

**PARLIAMENT OF KENYA****THE NATIONAL ASSEMBLY****THE HANSARD****Wednesday, 22<sup>nd</sup> September 2021**

The House met at 2.30 p.m.

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

## PRAYERS

## PAPERS LAID

**Hon. Speaker:** The Leader of the Majority Party.**Hon. Amos Kimunya** (Kipipiri, JP): Thank you, Hon. Speaker. I beg to lay the following Papers on the Table of the House:The annual report and financial statements in the National Assembly for the year ended on 30<sup>th</sup> June 2020 from the Privatisation Commission.The report of the Auditor-General and financial statements in respect of the Mitunguu Technical Training Institute for the year ended on 30<sup>th</sup> June 2018 and the certificates therein.The reports of the Auditor-General and financial statements in respect of the following institutions for the year ended on 30<sup>th</sup> June 2019 and the certificates therein:

- (i) The Drought Management Authority.
- (ii) The Kenya Animal Genetic Resource Centre.
- (iii) The Kenya Cultural Centre.
- (iv) The Kenya Institute of Mass Communication.
- (v) The Kenya Vision 2030 Delivery Secretariat.
- (vi) The Anti-Doping Agency of Kenya.
- (vii) The Kenya Medical Supplies Authority.
- (viii) The Kenya Railways Corporation.

The reports of the Auditor-General and financial statements in respect of the following institutions for the year ended on 30<sup>th</sup> June 2020 and the certificates therein:

- (i) The University of Nairobi.
- (ii) The Kenya Meat Commission.
- (iii) The Nyayo Tea Zones Development Corporation.
- (iv) The Kenya Ordinance Factories Corporation.
- (v) The Kenya Revenue Authority.
- (vi) The Kenya Revenue Authority Revenue Accountability Statements.
- (vii) The National Council for Persons with Disabilities.
- (viii) The National Hospital Insurance Fund.

**Hon. Speaker:** The Chairman of the Departmental Committee on Defence and Foreign Relations. Yes, Whip of the Majority Party.

**Hon. Katoo ole Metito** (Kajiado South, JP): Sorry, Hon. Speaker. I beg to lay the following Paper on the Table of the House:

The Report of the Departmental Committee on Defence and Foreign Relations on the ratification of the protocol to the African Charter on Human and People's Rights on the Rights of the Older Persons and the Rights of Persons with Disabilities.

Thank you, Hon. Speaker.

**Hon. Speaker:** The Chairman of the Public Investments Committee, Hon. Abdullswamad, Member for Mvita. We will skip that. So, we will go to the Chairman of the Select Committee on the National Government Constituency Development Fund. They are not aware that they are supposed to table Papers. But, they brought their Reports to be approved, which I have done. Have they forgotten what time the House starts in the afternoon?

The Chairperson of the Departmental Committee on Labour and Social Welfare. All of them submitted their reports for approval, which I have done. Or they decided to go and table them before the media? You know we are living in interesting times. They may have forgotten where they should table reports.

*(Laughter)*

We will skip those three reports. We will go back to them if and when the Chairpersons come to the Chamber. We will go to the next Order which is Order No. 6.

### NOTICE OF MOTION

#### ADOPTION OF A REPORT ON THE RATIFICATION OF THE AFRICAN CHARTER ON HUMAN AND PEOPLE'S RIGHTS' PROTOCOL ON RIGHTS OF OLDER PERSONS AND PERSONS WITH DISABILITIES

**Hon. Katoo ole Metito** (Kajiado South, JP): Thank you, Hon. Speaker. I beg to give Notice of the following Motion:

That, this House adopts the Report of the Departmental Committee on Defence and Foreign Relations on the ratification of the protocol to the African Charter on Human and People's Rights on the Rights of the Older Persons and the Rights of Persons with Disabilities, laid on the Table of the House on Wednesday, 22<sup>nd</sup> September 2021 and, pursuant to the provisions of Section 8(4) of the Treaty Making and Ratification Act of 2012, approves the ratification of the protocol to the African Charter on Human and People's Rights on the Rights of the Older Persons and the Rights of Persons with Disabilities.

**Hon. Speaker:** Very well. We will still skip the other two Notices by the other two Chairpersons. Go to the next Order.

### QUESTIONS AND STATEMENTS

**Hon. Speaker:** The first Question is by the Member for Eldama Ravine, Hon. Moses Lessonet.

*Question No.294/2021*MEASURES TO ENSURE ELECTRICITY POWER  
CONNECTION IN ELDAMA RAVINE

**Hon. Moses Lessonet** (Eldama Ravine, JP): Hon. Speaker, I rise to ask the Cabinet Secretary for Energy the following Question: -

- (i) What measures has the Ministry put in place to ensure electricity power connection in Eldama Ravine Constituency, particularly to public institutions including schools and health facilities?
- (ii) Could the Cabinet Secretary explain why the following transformers in Eldama Ravine Constituency are either un-operational or not connected to any customer: Transformers at Sumbeiywet Village, Kabor Primary School, Kenya Power Station at Ipopor area near Kimamoi Trading Centre, Ngusero village, and Sogee area Kokwomoi Primary School?
- (iii) Could the Cabinet Secretary explain why Kapsoit Primary school in Eldama Ravine Constituency is yet to be connected to electricity power over 10 years after installation of a transformer in the school?
- (iv) Why was the transformer at Lomunera Muserechi area in Eldama Ravine Constituency taken away by Kenya Power officers, and when will it be returned?

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

**Hon. Speaker:** The next Question is by the Member for Kipkelion East, Hon. Joseph Limo. He is known to be always punctual. What has happened today? We will come back to this Question.

**Hon. Speaker:** The last Question is by Hon. Kipruto Moi. Is he in?

**Hon. Kipruto Moi** (Rongai, KANU): I am here, Hon. Speaker.

**Hon. Speaker:** I know that you always arrived here at about 4.00 p.m. Today you arrived before the Member for Mvita and the Member for Kanduyi, who are late to table their Reports. Proceed.

## CONSTRUCTION OF NATIONAL TRAUMA HOSPITAL AT SALGAA

**Hon. Kipruto Moi** (Rongai, KANU): Hon. Speaker, I rise to ask the Cabinet Secretary for Health the following Question: -

- (i) Does the Ministry have any plans to construct a national trauma hospital at Salgaa area, near Salgaa Centre in Nakuru County to cater for the high number of victims of road accidents that occur along the Nakuru-Eldoret Highway, as promised by the Government in 2013?
- (ii) If there are, when will the construction of the said hospital commence?

**Hon. Speaker:** The Question is to be replied to before the Departmental Committee on Health.

For the second time, Question by the Member for Kipkelion East, Hon. Joseph Limo. We go to the responses for Statements.

**RESPONSE TO STATEMENT**

**Hon. Speaker:** The first response is by the Chairman of the Departmental Committee on Administration and National Security to a request by Hon. Gideon Keter. The Chair or the Vice-Chairperson as the case maybe, proceed and respond. If the Chair is not in, any of the three Members can respond. Hon. Peter Mwachii. I can see some people running up and down like rats out there.

Next is the Chair of the Committee on Defence and Foreign Relations, Hon. Katoo ole Metito, to respond to a request by the Member for Kikuyu, Hon. Kimani Ichung'wah, who has been running like our very own Omanyala.

*(Loud consultations)*

ISSUANCE OF VISAS TO KENYANS TRAVELLING  
TO THE PEOPLE'S REPUBLIC OF CHINA

**Hon. Katoo ole Metito** (Kajiado South, JP): Hon. Speaker, I beg your indulgence. The response to this request is lengthy, counting to 11 pages. I kindly request that I table it. A copy has been given to the Member for Kikuyu to go through. Just in case he has issues he may not be satisfied with, he can get in touch with me and, as a Committee, we commit to solve or address those issues.

Before I table it, I would like to point out that this Statement is multi-sectoral. It involves the Ministry of Health because it is about the Covid-19 vaccines with respect to people travelling to China. It also involves the Department of Immigration, which is domiciled in the Ministry of Interior and Co-ordination of National Government because it was also asking about work permits and *visa* for people who have travelled to China. It also has an element of the Kenya Revenue Authority (KRA), which is under the Ministry of Finance, because it was asking about imports that have come to Kenya from China since the time of outbreak of Covid-19. Therefore, the Ministry of Foreign Affairs, which my Committee oversees, was just acting as a link to coordinate the other various Government Departments to get the information. As such, the KRA has requested for two more weeks to respond to issues that pertain to them, especially on the issue of imports. The rest of the elements of the request, which concern the Immigration Department, the Ministry of Health and the Ministry of Foreign Affairs, have been responded to. That is why the response is lengthy. Kindly, allow me to table it.

**Hon. Speaker:** Very well. You can table it.

*(Hon. Katoo ole Metito laid the document on the Table of the House)*

**Hon. Speaker:** Hon. Ichung'wah, have you looked at the response?

**Hon. Kimani Ichung'wah** (Kikuyu, JP): Hon. Speaker, indeed, I got a copy of the response this morning. As much as I agree with the Chair of the Committee, there are issues that are cross-cutting. They have to do with the Immigration Department. I am happy that data has been provided from the Department of Immigration, showing that that slightly over 200 Kenyans have been able to access the People's Republic of China in the last one year. On the converse, close to 3,000 Chinese have been able to access our country and transact business. However, the Ministry of Foreign Affairs is trying to run away from some of the issues I have raised.

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Hon. Speaker, you are aware that the Ministry of Foreign Affairs has Trade Attaches in each and every Embassy of our Republic abroad. Indeed, on some of the data they claim they could not get, including data on volume of trade transacted by Kenyans in China and by Chinese in Kenya, I find it dissatisfying because it is data that is easily available.

I raised this request on 19<sup>th</sup> August, 2021.

Hon. Speaker, I am aware that the Committee did not meet with the Ministry of Foreign Affairs yesterday. Therefore, to purport to be hiding behind Kenya Revenue Authority (KRA) is, indeed, unsatisfactory. It points to the key things that we should address. I expected the Chairperson and the Committee together with the Ministry to address the hurdles stopping Kenyan businesspeople from accessing the Chinese market and travelling to China. Once the Chair tables the Statement, Members will be able to see that there is a contention that this is the way it is around the world. The Committee oversees the Ministry of Foreign Affairs and there is what Hon. Katoo calls reciprocity in relations between countries. It is on issues that touch on trade and even in relations between countries. It is not fair and it is very insensitive for the Ministry of Foreign Affairs to be telling us that this is what is happening around the world but at the same time tabling documents here showing slightly above 3,548 Chinese nationals who have accessed our country. They do businesses in this country and ship goods from China into our economy while only 200 Kenyans have travelled back to China in the last one year.

If it is reciprocity that the Ministry of Foreign Affairs is speaking about, then there must be fairness and equity. If it is Covid-19 protocols, we must reciprocate to the People's Republic of China on how they treat Kenyan nationals. Their own nationals must get the same treatment in this country. Otherwise, we are encouraging this country and making our people look like a colony of the People's Republic of China. Kenya is a sovereign State and the Ministry of Foreign Affairs and this Government must be at the forefront in protecting the interests of Kenyans and not Chinese nationals and their businesses.

**Hon. Speaker:** Hon. Ichung'wah, in my view, Hon. Katoo may not be able to respond to the issues you are raising. Hon. Katoo had said that the Kenya Revenue Authority (KRA) had requested for two more weeks. You can then schedule a meeting and when the Cabinet Secretary (CS) appears in person before your Committee, Hon. Ichung'wah can canvass the issues that he is raising. This is because when you talk about reciprocity, we may not know under what quantum. Is it on a ratio? If the population of Kenya is over 50 million and the Chinese are over a billion, you can then canvass those issues properly. The CS will come with all the technical people.

Hon. Katoo, you can actually request the CS to come with officers from the other Departments of Government as the coordinating Ministry since the matter rests within the Foreign Affairs docket. Hon. Ichung'wah, I think that will be a better way for you to raise those issues. They are pertinent and it would be of great interest for Kenyans to understand from the CS the ratio of 200 *vis a vis* 3,548.

**Hon. Kimani Ichung'wah** (Kikuyu, JP): Thank you, Hon. Speaker. I am well guided. I want to mention before the House that your statement is true: the Chinese population compared to ours, in relative terms, might be a justifiable cause. However, I expect the Chairman and the Committee to give us the number of Kenyans who have sought to travel to China but have been unable to. I would like to seek the reasons why our Ministry of Foreign Affairs is not exercising that policy of reciprocity in our engagement with the Chinese people. This is because our people are suffering. You are also aware that we are still repaying Chinese debts. We do not need to be seen like we are now becoming a colony of the People's Republic of China. We are a sovereign

State and as the people's representatives, we must pick on issues that touch on our people and not the Chinese people. I will be happy to appear before the Committee.

I was shocked this morning when the Clerk called me and communicated that they had received a written response last night. I was surprised that the Chairman had not invited me. This is because we have data of Kenyans who sought to travel but have been unable to. It is good and I appreciate that we now have the Sinopharm vaccine from the People's Republic of China. It is good to get all these donations. I will be asking the Chair of the Budget and Appropriations Committee, in the coming days, to table a report showing expenditure of the Kshs34 billion appropriated towards the purchase of the vaccines. Why are people still depending largely on donations of vaccines?

**Hon. Speaker:** Hon. Ichung'wah, that now confounds the issue. That should have been by way of notice of intention. Hon. Katoo.

**Hon. Katoo Ole Metito** (Kajiado South, JP): Thank you, Hon. Speaker. I fully agree with your directive. I want to put some things in the correct perspective. During this Covid-19 season, 788 Kenyans travelled to China as opposed to what my good friend is saying. However, there were 242 Kenyans who were unable to meet the very strict restrictions of the Chinese Government. Those who applied and met the conditions were 788.

Hon. Speaker, I wanted to put into the correct perspective the fact that we do not have trade attaches as a country in all our Missions abroad. Very few of them have. Secondly, there is the issue of trade and this narrows down to...

**Hon. Speaker:** Hon. Katoo, you will recall that Hon. Ichung'wah was the Chair of the Budget and Appropriations Committee and they may not have travelled a lot. I am sure he is not aware of that. It is a reality as you are saying.

**Hon. Katoo Ole Metito** (Kajiado South, JP): Yes, Hon. Speaker. We have been canvassing on the Floor of this House the need to have trade attaches in those Missions abroad that have economic value. I am happy because trade matters are neither under my Committee nor the Ministry of Foreign Affairs. There is a substantive Ministry called the Ministry of Industrialisation and Trade that handles international trade. The Departmental Committee on Trade and Cooperatives of this House oversees them. I am happy because the immediate former Chairperson of that Committee is currently the Chair of the Budget and Appropriations Committee. He has actually been moving this House into agreeing to have a budget for trade attachés in our Missions abroad. I, however, do not know whether it is about trade volumes. I am not sure whether it is my Committee or the Departmental Committee on Trade and Cooperatives that is supposed to handle this question.

Thank you, Hon. Speaker.

**Hon. Speaker:** Very well. The CS will come to respond to the issues so that Hon. Ichung'wah can ask any further supplementaries on the responses given. I think it is going to take us forever to handle the 11-page Statement.

*(Hon. Speaker consulted with Hon. (Ms.) Odhiambo-Mabona)*

We are juggling a lot of things and now that both Chairs are present, I will go back to Order No.5.

**PAPERS LAID**

**Hon. Speaker:** Let us have the Chairman Public Investments Committee (PIC).

**Hon. Abdullswamad Nassir** (Mvita, ODM): Hon. Speaker, I apologise because it is unlike me to be late. Hon. Speaker, I beg to lay the following Paper on the Table of the House:

The Report of the Public Investment Committee on its consideration of the Special Audit Report on Utilisation of COVID-19 Funds by the Kenya Medical Supplies Authority (KEMSA).

**Hon. Speaker:** Very well. The Chairperson Select Committee on National Government Constituencies Development Fund (NG-CDF).

**Hon. Wafula Wamunyinyi** (Kanduyi, FORD-K): Thank you, Hon. Speaker. I also wish to apologise for coming late. I am from the Office of the President where I was held up.

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

The Report of the Select Committee on National Government Constituencies Development Fund on Outstanding Funds payable to the National Government Constituencies Development Fund by the National Treasury.

Thank you, Hon. Speaker.

**Hon. Speaker:** The Chairman Departmental Committee on Labour and Social Welfare.

**Hon. Josphat Kabinga** (Mwea, JP): Thank you, Hon. Speaker. I also want to apologise for coming in late this afternoon. It is unlike me. I had an official meeting which ran till very late this afternoon.

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

Report of the Departmental Committee on Labour and Social Welfare on its consideration of the Breastfeeding Mothers Bill (Bill No.74 of 2019).

Thank you, Hon. Speaker.

**Hon. Speaker:** Again, we will go to Order No.6 to allow two of the Chairs to give notices.

**NOTICES OF MOTIONS**

## UTILISATION OF COVID-19 FUNDS BY KEMSA

**Hon. Speaker:** Hon. Abdullswamad Chair of Public Investments Committee.

**Hon. Abdullswamad Nassir** (Mvita, ODM): Hon. Speaker, I beg to give notice of the following Motion:

THAT, this House adopts the Report of the Public Investments Committee on its consideration of the Special Audit Report on Utilisation of COVID-19 Funds by the Kenya Medical Supplies Authority laid on the Table of this House on Wednesday, 22<sup>nd</sup> September 2021.

## OUTSTANDING FUNDS PAYABLE TO THE NG-CDF

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

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

THAT, this House adopts the Report of the Select Committee on National Government Constituencies Development Fund (NG-CDF) on the Outstanding Funds

payable to the National Government Constituencies Development Fund by the National Treasury laid on the Table of the House on Wednesday, 22<sup>nd</sup> September 2021.

Thank you.

**Hon. Speaker:** That concludes both Orders No.5 and 6, but on Order No.7 I wish to call for the third time the Question by Hon. Joseph Limo, Member for Kipkelion East. He needed an urgent reply and since he is absent and not desiring to be present the Question is dropped. On responses, again, the Chair of the Departmental Committee on Administration and National Security, he was not here when we called out the first time. Hon. Mwathi, you were to give a response to a request for a Statement by Hon. Gideon Keter.

*Question No. 359/2021*

CURRENT STAFFING LEVELS OF TEACHERS IN BOTH PRIMARY AND SECONDARY SCHOOLS

*(Question dropped)*

### RESPONSE TO STATEMENT

**Hon. Peter Mwathi** (Limuru, JP): Thank you, Hon. Speaker. I apologise for coming late because I was stuck in traffic jam. Thank you, for giving me a second chance. I wish to read the Statement:

THAT, on Thursday, 19<sup>th</sup> August 2021 the nominated Member of Parliament, Hon. Gideon Keter, MP sought for a Statement from the Cabinet Secretary Ministry of Interior and Co-ordination of National Government on the increased killings of young people in the country, in particular the Member sought to be informed of the following:

- (i) What is the status of investigations into the killings of the said young men, namely, Benson Njiru Ndwiga, Emmanuel Mutura Ndwiga, Moses Kimanthi Njiru, Fred Mureithi, Victor Mwangi, Mike George, Nicholas Musa and Emmanuel Kipkoech Rono?
- (ii) Whether any of the Government investigating agencies have managed to uncover the motives for the murders and whether any suspects have been apprehended and brought to book?
- (iii) The measures the Government has taken to inquire into the matter and ensure such incidences are handled with urgency and whether the police offices have acquired de-escalation techniques to enable them defuse situations, especially where suspects are not armed and how often the security personnel undertake refresher courses?
- (iv) The measures the Ministry has put in place to ensure that affected families are duly compensated for the pain and suffering brought with the loss of lives of their loved ones and within which timeliness will the families of the deceased be compensated?

The response is as follows:

The National Police was established by Article 243 of the Constitution of Kenya, 2010 and operationalised by the National Police Service Act, 2011 with protection of life as a function that cuts across the Services that make up the National Police Service (NPS). The National Police Service operates within the rule of law and all its officers are subject to the laws of the country to ensure accountability in their actions. Internal and external oversight bodies have been established

namely, Internal Affairs Unit (IAU) and the Independent Police Oversight Authority (IPOA) respectively.

Their main responsibilities are to check and determine the extent to which police officers use their powers including the use of force during enforcement. The National Police Service works closely with agencies to investigate cases involving use of force by police officers and their recommendations are implemented. There are usually complimented in their investigations by the Directorate of Criminal Investigations (DCI) in cases that are criminal in nature.

In reference to the killings of the two young men in Kianjokoma, Runyenjes in Embu, the National Police Service allowed the responsible agencies to carry out their independent investigations. They presented their findings to the Director of Public Prosecutions (DPP) who concluded that the officers on duty on the fateful day were criminally responsible for the deaths. He recommended that they be prosecuted. So, far six officers have answered to murder charges with further two being processed to answer for the same.

Hon. Speaker, as you are aware, there is a specific Request of Statement on this matter by Hon. Erick Muchangi, for which I have since received a response but I am counterchecking certain facts and seeking further clarification before I present it to this House.

In respect to the killing of the young men in Kitengela, investigations were carried out and one suspect, who was the mastermind of the attack, was arrested and has since been presented to court to answer to four counts of murder and malicious damage to property. More suspects are being sought and will likely be charged upon arrest.

On the de-escalation techniques, the National Police Service continues to create awareness on the dangers of vigilantism and mob injustices by educating the public on the importance of presenting suspects to the police. The public continues to be made aware that instances where they take the law into their hands they will criminally be liable for injuries and death occasioned. The National Police Service has been regularly training and retraining its officers on new crime management concepts and various legislations which they enforce. Lectures and drills are also conducted on regular basis at their stations and camps to keep them updated.

On the issue of compensation, the Ministry has no funds to compensate the affected families.

I thank you, Hon. Speaker.

**Hon. Speaker:** Hon. Keter.

**Hon. Gideon Keter** (Nominated, JP): Thank you, Hon. Speaker. While I acknowledge the response by the Chairperson, I wish to note that there is one particular case I singled out in my request that has not been mentioned at all. That is the case of a Form Two student, Mr. Emmanuel Kipkoech Rono, who was killed by a police officer at Kiptagich in Kuresoi South, Nakuru County. This is a very unfortunate incident. The loss of such an innocent young person should concern us. The Cabinet Secretary and the Inspector-General of Police should provide detailed information on this killing as a matter of urgency. On the issue of compensation, the duty of Government is to protect life. Where cases like this happen, morally and legally, the Government should take responsibility and compensate the victims.

Thank you.

**Hon. Speaker:** Does the Chair wish to say anything? Those are just part of the wish list.

**Hon. Peter Mwathi** (Limuru, JP): Thank you, Hon. Speaker. I concur with Hon. Gideon that there may have been an oversight on the actual details of the death of Emmanuel Rono, which I promise to include when I bring the Statement sought by Hon. Erick Muchangi.

**Hon. Speaker:** Hon. Milemba.

**Hon. Omboko Milemba** (Emuhaya, ANC): Thank you, Hon. Speaker. With humility, I did not really want to intervene but I realise that when the Statement was being given, there was a statement made with finality: that, the Government does not have money to compensate the victims!

Hon. Speaker, you remember the sentimental and emotional way the two boys were buried. I thought even the owner of the Statement should have interrogated the Ministry officials further so that a window is opened. If that particular Department does not have money for compensation, then what other ways or window is there for such compensation?

**Hon. Speaker:** I just imagine that the window available would be the judicial process. It is only through a judicial process that one may pursue such. The Government may even come up with some proposal for compensating families or relatives of those who may have been killed but, perhaps, the quantum may not be sufficient until there is a judicial pronouncement on the same. I do not know whether the Ministry considers that. Perhaps the Ministry could think of it.

Hon. Pukose, you want to say something on that?

**Hon. (Dr.) Robert Pukose** (Endebess, JP): Thank you, Hon. Speaker. I thank the Chair for responding. Listening to the Response, I was actually thinking about the judicial process of appeal but when you look at many of the families, they cannot afford the legal fees because more often, you need a lawyer to take up the matter. We have an Independent Policing Oversight Authority (IPOA). Unfortunately, as a House, we need to look at the law that operationalises the IPOA because more often than not we have raised similar cases and asked the IPOA to conduct investigations. However, after they have done the investigations, they are not able to deliver anything and you wonder whether people are just in that office enjoying salaries without being effective.

I know that in the BBI something was being looked into about the IPOA. I think IPOA is one of those bodies that is not effective and so, as a House, we need to do away with it and create a mechanism through which people can seek redress in these matters. This is because for the time IPOA has been there, I do not think they have achieved anything. So, we should examine the law that created IPOA so that something can be done about it. It is very frustrating. I have appealed to IPOA, but they have not been able to deliver anything. They are ineffective!

Thank you, Hon. Speaker.

**Hon. Speaker:** Maybe, they are not the only ones. There are several other Commissions where all you see are just seminars and workshops. The rest is just fuel guzzlers hovering all over carrying the chairperson, this commissioner or the other and then Budget time comes. Remember, the Constitution itself places an obligation on the National Assembly to fund them. So, you must consider that you cannot deny them funding.

The Member for Tharaka wishes to weigh in.

**Hon. George Gitonga** (Tharaka, DP): Thank you, Hon. Speaker. I agree that the avenue available to the aggrieved parents and parties is through the judicial process but what is of great worry to this House and to the country is that, in fact, we are piling up judgements against the Government. As we speak, we are just about to reach Kshs1 trillion of such amounts. So, in as much as we advise the aggrieved parties and families to go to court and get judgements, it is almost certain that those judgements will not be satisfied and they will just be judgements – decrees on paper and nothing more. I think we need to find a way of ensuring that the Government has sufficient funds to satisfy all judgements and to do it in a manner that is fair, just and equitable. It should not selectively choose which judgement to satisfy and which one not to satisfy. So, really

this is not of any help to the affected families, unless there is a clear policy on satisfaction of judgements made against the Government.

**Hon. Speaker:** As a senior Member of the Justice and Legal Affairs Committee, you should seek to know how many judgements are there and how many decrees have been issued against the Government and the owners have not enjoyed and then try to look at them historically so that when you come to budgeting, you can also prioritise and say that this-and-that was decreed about 20 years ago.

I am aware that there are some which are very old. They have not been satisfied. There are others which were done a few months ago and have been sorted out. So, the criteria used to settle is also questionable, but in terms of Article 95, you are the ones who exercise oversight over all those State organs, including the office of the Attorney-General and the Attorney-General himself as a State officer. You, as the National Assembly, exercise oversight authority over them and you can also commence the process of removing them from those offices. You have the power but if you do not exercise it, Kenyans will not even know that you have that power. You can decree that a judgment is 30 years old because it belongs to some unknown Kenyan out there who languishes in misery and they have nobody to turn to, yet this is the House with the power and mandate to resolve issues of concern to the people. Hon. Murugara, they say in Kiswahili, *kazi kwako. Kazi kwenu*. Hon. Nyikal.

**Hon. (Dr.) James Nyikal** (Seme, ODM): Thank you, Hon. Speaker. To a large extent you have summarised what I wanted to say. The cases start like they are criminal cases. The persons will be found guilty and they would be jailed. There is actually need for another process to start. It is the process of seeking compensation from the Government. That is where the weakness is. Even when judgment is given and payment decreed, normally, you would expect the ministries and the officers concerned, particularly the PSs and the CSs to know what judgment came against them through the Attorney-General's office and then request for those monies during the budget process.

As you rightly said, we are leaving our people open while there are actually ways that we can enforce this matter through this House. We need to make sure that people get compensation when they are aggrieved. Many people just give up and say, "If it is against the government, I do not want to waste my time. Nobody will pay me." I think, by law, it is not even possible to go and attach government property. That is another thing we should look at. We should allow people to attach government property, that is, if the government fails to pay. I think this is an area that the appropriate committee can help us in. It could even bring legislation that can help people in these matters.

**Hon. Speaker:** Hon. Nyikal, there is a law called the Government Proceedings Act. Now we will get a few people in the Justice and Legal Affairs Committee to weigh in on this issue even as I challenge the committee to also give us a report on the WAQF Bill. Hon. Sankok.

**Hon. David ole Sankok** (Nominated, JP): Thank you very much, Hon. Speaker. I have a different opinion. We have insurance for all officers who get injured in the line of duty. What if, we have in place an insurance cover paid for by the government so that in case a police officer injures a citizen or destroys properties of citizens then the aggrieved citizens are compensated. You are the third in command and you can only go to the second or the first. When you become one, please, assist us in making sure that we have an insurance cover for all those citizens who are maimed as a result of police brutality.

Thank you very much Hon. Speaker, we need that insurance cover.

**Hon. Speaker:** It will need some legal anchor which in terms of Article 94 can only be done by Parliament. So, it is you, Members of Parliament, particularly in the National Assembly who can do that. Hon. Muturi Kigano.

**Hon. Clement Kigano** (Kangema, JP): Thank you, Hon. Speaker. A few matters emerge from the Statement by the Departmental Committee on Administration and National Security. I would straight away say that we will interact with the Attorney-General urgently. I want to remind the House that the Attorney-General is just a conduit. The funding for compensation goes to the principal ministries, in this case the Office of the President. He would not be able to disburse the funds, unless the funds are passed specifically per case to him. He does not let the funds stay with him as soon they are brought to him. They are disbursed immediately. What could happen, and I have had experience in this matter of compensation as a lawyer, is that there is some favouritism in the Office of the President. You get some cases skipping others. So, the Attorney-General has no say on these matters. However, we will deal with the matter. We will interact with the Attorney-General and remind him of the concerns raised by the House.

The second matter I would like to address is the one which was mentioned about IPOA. I think the cure to this issue of IPOA looking as a white elephant is this: some of the prosecutorial jurisdiction should be given to bodies such as IPOA, to prosecute matters that are specifically arising from police misconduct. This will need legislation. My committee will look into it.

What I found a bit fallacious is when my colleague, in his statement, spoke about the police all the time acting within the law. I found that a bit atrocious, particularly when I watched in the media a case which has been going on for about two days. It is about two children who died in Nakuru. The police have already issued a statement that the children were poisoned by their father yet they have no evidence to this effect. Any stranger would come and do that and leave medicine around! Some of these matters are pre-empted by the police. The evidence that is emerging is that the doctor himself loved his children and he was not the kind of fellow to execute such a horrendous act. He too has died. So, some of these misfortunes are as a result of misconduct.

I am trying to research on the number of people who have been killed by the police in the last one year. It is a daily occurrence! So when that statement talks about the police acting within the law, it is absolutely laughable in Kenya. Look at what is happening in Kayole, Huruma and Dandora. Everyday there are demonstrations against police officers. It is because of people being killed by police. Every time the police deny being involved in those killings. I think we need to re-look this law. The Departmental Committee on Administration and National Security and my committee should, perhaps, join forces to see what legislation we need to give IPOA jurisdiction to prosecute matters concerning police. Remember, bodies like the NSSF used to have prosecutorial powers. Up to date, the Department of Migration has some nature of prosecutorial jurisdiction. So, we will deal with this issue.

You raised the matter of WAQF. I will not come to it now. I had already requested the Leader of the Majority Party to stand it down because my committee has not come up with its report. We need to interact with the public trustee on this matter. If you give us two weeks, we will be able to call the public trustee. We remembered late that the public trustee is a principal stakeholder in matters concerning WAQF Commissioners.

Thank you.

**Hon. Speaker:** It is important, Hon. Kigano, to keep in mind that there are Members, especially those of the Muslim fraternity, who have been following the fate of this Bill because it is a 2019 Bill. It is not good for the House Business Committee to appear to be stifling efforts at the realisation of the proposals to do a proper Bill on matters to do with WAQF.

**Hon. Clement Kigano** (Kangema, JP): Hon. Speaker, my committee has not been lethargic. We have been fairly active. This matter has delayed because of the exigence of time. It is going to be dealt with. We have identified the public trustee as a stakeholder who had been omitted.

**Hon. Speaker:** Have you asked for two weeks?

**Hon. Clement Kigano** (Kangema, JP): Yes.

**Hon. Speaker:** Two weeks it is. You are given two weeks. So, those who profess the Muslim faith now know that it is not the House Business Committee that is sitting on the Bill. After two weeks, the Bill will find its way into the Order Paper.

**Hon. Ali Rasso** (Saku, JP): On a point of order, Hon. Speaker.

**Hon. Speaker:** What is your point of order, Hon. Rasso? I wanted us to finish with the matter that was raised and Hon. Mwathi was responding to it before we come to the others. I know Hon. Millie. I have acceded to it.

**Hon. Ali Rasso** (Saku, JP) Thank you very much, Hon. Speaker. I wanted to speak to both. The WAQF Bill is almost going to the third year. What has not been done for over three years, I am afraid that two weeks will not be enough to finalise it. But with your wisdom, they may manage in those two weeks although they have not managed in three years.

On the issue that was raised by Hon. Keter, listening to the Chair responding to the Question, I was a bit disappointed because, on the face of it, the response was very thin. The issue of the two young men who were gunned down in Embu tickled the national psyche of the country. That two young men would have been arrested, given a cash bail of Ksh1,000 to appear in court or in a police station just disappeared and later on found in a mortuary. The issue of compensation, as you rightly said, sometimes as a House, we may not be doing the right things to assist this country. If we followed the issue of George Floyd, the American who was killed by policemen, the State said that since the police are servants of the state, the family ought to and will be compensated. If issues are in the public domain, captured on television and other media, we cannot run away to say that the State cannot compensate. We must differentiate issues.

Thank you, Hon. Speaker.

**Hon. Speaker:** On this one, let me hear from the Hon. (Dr.) Otiende Amollo before the Chair responds.

**Hon. (Dr.) Otiende Amollo** (Rarieda, ODM) Thank you, Hon. Speaker. The issue that was raised and responded to by the Chair is not a light matter. Some of us remember and some of us do not remember that less than three-and-half years ago we were in that situation where because of political affiliations many of those who supported our side of the divide lost their lives, indeed over 50. The matter was taken up in court and it is still pending. The problem with the judicial avenue is that... The judicial remedy is not ideal for this case. First, because of time. The time it takes to get to the bottom of such a matter in the Judiciary is way beyond what justice demands. Second is the cost. It is very expensive to prosecute a matter of this nature. Third, is the fact, Hon. Speaker, as you observed, that even after you get judgment, it will pend for years. There are judgments that have now been pending for four decades. Lastly, whether you get judgement or not, as Hon. Speaker observed, there is an express injunction against executing against Government. So, you will get judgment and you will have to sit on it until Jesus comes back or until the time the Government has sympathy on you. Only then will you be paid. So, it is not a good avenue.

It is true that there are other avenues that can be considered. There are avenues, including going to the Kenya Human Rights Commission, or going to the office of the Ombudsman. Many

people have taken those avenues because they are cheaper and faster. One might get results. What needs to be considered here is a scheme alongside what we have in terms of wildlife. When death or injury is caused by wildlife, there is a scheme of compensation under the Act. It is not sufficient but it is a good beginning. If we were to have a scheme that parallels that one, and in which whenever there are such injuries victims are compensated, at least, that could serve as a starting point. It could help us a little bit.

I have heard many people complain about this matter. Part of the problem is that there are many policemen who believe that if they injure you or even cause death, as long as they are not prosecuted and jailed, nothing will happen to them. Because if you sue, you will be suing the State. If you are to be paid, you will be paid by the State. So, there is no personal loss. Until we bring the element of personal loss, restraint on the part of the police will not be there.

Lastly, I have heard many people complain about some of the constitutional commissions and independent offices. It is true they have varying levels of success. I was there and so it is not for me to judge. But, the truth is that we should introspect as a House because for all these bodies, persons who go to them pass through this House. We debate who is to be chair and who is to be a commissioner and who is to hold what independent office. But, the tragedy is that most times when the debate comes, we do not debate objectively. We either debate from the prism of the party or the prism of tribe or the prism of gender or prism of a profession and, therefore, we stifle getting the best of what we can. We must be prepared to live with the fact that we can only do as well as we do here. If they are not working properly, we need to re-examine how we appoint them through this House. I believe that most of these offices are very important in a properly working democracy and if there are presided over by the right people. However, until we agree to get the right people, then we must take some share of the blame.

Thank you, Hon. Speaker.

**Hon. Speaker:** The Departmental Committee on Justice and Legal Affairs, these matters of culpability and taking responsibility are matters that should make the Committee spearhead some legislative proposals to address them. Look at the Police Act. It is not just right that people go and do whatever they choose because they know they will hide under the cover of Government. These matters, in fullness of time, the Committee should initiate some moves.

I see Hon. Kaunya wanted to say something before the Chairman speaks.

**Hon. Oku Kaunya** (Teso North, ANC): Thank you very much, Hon. Speaker. I wanted to make two comments. The first one regards the Statement by Hon. Pukose on the performance of the Independent Policing Oversight Authority (IPOA). As alluded to by a number of Members, it is true that some of these independent bodies and commissions have not performed to our expectation. However, it is also true that considering the environment in which IPOA has been operating, they have been able to perform well. This House may need to be given a report of that performance, so that Members can know.

For example, we all remember that this week, on Monday, 20<sup>th</sup> September 2021, there were five police officers who were taken to the High Court in Nairobi for killing Mr. Caleb Otieno in Changamwe, Mombasa. Mr. Caleb Otieno was arrested because he was suspected to have been carrying illicit brew. There have been several such incidences. The speed at which IPOA moved got us the results and had the officers taken to court. That is not easy to do within a short span of time.

There have been several other cases. I remember the case where I demanded a Statement involving the killing of a young man in my constituency. There are many other cases where some

results have been shown. I, therefore, beg to disagree with the insinuation that they have done nothing. It is true that they need to perform to our expectations.

On the second one, the issue of police performance also has quite a lot to do with the environment in which they perform. One of the things we found during the Committee's deliberations about two weeks ago was that a number of police officers are not facilitated. It will be up to this House to look at the budgeting, more so on the ground. If police stations do not have vehicles and police officers are unable to move to areas where there is action, it becomes a real problem. While we expect the police to perform as expected, we also need to ensure that the Ministries concerned, especially the Ministry of the Interior and Co-ordination of National Government, as well as this House, provide the resources necessary to ensure that they perform in a motivated manner.

There have been several cases of suicide among the police that we have been examining in the last two weeks. This House allocated some funds to start some counselling centres because there have not been any. In the Budget for this financial year, funds for establishing two counselling centres have been provided. Going forward, we hope that those cases can be reduced because they are human beings. When they operate in difficult circumstances, we expect that psychosocial support to be available.

I just wanted to add those comments. I agree with what Hon. Kigano indicated that there will be need to, perhaps, have the law on compensation made by this House, so that we provide for that avenue which is quicker and faster.

Thank you.

**Hon. Speaker:** Finally, let us have Hon. Mwathi.

**Hon. Peter Mwathi** (Limuru, JP): Thank you, Hon. Speaker. Most Hon. Members have spoken to the issue of the judicial process and how decrees are either honoured or not. When a case is against the Government, it takes long. Very importantly, my colleague, Hon. Kigano, spoke about review of the laws, which you also alluded to. Indeed, it is the appropriate way to go. We can then tell how to handle such cases in order to reduce the suffering.

If the Government was to compensate without any law relating to the same, how would we quantify the quantum for each case in this matter? People are of different ages, professions and standings! So, that needs to be addressed by way of review of the law. My Committee and I are available and so is Hon. Muturi Kigano, Chairperson of the Departmental Committee on Justice and Legal Affairs. We can put our heads together with the entire House.

On the issue of IPOA, I have not been in this Committee for too long but I know that before the Director of Public Prosecutions (DPP) gave instructions for the arrest of those officers, the Chairperson of IPOA shared their report with the Committee. In that report, they recommended that the six officers who were finally prosecuted, should be prosecuted. That was way before the DPP acted.

What I am also headed to address is the issue of budgeting. I saw this when we were doing the first Budget when I got into this Committee. They cried a lot about their ability to do their work because of very limited budgeting. During the sector working group, I told them that they also need to stamp their feet so that there is a budget line which is established for some of those activities they were saying they have no budget for. Because the House also addresses the issue of the budget, we can enhance the same when it comes here, so that they are able to work in the manner that they are. In my assessment, they did their work appropriately like in the Mombasa incident.

On the issue of compensation, which was raised by Hon. Omboko Milemba and Hon. Rasso that the Government said they cannot compensate, the Statement states that they have no funds. They did not say that they cannot compensate. They said that they have no funds to compensate. That means that there is no budget line for compensation. That is one of the things that I should also be picking up once we meet with that agency, especially when we are doing the supplementary budget. Now that it has been raised in the House, they should establish a budget line so that it exists and then we can see how to handle it when it comes to the House with the recommendations of the Committee.

Hon. Speaker, I beg to report that.

**Hon. Speaker:** Very well. On that segment of Statements, there is a request from Hon. Millie Odhiambo which has been given special consideration.

## REQUEST FOR STATEMENT

### LAKE VICTORIA BOAT TRAGEDY

**Hon. (Ms.) Odhiambo-Mabona** (Suba North, ODM): Thank you, Hon. Speaker for giving me this opportunity and indulging me. Before I make my request, I just wanted to indicate that there is erroneous belief or information that the Waqf Bill is about Muslims. It largely affects Muslims, but my reading tells me that even non-Muslims can create a Waqf. So, we should refrain from that notion that it is something to do with Muslims. It is also to do with us and I have brought amendments to the Bill.

Hon. Speaker, pursuant to the provisions of Standing Order No. 44(2)(c), I rise to request a Statement from the Chairperson of the Departmental Committee on Administration and National Security regarding a boat tragedy on Lake Victoria that resulted in fatalities on 21<sup>st</sup> September 2021.

On 21<sup>st</sup> September 2021, which is yesterday, a boat carrying about 20 passengers, though I am told they were probably more, departed from the Homa Bay pier headed to Ndhuru area and Sukru island of Suba North Constituency. On the way, just a few metres from the Homa Bay pier, the boat capsized. Two people had died by the time I was requesting for the Statement. I am told they have already recovered five bodies a few hours ago. They were estimating that probably nine more are still missing. Only eight who were able to swim ashore were rescued.

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

- (i) Could the Chairperson provide details on the measures the ministry has instituted to effectively and rapidly respond to both accidents and tragedies such as the one that happened on Lake Victoria and also any plans to undertake recovery?

I have a team at the lake right now. I am aware that there is the Kenya Red Cross and the coastguard, but if there was already somebody there, or there was an institution right by the shore, a lot of these people would not have died. They come after people have died!

- (ii) Could the Chairperson explain the steps being taken to ensure that boat operators in the lake adhere to safety and rescue measures?

Even in this particular case, they do not even know how many people were in the boat.

- (iii) Could the Chairperson explain whether the ministry has put aside funds to compensate the affected families if such fatalities occur again in the future?

Again, this is not the first one. There was one that resulted in several deaths. It is about the time when the late Senator Otieno Kajwang' was there. We have some that will result in fatalities of one or two people, but sometimes we have very many.

*(Hon. John Mbadi gestured to Hon. Speaker)*

I can see Hon. Mbadi is trying to remind me of others. Hon. Speaker, you probably may give him an opportunity if he so wishes. I am not hearing him. I am just urging the Committee Chair if he could please give a response so that, in instances like this, there should be an agency that is stationed in every beach to help in rapid rescue so that people do not wait. Like in this instance, they died a few metres away from the shore. Those who could swim were able to swim ashore. Those who could not swim died as people were watching in shock. So, I request that the Chair hastily responds. Even if we do not have a Fund, could the Government, on humanitarian basis, consider supporting these families?

Thank you, Hon. Speaker.

**Hon. Speaker:** Did you say that the Hon. John Mbadi wanted to say something?

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

My heart also goes to the families of these people who tragically lost their lives yesterday. We continue to get reports of more lives lost. We really do not know, up to now, how many lives have been lost. But, as Hon. Millie has said, the numbers keep on changing. No one has the correct data and statistics of those who actually were taking a ride on the boat.

What I want to ask is the Committee to consider... I hope the Chair will include this when the report comes back. You can look at the *Hansard* and add it onto the issues that Millie had raised. The areas where we have passenger boat transport are designated and known. These are areas where we can have a system, where we put people and Government officers to ensure that safety measures are adhered to. Rescuing someone drowning in the lake is very difficult because you do not know whether you will be the victim if you attempt to go and rescue. So, we need a system where we have patrol boats rescue the people who get involved in this kind of accidents and ensure that they have the necessary gear like the life jackets. The main problem in Lake Victoria is that passengers get into boats without life jackets, even those who have never taken a ride in the lake. But, Hon. Speaker, I will tell you that even fishermen drown in the lake. The lake has no friend. It can swallow you any time. There are certain areas you may not know are deep.

So, I would want to get from the ministry, through the Committee, the steps that are being taken to ensure that some safety measures are put in these areas that are designated as the points where passengers are picked. Some safety measures must be put in those areas.

It is very tragic that we lose people every time. Again, what Hon. Millie did not hear is that I talked about Nyakwara. There is an accident that is still fresh in the minds of our people in Lake Victoria. That is the Nyakwara accident. It killed all the people who were in the boat. So, it is something that should not be taken lightly. It is killing our people and our people have no choice. There are no Government ferries in Lake Victoria. So, our people have no choice. They have to take this dangerous mode of transport. Even me, the first time I took a long ride in a boat was in 1994. I had no choice. I had to go to where I was going and there was no any other means of transport. So, it is not a choice for our people.

Thank you, Hon. Speaker.

**Hon. Speaker:** Hon. Mwathi.

**Hon. Peter Mwathi** (Limuru, JP): Thank you, Hon. Speaker. I empathise with my colleague, Hon. Millie, especially on this tragic occasion that has just happened in Lake Victoria. I promise that what she has sought, together with the additional information which has been sought by the Leader of the Minority Party, will be incorporated in the Reply which I will endeavour to present as soon as possible. In any case, not later than two weeks.

*(Hon. Marselino Arbelle and Hon. Alois Lentoimaga consulted loudly)*

**Hon. Speaker:** Very well. Next Order. Order, Hon. Members—the Member of Laisamis and Member for Samburu North.

### MOTION

#### SESSIONAL PAPER NO. 4 OF 2020 ON THE NATIONAL CO-OPERATIVE POLICY

THAT, this House adopts the Report of the Departmental Committee on Trade, Industry and Co-operatives on Sessional Paper No. 4 of 2020 on the National Co-operative Policy on promoting co-operatives for Socioeconomic Transformation laid on the Table of the House on Thursday, August 19, 2021, and further approves Sessional Paper No. 04 of 2020.

**Hon. Speaker:** Debate on this Motion was concluded yesterday. What remained was the Question to be put, which I hereby do.

*(Question put and agreed to)*

Hon. Members, while still on my feet, let me guide the House that, on the basis of the Statement by the Chairman of the Departmental Committee on Justice and Legal Affairs, the Hon. Muturi Kigano, when we get to Order No. 9, the business appearing as (ii), the WAQF Bill (National Assembly Bill No. 73 of 2019) will not be considered. It is stood down, at his request, for a period of two weeks from today.

Next Order.

### COMMITTEE OF THE WHOLE HOUSE

*(Order for Committee read)*

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

#### IN THE COMMITTEE

*[Hon. Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu) in the Chair]*

#### THE IRRIGATION (AMENDMENT) BILL

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Order, Members. We are now in the Committee of the whole House to consider the Irrigation (Amendment) Bill (National Assembly Bill No. 12 of 2021).

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*(Clause 3 agreed to)*

*Clause 4*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): We have an amendment by the Chair of the Departmental Committee on Environment and Natural Resources. Hon. Sophia Noor for the Chair. Please, proceed.

**Hon. (Ms.) Sophia Noor** (Ijara, PDR): Thank you, Hon. Temporary Deputy Chairman. We also had an amendment to Clause 2.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Yes, but that one comes much later.

**Hon. (Ms.) Sophia Noor** (Ijara, PDR): On behalf of the Chair, I beg to move:

THAT, Clause 4 of the Bill be amended by inserting the following new paragraph immediately after paragraph (a) —

(aa) by deleting the word “projects” appearing in paragraph (g) and substituting therefor the word “schemes”.

This amendment seeks to harmonise the terminology used in the Act with the proposed amendment, which refers to “schemes” and not “projects.” It is just to clean up.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Okay. You actually did what I was proposing. Because it is already on the Order Paper, and the Member has read it, you are supposed to just refer to it and give the import of it, which you have just done. So, that is fine.

*(Question of the amendment proposed)*

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

*(Clause 4 as amended agreed to)*

*(Clause 5 agreed to)*

*Clause 6*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): We have an amendment by the Committee.

Hon. Sophia, proceed.

**Hon. (Ms.) Sophia Noor** (Ijara, PDR): Hon. Temporary Deputy Chair, I beg to move: -

THAT, Clause 6 of the Bill be amended —

(a) in paragraph (a)—

(i) in subparagraph (iii) by deleting the words “two persons appointed by the Cabinet Secretary out of four” appearing in the proposed new paragraph (h) and substituting therefor the words “one person appointed by the Cabinet Secretary out of three”;

(ii) by deleting subparagraph (iv); and,

(b) by inserting the following new paragraph immediately after paragraph (a) —

(aa) in subsection (4) by deleting the words “or its equivalent in any field” appearing in paragraph (c) and substituting therefor the words “in water engineering, civil engineering, agriculture, irrigation or environmental studies.”

By this amendment, we propose to reduce the quorum for conducting business for the board members from seven to five despite our proposal to increase the number of the board members from nine to 12. That is against the Mwongozo Code of Conduct. What we are, therefore, proposing is that we have the membership of the board conform to the regulations in place.

*(Question of the amendment proposed)*

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

**Hon. David ole Sankok** (Nominated, JP): Hon. Temporary Deputy Chairman, the proposal is in line with the Mwongozo Code of Conduct, and there is no way we can have 12 board members. For purposes of voting, it would not be proper to have a board of 12 members. The Mwongozo Code of Conduct proposes a membership of nine or eleven. So, the Departmental Committee is right in proposing a membership of nine and a quorum of five members.

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

**Hon. Josphat Kabinga** (Mwea, JP): Thank you, Hon. Temporary Chairman. I am just wondering why the notes are not in the online Order Paper?

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): What notes?

**Hon. Josphat Kabinga** (Mwea, JP): The amendments.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Is the Order Paper not online?

**Hon. Josphat Kabinga** (Mwea, JP): No, it is not unless I am not able to open it. This is an area I have a lot of interest and not accessing the amendments puts me in an awkward position.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): You will get a hard copy. In the meantime, Serjeant-At-Arms, please, check his tablet to ensure that he accesses the online Order Paper. I can see that Hon. Mwathi is insisting it is there, but you know, Hon. Mwathi, the last time I checked, I realised you were very good at IT. Your neighbour may not be as good. Anyway, as Hon. Kabinga’s equipment is checked, let him have a hard copy of the Order Paper, so that he follows the proceedings. You have seen it in your machine and not in his.

*(Hon. Josphat Kabinga spoke off-record)*

**Hon. Josphat Kabinga** (Mwea, JP): The Leader of the Majority Party is telling me that it is there yet I have opened, but I do not find it. It is me who does not have the online Order Paper, and not Hon. Mwathi.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Kabinga, you will have a hard copy as your screen is sorted.

In the meantime, let us proceed.

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

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

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

*(Clause 6 as amended agreed to)*

*(Clauses 7, 8, 9, 10 and 11 agreed to)*

*Clause 12*

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

**Hon. (Ms.) Sophia Noor** (Ijara, PDR): Hon. Temporary Deputy Chairman, I beg to move: THAT, Clause 12 of the Bill be amended by deleting the words “subject to mandatory approvals” and substituting therefor the words “subject to mandatory approvals in accordance with regulations”

The amendment is just a clean-up of spelling mistakes. The word “mandatory” is also amended to ensure that mandatory approval is done in accordance with the regulations under the Act.

*(Question of the amendment proposed)*

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

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

*(Clause 12 as amended)*

*(Clauses 13, 14 and 15 agreed to)*

*Clause 16*

**Hon. (Ms.) Sophia Noor** (Ijara, PDR): Hon. Temporary Deputy Chairman, I beg to move: THAT, Clause 16 of the Bill be amended in paragraph (a) by deleting the proposed new sub-paragraph (c) and substituting therefor the following new subparagraph—

“(c) be removed from office by the Cabinet Secretary if the member—

(i) contravenes the provisions of Chapter Six of the Constitution; or

(ii) acts in contravention of codes, policies and procedures in the public service.

The amendment seeks to amend Paragraph 2 of the Schedule to provide additional ways for members to be removed from the board. A member may be removed from office by the Cabinet Secretary with justification if a member conducts himself in a manner that puts the organization in jeopardy. The Committee notes that this provision is ambiguous because it does not give a clear way of removing what is undesirable. In the Order Paper, you will see that the person must be

within the confines of Chapter 6, policy and conduct and regulations under the public service. So, that is the criteria that has been put in place.

*(Question of the amendment proposed)*

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

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

*(Clause 16 as amended)*

*Clause 2*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Chairperson, do you have an amendment?

**Hon. (Ms.) Sophia Noor** (Ijara, PDR): Hon. Temporary Deputy Chairman, I beg to Move: THAT, Clause 2 of the Bill be amended in paragraph (c) by—

- (a) deleting the proposed new definition of the expression “Cabinet Secretary”; and,
- (b) deleting the proposed new definition of the expression “monitoring and evaluation”

Hon. Temporary Deputy Chairman, if you look at Section 2 of the Act, you will find that these definitions already exist. This proposal is superfluous and hence the amendment is to delete them.

*(Question of the amendment proposed)*

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

*(Clause 2 as amended agreed to)*

*Title*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): We do not have an amendment to the title.

*(Title agreed to)*

*Clause 1*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): We do not have an amendment to Clause 1.

*(Clause 1 agreed to)*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Members, we are done with the Irrigation (Amendment) Bill (National Assembly Bill No. 12 of 2021).

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Let us have the Mover of the Bill.

**Hon. Amos Kimunya** (Kipipiri, JP): Hon. Temporary Deputy Chairman, I beg to move that the Committee do report to the House its consideration of the Irrigation (Amendment) Bill (National Assembly Bill No. 12 of 2021) and its approval thereof with amendments.

*(Question proposed)*

*(Question put and agreed to)*

*(The House resumed)*

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

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Hon. Members, let us proceed. It looks like the Chairperson is Hon. Mwathi, or who is it? It must be Hon. Mwathi. That was a good work at the Committee of the whole House.

*(Laughter)*

## REPORT AND THIRD READING

### THE IRRIGATION (AMENDMENT) BILL

**Hon. Peter Mwathi** (Limuru, JP): Thank you, Hon. Temporary Deputy Speaker. I beg to report that the Committee of the whole House has considered the Irrigation (Amendment) Bill (National Assembly Bill No. 12 of 2021) and has approved the same with amendments.

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

**Hon. Amos Kimunya** (Kipipiri, JP): Hon. Temporary Deputy Speaker, I beg to move that the House do agree with the Committee in the said Report.

I want to request Hon. Sankok to second the Motion for agreement with the Report of the Committee of the whole House.

**Hon. David ole Sankok** (Nominated, JP): Hon. Temporary Deputy Speaker, I second.

*(Question proposed)*

*(Question put and agreed to)*

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Mover. Please, move for the Third Reading.

**Hon. Amos Kimunya** (Kipipiri, JP): Hon. Temporary Deputy Speaker, I beg to move that the Irrigation (Amendment) Bill (National Assembly Bill No. 12 of 2021) be now read the Third Time.

Hon. Temporary Deputy Speaker, as I move Third Reading, I want to thank the Committee and the House for the expeditious processing of this Bill. Members are aware that

this is a 2021 Bill, but it has been processed and completed in good time so that we can sort out the irrigation sector. I want to commend the Vice-Chair of the Departmental Committee on Environment and Natural Resources, Hon. Sophia Abdi, who has this afternoon taken us through these amendments with clarity such that Members were able to fast-track them.

I beg to move and request Hon. Dr. Nyikal to second.

**Hon. (Dr.) James Nyikal** (Seme, ODM): I second.

*(Question proposed)*

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Hon. Members, we shall pend putting the Question on that particular matter until a subsequent time.

*(Putting of the Question deferred)*

*(Loud consultations)*

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): I thought I had closed that matter, but let us have Hon. Kabinga and Hon. Sophia. We can then bring a closure to that and put the Question next time. Hon. Kabinga.

**Hon. Josphat Kabinga** (Mwea, JP): Thank you, Hon. Temporary Deputy Speaker. I am aware that I have been overtaken by events, but I need to be on record that I had about two amendments on this Bill. One of them is an important amendment. As you might be aware, through this Bill, we changed the name of the National Irrigation Board to the “National Irrigation Authority”. In line with other Authorities, I wanted to bring an amendment so that the head of the Authority changes the title from “Chief Executive Officer” to “Director-General” in line with other Authorities like the Kenya Rural Roads Authority (KeRRA), the Kenya Urban Roads Authority (KURA) and the Kenya National Highways Authority (KeNHA). I really do not know whether I have any opportunity to do so, but I want to apologise because this is something I had really wanted to do.

I also wanted to look at the period of the head of that institution in line with other institutions. The term of office in other Authorities is five years and the current term is three years. Those are two very important points that I needed to bring in form of amendments. I was this afternoon caught by surprise because I have had so many matters within my Committee this week that made me lose track of this Bill. I will be happy if there can be a recommittal so that I can bring in these two very important amendments. I think the Committee is also in support of those particular amendments.

Thank you, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Hon. Kabinga, unfortunately there can be no recommittal. That window is closed. However, nothing stops you from bringing an amendment in future in form of a Bill. Therefore, the window is now closed in terms of recommittal, but the future is not closed for you.

Hon. Kabinga, we are in the Third Reading, and you are aware that the amendments are done in Second Reading up to the Committee of the whole House.

**Hon. (Ms.) Sophia Noor** (Ijara, PDR): Thank you, Hon. Temporary Deputy Speaker. I totally agree with his amendments, but I think they can be brought at a later stage because they have been overtaken by events. If you go to the Authority, you will find that the

head is called “Chief Executive Officer” while the deputy is called “Deputy Director-General.” It has taken me by surprise too that we did not have that in our amendments.

Hon. Temporary Deputy Speaker, on behalf of the Committee, I really want to thank the Committee Members who have taken a lot of time to look at this Bill. We have gone to the field to check on the issue of irrigation so as to come up with ways to give it a new life. I would also like to thank the leadership of this House for looking at this and giving us the opportunity to finish it as quickly as possible.

Finally, I want to thank the Members of this House for the support they have given the Committee. Thank you, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): I had said the window is closed on this. We shall pend putting of the Question on this item to a subsequent time.

Next Order!

*(Putting of the Question deferred)*

## BILL

### *Second Reading*

#### THE SOCIAL ASSISTANCE (REPEAL) BILL

*(Hon. Amos Kimunya on 21.9.2021)*

*(Resumption of Debate interrupted on 21.9.2021 - Afternoon Sitting)*

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Hon. Members, this is resumption of debate interrupted on Tuesday, 21<sup>st</sup> September 2021. I am certain it had been moved, seconded and proposed. Hon. Members, for the record and avoidance of doubt, let me propose the Question because it was moved yesterday and seconded.

*(Question proposed)*

We shall start to my left with Hon. Oduor Ombaka, Member for Siaya.

**Hon. (Dr.) Christine Oduor** (Siaya CWR, ODM): Thank you, Hon. Temporary Speaker. Although this is not what I wanted to contribute to, it is important I say something. Sorry, let me just take my time because I was not paying attention.

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

**Hon. (Ms.) Odhiambo-Mabona** (Suba North, ODM): Thank you, Hon. Temporary Deputy Speaker. I have been consulting and presume this is the Social Assistance Bill.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Indeed, it is the Social Assistance (Repeal) Bill.

**Hon. (Ms.) Odhiambo-Mabona** (Suba North, ODM): Thank you, Hon. Temporary Deputy Speaker. I am very reluctant to support the repeal of this Bill and I have told the Leader of the Majority Party who was trying to persuade me otherwise. So, I might consider supporting him reluctantly. The reason why I am not very eager to support the repeal is that this Act has in itself never been operationalised.

I know the Leader of the Majority Party has indicated that there is a technical legal issue why this has not been done. I think the better way to go around it would be to bring an amendment to the Public Finance Management (PFM) Act so that we can actualise this Act. The idea behind the Social Assistance Act is very noble, which is to assist those of us who are in very difficult circumstances and the vulnerable. This Bill was brought by Her Excellency the Late Governor Joyce Laboso and I worked very closely with her on this issue based on the work we had done in the civil society and the suffering we saw a lot of people going through.

I am just worried because we have different support and protection mechanisms and both of them are very disunited. There is no single unit that regulates this kind of provision by the Government. Therefore, the issue of accountability and even knowing who benefits and how, becomes very difficult. I think I shared on the Floor of this House that at some point when people started receiving COVID-19 support, I become one of the beneficiaries without knowing why. I cannot remember, but I was receiving either Kshs1,000 or Kshs2,000 from the Government of Kenya as a vulnerable person. When I tried to refund this money, it was not even clear which Ministry I was supposed to refund to.

I want to thank the Cabinet Secretary who took their time to call me, when they heard I was calling around trying to find out where to return Kshs2,000 that could go to support some Kenyan who is really struggling. I want to encourage the Leader of the Majority Party that he would have brought proposed amendments to the PFM Act while at the same time repealing this one. Instead of repealing an Act when we do not have another one at hand, my only worry is perhaps there are more hidden reasons behind this repeal. This is because we have persons who are benefiting from these monies, who do not want a regulatory framework. The kind that is sending monies to unknown people like myself as a vulnerable person.

I am very reluctant to support and for that matter, I will abstain. I am not very enthusiastic about supporting a repeal of an Act which was unanimously passed on the Floor of this House. We did not see a problem with it then, and so, why are we seeing a problem now, other than closing loopholes of misuse of Government funds so that the funds can go to the right people? Thank you, Hon. Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Before I give it to Hon. ole Sankok, Hon. Dr. Otiende are you on intervention?

**Hon. (Dr.) Otiende Amollo** (Rarieda, ODM): No. I am queuing.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Okay, you are queuing the wrong way, but that is noted. Hon. Sankok.

**Hon. David ole Sankok** (Nominated, JP): Thank you, Hon. Temporary Deputy Speaker, for giving me this opportunity to support the Social Assistance (Repeal) Bill. I am a Member of the Departmental Committee on Labour and Social Welfare Committee, a person living with disability and a Member of Parliament representing 6.5 million Kenyans with disability in this House, who benefit directly from the Social Assistance Fund.

I would like to thank our Chairman, Hon. Kabinga *wa Thayu*, which means a peaceful person. He is a peaceful person who needed to assist vulnerable persons in our society. That is why he was passionate about repealing the Social Assistance Act, so that we can have a fund that is properly managed, not ran like a charity or under the management of a department in a ministry and does not depend on the Exchequer, which decides when to release the funds or not.

Hon. Temporary Deputy Speaker, I know you are leader and represent a constituency on top of being a Speaker. When you represent a constituency, I am sure very early in the morning or evening in *barazas*, you have found vulnerable people like older persons, persons with severe

disability, orphans and vulnerable children telling you that they have not received their stipend for one, three or four months. If you followed, you might have found that this is because the Exchequer did not release the funds because of some level of mismanagement.

The Kshs30 billion is not chicken change. It is a lot of money that needs a board to properly manage it. If we can have a State corporation like the Anti- Female Genital Mutilation (FGM) receiving Kshs200 million from the Exchequer, why can we not have a management Authority, board or State corporation managing Kshs30 billion? This Fund is important because it assists the vulnerable members of our society and older persons. For instance, our cultural ties have been severed by civilisation and westernisation. Most of our people live in urban centres and they have left our older persons in rural areas suffering. Some of them are sickly and go without food and drugs. Therefore, this Bill is very important.

This Bill was brought by the late Hon. Joyce Laboso, may her soul rest in eternal peace. She considered the vulnerable members of our society because all of us can never be equal. At that time, I was in the National Council for Persons with Disability. When the request to have an input on who should benefit from the Fund as the Council for Persons with Disability came, we said that it was not all persons with disability because we do not want persons with disability to be supplicants seeking favours. We need opportunities and not sympathy. We said the other categories of persons with disability whom we can empower and educate can benefit from other funds, but those who will benefit from the Social Assistance Fund are those who are severely disabled.

We need a board, so that we can explain to them the rationale of having severely disabled persons benefiting from the Fund. That way, they can see the need of increasing their numbers or even covering the whole population of the severely disabled persons. A severely disabled person is probably autistic or somebody with cerebral palsy.

**Hon. (Dr.) Otiende Amollo** (Rarieda, ODM): On a point of order, Hon. Temporary Deputy Speaker.

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

**Hon. (Dr.) Otiende Amollo** (Rarieda, ODM): Hon. Temporary Deputy Speaker, I respect Hon. Sankok and he has started by saying that he is supporting the Bill as presented and yet everything he has said so far seems to be opposing the idea of repealing the Act. We need clarity. Can Hon. Sankok make up his mind as to whether he is supporting or opposing?

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Maybe Hon. Sankok is taking a longer route. Hon. Otiende Amollo is very keen on your conclusion.

**Hon. David ole Sankok** (Nominated, JP): Hon. Temporary Deputy Speaker, you know Hon. Amollo Otiende is a renowned lawyer. He is very intelligent. I think he was the Chair of Ombudsman, if I am not wrong. He understands our Constitution very well, but sometimes when we take him through the longer route, he disappears somewhere in the bush. However, I will bring him up to speed by saying that I do support this amendment. I am just enriching the Bill and the amendment.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Hon. Sankok, it is a repeal. It will no longer be there tomorrow.

**Hon. (Ms.) Odhiambo-Mabona** (Suba North, ODM): On a point of order, Hon. Temporary Deputy Speaker.

**Hon. David ole Sankok** (Nominated, JP): Hon. Temporary Deputy Speaker, Hon. Millie Odhiambo is always on a point of order.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Order, Hon. Sankok! There is a point of order from Hon. Akoth.

**Hon. (Ms.) Odhiambo-Mabona** (Suba North, ODM): Hon. Temporary Deputy Speaker, as Members of Parliament, sometimes we are so busy that we do not understand the essence of what we are doing. It is not wrong to acknowledge. When the Bill is said to be repealed, it means that it dies. I hear Hon. Sankok saying that he is supporting the amendment. There is no amendment. The Bill is going in totality. There is no other legal framework now. That is why you hear me saying that I am very reluctant to support because the Leader of the Majority Party said they will bring another Bill later. There is nothing. So, if you are talking about supporting people with disability, there will be nothing after this Bill is repealed.

So, my point of order is that Hon. Sankok is not in order to say that he is enriching what is dead. You cannot enrich a dead thing. It is dead. If you say you are supporting, then you are saying: "Let the Bill die completely and I am not adding a hand, a leg or an arm to it". It is as dead as a dodo. However, if you are not supporting, then it means you are telling him to amend it because there is this part which is defective or not defective.

Thank you, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): That is very good information. Actually, it is not a point of order, but information through some routes to Hon. Sankok. Actually, this is a repeal of the law. Hon. Sankok, I am sure your thoughts are now packaged in a manner that speaks to what you are dealing with.

Please, proceed.

**Hon. David ole Sankok** (Nominated, JP): Hon. Temporary Deputy Speaker, this is a Bill that we are seeking to repeal. Hon. Millie Odhiambo, I understand what is happening here. Even as we repeal the Bill, it does not mean that the Social Assistance Fund will disappear. It means that the Social Assistance Fund will still be there to assist vulnerable persons in our society.

I wanted to pass the message to the Ministry responsible that severely disabled persons are persons we cannot economically empower. They are persons who do not have any opportunity to better their lives, unlike older persons who at one time were strong enough to better their lives. It beats all logic to have close to one million older persons in the register and only 42,000 persons with severe disability. It should have been the other way round because most vulnerable members of our society are persons with severe disability, and not older persons.

Yes, we can assist the older persons, but priorities must be set very right. First of all, the priority should be the most vulnerable members of our society, namely, orphans and vulnerable children, followed by persons with severe disability who require 24-hour care and then we come to older persons. Even in the listing and numbering, they should follow that particular order until persons with severe disability are exhausted, and then we can go to orphans and vulnerable children. As Hon. Millie Odhiambo has said, I did not see any problem with the Bill that was brought by Hon. Laboso. I also do not know why it has never been implemented. We have to repeal it so that we can make sure... From 2013, a whole Fund has been idle, being managed by a department in the Ministry of Labour and Social Welfare. It is high time this House looked into it. That is what we are doing. I implore Hon. Millie Odhiambo to come along to repeal the Social Assistance Act, so that in its place, we can put another Act that will be implemented even though I do not know why this Act has not been implemented.

Corruption is real in Kenya. I think cash transfers should be made through mobile money transfer platforms so that we can follow up to establish whether the money goes to the right persons.

Thank you.

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

**Hon. (Dr.) Otiende Amollo** (Rarieda, ODM): Thank you, Hon. Temporary Deputy Speaker. I am opposed to this Bill. I am surprised that Hon. Sankok, who spoke eloquently before me, said everything in opposition to the Bill and then concludes by saying that he supports the repeal. I really do not understand, but I will leave that to himself and his conscience.

The Social Assistance Act was, from the records, enacted in 2013. Now you are speaking to almost a decade. Instead of asking ourselves why it has not been properly implemented, we are going to repeal it. That cannot be the way to go. This is an august House and in 2013, nine years ago, it exercised its wisdom and took the taxpayers' time to enact a very elaborate scheme under the Act. It cannot be that now we certainly say that all that effort and all those years were in vain. In fact, all the issues that Hon. Sankok has spoken to are already in the Act. The Act establishes an Authority with perpetual succession which can be sued in its name or otherwise. It establishes a board.

It is so elaborate that I have no idea what else any Member would think of. This Act covers so much that we usually struggle with. You will find that in Section 20, for example, it covers orphans and vulnerable persons. Section 21 covers the older persons who are even defined. Section 22 covers the unemployed. Section 23, which would have concerned Hon. Sankok, covers persons with disability, and it goes on and on. What the Act tries to do in my understanding is to centralise the idea of social assistance. We are a country that tries to experiment with social welfare, but we do not always do it properly. It is always haphazard. One time, you will find there is a Ministry for Youth that is giving out handouts, another time you find that there is a ministry giving out handouts to persons with disabilities and another one to older persons. It is not synchronised. It is my understanding that as we were trying to move towards a welfare State, we were then trying to synchronise all these things, so that we minimise pilferage and ensure that only people who are entitled to social assistance get social assistance, so that we are also sure that we can manage the social assistance that we offer to give. You can only give what you have.

In all this, I am not sure I am persuaded or I have been made to fully understand why this elaborate scheme that we sought to implement nine years ago has not been implemented and instead of moving towards implementation, we are moving towards abolition. Once you repeal, there is nothing to talk about. It is as dead as a dodo. If you want to start anything else, you will start from scratch. In my understanding, if you enact legislation that is imperfect, you do not repeal it. You amend and improve it. If there are issues of regulations, even if there are regulations that can come under the PFM Act...

*(Loud consultations)*

Hon. Temporary Deputy Speaker, can the Members who choose not to pay attention give us time?

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Order Members! Consult in lower tones, so that we can hear what Hon. Otiende is saying.

**Hon. (Dr.) Otiende Amollo** (Rarieda, ODM): Hon. Temporary Deputy Speaker, thank you for your protection. I do not doubt that there might be imperfections. Those imperfections should not lead to...

*(Loud consultations)*

Hon. Temporary Deputy Speaker, these disruptions and consultations sometimes have a very thin line. It is my understanding and I would be quite willing to entertain, understand and even support any amendments that will make this work. To repeal it is to take us back a decade. Remember, these are not idle expectations. Our Constitution contemplates this kind of social assistance when it comes to social and economic rights. Therefore, to suggest that the Act does not tally well with the PFM Act or with the regulations that have been made or not made thereunder, does not auger well because in my opinion, if there is any issue to be dealt with, let it be dealt with either in this Act or in the regulations. If there are adjustments to be made, let us make them and not kill a good legal policy because of administrative shortcomings.

I oppose.

*(Applause)*

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

**Hon. Ali Adan** (Mandera South, JP): Thank you, Hon. Temporary Deputy Speaker. From the outset, I wish to support the repeal of this Bill. I wish to refer the House to the Committee's Report, and more specifically on the observation of the Committee, which says that the existing Act does not provide the National Social Assistance Fund to receive funding from the Exchequer. Sometimes we pass laws in this House with gaps. I am afraid the just concluded Bill on the National Irrigation Agency is such a Bill. So, it is important that we repeal with a view to coming up with a better law that accommodates all these. In the first place, it was hoped that the Ministry would introduce a more comprehensive law in the place of this Act addressing all broader sector issues. It did not. I also want to support the fact that, once we begin to redo this Bill afresh, we will consider areas like Mandera South and such areas that are regarded as far-flung and do not receive certain services. We will also consider members who are vulnerable. It is, therefore, very important that we restart the whole process and sort of involve the communities that hitherto are always forgotten.

Thank you, Hon. Temporary Deputy Speaker.

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

**Hon. (Dr.) James Nyikal** (Seme, ODM): Thank you, Hon. Temporary Deputy Speaker. I rise to oppose this Bill. I was involved in the Bill and the Act that is being repealed. As far as I can see, even looking at the Committee Report, the only issue is that this Authority is going to handle the funds that are currently being handled by the Ministry. That is the only thing. There are statements like it is not in line with the PFM Act. I know many other funds that have also been started and have not been in line with the PFM Act. Why are those funds not declared unimplementable?

The other thing is that it says it is not in line with the policy on social assistance. The Ministry went to court and the court said that there is need to give the Ministry time, so that the policy is aligned with the law. I do not think you work backwards, that you repeal a law because it is not in line with a policy which you have not put in place properly. The court said that it has given the Ministry time. The court provided for time to look at the policy and therefore, allowed for the delay in implementation of the Act. So, the only other thing that I can see would have been cured by just an amendment. I have looked at the Act, and this would then be an Authority probably under the Ministry of Labour and Social Development. I think there is enough room for amendments in this Act to make it operational.

A lot of funds are being used in social assistance. I know the history of social assistance. Orphans and vulnerable children, persons living with disability, and the elderly should benefit. They are clearly defined in the Act. So, I do not understand why we would remove an Act and replace it with regulations, and then say that we are putting it under regulations, but we are coming up with an Act. What would have happened is that they would have come up straight with an Act that would either amend this or if they are repealing, we would see that most of the components of what is in this Act are in a new Act. We are not coming up with an amendment or a new Act that will dictate that we repeal this Act. We are basically repealing this Act and replacing it with regulations. What I do not understand, because I know how the Ministry works, if this will be under regulations from the Treasury and the funds are being managed in the Ministry, what is going to be the relationship? Even now, there are a lot of problems in the management of these funds.

When we started it, it was a small programme and we had an inter-ministerial committee that was to look at all that. Even when the Bill came into place, there were consultations on how it would work and put all things together. The social assistance programme was intended to be larger. Later on, it was meant to extend and take care of vulnerable people who live in poor urban areas like Korogocho and Kibera. Actually, a bit of it was started in Mombasa and it was supposed to be extended. To repeal this Act and replace it with regulations without a substantive amendment Bill is not in order. What should happen is that they should quickly come up with another Bill that is more substantive that takes into consideration all the contents of this Act, and then say that with that, the other Act stands repealed.

In my view, it is not proper to do this. Therefore, I oppose.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Hon. Ochieng', Member for Migori.

**Hon. (Ms.) Pamela Ochieng'** (Migori CWR, ODM): Thank you, Hon. Temporary Deputy Speaker for giving me this opportunity. The whole issue of this repeal could not have been put better than the way the last speakers, Dr. Nyikal and Hon. Otiende Amollo, have done it.

I oppose the repeal more so with nothing replacing it immediately. The only thing I will add to everything that Hon. Otiende and Hon. Nyikal said is that I am a Member operating with a fund which is managed through regulations. All County Woman Representatives will agree with me that we have had enough problems in the management of the National Government Affirmative Action Fund. Therefore, when we talk about some regulations which are not elaborate enough and will still be under the National Treasury and Planning and that is all we are banking on, this is not going to help this country. The proponents of the repeal say that the money is lying idle. We are all witnesses in this country that this money has done a lot. During the COVID-19 pandemic, I am aware that almost all persons with disability in Migori County who had not been registered with the National Council for Persons with Disability received cash transfers from the Ministry of Labour and Social Welfare and all the other persons with disabilities in this country did the same for the first three or so months that the pandemic was here with us.

In Migori, again, last year and this year, we suffered serious damages from floods. This money came in handy and people were rescued and given food and lived until the floods subsided. We have seen the money put to use and the Bill introduced by the late Dr. Laboso was simply meant to introduce some control over the use of the money. We know that sometimes governments do not like to be controlled. What the Leader of the Majority Party should do is to come up with an amendment or some compelling Act that must make the other Bill operational not just repealing

it because after all, it has not been made operational as Hon. Sankok would like to convince the House.

Social assistance is necessary. We are witnessing a big number of jobless youths in the country who may need a lot of social assistance. In other countries, they have very elaborate social assistance especially for senior citizens and the elderly. Much as this is not well done in Kenya, I would wish that the Ministry does it to the letter, so that our elderly people can also feel like they can buy their own soap and sugar. This is the bit this House needs to address.

The number of orphans in this country has increased like never before. We have had pandemics like the recent COVID-19 and HIV and AIDS which have claimed lives of young parents in this country. So, we need the orphans to be helped. I have widows in my county. I am a pastor and when young women lose their husbands, pastors tell them they can see Jesus. I do not know how to tell the young women to see Jesus because they will only see Jesus when he appears with bread, school fees, a roof over them or some things like that. The need for social assistance in this country is overwhelming. Therefore, I believe we cannot just repeal this Bill the way one speaker said that there is some irrigation to be done in north eastern. I do not understand how this money can be connected with irrigation. There is enough money in the Ministry of Agriculture. The other day, we were talking about increasing funding for the Irrigation Board. So, let us put everything in the right perspective. It is my prayer that if there are any gaps that make the money not to be used the way it is supposed to, that is the bit we should deal with. The need for social assistance for those categories of people that I have just mentioned is glaring. If we think the Ministry is not using the funds, we should summon the Cabinet Secretary, Principal Secretaries and all directors, and ask them why the money is not working the way it ought to.

With those few remarks, I oppose the repeal. Thank you.

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

**Hon. (Ms.) Nasri Ibrahim** (Nominated, FORD-K): Thank you, Hon. Temporary Deputy Speaker for giving me this opportunity.

The new regulations aim to streamline the cash transfer programme with the funds administered by the oversight board through the Social Assistance Fund. The objectives and purpose of the Fund is to provide funding for the provision of social assistance for the poor and vulnerable persons in particular, among others, to provide for development and promotion of social assistance programmes and initiatives in the country. It also aims to provide for the criteria for identification, screening and prioritisation of beneficiary of social assistance benefits, and to provide for quality assurance framework to ensure that only eligible persons benefit from the social assistance funds. It is also to develop and promote programmes to render the recipients of social assistance capable of self-support and exit from social assistance benefits, to enhance financial capacity of the recipient and dependant from linkage with other Government interventions and to promote and incorporate recipient into other complementary services and access to better life conditions.

I support.

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

**Hon. Ndindi Nyoro** (Kiharu, JP): Thank you, Hon. Temporary Deputy Speaker. I rise to oppose the Bill because it is good for us to know that safety nets and cash transfers show that there is inequality in an economy.

In every economy, there is need to support the lowest and underprivileged. It is a manifestation that they are not active participants in that economy. Even as we debate about the cash transfers and security nets for the lower cadres in our economic society, it is good for us to

understand that for an economy to thrive, it has to be equal. For an economy to thrive, we need to involve everyone to be an active participant in the growth and productivity of that economy. That goes to explain why in our country at the moment, there is need to support people in many forms, especially those who are in the lower cadres. Even the bursaries that we give are a form of security net. Even the cash transfers that we give to the elderly who are over 70 years explain the same.

For an economy to thrive properly, all the people that we currently support need to fend for themselves. The best way to do this is for us as leaders, and especially the Executive, to have policies that give them the opportunity to be productive agents within our economy. I say so because if you compare the current regime led by President Uhuru Kenyatta with the regime of President Kibaki, there is a stark difference. Most of us went to university during President Kibaki's regime without the need for bursaries. It is not that we came from wealthy families. My father was just a carpenter and my mother was a peasant farmer, but because the economy was productive and there was money to be made, most of us just thrived within the same. We made it even through hardships. However, in the current administration and the current times, those at the lower strata in our society need direct support from the Government because there are very few avenues and opportunities for them to make a living and extra income to support their children in school and also live a better life.

If you look at the current global trends, 1 per cent of the wealthiest people in the world have twice the wealth of 6.9 billion people in the world. When you combine the wealth of the billionaires of the world, that is, those who have a net worth of more than US\$1 billion, they have as much wealth as 4.6 billion citizens of the world. That goes to explain the kind of inequality that we are faced with in this era. I am giving a credible data from Oxfam.

Even as we make wealth and announce Gross Domestic Product (GDP) growth every now and then, GDP cannot be eaten. You cannot pay school fees using GDP. You must use the money in your pocket. That is why even in economics, there is something we call the Gini coefficient. Every now and then, the National Treasury and the Kenya National Bureau of Statistics (KNBS) claim that our GDP is growing, but we do not go further to question who the beneficiaries of that created wealth are after the growth of the economy. Unfortunately, the Gini coefficient that measures the inequality between the rich and the poor in our country is just around 4.6. One means extreme inequality and zero depicts an unequal society.

Another very unequal society in the world, which is actually number one on the list, is South Africa. The kind of chaos that happens quite often in South Africa is bred by the gap between the haves and the have-nots. If as leaders, and especially those in the Executive, we do not draft policies that distribute the growth of our economy to as many people as possible, we will also be breeding chaos in our country.

It is sad to know that every Kenyan knows the kind of wealth that we are creating in this country. We usually read about GDP growths and say that the economy is growing, but unfortunately, the majority of the 47 million Kenyans still wallow in poverty because the created wealth is concentrated among not more than 10 families. The "super four" families are taking over all the wealth that is created in our economy. Therefore, we continue to have an economy where majority are wallowing in poverty while the little that is created by technology and any other form of production in our country is concentrated among a few. That is why many Kenyans remain as robots who keep voting for the same few families that keep using the same power that we give them to dominate us even further to perpetuity. We need to address that matter because inequality is not a good thing to be encouraged.

I say so because we should learn from a country like China. I have said this before in this House. When Deng Xiaoping took over in 1978, most of the Chinese people were in dire and extreme poverty. Just by using economic apparatus and the right policies, he made the Chinese economy depart from the very retrogressive economic policies of Mao Zedong like the proletarian and cultural revolution that, prior to that, had led to many deaths through famine. When he came into power in 1978, he crafted policies that encouraged a lot of production within the Chinese economy. Fortunately, this was well-distributed.

We can build an economy where people can thrive in production, especially one that is based on manufacturing because most production is labour-intensive. That means that the fight between the profits and wages brings about stabilisation of equality because when people who are working are given an opportunity to unionise, they are able to negotiate for better wages. That simply means that we distribute money from the profits that benefit a few shareholders to wages that benefit many.

I am still on the Chinese case. By using policies that could spur production based on manufacturing, Deng Xiaoping pulled over 700 million Chinese from poverty during his term up to 1990. The basis of the Chinese economic growth is the reign of Deng Xiaoping from 1978.

We can learn the same from South Korea. South Korea was still poor at the time of Independence. Kenya was richer in terms of GDP per capita than South Korea. The same policies of Deng Xiaoping were used in South Korea because when we spur the economy through production that is labour-intensive, that means that many people become active participants in the economy. Therefore, they may not need bursaries and cash transfers because they can literally earn that money through their hard work and labour.

It is good for us to have a standalone organisation that deals with this. It will not be good for us to overburden the Ministry because we need a standalone body to handle those issues. Therefore, I oppose the repeal of the Act.

Thank you.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Let us have Hon. Amin Kassim, Member for Wajir East.

**Hon. Rashid Kassim** (Wajir East, WDM-K): Hon. Temporary Deputy Speaker, I wish to give my input into this repeal. From the outset, I oppose the repeal of the Social Assistance Act.

Kenya is an economy that has a lot of disparity in terms of the social and economic development. We have realised that nearly 70 per cent of Kenyans are living and dwelling in poverty. It is enshrined in the Constitution of Kenya, 2010, Article 43, that every Kenyan will have access to food security, basic rights and social protection. It is already enshrined in the Constitution. The Constitution envisages that all Kenyans can provide and access basic human rights. By the fact that this Act was there to provide and allow every Kenyan to access those things, then repealing it refers us back.

Most of the projects which are still anchored in the National Treasury and Planning give a lot of disparity in terms of distribution. If funds are still being held at the National Treasury, it is the whims of the Treasury to provide to whom they so wish. The fact that we have an entity that is able to provide the same and distribute to all the needy persons and provide for health services, food security, school feeding programmes and all those social networks that are desired, I find repealing this Act a very retrogressive step. We have already made gains. These gains are going to be lost by repealing it and trying to domicile these funds in the National Treasury. The fact that it is going to be within the National Treasury is negating the gains we have already made for Kenyans.

This Fund has for the first time, for the last two years it has been working, been able to provide for vulnerable groups like those who have lost their livelihoods either basically to drought or basically to lack of employment or as a result of the abject poverty they have had over the years. It was able to provide social network even for those families that are widowed. The fact that this money was initially meant for social protection of those vulnerable groups, taking it back in terms of even targeting, it is properly targeted when it is within an institution, an entity, like an Act of its own. I find taking it back to the National Treasury and Planning absurd. We cannot agree on those things.

One observation we have made and even during the early years of Independence, we have had a country of 10 millionaires and 10 million beggars. Today, we still have a country of 40 million beggars and people who are still living in abject poverty. The economy has not been able to thrive. As a result of poor governance that we have observed over the years, this has been responsible for abject poverty. Many Kenyans cannot access basic rights like food. Even then, His Excellency Uhuru Muigai Kenyatta, has even anchored his legacy on certain pillars like food security, health and housing. Those perspectives that we have been observing have even been reversed. Today, we do not know where we have left those visions that we have had for Kenyans. The Constitution envisaged supporting the needy groups and we cannot take this function back to the National Treasury. We will not achieve anything. Those who are envisaging repealing the Act are making us go back. They are making us not to achieve the basic human rights which are enshrined in the Constitution. I truly oppose those who think that way and want to take us back to the dark days when we did not consider support to our needy persons in our society.

Culturally, we have a social network system which existed over the years. Urbanisation and education have just affected the social networks that existed within the community. The networks have been overridden by civilisation. The fact that the Government has already taken responsibility of providing for the needy persons, providing social network systems, food, school feeding programmes, the needy, orphans and disadvantaged family members, this is an obligation that was envisaged early in the Act. But, if we today reverse those gains which we have done, I consider it absurd and retrogressive. We do not need to uphold and agree, as Members of Parliament, on anything that is retrogressive or something that is going to take us back.

I oppose, and I oppose totally, the repealing of the Social Assistance Act. Thank you, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Hon. Abdi Yusuf, Member for Kamukunji.

**Hon. Yusuf Hassan** (Kamukunji, JP): Thank you, Hon. Temporary Deputy Speaker, for giving me the opportunity to speak on this Bill. I oppose it.

If you look at the genesis of the Social Assistance Bill, which is being repealed by this Bill of 2020, it was enacted to implement Article 43(1)(e) of the Constitution which guarantees the rights to social securities as one of the economic and social rights. I agree with some of the other speakers that this is a backward step. It removes an important step that we had made in implementing some of the rights in our Constitution of which the Social Assistance Act No. 24 of 2013 had provided. The Act provides for rendering of social assistance to vulnerable persons and establishes the National Social Assistance Authority to identify and provide social assistance to persons in need. If you look at the composition of our country, this is a country with one of the biggest disparities between the rich and the poor. Therefore, unlike some of the wealthy countries or middle-income countries that are able to provide for their citizens, we have a huge number of people who have no social network, no protection whatsoever, and have not been provided with

any assistance under a very difficult social economic system. If you look at the economic downtime, the serious effects of the COVID-19 pandemic, you would notice that in fact, even large numbers of people are moving from the middle classes into the lower levels of poverty. That is why we need to protect the social guarantees that exist as is provided by the Social Security Act.

The other important element is that if there is need to improve the Social Security Act of 2013, what we need is to amend it and to provide and strengthen it through some of the positive elements that I see in this repeal Act of 2020. But it really does not need to be thrown away altogether. That is why we really need to reconsider, given our economic circumstances, given the large number of people who are in need of support. If you look at Nairobi, which is the capital city, you do not even have to look at our rural poor. We have large numbers of very poor people. Sixty per cent of our population in Nairobi live in informal settlements under conditions that would be considered to be below the minimum poverty standards of the United Nations. In those neighbourhoods, there is no affordable housing, and no guarantee of jobs. They do not enjoy any social services that are guaranteed in many countries of the world. Then we have a large number of elderly disabled people who are left on their own.

In some rural areas, maybe there is a support system because of the family structures that exist, but in cities like Nairobi, Nakuru and Mombasa, many of the elderly, disabled and orphans are left on their own. They fit into the description that Kenya was given many years ago, that Kenya was more of a man-eat-man society where these people are left out. What the Social Security Act, 2013 did was to provide for support and protection of some sections of this particular desperate population. We now turn around to repeal the Act. We are taking the functions of the Act to a ministry instead of an independent Authority. This is definitely going to undermine the intentions of the original Act and the Constitution.

I would like to suggest that we look at some of the loopholes that exist in the Social Security Act and maybe, carry out amendments to improve it. I completely oppose the idea of repealing the entire Act. It is not the right thing to do. Doing away with the Authority and moving its functions to a ministry is not the right thing to do. Kenyans will be better served if the Act is implemented as it is at the moment to have the Fund operate under an Authority as opposed to a ministry.

With those remarks, I oppose the Social Assistance (Repeal) Bill.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Let us have Hon. Ochieng', who will be followed by the Leader of the Majority Party.

**Hon. David Ochieng'** (Ugenya, MDG): Thank you so much, Hon. Temporary Deputy Speaker.

Having gone through the Social Assistance Act, 2013 and having listened to fellow Members speak on this Bill, I am tempted to request the Leader of the Majority Party, who is going to speak after me, to consider withdrawing this Bill instead of trying to tell us to go on with this. Where he sits, he would tell you that in progressive law making, there is no room for moving backwards. I have never heard of a statute being downgraded into a regulation. We upgrade regulations into statutes. We upgrade a Gazette Notice into a statute, but hardly do we downgrade a statute.

I have read through the Memorandum of Objects of this Bill and there is nowhere we are being told why we should add more functions to the Ministry of Finance and National Planning, which is already overwhelmed with so much work. This belies the Government's approach and confirms shoddy treatment of poor people. I will give an example before I go to the main Bill. Every year, we talk about hunger. Two weeks ago, the President declared the current drought ravaging the country a national disaster. We have been arguing about maize and sugar. Do you

know that our Strategic Grain Reserve (SGR) is established under regulations? In the rest of the world, SGRs are established by law. In our case, it is because people want room for corruption. Like in this case, we are talking of not less than Kshs26 billion a year. There being no explanation for the proposed repeal of this Act, I tend to think that this is an attempt by the bureaucrats in the Ministry of Finance and National Planning to control these funds not for purposes of bettering service delivery in terms of ensuring that more deserving individuals access the funds, but rather for purposes of creating more bureaucracies to make the disbursement of these funds more difficult.

*(Hon. (Ms.) Odhiambo-Mabona and Hon. (Ms.) Gladys Wanga consulted loudly)*

Hon. Temporary Deputy Speaker, you need to protect me because what they are talking about is distracting me.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Is that Hon. Akoth and Hon. Wanga? Please, consult in low tones, so that we can get to hear what Hon. Ochieng' is saying.

**Hon. David Ochieng'** (Ugenya, MDG): Thank you, Hon. Temporary Deputy Speaker. Social protection is not just about disbursing money. It includes building communities, offering psychological support, building families and doing things that will create cohesion in the nation. Doing a mechanical job of taking money and handing it over to people is a misunderstanding of what social protection is.

The Constitution gives Kenyans the right to social, economic and civil liberties as well as cultural rights. So, to effectuate social security right, we have to enhance the National Social Security Fund Act. To effectuate the right to healthcare, what we are discussing this afternoon, and what has been in existence, is a constitutional health framework. The Social Assistance (Repeal) Bill is meant to ensure that we have a framework that is broad enough to take into account all the requirements for facilitation of the assistance of those who may need it, namely, orphans, jobless people, elderly and the sick.

Hon. Temporary Deputy Speaker, I do not believe that the Ministry of Finance and National Planning has the capacity to set up the framework and infrastructure required for this kind of job. This is a job for the Ministry of Labour and Social Protection, which the Government has deliberately refused to operationalise for obvious reasons. Every time we see huge sums of money, we only think that the Government should control it. That is why sometimes they take three to five ministries and put them together. They take three to five parastatals and put them together even in the middle of the term of a regime. You see the President transferring a certain parastatal to a certain ministry for them to control it because it is deemed to be lucrative. It is the wrong way of going about things.

If the Leader of the Majority Party believes that the reason is to improve the way this Act was meant to work in terms of assisting vulnerable persons and other people who are not in a position to afford food, healthcare and medical services, then what I would expect him to do today is to introduce a new law or push for the implementation of this Act as it is. However, bringing a one-line amendment requiring that a law that was passed by this House is repealed, so that we give absolute powers to a minister is, in my opinion, a misunderstanding even on the part of those who have proposed this repeal. As we speak to it, we have Members who are yet to tell you that in every 10 messages they receive, five are about death, two are about sick persons and one is about school fees. It is all these things. Why would someone want to centralise this Fund by putting it under the Ministry of Finance and National Planning? I do not understand.

In fact, if you asked me, I would have proposed that these roles should be shared by the county governments because they now have roles that are dominantly social. I would imagine that they would be talking about having county governments helping the national Government on issues of healthcare and agriculture, as it has been put in the Constitution. I do not know what to say, but some of the legislative proposals that come to this House sometimes surprise me. That is why yesterday you heard Members here talking about VAT. The Bill was brought to this House, we passed it and then you hear a Member talking at a funeral somewhere saying that fuel prices are high. The taxation measures were brought here and we made our comments. We told the Government that the Bill they had brought through the Leader of the Majority was wrong, but they still rubbed it through us.

Hon. Temporary Deputy Speaker, this country belongs to all of us. The idea that only a small group of communities can manage the resources of this country is wrong. We need to start building structures and institutions. We need to start trusting each other. We need to work for all of us. It cannot be that every time there is a programme that has big sums of money, it is put under a certain ministry. It is wrong. I would imagine that what we want to do as Parliament is to try and get more money into this kitty, push for the implementation of the Authority and make it stronger, so that Hon. Kimunya and the people of Kipipiri can also benefit. He does not have to raise Questions here about those *wazee* and *mamas* who do not have money. I am, however, surprised that people come here to waste Parliament's time. Since 2013, we have had the Social Protection and Council Bill proposing the same things. What we should be discussing today is how to promote equity. How do we ensure that we reach more people? How do we ensure that this Act is arching well from the constituency level and not at the national level? How do we give Members of Parliament (MPs) a bigger role because most of those requests come to them? How do we strengthen the vetting committees on the ground? I have never heard of something as good as this, but you now want to give it to one individual to be the one making all the decisions? I oppose with all the breath that I have.

Thank you.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Hon. Members, I had called the Mover, who is the Leader of the Majority Party, to reply. But I can tell that Hon. John Mbadi came here running.

**Hon. John Mbadi** (Suba South, ODM): Thank you, Hon. Temporary Deputy Speaker for that indulgence, although the Leader of the Majority Party is asking me to contribute to the next Motion. However, I really do not know why the Leader of the Majority Party could bring this Bill to the House which is repealing an Act of Parliament without a replacement. It is a very rare kind of legislative process that we face in this country, and I tried to listen to some of the speakers and I got concerned that I must come and put across my thoughts on this. There should be a very good reason for you to repeal a Bill without replacement. You cannot repeal a Bill and replace it with regulations, which are usually drawn from an Act of Parliament. Therefore, you cannot repeal an Act and replace it with regulations. Further, this issue of social assistance is very close to my heart. I remember in the 10<sup>th</sup> Parliament, I introduced a Motion that gave the elderly people Kshs2,000 a month. Before that, it was Kshs1,500 without any backing of a Motion. I brought a Motion to Parliament and that is what moved the stipend from Kshs1,500 to Kshs2,000. Now it had some legal backing, although it was not an Act of Parliament.

Later on, the Social Assistance Fund came up and we contributed, hailed and supported it. Therefore, if the Leader of the Majority Party has brought this repealing and replaced it with something else in the law, then we would have accepted. It would also look very bad for the Leader

of the Majority Party to lose a Bill. I think in his reply, he may wish to withdraw it so that we do not subject him to unfair treatment. He is a leader in this House and I am also a leader in the House and, as my colleague - and I do not want to appear like I am shooting down his Bill - I would like to request the Leader of Majority to consider withdrawing this Bill even at this stage.

Thank you, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Leader of the Majority Party.

**Hon. Amos Kimunya** (Kipipiri, JP): Thank you, Hon. Temporary Deputy Speaker. I really wish that the Members who have talked today would have been here yesterday, when I was moving the Bill. This is because they would have understood the rationale for repealing this Bill. The Departmental Committee on Labour and Social Welfare carried out public participation and when they presented their Report yesterday, they came up with the same conclusion that the Bill should be repealed.

First of all, I sense some confusion through the contributions this afternoon that, perhaps, we are doing away with the Social Assistance Fund or the Social Assistance Program. But that is not the case. Since the introduction of the first experiment of Social Assistance Fund in 2004 with 500 beneficiaries, the number has now moved to 1.2 million. The Fund has grown. Before the introduction of this law in 2013, operations have never stopped because of the lack or the non-operability of this law. I mentioned yesterday that one of the challenges we have been having with this Act is that it set up the Social Assistance Authority - which is basically converting the Department within a Ministry that has been doing this into an authority. With due respect to most Government departments, this is something that was done for self-perpetuation and not with the intention of necessarily bringing in any efficiency in the operations of the Government. As it was preparing to manage this Fund, the Public Finance Management Act (PFM) is also very clear in terms of how funds are set up and managed. They will be managed together based on the regulations pursuant to the PFM Act, and that is how it has been operating. We have a whole group of people who are scattered between the handicapped, children, vulnerable and different people under different ministries. We also have people with disabilities or living differently.

**Hon. David ole Sankok** (Nominated, JP): On a point of order, Hon. Temporary Deputy Speaker.

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

**Hon. David ole Sankok** (Nominated, JP): Hon. Temporary Deputy Speaker, the least I expect from the Leader of the Majority Party is respect to the persons with disabilities. He is calling us handicapped persons but Article 54 of our Constitution is very clear that we should not be referred to in a demeaning manner. We are persons with disabilities.

**Hon. Amos Kimunya** (Kipipiri, JP): Okay. My apologies!

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Leader of the Majority Party, you are well informed now.

**Hon. Amos Kimunya** (Kipipiri, JP): My apologies. I think I had already quickly changed and said people living with disabilities. That is an old term but no disrespect.

We have all those groups of people who are beneficiaries of this Social Assistance Fund and they are scattered between different ministries. The whole design was to get the Government to actually go into the villages and gather those people through the chiefs and different district commissioners' coordination and then they are registered and provided with assistance. By creating this one department into an authority, you are making it a super authority that will have presence

in all the villages to gather this information. That is because the rest of Government will not operate with authority.

Those are some of the operational challenges that were found that once you create this authority, you will need it to have offices in every village where there is a person living with disability, a vulnerable child and an older person so that they can collect that information and bring it centrally as an authority. If you are going to use the rest of Government to get all this information for the authority, then you do not need the authority. That is the whole reason for a compelling case for having the authority.

Since you do not have that compelling case for the authority, then you look at what else is within the Bill or the Act. As a result, it collapses. Everything has been done since 2004 and the proof of the funding is in Njoro. It has worked since 2013. The number has moved to 1.2 million people and it has been working without an authority. There was no compelling need for the authority in the first place. More importantly, this conflicts with the provisions of the PFM Act and how it works with the rest of Government. The Bill may not have been well thought out in the first instance and hence, there is no point of having a statute in the books that does not work. I want to request Members that we clean it up. Let us repeal all the unnecessary laws. This is not the only one. There will be several others coming in terms of repeal of some of the laws that are in statute books, but are not working. This is part of cleaning up of the laws through the way of the Government and the law reform people. That is basically the real need for the repeal of this. It is not in any way intended to reduce or diminish the value of the Social Assistance Program. It is meant to ensure that we do not use all the money for social assistance towards paying the overheads of a special authority, which is only being created to manage this money. It could actually end up gobbling the entire amount and the people who are the beneficiaries will receive nothing.

With those remarks, I beg to reply.

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

Hon. Members, in the circumstance that we are in, we shall not put the Question now. That shall be done in a subsequent time.

*(Putting of the Question deferred)*

Next Order!

## **BILL**

### *Second Reading*

#### THE TAX APPEALS TRIBUNAL (AMENDMENT) BILL

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): The Leader of the Majority Party.

**Hon. Amos Kimunya** (Kipipiri, JP): Thank you, Hon. Temporary Deputy Speaker. I beg to move:

THAT, the Tax Appeals Tribunal (Amendment) Bill, (National Assembly Bill No.19 of 2021), be now read a Second Time.

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You will recall that on or around 7<sup>th</sup> November 2020, His Excellency the President in a recorded address while marking the National Taxpayers Day which is around the end of October or the beginning of November, directed the National Treasury and the Attorney-General to review the legal and operational framework of the Tax Appeals Tribunal, the onward appeals to the superior courts, as well as the provisions for the Tax Procedure Court Act to ensure all the various tax disputes are resolved in an efficient manner.

The product of this request is basically this Bill which has the intention of creating an independent tribunal for speedy, efficient, just determination of tax disputes and accord some rulings that have been passed by the courts. This is because the Constitution does recognise all tribunals as judicial bodies that fall under the Judiciary. At the moment, we have about 976 tax disputes. They could have gone up or down depending on how many have been resolved, how many more have been filed and how many are pending before the tribunal. When you look at this, it is one of the busiest tribunals within the structure of our *quasi-judicial* system in Kenya.

There are about 34 other tribunals in operation ranging from the Co-operatives Tribunal, Rents Tribunal and Business Premises Tribunal, but the Tax Appeals Tribunal seems to be the most active and busiest in terms of workload. This operational challenge has also brought to the fore the fact that it is currently served by part-time members. There is a crammer whether the 976 court cases can be continued sustainably using part-time members of the tribunal who only come as and when they are needed. Obviously, the remuneration structure which was pushed to the tribunal by the Salaries and Remuneration Commission (SRA), does not give them enough incentives to be there when they are needed. This is because they are only paid for so many sittings in a month. Hence, they do not recognise the background work that they do in trial research and writing judgements.

One of the proposals in this review is to have them as full time - and I will come back to this later on. Another of their institutional challenges is the fact that the Tax Appeals Tribunal since its inception, has always been funded by the Kenya Revenue Authority (KRA), which also seconds its staff. Here is a tribunal which is supposed to be providing independent judgements and fairness to a taxpayer who appears before it. They try to do their best, but the fact is that they are funded by KRA. This means there is a perception to a person appearing before it that: 'He who pays the piper calls the tune'. So, even when a judgement should be in favour of KRA, for justice to be done, that perception has always worked against them. That is because of the feeling of how to trust a tribunal funded by KRA and also has its staff.

It does not get better because the appointment of members to the tribunal is also the mandate of the CS the National Treasury, who also is a beneficiary of the work of KRA. He is obviously desirous of optimising the revenue collections by KRA. Again, as I said, within the framework of our new Constitution, Article 169 basically says that tribunals should be within the jurisdiction of subordinate courts and supervised by the Judicial Service Commission (JSC). Our Tax Tribunal is put under the jurisdiction of the National Treasury, which is obviously against the Constitution. To remedy part of this, the Bill proposes to amend Section 4 of the Act, first of all, on the appointment of members of the tribunal, by conferring those powers to the JSC as opposed to the CS, the National Treasury.

JSC also proposes the modalities of appointment of those people. Currently and I know I did this during my time, we would have stakeholders propose names and the CS would appoint but now, I think this has been challenged in the courts. To ensure we do not have this kind of situation, we now have, within the Bill, the whole process of how the vacancies will be declared and how a panel will be selected. This is because you are not just appointing lawyers. I know JSC

is very good at appointing lawyers but tax matters are not just about the tax law. They are also about the mechanics of taxation. Typically, any tax appeals tribunal will have lawyers, accountants, economists and different types of people who will sit to arbitrate and hear cases.

So, it becomes necessary to have a panel to interview and get from among the different professionals members to constitute the tribunal. This makes a lot of sense because we avoid the feeling that the person appointing has only picked people that he or she like, love, play golf or socialise with. This will be through a transparent system and even competitive if you like. I do not want to belabour the point on how the selection will be done because it is contained in the Bill, complete with a time line. The bottom line is once this panel has done its job, JSC will by notice in the gazette appoint the chairperson and members of the tribunal as the case may be to complete that process.

Going to the composition of the tribunal, the Bill proposes to oblige the JSC and the selection panel, to ensure the nominees to the tribunal reflect the interest of all sections of society and comply with Articles 10 and 27 of the Constitution, which espouses our national values, principles of governance, equal opportunities for persons with disabilities, marginalised communities and issues about gender. They are also part of the requirements within the Bill.

The Bill also seeks to amend the current Section 7 of the Act, in relation to the secretary of the tribunal, by replacing the CS who is the appointing authority and transferring that responsibility to the Public Service Commission (PSC). I know there are some issues with this because this is a tribunal under the JSC. The thinking was that the Public Service Commission (PSC) should be the one appointing the Authority. I am aware that the Chair of the Departmental Committee on Finance and National Planning and her Committee have heard representations from various bodies and there could well be some amendments to that in terms of how the secretary is appointed and the qualifications of the secretary. However, more importantly, at least, it is moving from the Cabinet Secretary of the Treasury to another appointing authority.

It also increases the number of years in terms of the experience of the secretary to be appointed secretary to the Board. In the event that you have been a member of the Kenya Revenue Authority, you are barred from being appointed secretary to the tribunal until the lapse of at least 5 years, which is basically about the same thing we have for people who have been in politics. You cannot be appointed to the IEBC because, how do you go and arbitrate when history is so fresh with your first employer? It is just to protect that independence in terms of the operations.

The Bill is very elaborate in the duties of the secretary in terms of the day-to-day operations. It is also delinking the work of the secretary from the work of the chairperson. So, you do not have members and the secretary fighting between executive matters and policy matters. I did not mention that the thinking in terms of coming up with the Bill was like because there are so many cases, why do we not have all the tribunal members being full time? That is what the current proposal is in the Bill. However, as people have been discussing this Bill, I have also had representations, since the publication of this Bill, from people who are professionals serving other public duties in other tribunals and not just in tax. That is because once you do this, it sets precedence for all the others not just in the tax tribunal. There are people who are serving on a part-time basis because they can only afford to give part of their time. Because of their specific expertise in terms of the taxation practise, the land estate management or knowledge in the co-operative movement, people are called to serve in related tribunals.

However, especially in tax, we have so many people who are tax practitioners who may be required to serve in this, but they will not relinquish their responsibilities as partners in their accounting practices or as senior managers in their accounting practices to serve on a full time

basis in a tribunal. That is because they still need to do what they do best – to serve other clients. Hence, we will be proposing an amendment to this, with the concurrence of the House, so that we have a hybrid of both full time as well as part-time members to ensure that those who can be picked on a full-time basis are on bonded and those who can only be available on a part-time service because of other commitments yet their skills are required, can also be accommodated within the framework of the tribunals.

The other thing I would like to highlight is something I note from the Report of the Committee. When the Chief Registrar of the Judiciary appeared before the Committee, she did bring up an issue that we had not taken on board at the point of drafting the Bill, which is that since 2014 and 2015 – and this is at paragraph 51 of the Report of the Committee – Treasury has progressively been transferring the operational budgets of the local tribunals and it has done for 20 of them. However, the transfer has been done by just shifting the budgets to the Judiciary, but there is no tribunal's operational framework. There is no Tribunals Management Act. So, there is money, but the operational, institutional and legal framework does not exist. I think it is something that is being worked on. I understand work has been going on for the last three years or so, but we do not have it in this House.

So, even as we transfer the function of the Tax Appeals Tribunal to the Judiciary, it will suffer the same fate as some of them who have been transferred there. The Judiciary has then had to return them to the line Ministries because they do not have the capacity to oversee and manage them. They do not have rooms. Those tribunals will require places to sit. They will require staff and an operation framework has not been there. So, it is something we need to bear in mind. I will be urging this House that even as we pass this, we will need to create a transition mechanism so that we do not end up, through law, transferring this to the Judiciary and then we find that they do not have a legal framework to manage them and then they return them back to the Treasury.

Basically, the point we are making here is that we would be discussing with the Committee with a view to pass some amendments so that even as we do this, we can ensure that within our transitional mechanism, we are very clear that those functions will only be transferred when we have the enabling law in place. Otherwise, we will end up with a situation where we actually have a tribunal and the law saying that it should be at the Judiciary and then the JSC will tell us: "Fine! Thank you for bringing them here but we do not have the legal framework to house them." So, to synchronise the completion of the work that is pending in terms of how you manage tribunals and the transfer of those tribunal functions to the JSC, we will be asking for some transitional mechanism within the Bill by the time we complete it.

Hon. Temporary Deputy Speaker, this Bill has generally made several proposals. They are all geared towards expediting the resolution of tax appeals in the tribunal. I would really want to urge Members to see it from the lens of expediency and efficiency for optimum turnaround of the tax appeals tribunal. This would basically ensure that all those cases that are lying in the tribunals, which potentially means there is a lot of tax awaiting resolution of the matters, are being canvassed at the tribunal. One way or the other, it either releases that liability from the taxpayer or ensure that money moves to the taxpayer. The clarity in terms of businesses will be better so long as we have the working of those tribunals sorted out.

So, I would urge that we move with speed and work on this. At least, it will trigger the setting up of the regulations and most importantly, it will expedite the process of ensuring that the Judiciary and the people who are concerned can come up with an enabling framework so that the baby we are giving to them would actually have a home where it can grow.

Before I close, I would want to take this opportunity to thank the various members of the public who have dedicatedly, for a long time, been serving in all those tribunals. It is more of service to humanity. It is not because of the money. They have done a super job within tax, but also among the other 34 tribunals that are in place providing *quasi-judicial* services to the people. They are basically people who are *quasi-volunteers*.

With those remarks, I beg to move and ask the Chair of the Departmental Committee on Finance and National Planning, Hon. Gladys Wanga, to second.

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

**Hon. Hon. (Ms.) Gladys Wanga** (Homa Bay CWR, ODM): Thank you very much, Hon. Temporary Deputy Speaker. I rise to second the Tax Appeals Tribunal (Amendment) Bill (National Assembly Bill No. 19 of 2021). I want to thank very much, the Leader of the Majority Party, for introducing this Bill and also for his thorough exposition of the intent of this Bill, as he was moving. He has adequately covered most of the areas that are covered in this Bill. For the record, I will state that this Bill went through the First Reading on 8<sup>th</sup> June 2021 and was thereafter committed to the Departmental Committee on Finance and National Planning for review and report to the House, pursuant to Standing Order No. 127.

As the Leader of the Majority Party has explained very thoroughly, the current Tax Appeals Tribunal is hosted by the Kenya Revenue Authority (KRA). The Authority is responsible for facilitating the operations of the Tax Appeals Tribunal by providing budgetary allocation, office space and general infrastructural requirements. The secretariat of the tribunal is deployed from KRA. As the Act is not explicit on the manner or recruitment of the staff, this has created a perception of conflict of interest because when you are going to the tribunal, you are in conflict with KRA. If the tribunal itself is facilitated by KRA, then there is a view that you probably will not get adequate justice. Most importantly, the Tax Appeals Tribunal is among the 34 tribunals that were to be regularised in compliance with the High Court Judgement delivered on 11<sup>th</sup> March 2021, that was Petition No. 197 of 2018; Okiya Omtatah versus JSC, the Attorney-General, Parliament and *Katiba* Institute, challenging the composition and operations of local tribunals in Kenya. The Petitioner had sought the declaration that local tribunals established pursuant to Article 169 (1) (d) of the Constitution are not part of the Executive nor are they independent adjudicatory bodies, but they are subordinate courts. So, the High Court rendered its decision by declaring that the local tribunals created under Article 169 (1) (d), are actually subordinate courts. As such, appointment and removal of members of the tribunals by the Executive violates the principles of separation of powers and contravenes the rights to fair hearing under Article 50 of the Constitution, and infringes on the independence of the Judiciary.

Therefore, the introduction of this Bill by the Leader of the Majority Party is in line with the direction of the court, so that we regularise the Tax Appeals Tribunal. I am sure the Leader of the Majority Party is also considering this because I know that there is a Bill that is in process to regularise not just the Tax Appeals Tribunal, but all the other 33 remaining tribunals and to move them so that we can comply with that decision of the High Court.

Many times, this House has been accused of not honouring court decisions. You realise that this is one example. This decision was only rendered in March and now in September we are already midway through the legislative process of complying with the decision of the High Court. Therefore, those who accuse Parliament of not honouring or being in conflict or feeling like they are above the law, should see that Parliament actually strives at all times to operate within the dictates of the Constitution, and also honour the decisions of the court. This is in display here.

This Bill has 18 clauses. It seeks to amend the Tax Appeals Tribunal Act of 2013. Clause 2 seeks to repeal Section 4 of the Act and to substitute it with a new section to provide for composition or the members of the Tribunal to be appointed by the JSC. The Clause further seeks to amend the Act by introducing New Sections 4A and 4B, providing for qualification of members of the tribunal and appointment procedures. The third clause seeks to amend Section 5 of the Act to provide that service by the chairperson and members of tribunal shall be on full time basis. The Leader of the Majority Party explained that we have a huge backlog of cases within those tribunals and the fact that the tribunal has been operating part time has partly contributed to that backlog. Having members of the tribunal on full time basis will help clear the current backlog of 500 un-heard appeals. We currently have 500 appeals that are yet to be heard before that particular Tribunal. Therefore, we want to urge that after this law is passed, and the members of the tribunal will be operating on a full time basis, then they should work on expediting the hearing of those cases. What cases are taken before the tribunal? They are huge tax disputes. You probably have a tax dispute of a large sum of money and you have to wait for two or three years before it is heard. Yet, the value of that sum remains the same. This is the true demonstration of the fact that justice delayed is justice denied. On that front, the Committee supports the action of making the members of the tribunal full time. It will not be full time to rest, but full time to process cases.

The other day, I heard the interview by the Chief Justice, Lady Justice Martha Koome, and she said that one of her biggest priorities is reducing the backlog of cases within the Judiciary. Actually, that is a huge and important priority. I would like to encourage her, now that those tribunals are going to the JSC; it is for her to actually undertake to expedite those cases.

Clause 4 of the Bill contains a proposal to amend the Act by repealing the current Section 7 and replacing it with a New Section 7. The New Section 7 provides for staff of the tribunal, including the secretary to the tribunal, to be appointed by the Public Service Commission. The Committee has a different view on this particular clause. Later on, I will be speaking to the proposals that were given through public participation, and some of which the Committee agrees with as far as the appointment of the staff of the tribunal is concerned. That is because if you have the JSC, why would you have the Public Service Commission appointing staff of a judicial body? It is like asking parliamentary staff to be appointed by the Public Service Commission and yet, you have a standing Parliamentary Service Commission that is responsible for the staff of Parliament constitutionally.

Clause 5 seeks to amend the Act by introducing Section 7A. The new section provides for functions for the secretary to the tribunal that includes:

Day to day management of the affairs of the tribunal, keeping proper records of tax appeals filed, judgment delivered and tax appeals settled out of the tribunals and under the guidance of the chairperson, provide strategic leadership of the tribunal and the secretariat. Those are some of the fundamental clauses and issues that have been raised in the Bill.

As far as public participation is concerned - and I want to put this on record - it is very interesting that many times you meet people, they say that Parliament did not conduct public participation on this matter and yet, it is important to note that on every matter that comes before this House, the biggest priority and, perhaps, the biggest expense and time by committees of this House is on public participation.

Sometimes, people do not take interest in the Bill but, after it has been processed, they come back and say that we did not conduct public participation. I urge the public that Parliament will, of course, not be walking door to door to every person asking their views on a particular matter. So, if members of the public are interested in a particular issue, they must take interest and

follow in the dailies and on the internet and come and provide their views because law-making is a joint effort. Everybody's views count. However, public participation does not mean that we agree and it does not connote concurrence; but that one's views are listened to and recorded.

Following the advert on this Bill, the Committee discussed it with stakeholders on Thursday, 29<sup>th</sup> July at Hilton Gardens Hotel in Machakos and several stakeholders attended the meeting. Allow me to thank dedicated stakeholders whose value contribution led to the production of the Committee's Report. They include the Institute of Certified Public Accountants of Kenya who are a very consistent contributor to every legislation. I thank and congratulate them. We also had the Kenya Association of Manufacturers, Coulibaly Associates, the Law Society of Kenya, the National Treasury and Planning, Kenya Revenue Authority, the Judiciary and the Institute of Certified Public Secretaries.

In general, the stakeholders welcomed the proposed amendments in the Bill with a majority of them opposing the recruitment of staff of the tribunal by the Public Service Commission (PSC), and the setting of salaries of the chairperson and members of the tribunal by the Cabinet Secretary. A proposal was made by some stakeholders to stagger appointment of members of the tribunal so as to ensure the tribunal does not have any vacant positions at any given time.

If the tribunals have been found to be subsidiary courts, then appointment or recruitment of staff should be done by the Judicial Service Commission (JSC). Those are proposals that are going to be moved by the Committee during the Committee of the whole House stage.

The proposal to have the tribunal's funds appropriated by Parliament and to receive funding through grants and donations was also opposed by some stakeholders. Their comments on the Bill are contained in Part 3 of the Report and all stakeholders' comments were considered by the Committee while it was making determinations on the amendments.

On the issue of directly funding the tribunal, the tribunal has no mechanism for expending money. Therefore, money for the tribunal should be appropriated to the JSC. Therefore, the tribunal is funded just like all the other courts are funded. So that particular section of the Bill will be reviewed and amendments proposed by the Committee so that the tribunal has some legs to stand on as far as funding is concerned.

While considering the Bill, the Committee observed that while the Bill seeks to comply with the decision of the High Court, there were still some areas that may not be entirely complied with. I have already spoken to the issue of the staff of the tribunal being recruited by the Public Service Commission. The Committee was of the view that the role of the appointment of secretary and staff, of course, should be by the JSC and the local tribunals being under the JSC management of staff, service in them must be done by the JSC. However, the Bill as currently framed, it would be difficult to discipline staff appointed by the PSC.

The Committee further observed that determination on remuneration and payment of expenses by the chairperson and members of the tribunal is to be undertaken by the Cabinet Secretary in consultation with the Salaries and Remuneration Commission (JSC). The Committee was of the view that this would amount to interference of the Judiciary by the Executive, which is against the intention of the court ruling. To this end, the Committee will propose amendments to the Bill to remedy and address the anomalies. It is worth noting that the enactment of this Bill will increase efficiency of the tribunal because we will have full time members. The backlog will no longer be there. Membership is proposed of between 15 to 20 members, which means that the tribunal will be able to constitute many panels to dispense of appeals.

From the Departmental Committee on Finance and National Planning perspective, we also see this as being beneficial to revenue collection because with 500 appeals and as much as the

people who have lodged the appeals have money held, there is also a lot of revenue that is held up by that kind of backlog. Therefore, the efficiency that will be created by the new structure should be able to unlock the much needed revenue for provision of services by the Government.

The Leader of the Majority Party spoke to the issue of transition. I agree with him that we should have a transition mechanism and timelines so that we do not leave a *lacuna* that will lead to disruption of services.

Hon. Temporary Deputy Speaker, with those many remarks, I thank Members of the Departmental Committee on Finance and National Planning for their dedication to this process. I also thank the Leader of the Majority Party and Members of the House for their support. I also thank the Clerk of the National Assembly and the Speaker.

With those many remarks, I beg to second.

*(Question proposed)*

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): We are now in order, Hon. Members. We shall give a chance to Hon. Obara Akinyi.

**Hon. (Ms.) Eve Obara** (Kabondo Kasipul, ODM): Thank you very much Hon. Temporary Deputy Speaker for giving me this opportunity to speak. At the outset, I support the amendment Bill for the following reasons:

One, the amendment Bill recognises the JSC as the appointing authority in line with the High Court judgment which held that tribunals fall under the Judiciary as articulated by the Chairperson.

Two, the amendment Bill also gives the Judiciary powers to directly appoint and gazette members of the tribunal, which solves the problems that have been witnessed in the past where the Executive would decline to gazette appointments that are made by the Judiciary.

Three, the amendment Bill introduces a tribunal secretary who will be in charge of operations and policy and, therefore, I believe it will improve efficiency.

Finally, I have looked at Clause 16 of the Bill and I think that it is hanging and needs to be looked into again by the Committee.

Thank you, once again. I support.

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

**Hon. David ole Sankok** (Nominated, JP): Thank you very much, Hon. Temporary Deputy Speaker, for giving me this opportunity to support the Bill 100 per cent. I thank the Leader of the Majority Party but, more so, the Departmental Committee on Finance and National Planning led by Hon. Gladys Wanga. Is she normally called Nyasuguta? What is her other name? It is Nyasuna. She is the first ever person not from the ruling side to be the Chairperson of the Departmental Committee on Finance and National Planning. Now that we are discussing the Tax Appeals Tribunal (Amendment) Bill, we now know that tax laws are domiciled in the National Assembly.

I support the Bill because tax disputes are not only scary to investors, but are also time-consuming. Sometimes, they are not resolved in a manner that allows Kenyans to be confident in paying taxes. We have 900 appeals, as mentioned by the Leader of the Majority Party, Hon. Amos Kimunya, who was, at one time, the Minister for Finance. I know he knew what was going on in those appeals.

When we have appeals against the Kenya Revenue Authority (KRA), those are disputes between the citizens or taxpayers and the KRA. It is the KRA that collect taxes on behalf of the National Treasury. When it is the KRA that appoints and pays the salaries of the members of the

Tribunal who sit within the buildings of the KRA and also the Cabinet Secretary (CS) for the National Treasury is the appointing authority, the citizens may not be confident in finding justice. It will be very difficult for a goat to find justice before a panel of hyenas.

The National Treasury and the KRA are interested parties in such disputes. When we amend the Tax Appeals Tribunal Bill so that the members of the tribunal are appointed by the Judicial Service Commission (JSC), I will support it 100 per cent. This is so that we can delink the interested parties to ensure that there will be no conflict of interest in resolving such disputes.

When we have full time membership, those appeals will not stagger for a long time. Business people know that time is money. Some of them are not Kenyans. They are just taxpayers who are foreign investors. When you consume their time and they go back to their countries only to appear before the Tribunal and one year passes before their appeals are resolved, you will scare them away. Scaring away investors means that our tax base keeps on shrinking.

Kenyans are also not confident in finding justice in a tribunal that is domiciled within the National Treasury or the KRA. When that happens, most of them hide their businesses and incomes and end up not paying taxes. If they are confident that they will find justice in the appeal system in case of disputes or miscalculations because to err is human and the KRA staff are also human beings who are open to a few errors, they will be able to declare all their sources of income and businesses. We will then increase the number of people paying taxes and the tax base will widen.

When the National Treasury and the KRA are the appointing authorities and they pay the members of the Tribunal, we run the risk of politically “weaponising” the collection of taxes and such appeals. In the recent past, we have seen instances where, whenever you differ with the powers that be, you will be visited the next day either by the Ethics and Anti-Corruption Commission (EACC), the KRA or the Directorate of Criminal Investigations (DCI). Our refuge has been the Judiciary. Bringing them into the appointment of this Tax Appeals Tribunal will be a refuge to all those who have been fought politically using Government agencies like the KRA.

People, especially politicians, have been hiding their earnings. Some of them have been hiding their businesses. They cannot declare their businesses in this country. Sometimes, they even invest outside the country because they fear that they will never get justice within the KRA and the Tax Appeals Tribunal. You have heard of offshore banking where Kenyans run away with their monies outside the country. Some of the laws like this one where the Tax Appeals Tribunal was domiciled within the KRA is one of the things that was scaring away those people.

There was a time when the KRA used to look at our electricity bills. They would check the tokens to ascertain that you are paying electricity bills. All of a sudden, they will start saying that you have not declared your rental income.

In the rural areas where we come from, our mothers or fathers may not be educated, but may have some chicken or small pig farms which they connect to electricity. The moment you have more than 10 electricity connections, the KRA will be on your neck. If there was a tax appeals tribunal that was independent and domiciled in the Judiciary, you will not have any problem because you will go to the tribunal and confidently explain that because your brother is not educated, he used your National Identity (ID) number or since he still does not have a KRA pin number, he used your pin number. That is why you have so many electricity connections. It is not that you have rental houses.

There was a very big assumption on that and many Kenyans may not be declaring rental incomes. Some of them have registered in the name of their friends or brothers because they know that they will not get justice because of such laws. Amending this law is very important for this House and that is why I support it.

There is also a provision in the Bill which states that, in the appointment of the members of the Tribunal who will be 15 and above, we should not only appoint lawyers because the tribunal is in the Judiciary. We should appoint technical people because tax laws go beyond legal matters. Some are financial matters and we will have people like Hon. Mbadi, who is a very well-known accountant and finance person, sitting in the tribunal. That is very important.

I urge my colleagues in this House that for the sake of all of us and to broaden the tax base in this country, let us fully support this Bill and pass it as soon as possible. Once we have passed it, we will request the Leader of the Majority Party to take it to the President for assent so that it is operationalised as soon as possible. Even if we have that period, we would like this Bill to start working as soon as possible.

I support the Bill 100 per cent.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Let us have Hon. Martin Owino.

**Hon. Martin Owino** (Ndhiwa, ODM): Thank you, Hon. Temporary Deputy Speaker. I rise to support this Bill which is timely. Also, I want to thank the Committee for the good work they have done.

*(Hon. David ole Sankok gestured to Hon. Martin Owino)*

I want to start by saying that if Hon. Sankok owes me money, and I am the one who dictates or establishes tribunals, it will not work that way. It is all centred on me. So, the interest may be skewed. That has been happening with KRA. Many people are frustrated. Out of that frustration, a lot has led to harassment and psychosocial issues, and even economic issues. Even businesses have closed because some cases protract for years. It has also led to many bankruptcy cases, lots of job losses and tax evasion. If you cannot breathe, you will always find a way to survive. So, I like the objective of this Bill. It is trying to expedite the conflicts and resolutions. When that is done, what it will bring to revenue collection is that we will have more revenue being collected. If it is done out of malice or self-interest which we know is anchored in the KRA and now that we will be independent... We are talking of a Bill that will also increase revenue to our coffers.

The other point which I want to make is that we establish these bodies but, if we are not careful on how we recruit staff to work in them, it may not work. That is why I agree with the amendment which is being made that all the staffing and remuneration of the staff be aligned with the Judicial Service Commission (JSC). Tribunals, in another word, have *quasi-judicial* functions which should only fit in the JSC. If another person appoints the team or recruits the staff, how will they then supervise them and make them effective? So, I look forward to seeing that amendment. But I think this is a very timely Bill. It will help manage a lot of conflicts which are there; some of which take too long for no good reason.

So, with those few words, I support and urge the House to pass this Bill as quickly as possible so that we can have some resolution of those conflicts. Thank you, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Before I get to Hon. Adipo, let us have Hon. Rindikiri.

**Hon. Mugambi Rindikiri** (Buuri, JP): Thank you, Hon. Temporary Deputy Speaker. I rise to support this Bill.

It is true we need an independent body to be arbitrating between the complainants and the KRA. It is common sense that you cannot be a prosecutor and at the same time, the judge. That has been the norm within KRA. If we get experts from all the fields, all the industries and from all

the professions, we should be able to have a very well-balanced tribunal that will be ready and easily accessible by the citizens of this country. I agree the KRA has been operating as a monopoly in terms of tax issues. Whenever there is a problem, you will either be thrown into the police cells or taken to court for things which are not even related to failure to pay taxes.

For example, I used to pay taxes through my employer when I was employed. There was a time when the KRA's system went off and I was forced to go back and get documents which were not easily accessible and I needed a tax compliance certificate. I did not know where to go to put my case. I was forced to pay some amount of money, although I knew I had paid. If there was an independent body that I could go to and present my problem, I am sure my matter would have been resolved. This brings to mind that there are so many other Kenyans who would be having a similar problem. We need independent bodies to be checking some of these *quasi*-government and Government activities.

It is true that we have an animal in KRA and we need an alternative dispute resolution mechanism, which I believe will be provided by this tribunal. Kenyans wake up in the morning and find that they are being charged taxes. Yesterday, we spent the whole day talking about the increase in fuel prices. There is a whole list of taxes and levies which accompany VAT and we could not get anywhere to go and do an appeal. If we had an independent tax tribunal, we would have taken the matter to that tribunal. But we do not have. We can only revert back to KRA. This Bill is coming at the right time. I pray that once the amendment is approved, the operations of the tribunal need to be regionalised. We should not have a centralised tribunal that operates only in Nairobi. We need a tribunal that will operate in every part of the country, with the possibility of having an office in every county. So, as the Bill is prepared, we need to establish centres countrywide where people will go and launch complaints. If we let it be at the Head Office, Nairobi, we still have a problem because majority of Kenyans will not afford to travel to Nairobi. Therefore, we must make it accessible at the county level or, at least, the regional level.

The Bill has come at the right time. As I support it, I urge the drafters to consider providing for the tribunal to have branches throughout the country. I am aware that, that is an operational issue but at this stage, we also need to incorporate that aspect in the final draft of the Bill. I support the formation of the tax tribunal. It is going to sort out a major problem in arbitration. It is going to ease congestion at the courts because when people are aggrieved, they rush to court. The tribunal will serve as an alternative dispute resolution entity. I believe the tribunal will be more accessible and faster in sorting out issues as compared to the law courts.

With those remarks, I support the Bill.

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

**Hon. Adipo Okuome** (Karachuonyo, ODM): Thank you, Hon. Temporary Deputy Speaker for giving me this opportunity. I am sorry; there is something wrong with my card. You said you could not see my registration and yet, it is showing here.

I rise to support the Bill. I am a member of the Departmental Committee on Finance and National Planning and I am grateful that our Chairperson has ably elaborated what we agreed on. Complaints arose. The Kenya Revenue Authority (KRA) was taken to court by Okiya Omtata and the rest. There have been delays in solving tax problems with the payers and therefore, whatever we are doing is in response to those complaints as well as responding to the needs that are there. The Judicial Service Commission (JSC) is going to be an independent body that will arbitrate between the taxpayer and the tax authority itself, KRA, and people will have confidence in knowing that whatever they are going to pay is justified and complies with the law. This Bill is very important because it will take care of both sides. The Government needs revenue and we

cannot be unfair to them, and the taxpayer needs money and we need to ask him to pay what is justified. The employees are going to be independent too because they are not going to be KRA employees. They are going to be employees who are for justice to both sides. This Bill is very important. I support it and believe Kenyans will be happy to see that we are trying to do something that will help them.

I know people outside there have complained about taxation, quite considerably, and for the first time, I think this Bill is one that they can support and say they are happy with Parliament and the action it has taken.

With those few remarks, I want to emphasize that I support the Bill and urge the House to support it so that we can move forward for our good.

*(Hon. Amos Kimunya consulted with Hon. (Ms.) Gladys Wanga)*

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Leader of the Majority Party, please, end the consultation with Hon. Wanga so that you can reply.

**Hon. Amos Kimunya** (Kipipiri, JP): Thank you, Hon. Temporary Deputy Speaker. I am very delighted to notice this afternoon the quality of debate and the support by the Members on a matter that touches on us. My only disappointment is obviously that the whole essence of Parliament was about, “no taxation without representation” on matters finance.

However, it does appear that the whole issue of taxation is a very difficult subject and most of the people would rather keep away than come and not be sure of what to say. However, I want to thank Hon. Gladys Wanga and her Committee because not all of them are finance people. They really got the grasp of the issues and the principles of fair taxation and you can see from the quality of the Report and the presentations. I really want to thank the Members who have endured this afternoon as we went through this. I am glad that this Bill will make it to the next step in the course of this mini-session so that we can, at least, open the door for other tribunals to now have their laws revised to accord with the ruling of the courts and Article 169 of the Constitution by placing them at the Judiciary. This is really a test case. If we get this one right, all the others should follow quite easily. I am happy that the Hon. Members have supported this Bill so well this afternoon. Hon. Temporary Deputy Speaker, I want to thank you for your patience on this matter, and our technical team for being there for us today.

With those remarks, I beg to reply.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Hon. Members, we will still pend putting the Question on that particular item to a subsequent time when we have the numbers.

*(Putting of the Question deferred)*

Next Order!

*Second Readings*

THE LANDLORD AND TENANT BILL

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): The Leader of the Majority Party.

**Hon. Amos Kimunya** (Kipipiri, JP): Hon. Temporary Deputy Speaker, again, this is a very weighty Bill and affects everyone who is either a tenant or landlord. There has been some

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consultations and pressure from some people that we move it to next week, so that they can have enough time to look through it. Also, the Chairperson of the Departmental Committee on Transport, Public Works and Housing has said I give him an opportunity to look at this Bill in the course of next week. I ask that we step it down for the convenience of the House. We should not use 15 minutes moving it. Similarly, this applies to the business appearing after it, which is the Health Laws. These are very crucial Bills and I would like to prosecute them when we have a bigger number in the House.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Okay, Leader of the Majority Party. The Bill is stepped down. I do not want you to put it together with the next one because we must call it and you can speak to it individually.

*(Bill deferred)*

Next Order!

#### THE HEALTH LAWS (AMENDMENT) BILL

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): The Leader of the Majority Party.

**Hon. Amos Kimunya** (Kipipiri, JP): Hon. Temporary Deputy Speaker, indeed, the Health Laws (Amendment) Bill is one of the Bills which the Committee is yet to table the report. There have been lots of consultations between the Ministry and the Committee. They have also appealed that we give them until this weekend to table the report and hopefully on Tuesday, we can start the debate. This is so that Members have the benefit of the views of the Committee and what came out from public participation as they contribute to the Bill. Again, this is from the point of view of the report not being there, and not for the convenience of the House. I beg your indulgence that we also step it down until we have the report on the Floor of the House.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Okay, the Leader of the Majority Party. It is so ordered that we step it down, until it is next rescheduled by the House Business Committee (HBC).

*(Bill deferred)*

#### ADJOURNMENT

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Hon. Members, the time being 6.48 p.m., this House stands adjourned until Thursday, 23<sup>rd</sup> September 2021, at 2.30 p.m.

The House rose at 6.48 p.m.