the Kianjokoma fraternity has spoken today. They would like to see an overhaul of Manyatta Police Station and get assurance that their properties and businesses will be safe going forward.

Thank you, Hon. Speaker.

**Hon. Speaker:** Hon. Mbarire.

**Hon. Cecily Mbarire** (Nominated, JP): Hon. Speaker, let me also start by thanking the Hon. Member for Runyenjes, Hon. Eric Muchangi, for finding it fit to bring this matter before this House.

I am also seized of what has been happening in that particular part of Runyenjes Constituency since Sunday. The community, right now, is out there demonstrating. The reason is that the explanations given by the police, as to the circumstances leading to the death of the two young men, are not convincing at all. The last thing that should happen to any Kenyan hoping to be in the best protection is to die under the same so-called “protection.” So, we are seeking to know the truth about the death of Emanuel and Njiru. We want to know how they died in the hands of police officers while inside a police vehicle. The explanation that is being given is not adequate and satisfactory. We, therefore, seek real answers through the Departmental Committee on Administration and National Security. We want the Inspector-General of Police to come in and ensure that justice is done. More importantly, as *Mheshimiwa* Eric has said, we would like to see an overhaul of the security system in Embu County because it is becoming a real problem, not just in Runyenjes, but in the entire Embu County. We want those situations settled. We ask the police to stop harassing peaceful demonstrators who only have one way of expressing themselves: demonstrating across the town.

Today, Mr. Kamunyoti and his wife are mourning the death of their two children. We do not know whether tomorrow we will be talking about an entire village that will have been wiped out! Hon. Speaker, this matter is not only important, but also very urgent. I would like the Chair of the Departmental Committee on Administration and National Security to understand that people are waiting for answers, therefore, this issue needs to move very swiftly, so that we can get to know how those two young men died at a time when they were at their prime in the university. We mourn as the people of Runyenjes. We mourn as the people of Embu County.

Thank you, Hon. Speaker.

**Hon. Speaker:** Chair, how soon do you think you can give a response?

**Hon. Peter Mwathi** (Limuru, JP): Thank you, Hon. Speaker. I sympathise with the situation as it has been presented. I undertake to quickly follow up with the Ministry. In any case, I expect a response in not later than two weeks. However, I will do it even faster than that, if I can manage. I ask the Hon. Member to just give us a little time. However, I commit to personally follow it up and ensure that we have the response.

Thank you.

**Hon. Speaker:** Very well. Let us have the Member for Kilifi North.

#### PAYMENT OF INTERNAL EXAMINATION FEES IN PRIMARY SCHOOLS

**Hon. Owen Baya** (Kilifi North, ODM): Thank you very much, Hon. Speaker. This is a Request for a Statement for the payment of internal examination fees in primary schools.

Pursuant to the provisions of Standing Order No.44(2)(c), I seek to request for a Statement from the Chairperson of the Departmental Committee on Education and Research regarding payment of internal examination fees in primary schools.

As part of curriculum implementation, learners in primary schools are expected to undertake internal examination at the middle or end of each term. To that end, and in a bid to guarantee high standards and reliability of those exams, primary schools countrywide are compelled to purchase or print costly exams and exam papers every term. This arrangement is highly disadvantageous to pupils from poor backgrounds, who are denied access to those exams

by head-teachers on account of non-payment of internal exam fees. In some cases, those exams are written on blackboards, which is a strenuous and tedious exercise.

The national Government currently funds Free Primary Education (FPE) at a rate of Kshs1,420 per pupil that primarily caters for tuition, leaving examinations and assessment without any specific earmarked funding.

It is on account of those concerns that I seek a Statement from the Chairperson of the Departmental Committee on Education and research on the following:

- (i) Are the course fees for termly internal examinations catered for under the Free Primary Education (FPE) Programme?
- (ii) If those courses are inclusive of the FPE funding, what is the allocation per pupil? If the course fees are not included under the FPE funding, what short-term and long-term interventions does the Ministry of Education have in addressing this challenge to ensure that pupils from poor backgrounds do not continue to be disadvantaged by internal exam course fees that are out of reach of their parents and guardians?

Thank you, Hon. Speaker.

**Hon. Speaker:** Let us have the Chairperson of the Departmental Committee on Education and Research.

**Hon. Florence Mutua** (Busia CWR, ODM): Thank you, Hon. Speaker. There are a lot of issues in the education sector. I am happy that Members are bringing them out through the right channel. I actually thought that I would get a moment to talk about the Petition, but that has been overtaken by events.

The issue that has been raised by Hon. Baya, about the internal fees, will have to be looked into because many people have been asking where the internal fees came from. I believe the Ministry has one approved fees structure for schools. We will look into that matter and ensure that we identify any schools that are charging that fee so that the Ministry can take action. It is illegal!

Thank you, Hon. Speaker.

**Hon. Speaker:** Very well. How long will you take?

**Hon. Florence Mutua** (Busia CWR, ODM): Hon. Speaker, we have four other pending requests for statements from Members. The Cabinet Secretary (CS) is currently in London on issues of setting exams. Maybe, in two weeks time. *Mheshimiwa* Owen Baya can give us two weeks to bring an answer.

Thank you.

**Hon. Speaker:** Very well. That is okay. Two weeks. Is that okay, Hon. Baya?

**Hon. Owen Baya** (Kilifi North, ODM): Yes. I understand that the Departmental Committee on Education and Research is overwhelmed with work. However, two weeks from now kids will start being sent home because they will not have paid examination fees. They will not be in school. Therefore, this is a matter that needs to be dispensed with within the shortest period of time possible.

I do not know when the Cabinet Secretary started looking at examinations yet we have the Kenya National Examinations Council (KNEC) Chair and CEO. He now goes to London to talk about examinations yet we have an independent body that looks at that. He needs to come back and look at the issues affecting children every day.

They only disbursed the money for FPE the other day, but it has not even reached schools. School heads are stranded. They cannot operate schools as they open, but the CS is in London having a cup of tea. He needs to come back and work.

**Hon. Speaker:** Did you say he is having a cup of tea?

**Hon. Owen Baya** (Kilifi North, ODM): *spoke off-record.*

**Hon. Speaker:** What is your point of order, Hon. Wanga?

**Hon. (Ms.) Gladys Wanga** (Homa Bay CWR, ODM): Thank you, Hon. Speaker. The matters raised by Hon. Baya are very weighty and require a response. However, to rise and say that the CS, who is on an official tour of duty at the Global Education Summit that was also attended by His Excellency the President, is having a cup of tea is really wrong. To mislead the public by saying that the CS is having a cup of tea is really wrong. He should withdraw that statement and acknowledge that the CS is on official duty, notwithstanding the fact that the issues he is raising are very weighty and require a response. Maybe this yellow attire is causing a bit of a problem.

Thank you, Hon. Speaker.

**Hon. Speaker:** Anyway, Hon. Florence Mutua has heard that. Work within the available time. Let us have Hon. Mutua.

**Hon. Florence Mutua** (Busia CWR, ODM): Hon. Speaker, it is important for the Member, as Hon. Wanga has said, to withdraw what he has said. This response is very key to the questions that he is asking and there is nothing that can be done without the approval of the CS. He has to be patient and wait for the CS to come back. He should be here any time next week to give us all the responses that all the other Members have been patiently waiting for. There are four of them.

One thing that we need to do as a Committee - and I thank the Members of the Budget and Appropriations Committee for supporting us on this - is to have Mitihani House completed. This will end the issue of going to London every time we have to set exams.

Thank you, Hon. Speaker.

**Hon. Speaker:** Very well. The next request is by the Member for Garissa Township.

THE BREACH OF THE STATISTICS ACT BY THE KENYA NATIONAL BUREAU  
OF STATISTICS IN PERFORMANCE OF ITS FUNCTIONS

**Hon. Aden Duale** (Garissa Township, ODM): Hon. Speaker, pursuant to the provisions of Standing Order 44 (2)(c), I seek to request a Statement from the Chairperson of the Departmental Committee on Finance and National Planning regarding the breach of the Statistics Act No.4 of 2006 by the Kenya National Bureau of Statistics.

The Bureau is responsible for among other things, establishing standards and ensuring the use of the best practice and methods in the production and dissemination of statistical information across the national statistical systems and collecting, compiling, analysing, abstracting and disseminating statistical information on matters specified in the First Schedule to the Act.

Hon. Speaker, in terms of statistical information the Bureau is required to conduct household based and establish best survey. The survey reports inform policy formulation, planning, budgeting and oversight by the three Arms of Government including Parliament. The Fourth Schedule to the Statistics Act further, enumerates the principle which guides the Bureau in the performance of its functions and includes the need to ensure timelines and release of statistical information. However, despite these requirements of the Act the Bureau has acted in breach of the Statistics Act, 2006 by delay and non-release of very critical reports among them: the Annual Economic Survey 2021, the Leading Economic Indicators, the Quarterly Gross Domestic Product Report and the Quarterly and Annual Reports and other official Statistics.

This has led to lack of Indicators Report, highlights on Consumer Price Indices, inflation and interest rates and exchange rates. On the Quarterly Gross Domestic Product, Section 14

mandates the Bureau to submit that before Parliament four months after the end of every financial year. On the Annual Economic Survey 2021, which is to be released by 30<sup>th</sup> April 2021, it is to inform Parliament and the National Treasury on the processing of the Budget Estimates for the Financial Year 2021/2022.

Hon. Speaker, it is on the account of these blatant breach of the law, that I, therefore, seek a Statement from the Chairperson of the Committee on Finance and National Planning on the following:

- (i) Could the Chairperson explain the reasons for the delay and non-release of official statistics including the following: The Annual Economic Survey 2021, Leading Economic Indicators, Quarterly Gross Domestic Product Report, Quarterly and Annual Activities Report and other Official Statistics among other Reports?
- (ii) What action has been taken to disband the Board for negligence of duty by failing to produce Quarterly and Annual Operation Reports both to Parliament and the National Treasury by the Board as required under section 6, as read together with section 14 of the Statistics Act 2006?
- (iii) What is the total number of staff appointed by the Board in the last five years, including internal promotions done indicating among other things: the number of staff hired, their gender parity, their age, their county of birth among other parameters in line with Article 232 of the Constitution?
- (iv) Could the Chairperson explain the utilisation of the budgetary allocation by the Bureau for the last five years?
- (v) What steps the Bureau has taken to support counties in the production of county statistics for the county planning and development as per section 4 (2)(g) of the Statistics Act?

Thank you, Hon. Speaker.

**Hon. Speaker:** Hon. Wanga.

**Hon. (Ms.) Gladys Wanga** (Homa Bay (CWR), ODM): Thank you, Hon. Speaker. I have listened to Hon. Duale's many questions in one Statement. So, you could give us four weeks to deal with this matter. He talks about surveys, recruitment and so on. It is a wide range of issues and we need time to invite both the Bureau and Hon. Duale to discuss before we bring the Report.

Thank you, Hon. Speaker.

**Hon. Speaker:** Hon. Duale.

**Hon. Aden Duale** (Garissa Township, ODM): Hon. Speaker, I want to ask the Chair to reduce the time to three weeks because some of these Reports, by law, are supposed to be submitted to the National Assembly. They are very critical for the National Treasury to set economic programs in our country. I know the Chair is very competent and can burn the midnight oil to bring a response in three weeks. This is because we are at the tail end of this Session and we do not want to be caught with time.

Secondly, you remember the matter I raised on the Capital Markets Authority (CMA). We had a session and, maybe, the Chair can give direction now or later tomorrow on what the Committee has decided on the matter.

**Hon. (Ms.) Gladys Wanga** (Homa Bay (CWR), ODM): Thank you, Hon. Speaker. We will try as much as possible and bring it as soon as we get feedback. We will not stall.

The matter that Hon. Duale is referring to about the CMA, we invited them and Hon. Duale as well. We have a response to that Statement and I believe, perhaps, tomorrow we can give that response and what the Committee feels moving forward.

Thank you, Hon. Speaker.

**Hon. Speaker:** Very well. It can be brought tomorrow. Next and last request is by Hon. Alfred Keter.

STUDENT'S 100 PER CENT TRANSITION TO SECONDARY SCHOOLS  
IN THE COUNTRY AND AVAILABLE INFRASTRUCTURE

**Hon. Alfred Keter** (Nandi Hills, JP): 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 Education and Research, regarding challenges occasioned by the ministerial policy on 100 per cent transition in the country.

Hon. Speaker, the Government's plan to roll out 100 per cent Transition Policy has seen primary to secondary transition rates increase from 83.3 per cent in 2018 to 95 per cent this year hence posing infrastructural challenges in most schools in the country. This therefore means that the Ministry needs to put in place additional infrastructure in order to accommodate the changes occasioned by the transition. For instance, putting up additional classrooms, libraries, laboratories, ablution blocks and dining halls to mention but a few.

As it is now, most schools have been forced to seek other alternatives, for instance, converting libraries, dining halls and other available spaces into classrooms thereby overstressing other amenities such as dormitories, laboratories and washrooms.

In many schools where we were expecting to have 40 students they have been overstretched or forced to admit more than 120 students, which is triple the number. Hon. Speaker, students need a conducive learning environment in order to excel in their academics and extracurricular activities. The government ought to have done proper planning before rolling out the said policy to ensure smooth transition of students from Form One to secondary schools. It is against this background that I seek a statement from the Chairperson of the Departmental Committee on Education and Research on the following:

1. What measures has the ministry put in place to ensure smooth transition to secondary schools?
2. Could the chairperson explain what plans are there to ensure quality learning and safety of our students?

Thank you, Hon. Speaker.

**Hon. Speaker:** I see Hon. Osotsi's hand is up.

**Hon. Godfrey Osotsi** (Nominated, ANC): Hon. Speaker, first of all I want to congratulate my friend, Hon. Keter, for bringing up this matter. The issue of congestion in school is a serious one. I am a parent in one of the national schools. The other day I took my daughter to school and I witnessed a pathetic situation. Yes, we support the 100 per cent transition policy because it is a very progressive policy, but then the Government is not making serious efforts to ensure that we have adequate school infrastructure to accommodate the students arising from the 100 per cent policy.

While all this is happening, I have information that the World Bank availed up to 175.5 million euros for the purpose of improving school infrastructure, but up to now that programme has not been implemented because the process of procurement was done and awards were issued

to the contractors in December 2020. To date, the project has not started because the PS and the CS have stopped the programme. This is a serious matter and I will be bringing a substantive Question to this House to ask why the Ministry of Education has not taken advantage of the World Bank offer for the school improvement so that students in 30 counties with lowest poverty levels can benefit from improved infrastructure.

What Hon. Keter has raised is very important and I want to ask the Departmental Committee on Education and Research to take this matter seriously because our children are suffering. Some of them are even sleeping on the floor! There are no beds. I, therefore, support the request for statements by Hon. Keter and ask the Departmental Committee on Education and Research to take this matter seriously. I will be bringing a substantive Question on this matter that I have raised on the World Bank offer to fund the school infrastructure programme to the tune of 175.5 million euros.

**Hon. Speaker:** Member for Chepalungu, you want to comment on the same?

**Hon. Gideon Koske** (Chepalungu, CCM): Yes, Hon. Speaker. There is an alarming congestion crisis regarding Form Ones across the country. The 100 per cent transition is quite welcome but it should also have a transition in terms of money. Money should follow the huge number of students who are being enrolled in secondary schools. Every year, statistics show, there is an increase of 8 per cent to 10 per cent on the population of students. Currently, there is a shortage of 400,000 students across Kenya. Those are students who do not have where to sit in classrooms. They do not have where to sleep in dormitories. Most of the schools have improvised tents. Some are using dormitories, dining halls and laboratories as classrooms. Some are sitting under the trees to serve as classrooms.

In 2019, we had a population of about 960,000 students who were joining Form One. This year, we have a population of about 1.1 million. So, the NG-CDF alone, which is around Ksh60 million in terms of development, cannot do anything in terms of infrastructure. I remember last year His Excellency the President had allocated more than Ksh10 billion specifically for infrastructure development in schools but we never saw in our constituencies such money being utilised on infrastructure.

So, I stand to support Hon. Keter for bringing this request for a statement which requires urgent attention. This country is known for education and we want to impart knowledge to our children in order to build this nation. Thank you, Hon. Speaker.

**Hon. Speaker:** I have seen a lot of interest. So, Hon. Florence Mutua, just stay put. Let me allow Members to make their interventions. But, be brief! This matter is very serious. It is a very serious matter and I think it is fair that we get a few more Members commenting before Hon. Mutua tells us when it is she is going to give a response. Member for Funyula.

**Hon. (Dr.) Wilberforce Oundo** (Funyula, ODM): Thank you, Hon. Speaker. The issue of congestion in secondary schools is alarming and some of us are victims of our own success. With the improved disbursement of bursary from NG-CDF, many boys and girls who would not have gone to school at all are now flocking schools. In my constituency of Funyula, we have literally achieved a 99 per cent transition rate since I became an MP. I have one neighbouring school which has been doing well and kids have remained in school because of bursary being availed. It has got 600 pupils who are reporting in Form One yet it is a two-streamed school. Sometimes I am unable to concentrate because the pressure I have is too much.

As I am seated here, I have received WhatsApp texts. A school that has got only one classroom for Form One has received 80 pupils and out of those 80, about 70 of them want to board yet there are no boarding facilities. This is so yet there are a lot of infrastructure funds lying

in the ministry. We wonder what criteria the ministry uses to distribute the funds and projects to various schools. Is it a preserve of some constituencies or is it that Members of the Departmental Committee on Education and Research grabbed everything and left the other Members with nothing? The country must have a sober discussion so that we solve this matter. There needs to be an equitable share of the infrastructure funds in order to supplement the NG-CDF money.

Thank you, Hon. Speaker.

**Hon. Speaker:** Hon. Sankok.

**Hon. David ole Sankok** (Nominated, JP): Thank you very much, Hon. Speaker. I want to support Hon. Keter because this is a very important matter. Hon. Speaker, you had asked: why don't we just do the sum total of how much is required for us to achieve that 100 per cent transition? Indeed, we need to have all students being comfortable in both primary and secondary schools. I think it is this House that allocates funds. As Hon. Osotsi has said, when we have funds from World Bank being stopped, it is because probably the PS and the CS needed kickbacks and they did not get anything. We do not know why they stopped such a noble idea yet our students are suffering. I am talking from a point of knowledge because I have six biological children in various public schools. I do not take my children to private schools. The congestion levels in those schools is alarming! I think we can go further, as a House, and have policies that all leaders in Government – the Executive, the Judiciary and Parliament – should have their kids in public schools because that is the only time all government resources will be used to improve our public sector.

Dr. Nyikal had said that we should force state officers from Parliament, Judiciary and the Executive to use public hospitals. Why should we have a health insurance scheme for private hospitals yet we have public hospitals? There is no way we can improve what we do not use. So, I urge Members of this House: if we want to improve the education system in our country, we should lead by example and that is by having all our kids enrolled in public schools from primary all the way to the university. That way, we will be able to channel a lot of resources to public institutions.

Thank you very much, Hon. Speaker. I support.

**Hon. Speaker:** Hon. Soipan.

**Hon. (Ms.) Soipan Tuya** (Narok CWR, JP): Thank you very much, Hon. Speaker for giving me a chance to add my voice to this very important issue raised by the Hon. Keter. The policy on a 100 per cent transition is very important because without this policy we would be asking ourselves: where did the children who did not transition from primary school to secondary school go to? What is the reason they are not transitioning to secondary schools? Of utmost importance is that as we implement this policy we need to know where these children are going to.

Yesterday, I was having a chat with a principal of the best performing school in Narok, Naikara Secondary School in Narok West. He was telling me that the practical capacity of the school is 300 students. However, those posted to the school are 450. You ask yourself: where are all these children going to? It is a health hazard. We are in the midst of a pandemic, the COVID-19. We are talking about social distancing! Even, hygienically, lumping kids together almost in double numbers to what the infrastructure in the schools can hold, is a crisis! When I was talking to the principal, I told him that the school is the best performing school in Narok, but now the enrolment waters down the quality of teaching. The net effect of that would be poor performance in schools. Classrooms are going to be full and yet we are not having more teachers posted to the schools. We do not even have enough classrooms. It is going to reverse the gains that we are otherwise making in the education sector in our counties. We should ask ourselves: are we

implementing a policy at the expense of turning our schools into conveyor belts? Do we just want to say that our children have gone through secondary school for the sake of it as a formality yet the quality of education and health of our children is compromised? This is an issue that we need to look at. The Ministry should go to the bottom of it at the earliest possible time so that we can have our children transiting but not at the expense of the quality of education.

Thank you, Hon. Speaker.

**Hon. Speaker:** Member for Ndhiwa.

**Hon. Martin Owino** (Ndhiwa, ODM): Thank you, Hon. Speaker. I just met head teachers of schools in my constituency. They are 52 in number. I have 204 schools in my constituency; 152 primary schools and 52 high schools. It is not just a transition from primary to high school, it is also a transition of kids from the village to primary schools. So we have classrooms which are doubling, but with no teachers. The teacher to pupil ratio is now going from about 1:50 to about 1:70. That is how bad it is. That is also working out the teachers. So, as the Hon. Member has said, teaching is compromised. The idea is noble but the implementation and the expected outcome is not going to reflect what we anticipated. We are asking ourselves: how can funds follow policies? The Ministry is quiet about this issue. They are not even coming to the Budget and Appropriations Committee with a budget that can help us to implement this thing. As for me, we have a WhatsApp platform where I get all the cries of teachers. It is overwhelming and something has to be done, honestly.

Thank you, Hon. Speaker.

**Hon. Speaker:** Majority Whip.

**Hon. Emmanuel Wangwe** (Navakholo, JP): Thank you, Hon. Speaker. I also want to join my colleagues in commenting on this statement by Hon. Keter. I request that as the Chair of the Departmental Committee on Education and Research will be following on the issues raised by Hon. Keter, there are two other issues which I would want to enjoin. One, whereas the student ratio has gone up, the Ministry has come up with a new policy of banning registration of new schools which is completely the inverse. Every primary school must combine with another to make a secondary school. Once you ban the registration of a new school, definitely that is an awkward policy which cannot deliver the population that we have.

Secondly, I would want the Chair to look into the issue Hon. Owino has raised; the issue of teacher to student ratio. Why should we transit more students into a classroom and we do not have enough instructors to give knowledge to the students? That is very key. Let the Chair look into the issue of infrastructure to support the number of students who have been recruited.

Finally, just to reiterate what Hon. Osotsi said on the issue of Secondary Education Quality Improvement Project (SEQIP) as a programme. Let the Government now move with speed and implement. It is in phase two. Phase one was fully implemented, phase two is now facing challenges a year later and yet it is supposed to roll out to the third phase. Therefore, once those three are combined, we will have a sufficient answer from the Chair of the Departmental Committee on Education and Research.

Thank you, Hon. Speaker.

**Hon. Speaker:** Member for Nyando.

**Hon. Jared Okelo** (Nyando, ODM): Hon. Speaker I thank you very much. I had also intended to raise certain issues that draw a nexus from what we are discussing now. Even though in law they say costs follow events, in counties, they say, money follows functions. The Government came up with an idea of a 100 per cent transition and cleverly passed over that burden on the shoulders of Members of Parliament without any additional funding. So, that is the quagmire

we are in today. Anytime there is a shortage of infrastructure within schools or there is lack of school fees somewhere, it is the Member of Parliament who is blamed for this kind of scarcity. That is the kind of situation we are confronted with.

I have 155 schools within Nyando Constituency. Half of the money that we get goes towards bursaries, leaving so paltry an amount of money that cannot even erect a classroom across the constituency. I do not know whether this House has the latitude to enhance the CDF funding, or even put its feet on ground to ask for additional funding for infrastructure development within our schools.

Another matter that I had wanted to raise, and this is an opportune time to do so, is that since Monday, with reporting of form one students in schools, I have, personally, received lots of phone calls. I am being told that even though the calling letter had, annexed to it, a fee structure, when students report in schools, they realise there are so many hidden charges that were not hitherto put clear. At that point when children are being admitted, they have to pay these sums of monies. So, even as the Departmental Committee on Education and Research is retreating to get into the bottom of these issues, we also need to know why these hidden charges are passed over to our parents yet they are issues that were not raised earlier.

Secondly, it has become a new normal that mattresses together with boxes, bedsheets and other requirements are not to be bought by parents but they have to pay for them in schools. They are made to pay over 300 per cent over and above the prevailing market price. They have no choice. That is what they have been forced to do. We have received a lot of complaints from parents regarding what should happen now that they are in this kind of state.

Finally, this is a matter that would be transcending across constituencies. Traditionally, the NG-CDF Board would be asking us for budget proposals from the November to December so that any funding begins from April or sometimes in June heading into another round of a financial year. We are staring at the electoral period next year. I doubt whether we shall be having the requisite quorum when we report back here in February.

Hon. Speaker, I am seeking your direction. Even though I am doing so, informally, we are privileged to have the Constituencies Development Fund Committee Chairman with us here, the party leader of FORD-K. A pronouncement should be made for us to go ahead and present our budget proposals immediately. This matter should head to the National Treasury so that funding also begins immediately so that by December, we are done with the National Treasury so that we get into another round of elections having supported all the projects we had in mind for the five years.

Hon. Speaker, we did not sign to be Members of Parliament for four years and hence we did not sign to carry out projects on the ground for four years. So, this is something we will seek your indulgence on. Give a directive. My proposals are ready. I can present them as soon as tomorrow morning so that funding from the National Treasury can follow immediately. Whereas I will be back with you in this House in September 2022, some Members here ...

*(An Hon. Member spoke off-record)*

I am sorry, you will be President. I forgot they were saying that you will be President. I wish you well though you will have to contend with the former Prime Minister, the Right Hon. Raila Amollo Odinga.

Hon. Speaker, what I am saying is we may end up going into another round of election with our projects not funded and, therefore, have somebody pretty new taking over from our vision,

which they do not properly understand. So, if you make a pronouncement now, we can work on our project proposals sooner than later so that funding can begin. We are praying that by December, the National Treasury will be done with us and we start a new year on a clean slate. This should not be limited to the NG-CDF; it should also include the National Government Affirmative Action Fund (NGAAF) because it is also an integral part of development on the ground. Our sisters are here with us and they need our support.

I thank you.

**Hon. Speaker:** I can see that the Member for Endebess wants to comment. Please, make your comments brief. I am sure Hon. (Ms.) Florence Mutua has taken too many notes.

**Hon. (Dr.) Robert Pukose** (Endebess, JP): Thank you, Hon. Speaker. I support this Petition by Hon. Alfred Keter, Member for Nandi Hills.

What we demand is transparency, especially on the Ministry's Budget for supporting school's infrastructure. Many Members do not even understand how much has been released to which school within their constituency. They do not know whether every school in the Republic of Kenya is supported and whether that money is distributed fairly. It will be important that the Chair makes sure that the Ministry gives us a table of how much it has been awarded for school infrastructure development, say, in Endebess or in any other constituency. It will be of interest to Members to see a tabulation indicating which school got what amount of money.

Hon. Speaker, I also support the sentiments by Hon. Jared Okelo. The Chair of the Constituency Development Fund Committee, who happens to be my neighbour and the leader for FORD-K, should have tabled the estimates showing how much money each constituency has been allocated in this Financial Year so that we work on our proposals and make sure that the proposals are submitted. That is what our Fund Managers are waiting for. So, Hon. Wafula Wamunyinyi, please, with your Committee, table those estimates so that we can act on them.

Lastly, the biggest challenge is the issue of registration of schools. Registration of new secondary or primary schools should not be a favour. The Ministry should stop freezing registration of new schools. It is forcing Members to seek registration of new schools as if it is favour. It is not a favour to us. We feel that there are areas where a need has arisen for registration of new schools.

In my constituency, I have built three new primary schools and three new secondary schools, but, as we speak, some of those schools do not have teachers from the Teachers Service Commission (TSC) yet there are pupils who are learning there. We have pupils at Chepkilot, Lutaso, Chepchoina, Kietkei and many other schools within those areas. How do we expect those pupils to compete effectively with pupils who are at Alliance High School or Starehe Boys Centre or any other national school? So, it is important that these matters are taken very seriously. As we have 100 per cent transition of pupils from primary to secondary school, we should develop adequate infrastructure at the secondary school level to accommodate more pupils. Since we have created that infrastructure in the form of new secondary schools, the Ministry of Education should register those schools so that pupils can learn properly and have the necessary teachers to guide them.

I thank you.

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

**Hon. Omboko Milemba** (Emuhaya, ANC): Thank you, Hon. Speaker, for this opportunity. I will be very brief. I support the Statement sought by Hon. Alfred Keter.

The 100 per cent transition policy aims at actualising the law now that basic education is compulsory. The definition of "basic education" is going up to Form Four. So, we support the 100

per cent transition because it is good. However, the 100 per cent transition must be followed by funding. Unfortunately, something that Hon. Members have accepted, and one Member seems to allude to it, is that we now accept fully that it is the NG-CDF that is supposed to build infrastructure in schools. We are not putting pressure on the national Government to actually do the infrastructural development in our schools. We are just taking that burden continuously without complaining. Actually, the NG-CDF's contribution to infrastructure development in schools should be very small. In fact, the opposite of what I see happening should be happening. The NG-CDF should be supplementing the national Government's efforts in school infrastructure development. The situation is worsening.

Hon. Speaker, as Hon. Keter said about the situation now, in the next two years, there will be a bombshell coming. That is when the children who are in the so-called "Grade 5" will be transiting to Junior Secondary School, that is, in two years' time, just at the brim of 2023. The pupils who are now in Standing Six will have done their Standard Eight examination and will be transiting to Form One. We shall have a double intake of Form Ones in the next two years. If we do not develop adequate infrastructure in schools using serious budgeting by this particular House, there will be a disaster when that time comes because there will be no places to accommodate these pupils. In fact, there is nobody, including the Cabinet Secretary, who is ready and who can explain to Kenyans how the two classes will be accommodated in our schools. Some people are thinking that some primary schools will become secondary schools. Others are not even aware of what will happen. So, this is a very serious issue; the early we intervene, the better.

Thank you, Hon. Speaker.

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

**Hon. Joshua Kandie** (Baringo Central, MCCP): Thank you, Hon. Speaker. I am also in support of the Statement by Hon. Keter.

Having listened to Members' contributions, I am of the opinion that the Ministry of Education is playing with Kenyans. They are concentrating on very minor issues like saying that communities should not use school buses and at the same time they are introducing rules which are very bad for teacher training colleges. They are also reducing examination centres. The Chair and the Departmental Committee on Education and Research should come out strongly on the Cabinet Secretary (CS) and his Principal Secretary (PS). These guys are trying to mess the education system in Kenya. I am one of the people who support education by all means. I support it with my friends from abroad but when we look at what the Ministry is doing, Joshua Chepyegon Kandie, sometimes I am very annoyed. When I meet the CS I will knock him, I will give him a blow because on this one... I am a very good person but when it comes to messing a human being, I am a totally very bad person. If we continue this way, we will end up having a lot of children out there without good education. I want the Chair of the Departmental Committee on Education and Research... There are a lot of questions. I have a question which has not been answered by the CS. I am waiting for the CS to come from the UK and meet him face to face so that I tell him the truth. Sometimes Kenyans...

**Hon. Speaker:** You threaten to injure him.

**Hon. Joshua Kandie** (Baringo Central, MCCP): No, Hon. Speaker. Kenyans think that when you are a professor you know everything. I want to tell the CS to come down and listen to educationists, teachers, even Members of Parliament and everybody else. The other time when Hon. Melly was the Chair of Departmental Committee on Education and Research I requested that some of the budget allocated to the Ministry to be taken to National Government Constituencies Development Fund (NG-CDF). We would be having very few problems. But they took it to the

Ministry of Education and we do not know the schools that were allocated the money. I do not know even which schools in my constituency got the allocation. We get the NG-CDF every year. I assure my colleagues that if they come to Baringo Central, my people are singing saying that NG-CDF came at the right time. If we enhance NG-CDF we will go far in terms of infrastructure in schools.

With those few remarks, I thank you Hon. Speaker.

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

**Hon. Wafula Wamunyinyi** (Kanduyi, FORD-K): Thank you, Hon. Speaker. The Petition by Hon. Alfred Keter to the Ministry of Education affects all of us. Like colleagues, I strongly support it.

Hon. Speaker, let me start by giving a bit of information. With your permission, at the beginning of the year a meeting was held between my Committee of NG-CDF and that of the Departmental Committee on Education and Research. It was a joint sitting which you permitted us to hold on the 17<sup>th</sup> of February.

*(Loud consultations)*

I wish these Members could consult in low tones.

I thought it is important Members to get this because it affects all of us. With your permission, at the beginning of the year we held a joint Sitting between the National Government Constituencies Development Fund Committee and the Departmental Committee on Education and Research. This was after the National Treasury released Ksh5.7 billion to the Ministry of Education towards enhancing infrastructure in our schools in the country. This was one of the requirements to comply with protocol that had been set by the Ministry of Health. So, in an effort to harmonise so that whatever NG-CDF was going to contribute and what the Ministry of Education was to contribute to schools is known and that there is no duplication or confusion about funding, my Committee and that of Hon. Florence Mutua held a joint Sitting and we agreed that the Ministry of Education should disclose the criteria they were going to use for the development of schools, construction of classrooms in schools in the country with the Ksh5.7 billion. We had initially proposed that the money should be released through NG-CDF so that it goes to constituencies whose leaders know where there are problems which needed to be solved. But the Ministry was not willing to release the money through the NG-CDF. So, we agreed the Departmental Committee on Education and Research to pursue the same with the Ministry so that a criterion is given on how the funds were going to be allocated, the schools that were going to benefit, and the amounts that would be given to the schools. My colleague, Hon. Florence, would be in a better position to respond to that. The Ksh5.7 billion which was released at the beginning of the year would have done a big job towards creating more space in our schools.

Alongside that, we have funds that have been allocated through NG-CDF. It is clear anyone can tell how much has been spent on every school and towards what project through NG-CDF. So, we do not have a problem with NG-CDF. On the issue of raising funds so that we meet the requirement to ensure we meet 100 per cent transition in our schools as a contribution from NG-CDF, it is the House here that appropriates. It is the House that works with the National Treasury to pass the Budget. In fact, this is what has caused delay. We are still working on the ceiling with the Board and the Department of Planning at the National Treasury so that we come up with a clear... We are seeking a slight increase. What was given last year is Ksh137 million. We have been asking to have the amount increased a little from within the budget given to the Board. I

advise Members to work on the proposal. Let them not wait. I request, Hon. Speaker, to allow me to do this next week but Members should not wait for this because it is roughly around what we received last year, that is, Ksh137 million.

I urge Members to work on the proposals so that we are able to get funding as soon as possible when queries have been cleared from constituencies. I will table this next week, but I confirm that the amount that was given is Ksh137 million. We are trying to negotiate to see if it can be enhanced a bit. If it fails, I will be tabling the same.

Thank you very much, Hon. Speaker. Do the letters of proposals and submit them to the Board.

**Hon. Speaker:** Let us have Hon. Melly. Be brief. The Chairperson has now heard so many points raised by you and he is the one to give us the way forward.

Proceed, Hon. Melly.

**Hon. Julius Melly (Tinderet, JP):** Thank you, Hon. Speaker. I also rise to support the request for a Statement, which members have contributed to. One of the issues I want to put across is that of financing and making sure that 100 per cent transition is a success. With regard to the 100 per cent transition, as an educationist, we say it is better to have a child in school than outside the school. However, in this situation you realise that, currently, the population of Form One students in schools is about one million. It is a normal trend that the student population in Form One increases by between eight and 10 per cent every year. It means, therefore, that even if we build enough classrooms this year, next year, we will still need eight or 10 per cent more new classrooms.

The Ministry is supposed to ensure that we have an eight per cent increase in the number of teachers in schools, so that we also have enough teaching staff. Hon. Keter has just put it very clearly that if you come to our county, top schools like Kapsabet Boys High School, Kapsabet Girls High School, Meteitei High School, Samoei Boys Secondary School and others have three extra classrooms this year. Last year, they had six Form One classes. This year, they have nine and the number of teachers is still constant. The dining halls and libraries have been converted into classrooms. It means that the teaching and learning process is not effective.

The Ministry needs to move fast and ensure that one, the funds are actually disbursed to those schools on time. Secondly, they should ensure that we have the Secondary Quality Improvement Project (SEQIP) programme. There was a SEQIP programme which was supposed to be implemented in 30 counties and 110 constituencies of low income, but that programme has stalled in the Ministry. It would have ensured that about 2,000 classrooms are built by the World Bank. About 500 laboratories could have also been constructed. That could have eased this problem.

On top of that, we have a very pertinent issue of the NG-CDF. The NG-CDF plays a critical role. The delay in disbursement of the NG-CDF means that there will be a delay in the construction of classrooms. That would mean that a number of students will study under trees, yet this is a very cold season. A number of them will contract pneumonia. This is also a bad time since it is a new normal. We will not be able to have enough space. That is why we are talking about space in schools as a very urgent thing. I would like hon. Members to know that the issue that has been brought before us is very urgent. It is an emergency and we need to take it up with speed. I want the Ministry and the Departmental Committee on Education and Research to take it up with the necessary urgency that it deserves.

Lastly, I also want to point out that as much as the Teachers Service Commission (TSC) has been employing almost 5,000 teachers every year, that is actually a paltry number because it

is not enough. You realise that, even if students are increasing by 100,000 every year in secondary schools, the teachers that we are employing are not enough. They have not even reached 60 per cent of what is required in those schools.

This request for a Statement is very important. I urge the Chairperson of the Departmental Committee on Education and Research, the Cabinet Secretary and the Principal Secretary to ensure that this is addressed very urgently.

Thank you, Hon. Speaker.

**Hon. Speaker:** Let us have Hon. Oduol.

**Hon. (Prof.) Jacqueline Oduol** (Nominated, ODM): Thank you, Hon. Speaker. I would also like to support the request for a Statement by Hon. Keter because of 100 per cent transition policy. Like other policies, 100 per cent policy was an effort to, not only come up with regulation, but also administrative action.

I understand that, as Members of Parliament, we are frustrated because it is our role to exercise oversight. However, allow me to humbly say, not just as someone who is an educationist by training, but because I know how Hon. Kandie was frustrated by the professor, as we seek for 100 per cent transition, let us not encourage a culture that is beginning to take root in our country where we ridicule people for taking the very education that we want to ensure we get 100 per cent transition.

I have sat here this afternoon and I believe that education is not just how we go to school and the transition that we get, but as Hon. Millie has indicated, it is holistic. That is why we want all our children to be there. Therefore, as I support this request for a Statement, I would also like to remind Hon. Members that we have a responsibility to look at the policy. The matters that we are raising here require that even as we deal with issues of budget, we need to be asking ourselves whether there is room to have a dialogue or conversation, respectfully to keep focus and make progress, given the challenges that we have.

I conclude by indicating that when we see projects such as the ones sponsored by the World Bank being put on hold, I confirm that it is easy to point fingers at the CS and the PS, when you are looking at it from the outside.

However, I am very happy that the parliamentary system will allow us to hear from the CS. I would urge that, because of the manner in which our country is increasingly developing, there should be ways of getting all kinds of shortcuts as we embark on activities. We should allow the Ministry to get back to us and ensure that we encourage all of our children to go to school.

Thank you, Hon. Speaker.

**Hon. Speaker:** Let us have the Member for Seme.

**Hon. (Dr.) James Nyikal** (Seme, ODM): Thank you, Hon. Speaker. We are seeing a transition. For some who may know a little history, this actually happened in the country in 1962 when we had primary schools going up to Standard Four and then the very few intermediate schools going up to Standard Eight. There was a common entrance examination. Kids were expected to do the Standard Four common entrance examination and then only those who passed proceeded to intermediate schools. When this was moved, it was similar to the 100 per cent transition.

What eventually happened - and it is what we may look at - all the primary schools proceeded from Standard One all the way to Standard Four. If you look at it, we need as many Form One classrooms as there are Standard Eight classrooms every year. That is the direction to go. If we do that, the other thing that will happen is that most people will choose to go to day

schools. Day schools are much cheaper. Parents are dying from the cost of boarding schools. One child in a poor household takes up all the resources when they get into a boarding school.

As we look at this policy, we can have all students moving gradually to Form Four and most schools becoming day schools to reduce the cost of education. That is something that we should look at in proper progression of this policy.

Thank you, Hon. Speaker.

**Hon. Speaker:** Very briefly, let us have the Member for Mathare.

**Hon. Anthony Oluoch** (Mathare, ODM): Thank you, Hon. Speaker. I support all that my colleagues before me have said. I just wanted to tie in one small point that we must not lose. I support the request for a Statement by Hon. Keter. The point has been made and it is Hon. Jared Okelo who raised the question of how we deal with delayed disbursement of funds for the NG-CDF. The truth of the matter is that the NG-CDF is what has contributed to 80 to 90 per cent of the infrastructure that we see in our schools. There is a practice, and I have seen it now for the three years that I have been here, that towards the tail-end of a financial year, the Government will withhold disbursement of funds to counties.

I am reliably informed that there is a practice of withholding monies meant for the NG-CDF as a parliamentary term approaches its tail-end. I would, therefore, encourage Hon. Jared Okello to not only hope that the Statement will come from the Chair, Hon. Wamunyinyi, but also request for a specific statement on how this issue will be dealt with; the rationale or justification for slowing down disbursements of NG-CDF monies because we are going for an election. We know that there are Cabinet Secretaries, Principal Secretaries and other Government officials who are getting ready to run for our seats, but their monies and programmes are not being slowed down. Under Article 95 of the Constitution, we are the people who disburse funds. How do we disburse funds for other Government agencies when the very things that we ought to implement through the NG-CDF are slowed down towards the-tail end of the financial year?

Even as we look at this request for Statement and 100 per cent transition, the issue of how infrastructure funds have been spent has been discussed here many times. I would encourage that beyond the request, Hon. Keter, we should consider constituting a select committee to conduct a special audit of the monies we set aside for infrastructure funding for the last four years. At the end of the inquiry, we should say that in the budget that is coming or that which we already passed, we should make sure that school infrastructure development money should be given to the NG-CDF as conditional grants to implement such projects.

Thank you, Hon. Speaker.

**Hon. Speaker:** Hon. Members, I know that very many of you have made requests, but you will allow me to bring this matter to a close, but not before I hear the Member for Suba North.

**Hon. (Ms.) Odhiambo-Mabona** (Suba South, ODM): Thank you, Hon. Speaker for giving me this opportunity.

I support the appeal by Hon. Keter. I agree with all the Members on what they have said. The only thing I want to emphasize to the NG-CDF Chair is that for those of us who have been dealing with cases upcountry or in our constituencies, we have a crisis because of the change in the school calendar. We have a lot of people who are having crises because you get the bursary and then there is an overlap with another term. Therefore, it means that we must deal in an extraordinary manner the way the Government is also dealing with it. Instead of encouraging us to do our proposals, just indicate that by the end of this month, proposals shall be in because we are dealing with timelines. We cannot be dealing with some positions when we know that the

Budget has passed. The Budget must be passed way ahead of time and money must be disbursed way ahead of time.

I also want to incite Members. If that is not done, we must also hold other people hostage in terms of the work that is being done here. We cannot be passing other people's work when ours is being sabotaged. So, we want to put the Chairman on notice that, if we do not do that by the end of this month, his office should be calling us to give proposals and by September, all the money for the constituencies should be in our accounts because we have a short time before the NG-CDF secretariat sets their technical slackening. They will not tell you that they have stopped disbursing money; they will just not disburse the funds. We need that to happen when Members are still coming to the House. Otherwise, we will also not pass certain things.

Thank you, Hon. Speaker.

**Hon. Speaker:** Member for Wajir East.

**Hon. Rashid Kassim** (Wajir East, WDM-K): Thank you, Hon. Speaker. I am really glad for the time you have given Members to articulate this matter. You seem to understand the issues affecting Members of Parliament. That is why we support you in your endeavour to become the CEO of this country in the future.

*(Loud consultations)*

Thank you very much for giving us ample time. It is a fact that you also come from a rural area like where we come from. You know education is quite important in our regions. Thank you very much.

Hon. Speaker, there are certain issues that need to be understood. These issues are very unique to us, particularly those of us who support education and feel that education is an equalizer in terms of improving the social standards of our people.

In northern Kenya, we have been affected by a number of challenges in terms of education. The policy of 100 per cent transition from primary to secondary school has been implemented without commensurate support in terms of infrastructural development for schools. The situation now is such that we have schools with common classrooms that are getting between 50 and 60 students. This has been a challenge. We suggest that as the Government implements the 100 per cent transition policy, there should also be consummate support in terms of infrastructural development for schools so that every child can be able to access a classroom.

The other challenges we have had is the issues of school feeding programme. Children in my constituency are from very poor backgrounds such that they cannot even afford a meal a day. As the Ministry of Education supports infrastructural development, it should also provide for the school feeding programme that has been there in the past. The late President Moi provided school children with milk alongside the school feeding programme. This would support and alleviate hunger. Those issues should be addressed alongside the infrastructure improvement programme in schools to attain 100 per cent transition. The school feeding programme is equally important in attaining 100 per cent transition as well.

Yesterday, I had about five students in my office. Each of them could not get school fees to further studies. So, they decided to go and tender their livestock. I had to bring them back. I paid their fees to join national schools. These are some of the challenges that we have as Members of Parliament. Even when the NG-CDF funds are not available, we still go ahead with our charitable ways of helping them.

The other challenge we have is teaching. There are certain regulations that the Ministry of Education is trying to bring on board without considering the challenges that we have in terms of teacher-student ratio. The Teachers Service Commission has scrapped Primary Teacher 1 (P1) cadre. We no longer have P1 teachers. That means those children who were able to attend P1 courses because of their poor grades in KCSE can no longer go for P1 teaching courses. They have to qualify for diploma courses and above. These new policies being implemented by the Ministry of Education have negated our chances of getting adequate teachers in our areas.

Insecurity has also affected us such that we are not able to attract teachers from other parts of the country to teach in our schools. This has been a big challenge to us as Members of Parliament in trying to use the NG-CDF. The NG-CDF money has not been coming in regularly. As we take an audit of disbursements of NG-CDF monies, at the closure of the last financial year, we had about Kshs26 million or Kshs30 million which up to now has not been disbursed by NG-CDF secretariat. We have crossed to a new financial year with a backlog of undisbursed sum of Kshs30 million. We urge the Committee and the Chair of the NG-CDF Board to make sure that there is frequent disbursement so that we meet our obligation as Members of Parliament. That way, we will be able to support learners through disbursement of bursaries and construction of schools.

Thank you, Hon. Speaker for giving me the opportunity.

**Hon. Speaker:** Finally, is the Member for Wajir South.

**Hon. Mohamed Mohamud** (Wajir South, JP): Thank you very much, Hon. Speaker. I will be short and swift on this point as it has been quite widely discussed by my colleagues.

It is very important that we raise the transition of students from primary to secondary school to 100 per cent. It is one of the best things that can happen to the newer generation. I feel that that is important. Unfortunately, the infrastructure has not been in place. We expect our children to transition to another level of education without sufficient facilities available wherever they are transitioning to. Those facilities are not there. I will give you one example. In Wajir South Constituency, there are 11 secondary schools. I decided to add about four more. The unfortunate thing about those 11 secondary schools is that they are widely dispersed. Since Wajir South is the second-largest constituency in the country at 23,000 square kilometres, it becomes quite terrible that we are unable to provide school facilities for our children at every corner of the constituency.

One other thing that I want to mention is that the Ministry should improve capitation. Capitation is not enough. We are only being told about capitation that should be supporting schools. Those capitations are meagre. They are not enough to even support and facilitate laboratories that can equip our children to become future scientists who can compete with the rest of the world. You can work towards 100 per cent transition, but do you have the next level where those children can move forward to?

In addition to that, when the 100 per cent transition level reaches Form Four or the O-Level, as they used to call it during our time, colleges and universities are not available. That is where our challenges are. Provide transition at 100 per cent. Provide facilities in secondary schools, universities and colleges. If that is not done, this country will be failing future generations. Therefore, future generations are looking forward to seeing legislators in this House legislate on processes where, not only is the budget increased but also the NG-CDF which has done tremendous work in every corner of this country. The amount of the NG-CDF being provided is not sufficient to support schools. I urge that a particular percentage is purposely added for the transition issue.

Therefore, I will end by saying that this proposal is quite important. I support it. Thank you very much.

**Hon. Speaker:** Hon. Florence, you have obviously heard the concerns raised by so many Members. I know you are equal to the task.

**Hon. (Ms.) Florence Mutua** (Busia CWR, ODM): Thank you, Hon. Speaker. Let me take this opportunity to thank Hon. Keter for that very key Statement. I have listened to and noted all the views by the Members.

Currently, infrastructure is a big problem when it comes to the education sector, especially with the new 100 per cent transition which we appreciate very much because it has ensured that we do not leave any child behind. The new competency-based curriculum (CBC) ensures that we also need many new classrooms. We need a lot of infrastructure support from the Government.

Let me take this opportunity to thank His Excellency the President Uhuru Kenyatta for his recent visit to London to attend the Global Education Summit, which was a very key educational meeting to ensure that we increase financing for quality education. I am sure he came back with many goodies and he will inform the country at some point.

Hon. Speaker, as we all know, the Ministry receives a lot of money for infrastructure. This year, we received Kshs1.6 billion for infrastructure for primary schools and Kshs2.7 billion for secondary schools. Out of this, Kshs1.9 billion will be for desks. Let me quickly talk about what the Member has raised about capitation.

Capitation has been going on for a while. It is high time that the Government also reviewed the capitation because it started a very long time ago and many things have changed. Life has become more expensive. It is imperative that the capitation is also increased to cater for all that is needed in the sector.

We all know that education is the only equaliser we have in the country and in the world. It must be fully supported. As a Committee there was a time we had discussed involving the local Members of Parliament in the issue of funding. As has been raised by Members of Parliament, the criterion that is used to identify schools that need funding in those constituencies has never been clear to them. That is what is coming out. The Ministry needs to give us a clear criterion of how they identify the schools that need support in the various constituencies without involving the Member of Parliament of that area. That denies the Member the ownership of whatever is brought by the Ministry. Therefore, it is important moving forward. I hope that the answer will cater for that. The Ministry should actually work with the Members of Parliament to ensure that if there is any support going to his or her area, they are involved and the MP can confirm that that is the school that needs more funding than the one that the Ministry may want to support.

Hon. Speaker, you will remember that there was a time Hon. Duale brought a Question similar to what Hon. Keter has brought. It was a very detailed and well-responded to Question with all the schools that were supported during that time. I remember I even requested the Members to pick the report and just confirm that what was there was true and that those schools were actually the ones that were supported. I can confirm that no Member has ever told me that the schools in that report were not the ones supported. It is important to look at that report and confirm that those schools are actually the ones that were supported during that time.

Hon. Speaker, I also want to applaud the Members of Parliament for the good job they have done to ensure that we have infrastructure. They have done very well. They have put up the necessary classrooms. It is obvious that they will need more support through the NG-CDF or whatever channel they use to get more support to ensure that they have the necessary infrastructure.

I want to briefly talk about the SEQI Project. It is funded by the World Bank. It was to kick off last year in March. It was tendered and the entire procurement process was done. It was supposed to have started taking care of the infrastructure we are talking about because it was

supposed to be completed in six months. We have no idea why the project was suddenly stopped. As Hon. Osotsi has said, he will bring a Question to the Floor for the CS to appear and tell us why it was stopped, so that we can unlock it. We are hoping that it will proceed.

I can confirm that that project was to benefit 3,193 schools in 30 counties. I quickly want to read those counties. They were Bungoma, Murang'a, Busia, Kakamega, Homa Bay, Migori, Kisii, West Pokot, Turkana, Elgeyo Marakwet, Bomet, Nandi, Samburu, Baringo, Tharaka Nithi, Laikipia, Machakos, Kajiado, Wajir, Mandera, Marsabit, Isiolo, Makueni, Kitui, Tana River, Taita, Kwale and Kilifi. As a Committee we request the Executive to allow it to proceed, so that we kick-start the infrastructure projects in those various counties, even as we negotiate for the other counties to be supported. This was to cover 30 counties.

During the annual budget process, we requested the National Treasury, through the Budget and Appropriations Committee, to give us more teachers but they declined. I highly believe that they do not know the pressure that we have, especially with regard to infrastructure and having more teachers in those schools. They declined and we will still pursue it during the Supplementary Budget to ensure that we get the additional 5,000 teachers that were supposed to have been hired.

There are a lot of questions and statements in the education sector and I can assure Members that we will have them answered on the Floor of the House. We have other roadside policies like the issue of the buses not being used by the public which Members have raised here. We will also ensure we have concrete answers. Also, there is the issue of non-continuation of registration of schools. I managed to deal with Members who had those issues and I have taken their letters to the Ministry to ensure these schools are not locked out.

This is a very important Statement and I am hoping the answer we get from the CS will finally lay to rest the issue of infrastructure. Let the Ministry involve the MPs so that they feel part of the ownership of infrastructure put up in schools. The criteria should be very clear to the Members so that they can feel truly the Ministry has supported the schools. We will need two weeks to answer that Question once the CS is back as I said.

Thank you, Hon. Members and Hon. Speaker.

**Hon. Speaker:** Two weeks, Hon. Keter. It is good you raised this issue because it is very pertinent.

**Hon. Alfred Keter** (Nandi Hills, JP): Hon. Speaker, allow me to thank you for acknowledging that this is a very critical issue. Secondly, thank you for allowing Members to interrogate this issue. I must admit that it was not very easy to make a decision whether it should be a Question, Statement or a request to Members to support it as an Adjournment Motion so that we can discuss this issue.

I am fine with two weeks because we expect a comprehensive Statement which will be holistic in its approach because these issues are so many. They touch on every issue of education from infrastructure to teachers and the questions raised by the Whip on registration of new schools. Unless new schools are registered, we will not increase the capacity in secondary schools. The question here is capacity, for us to achieve 100 per cent transition which all Members have supported, we must ensure we have the same capacity in secondary schools so that they absorb the entire students who did KCPE.

Thank you, Hon. Speaker.

**Hon. (Ms.) Gladys Wanga** (Homa Bay CWR, ODM): On a point of order, Hon. Speaker.

**Hon. Speaker:** Very well. Next Order! Hon. Wanga, you have a point of order?

**Hon. (Ms.) Gladys Wanga** (Homa Bay CWR, ODM): On a point of order, Hon. Speaker. I wanted to note that while we are in the Chamber, two eminent Kenyans have won the 800 meters

race, Emmanuel Korir has won gold and Ferguson Rotich has won silver. I wanted us to acknowledge this so that we congratulate them for the sterling performance in Tokyo.

Thank you, Hon. Speaker.

*(Applause)*

**Hon. Speaker:** That is good. It lifts the spirits of all Kenyans. We were getting a bit worried. I think we do not have a lot of space to swim that is why we do not do very well in this area. That is great and good news.

### COMMUNICATION FROM THE CHAIR

#### GUIDANCE ON CONSIDERATION OF THE PARLIAMENTARY PENSIONS (AMENDMENT) BILL IN COMMITTEE OF THE WHOLE HOUSE

**Hon. Speaker:** Hon. Members, before we proceed to the next Order, I have a Communication to give by way of guidance. I wish to guide the House before it proceeds to the Committee of the whole House to consider the Parliamentary Pensions (Amendment) (No.3) Bill (National Assembly Bill No.57 of 2019 and make the following observations:

You will recall that at the rise of the House during the Afternoon Sitting of Tuesday, 6<sup>th</sup> July 2021, the Committee of the whole House had commenced reporting progress on its considerations of the Parliamentary Pensions (Amendment) (No.3) Bill (National Assembly Bill No.57 of 2019) pursuant to the provisions of the Standing Order No.134.

At the time, the Committee had considered the Bill up to New Clause 13A. In this regard, and in line with the provisions of Standing Order No.132, providing for sequence to be observed on a Bill in Committee, what remained for consideration was New Clause 18A, Clause 3, Title and Clause 1.

Hon. Members, as indicated in the Notice Paper, the Member for Homa Bay Town, Hon. Peter Kaluma has indicated intention to move a recommittal of New Clause 13A. Further, the Member for Kanduyi, Hon. Wafula Wamunyinyi proposes amendments to Clauses 8 and 9.

Hon. Members, you will also recall that before we proceeded on recess, I had directed that any Members proposing amendments to the Bill should appear before the Departmental Committee on Finance and National Planning in line with Standing Order No.131. I am informed that no Member appeared before the Committee regarding the said matter. However, I have since received information to the effect that the Member for Homa Bay Town, Hon. Peter Kaluma no longer intends to move the House to reconsider the New Clause 13A. In this regard, therefore, the intended recommittal as indicated in the Notice Paper, will not be proceeded with.

On the other hand, the Member for Kanduyi has proposed amendments to Clauses 8 and 9. In a nutshell, the amendment seeks to remove the requirement for payment of interest on gratuity, where a Member of Parliament who is elected buys back into the pension scheme. Further, the amendments also propose that in calculating pension, there should be reckoning of service of an Hon. Member as the aggregate period served, regardless of any interruptions thereto.

I only hope that some Members will understand what this means. Looking in the House, Hon. Wafula Wamunyinyi and Hon. Maoka Maore could be experts. I do not see any other person. Maybe Hon. Jimmy Angwenyi would have been of use and Hon. Kioni. They understand the issue of buy back and a period of reckoning, if you interrupt. That is if your employers decided to interrupt you a bit and then you come back. That is what this is addressing.

Hon. Members, you may agree with me that the said amendments by the Member for Kanduyi have Money Bill aspect, as defined under Article 114 of the Constitution and as well as direct implication on the budget of the said pensions and confer a benefit which has monetary implications.

In this regard, and in keeping with the provisions of Article 114 (2) of the Constitution which provides that:

“(2) ...the Assembly may proceed only in accordance with the recommendation of the relevant Committee of the Assembly after taking into account the views of the Cabinet Secretary responsible for finance.”

I have not received any communication as to whether the Cabinet Secretary for Finance has been contacted in regard to the proposed amendments by the Member for Kanduyi Constituency, Hon. Wamunyinyi. I, therefore, regret that I will not permit the proposed amendments to be considered by the House in the absence of a proper recommendation, as envisioned in the Constitution.

In conclusion, therefore, the amendments proposed by the Member for Kanduyi to the Parliamentary Pensions (Amendment) (No.3) Bill 2019 as contained in today’s Order Paper will not be proceeded with in Committee of the whole House.

Hon. Members, I now order that the Committee of the whole House do proceed in accordance with the guidance herein above.

I thank you.

Next Order!

## COMMITTEE OF THE WHOLE HOUSE

*(Order for Committee read)*

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

### IN THE COMMITTEE

*[The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya) took the Chair]*

#### THE PARLIAMENTARY PENSIONS (AMENDMENT) (NO. 3) BILL

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuya): Order, Hon. Members. Order, Hon. Kajwang’. We are now in Committee of the whole House to consider the Parliamentary Pensions (Amendment) (No.3) Bill (National Assembly Bill No. 57 of 2019). Order Hon. Members.

*New Clause 18*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuya): I now call upon the mover, Hon. Wanga.

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

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17— THAT, the Bill be amended by inserting the following new clause immediately after Clause

Insertion of new section 23 in Cap.196 18. The principal Act is amended by inserting the following new section immediately after section 22-

Regulations by the Commission. 23. (1) The Commission may make regulations for prescribing anything required by this Act to be prescribed and generally for the better carrying out of the purposed of this Act.

(2) Without prejudice to the generality of sub-section (1), regulations under this Act may provide for-

(a) the administration of pension, gratuity and other benefits to Members of Parliament;

(b) the establishment, regulation and supervision of the management of a post-retirement medical fund scheme for Members of Parliament;

This clause is seeking to give power to the Parliamentary Service Commission to prepare regulations for management of our pension. It says the Commission may make regulations prescribing anything required by this Act to be prescribed and generally for the better carrying out of the purposes of this Act. Mainly, administration of pension, gratuity and other benefits of Members of Parliament and establishment of regulation and supervision of the management of a post-retirement medical scheme for Members. Remember we are moving the pension management for Members from Treasury to come under the preview of the Parliamentary Service Commission. So, this is just giving them power to prepare regulations to manage the same.

Thank you, Deputy Chairlady.

*(Question of the new clause proposed)*

*(New clause read the First Time)*

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

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

*(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)*

*Clause 3*

**Hon. (Ms.) Gladys Wanga** (Homa Bay CWR, ODM): Thank you, Hon. Temporary Deputy Chairlady, although I am not the mover of this Bill. I am just moving amendments on

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behalf of the Committee. The mover is Hon. Mwadime, who is the Chair of the Pensions Committee.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuya): But you are the mover of the amendment.

**Hon. (Ms.) Gladys Wanga** (Homa Bay CWR, ODM): Yes, I am the mover of the amendment. Hon. Temporary Deputy Chairlady, I beg to move:

THAT, the Bill be amended in Clause 3 by inserting the following paragraph immediately after paragraph (d) –

(e) by inserting the following new definition-

“Commission” has the meaning assigned to it under the Parliamentary Service Act;

This is inserting the meaning of “Commission” as used in the Bill to mean the meaning assigned to it under the Parliamentary Service Act, which is really the Parliamentary Service Commission.

*(Question of the amendment proposed)*

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

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

*(Clause 3 as amended agreed to)*

*(Title agreed to)*

*(Clause 1 agreed to)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuya): Hon. Members, we have concluded the Committee of the whole House and I now call upon the mover to move reporting. Member for Funyula.

**Hon. (Dr.) Wilberforce Oundo** (Funyula, ODM): Hon. Temporary Deputy Chairlady, I beg to move that the Committee do report to the House its consideration of the Parliamentary Pensions (Amendment) (No.3) Bill (National Assembly Bill No. 57 of 2019) 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**

## THE PARLIAMENTARY PENSIONS (AMENDMENT) (NO. 3) BILL

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

**Hon. (Ms.) Soipan Tuya** (Narok CWR, JP): Hon. Temporary Deputy Speaker, I beg to report that a Committee of the whole House has considered the Parliamentary Pensions (Amendment) (No.3) Bill (National Assembly Bill No. 57 of 2019 and approved the same with amendments.

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

**Hon. (Dr.) Wilberforce Oundo** (Funyula, ODM): Hon. Temporary Deputy Speaker, I beg to move that the House do agree with the Committee in the said Report. I also request Hon. (Dr.) Christine Ombaka, MP Siaya County, to second the motion for agreement with the report of the Committee of the whole House.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. (Dr.) Christine Ombaka.

**Hon. (Dr.) Christine Ombaka** (Siaya CWR, ODM): Thank you, Hon. Temporary Deputy Speaker. I second. Thank you.

*(Question proposed)*

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

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Members, I would have been glad to do that, but I am constrained not to do that because I need to confirm that we have the requisite quorum.

I will, therefore, direct that very necessary steps be undertaken when we appropriately quorate. So, we move on to the next business.

**BILL**

*Second Reading*

THE WAQF BILL

*(Hon. Emmanuel Wangwe on 3.8.2021)*

*(Resumption of Debate interrupted on 3.8.2021)*

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. T. J. Kajwang', you were on the Floor when this was adjourned. You have your time.

**Hon. T.J. Kajwang'** (Ruaraka, ODM): I had not begun, so my clock should read 00.00. Hon. Temporary Deputy Speaker, thank you so much for giving me an opportunity to speak to this. Yesterday we had a lengthy discussion on it and I appreciate the Members who spoke both from their hearts and from a point of law and facts. Sometimes one of the things that we see as leaders of committees is that we prepare very well, but when we come to the plenary the Majority Leader or the Majority Chief Whip lead the discussion. Therefore, we do not get as much time as

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we should be able to explain to Members where we are. However, I said that today, on behalf of the Committee, we will set a few things straight so that we allow this Bill to mature to a Third Reading.

This is a very good Bill in respect of the people that it is concerned. You know as I do, if you were a student in those days, you would not get your Trust aggregates in the faculty of law, if you did not attempt a question on Waqf, because very few people understood or could even pronounce what Waqf is all about. So, it was only the studious students that were able to understand what Waqf was all about. Imagine that this is amending or completely repealing sections of Wakf Act, which was an Act of 30 of 1951, which came by virtue of Legal Notice No. 142 of 1963 in effective date of 1951.

Let me just show you how ridiculous this colonial law was, and why members of the Islamic faith had to bear with a very old colonial and retrogressive Bill. The definition, for example, of Waqf in the legislation that we intend to repeal reads as follows:

“A Muslim means an Arab, a member of the Twelve Tribes, a Baluchi, a Somali, or a Comoro Islander, a Malagasy, or a native of Africa of the Muslim faith.”

Imagine this is a legislation that is existing describing members of the Islamic faith. How ridiculous and how retrogressive must Muslims be feeling to deal with such legislations that are unrepealed!

In this legislation, at that time, it only would apply to areas that the Provincial Commissioners would gazette. Meaning that in the coastal strip because of application of the Sultan protectorate, certain laws did not pass beyond Mombasa into the hinterland. Muslims are all over. There are Muslims in Gendia, Kendu, Kisumu and in Ndhiwa. In fact, people have changed names there. People who were called George Onyango, nowadays are called Abdullahi Akbar Onyango. So, if you only limit the application of legislation to a particular region, you miss a people that should benefit from the legislation. One of the things that were discussed yesterday, was what I heard a Member call constitutionality of this Bill. I think we should have waited for more direction to understand where we are. There is nothing unconstitutional in this Bill. The Member may have misconceived what you and I know as sources of law. You know, sources of law are predicated in Judicature Act.

I would want to bring you up to speed, especially to Section 3(2) which says:

“Jurisdictions of the courts will be governed by the Constitution and received legislation”. That is the compound law of legislation and case law as at the reception date and of course doctrines of equity and so on. In subsection 2, the courts will be guided in cases in which one or more of them are affected by it, personal law. I think the word here is “African customary law”. The Islamic law is applicable in Kenya by dint of African customary law of the persons that they relate to, when one or two people are affected by it. Once somebody professes a particular regime of law, whether it is native law to the extent that is personal law that law would, therefore, be a law that is applicable under our Constitution and under the law.

The only thing which I thought came out very strongly that the Committee will be looking at, is that this law must be applicable and not repugnant to justice and morality, or inconsistent with any written law, and shall decide all cases according to substantial justice. It, therefore, means that not just for the Muslims, but for everybody else. We would want to investigate if that law is consistent with the written law and the Constitution, especially that it is not repugnant to moral justice.

That being the case, Members then understand that there is no unconstitutionality in this law. However, as I heard Member for Suba North for example say, what is this law which should

just be applicable to a certain group of people and not applicable to others? She says, if a Waqf is set, then the benefits of that Waqf should be applicable to everybody, regardless of religious persuasion or doctrinal issues. That is why it is personal law. People choose the regime under which they want. There are people who have professed Christianity, there are people who have professed African customary law to guide their personal law. So, if persons have professed Islamic law, just the fact that this law, therefore, benefits such group of people, it does not make it unconstitutional. It would not be argued that people from other persuasions would want to benefit from a law for which it is not a personal law.

So, I think sometimes we have extended passion to judge our constitutionality when we decide these things. I mean, if you are not a member of the Islamic faith, so why do you want to benefit from it? Is it because the *sadaka* or the Waqf comes from the Muslim people or because it is decided by the Islamic law? So, you want them to donate, you want them to give, and then you want to take a benefit from it. When you cannot donate to the same kitty, it does not make sense.

I think yesterday there was a suggestion that it was a discriminative law which tries to alienate society. Therefore, I have shown and we will clearly show how it alienates society. We will clearly show in the Report that it is not unconstitutional. The question would be, if the trustees of the Waqf decide to benefit a community that is not generally Islamic, that is what has not come out here, which should come out well. This is because that, again, can happen here and it is unconstitutional.

For example, the commissioners can decide to build a school in an area which is predominantly Christian. Should that happen, it is not unconstitutional. That is perceived especially, if they are poor people and if they relate to the basic principles which are here.

Hon. Temporary Deputy Speaker, having said that, I think I must have prepared too many things to say. So, I need to say them quickly. Section 4 would really need to be looked at in terms of validity over Waqf. It is this Section 4 that is talking about applicability of the law and the sources of law, especially the fact that there needs to be a very clear sentence that, notwithstanding the fact that somebody does not profess that faith, a Waqf can be given in favour of that person.

A poor young man in Luanda is just as poor as the other in Vanga. It does not matter the personal law that he professes or the religion that he professes. Poverty is poverty. So, all these people should be looked at.

Clause 4 of the Bill says that there will be a selection panel. What I found, which I think we will be discussing in the Committee is that this selection panel shall invite views from Muslims in respect of shortlisted candidates. Who are these Muslims? Legislation cannot just say it will invite Muslims. It must show the type, the cadre, and the criteria of the people they call Muslims who will be invited as a selection panel.

There is need to understand the public trustee. There is a group of four legislations that are relevant to this – the Trustees Perpetual Succession Act, the Trustees Act and the Public Trustee Act – because this is in the nature of trust law as regards to people professing the Islamic law. So, the Committee would want to understand if the various sections of the Trustees Act have been complied with. These are whether you are Islam, Christian, or African traditionalist. The Trustee Act and Public Trustee Act are applicable to everybody, including the Waqf. So, we would want to understand to what extent this has been discussed and to what extent it is consistent with the written law that is there.

There is an interesting proposition here; that, the Attorney-General becomes the Chair of the Waqf Commission and, of course, with eight other members. If you go to the financial reporting...

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

*(The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya) in the Chair)*

Thank you, Hon. Temporary Deputy Speaker. Before you came, I had an undertaking from the Temporary Deputy Speaker that has just left that you would not mind giving me just a few more minutes to explain what I must explain because it is important.

If you go to the auditing sections, it says that the Commission shall prepare a report and submit it to the Attorney-General. That must have been a mistake. They must have meant the Auditor-General because this is auditing.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Hon. T.J. Kajwang', how much time do you need?

**Hon. T.J. Kajwang'** (Ruaraka, ODM): I will be over with this in the next five minutes maximum.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Five minutes is a long time.

**Hon. T.J. Kajwang'** (Ruaraka, ODM): Well, you know Members will be saying this. Some of us have taken time to research to be able to...

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Let me give you three minutes.

**Hon. T.J. Kajwang'** (Ruaraka, ODM): Alright.

*(An Hon. Member spoke off-record)*

Yeah, you know he is speaking, but he has already spoken and then he is directing me on how long I should take.

I think this is a mistake, it should have been the Auditor-General because Clause 27 is the clause by which there is auditing. So, this report should properly go to the Auditor-General. After all, the Attorney-General is already the Chair of the Commission. So, how would the Attorney-General prepare a report to himself? It does not make a lot of sense.

The last one has to do with rules and regulations. Article 29 needs to be expanded properly so that the Attorney-General does not only make the rules, but also regulations because this is an endowment fund which will need some regulations to carry it through, which may not necessarily be captured in the Act. So, that should come out clearly, but even if it comes out, there should be the extent of that regulation because it will interfere or affect the rights of the people that will be affected by the Waqf.

Hon. Temporary Deputy Speaker, we have agreed that my Committee is processing this Bill. Members should not worry. At the appropriate time, when we go to the Third Reading, we will have a Report suggesting specific amendments that we should have. We will discuss this with the people that are all concerned.

I thank you.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Hon. Members, if you have already spoken to the Motion, you could pull out your card so that you do not cause confusion.

You cannot speak twice to the same matter. Let us have Hon. Dominic Koske. Are you on a point of Order?

**Hon. Gideon Koske** (Chepalungu, CCM): Hon. Temporary Deputy Speaker, I am standing under Standing Order No.95. I beg to move that you call upon the Mover to reply. We have been debating this Bill since yesterday. We have done so for over three hours. I am looking at the next Order, which is also very important. We might require more time to deliberate it.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Hon. Members, my hands are tied. Once a Member moves such a Motion, I have to throw it back to the House to decide. Hon. Rachel Nyamai, you know that.

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

Mover.

**Hon. Emmanuel Wangwe** (Navakholo, JP): Thank you, Hon. Temporary Deputy Speaker. I thank my colleagues for the very good information they gave and volunteered to the House. I wish also to commend Hon. T.J. Kajwang', the Vice-Chair of the Departmental Committee on Justice and Legal Affairs for undertaking to give us more information especially that came from the public through public participation before we get to the Committee of the whole House.

My colleagues are asking me to donate some time, but my hands are tied with respect to the Standing Orders now that I am replying according to the provisions of Standing Order No.95. My colleagues, my hands are tied on that account. I thank all my colleagues. We have taken note and have undertaken to print the *Hansard*, so that all the comments and views the Members have aired are included in the next stage. Thank you, Hon. Colleagues.

I beg to reply.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Thank you, Hon. Wangwe. We will defer putting of the Question until when we are properly constituted.

*(Putting of the Question deferred)*

Next Order.

**Hon. T.J. Kajwang'** (Ruaraka, ODM): On a point of order, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Yes, Hon. Kajwang'.

**Hon. T.J. Kajwang'** (Ruaraka, ODM): Hon. Temporary Deputy Speaker, I beg your indulgence. Before you step to the next Order, I request that in your discretion, you alter the Order Paper. There is a matter that is last on the Order Paper, the Judicial Service (Amendment) Bill. As the Vice-Chair of the Departmental Committee on Justice and Legal Affairs, I have written a letter to the Speaker, and I have shared a copy with the Whip of the Majority Party, intending to withdraw the Bill completely. I request that we may want to deal with it and withdraw it rather than wait until the last Order is called for the convenience of the House.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Hon. Kajwang', that is in order. Let me have a bit of consultation.

*(The Temporary Deputy Speaker)*

*consulted the Clerk-at-the-Table)*

Hon. Kajwang', I will give you an opportunity to speak to the issue of withdrawing the Bill at this point in time. I, therefore, re-organise the Order Paper and have us look at Order No.15.

## BILLS

### *Second Readings*

#### THE JUDICIAL SERVICE (AMENDMENT) BILL

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Hon. Kajwang'.

**Hon. T.J. Kajwang'** (Ruaraka, ODM): Thank you, Hon. Temporary Deputy Speaker. On behalf of the Departmental Committee on Justice and Legal Affairs, we wish to withdraw this Bill.

The justification or reasons for which we do this have been explained in a letter to the Hon. Speaker, which has been copied to the Whip of the Majority Party. So, they are aware what is happening. The reasoning here is that the Bill seeks to amend Section 30(3) of the Commission's Act. Section 30 of the Act, there was a High Court case, namely, the Law Society of Kenya versus the Attorney-General and another, 2016, Kenya Law Reports, which the court expressed itself and struck out that section of law as unconstitutional. It is this section that this Bill is proposing to amend. When the court has expressed itself exercising correct jurisdiction, that section of the law is now not there at all for amendment. This is the thinking. Of course, it came after this Bill had been published. That having been done, there is no section of law to amend. To that extent, therefore, the Bill which seeks to amend what is not there is not only illegal, but is also unconstitutional. We have expressed our legal piece in the long letter and we have explained how that arose. We have even annexed a copy of the judgement to that piece.

So, in view of the view that is concurred upon by the Members of the Committee, I wish to apply it to withdraw the Bill. I have done that because I have seen before chairmen of committees coming to withdraw Bills or sections of law and I have been very critical that it cannot be done either without the concurrence of the Committee or without explaining to the plenary exactly the reasons for which you withdraw a Bill. I have seen chairmen of committees taking advantage of their personal views of what they think should be withdrawn or not withdrawn. In this sense, we have given a legal justification. It has been concurred with the Members of the Committee for the withdrawal.

Of course, there is no report, but as we said the other day, whether there is a report or not, the Standing Orders allow a Bill to proceed to the Second Reading notwithstanding that there is no report. So, in that view, we ask, Hon. Temporary Deputy Speaker, that you may order that this Bill stands withdrawn in whole. Thank you.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Very well, Hon. Kajwang'. In listening to you, you have said that this is a deliberation of the entire Departmental Committee on Justice and Legal Affairs.

**Hon. T.J. Kajwang'** (Ruaraka, ODM): Yes.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): In that case then, Hon. Members, the Bill stands withdrawn. Accordingly expunged from the Order Paper.

*(Bill withdrawn)*

Let us go to the next Order.

THE NATIONAL HOSPITAL INSURANCE FUND (AMENDMENT) BILL

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): The Whip of the Majority Party.

**Hon. Emmanuel Wangwe** (Navakholo, JP): Hon. Temporary Deputy Speaker. I beg to move that the National Hospital Insurance Fund (Amendment) Bill (National Assembly Bill No.21 of 2021) be read a Second Time.

This Bill seeks to amend the National Hospital Insurance Fund (NHIF) Act of 1998 to establish the National Health Scheme and to enhance the mandate and capacity of the NHIF to facilitate and deliver Universal Health Coverage (UHC).

According to the World Health Organisation, UHC means that individuals and communities receive the health services that they need without suffering inability due to financial hardships. As Members will appreciate, the overriding goal of the UHC programme is to provide healthcare for all without discrimination based on financial ability or other factors.

One of the most important ways to achieve this is through a seamless national health insurance plan covering everybody regardless of their financial ability. In this regard, therefore, the proposals in this Bill are aimed at making the NHIF a national health insurance scheme that is mandatory to all Kenyans. The target is eventually to cover, at least, five million poor households, but as a start, the Government has committed to start with covering one million poor households this year.

To expand the mandate of the NHIF to offer universal health coverage, this Bill seeks to increase the revenue raised through the NHIF in three main ways. This Bill seeks to, first, make the NHIF mandatory for all, whether salaried or employed. Currently, the informal sector, which contributes 83 per cent of the Kenyan workforce, has remained voluntary.

Second, the Bill requires employers to make standard and matching contributions in respect to their employees' NHIF contributions to improve the financial sustainability of the NHIF, as well as its redistributive potential. On this point where matching will apply, there is still a debate as we are aware that the Committee is yet to file a report. However, they will look at the report from the Committee, which is looking at two aspects of matching. It is either going to call it matching or top-up. Matching means that if one member contributes Kshs400, the employer will also contribute Kshs400. However, if we approve the top-up, if, for example, the payable amount is Kshs500, the employee will contribute Kshs150 and the difference shall be met by the employer.

Third, for co-insured patients with a payment insurance facility and the NHIF, the Bill provides that the healthcare providers will be required to bill the private insurer first before billing the NHIF. However, the NHIF will continue to cover the daily rebate for inpatients.

Many times, we have not withdrawn support from private healthcare providers by virtue of upgrading the scheme. They will still apply. The private healthcare providers will still continue to function.

To sanction compliance with payment deadlines, Section 13 of the Bill seeks to amend the Act to rationalise the penalty for late payments of the standard or matching contributions. The Act provides for a penalty of five times the amount contributed. However, the Bill proposes to sanction a penalty of 25 per cent of the contribution. In the current Act, if you are supposed to pay Kshs500 and you default, you will pay Kshs500 times five, namely, Kshs2,500. However, this Bill proposes

that you pay 25 per cent as a penalty of the sum amount which you were supposed to pay before you defaulted.

Additionally, in the event that an employer fails to remit the required standard or matching contribution which makes an employee incur some costs while seeking treatment, the Bill makes provision for the employer to compensate the employee for the costs incurred while seeking treatment. What has been happening with employers is that most of them deduct the NHIF, but fail to remit. So, when an employee goes to hospital and presents their NHIF card, that is the time they realise that they are not compliant yet their money was deducted. What then happens is that the employee gets money from his or her pocket to pay the bills. The amendment being proposed in the Bill is that if that employee has suffered because of the negligence of the employer, the employee should have recourse to recover the money by being compensated by the employer to that extent.

The Bill enhances the penalty for individuals who obtain benefits through false or fraudulent claims. They are to be subjected to a fine of Kshs10 million or imprisonment for five years. There is also deregistration of healthcare institutions found participating in fraudulent activities.

We have seen scenarios where there is false presentation of claims by some service providers to the NHIF. If you are a service provider who has been panelled as being eligible to provide healthcare services and you fraudulently present false documents for payment, the Bill proposes that you will have to pay a fine of Kshs10 million or face imprisonment for five years. Also, without an option, you will be deregistered off the list of healthcare service providers. This will help to deter the aggressiveness of fraudulent healthcare providers.

In a study conducted by Oxfam, it was observed that universal health coverage is not a one size fits all journey. Governments need to develop approaches that fit the social, economic and political contexts of their individual countries. In addition, the WHO has been explicit that countries should prioritise four key actions to finance universal health coverage. One of them is to reduce direct payments at the healthcare facilities. You can only prepare for ill-health because you do not know when you will fall sick. You cannot just keep money and hope that it will be available when illness comes. That is why we discourage direct payment because you may not have money at that time. You prepare for it so that you reduce the direct payments since you have already made arrangements by being part of a scheme which is now safeguarding you in terms of your health.

The second one is to maximise mandatory prepayment. This is through organisations or by the Government. The Government should mobilise a particular organisations like the NHIF which sets up a maximum mandatory prepayment procedure to cover the scheme. This is done through the establishment of large risk pools like the NHIF, which will pool all the resources that we have now made mandatory through the Bill. When you look at how the base will widen, it will be a big pool to collect money and also manage medical risk.

The final one is to use general Government revenue to cover those who cannot afford to contribute. In the Bill, there is a clause on indigence which will address the issue of those who are not able to meet the contributions. It entails how the Government will approach such, put them together and manage their contributions.

Those four actions are the sole objective of the various health-related laws, including this Bill. The NHIF Bill intends to reduce direct payments at healthcare facilities, make insurance premium payments mandatory, and most importantly, require the Government to use its own revenue to make contributions for the indigent.

The Bill intends to amend Section 15 of the NHIF Act by inserting Section 1(b) which shall make the national Government liable as a contributor to the Fund on behalf of the vulnerable who shall be identified by a relevant Government body.

This Bill should not be misunderstood as afflicting the private sector insurance market. It does not prohibit taking out insurance premiums from private sector providers. Additionally, the Bill does not prevent persons of means from having enhanced insurance premiums. In fact, the Bill proposes to amend Section 15(d) of the Act by inserting Section 3(a) to allow individuals to make additional voluntary contributions to enhance their benefits.

There have been conflicting views out there that this Bill will stop and block the private market players. It is not. In fact, it will enhance and streamline the environment where both private and public insurers like the NHIF are going to play.

The Bill also makes provisions for the empanelment of healthcare providers to avoid quacks and substandard healthcare services to Kenyans. In this regard, the Bill empowers the NHIF Board, in consultation with the relevant accredited bodies, to publish in the Gazette, the list of empaneled health providers. It is important that we have a list of qualified healthcare service providers. We should not just have a list, but it should be monitored to ensure that those who are on it are complying with the laid-down rules to the right standard, are not fraudulently collecting money from people and the services they are offering to the people are up to standard.

The motivation for this Bill is to tailor and support the NHIF to cater for the financing component as far as access to healthcare by Kenyans is concerned. I am reliably informed that the Departmental Committee on Health was receiving input from several stakeholders, including the CEO of the NHIF. I hope that once the Committee is ready with the report, we will benefit from further insights made by the industry players.

Hon. Temporary Deputy Speaker, it is important to note that as per your own ruling, we could not wait because we are on the move to achieve universal health coverage. As a country, we must join the well developed countries to make sure that we provide universal health coverage to our people. That is why we will go as per your ruling and proceeding to the Second Reading as we await the Departmental Committee on Health to table their report in the House.

I had a sitting with the Chair and he was very comfortable that we proceed since most of the issues have been resolved. We are just waiting for them to prepare the report and bring it to the Floor of this House as early as tomorrow, unless something else happens.

With those many remarks, I beg to move and ask Hon. Owino, the great, to second. Thank you, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Kindly, have the Floor, Hon. Owino.

**Hon. Martin Owino** (Ndhiwa, ODM): Thank you, Hon. Temporary Deputy Speaker. First of all, let me thank the Chief Whip for that eloquent moving of this important Bill. I am a Member of the Departmental Committee on Health and on behalf of my Chair, Hon. Sabina Chege, whom I am happy to represent, I second the National Hospital Insurance (Amendment) Bill (National Assembly Bill No.21 of 2021). Health is very important. Any Government that wants productivity, it is a must that it should address squarely and effectively the issue of healthcare. On that note, I want to thank the President for putting health as one of his Big Four Agenda.

Universal health coverage is the engine that will drive people to good health and the NHIF will drive this engine. The engine which is now before us as an amendment will first of all change the title of the NHIF to the National Health. The NHIF was addressing tertiary care of patients, meaning unless you are Level 5 or 6, it was not very effective. Now that we have brought in health,

so that dispensaries and health centres can also be covered in this insurance scheme, it is important to note that we tried the input in health for UHC supplying commodities, so that people can get drugs and all that, but that did not work in the pilot phase of the study. We have, therefore, resorted to output meaning and we want to have a national insurance scheme where you can be paid for if your indigence dictates, or your employer can deduct the amount due from your salary and pay for you. Those who are working can also chip into a kind of a pool the way insurance works. You just have to go to the facilities for care without making any direct payment. This amendment Bill, first, addresses that aspect. So, we will have the National Health Insurance Fund as the title and those recommendations or amendments will come during the Committee of the whole House.

Secondly, this Amendment Bill will give mandate to the NHIF to facilitate payment for health services in all the facilities without nationals struggling to get where to pay and all that. They will just go for services and anticipate. We made it very clear to the team from the NHIF that once it is cushioned with this Bill, then access to healthcare services should not just be access, but should be accompanied by quality of services.

We also had a problem with billing. When patients sought care from facilities, the first bill went to the NHIF. They were billed first and so they were taking a bigger slack than that of the private service providers. This amendment Bill will ensure that the first bill goes to the private insurance and then other bills are good enough for these schemes. They can take care of diagnostic services as well as chemo. They will take the second bill. That will save some money for us to spread out for long-term care for patients in those categories.

As we all know, medical insurance companies have been around for the last 55 years. There have been a lot of fraudulent activities which this amendment Bill is trying to prevent. One of them is the use of stamps. People used to make their own stamps. This amendment will remove that aspect. There will be no use of stamps anymore. Also, the means of identification will be biometric so that we have everybody in the system. However, should there be any act of fraud, we have upped the penalties to Kshs10 million or five years imprisonment. If this is enforced candidly, we can protect the Fund and, therefore, the sustainability of the Fund can be assured.

The issue of penalties has also been painful. If you delay to pay or if employers delayed, nothing was done. As the Mover put it rightly, we have reduced the penalty. It used to be five times and we have said you can pay 25 per cent of what you owe. If Members pass these amendments, there will be a lot of gain for this country. What happens is that people are not able to pay for healthcare services. That has impacted negatively on how people value their health. We have delays in accessing health care services. When there is delay, it invites progression. The disease progress because you have not gone to hospital because you fear you cannot afford to pay. So, when such patients show up at Level 5 and 6 hospitals, the tertiary care, they show up with complications. For example, somebody could be suffering from diabetes, but he does not know and does not want to go to a medical facility because he does not have money to pay. With time, the disease can progress and damage organs. He may end up with renal failure and require dialysis services, which will take him away from his family or cut down his productivity. This amendment Bill is going to make it easy for people to get to medical facilities even for preventive care. That is why we are removing “hospital” from the title and replacing it with “health” to read “National Health Insurance Fund.” That may make our productivity more valuable because diseases will be detected and managed early, and people can receive services. As I said, the engine to ensure that people can access healthcare is the NHIF. That is how important it is.

As a Committee, even today, we talked about how contributions can be made to that Fund to make it more sustainable. We have made some changes, especially with regards to employers

matching what they deduct from their employees and contributing it to the Fund. That will come at the Committee of the whole House stage.

Let us start with the public entities and Government agencies. Merge the Fund. In insurance, when one person is critically ill, another one may be well enough to continue paying for that person to be taken care of.

Lastly, I must report that we had extensive public participation on the Bill. Workers, the Ministry of Health, industries and everyone else came and gave their input. The amendments that we will propose on the Floor during the Committee of the whole House will edify this. However, as it is, if done, healthcare in this country will be more amenable to people than it is now.

Thank you, Hon. Temporary Deputy Speaker. I ask Members to support the Bill.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): You need to second, Hon. Owino.

**Hon. Martin Owino** (Ndhiwa, ODM): Hon. Temporary Deputy Speaker, I beg to second.

*(Question proposed)*

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Let us start with Hon. David Sankok.

**Hon. David Ole Sankok** (Nominated, JP): Thank you very much, Hon. Temporary Deputy Speaker. *(Inaudible)*

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Hon. Sankok, you seem to be speaking in tongues or something. You are spending a lot of time with the cows that when you come to Parliament, you forget parliamentary languages which are Kiswahili and English. That is just a reminder.

**Hon. David Ole Sankok** (Nominated, JP): Forgive me, Hon. Temporary Deputy Speaker. I was just thanking you for giving me this opportunity in my mother tongue of *Maasai*.

I rise to support the Bill. I congratulate the Departmental Committee on Health as well as the Mover, Hon. Wangwe, our Majority Whip, for the National Hospital Insurance Fund (Amendment) Bill, 2021. Kenyan millionaires and even billionaires are one disease away from poverty. You may be rich today, but after an attack of COVID-19 or cancer, whether you die or not, you will leave your family in poverty because of the exorbitant prices charged in our hospitals.

Many Kenyans suffering from terminal illnesses are entering stages where they may not be able to handle the diseases because healthcare bills are prohibitive. Even treatable and minor diseases that can be treated with just a dose of antibiotics or anti-protozoa medicine become untreatable because the bills are just too scary. Sometimes when people go to hospital even for a simple disease like gonorrhoea, they are prescribed antibiotics to take for three or five days, but because of the price of the drugs, they take them for one or two days and the bacteria develop resistance. These are some of the things we encounter when we lack an elaborate insurance system for our citizens.

The NHIF is the only route to universal healthcare. The provision of machinery and employment of manpower cannot solve issues if the NHIF is not in place and properly regulated. For the sake of the hustler nation, let us make the NHIF contributions in terms of a percentage. In some clauses in the Bill, I have seen that some people will be exempted and others will be paying in terms of income especially the self-employed and those in private sector. In the Committee of the whole House, I will suggest that we make contributions as a percentage of one's earnings, so that if a Member of Parliament earns Kshs800,000, they pay one or two per cent of their salary. If

it is two per cent, this will translate to Kshs16,000, rather than having all of us paying Kshs500 including the person who earns the lowest salary of Kshs7,500.

When you earn Kshs7,500 and pay Kshs500 to the NHIF, that is almost 30 per cent of your salary, yet a Member of Parliament who pays Kshs500 is paying 0.0001 per cent of his or her salary. This is not an equaliser. For the sake of the hustlers who are at the bottom of the ladder hustling their way through the economic ladder to become billionaires, let us charge in terms of percentage. I will bring this amendment in the Committee of the whole House.

The NHIF should also protect the very vulnerable members of our society. For instance, why should persons with disability pay for an insurance Fund? They should be easily exempted. I will bring an amendment in the Committee of the whole House, so that we can exempt persons with disabilities from paying. They are registered and the Government has their data and should pay for them.

Even those on the cash transfer programme, we cannot say they are vulnerable and give them Kshs2,000 per month and then expect them to pay hospital bills. Surely, the Government should give them Kshs2,000 per month and pay Kshs500 towards their NHIF contributions. In any case, you can deduct the Kshs500 and give them Kshs1,500, so they are safe. Health is more important than clothing, shelter and food. If they die, they will not eat the money you are giving them. So, let us have an arrangement where we either top-up and make the cash transfer Kshs2,500, so that, Kshs500 is for the NHIF or we deduct it. I am sure they will not complain.

The Bill also seeks to seal loopholes of corruption from the hospital side. Some hospitals are overcharging and having bills of patients who have not gone to hospital. In private hospitals, there are cartels who solicit for anybody with a NHIF card. They take it, swipe and charge a false bill and probably pay the owner some little money. For example, they charge Kshs20,000 and pay the owner of the NHIF card Kshs1,000. With the poverty level in Kenya, everybody is willing to accept this.

It will also seal loopholes from holders of NHIF cards; the clients themselves. You find patients asking who has an NHIF card, so they can use it in hospital. So, one card is used by 10 members of the society around that area. Anybody who falls sick already knows who has an NHIF card. Sometimes they pay for it because after analysing their sickness as serious, they think they will be charged close to Kshs10,000. So, they pay Kshs2,000 to use someone's card. It will seal loopholes from that area. It will also seal loopholes of corruption from inspectors. Clause 30(6) says that there is a penalty for inspectors who will inspect the hospital, find that there is a problem with the hospital and there is corruption, but because they have also asked for some kickbacks, give the wrong information. I really support this Bill and I think it is upon this House to hurry up, so that we can attain the universal healthcare and cushion our citizens.

Diseases like cancer are detected very late when they are in stage 4 when they are no longer treatable. Why? Because people fears to go to hospital since they know how much they will be charged. They are probably looking for money. Some of them have already been diagnosed that they have stage one cancer which is treatable, but they will go home, so that they can look for money. Then they will look for that money for the next three years. When they come back, they are already in stage four and it is not treatable. So, for us to protect our citizens, I support this Bill. I thank you, Hon. Temporary Deputy Speaker, for giving me this opportunity. Do not mind when I thank you in Maasai, I will still say *ashe oleng*.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuyu): Let us have the Member for Funyula.

**Hon. (Dr.) Wilberforce Oundo** (Funyula, ODM): Thank you, Hon. Temporary Deputy Speaker, for the opportunity to contribute to the Bill at hand, that is, the National Hospital Insurance Fund (Amendment) Bill from the National Assembly. Probably if there is anything that has got the potential of disorganising a family and wiping away a family's investment and wealth, it is medical bills. As we say in my community, you never know when you will fall sick. You can decide when to sleep and when to wake up but you never know when you will fall sick and you never know what kind of illness that will befall you. You never know how much it will cost to treat the illness. You never know how long it will cost to treat illness.

In typical terms, illness is like a risk and many times you choose whether to retain the risk or to transfer the risk. Since you do not know the ultimate outcome of a risk, the practice has always been that in such circumstances, you transfer the risk. That probably is the genesis of medical insurance cover and probably the genesis of the NHIF. There are very many good stories out of the NHIF in terms of paying medical bills and providing affordable medical care. There are also other harrowing experiences about the NHIF, but probably in respect of this Bill, it is important to focus on the positive part of it.

Looking at the Bill as drafted, it seeks to do a few things that hitherto were not in the original Bill. One, is to entrench the Universal Health Care (UHC) that has been a talk all along for many years in this country. We have people in this country who truly cannot afford to subscribe to any medical cover because they have no money. They are retired, vulnerable, indigent and have no source of income. Those are the people that are the most important aspect of this Bill. This Bill compels the national Government to basically make arrangements to pay medical insurance for those people.

The Bill provides that there must be equal contribution for both the employer and the employee. I know we are going for many employers and this is going to increase the cost of doing business. This is going to increase the cost of running operations. Nevertheless, for the purpose of the health of this country, there are some sacrifices people, corporates and all other forms of legal entities must be willing to make for this country to be strong and productive. Obviously, if the Bill as drafted goes through, the typical private medical insurance schemes will start losing customers and subscribers because the cost is going to be exorbitant. Therefore, an employer will treat the NHIF as an added benefit accorded to an employee.

The other important aspect of this Bill that seems to come out very clearly is again to entrench voluntary contribution. However, we hope that the principal Bill has provisions on what kind of benefits voluntary contribution will entail and how much will be required for purposes of getting full range of medical cover. Many times, the NHIF tends to pay for only bed and probably the hospital room. It does not pay for all the services. We hope with the increased contribution and increased cover, it will be in a position to cover all forms of treatment both outpatient and inpatient. In many cases, the biggest cost is outpatient. That is why it is the most frequent especially people living with various types of underlying conditions. However, there is a provision in the Bill in Clause 7 that amends Section 22 of the principal Act where it says that where a beneficiary has a private health insurance cover, the private health insurance cover shall be liable for payments up to the limits the beneficiary is covered. In the event you have a double cover, again, this is a matter that professionals in the insurance industry will have to debate. You can never be covered for the same risk by two underwriters. It provides that if you have both, the NHIF, which seems now a compulsory universal cover and you have a private one, in the event of any treatment, you start with the private one, and end up with the NHIF. The danger with that is that private hospitals and the private insurance covers unless we put mechanisms in place, will collude to quickly deplete

that particular cover, so that they fall to the NHIF leaving the patient vulnerable. You know quite a number of medical conditions like cancer take a long time to treat.

With those few remarks, I support, but probably at the Committee of the whole House, there will be some immediate amendments, so that we can align to the realities of the modern life and the challenges of the medical cover in this country.

With those few remarks, I beg to support.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Member for Chepalungu, Hon. Koske.

**Hon. Gideon Koske** (Chepalungu, CCM): Hon. Temporary Deputy Speaker, this is a very important amendment that this House is considering. The UHC means that all individuals and communities receive the health services they need without suffering inability due to financial hardships. The WHO provides that the UHC program is to provide healthcare for all without discrimination based on financial ability or other factors.

It is important to note that the informal sector, which constitutes 83 per cent of the Kenyan work force, has remained under voluntary contribution to the NHIF. That means the people who are benefiting from the NHIF are about 17 per cent of the population, leaving out the entire population of 83 per cent without the ability to join the scheme. In the event that an employer or those who are in the formal sector fail to remit the required contributions, an employee incurs some costs while seeking treatment. This amendment Bill provides for employers to compensate the employee the cost incurred while seeking treatment.

The same WHO has been explicit that countries should prioritise four key actions to finance UHC. This is by reducing direct payments at the healthcare facilities, maximise mandatory pre-payments, establish large risk bills and use general Government revenue to cover those who cannot afford to contribute. This Bill makes provisions for the empowerment of healthcare providers to ensure that quacks and substandard healthcare service providers do not serve Kenyans. In this regard, the Bill empowers the NHIF Board, in consultation with the relevant accredited bodies, to publish in the Gazette, a panel of healthcare providers.

Hon. Temporary Deputy Speaker, in the next amendment, I have the same thought as per what this has already mentioned, namely, the Insurance Fund Act No.9 of 1998. I would like to introduce a Bill to amend the same Act, especially No. 9 of 1998. I will finish preparing the amendments within some days, so that during the Committee of the whole House, they can be included. I intend to bring the rates payable under voluntary contribution created under Section 20 of the Act within the armpit of the Act, so that amounts payable under voluntary contribution is prescribed under the Act.

The amendment will seek to provide that an amount of Kshs300 will be payable under voluntary contribution each month. Also, the amendments will seek to grant the NHIF powers to review the rate after every five years, with the approval of the National Assembly. The NHIF will be required to provide reasons for any proposed review including the expected impact of the review.

This has a simple justification. The proposed amendment is intended to ensure that many Kenyans especially persons in the informal sector, those not working, indigent, and cannot afford to make the NHIF contributions, access healthcare services by reducing the rate from the current Kshs500 to Kshs300 per month. This translates to about Ksh10 per day. This will facilitate many Kenyans to have access to healthcare insurance under the NHIF and, therefore, access healthcare more.

The Bill, under the memorandum of objects and reasons, Clause 15 proposes to repeal Section 20 of the Act to remove the voluntary contributions to the Fund and they become mandatory. For all people in the formal sector, it will be automatically calculated based on the earnings. But those not in the formal sector, it is very important that we bring down the cost from Kshs500 to Kshs300. The *jua kali* sector people, *boda boda* operators, *mama mboga*, *kiosk* operators are able to get Kshs10 every day so that cumulatively, at the end of the month, they are able to pay Kshs300.

The voluntary contributors to the NHIF have fallen by 77 per cent since the COVID-19 Pandemic was reported in March 2020 because of the simple reason that most of the contributors are self-employed in small businesses which may have collapsed or lost sales due to COVID-19 related lockdowns locally and abroad.

There are many schemes under the NHIF. I see no sense for the NHIF to have over 74 schemes all contributing to the same kitty. If possible, they can bring them down to only three schemes and categorise them in a larger perspective, namely, employer paid scheme, for those in the formal sector; civil servant schemes, and thirdly, and the one majority of Kenyans fall into, the tax pay scheme. That is for Kenyans in the informal sector.

The main reason 77 per cent of Kenyans have stopped remitting the contributions is because they cannot afford to contribute Kshs500. They join the scheme in the initial stages, but fail later. If we fix it at Kshs300, we will widen the scope and bring all Kenyans on board. We can get almost ten million Kenyans who will pay Kshs300 per month and the Government will match the contribution. Add me one minute. There is one important point which I need to make.

Hon. Temporary Deputy Speaker, we will get more funds when we bring down the cost by widening the bracket of those coming into the scheme. We also need to propose that in every constituency in Kenya, the NHIF is given powers to construct hospitals.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): I have added you one minute, Hon. Koske.

**Hon. Gideon Koske** (Chepalungu, CCM): The NHIF should be given the mandate to construct their own hospitals and provide all the specialists in every constituency, so that if you want to meet any kind of specialist, you can access him or her in your constituency. That will make the universal healthcare provision accessible to everybody across the constituencies.

We also have people with disabilities and senior citizens under the cash transfer programme. For those two categories, the Government is able meet their contributions every month, so that they can access healthcare without contributing to the scheme. The Government takes care of them because of their age and disabilities.

With those few remarks, I beg to support the Bill since it will be very important to Kenyans. Thank you.

## ADJOURNMENT

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Order, Members. Hon. Members, our time is up. For the Members who were waiting to contribute, we have a lot of time left. So, when the Bill comes back on the Order Paper, you will have the opportunity.

With that, the time now being 7.01 p.m., this House stands adjourned until Thursday, 5<sup>th</sup> August 2021, at 2.30 p.m.

The House rose at 7.01 p.m.