

**PARLIAMENT OF KENYA****THE NATIONAL ASSEMBLY****THE HANSARD****Tuesday, 23<sup>rd</sup> November 2021**

The House met at 2.30 p.m.

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

**Hon. Speaker:** Hon. Members, there is no quorum. Let the Quorum Bell be rung for more Members who may still be having their lunch.

*The Quorum Bell was rung**(Several Hon. Members walked into the Chamber)*

**Hon. Speaker:** Hon. Members, please, make your way in so that we can dispense with some preliminary business. I will deal with the Communication from the Chair followed by the Messages.

**COMMUNICATION FROM THE CHAIR****PETITION FOR REMOVAL FROM OFFICE OF THE ATTORNEY-GENERAL**

Hon. Members, I wish to convey to the House that my Office is in receipt of two letters dated 13<sup>th</sup> September 2021 and 22<sup>nd</sup> October 2021 from Mr. Khelef Khalifa seeking the removal of the Attorney-General, Hon. Justice Paul Kihara Kariuki. In a letter dated 13<sup>th</sup> September 2021 titled “*Public Petition for the Removal of the Hon. Paul Kihara, Attorney-General*”, Mr. Khalifa petitions this House to initiate the process of removing from office the current Attorney-General of the Republic of Kenya, Hon. (Rtd.) Justice Paul Kihara Kariuki, on account of his alleged conduct relating to the re-run of the 2017 Presidential Election.

In summary, his grounds for removal include claims of empanelling a three-judge bench of the Court of Appeal that overturned a High Court decision and allowed the 2017 Presidential Election re-run, the manner of selection of the bench that heard the matter and alleged disregard of the rule of law and administration of justice. You will recall that the 11<sup>th</sup> Parliament had an occasion to consider a petition for the removal from office of the then Attorney-General. At the time, the Law Society of Kenya had petitioned this House to consider initiating the process of removal of the then Attorney-General, Hon. (Prof.) Githu Muigai, from office. The Report of the Departmental Committee on Justice and Legal Affairs to which the Petition was committed is instructive.

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With regard to its findings, the Committee Report tabled before the House on Tuesday, 19<sup>th</sup> August 2014 states:

- (i) The Office of the Attorney-General is not listed as either a constitutional commission or an independent office under Articles 248(2) and (3) of the Constitution;
- (ii) The procedure for removal contemplated under Article 251 of the Constitution cannot be used for removal of the Attorney-General;
- (iii) While the Attorney-General is a member of the Cabinet under Article 152(2) of the Constitution, he is not a Cabinet Secretary and, therefore, the process of removal of a Cabinet Secretary cannot apply in this case;
- (iv) Whereas Article 132 of the Constitution gives the President power to dismiss the Attorney-General in accordance with Article 156, the same Article 156 does not have provisions on removal of the Attorney-General;
- (v) The Office of the Attorney-General Act has made provision for the grounds for removal, but does not set out the procedure for removal.
- (vi) The power and discretion to remove the Attorney General is vested in the President vide Article 132(2)(b) of the Constitution.

Consequently, the Committee proceeded to recommend that the Office of the Attorney-General Act, 2012 should be amended to provide for express provisions on the procedure for removal of the Attorney-General from office by way of an all-inclusive process. Thereafter, a Bill was published in the name of the Committee to actualise those findings in law. However, by the end of the 11<sup>th</sup> Parliament, the Bill had not been concluded and, therefore, lapsed.

In light of the previous inconclusive process undertaken on a petition to remove the Attorney-General, the Clerk of the National Assembly wrote to Mr. Khalifa on 6<sup>th</sup> October 2021 advising him of the inability of the House to process his request. The letter highlighted the lack of express provisions in the Constitution, ordinary legislation and the National Assembly Standing Orders on the manner in which the process of removing the Attorney-General from office may be initiated and how a binding recommendation for such removal may be made by any person or body.

In his letter dated 22<sup>nd</sup> October 2021, Mr. Khalifa did not agree that the body mandated by the Constitution to enact, amend and repeal laws can argue that it is unable to act on his request due to an existing gap in the law. You will recall that, as per the provisions of Article 109(4) of the Constitution, only a Member or a Committee of this House has the power to introduce legislation for consideration and debate. The Departmental Committee on Justice and Legal Affairs may wish to consider reviewing the Act to provide for the procedure for removal of the Attorney General. In the meantime, the Clerk of the National Assembly is hereby directed to inform the Petitioner on the progress of this matter and further inform him that, to the extent that there is a *lacuna* in law on the removal of the Attorney-General, the matter is not within the authority of the National Assembly to deal with.

Thank you, Hon. Members.

Members, please, come in.

*(Several Hon. Members walked into the Chamber)*

*(Hon. Owen Baya walked along the Gangway)*

Member for Kilifi North, you have not even stayed for one minute!

### MESSAGE

**Hon. Speaker:** Member for Mwea, please take your seat. I know you like sitting where the Member for Meru has sat today, just behind Hon. Sankok.

#### STATE OF THE NATION ADDRESS TO PARLIAMENT BY THE PRESIDENT

**Hon. Speaker:** Hon. Members, Standing Order No. 42(1) relating to Messages from the President provides that “the Speaker shall read to the House any message from the President delivered to the Speaker for communication to the House.” In this regard, therefore, I wish to inform the House that I have received a Message from His Excellency the President dated 19<sup>th</sup> November 2021 conveying that he intends to deliver the 2021 State of the Nation Address to Parliament pursuant to Article 132(1) of the Constitution.

Hon. Members, the said Article 132(1), paragraphs (b) and (c) of the Constitution states, and I quote:

“(1) The President shall—

(b) address a special sitting of Parliament once every year and may address Parliament at any other time; and,

(c) once every year—

- (i) report, in an address to the nation, on all the measures taken and the progress achieved in the realisation of the national values referred to in Article 10;
- (ii) publish in the Gazette the details of the measures and progress under sub-paragraph (i); and,
- (iii) submit a report for debate to the National Assembly on the progress made in fulfilling the international obligations of the Republic.”

Hon. Members, pursuant to the above provisions of the Constitution and Standing Order No. 22(2) of the National Assembly Standing Orders, I therefore, wish to notify all Members that a Special Joint Sitting of Parliament will take place on Tuesday, 30<sup>th</sup> November 2021, at 2:30 p.m. in the National Assembly Main Chamber, Parliament Buildings. I am aware that the offices of the Clerks of the Houses of Parliament have since commenced preparations for the day, including official invitations which will be sent out in the usual manner. I also direct the Clerk to ensure that the notification of the Joint Sitting is published in the Kenya Gazette for the information of Members and the general public.

I thank you, Hon. Members.

*(Hon. Pavel Oimeke walked into the Chamber)*

**Hon. Speaker:** Member for Bonchari, come in. Please take your seat.

**COMMUNICATION FROM THE CHAIR****IMPORT OF THE COURT OF APPEAL JUDGMENT ON THE LEGISLATIVE  
FUNCTION OF THE NATIONAL ASSEMBLY**

**Hon. Speaker:** Hon. Members, this Communication from the Chair, being No. 46 of 2021, relates to the import of the judgment of the Court of Appeal in Civil Appeal No.E084 of 2021 on the legislative functions of the National Assembly.

Hon. Members, you will recall that last year on 29<sup>th</sup> October 2020, the High Court delivered a judgment that, among other things, purported to nullify 23 Acts of Parliament that had been passed by this House. You will also recall that following the High Court Judgment, I did issue a Communication to this House to the effect that the National Assembly, being dissatisfied with that decision, would appeal the High Court Judgment.

Hon. Members, to this end, I wish to inform you that last week on Friday, 19<sup>th</sup> November 2021, the Court of Appeal sitting in Nairobi in Civil of Appeal No.E084 of 2021 delivered its judgment on our appeal and set aside the judgment of the High Court.

*(Applause)*

In particular, the Court of Appeal made several orders. Allow me to highlight part of the Orders of the Appellate Court, point by point, because they have a huge bearing on the legislative processes of this House. First, in its decision, the Court of Appeal declared 21 Acts of Parliament out of the 23 which the High had declared as being unconstitutional for want of Senate participation to be constitutional and valid.

*(Applause)*

It will be recalled that this House passed the said laws without Senate's participation on the strength that they did not concern county governments as they were dealing with the functions of the national Government under the Part I of the Fourth Schedule to the Constitution and/or were Money Bills that did not contain provisions affecting the county governments. The Court of Appeal in its judgment agreed with this interpretation of the National Assembly and consequently upheld the constitutionality and validity of the 21 Acts of Parliament. In brief, the laws that were declared to be constitutional are as follows:

- (1) The Public Trustee (Amendment) Act, No. 6 of 2018;
- (2) The Building Surveyors Act, No. 19 of 2018;
- (3) The Computer Misuse and Cybercrime Act, No. 5 of 2018;
- (4) The Statute Law (Miscellaneous Amendment Act), No. 4 of 2018;
- (5) The Kenya Coast Guard Service Act. No. 11 of 2018;
- (6) The Tax Laws (Amendments) Act, No. 9 of 2018;
- (7) The Statute Law (Miscellaneous Amendments) Act, No. 18 of 2018;
- (8) The Supplementary Appropriation Act, No. 2 of 2018;
- (9) The Finance Act, No. 10 of 2018;
- (10) The Appropriations Act, No. 7 of 2018;
- (11) The Capital Markets (Amendments) Act, No. 15 of 2018;
- (12) The National Youth Service Act, No. 17 of 2018;

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- (13) The Supplementary Appropriations Act, No. 13 of 2018;
- (14) The Health Laws (Amendment) Act, No. of 5 of 2019, save for the amendments made to Sections 3 and 4 of the Kenya Medical Supplies Authority (KEMSA) Act. The Act made various amendments to health-related statutes on matters relating to health policy including the Pharmacy and Poisons Act, Cap. 244; the Medical Practitioners and Dentists Act, Cap. 253; the Nurses Act, Cap. 257; the Kenya Medical Training College Act, Cap. 261; and the Nutritionists and Dieticians Act, No. 18 of 2007, among others.
- (15) The Sports (Amendment) Act, No. 7 of 2019;
- (16) The National Government Constituencies Development Fund Act of 2015;
- (17) The National Cohesion and Integration (Amendment) Act of 2019;
- (18) The Statute Law (Miscellaneous Amendment) Act of 2019;
- (19) The Supplementary Appropriation Act, No. 9 of 2019;
- (20) The Appropriations Act of 2019;
- (21) The Insurance (Amendment) Act, 2019.

Hon. Members, as stated earlier, the Court of Appeal declared 21 out of the 23 Acts constitutional and only two Acts, these being the Equalisation Fund Appropriation Act, No. 3 of 2018 and the Sacco Societies (Amendment) Act, No. 16 of 2018 were declared unconstitutional. In terms of the objects of the two Acts, the Equalisation Fund Appropriation Act, No. 3 of 2018 appropriated funds for expenditure by the national Government for the direct use of monies from the Equalisation Fund. It is, therefore, a “spent” law. The Sacco Societies (Amendment) Act, No. 16 of 2018 on the other hand sought to provide that the Sacco Societies Regulatory Authority may establish and operate an electronic filing system for purposes of electronic filing of the statutory returns and documents or other information required to be furnished to the Authority.

Hon. Members, the Court of Appeal further declared the amendments made to sections 3 and 4 of the Kenya Medical Supplies Authority Act contained in the Health Laws (Amendment) Act to have been unconstitutional. Only those two sections!

To this end, Hon. Members, in light of the Court of Appeal Judgment, a pertinent question that arises is how the House should proceed to re-enact the laws that have been nullified. With respect to the Equalisation Fund Appropriation Act No.3 of 2018, the objectives of the long title of the law reads as follows:

*“An ACT of Parliament to authorize the issue of a sum of money out of the Equalisation Fund and its application towards the service of the year ending 30<sup>th</sup> June, 2018, and to appropriate that sum for certain public basic services and for connected purposes”*

Hon. Members, you will agree with me that this particular Act, being an annual appropriations law, cannot be resuscitated as it is a “spent” law. The decision of the Court of Appeal will have to be adhered to by future Houses when enacting the annual Equalisation Fund Laws. It is, however, worth observing that under Article 204 of the Constitution, the Equalisation Fund was meant to be a 20-year measure to assist the marginalised areas caters for basic services such as water, roads, health services and electricity connectivity. The sad fact is that, whereas more than half of the statutory period has now lapsed, the Fund has been largely moribund since every step to actualise it has been met with endless litigation.

Hon. Members, with respect to the Sacco Societies (Amendment) Act, 2018 No.16 of 2018, I direct that the Clerk moves with speed to facilitate the re-introduction of the Bill in the House in

the exact text as it was originally passed by this House in 2018 for reconsideration in an expeditious manner and forwarding it to the Senate.

With respect to the amendments made to Sections 3 and 4 of the Kenya Medical Supplies Authority Act touching on the functions of the Authority as contained in the Health Laws (Amendment) Act, No.5 of 2019, I note that there is presently a Health Laws (Amendment) Bill, 2021 at Second Reading. Consequently, the amendments may be proposed to the Health Laws (Amendment) Bill, 2021 for consideration by the House at the Committee Stage. Subsequently, upon passage, the Bill shall be forwarded to the Senate for consideration also. That way, this House will have discharged its legislative role on the two impugned laws in compliance with the findings and decision of the Appellate Court.

Hon. Members, moving on to the other Orders of the Court of Appeal, the Court also made a declaration that the concurrence process envisaged in Article 110(3), only applies to all Bills concerning counties within the meaning of Articles 109 to 114 of the Constitution. Indeed, as you are aware, Article 110(3) of the Constitution provides that before either House considers a Bill, the Speakers of the National Assembly and Senate shall jointly resolve a question as to whether the Bill is one concerning counties and, if it is, whether it is a special or ordinary Bill. This has been a major point of departure between the two Houses and, as you are, indeed, aware, the High Court had made a declaration that all Bills must be subjected to the concurrence process, notwithstanding the distinct legislative mandates of both Houses and the asymmetrical nature of our bicameral Parliament in which each House has distinct mandate with the Senate having limited legislative mandate as, indeed, observed by the Court of Appeal in paragraphs 72 and 73 of its judgment. In their judgment, the distinguished judges held as follows, in paragraph 98:

“Therefore, it was an error by the High Court to find that it is a condition precedent that any Bill published by either House be subjected to the concurrence process”.

Hon. Members, the finding of the Court of Appeal on this matter is that only Bills concerning county governments as espoused in Article 110(1) of the Constitution would be subject to the concurrence process. The Court rightly held that Article 110(3) can only be interpreted in the context of the law making roles and procedures of the Senate and National Assembly as specified in Articles 109 to 116 of the Constitution.

Would the Members who are at the door come in?

*(Hon. Members walked into the Chamber)*

In this regard, the Court of Appeal has now settled that Article 110(3) of the Constitution shall not be applicable on any or every Bill that originates from the National Assembly but only on Bills that concern county governments within the meaning of Article 110(1) of the Constitution. We applaud the Court for upholding the provisions of Article 110(3) of the Constitution and the distinct roles of the Houses of Parliament.

Hon. Members, with respect to the constant insistence by part of the Senate that the Speakers of the Houses of Parliament should form a mediation Committee, akin to the one under Article 113 of the Constitution, to offer advisory on the question of Bills concerning county governments, the distinguished judges held as follows, in paragraph 102 of the Judgment:

“We, however, need to point out and clarify that our interpretation of Article 110(3) leads to a conclusion that the mediation process under Article 113 of the Constitution is not applicable to the concurrence process in Article 110(3). The provisions of Article 113 are clear that they only apply when there is deadlock in the consideration and passing of

ordinary Bills concerning counties by the National Assembly and Senate. The mediation process therefore applies during the enactment process of a Bill, and not before consideration of a Bill, which is when the concurrence process in Article 110(3) is relevant. In our opinion, the concurrence process under Article 110(3) is one that is solely and exclusively within the mandate, powers and control of the Speakers of the two Houses of Parliament, who must resolve any question arising as to whether a Bill is one concerning counties or not, before its consideration”.

Hon. Members, further, the Court of Appeal also made Orders touching on the legislative procedures and rules of this House. Firstly, the Court ordered that any Bill or delegated legislation that provides for, or touches on the mandate or powers of the Parliamentary Service Commission, must be considered by the Senate as it directly affects the Senate’s ability to undertake its constitutional mandate, including its ability to consider Bills that affect counties. In this regard, moving forward, in terms of the legislative procedures, any Bill that provides for, or touches on the mandate or powers of Parliamentary Service Commission, shall be forwarded to the Senate after passage for consideration.

Hon. Members, secondly, the Court also made Orders in regard to our legislative procedures relating to the rules of this House and I quote:

“...where the Speakers of the House concur that a Bill is one that concerns counties, pursuant to Article 109(4), the Bill must be passed in accordance with Articles 110 to 113, 122 and 123 of the Constitution and the Standing Orders of both Houses and is not subject to Article 114 of the Constitution.”

Hon. Members, Article 114 of the Constitution is the provision on money Bills, and the finding of the Court is that where the Speakers of the Houses agree that a Bill is one that concerns county governments, then such a Bill shall not be subject to Article 114 of the Constitution. The Court of Appeal, however, observed the following in Paragraph 127 of the Judgment with respect to money Bills, and I wish to quote the distinguished Judges:

“...It is instructive that, unlike Article 109 (4) of the Constitution where application of Article 110(3) of the Constitution is expressly required, in the case of enactment of money Bills, the Constitution is silent on the involvement of the Senate. As such, it is safe to conclude that all money Bills pass through the Speaker of the National Assembly whether commenced by the Senate or in the National Assembly, for him or her to ascertain whether or not it is a money Bill, and all money Bills subjected to the Budgetary Committee, dependent upon their outcome, are passed by the National Assembly without reference to the Senate”

Hon. Members, I also note that the High Court in its Judgment had also declared the National Assembly Standing Order No.143 which requires Bills originating from the Senate to be subjected to the money Bill determination as offending the Constitution. The Court of Appeal did not, however, make any determination on Standing Order No.143 as it was not part of the items that were set for determination at the Appeal. Indeed, the Court of Appeal also observed in Paragraph 260 of its Judgment as follows, and allow me to quote:

“260. We note that there was no appeal in respect of Standing Order No. 143 (2) to (6) which was also declared unconstitutional by the High Court. This being the case, there was nothing for us to determine in this regard.”

Hon. Members, in light of the foregoing, the High Court Judgment which declared the National Assembly Standing Order No.143 unconstitutional still stands. Additionally, I also note that the Court of Appeal in its Orders also declared that the provisions of Standing Order No.121(2) of the National Assembly Standing Orders, which provide for the procedure for consideration of

Bills concerning county government, is inconsistent with Articles 109(4), 110 to 113 of the Constitution and is, therefore, null and void.

Hon. Members, to this end, it may be prudent that the Procedure and House Rules Committee, which is currently undertaking a review of the Standing Orders, does also undertake a review of Standing Order Nos.121 and 143 with a view to aligning them with the Constitution as guided by the court decisions.

Hon. Members, finally, the Court of Appeal also made a determination on our Cross-Petition which we had filed in the High Court. You will, indeed, recall that the National Assembly had also filed a Cross-Petition in the High Court seeking among other things, the following declarations on a number of constitutional questions which are of concern to the Members of this House:

1. We had sought in the Cross-Petition a declaration that the Senate had a limited role of oversight of State and State organs, under Article 145 of the Constitution, limited to considering and determining any resolution to remove the President and the Deputy President.
2. A declaration that, to the extent that the Senate has established committees duplicating the mandate of the Committees of this House and purported to exercise oversight over matters that fall in the exclusive domain of this House, the Senate of Kenya is in violation of the Constitution.

*(Applause)*

3. We had also sought a declaration that the Senate purported action of establishing and facilitating and/or causing to be facilitated committees duplicating the mandate of the Committees of the National Assembly and county assemblies amounts to imprudent and irresponsible spending of public money, contrary to Article 201 of the Constitution.
4. A declaration that the National Assembly had the sole mandate of approving persons nominated by the President as State or public officers to serve in state office and public office in the National Government.
5. A declaration that Article 95(4) and (5) confers the National Assembly the exclusive mandate of oversight of State officers; and,
6. A declaration that establishment of the offices of the Senate Leaders of the Majority and Minority through Senate Standing Order Nos.19 and 20 is contrary to Article 108 of the Constitution as the offices are not created or established anywhere in the Constitution.

Hon. Members, it is notable that the High Court converted the National Assembly's Cross-Petition into a response to the consolidated Petition and failed to consider the issues raised therein. In this regard, the Court of Appeal held that the Cross-Petition raised significant constitutional issues and the High Court ought to have given procedural guidance on dispensing with the issues. To this end, the Court of Appeal in its Judgment made the following Order and I quote:

“We hereby remit the Appellants’ Cross Petition filed in Nairobi H.C. Constitutional Petition No.284 of 2019 back to the High Court for consideration and determination of Prayers Nos.7 to 22 of the Cross-Petition.”

In light of the foregoing, I will be giving directions to the Clerk of the National Assembly and our Legal Counsel on how to proceed with respect to implementing the Orders of the Court of Appeal in this regard.



Hon. Members, having highlighted the Orders of the Court of Appeal and even as we proceed as guided by the Court of Appeal, allow me to also note that there may be ensuing issues arising from the manner in which the Senate had applied the High Court Judgment which has since been set aside. One of the ensuing issues was the erroneous interpretation and application by the Senate of the High Court Judgment where it did proceed to republish Bills when this House was already seized of similar Senate Bills which were undergoing consideration at different stages by the Committees and the House.

Hon. Members, as I have guided this House before, I shall stand guided by the reports of the relevant committees considering similar versions of Senate Bills on their determination on which of the Bills should be proceeded with and accorded priority in the House.

The other ensuing issue arising from the erroneous application of the High Court Judgment is in respect to the National Assembly Bills in the Senate whose consideration the Speaker of the Senate had halted on grounds that no resolution had been made between the two Speakers in terms of Article 110(3) of the Constitution. To this end and in light of the Court of Appeal Judgment, I shall be consulting my distinguished colleague and counterpart in the Senate for reconsideration of his decision halting the consideration of the National Assembly Bills in the Senate.

In this regard, I have in mind the Kenya National Library Service Bill, 2020; the Parliamentary Pensions (Amendment) (No.3) Bill, 2019; the Public Service (Values and Principles) (Amendment) Bill, 2019; the Cancer Prevention and Control (Amendment) Bill, 2020; and, the National Youth Council (Amendment) Bill, 2019, whose consideration was stopped in the Senate.

Hon. Members, from what I have just highlighted, you will agree with me that the legal dispute between the two Houses and the different interpretations of the High Court Judgment adopted by both Houses was threatening to frustrate the legislative business of Parliament, its committees, individual Members and the cordial relationship between the two Houses. It had also threatened to negate the legislative authority of the institution of Parliament as provided for in Articles 94, 95 and 96 of the Constitution.

Hon. Members, I must, therefore, commend the Judges of the Court of Appeal for settling all the pertinent constitutional issues and, more so, for upholding the Constitution and the High Court decision in the famous Pevans East Africa Case by applying the “pith and substance test” to establish whether a Bill concerns county governments. Please join me also in lauding the Members of this House who have been instrumental in offering counsel on the matter, the Clerk of the National Assembly, our internal and external counsel for their contributions and enriching submissions to the case which made it a success.

*(Applause)*

Hon. Members, I am, however, cognizant of the fact that the Judgment of the Court of Appeal does not call for celebrations as it is not a case of who has won or who has lost. It calls for sobriety. More so, it should be seen as a learning lesson for both Houses to live in comity and restrain from taking each other to court. Indeed, when we drag each other to court, it is the people of Kenya who lose and yet, they are the very reason that the two Houses were established.

Hon. Members, when legislative processes of either House stop, it only means that Parliament cannot use or exercise its legislative power to respond to the issues of concern to the people. I, therefore, call on both Houses to work together and collectively to serve our people,

remembering that, in the end, whenever there is a court dispute between the Houses, it shall never be a question of which House won, but rather – how did *Wanjiku* lose?

Consequently, with the citizenry in mind, as Parliament, we must, therefore, always find ways of amicably settling our disputes outside the courts. To this end, I will continue engaging my distinguished colleague and counter-part in the Senate with a view of unlocking any impasse that may arise in the legislative processes.

Hon. Members, in summary, following the decision of the Court of Appeal, my guidance is as follows:

(i) THAT, the Leader of the Majority Party, or the Departmental Committee on Trade, Industry and Co-operatives, re-introduces a Bill for an Act of Parliament to amend the Sacco Societies Act as contemplated in the Sacco Societies (Amendment) Act, No. 16 of 2018 which was declared unconstitutional by the Court of Appeal, for expeditious reconsideration by the House. To ensure expedited processing of the said Bill by the House, the re-published Bill is not to contain any matters outside the impugned Act.

(ii) THAT, in respect of the amendments made to sections 3 and 4 of the Kenya Medical Supplies Authority Act as contained in the Health Laws (Amendment) Act, No. 5 of 2019, the Departmental Committee on Health does consider proposing the amendments to the Health Laws (Amendment) Bill, 2021 at the Committee Stage for consideration by the House.

(iii) THAT, the Bills which, after passage by this House and referral to the Senate, were stopped from proceeding at the Senate be re-sent to the Senate for its consideration and decision in light of the interim orders given by the Appellate Court on 2<sup>nd</sup> February, 2021 and the final orders given on 19<sup>th</sup> November, 2021. This includes the Kenya National Library Service Bill, 2020, the Parliamentary Pensions (Amendment) (No.3) Bill, 2019, the Public Service (Values and Principles) (Amendment) Bill, 2019, the Cancer Prevention and Control (Amendment) Bill, 2020, and the National Youth Council (Amendment) Bill, 2019.

(iv) THAT, as part of the on-going end-term review of the Standing Orders, the Procedure and House Rules Committee undertakes a review of Standing Order 121 and 143 with a view of aligning the provisions with the Constitution as guided by the Appellate Court. In the meantime, we will be guided by the text of the Judgment of the Appellate Court.

(v) THAT, with respect to the Orders of the Court of Appeal regarding the Cross-Petition (No. 284 of 2019) by the National Assembly, in which the National Assembly sought about 16 Declaratory Orders against the Senate, I will be giving directions to the Clerk of the National Assembly and our Counsel on how to proceed to implement the Order of the Court of Appeal.

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

**Hon. Aden Duale** (Garissa Township, JP): On a point of order, Hon. Speaker.

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

**Hon. Aden Duale** (Garissa Township, JP): Hon. Speaker, I really want to thank the Court of Appeal, the Speaker's Office and the Clerk's Office because, out of the 23 statutes which were challenged by the Speaker, the Court of Appeal has confirmed 21 of them to be constitutional. All the 23 statutes had my signature as the Leader of Majority and, in fact, the Senate challenged only the Government Bills.

Hon. Speaker, for seven and a half years, I was the Leader of Majority under your leadership and the Clerk's. We argued that the Constitution of Kenya, 2010 was very explicit on the roles of a bicameral Parliament; and that, the Constitution of Kenya had given the Senate very limited mandate. This Judgment by the Court of Appeal is very clear and has placed the Senate in its place within the reading of the Constitution.

If you read the legislative powers from Article 109 all the way to Article 114 of the Constitution, they are crystal clear like day and night. The drafters of our Constitution knew what they were saying. That is why today, we can say that the Senate will never again encroach on the National Assembly's mandate. Hon. Speaker, it is very clear - and you have said a number of times - that the Constitution says that a Member of Parliament can originate any Bill in the bicameral Parliament. The functions of budgetary provision, taxation, the Finance Bill, the Appropriation Bill and the vetting of public and state officers are exclusively the mandate of the National Assembly as stated very clearly in the Constitution.

Hon. Speaker, you have seen over and over again, there are committees of this House which are mandated by the Constitution - and not even by the Standing Orders - that are being duplicated in the Senate. The people of Kenya... I have nothing against the Senate! In fact, in the 11<sup>th</sup> Parliament, we said even the leadership of this country knew the reasons... Those who came to the National Assembly knew why they were coming here and the powers of the National Assembly. Similarly, to those who went to the Senate! You know, the first Senate was more like 'a house of old men'. That is why we saw Prof. Anyang'-Nyong'o, Kiraitu Murungi and the Late Yusuf Haji... Those are the pioneers of the Senate. Now, the young energetic Members who went to the Senate like Senator Hassan Omar and Senator Bonny Khalwale realised that, that House has no mandate or powers as clearly stated in the Constitution.

The other issue which we did and which was very important - and Hon. Mbadi will agree with me - is that for seven years, we were dealing with those matters on Cross-Petition, and whether the offices of leadership in the Senate were provided for in the Constitution? I hope the Auditor-General is watching this. That, the Leader of Majority and the Leader of Minority is provided for in Article 108 of the Constitution. Ideally, the Leader of Minority in this House is supposed to be in-charge of his numbers in the minority side in the Senate. Hon. Kimunya is supposed to be the Leader of Majority in both Houses as the Constitution says. What happened is that people decided to use the Senate Standing Orders.

Based on this, I want to say that the High Court has handled this matter very well. We asked the Attorney-General *Emeritus* of the Republic of Kenya, Prof. Githu Muigai and the current one: "Please, can the Government... This is because we saw the Cabinet Secretary for Interior and Coordination of National Government and the Cabinet Secretary for Foreign Affairs appearing in the Senate. So, we asked the Attorney-General to initiate the Cross-Petition by the National Assembly, concerning the establishment of those offices, so that they could be pursued. The leaders who have occupied those offices in the past and present must be surcharged for all the monies. The Auditor-General must surcharge them. The ball is in your court. You choose the Senate; you choose a House because it is not like the Senate of the United States (US).

This is a momentous day because Article 110 (3) of the Constitution is very clear. Hon. Speaker, you must use your powers now and decide where the question arises. Bills from this House should not just go to the Senate and the decision will now be made by the Speaker.

Hon. Speaker, finally, last week, I asked you about Article 132 of the Constitution on the President's Address, which is a very important constitutional day.

**Hon. Speaker:** We have addressed that issue. The earlier Communication was about announcing that decision, but we are waiting for technical advice. So far, they have said we maintain the numbers and observe social distance.

Hon. (Dr.) Wamalwa.

**Hon. (Dr.) Chris Wamalwa (Kiminini, FORD-K):** Thank you, Hon. Speaker. It is, indeed, true that it is a win-win situation for both Houses. As you have clearly put it, the question we

should be asking is: How much is Wanjiku losing? I salute the distinguished judges for the wonderful direction they have made. I know both Houses have been together. I sympathise with you, Hon. Speaker. I remember even in the last Parliament, on matters of division of revenue, which Hon. Mbadi argued very well on the Floor of the House, we know how much it cost when they went to court on that matter. It is my prayer that from now henceforth... The Senate should be given a copy of this decision. It will be nice for them to look at it and comment on it on the Floor of the House. We want to move together as one family. The sibling rivalry we have been having is uncalled for because the Constitution is very clear that the Senate participates. It is this House that enacts laws. From that determination, it shows clearly that the National Assembly is the upper House. It goes without say. From today henceforth, the sibling rivalry that has been there must come to an end. They should accept that they are the lower House and we move on together as a family, but they will continue participating.

On the issue of the leadership, it is true that this matter has been there and Hon. Mbadi has mentioned it very clearly. In Article 226 of the Constitution, anybody who has consumed the money should be surcharged. The money should be paid back. People cannot continue bashing this House and yet, they did not follow the Constitution. When we look at the people ....

**Hon. Speaker:** Hon. Kigano.

**Hon. Clement Kigano** (Kangema, JP): Thank you, Hon. Speaker. In fact, although the circumstances call for celebrations, what should come upper most into our minds is goodwill. We should invoke goodwill and magnanimity in winning so that we approach the other House in a way that they will feel reasonably subdued and in a way that does not seem punitive. Just as the Bible tells us, litigation all the time is not a solution to matters.

Equally, there are matters that were not touched that were remitted back to the High Court. It concerns the conflict among committees of the two Houses. Recently, in one occasion, the Chief Justice refused to appear before the Senate on the basis that the matters had already been decided and deliberated on by my Committee, the Departmental Committee on Justice and Legal Affairs of the National Assembly. This is a very urgent matter and the apparent conflict among committees should be resolved.

In the hearing of the appeal, the ranking Member...

**Hon. Speaker:** Hon. Oundo.

**Hon. (Dr.) Wilberforce Oundo** (Funyula, ODM): Hon. Speaker, thank you for giving me this opportunity. I want to go on record that since I came here; I have literally wondered what the role of the Senate is. I have had the opportunity to read the Constitution and my understanding is very clear. They are supposed to participate in law-making, strictly in matters relating to counties. Where they got the audacity to believe they can deal with all matters in this country is something that has always baffled me for as long as I have been here. In many occasions when we have had meetings with them, they have always ended acrimoniously. I remember we went for mediation in the Land and Physical Planning Bill and the one on value rating and it was such a show that ashamed me to the level of misunderstanding the role and context of what the Senate needs to do.

The remaining issue here is the Cross-Petition. We must settle the matter as soon as possible so that we can avoid the duplication of roles, wastage of time and wastage of public resources. I wonder what role the Senate has in summoning the Director or the Inspector-General of Police. What role does the Senate have to deal with foreign affairs issues? We need to conclude this matter for the benefit of the people of Kenya. It is not about you or us, but it is about the people of Kenya.

Thank you, Hon. Speaker.

**Hon. Speaker:** Member for Tharaka.

**Hon. George Gitonga** (Tharaka, DP): Thank you very much, Hon. Speaker. Let me begin by saying that this is one of the best decisions that the Court of Appeal has made this year. The first one was on the Building Bridges Initiative (BBI) and this is the second one. This decision will go into our universities where our children, using the principle of *stare decisis*, will use it for purposes of scholarship. The Senate has actually and should understand its place; that in as far as matters national are concerned; it is the preserve of this House.

Allow me, Hon. Speaker, to weave into the Cross-Petition which now becomes a substantive suit in the High Court. I commend you because you have been asking what roles the Senate offices are doing when the Constitution is silent about them. Therefore, the High Court should stretch its mind to interpret what we are asking them to do and make those declarations. Anybody in the Senate who has earned money strictly speaking unconstitutionally and illegally has only one remedy upon himself or herself. It is a surcharge by the Government and the money should be refunded or recovered.

Thank you.

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

**Hon. Olago Aluoch** (Kisumu West, FORD-K): Hon. Speaker, thank you very much for not just highlighting the Judgment of the Court of Appeal, but also analysing and dissecting it in a scholarly and lawyerly manner. You have made it clear for even non-lawyers in the Senate to understand the Judgment clearly.

Hon. Speaker, you were very modest in saying that there is no winner. Although the Constitution says that Parliament means the National Assembly and the Senate, out of this House, Kenyans know that Parliament is the National Assembly. There is no other Parliament. They call us MPs and they call the Members of the other House; Senators. That is the fact.

We must commend our Legal Department. They have done a very good job in coordination with our external lawyers. I am proud that many of them who are now leading that directorate were interviewed in the 10<sup>th</sup> Parliament and others when I was a commissioner. They are doing an exemplary job in the Legal Department. This Judgment is going to make it clear to the other House that they are boxing above their weight. That is a fact they must understand.

This Judgment is superb in all respects. I want to tell the House that the Judgment you have just dissected gives direction to the High Court so that when the issues they are going to deal with are referred back for re-consideration, they will know which direction to take. If there is anybody in the Senate who is imagining that they should take this matter further to the Supreme Court, they will be wasting public money and judicial time. I stand here feeling very proud about this Judgment.

Thank you very much for dissecting it for us.

**Hon. Speaker:** Hon. Members, those were just comments. Let us go to business. Hon. Sankok, do you also want to weigh into this one?

**Hon. David ole Sankok** (Nominated, JP): Yes, Hon. Speaker. First of all, thank you for your guidance and I know today your guidance is top-notch and it will be used as reference beyond our borders and even in years to come.

Through the Judgment, I have realised that the Senate is just an amorphous political civil society that should be dealing with cattle dips, dumpsites, and control of rabies in dogs and lateral revenue allocation formulae among the 47 counties, but nothing else more than that!

From this Judgment, the Senators who participated in such matters should be surcharged all the monies that were used for legal fees. Recently, I saw them enjoying themselves in Saudi

Arabia purporting to investigate the issue of labour export which falls squarely under the Departmental Committee on Labour and Social Welfare of this House. Since my Chairman is here, I implore him to accept their Report as a memorandum, just like any other memorandum from civil societies, survivors from Saudi Arabia, recruitment agencies, *et cetera*, and then we put it in our Report which will be tabled in this House very soon.

Hon. Speaker, thank you for your guidance. You are always a mobile encyclopaedia when it comes to legal matters. I support the Judgment and your presidential bid in 2022.

*(Laughter)*

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

**Hon. Jared Okelo** (Nyando, ODM): Thank you very much, Hon. Speaker. When you listen to a cartoon in the name of Hon. ole Sankok, you are left baffled.

Thank you for that quite elaborate and in-depth analysis of the court findings. I have always believed that if Senators really wanted to be serious, there is a lot of work to be done.

**Hon. Speaker:** There is an intervention by Hon. Olago Aluoch.

**Hon. Olago Aluoch** (Kisumu West, EFP): Hon. Speaker, as much as Hon. Okelo may not agree with Hon. Sankok, but is he in order to call him a cartoon?

*(Laughter)*

**Hon. Speaker:** Hon. Okelo, did you call Hon. Sankok a cartoon?

**Hon. Jared Okelo** (Nyando, ODM): Yes, I did. He did not have any problem with that because, indeed, he is.

However, Hon. Speaker, if we are to make progress, there is a lot of work on the ground for Senators to do.

**Hon. David ole Sankok** (Nominated, JP): Please withdraw!

**Hon. Speaker:** Now he is complaining.

**Hon. Jared Okelo** (Nyando, ODM): Is he now complaining?

**Hon. Speaker:** He wants you to withdraw.

**Hon. Jared Okelo** (Nyando, ODM): Alright, I withdraw; he is my friend.

Hon. Speaker, I have seen many cases where Cabinet Secretaries (CSs) still present themselves before the Senate even on matters that are under investigation and live in this House. Last week, the CS for Sports, Culture and Heritage appeared before the Senate. From my recollection, the sports function was not devolved to the counties.

Just as this Judgment has advised, we need to properly analyse what they need to be doing for our counties, some of which has been alluded to by my friend, Hon. Sankok. He talked about sanitisation on the ground, clearing dogs with rabies and many things that they should do to keep themselves busy, unless they are saying that they can quickly sanitise other departments...

**Hon. Speaker:** Hon. Members, let us proceed with business. There is need to sanitise many places.

Next Order!

## PAPERS LAID

Let us have the Leader of the Majority Party.

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

Reports of the Auditor-General and Financial Statements in respect of the following institutions for the year ended 30<sup>th</sup> June 2021, and the certificates therein:

- (a) Horn of Africa Gateway Development Project by the State Department for Transport;
- (b) Ethics and Anti-Corruption Commission (EACC) Staff House Mortgage and Car Loan Scheme; and,
- (c) Ethics and Anti-Corruption Commission.

Reports of the Auditor-General and Financial Statements in respect of the following institutions for the year ended 30<sup>th</sup> June 2020, and the certificates therein:

- (a) National Authority for Campaign Against Alcohol and Drug Abuse;
- (b) Kenya Universities and Colleges Central Placement Service;
- (c) Technical University of Kenya;
- (d) Kenya Education Management Institute;
- (e) National Environment Trust Fund;
- (f) Non-Governmental Organisations (NGOs) Co-ordination Board; and,
- (g) National Transport and Safety Authority.

Reports of the Auditor-General and Financial Statements in respect of the following constituencies for the year ended 30<sup>th</sup> June 2020, and the certificates therein:

- (a) Ganze;
- (b) Mathira;
- (c) Ainabkoi; and,
- (d) Kasauni.

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

- (a) Kigumo; and,
- (b) Othaya.

Report of the Auditor-General and Financial Statements of the Kenya Wildlife Service for the year ended 30<sup>th</sup> June 2019, and the certificate therein.

Thank you, Hon. Speaker.

**Hon. Speaker:** Let us have the Vice-Chairperson of the Budget and Appropriations Committee. Is that Hon. Shinali?

**Hon. Bernard Shinali** (Ikolomani, JP): Hon. Speaker, I beg to lay the following Paper on the Table of the House:

Report of the Budget and Appropriations Committee on its consideration of the County Governments Grants Bill (Senate Bill No. 35 of 2021).

**Hon. Speaker:** Let us have the Vice-Chairperson of the Departmental Committee on Administration and National Security.

**Hon. (Ms.) Fatuma Gedi** (Wajir CWR, PDR): Hon. Speaker, I beg to lay the following Papers on the Table of the House:

Report of the Departmental Committee on Administration and National Security on its consideration of the Public Petition regarding gazettelement of Kitui as hardship area.

Public Petition regarding Accessing National Identity Cards by the Nubian Community.

Fact-Finding Report regarding Forceful Eviction of the Residents of Nduguini, Makima Ward of Mbeere South Constituency.

**Hon. Speaker:** Very well. Let us have the Vice-Chairperson of the Departmental Committee on Trade, Industry and Co-operatives.

**Hon. (Ms.) Wangari Mwaniki** (Kigumo, JP): Hon. Speaker, I beg to lay the following Paper on the Table of the House:

Report of the Departmental Committee on Trade, Industry and Co-operatives on its consideration of the Kenya Industrial Research and Development Institute Bill, (National Assembly Bill No. 44 of 2020).

**Hon. Speaker:** Finally, let us have the Chairperson, Departmental Committee on Finance and National Planning.

**Hon. (Ms.) Gladys Wanga** (Homa Bay CWR, ODM): Hon. Speaker, I beg to lay the following Papers on the Table of the House today:

Reports of the Departmental Committee on Finance and National Planning on its consideration of the following:

- (a) Senate Amendments to the Public Private Partnerships Bill, (National Assembly Bill No. 6 of 2021);
- (b) Asian Widows' and Orphans' Pensions (Repeal) Bill, (National Assembly Bill No. 29 of 2021);
- (c) Provident Fund (Repeal) Bill, (National Assembly Bill No. 30 of 2021);
- (d) Public Procurement and Asset Disposal (Amendment) Bill, (National Assembly Bill No. 32 of 2021); and
- (e) Public Procurement and Asset Disposal (Amendment) Bill (No.2), (National Assembly No. 36 of 2021).

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

## NOTICES OF MOTION

Let us have Hon. Fatuma Gedi.

### ADOPTION OF REPORT ON FORCEFUL EVICTION OF RESIDENTS OF NDUGUINI IN MAKIMA WARD OF MBEERE SOUTH CONSTITUENCY

**Hon. (Ms.) Fatuma Gedi** (Wajir CWR, PDR): Hon. Speaker, I beg to give notice of the following Motion:

THAT, this House adopts the Report of the Departmental Committee on Administration and National Security regarding the forceful eviction of the residents of Nduguini, Makima Ward of Mbeere South Constituency, laid on the Table of the House on Tuesday, 23<sup>rd</sup> November 2021.

**Hon. Speaker:** Next Order!

## QUESTIONS AND STATEMENTS

### ORDINARY QUESTIONS

The first Question is by the Member for Kajiado North, Hon. Manje.



*Question No.449/2021*

## WHEREABOUTS OF INFANT ABANDONED IN NGONG

**Hon. Joseph Manje** (Kajiado North, JP): Thank you, Hon. Speaker. I rise to ask Question No. 449/2021 to the Cabinet Secretary for Health:

- (i) Could the Cabinet Secretary explain the whereabouts of an infant who had been abandoned, later rescued on 5<sup>th</sup> October 2021 in Ongata Rongai area, Kajiado County, and taken to the Nairobi Women's Hospital, Ongata Rongai Branch in the same town for medical treatment but later reported missing from the hospital a few days thereafter?
- (ii) What measures does the ministry have to ensure that medical institutions and facilities are able to account for unidentified persons who are taken in for treatment?

**Hon. Speaker:** The Question will be replied to before the Departmental Committee on Health. Next Question is by the Member of Tharaka, Hon. Murugara.

*Question No. 473/2021*

## DELAYED ISSUANCE OF SENIOR TEACHERS' LETTERS IN THARAKA CONSTITUENCY

**Hon. George Gitonga** (Tharaka, DP): Thank you, Hon. Speaker. Allow me to ask Question No. 473/2021 directed to the Cabinet Secretary for Education:

- (i) Could the Cabinet Secretary explain why Mr. Kamui Joshua Munene (TSC No. 505757), Mr. Mutiiria Aron Mutugi (TSC No. 480686), Mr. Japhet Kirimi Muthwe (TSC No. 535767), Ms. Hellen K. Njagi (TSC No. 392191), Ms. Nyaga Priscilla Kagendo (TSC No. 366144), Mr. Peter Ntoiti Ngoci (TSC No. 508176), Mr. Rose Gatwiri Njeru (TSC No. 423450) and Ms. Purity N. Gideon (TSC No. 345212) who were appointed as senior teachers in 2017 are yet to be issued with appointment letters as required under the Teachers Service Commission's policy on human resource?
- (ii) Could the Cabinet Secretary state the timelines within which their respective appointment letters shall be released to them?

**Hon. Speaker:** That Question will be replied to before the Departmental Committee on Education and Research. The Next Question is by the Member of Meru County, the Hon. Bishop Kawira Mwangaza.

*Question No. 476/2021*

## IMPLEMENTATION OF THE INUA JAMII CASH TRANSFER PROGRAMME IN MERU COUNTY

**Hon. (Ms.) Kawira Mwangaza** (Meru CWR, Independent): Thank you, Hon. Speaker. My Question is 476/2021, to the Cabinet Secretary for Labour, Social Security and Services:

- (i) Could the Cabinet Secretary explain the progress of implementation and disbursement of the Inua Jamii Cash Transfer Programme in Meru County?

- (ii) Could the Cabinet Secretary provide an updated list of the beneficiaries of the programme in Meru County and also state the eligibility criteria to enable potential applicants to submit their application details?
- (iii) What measures has the ministry put in place to ensure timely disbursement of funds to the beneficiaries of this programme in Meru County?

**Hon. Speaker:** That Question will be replied to before the Departmental Committee on Labour and Social Welfare. The last Question is by the Member for Wundanyi, the Hon. Danson Mwashako Mwakuwona.

*Question No. 489/2021*

#### INSTALLATION OF COMMUNICATION MASTS IN WUNDANYI CONSTITUENCY

**Hon. Danson Mwashako** (Wundanyi, WDM-K): Thank you, Hon. Speaker. I rise to ask Question No. 489/2021 to the Cabinet Secretary for ICT, Innovation and Youth Affairs:

- (i) Could the Cabinet Secretary provide names of all firms which own communication masts and installations at the Vuria Hill in Wundanyi Constituency?
- (ii) Could the Cabinet Secretary explain why the road leading to the said installations has not been maintained and why the owners of the masts have failed to carry out Corporate Social Responsibility (CSR) projects for the community living in the area, particularly in the Mghage-Mwanda area, considering that the masts and installations have occupied and disenfranchised the community of a recreational site and viable area for tourism purposes?
- (iii) Could the Cabinet Secretary clarify whether any environmental impact assessment on the health and safety Kenyans living near the masts and installed equipment was carried out, particularly on the effect and nature of the network and wave transmissions before installation of the masts and, if yes, provide a copy?
- (iv) Could the Cabinet Secretary consider employing technicians from amongst the locals for jobs such as routine maintenance of the masts and equipment, and tending of the surrounding environment and pathways leading to the said installations?

**Hon. Speaker:** That Question will be replied to before the Departmental Committee on Communication, Information and Innovation. The next segment is Requests for Statements. There is one from the Member of Dagoretti South.

#### REQUEST FOR STATEMENT

##### STATUS OF ROAD PROJECTS IN DAGORETTI SOUTH CONSTITUENCY

**Hon. John Kiarie** (Dagoretti South, JP): Thank you very much, Hon. Speaker. I rise to request for a Statement regarding incomplete and sub-standard road works in Dagoretti South Constituency.

Pursuant to Standing Order No. 44(2) (c), I request a Statement from the Chairperson of the Departmental Committee on Transport, Public Works and Housing regarding incomplete road projects and sub-standard workmanship in road construction in Dagoretti South Constituency.

In the year 2019, the Ministry of Transport, Infrastructure, Housing, Urban Development and Public Works initiated a project of the construction and rehabilitation of up to 400 kilometres of roads, mainly in informal settlement areas in the Nairobi City County. The plan as announced

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was intended to upgrade the roads to cabro and bitumen standards. The cabro roads were to benefit the densely populated areas, mostly in the informal settlement areas, in Dagoretti South Constituency, particularly Riruta, Waithaka and Ngando.

The construction of the said road projects commenced in January 2020. However, the contractors have ignored some of the basic engineering principles in the construction of these roads such as the standard width of a road, the drainage system, the ground preparation, the quality of the construction materials and the coordination between the contractor, the fore persons and the implementing agency, amongst other issues.

Now, concerned that this programme is about to be concluded, works in most of the major roads prioritised for the upgrade are yet to commence. A case in point is Mbereri Road that was prioritised as a road number two in the priority list work plan and which, to date, remains unattended to, even after the demolition and relocation of structures and utility installations to pave way for the road construction were carried out. Other major roads prioritised include Wambiri Road, Jerusalem Road and Wairimu Road, among many others which have since been abandoned.

It is against this background that I seek a Statement from the Chairperson of the Departmental Committee on Transport, Public Works and Housing on the following:

- (i) Could the Chairperson provide the status of road projects in Dagoretti South Constituency which were prioritised in this programme by the ministry for upgrade to bitumen or cabro standards?
- (ii) What are the timelines for the completion of the said roads' project?
- (iii) What measures are in place to ensure the quality of these roads that are being constructed?

Hon. Speaker, I profusely thank you. I signed this on 17<sup>th</sup> November 2021.

**Hon. Speaker:** The Chairperson or the Vice Chairperson? The Request will be channeled through the Office of the Leader of the Majority Party. Next Order.

## BILL

### *Second Reading*

#### THE RADIOGRAPHERS BILL

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

*(Question put and agreed to)*

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

## MOTIONS

#### ADOPTION OF REPORT ON LACK OF ACCESS TO CITIZEN REGISTRATION SERVICES

THAT, this House adopts the Report of the Departmental Committee on Administration and National Security on its consideration of a Public Petition by residents of Wajir and Garissa counties regarding lack of access to citizen registration services, laid on the Table of the House on Wednesday, 11th August 2021.

*(Hon. (Ms.) Fatuma Gedi on 14.10.2021)*

*(Debate concluded on 18.11.2021)*

**Hon. Speaker:** Hon. Members, debate on this Motion was concluded. I, therefore, put the Question.

*(Question put and agreed to)*

**Hon. Aden Duale** (Garissa Township, JP): On a point of order, Hon. Speaker.

**Hon. Speaker:** Hon. Duale, what is your intervention about?

**Hon. Aden Duale** (Garissa Township, JP): Hon. Speaker, I came to the House this afternoon because I was told a response to my Statement by the Chairperson of the Departmental Committee on Finance and National Planning on the Kenya Bureau of Statistics is ready. So, if we have passed that Order, can it be slotted on tomorrow's Order Paper? I got an email from the Clerk of that Committee that my Statement is ready and it will be read by the Chairperson this afternoon.

**Hon. Speaker:** It was not indicated.

**Hon. Aden Duale** (Garissa Township, JP): Can it be slotted on tomorrow's Order Paper?

**Hon. Speaker:** Hon. Wang, will you be able to read the Statement?

**Hon. (Ms.) Gladys Wang** (Homa Bay CWR, ODM): Thank you, Hon. Speaker. The Statement is ready. We can read it either tomorrow or on Thursday.

**Hon. Speaker:** Tomorrow afternoon or morning?

**Hon. (Ms.) Gladys Wang** (Homa Bay CWR, ODM): Tomorrow afternoon is okay.

**Hon. Speaker:** Very well. The response will be read tomorrow.

The Leader of the Majority Party, proceed.

#### SENATE AMENDMENTS TO THE PUBLIC PRIVATE PARTNERSHIPS BILL

**Hon. Amos Kimunya** (Kipipiri, JP): Thank you, Hon. Speaker. I beg to move the following Motion:

THAT, the Senate Amendments to the Public Private Partnerships Bill (National Assembly Bill No. 6 of 2021) be now considered.

Hon. Speaker, Members should be aware that we deliberated on a revamped Public Private Partnerships Bill to bring it at par with the modern reality and update what had been considered in this House, the Senate and the mediation process. In the process of all these, we discovered that there were a lot of other things that were not captured, especially the issue of sorting out the cost of doing business by removing bottlenecks that were entrenched in the previous Bill.

The Public Private Partnerships Bill sailed through this House and also the Senate because there will be Public Private Partnerships projects at the county level. I thank the Senate Committee because it took an uncharacteristically short time to look through this Bill noting we have about

20 Bills that were referred there in 2018 and are still at different legislative stages. On this Bill, they rose to the occasion and proved that with goodwill, the 20 Bills can be processed. When the Senate considered this Bill, they came up with an amendment to Clause 6. This was to add the Principal Secretary in charge of the State Department for Infrastructure. On Clause 13, they amended by inserting a time limit of 21 days for the evaluation of a report. Previously, we did not have a timeline. On Clause 75, the Senate tinkered with it editorially to make it better and we agree with them.

The Senate has basically enriched the Bill. I have looked at the amendments. Going by our earlier discussions and the court ruling, I am surprised that there is no amendment that has been brought here that relates to the functions of counties or county governments. Be that as it may, they still went ahead and improved the Bill. We had discussions with the National Treasury and Planning and I am sure the Committee can confirm that. We can live with these amendments rather than having a to and fro situation that will lead to mediation and we do not have the luxury of time.

Hon. Speaker, I want to implore Members to take it that the Senate has enriched the Bill and whatever they have done can only make the Bill better. There is nothing unbecoming and controversial. I want to urge the House to accept in total the Senate amendments so that we can move to the Committee of the whole House and give life to the legislative process of the Public Private Partnerships Bill. I do not want to go to the background of why we did the Public Private Partnerships Bill because this House deliberated on this Bill and it was conscious of what they were passing. The only things that have been added are the issues that were brought by the Senate as part of the enrichment of this Bill.

I do not want to take time on a straightforward matter. I want to implore the House to team up and pass this Bill so that we can have the best Christmas gift next week for future investors. For our infrastructure sector, we now have a modern Public Private Partnerships Bill that will be passed to be an Act of Parliament that will sort out our contractual obligations and issues in the future. By the time we look at the next expressway, for example, the Mau Summit Expressway and other Public Private Partnerships projects, we will at least have a law that we can refer to and ensure that everything is done in accordance with the will of this House.

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

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

**Hon. (Ms.) Gladys Wanga** (Homa Bay CWR, ODM): Thank you, Hon. Speaker. I beg to second. As it has been mentioned by the Leader of the Majority Party, the Senate amendments are not fundamentally altering what the National Assembly had considered. In some instances, the Senate brought in details that have made the Bill better. As a Committee, we did not see the need to disagree or go to mediation. We did not agree with some things but they were not fundamental in nature to necessitate mediation.

With those few remarks, I beg to second.

*(Question proposed)*

**Hon. Speaker:** Hon. Oundo.

**Hon. (Dr.) Wilberforce Oundo** (Funyula, ODM): Hon. Speaker, I sat here as we debated this Bill in the Committee of the whole House. Public Private Partnerships is the way to go. Eventually, the Government is not going to have funds to undertake anything. By accepting the proposed amendments, the most important thing is that we shall be sending a clear message to the

Senate that we are not interested in sibling rivalry. What is good for Kenya is good for Kenya. I want to implore Members to pass these amendments. We have so many projects in the pipeline that are pending and need to be funded. Kenya has to develop fast. We have no luxury of time.

With those few remarks, I support.

**Hon. Speaker:** Hon. Sakwa Bunyasi.

**Hon. Sakwa Bunyasi** (Nambale, ANC): Hon. Speaker, this was in respect to the earlier business. I was going to request the Chairlady of the Departmental Committee on Finance to confirm when she would table the Public Debt Bill. She has said it is almost ready. So, it is not about this Motion.

Thank you.

**Hon. Speaker:** Hon. Osotsi, is it on this Motion?

**Hon. Godfrey Osotsi** (Nominated, ANC): Hon. Speaker, I want to contribute to the next item, not this one.

**Hon. Speaker:** Okay. Hon. Wangwe. I am just following the request list. Hon. Lessonet.

**Hon. Moses Lessonet** (Eldama Ravine, JP): Thank you, Hon. Speaker, for this opportunity. We need this Bill like yesterday, so that the private sector can commit resources towards large investments and projects, especially projects that have ways of raising their own money. It is the reason that I stand here to support the Motion. As we do that, we also need to encourage county governments to take the route of private public partnerships in order to finance first-class facilities specifically in the medical, water and roads sectors. They should not just rely on the equitable share of revenue from the national Government for them to undertake projects that will impact lives now. This Bill will also enable the national and county governments to channel resources which would otherwise have gone to large projects to social projects.

Hon. Speaker, with those few remarks, I support the amendments. I thank you.

**Hon. Speaker:** I take it that there are no more Members wishing to contribute since no more have made requests. Let the Mover reply. Hon. Kimunya.

**Hon. Amos Kimunya** (Kipipiri, JP): Hon. Speaker, I really want to thank Members for their brief contributions to this Bill. It shows the depth of interrogation of the original Bill when it was presented in this House. It also shows the faith Members have in us when we try to convince them that we are happy with what the Senate has done. I also thank the Senate for their speedy consideration of this Bill. I ask them to also speedily process the other Bills before them so that we can close the year with all the work that has been done by the National Assembly and the Senate being enacted into law.

With those few remarks, I reply.

*(Question put and agreed to)*

**Hon. Speaker:** Next Order.

## COMMITTEE OF THE WHOLE HOUSE

*(Order for Committee read)*

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

## IN THE COMMITTEE

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

## SENATE AMENDMENTS TO THE PUBLIC PRIVATE PARTNERSHIPS BILL

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): Hon. Members, we are now in the Committee of the Whole House to consider Senate amendments to the Public Private Partnerships Bill (National Assembly Bill No. 6 of 2021). Just hold on for a minute as we organise our table. Let us start.

*Senate Amendment to Clause 6*

THAT, clause 6 of the Bill be amended by deleting paragraph (c) and substituting therefor the following new paragraph—

(c) the Principal Secretary in the State department responsible for matters relating to infrastructure.

*(Question of the amendment proposed)*

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

**Hon. (Ms.) Gladys Wanga** (Homa Bay, ODM): Thank you, Hon. Temporary Deputy Chairman. Should I say that it be approved?

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): You have to seek approval and explain why it should be approved.

**Hon. (Ms.) Gladys Wanga** (Homa Bay, ODM): Thank you, Hon. Temporary Deputy Chairman. I beg to move that Senate amendment to clause 6 be approved by the House. Essentially, we had made an amendment to remove the Principal Secretary for the State Department for Infrastructure from the membership of the Privatisation of the Committee. The reason was that several projects may be involved. They could be water or energy projects. We thought the Principal Secretaries should be co-opted on a need basis. But the Senate disagreed and said we should include the one in charge of infrastructure, probably because most PPPs are infrastructure related. So, we agree and beg that it is approved. I beg to move.

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

**Hon. (Dr.) Wilberforce Oundo** (Funyula, ODM): Hon. Temporary Deputy Chairman, as much as the amendment looks harmless, it indicates the limited understanding of PPPs in general. We are going to have very many projects that are probably not physical in nature that are going to be initiated through this model. As we have said, in the spirit of accommodating our Senate colleagues, we should let it to go through but I foresee we might have to amend. This is because there will be so many other projects in other sectors requiring the cooperation. That is why the House meant this should be on a need-to-need basis. Nevertheless, we should let it to go through.

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

**Hon. Sakwa Bunyasi** (Nambale, ANC): Thank you, Hon. Temporary Deputy Chairman. Actually, I was not waiting for this one but I have something small to say on it. I think the

experience today has largely been in the large infrastructure like transport, water and energy. I guess, this is in the spirit of going forward and we should let it to go through.

*(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)*

*(Senate Amendment to Clause 6 agreed to)*

*Senate Amendment to Clause 33*

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

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

THAT, Clause 33 of the Bill be amended in sub-clause (3) by inserting the words “within twenty-one days of receipt of the evaluation report” immediately after the words “the Committee shall”.

The Senate is just adding a timeline within which the Evaluation Report should be produced. So, if you bring your proposal for a Public Private Partnership (PPP), it should be considered within 21 days. We had not done this earlier and I think it is useful additional information. I beg to move.

*(Question of the amendment proposed)*

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

**Hon. (Ms.) Shamalla Jennifer** (Nominated, JP): Thank you, Hon. Temporary Deputy Chairman. I want to support this amendment. I think it is important in this area and sphere of big PPPs we have timelines with specific regard to this amendment. It will seal all the loopholes of giving favours and maybe delays which lead to corruption.

With those few remarks, I support.

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): Hon. Oundo, you still have something on this? Very well. I will then proceed to put the Question.

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

*(Senate Amendment to Clause 33 agreed to)*

*Senate Amendment to Clause 75*

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

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

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THAT, clause 75 of the Bill be amended-

- (a) in sub-clause (2)-
  - (i) by deleting the word “five” appearing immediately before the words “other persons with” in paragraph (bb) and substituting therefor the word “four”; and
  - (ii) by deleting the word “one person” appearing immediately before the words “not being a member” in paragraph (cc) and substituting therefor the words “two persons.”
- (b) by inserting the following new sub-clause immediately after sub-clause (6)-
  - (6A) A person aggrieved by the decision of the Committee may, within seven days of the decision, make an application for review to the Committee in the prescribed form.

This amendment seeks to reduce the number of people appointed by the Cabinet Secretary from five to four, and then increase the number of people from the Council of Governors (CoG) from one to two. So, this is the gist of the amendment. The CS is supposed to appoint five people to the Appeals Committee and we have reduced them to four, then the CoG is supposed to appoint one and we have increased to two. We agreed with the Senate on this. In part (b), if you are aggrieved with the decision of the Committee, the Senate is providing that within seven days of the decision, you can make an application for review. I beg to move.

*(Question of the amendment proposed)*

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

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

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

*(Senate Amendment to Clause 75 agreed to)*

*Senate Amendment to New Clause 75A*

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): Hon. Chairlady, you should now move Second Reading of this new clause.

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

THAT, the Bill be amended by inserting the following new clauses immediately after clause 75-

Secretary. 75A. (1) The Cabinet Secretary shall designate a public officer to serve as the Secretary to the Committee.

(2) A person designated under subsection (1) shall be an Advocate of the High Court of Kenya of at least seven years standing.

Essentially, the Senate is introducing this Appeals Committee. Therefore, if the PPP Projects Committee does not approve your project or you feel aggrieved then, you have a place where you can complain. They are also setting out that the CS shall designate a public officer to serve as the Secretary to the Committee. The person shall be an Advocate of the High Court with at least seven years standing. The remuneration shall be determined by the Salaries and Remunerations Commission (SRC). Are we doing 75A only and then 75B, that is one at a time?

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): It is one at a time.

**Hon. (Ms.) Gladys Wanga** (Homa Bay CWR, ODM): Okay. I will do 75A, on the Cabinet Secretary appointing the Secretary. I beg to move, new clause 75A be now read a Second Time.

*(Question of the new clause proposed)*

*(New clause read the First Time)*

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

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

**Hon. Emmanuel Wangwe** (Navakholo, JP): Thank you, Hon. Temporary Deputy Chairman. I wish to support the new clause by the Chairlady especially reading 75A (1) together with (2). It is important that a secretary be designated. In a set up like this one, if the secretary will have the capacity of an Advocate of the High Court especially with seven years standing, then this is a good suggestion. Therefore, I support.

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): Hon. Chairlady, just hold on this is my part.

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

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

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

#### *Senate Amendment to New Clause 75B*

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

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

THAT, the Bill be amended by inserting the following new clauses immediately after clause 75-

Remuneration.

75B. The members of the Committee shall be paid such salaries and allowances as the Cabinet Secretary shall, in consultation with the Salaries and Remuneration Committee, determine.

I beg to move.

*(Question of the new clause proposed)*

*(New clause read the First Time)*

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

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

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

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

*Senate Amendment to New Clause 75C*

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

THAT, the Bill be amended by inserting the following new clauses immediately after Clause 75—

Conflict of interest 75C. A member of the Committee who has a direct or indirect interest in a matter before the Committee shall declare the interest and shall not participate in any proceedings of the Committee on the matter.

This speaks to the issues of conflict of interest. If you are a member of the committee and you have direct or indirect interest on a matter, then you should declare your interest and recuse yourself.

*(Question of the new clause proposed)*

*(New clause read the First Time)*

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

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

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

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

*Senate Amendment to New Clause 75D*

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

THAT, the Bill be amended by inserting the following new clauses immediately after Clause 75—

- Offences. 75D. (1) A person shall not—
- (a) without reasonable cause or lawful excuse, obstruct or hinder, assault or threaten a member of the Committee acting under this Act;
  - (b) without justification, fail to provide information required by the Committee under this Act;
  - (c) without justification, fail to provide information within reasonable time that is required by the Committee under this Act;
  - (d) submit false or misleading information to the Committee;
  - (e) misrepresent to or knowingly mislead a member of the Committee acting under this Act; or
  - (f) interfere with or exert undue influence on any member of the Committee.
- (2) A person who contravenes subsection (1) commits an offence and is liable, on conviction, to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding one year, or to both.

New Clause 75D (1) speaks to the offences that a person shall not commit in dealing with the committee like failing to provide information required without justification. This includes failing to provide information within reasonable time, submitting false or misleading information, misrepresenting or knowingly misleading a member of the committee or interfering with or exerting undue influence on any member of the committee. Those shall constitute offences. Sub-clause (2) speaks to what kind of penalty those offences shall attract. It will be a fine not exceeding Ksh500,000 or imprisonment for a term not exceeding one year or both.

*(Question of the new clause proposed)*

*(New clause read the First Time)*

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

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

**Hon. (Dr.) Wilberforce Oundo** (Funyula, ODM): Hon. Temporary Deputy Chairman, it is a good amendment, but I am just curious. Probably we need a further explanation. Why would matters that fall under the penal code be included here? These are things of assault, threatening and obstructing. Those kinds of things are already adequately covered in the penal code and I would really have imagined members of the Senate would have known that very clearly. Nevertheless, probably the Chairlady could further explain why that was sustained, knowing very well that this is a matter already covered in the penal code.

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

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

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

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

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): Chairlady, I was wondering on this New Clause 75D that we have just passed where we are saying “without a reasonable cause or lawful excuse, obstruct or hinder, assault or threaten...” Can somebody have a lawful cause to assault or to threaten? This is the law that we have made. We will move on.

*Senate Amendment to New Clause 75E*

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

THAT, the Bill be amended by inserting the following new clauses immediately after Clause 75—

Decree. 75E. The Committee shall issue a decree setting out its decision in a particular matter and the decree shall be enforceable in the same manner as a decree of the Court.

This is just stating the decree of the committee. The committee shall issue its decree and the decree shall be enforceable in the manner as the decree of the court.

Hon. Temporary Deputy Chairman, on the issue that you are raising, as I said, when I was seconding the Bill, we did not necessarily or absolutely agree with every point the Senate made, but now we just looked at whether these were fundamental enough to result to mediation. That is why we allowed some of the points to pass. That was the main consideration of the Committee. This is a very important Bill. It has some really fundamental issues. A big part of it was well done by this National Assembly. So we decided that this should not constitute sufficient grounds for mediation. So, I urge Hon. Oundo and you, Hon. Temporary Deputy Chairman, to just bear with us on these matters because if they were in our hands fully, we would have probably dealt with them here once and for all. I thank you, Hon. Temporary Deputy Chairman.

*(Question of the new clause proposed)*

*(New clause read the First Time)*

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

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

**Hon. Emmanuel Wangwe** (Navakholo, JP): Thank you very much, Hon. Temporary Deputy Chairman. I wish to support the proposed new clause by the Chairlady. However, I am a bit reluctant in the line that the Chairlady has said because I am very much aware that it is only the

Constitution that can give powers to either a place or any organisation to set up an equivalent of a court.

For instance, Article 125 of the Constitution makes a Committee of the House to have the same powers as those of the High Court of Kenya. Therefore, in as much as we support this in line with what the Chairlady of the Departmental Committee on Finance and National Planning has said, it is important that we put our views so that in future, let our voices be recorded.

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

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

**Hon. (Dr.) Wilberforce Oundo** (Funyula, ODM): Hon. Temporary Deputy Chairman, again I join my colleague, the Whip of the Majority Party, in really raising concerns on the text and the wording of that particular New Clause 75E. I am not so sure whether the committee – I need to be apprised because it has been of time – is a tribunal to the sense that it has got powers of a court of law. If it does not, then obviously that amendment is just superfluous and will have no value at all or it will have to be struck out by any court because a committee cannot have the power of a court. I am not so sure whether they sought adequate legal advice or for the sake of avoiding prolonged mediation, let us just say as we used to say in computer, garbage in, garbage out. Probably the Chairlady could explain again so that we understand.

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

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

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

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): Chairlady, we have done it but I hear Hon. Oundo and my brother, Hon. Wangwe and of course myself. Hon. Bunyasi is shaking his head wondering which court this committee will be equating itself to. Is it the High Court, a tribunal, the Supreme Court or what court? This is the law that we have made. We have made progress. We are done with the Senate Amendments to the Public Private Partnerships Bill (National Assembly Bill No. 6 of 2021).

So, Hon. Members, I direct that we now consider the Perpetuities and Accumulations (Amendment) Bill (National Assembly Bill No. 24 of 2021).

#### THE PERPETUITIES AND ACCUMULATIONS (AMENDMENT) BILL

*(Clause 2 agreed to)*

*Clause 3*

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

THAT, Clause 3 of the Bill be amended in the proposed new section 19 by deleting the proposed subsection (2) and substituting therefor the following subsections:

(2) Subject to special and general power of maintenance and advancement or as predicted by the terms of the trust or as otherwise provided, income which is not accumulated shall be distributed.

(3) At all times any income that is not accumulated shall be distributed to the intended beneficiaries.

This is just to provide that any income of the Trust that is not accumulated should be distributed. So, the income shall be distributed to the intended beneficiaries. That is the amendment.

I beg to move.

*(Question of the amendment proposed)*

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

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

*(Clause 3 as amended agreed to)*

*(Title agreed to)*

*(Clause 1 agreed to)*

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): Hon. Members, we are done with the Perpetuities and Accumulations (Amendment) Bill. We shall therefore move to reporting. I will call upon the Mover to report on the Senate Amendments to the Public Private Partnerships Bill (National Assembly Bill No. 6 of 2021). Mover.

**Hon. Amos Kimunya** (Kipipiri, JP): Hon. Temporary Deputy Chairman, I beg to move that the Committee does report to the House its consideration of the Senate Amendments to the Public Private Partnerships Bill (National Assembly Bill No. 6 of 2021) and its approval thereof with amendments.

*(Question proposed)*

*(Question put and agreed to)*

**The Temporary Deputy Chairman** (Hon. Christopher Omulele): We shall move to reporting on the Perpetuities and Accumulations (Amendment) Bill, (National Assembly Bill No. 24 of 2021). Mover.

**Hon. (Ms.) Gladys Wanga** (Homa Bay CWR, ODM): Hon. Temporary Deputy Chairman, I beg to move that the Committee do report to the House its consideration of the Perpetuities and Accumulations (Amendment) Bill (National Assembly Bill No. 24 of 2021) and its approval thereof with amendments.

*(Question proposed)*

*(Question put and agreed to)*

*(The House resumed)*

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

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Hon. Members, let us start with the Public Private Partnerships Bill and I now call upon the Chairperson to report to the House.

## REPORTS

### SENATE AMENDMENTS TO THE PUBLIC PRIVATE PARTNERSHIPS BILL

**Hon. Christopher Omulele:** Hon. Temporary Deputy Speaker, I beg to report that the Committee of the whole House has considered the Senate Amendments to the Public Private Partnerships Bill (National Assembly No. 6 of 2021) and approved the same with amendments.

**Hon. Amos Kimunya** (Kipipiri, JP): Hon. Temporary Deputy Speaker, I beg to move that the House does agree with the Committee in the said Report. I request Hon. Wangwe to second the Motion for agreement with the Report of the Committee of the whole House.

**Hon. Emanuel Wangwe** (Navakholo, JP): Thank you, Hon. Temporary Deputy Speaker. I second.

*(Question proposed)*

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): We will have to defer the putting of the Question, until the business comes back in the Order Paper. Let us move to report on the Perpetuities and Accumulations Bill. I call upon the Chairperson to report to the House.

### THE PERPETUITIES AND ACCUMULATIONS (AMENDMENT) BILL

**Hon. Christopher Omulele:** Hon. Speaker, I beg to report that the Committee of the whole House has considered the Perpetuities and Accumulations Bill (National Assembly Bill No. 24 of 2021), and approved the same with amendments.

**Hon. (Ms.) Gladys Wanga** (Homa Bay CWR, ODM): Hon. Temporary Deputy Speaker, I beg to move that the House does agree with the Committee in the said Report. I request Hon. Rozaah Buyu to second the Motion for agreement with the Report of the Committee of the whole House.

**Hon. (Ms.) Rozaah Buyu** (Kisumu CWR, ODM): Thank you, Hon. Temporary Deputy Speaker. I second.

*(Question proposed)*

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): On the same note, I shall defer putting the Question until the next time the matter is on the Order Paper.

*(Putting of the Question deferred)*



Next Order.

## BILL

### THE ASIAN WIDOWS' AND ORPHANS' PENSIONS (REPEAL) BILL

#### *Second Reading*

*(Hon. Amos Kimunya on 17.11.2021 – Afternoon Sitting)*

*(Resumption of Debate interrupted on 17.11.2021 – Afternoon Sitting)*

We are resuming debate on this Bill. I believe that the Committee Report has been tabled. A few Members had contributed. It had been moved, seconded and three Members had contributed, namely: Hon. ole Kenta, Hon. Dan Mwashako and Hon. Edith Nyenze. Hon. Shamalla, do you want to speak to this or something else? Chairlady of the Departmental Committee on Finance and National Planning, Hon. Wanga, are you speaking to it?

**Hon. (Ms) Gladys Wanga** (Homa Bay (CWR), ODM): Yes. Thank you, Hon. Temporary Deputy Speaker, for giving me the opportunity to contribute to the repeal of the Asian Widows' and Orphans' Pensions Bill.

This repeal is long overdue because the Asian Widows' and Orphans' Fund is from the colonial days. In fact, the last time it ever operated was in the 1980s. Its returns were made back to the Crown in the United Kingdom (UK). It has been dormant since the 1980s yet we have an Act speaking to it. I thank the Leader of the Majority Party for moving the Bill to, once and for all, repeal the Asian Widows' and Orphans' Fund, which is a colonial concept.

Currently, we have one pension for Kenyans, not separate pensions for Asians, Muslims, Christians or Hindus. This was a form of discrimination from the old times. Repealing the Bill is timely so that we all operate within the context of our pension funds, namely, the National Social Security Fund (NSSF) and other pension funds as regulated by the Retirement Benefits Authority (RBA).

One of the things that came up was whether our Special Funds Accounts Committee is able to conduct a terminal audit of this Fund, so that we know whether it has any assets or liabilities and their status as it is wound up. One of the recommendations of the Committee is, if possible, to have an audit. There was an argument as to whether we can still bring back documents from the Crown in the United Kingdom in order to audit them. We do not know whether it is practical, but nonetheless, it was put in as a proposal.

This is a straightforward matter. It is not useful to have an operational Act for a fund that has not operated since the 1980s. Once again, the Committee agrees with the Leader of the Majority Party as he proposes to completely repeal this Act, so that we channel all our energies towards the current pension or social security mechanisms in the country.

The Committee supports the repeal of this Act and thanks the Leader of the Majority Party. I take this opportunity to thank Members of the Committee for putting in effort to ensure that this Report is turned around within the shortest time possible.

I beg to support the Bill.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Let us have Hon. Okuome Adipo, Member for Karachuonyo.

**Hon. Adipo Okuome** (Karachuonyo, ODM): Thank you, Hon. Temporary Deputy Speaker. I beg to support this Bill. Honestly, there is no need for this law to exist in the books anymore because Asians are long gone and that kind of pension arrangement is also gone. In addition, we now have the Retirement Benefits Authority (RBA) taking care of...

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Hon. Shamalla, what is out of order?

**Hon. (Ms.) Shamalla Jennifer** (Nominated, JP): Hon. Temporary Deputy Speaker, I heard the Hon. Member of Parliament saying that Asians are long gone. There are many Kenyan Asians. The Bill is not about a particular racial or ethnic grouping. It is about the pension's fund, as was explained to us by Hon. Gladys Wanga, which was a colonial instrument. There are still Asians who are Kenyan citizens or who live in Kenya and can still benefit from pensions funds within the new framework of the law that we have.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): So, it is sort of a point of information. I do not know if what Hon. Shamalla has said is clear to the Hon. Member.

**Hon. Adipo Okuome** (Karachuonyo, ODM): Thank you. The point I am making is that we now have the RBA and the Kenyan Government making all kinds of arrangements for staff pensions.

I, therefore, support this Bill.

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

**Hon. David ole Sankok** (Nominated, JP): Thank you, Hon. Temporary Deputy Speaker and the incoming Governor of Narok County, for giving me the opportunity to support this Bill. I know Hon. Wanga is very excited because female Members of Parliament will dominate governorships in 2022. Most likely, one of you will be the Chairlady of the Council of Governors (CoG).

I support this Bill because it is a long overdue move. If the Act has been dormant for more than 30 years, it is in good faith that the Committee thought it good to do away with it. The Act is not just being repealed because of it being dormant. It was a kind of segregation that prejudiced Asians and pitted them against other Kenyans. If you have a fund that is specific to a race, you are either saying that that race is superior to the rest, or the rest are superior to that race, and that is why we cannot use the same pension. It was colonial.

You remember that in the colonial days, there was a kind of segregation which even affected our schools. There were different schools for Africans, Whites and Asians. That racial discrimination is what the whole world is against. If the Committee thought that we should repeal it and do away with it...

Hon. Temporary Deputy Speaker, there was segregation during the colonial days. There were toilets which were used by the Whites and those for Africans. It is a prejudice to say that this pension is only reserved for a particular race. We should all be up in arms against it.

I also want to know from the Committee and I am sure Hon. Gladys Wanga, the incoming Governor for Homa Bay County is listening: Was there any money that was left in that Fund? If yes, what will we do with it? Will we reserve it for the Asians or will we decide to give it to the weaker members of our society like persons with disabilities, orphans and the vulnerable?

This is a Bill that deals with a Fund. We want to know the fate of the Fund if there were some bank balances. We should know how the transition will happen if there were bank balances because once this Bill is repealed, it will no longer be a Bill or an Act and it will not govern anything. It is in good faith for us to know if the Fund account is reading zero. If that is the case, then we will not have problem with it.

Lastly, we would like Kenyans to learn from this Bill. As we repeal and do away with it, what was its import? Are our current pension schemes doing positive things that this Fund was doing in the late 70s and 80s? Was it serving the Asian race? Can it now serve all the Kenyans? This will help us not to lose very important points from a Bill just by repealing it.

Hon. Temporary Deputy Speaker, with those remarks, I support.

**The Temporary Deputy Chairperson** (Hon. (Ms.) Soipan Tuya): Hon. John Bunyasi.

**Hon. Sakwa Bunyasi** (Nambale, ANC): Hon. Temporary Deputy Speaker, I support the proposed repealing of the Bill. However, I am completely horrified; either I have a very short memory or lack of research. The arrangements that led to this were part of the architecture of the Lancaster Conference. Later at Independence, for those communities that opted to take British citizenship, the agreement was that their pensions would be guaranteed in Britain. They gave management of the pension payment to Crown agents. The fact of the matter is that over time, the amounts were so small and the cost of Crown agents was exceeding the value of the pension.

I appreciate all the reasons why we should wind it up. However, let us also not go on record to say things that look like they are not quite well thought. Some people here were quite young and might not have a memory of that but we should do research. When I was in the Public Accounts Committee (PAC) some years back, when we attempted to do a review, many of the pensioners were either not traceable or had very little money in the Fund. Some had like 5 pounds and the cost of getting to London was greater than that. There are many good reasons why it should be wound up. But for heaven's sake, let us do it in a manner that is consistent with its background. In doing so, there may be need to get an orderly transition between the Government of Kenya and the Government of the UK.

It is not for the reasons of segregation that the Fund was put up but it was during Independence that it was agreed that everybody chooses where they wanted to go. We should do this in the context of why it was set up.

Thank you, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Chairperson** (Hon. (Ms.) Soipan Tuya): Hon. (Ms.) Akinyi, Member for Kisumu.

**Hon. (Ms.) Rozaah Buyu** (Kisumu CWR, ODM): Thank you, Hon. Temporary Deputy Speaker, for this opportunity. The Constitution of Kenya treats every Kenyan regardless of their gender, age, and equal. Under the 2010 Constitution, we are all equal and governed by the supreme law of the country which is the Constitution. There is no way that in the place of this country, we could have a law that discriminates and one that is specific for a certain group. In this moment of the great movement of Kenya of unity, nationalism and oneness also dubbed as “*Azimio la Umoja*”, you cannot have any specific law that is just tied to one group in this country.

For that, I stand to support the repeal of the Asian Widows and Orphans Fund.

Thank you, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Chairperson** (Hon. (Ms.) Soipan Tuya): Hon. (Dr.) Oundo.

**Hon. (Dr.) Wilberforce Oundo** (Funyula, ODM): Thank you, Hon. Temporary Deputy Speaker, for giving me a chance to contribute to this Bill. Let me take my colleagues, as Hon. Bunyasi has done, on a historic journey. At Independence, there was fear, antagonism and uncertainty of whether people of a certain race would remain in Kenya or not. During part of the negotiations for Independence, those who did not want to remain in Kenya and had served the Crown for many years were allowed to relocate from Kenya and that goes with their pension. Having worked for the country for many years, they had to go with their pension.

Hon. Temporary Deputy Speaker, I sit in the PAC and the issue of pension to people living outside this country is becoming an audit query every year. This is because tracing the beneficiaries or the dependants is not easy. The amount being paid as pension is so negligible to the extent that the cost of administering the Fund far much outweighs any charge on the Consolidated Fund. So, it has always been an agreement all along that as we try to put in place a more robust pension management scheme, the pension schemes that do not make economic sense should be wound up or an alternative way is found to ensure that we proceed.

I want to join my colleagues to note that there must be some kind of orderly transition. As we repeal, the beneficiaries, who still benefit by virtue of having served this country in various capacities before Independence, do not get denied what is due to them. We hope that there could be a provision in the Bill to provide for a transition period where everybody is able to get their funds.

Hon. Temporary Deputy Speaker, it is wrong for any Member to insinuate that this particular Bill was favouring a certain category of Kenyans. It was not. It is an historical matter that needs to be put into proper perspective so that all of us understand the genesis of the Bill and why it is being repealed.

With those few remarks, I support the repeal of the Bill.

**The Temporary Deputy Chairperson** (Hon. (Ms.) Soipan Tuya): Hon. Manje.

**Hon. Joseph Manje** (Kajiado North, JP): Thank you, Hon. Temporary Deputy Speaker, for giving me this chance. I also want to...

**The Temporary Deputy Chairperson** (Hon. (Ms.) Soipan Tuya): Hon. Sankok, why are you on intervention?

**Hon. David ole Sankok** (Nominated, JP): I rise on Standing Order No. 53 (3) and I would like to request the Speaker to defer the putting of the Question on this Bill.

**The Temporary Deputy Chairperson** (Hon. (Ms.) Soipan Tuya): Hon. Sankok, maybe later on but not at this point.

**An Hon. Member:** We are still debating.

**Hon. David ole Sankok** (Nominated, JP): I had seen that there was no interest.

**The Temporary Deputy Chairperson** (Hon. (Ms.) Soipan Tuya): Hon. Sankok, since when did you become the Speaker? How do you know?

**Hon. David ole Sankok** (Nominated, JP): *Entitai naibuar lhalha, mikiar oleng.*

**The Temporary Deputy Chairperson** (Hon. (Ms.) Soipan Tuya): Hon. Manje, please continue.

**Hon. Joseph Manje** (Kajiado North, JP): Hon. Sankok, I was on the Floor.

**Hon. Emmanuel Wangwe** (Navakholo, ODM): On a point of order, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Chairperson** (Hon. (Ms.) Soipan Tuya): What is it Majority Whip?

**Hon. Emmanuel Wangwe** (Navakholo, ODM): Thank you, Hon. Temporary Deputy Speaker. The Standing Orders in this House give us directions that we only have two known languages. Hon. Sankok spoke some very advanced English or foreign language which sounded like the Maasai language. Is he in order to proceed and be on *The Hansard* in that direction?

Thank you, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Hon. Sankok, I do not know what you said but just to remind you that the only language you can use is English, Kiswahili or the Kenya Sign Language. You need to stick to that.

Now, let us have Hon. Manje continue without interruption.

**Hon. Joseph Manje** (Kajiado North, JP): Thank you, Hon. Temporary Deputy Speaker. I support the Committee on the repeal of the Asian Widows and Orphans Pension Bill. Because of the time lapse, it has stopped serving the purpose it was effected for.

The Bill was enacted at Independence to effect the payment of pension of Kenyans who decided to go to other parts of the world. It has been distributed to our embassies. With time, the kitty has become small and tracing the beneficiaries has become a big issue. If we check the books of our auditors, there has been an audit query every year because of the inability to trace the beneficiaries. It has been overtaken by events and, therefore, this is the correct time to repeal the Act so that we can have Acts that are effective and efficient.

Again, because of emerging issues, when living in a different country, say, in Britain, the Kenyan Shilling compared to the Dollar becomes weaker progressively. So, due to that, it becomes negligible and not cost effective.

I support repealing of the Act.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Hon. Shabbir, Member for Kisumu East.

**Hon. Shakeel Shabbir** (Kisumu East, Independent): Hon. Temporary Deputy Speaker, I wish to address the issue of the Asian widows' pension.

Firstly, my understanding is that the last real transactions took place in the 1980s. Since then, there have not been any transactions on this particular Fund yet there is a board that sits somewhere and has been paid for the last nearly 40 years. We want to understand what this particular board does.

*[The Temporary Deputy Speaker  
(Hon. Soipan Tuya left the Chair)]*

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

My grandmother used to get a pension through the crown agents. We know we are repealing it, which is very important but at the same time, we need to know whether we can have a final audit of what has happened; not of the transactions but the final audit. I was mayor and towards the end of a session, it was the most dangerous time because a lot of assets disappeared and a lot of things happened. As we repeal the Act, we must ensure that there is, what we might call in accounting terms, a finalisation or termination audit. I know the Leader of the Majority Party knows what I am talking about.

Another thing we need to know is if these people have been ghost workers for the last nearly 40 years. We need to understand who has been sitting on the board when there have been no transactions for nearly 40 years. This is the form of waste we want to clear. We are repealing the Act and that is very good but we must also look to see whether we have doing the right thing or not. Apparently, there is some money still in that account. Who utilises the money? Who allocates it? Is it budgeted for every year and for what reason?

It is very important that we get to the bottom of this matter. Repealing the Act is the easier action but the action must be implemented with the terminal audit to see whether people have taken advantage of the scheme that has been moribund for almost 40 years.

Thank you, Hon. Temporary Deputy Speaker.

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

**Hon. (Ms.) Shamalla Jennifer** (Nominated, JP): I have already spoken to it.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): I see no further interest in it. Let the Mover reply.

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

I thank the Members for the manner in which they contributed. It is a simple and straightforward task of deleting or removing the Act from our statute books. This particular law is basically dead and overtaken by time. I reassure Members, including my friend, Hon. Shakeel Shabbir that, indeed, the transition mechanism does provide for a review of what has happened. We need to know what is in the Fund and any amount due to the Fund will be collected. Any amount payable by the Fund will also be determined. There is a time period of one year during which all reconciliations will be done so that we do not repeal an Act and yet there is some money in the bank and some people with .... So, various mechanisms have been put place within the law to ensure the smooth transition from this to the Pension Fund envisaged under the Public Finance Management (PFM) Act. That is the only comfort I want to give Members. All their worries have been taken into account. We should not have any issues as we repeal the Fund.

With those remarks, I beg to reply.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): I direct that the next steps in regard to this business be undertaken when the matter will be set down in the Order Paper.

*(Putting of the Question deferred)*

I direct that we move on to the next business on the Order Paper.

## BILL

### *Second Reading*

THE COUNTY GOVERNMENTS GRANTS BILL (SENATE BILL NO.35 OF 2021)

*(Hon. Kanini Kega on 17.11.2021)*

*(Resumption of Debate interrupted on 17.11.2021)*

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Members, this business had been moved and seconded. Debate was to proceed. The first Member with interest in it is Hon. Wangwe, the Whip of the Majority Party.

**Hon. Emmanuel Wangwe** (Navakholo, JP): Thank you, Hon. Temporary Deputy Speaker. I rise to second the County Governments Grants Bill (Senate Bill No.35 of 2021) by the Budget and Appropriations Committee (BAC).

I am a Member of the BAC. We went through the Report before it was tabled. The Report is comprehensive and informs Members about the whole of the proposed Bill. Therefore, I second with a lot of information.

The gist of the Bill is to set a framework pursuant to Article 202 of the Constitution on conditional allocations for the Financial Year 2021/2021. This is to facilitate the transfer of

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conditional and unconditional allocations made to counties under this Act from the Consolidated Fund to the respective County Revenue Funds and Special Purpose Accounts.

This Bill provides a legal framework and mainly touches on the grants and donations to the 47 counties. There are operational and staffing issues that were inherited from the defunct local authorities. Counties should look into strategic issues that will enable them to raise their own revenues in an efficient and effective manner.

When you look at the conditional allocations for the Financial Year 2021/2022, which are for the purpose of building headquarters for various counties, they basically amount to Ksh332 million. Some of it has been allocated Isiolo, Lamu, Nyandarua, Tana River, and Tharaka-Nithi. There are conditional allocations for the leasing of medical equipment, which monies are to be shared equally among the counties at a rate of Ksh153 million. In total, we are talking of about Ksh7.2 billion.

There are conditional allocations resulting from loans and grants from Development Partners to each county government for the Financial Year 2021/2022, totalling to about Kshs32 billion. This includes about Ksh2.2 billion World Bank funding meant to transform the health sector through universal healthcare projects. Conditional allocations through the Ministry of Health are meant to improve delivery of service, utilisation and equality of primary healthcare services with focus on reproductive, maternal, new-born child and adolescent health at the county levels.

Public participation was done as is indicated in the Report. For the benefit of my colleagues, the Report was tabled this afternoon and is in the Table Office. So, I just want to remind you to, please, access it at the Table Office. We interrogated the Council of Governors (CoG), the Controller of Budget, the Commission on Revenue Allocation (CRA) and the National Treasury. The Bill grants shall be released to the County Revenue Funds account upon compliance with the conditions set out by the National Treasury for the Fund.

There are important issues we have highlighted in the Report which Members should be aware of. The Bill, if passed, as proposed by the Senate, will be against Justice Makau's ruling in Petition No. 252 of 2016 on 3<sup>rd</sup> December 2020. Secondly, the clauses that makes it an annual Bill shall be removed. This will enable the Bill to provide for disbursement of conditional grants to counties pursuant to Article 207 of the Constitution. We also observed that the Bill provides for the procedures for implementation, reporting and accountability of the funds, including the roles and responsibilities of various institutions.

In conclusion, the Committee will be looking at various proposed amendments to the Bill, including proposed amendments to the title of the Bill, Clause 2, and the object of the Bill. We shall also propose deletion of various clauses in order to align the Bill with the Constitution.

Therefore, in summary, this Bill is also going to help the National Treasury to facilitate agreements between county governments and Development Partners. This shall be tabled in Parliament before inclusion in the Budget Policy Statement (BPS). This position has been missing. If it can now be adopted as proposed in the Report to correct the Bill and align it with the Constitution and the Public Finance Management (PFM) Act, then it is going to be a good thing and will enrich it for perpetuity.

Finally, on the additional allocations with respect to loans and grants, the National Treasury shall include in the BPS the indicative amounts to county governments. As we do this, it is also important to inform the county governments that whereas this House appropriates funds to them, it is important as they also proceed to do their budgets in the various counties, they should allocate the same funds equitably; not necessarily to be equal but let them distribute the funds equitably

across the county. Let us not witness a skewed allocation informed by political belonging because then areas or wards not aligned to a particular governor will end up not getting the funds just because they speak a different political language.

It is important to note that this are not county funds but the country's funds got from the Consolidated Fund which gets money from taxpayers. We do not separate taxpayers from whom the Kenya Revenue Authority (KRA) collects these funds. Therefore, we need to see a replica of the national Government rolling down to the county governments, which should observe equity and not equality.

With that, I support the Bill. Thank you.

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

**Hon. (Dr.) Wilberforce Oundo** (Funyula, ODM): Thank you, Hon. Temporary Deputy Speaker. When I perused through this Bill, I found so many contradictions and issues that do not really align it to the Constitution. Initially, the Bill came as one, but I think after the ruling by the High Court, it became necessary to segregate the conditional grants from unconditional grants. This was meant for the national Government to transfer funds to the various counties and, therefore, address specific needs of Kenyans living in those counties.

A very clear example is: at the advent of devolution many counties did not have decent headquarters. So, over the years the national Government, through the Division of Revenue Bill, has always allocated funds for the purpose of constructing and completing county headquarters.

On Universal Health Care (UHC), we know health is central to this country. Therefore, many of us believe this might have informed the national Government to basically transfer funds for the purpose of leasing equipment for medical services.

The Bill has a progressive approach but I want to pick out a few issues. First, the title is misapplied because the money being granted is both national funds and funds through loans guaranteed by the national Government. Based on the schedules provided, the money in form of loans is a whopping Ksh32 billion while that in form of conditional grants is Ksh7.5 billion. So, essentially, these are not county generated funds, rather they are funds generated and guaranteed by the national Government. The title of the Bill must speak to this reality and not confuse Kenyans to believe that these funds have been generated by the counties to be shared amongst themselves. It is as if they generate anything much. So, that is the first issue.

Secondly, if you read through the Bill, you realise that it will be an annual Bill. I wonder and ask: what will happen in a financial year where the national Government has no intention at all to give conditional grants to or secure loans for the county governments? This is an area that needs to be addressed. I believe that the Committee and its legal team will help us address this particular concern. This is because it is actually at the benevolence of the national Government; it can choose to do so, or not to.

The Bill proposes amendments to the Public Finance Management (PFM) Act. In Clause 8, it seeks to amend Section 42 of the PFM Act to assume that Parliament shall consider the Division of Revenue Bill, the County Allocation of Revenue Bill and another Bill for the allocation and transfer of conditional and unconditional grants under Article 202 of the Constitution. This should be within 30 days after the Bills have been introduced. It might be important that we review this particular clause at the Committee of the whole House. I believe we will be ably guided by the Committee that is handling the matter.

The interesting part which I think is progressive but not progressive enough is the requirement that the national Government and respective county governments have an intergovernmental agreement for the transfer of the funds. It provides various procedures. The



curious one is that the agreement must be approved by respective county assemblies within 14 days. We wonder whether they are 14 sitting days or 14 calendar days. That needs to be clarified. The most curious part is that it will be subjected to public participation after it has been approved. I wonder which comes first. Is it public participation before approval or approval then public participation? Then, public participation will just be a façade or a charade because a decision will already have been made.

The main omission in this Bill is the lack of accountability. The amendments being proposed by the Senate provide no room for accountability. These are national Government funds, which are allocated by this House, that is, the National Assembly. Making no provisions whatsoever for a way to account for these funds is setting an extremely dangerous precedent. County governments will enter into agreements which they have no intentions to enforce, and misuse the funds! As Hon. Wangwe has said, there are many cases in this country where funds are devolved to county governments, but because of political differences or future political considerations, the funds are only spent or utilised in one particular constituency or sub-county to fulfil certain political goals. One of the obvious things we will have to do is to amend to require that there must be some form of accountability to the national Government even as they account to the Senate. Yes, there is a provision to submit reports to the Controller of Budget, but the Controller of Budget only deals with matters during disbursement and not how the funds are used. What happens where the Government has guaranteed loans from various places yet the funds are misused or not applied for what was provided for in the agreement? So, there must be a provision for review or monitoring and evaluation to confirm that the funds have been utilised. There must be an arrangement in place.

As I conclude in support of the Bill, of course, subject to amendments later, I wish to state two things: the main intention, when serious political leaders in this country fought for devolution, was to make devolved units the engine of development. If you do a simple rundown, you will realise that has not been achieved. We have pumped billions and billions of money into devolved units but what you see on the ground is something different. As they say, things are different on the ground. Therefore, as we continue to improve the disbursement and management of funds, we must put in mind what value for money there is. Are Kenyans getting value for money, or will it be in the best interest of the national Government, instead of giving these funds as conditional grants, to use our line ministries to implement specific projects that affect or benefit the people that it is supposed to benefit? It is the same way we have done with the National Government Constituency Development Fund (NG-CDF). If you go to many constituencies, the projects and works of the NG-CDF stand out very clear and outshine the works of county governments yet county governments get colossal sums of money.

Secondly, as we give conditional grants and disburse loans received, it is important and a must that the county governments also up their game and literally collect internal revenues. There is so much pilferage and loss in the various cesses and levies they are allowed to collect. It was never meant that county governments would solely depend on the national Government to fund their activities and their programmes. Many a times we hear that county government staff have gone without pay. If you meet and ask them what they do with the collections they get from markets, cattle dips, mortuaries and the rest, they simple say, “We do not know where that money goes. This is where the Senate should have trained its eyes and spend all its time, that is, policing, supervising and overseeing county governments instead of wasting time doing things such as trying to fight the National Assembly when they have no powers at all to fight it.

Finally, the issue of corruption, values and integrity. We must continuously infuse this in our county governments because they hold a specific and a very serious position in our country. If the Building Bridges Initiative (BBI) had gone through, 50 per cent of national funds would have gone to county governments. Fifty per cent requires us to say value for money.

With those few remarks, I support.

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

**Hon. David ole Sankok** (Nominated, JP): Thank you so much, Hon. Temporary Deputy Speaker, for giving me this opportunity to also add my voice into this very important Bill and Report.

The conditional allocation grant, which is more than Ksh7 billion per county is not chicken change. It is money that should be accompanied with a lot of conditions set by the national Government lest we continue having what we are seeing in county governments where 80 per cent of all the money they collect and receive from the national Government goes to payment of salaries and what we call recurrent budget. Sometimes the money goes to public participation, recurrent budgets in terms of office operations like having sodas and tea, and local and international travel. That is why we are not seeing value for our money. As Hon. (Prof.) Oundo has said, things on the ground are different from the allocations to county governments.

I have read from the Bill that there will be public participation after approval. Talk of priorities upside down or downside up, whichever way you would like to put it. That is what they are doing. We need to be very careful lest we do public participation in vain just to satisfy the requirement of our Constitution. If you have already approved, what is the essence of public participation? Supposing the public does not need it? Supposing the public gives very good suggestions on what is supposed to be done but it is already approved?

Again, from that Bill, it is supposed to be annually. That means county governments will be at the mercy of the national Government. The national Government may decide that this year they will thoroughly use their muscle of numbers in the National Assembly or in the Senate so that the Bill is not passed. So, they will not receive the grants.

We also want to check on the issue of equal distribution of the conditional grants. That is so that, as other Hon. Members have said, we do not have distribution in terms of political patronage. What I have in mind is a Governor who has completed two terms and has the intention of contesting in a single constituency within his county. Naturally, he or she may be biased towards taking a lot of development to woo voters in the constituency he is intending to contest in. So, we really need to be very careful about that.

The other issue is about the Senate. As Prof. Oundo has said, the Senate's work is to oversee county governments, but it has been amorphous in terms of what it is supposed to do. That is why I said it is an amorphous, political civil society. It is like an activists' club that is just there. You can imagine them summoning the Cabinet Secretary for Interior and Coordination of National Government and the Cabinet Secretary for Foreign Affairs. It is like they do not understand their mandates. One of their mandates is to oversee county governments. That means they should ensure county governments are not only recipients but also generators of income through revenue collection. But, please, do not think they do not collect a lot of revenue. They do!

In Narok, the Maasai Mara Game Reserve is one of the biggest tourist attraction sites throughout Kenya. We also have sand and building stones. What happens is that the county government makes 10 per cent official receipts while 80 per cent are made in River Road. They then collect revenue which is not remitted to bank accounts or reflected anywhere. When you ask why staff go without salary and yet they collect a lot of money from mortuaries, cattle dips,

markets, business licenses, sand lorries and tourists, you will not be told where the money goes to. So, the Senate has a lot of work in their hands. They have a full tray but they decide not to perform their duties. Instead, they want to compete with the National Assembly. They cannot do that because the Constitution is very clear.

Hon. Temporary Deputy Speaker, with those many remarks, I support. We need to sit down at the Committee of the Whole House so that we can make amendments to have a very good report as opposed to the one from the Senate. They may not be able to conduct much research because they do not know their work. We should show that we are the upper House and that we know and understand our work and what is good for this country.

I support.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Sankok, I do not think the Senate does not know its work. I am sure Senators know their work. It is just that sometimes they overreach. It is normal for people to want more than is really theirs. I am sure they know their work.

Hon. Shabbir, Member for Kisumu East.

**Hon. Shakeel Shabbir** (Kisumu East, Independent): Thank you, Hon. Temporary Deputy Speaker. I want to take up from where my colleagues stopped. The purpose and object of the County Governments Grants Bill is to put together a framework to support Article 202 on conditional allocation and to facilitate the transfer of conditional and non-conditional allocations. That is what the Bill says. When you look at the attachments, you see a problem. The problem of conditional grants is exactly that—it is a conditional grant. A conditional grant can be accepted or rejected by a county government.

The last page of this document says every county government in Kenya got Ksh153,297,872 as a conditional grant for leasing medical equipment. This Bill has not addressed the point of being given a conditional grant that you do not think is value for money. I know, for a fact, that certain county governments said they did not want this grant for medical equipment. Indeed, the First Schedule shows that every county government has actually been given the conditional grant! The question is: what happens when a conditional grant is given to you and you use it for something else? That is not provided for in this Bill! The other conditional grants are IDA World Bank Transforming Health Systems for Universal Health Care Project; IDA World Bank Credit—National Agricultural and Rural Inclusive Growth Project; IDA Kenya Climate Smart Agricultural Project; and, EU Grant—Instruments for Devolution Advice and Support. There are about 14 conditional grants. Does that mean that when the World Bank sends Kisumu County money for transforming health systems and we feel that the conditional grant does not match our needs, we have to take it? It appears that conditional grants are automatic. Whatever is given will be divided among the 47 county governments. I cannot understand the logic.

I share Hon. Sankok's concern. Maybe I do not understand this Bill: It literally lays out conditional allocations and gives county governments no particular say. It says the amounts will be given out without going through the Consolidated Fund accounts of respective county governments. Whatever problems we have with the Consolidated Fund, it has one strength. It has control mechanisms. I wonder whether this grants system is going to bypass the Consolidated Fund. Do we have mechanisms to make sure that we do not end up with something like the Arror Dam scandal in the counties? Let us say the World Bank has given us so much money for climate change. So we divide that money among the 47 counties the way they have done with health funds. Does that mean that there is no mechanism for understanding the needs of the counties? Does it mean there is no mechanism for saying that this is how we should do? Does it mean there is no

mechanism for deciding what value there is for money? The Consolidated Fund has that mechanism.

The Public Finance Management Act is supposed to be amended by inserting a new section 42 to provide that Parliament shall consider the Division of Revenue Bill, the County Allocation of Revenue Bill and the Bill for allocation and transfer of conditional and non-conditional grants under Article 202 of the Constitution no later than 30 days after the Bills have been introduced.

I understand the first one on the Division of Revenue Bill, but where do the conditional grants come in? They are a bane. We do not understand them and that has been a big problem between this House and the Senate. The Leader of the Majority Party understands more than I do. Should we not send the Bill back to the Senate and tell them that we do not understand exactly what they want? The Bill does not state exactly what they want. The Senate is saying that it wants to give an exemption so that the conditional grants do not go through the Consolidated Fund. Who will decide? What are the mechanisms for looking after that money? One of my colleagues has also raised serious concerns.

Hon. Temporary Deputy Speaker, I do not support this Bill.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Let us have Hon. Mwalyo Mbithi, Member for Masinga.

**Hon. Joshua Mwalyo** (Masinga, WDM-K): Thank you, Hon. Temporary Deputy Speaker, for the chance to contribute to the Bill. Although I have not extensively read it, I understand how conditional grants work. I would like to point out a few things.

Conditional allocations refer to additional resources allocated to county governments apart from their normal budget. I happened to interact with some counties which were given conditional grants for specific projects that they were undertaking. The best part about conditional grants is that they are controlled by the giver. If the grant is from the European Union (EU), they will specifically send a coordinator for that account. The account is not operated by the usual government officers and they cannot even transfer the funds. The money is controlled and is not transferable. They cannot divert that money to another project. It is only when the European Union signs off on the project that they can be paid.

Therefore, the additional grants being proposed are a good idea because most of the money that the national Government gives counties goes to recurrent expenditures. Therefore, you find that there is nothing or very little that they can do in terms of development. For instance, the World Bank may say that they are contributing towards Universal Health Care (UHC). They will appoint their own people and UHC will be developed. Their grant will complement what the Government is giving. This is a good Bill. If we make a few amendments on the controls, vote on it and pass it, then it will help our counties.

It has been very difficult for counties to engage in any meaningful development. I will give an example of my constituency. The county government has only been able to construct three boreholes since I was elected in 2017. That means that if there were some conditional grants given to counties for water or UHC, even hospitals could be stocked with drugs. They could also build some mortuaries. If a person dies in my constituency, they are transported to another constituency because my constituency has no mortuaries. The county has no extra funds to even build one.

I find these funds to be very useful. I hope Parliament will support the Bill so that it goes through and partners who are willing to give conditional grants can go ahead to do so. With those few remarks, I support the Bill.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Let us have the Leader of the Majority Party.

**Hon. Amos Kimunya** (Kipipiri, JP): Thank you, Hon. Temporary Deputy Speaker. I rise to support this Bill and thank the Budget and Appropriations Committee (BAC) for having quickly considered it over the weekend. From the discussions by Members, the Bill raises a number of issues that need to be dealt with during the Committee of the whole House. It is good that we, at least, record our appreciation for the work they have done.

From my reading of the Bill, it basically has a twofold function. First, it attempts to approve, in retrospect, what was done through the Division of Revenue Bill of 2021/2022 earlier in the year. We passed the Bill and allocated money to counties as conditional grants and to the national Government.

I do not understand why the Senate wants to do this. The Speaker clearly alluded to it in his ruling. He stated that the Senate has no power in terms of appropriation of money. That power is resident in this House. In any case, we already appropriated that money. When I see that one of the objects of the Bill is to appropriate money for the 2021/2022 Financial Year and they even go ahead and schedule a list, I see mischief in that the Senate is trying to start the appropriations process through the back door! It means that next year, they will come up with another one for the 2022/2023 Financial Year, allocate some sums and force us to agree with them.

We need to agree upfront that you do not put in law that this amount will apply for this year unless it is an Appropriations Bill. We already have the Appropriations Bill that gave effect to the 2021/2022 Budget. I want to see how the BAC will handle that, so that when we come to the Committee of the whole House, we delete all references to 2020/2021 and just leave the generic issues in terms of how they will appropriate conditional grants to counties going forward. We cannot go back in time because we already have a law that covers that.

I do not see their rationale because we are not in a vacuum. This House already appropriated that money and it has already been disbursed. They are trying to schedule and put in law that these are the donors and all that. Supposing all of them change, what will we do? Will we bring back the law and amend it because the funding agency that has been scheduled in Clause 4 has changed? If any of those things happen after we pass the Bill, what would happen?

The Bill currently states that conditional grants must be received from certain people. That is poor drafting. It is an overreach by the Senate. Perhaps, it is a misunderstanding. We will give them the benefit of doubt in terms of their mandate and what they were trying to do. I heard that there was a court ruling that said we should not mix division of revenue with conditional grants. That does not mean that we go back. Why 2021/2022? Why not 2020/2021? That is my first concern and I would wish that the Budget and Appropriations Committee does bring an amendment to remove any references to the particular year, or allocation for a year which we have already dealt with through the law. Be that as it may, I believe the second date to facilitate the transfer of conditional allocations made to the counties flows very well. Reference being made to the year is something that we commend them for including.

When we devolved, some people were not quite sure what it meant. They thought it was decentralisation of services as had been done through the District Focus for Rural Development in those days. When we devolved functions, it meant giving functions, money, and decision-making ability to the local level. This takes place within the framework of the County Integrated Development Plans (CIDPs) which then involve the people in public participation in terms of what priority needs are and what they want done. So, they are involved from that angle. That is for purposes of utilising the national revenue that is shared through the Division of Revenue Bill and allocated to counties through the County Allocation of Revenue Act. This special grants are actually to specific counties. I want to correct the impression I had that it is money that is equitably

shared. No. When a specific funding agency decides that they want to fund some climate change issue, they must just look at where the water towers are, or where they can best mitigate climate change issues and fund projects in that area. Hence it is not about equity. It is about what the people want. What is becoming very clear is that these conditional grants cannot be used for anything else.

I served in the Departmental Committee on Education and Research and I know there was Ksh2 billion that kept on being sent to the counties for purposes of helping infrastructure grants to the youth polytechnics and the TIVETs under their care. Most of this money ended up being used by the governors to pay for their salaries because there was delay, but the money that was there to upgrade these facilities was then used! I think this law now takes care of those things. When you receive money for a specific purpose, it is designated for that purpose and you cannot use it for anything else. You cannot commingle that money with others because we know money is fungible. If you take money from this pot and that pot and you put it together, you will not be able to see which money is from which pot. It will be in the combined pot. So, it is only through systems and legal frameworks that we can be able to tell that you have received this money for, say, healthcare. So, keep it for healthcare. Only use it for healthcare. Account for it under healthcare.

I cannot over-emphasise why we did this. The Senate, perhaps, has major limitations. When you look at Article 96 of the Constitution, it basically talks of the Senate having oversight over the national revenue that has been allocated to the county governments. It does not talk about the expenditure, or about own-revenue raised by the counties. So the Senate can only oversee the national revenue that has been appropriated to the counties. It is not even very clear what that oversight means and whether it is to ensure that Treasury has sent the money. This is because it does not talk of expenditure. If it is expenditure, it would have been very clear. We tried to bring that amendment within the Building Bridges Initiative (BBI) constitutional amendment. It was an amendment to Article 96 that Senate shall have oversight over the national revenue and the expenditure thereof as well as own-revenue and expenditure at the county level. That way, the Senate would have something to do granted that our devolved structure gives that power of oversight to the county assemblies. The governor appears before the county assembly, presents his budget and integrated development plan and the budget is approved by the county assembly hence he is obligated to actually report and account to the county assembly. However, when you look at the Constitution, there is some lacuna in terms of direct linkage and how the governor is supposed to account to the county assembly. We have seen cases where governors become choosy. When they think they have better friends in the Senate, they will go and try to appear before the Senate. When they think the Senate matter is hot, they then go and appear before their respective county assemblies and then claim double jeopardy relief. The matter then disappears in between those two.

This is a good law and I do hope we will enrich it further to also bring in conditional grants. Those conditions do not just mean what you can use the money for. We foresee a situation where the Treasury should be giving grants and saying, we will give you this money on condition that you raise 10 per cent. If you raise the 10 per cent, then you get the 90 per cent so that we can incentivise the county governments to make their own contributions towards development projects. Indeed, they can own the projects. Right now there is an ownership issue. Projects are funded through the national government. They do not care. The Ministry of Public Works is given the responsibility to go and set up those headquarters. The Nyandarua County Headquarters started in 2003. Right now I think it is still at slab level. We are talking of eight years and two governors and it is still being done. They are still in some temporary accommodation which tells you there is

a big issue either because of frustration, or the coordination between what the national Government and what the county government are doing. Contractors keep on leaving the site.

We have seen conditional grants working very well within the road sector especially the roads that are co-financed by the Kenya Rural Roads Authority (KeRRA). I do not see why we cannot have the same thing happening on mega projects, including in the Managed Equipment Scheme that seems to have some issues that I do not want to get into. It is for other people to tell us. Like I said, I am in total agreement with the generic text and objects of this Bill, but I am totally opposed to the inclusion of references to the allocation for 2021 and 2022 including the schedules thereof which are attached to this Bill. I am not sure why we want to do them again when we already did the same through the Division of Revenue Bill and they were captured in the County Allocation of Revenue Bill. So, I would want to ask the Budget and Appropriations Committee to actually clean up that for us so that we pass this generic law which will be used next year and whatever happened in the past has already happened. In any case, we do not pass law in retrospect. We will end up with more court cases and I am not sure that is what we want to get ourselves into or better still set.

**Hon. Emmanuel Wangwe** (Navakholo, JP): On a point of information, Hon. Temporary Deputy Speaker.

**Hon. Amos Kimunya** (Kipipiri, JP): Yes, I will take the information.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): You wish to inform the Leader of the Majority Party.

**Hon. Emmanuel Wangwe** (Navakholo, JP): Thank you, Hon. Temporary Deputy Speaker. With lots of humility, to inform your boss on the microphone is not very good but since he had spoken on the numbers in terms of preparing a document in retrospect, I just want to inform the Leader of the Majority Party that the numbers which are in the document simply make the benchmark. They have been used to guide on how the document is supposed to look like in future. They are not meant to be retrogressive in terms of the law but to set the base against which the Bill is going to appear in future. Thank you, Hon. Temporary Deputy Speaker.

**Hon. Amos Kimunya** (Kipipiri, JP): Thank you for the information. However, be that as it may, When I now look at Clause 4, I am not sure whether we are saying that World Bank is obligated to finance national agriculture and rural inclusive growth project into the future or indeed the German Development Bank will finance the drought resilience programme into the future. We probably do not need examples cited in the law. That can be done in Regulations. However, we can do a generic law and ask that Regulations be done through those Schedules so that when you look at a law, it will tell you, when this happens, you do this, you do not start...

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Seriously, going by the intervention by the Minority Whip, have these figures been put here as an example?

**Hon. Amos Kimunya** (Kipipiri, JP): No.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): That would be very interesting. Proceed, the Leader of the Majority Party.

**Hon. Amos Kimunya** (Kipipiri, JP): Indeed, from the Long Title, it is very clear: An Act of Parliament to provide for the additional allocations to county governments for 2021/2022 Financial Year. The key word is "additional allocations". The issue of additional allocation is within the framework of the National Assembly. We are the ones who appropriated money, not the Senate. If we continue with this, there is no reason why they cannot come next year and say we now want an additional requirement. We will be dragged, like we have been dragged in the past. This is my issue. I want us to interrogate it. Perhaps, they have a good reason for doing it, but

I would want to be convinced that we are not talking of reopening Appropriations as we did without the framework of the Supplementary Appropriations Act. This is what I see happening through the backdoor.

Like I said, we will have time for this and we can look at it together and see, what the rationale is. If it is by way of example, then we state it. However, in an example, you do not then put specific people. We can say this is the template of how it will be but without necessarily indicating the figures. The figures will change year in, year out. The Germans may want to find something now but their funding priorities might change in the next year. If you already put them in a template, we are basically saying we are expecting some money which is not guaranteed. So, I think that is the rationale we need to talk about. We need to look at this Bill afresh, clean it up, then pass it. As we go into the new budgeting cycle, we will use the new law to have the monies, that is, the Ksh370 billion revenue allocation to counties. This looks like the figure that is being agreed upon. We should then say, this is the money that will go to conditional grants and this amount will go to this county and for this purpose. I have no problem with that. However, attempting to put figures in 2021/2022 Financial Year, then pass it within a law, we will basically be saying, that if Nyandarua County, for example, received less and we told them that Parliament has passed this Bill and they should have received a certain amount of money, they would ask for more money, yet you will not have appropriated it. Moreover, you will not even be sure where that money will come from.

So, that is the spirit of my discussion on this issue. The generic part is good. It is only when we come to the numbers that I see an issue. Usually, it is said, the devil is in the detail. Those numbers could mean a lot if we do not take care or understand why they have been put there. In West Africa, they say, a toad does not jump in the daylight for nothing unless something is chasing it. So, we need to know what is chasing our toad to have these numbers coming in.

With those remarks, Hon. Temporary Deputy Speaker, I beg to support but with those reservations.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Kathambi, Member for Njoro.

**Hon. (Ms.) Charity Chepkwony** (Njoro, JP): Thank you very much, Hon. Temporary Deputy Speaker, for giving me this opportunity to add my voice to the County Governments Grants Bill. Let me start by appreciating the Budget and Appropriations Committee in relation to appropriations of funds. I just want to appreciate the proposed grants and loans, but my main concern will be: when we talk about public participation in this country, it is taken for granted. So, my first point is to say that when we talk about these loans and grants, it is my belief that the county governments will ensure public participation takes place at the right time so that people can give their views in relation to the entire matter.

Let me also take an opportunity to say that I have gone through what is proposed in relation to the loans and grants. These matters include health, credit, rural inclusivity, smart agriculture, devolution, water and sanitation, primary health, Kenya devolution support, drought resilience programme, emergency locust response, informal settlement improvement...

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Chepkwony, is that mask useful to you?

**Hon. (Ms.) Charity Chepkwony** (Njoro, JP): Hon. Temporary Deputy Speaker, I thought I am safe and everyone around is safe because I have kept a very safe distance. It is not even 1.5 metres; I have kept a distance of about two meters. To add on that, I am fully vaccinated, therefore, I am so safe.



**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Chepkwony, let me just say this. It is not about you being vaccinated. It is about keeping the others safe. The protocols are still applicable in the House. Therefore, we keep wearing the masks. Proceed.

**Hon. (Ms.) Charity Chepkwony** (Njoro, JP): I have actually kept all my colleagues safe because I am very far from the whip and the noise maker behind me.

Hon. Temporary Deputy Speaker, you have interrupted me. I was going through what is proposed for the loans and the grants and I still have a lot of interest. In future, we have to look at another dimension as a country. There is a global communication in relation with climate change in the world but I do not see anything here about it. There is a concept of climate change. Climate change has become real in the world. We have seen a lot of impact in our own country. Right now, pastoralists in the northern parts of Kenya are suffering. Livestock are dying from lack of water. When it rains in this country there are floods and landslides. There is a huge climate change impact in the country. We have seen a lot of deforestation which has affected the rainfall cycle. This has in turn affected food security in the country.

When I was going through this document I realised there was nothing about climate change and yet that also affects our country. I hope in future we will look at these loopholes so that we can come up with a way to contribute to our country. In relation to that, it is also good to say that recently, during the UN Climate Change Conference 2021 held in the United Kingdom, His Excellency the President explained what the country is doing.

Therefore, as we try to increase forest cover in the country, which has a positive impact in our country, we must talk about climate change. There is nothing about it in this document and that is why it became a matter of concern. In future, the Budget and Appropriations Committee must see that loophole.

Hon. Temporary Deputy Speaker, as we talk about all these fantastic grants and loans being proposed, I also have a message to our governors concerning a challenge in this country: when some governors get money, they sometimes do intentional action of taking the money to their strongholds and ignoring other areas where they probably did not get votes. Therefore, we must push our governors to ensure that there is fairness in terms of distribution of these grants and loans to the respective wards in this country.

On that basis, I am also proposing that we should have a very clear mechanism to ensure that the conditions set in relation to these grants and loans are totally agreed and followed to the letter. At times, we have conditions that are bent for some reasons. Therefore, if we have specific money for specific items, governors must be pushed to ensure that the funds follow the right conditions.

Lastly, Hon. Temporary Deputy Speaker, we still have a lot of challenges in this country where we have minimal collection of revenue by governors. We must also try to remind governors to come up with creative ways of raising revenue and not those methods that are killing the economy of the people at the bottom. I stand to support this concept but the Bill needs to be relooked so as to improve on areas where there are loopholes.

I thank you.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. David Ochieng', Member for Ugenya.

**Hon. David Ochieng'** (Ugenya, MDG): Thank you, Hon. Temporary Deputy Speaker. I seek to support this very important Bill in my opinion.

For the last eight years in this Assembly, we have bemoaned the way in which the National Government has been treating this so-called grants: the bitterness with which they are treated; the

local criteria through which they are given to the counties; and, above all, the opaqueness with which the National Treasury and Planning handles the grants. So, from a macro-level, I support the Senate Bill on County Governments Grants because it gives disciplines on how this country can deal with an eventuality where every year, there are funds coming to the Government to be given to the counties but there is no proper legal framework for doing so.

The courts have confirmed part of what we have been questioning in this Assembly. How do we separate these two things? What is duly and legally payable to the county governments and what goes to them as grants, whether conditional or non-conditional? This law provides for the disciplines through which national Government and the county governments will deal with reception, use, and accounting for these monies that go to the counties as grants.

Hon. Temporary Deputy Speaker, this law, in my opinion, does one thing that runs through our Constitution by requiring that agreements are entered between the two levels of Governments. It also provides that these agreements shall be approved by the county assembly. It means that for the first time, the public get to participate in the process of approval and use of these grants. Therefore, they are not just opaque agreements between national Government and the county governments. This must be supported.

Secondly, as much as I agree with the Senate, I want to fault it on one issue. This Assembly has severally questioned the criterion used by the national Government to give grants to counties to build headquarters. For example, the Hon. Member has just talked about Nyandarua County. So, why did Nyandarua County qualify first and not Siaya County? What criterion was used to decide that it will be this county and not the other one? Who made that decision? Why would some counties be required to use their own monies to build their headquarters and others get money from the National Treasury? I would have imagined that the Senate would also give a criterion on how the National Treasury is supposed to decide how these counties get money for building headquarters.

Thirdly, in the same breath, under Clause 4 (b), the most stinking scandal of the year is the Medical Equipment Leasing Project. This is not the first time that we are going to see this kind of a project coming up. So, I would imagine that we should have had disciplines from the Senate because this is probably their forte: That if in future, there would be a certain project like, we expect these disciplines to be followed in terms of procurement.

I have watched the governors coming to answer questions on Medical Equipment Leasing Project in the Senate and all of them have said that they were forced to accept this equipment whether they were ready to use them or not. It is on record that more than half the counties that received these equipment do not use them because they do not have staff and are not prepared to use them. So, we are paying so much money every year but they are not being used. I hope that we can propose amendments that will ensure that in future, in case there is something like that happening, there are parameters, criteria and indicators on how best this can be done so that you give counties the money, let them lease on their own and let those who would want to buy to do so. There are those who would want to buy, to lease and others who have their priorities elsewhere. You do not ram down their throats and force them to accept radiology equipment and theatre equipment because you think they are necessary without having trained personnel. I also think that the Senate should provide that before this kind of ventures are gone into, counties must be consulted and they must agree. Therefore, there is no time when national Government will force anything on the county governments...

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Ochieng', without interrupting your train of thought on this one: you have indicated that the Medical Equipment

Leasing Project was forced on the counties. How come it has not been challenged in the courts? If it is true that probably national leaders insisted that these counties must spend their money in this way, is it not against the very spirit of devolution and, therefore, unconstitutional? I would like some thoughts on that.

**Hon. David Ochieng'** (Ugenya, MDG): Hon. Temporary Deputy Speaker, this has been challenged in court and governors have protested. It is not just a court issue but it has been litigated and has been a subject of debate not just in this Assembly but in the Senate too.

This particular thing about this Medical Equipment Leasing Project is what you can describe how the deep State operates. They must accept and they have no option. We had Cabinet Secretaries coming to justify this when I used to sit in the Departmental Committee on Health. There was no justification at all of not involving the counties and letting them choose what equipment they required. It was one size fits all; you take it or take it. There was no option of leaving. Even as we speak now, the Senate has been having these questions every year: Why are we paying for things that we are not using?

Hon. Temporary Deputy Speaker, if you went to Moi Teaching and Referral Hospital (MTRH) today, you will find an MRI machine that was supplied at Ksh200 million but the market would give it to you at Ksh70 million or Ksh80 million. They argue that it was brought to them by the national Government. So, it is basically a corruption conduit that national Government just decides to supply equipment to the counties.

I want to note that it was so much necessary for this particular Bill to indicate that the national Government cannot pick and choose what it will send to the counties in money or in goods. It should be clear that the national Government cannot choose or procure unless asked by the relevant county. We should have seen that provision in this Bill. I hope to have a chance to propose an amendment to this Bill to reflect that position.

Hon. Temporary Deputy Speaker, I want to agree with the Leader of the Majority Party on the issue appearing in Clause 4(2). Laws are made for posterity and if we wanted to improve on what the court said about separating the two, then, we should make the law for posterity and say that in future, this is how we want grants to be handled. We could have used 2021 as a benchmark, but we cannot say this is only for the Financial Year 2021/2022. The Majority Whip is telling us that this is an example, but it is not. The wording here is "allocations finance by proceeds... shall be as set out". This is not an example, but a law. Once it is passed, this is how it should be done according to Clause 4(2). It does not say that when we pass it, we want it in this format or structure. I agree with the Leader of the Majority Party on this. I would like him and the Majority Whip to listen to this, if they allow me.

*(Hon. Amos Kimunya and Hon. Emmanuel Wangwe consulted loudly)*

We should not kill this Bill. We must negotiate with the Senate and mediate, so that the Bill does not die the way others have died because it is very important. We urge our leaders in both sides of the leadership of the National Assembly that this Bill is negotiated in a manner that we do not lose it. We should not leave this Parliament without passing it. They should allow negotiations without bashing the Senate because we do not have to do so all the time. We can agree with them that principally, this is a good Bill, as they have said, but we can change a few things so that it is passed before we go for elections.

Going forward, the other issue I thought was quite important and should be raised in this Bill is the way donors and the National Treasury agree on counties to benefit from the various

donor-funded projects. In Rwanda, it is the Government that gives donors priorities not donors giving the Government priorities. I want a situation where even here in Kenya, it is the Government that gives donors its priorities which fall in certain belts or counties, so that donors do not pick or choose, but our priorities choose for us, so that donors fit into what we are doing. It has worked very well for Rwanda and I thought it could work for us too.

Hon. Temporary Deputy Speaker, equity in the way these grants are given to the counties is key. I hope we can agree that the National Treasury does not gerrymander bureaucratic individual's feelings that if you build Nyeri, you have built the whole country. If you build Nyeri and do not build Siaya, we are worse off as a people. If you build three referral hospitals in Kiambu in central Kenya alone and do not build any in western Kenya, we all are worse off.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Ochieng', I will allow you an extra two minutes because I interrupted you.

**Hon. David Ochieng'** (Ugenya, MDG): Hon. Temporary Deputy Speaker, I always do not understand because in the last five years alone, we had the Kenyatta University Teaching and Referral Hospital (KUTRRH) built here next-door. Then we had another branch of Kenyatta National Hospital (KNH) built in Othaya, Nyeri. We are now having another one being built in Gatundu, and all of them are within the distance of 100 kilometres. Where I come from in Siaya and Kisumu, we have begged for the upgrading of the Jaramogi Oginga Odinga Teaching and Referral Hospital (JOOTRH) to a referral hospital, but this has not happened. The whole of western region, from Naivasha all the way up, we only have the Moi Teaching and Referral Hospital (MTRH). We are worse off if only one region grows and the others do not grow.

I wish in future, the Government that comes in, plans equitably. This thing that if you are given a position, the only place that should benefit is your area, is stupidity and does not help us. For those who went to school, if when planning you give roads to one region and leave the others thinking you are growing the country does not help. I hope this Bill will streamline how grants are administered, but above all, ensure every part of the country benefits from donor support.

Hon. Temporary Deputy Speaker, I beg to support that this Bill will survive as indicated.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Very well spoken, Hon. Ochieng. Hon. Arbelle Malimo, Member for Laisamis.

**Hon. Marselino Arbelle** (Laisamis, JP): Thank you, very much, Hon. Temporary Deputy Speaker, for giving me this opportunity to add my voice to the County Governments Grants Bill. Indeed, there are many proposed amendments.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Malimo, wear your mask appropriately.

**Hon. Marselino Arbelle** (Laisamis, JP): Thank you, Hon. Temporary Deputy Speaker. I have looked at the proposals made here and I agree with them. The grants are given to the counties sometimes by the European Union (EU), the World Bank, Japan and other development partners, in support of different programmes. I have seen programmes that support small scale agriculture, health, and the energy.

Sometimes, I have come across governors of respective counties who just because these are non-conditional grants, consider them as free money. So, they sometimes end up using the money to pay salaries, pending bills and other non-essential issues at the county, thus forgetting that these are funds allocated to the counties to spur growth and development. I have seen a loophole where in some counties, since the governor is the one in possession of the funds, ends up misusing them. Conditional grants come from the Exchequer with conditions. That is why many governors are crying that they have not received funds. They have not met the criteria set for them

by the National Treasury. The National Treasury disburses funds to the counties, but because of some conditions attached to them, they unfortunately end up crying that they have not received the funds. I agree with the proposals made. We need to join hands and ensure that this Bill goes through so that checks and balances are put at the county level, and the country can have some growth.

Thank you, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Okelo Odoyo, Member for Nyando.

**Hon. Jared Okelo** (Nyando, ODM): Thank you, very much, Hon. Temporary Deputy Speaker. From the outset, allow me to step back and reflect on what Hon. David Ochieng' has said, that certain Government projects are directed in a particular way to the detriment of other regions. This informs the cut-throat competition we commonly have during our electioneering period. We have been accustomed to believe that once your person loses, you lose everything and those who benefit by ascending to the most coveted house on the land get very beautiful benefits. This is looked at as a leverage towards economic progress. We are looking forward to a day when leaders will treat the country as the same, and projects will not be directed towards areas where they come from.

Hon. Temporary Deputy Speaker, I support the County Government Grants Bill, but with reservations. Reading through it, firstly you will notice there are many revenue streams here, courtesy of the donor world and other development partners. You ask yourself: If all this money is currently channelled to our counties besides what we allocate in the budget and appropriate here under the County Allocation of Revenue Bill, then, why are our counties having problems? This means there is a fundamental problem lying somewhere because this is not small money that we are seeing here. For instance, the Danish International Development Agency (DANIDA) finances universal health care and the World Bank supports several programmes including devolution. Other donors include the Government of Sweden and the German Development Bank. If the money would be channelled appropriately and then we shun misuse or misappropriation of funds and pilferages that commonly accompany our transactions, this country would be miles and miles ahead. But we wonder where the money end up.

I want to speak about the autonomy of our counties. The Bill has tried to put the Cabinet Secretary for the National Treasury and Planning at the centre of all the grants that will be coming from development partners. We ask ourselves what that means on the autonomy of counties to deal directly with donors and development partners. I am privy to many counties that deal directly with development partners for the simple reason that the partners have always believed that there is a lot of procrastination and bureaucracy with the national Government. If you intend to do anything, it will take a very long time for any tangible development to be implemented. This Bill takes us back to perhaps what donors have been running away from by engaging directly with the counties. The national Government sometimes misappropriates funds and engages in a lot of procrastination, which will not work for the betterment of the donor community.

I am trying to wrap my head around the motivation of this Bill, and I cannot put my finger on anything that would motivate the Senate to come up with a Bill like this one. At what point do we include the conditional grants in the budget? Hon. Kimunya, the Leader of the Majority Party, alluded to it. It has been put here under Clause 5(ii) that they have to include conditional grants in the Appropriation Bill. What happens when the conditional grants extended to counties come a little late? What happens in such a situation? How do you declare? Because our financial cycle or fiscal cycle does not coincide with the donor community's financial cycle, it will put us into a quandary. Apart from taking away the work of this House in coming up with the Appropriation

Bill every year, the Senate cleverly would want to add us an additional responsibility here, which they will have a leverage to dictate. They have mentioned a figure for 2021, and as Hon. Kimunya said, they will come up with a different figure in 2021/2022, and probably 2022/2023. These are fundamental issues that we cannot run away from.

We acknowledge the national Government as guarantor of loans, but I ask myself whether we need the same guarantor for grants. In this Bill, the national Government has been put at the centre of every transaction that will come out of it. I know the national Government would want to superintend the functions of the counties probably under the spirit of complementarity or under the spirit of intra-governmental coordination and stuff like that. But this takes away powers of county governments from running their activities prudently without external interference by the national Government. The genesis or the main idea behind coming up with devolution was to cut out certain interferences that have permeated systems for too long, but we are taking ourselves back to the same national Government that has frustrated our efforts.

For that, Hon. Temporary Deputy Speaker, I decline to offer my support to this Bill. Thank you.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Thuku Kwenya, Member for Kinangop.

**Hon. Zachary Thuku** (Kinangop, JP): Thank you, Hon. Temporary Deputy Speaker, for the opportunity to add my voice on the County Governments Grants Bill. I believe it is a Bill whose time has come.

We have seen attempts by the national Government, to some extent, to dictate the programmes that should be run by county governments. This has happened to the extent that county governments seem to be signing coerced agreements without much support of the law, where they cannot defend much. Let me give examples. We have had a situation and the colleague who spoke earlier, Hon. Ochieng', alluded to this fact, in the issue of the Managed Equipment Scheme (MES), where the national Government declared that they would procure goods and distribute them as conditional grants to county governments. We saw every attempt to have a figure assigned to the said agreements. Later, the same became a big issue, because it was not just a grant, but a loan. The county governments were required to foot the bill as much as there was no approval. There was no public participation and there was no approval by county assemblies. This Bill seems to cure that because for any agreement to be entered into, especially where the national Government attempts to put money in conditional grants, it is clearly stipulated here that there must be concurrence with the county assembly.

I am careful to say that maybe we will need to amend Clause 91(4)(a) where it is expressly stated that in case county assemblies do not approve or do not consider the same within 14 days, the agreement would be deemed to have been passed. To some extent, that strips the county assembly of its powers. If the county assembly is on recess and the Speaker does not call for a special sitting within 14 days and they do not consider the same, it would be deemed to have been passed. That is a mischief that can be passed by governors, especially where they have interest. We also saw the same happening in the Ministry of Agriculture, where they procured milk cooling plants for county governments. It was a conditional grant, but, of course, without the consent of county governments.

I will come up with some amendments, so that we can align the Bill and make it stricter for the national Government to enter into county governments on conditional grants which they are to give. I am talking about money coming from the Government of Kenya because development partners are very specific. But the question that begs for an answer is: What if the Government or

county governments do not have, as priority, conditional grants by development partners? Do we have a mechanism where the county assembly or county governments can reallocate the money that is meant for the same programmes? If we leave it as it is, we will allow our development partners, with all due respect, and the Government, to dictate where the money will go. That has a direct impact on the independence of county governments. County governments should be autonomous.

One of the reasons why county governments are not functional - and I am sorry to use the words not functional - is because they are at the mercy of the national Government. Today, many county governments have not received their first quarter allocations. They delay over and over so that whenever the money is released by the National Treasury, there is already a crisis. That is why there is an outcry everywhere that county governments are not functional. However, if you dig deeper, you will find that it is not a conspiracy by governors not to perform. There is some frustration that comes from the Treasury. Even as I support this Bill with proposed amendments, my prayer is that the National Treasury releases money to county governments as and when required, so that programmes can run. At times, we beat them so hard when we need services like water, good roads, and agricultural support, but they do not have money in their coffers. The money that is released is just for recurrent expenditure. As Parliament, we need to assert ourselves because our people are in county governments and that is where services are needed.

For devolution to work, there must be concerted efforts by this House to make sure that money gets to the counties as and when they are supposed to. When there is delay, it becomes a big issue for governors to perform, yet everybody castigates them as non-performers. There cannot be a conspiracy in the whole country that governors do not want to work. We know what happens even when we want to implement our National Government Constituencies Development Fund (NG-CDF) projects. If our money is delayed, we cannot move ahead. Think of a whole county government where there are so many workers and programmes such as healthcare. If money is not availed as and when it is required, we expect the crisis that we face every day.

There is also the issue of education. Village polytechnics are under the purview of county governments. Their money is allocated to county governments as conditional grants by the Government for capitation. At times, county governments may have allocated money from their own coffers. When money is sent by the national Government, it becomes an issue because the money cannot be absorbed since the programmes that they are trying to facilitate are already catered for by county governments. The conditional grant comes in late. Since these are the kind of audit questions that they get every other time, why do we not just look at this Bill closely, so that we can come up with a mechanism to reallocate money and have the same up-scaled to the Budget Office to be approved, so that counties can run efficiently?

I support the Bill because it is timely and we need it. However, I will bring some amendments.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Let us have Hon. Gogo, Member for Rangwe.

**Hon. (Dr.) Lilian Gogo** (Rangwe, ODM): Thank you, Hon. Temporary Deputy Speaker, for giving me this opportunity to add my voice to this very important Bill. I rise to support it because it provides for additional allocations to our counties. Any additional allocations that provide for the responsibilities of the national Government and county governments are of pertinent concern to devolution.

If we are to make devolution thrive, we must provide funds for it to work. Often times, we have heard that our counties are starved of resources, yet we expect services to be provided and

work to be done. There is enough bureaucracy in funds getting to our counties. Generally, given the ceilings, allocations from the national Government are low. When you work at the grassroots, you realise that as much as counties want to discharge their responsibilities to the people of Kenya, there is generally no money. If it is there, it is way below what is expected for counties. As has earlier been indicated by my colleagues, it is these counties that are at the grassroots that meet with people where the rubber meets the road. So, anything that touches on increasing funds to our counties is welcome, because we must have a seamless working relationship between the national Government and county governments. If this is dealt with well enough and with benevolence, there is a role that is played by the national Government and one that is played by county governments. However, the main intention should be to empower our devolved systems and make them run for posterity.

I support this Bill although there is mischief in some parts. It has been indicated that if the Bill is not approved by county assemblies within a given time, it would be deemed as having been approved. Look around the National Assembly chamber and you can see that Members are not here. They are at the grassroots where they are positioning themselves for the next elections. It is at these times, whether in the National Assembly or in county assemblies, that the national Government or county governments sneak in certain Bills if there are certain things they want to do. So, this may be abused and we probably need to amend it.

I am also thinking about the autonomy of county governments. As much as we want to involve the national Government in grants that go to our counties, we should let the young boys go to work. We are creating lot of bureaucracy in terms of the funds that go to our counties to the extent that if they are from donors, it becomes too much. However, the national Government also finds itself between a rock and a hard place because it should control its systems. So, in as much as we want autonomy in our counties, the national Government should also focus exclusively on what is happening at the counties.

I am also looking with some concern at the pace of management and development of our devolved systems. Depending on the managers by the name of governors, you find some counties developing at a fairer pace than others. We should have a system that will check on how the money is used. Of course, systems are there. The problem we have in this country is not necessarily lack of laws, but implementation. There are issues with how we ensure our laws work for our people. The laws are there. There are pieces of legislation put in place by the National Assembly, the Senate and even the county assemblies, but the issue is implementation. We should really look into the working of the laws that we bring in.

This is a good Bill and I support it with the various amendments that have already been proposed by my colleagues, which I do not want to repeat. It is a good Bill that we need to support. We need to eliminate graft that raises eyebrows when it comes to Government expenditure at both the national and county levels. We need some level of patriotism when we are given the responsibility to manage public funds as leaders.

With that, I support the Bill.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Maanzo, Member for Makueni.

**Hon. Daniel Maanzo** (Makueni, WDM-K): Thank you, Hon. Temporary Deputy Speaker, for giving me an opportunity to contribute on this very important Bill.

I have seen that Makueni County has been allocated close to Kshs500 million. So far, every county in Kenya has received an average of up to Kshs80 billion and most of it cannot be accounted for. I am aware there have been projects run by World Bank's conditional grants. Quite a number



are by the European Union and many other organisations. The Action-Aid has done a milk plant in a place called Kanthonzweni for Kshs84 million. It was my initiative that eventually went to the county government. It is not only this, but many projects have been done there even by NGOs and foundations. If it is a water project, it is eventually given to the management of the county and it will eventually be run down. There is something terribly wrong with counties in Kenya. There is a lot of wastage, lack of consultation and no proper public participation. In many occasions, county assemblies are just at the behest of the executive, namely, the governor's office. It is in such a situation that you find this mess.

First of all, how would this have been done differently? It looks like a supplementary budget. It should have been in the original budget. In these conditional grants and even when you see the meaning of "grant" here, it also includes loans. That means it is a loan which the national Government will eventually pay. If they have not utilised the 15 per cent properly and it has not worked properly, why would you add more money to the counties while there is no proper mechanism of overseeing the sort of situation? I have seen some of it is about headquarters. Some counties like Makueni have done their headquarters, but that is an installation of the county. It becomes part of the county. It means that it should be part of the county budget. Where they have not yet done their county headquarters, it is deserving that money should be released.

I believe this must be amended. We must countercheck and scrutinise the projects. What belongs to the normal budgeting of a county should go through that normal budgeting of a county, so that local assemblies participate and the Senate eventually oversees. What is happening here is a real breach of the Constitution and the expectation on devolution. Therefore, most of the money we are going to give through this Bill is just going to waste. It will never be accounted for because most governors have served their second terms and others will not be back. It means most of this will go to waste within this financial year or end up being converted and processed to be money for some governors to run again and become governors, or be used for them to come and compete in the Senate or in the National Assembly. That is for those governors that are exiting. There is no law barring them from doing that.

If you look at it, it is not guided specifically for every county on what has been put in and what is left. I think there is a serious mischief in this law or amendment. We, as the National Assembly, have a duty to remove this mischief and make sure that money belonging to Kenyans is not wasted further. There has been a lot of waste of public funds in this country. In fact, the only successful thing in this country has been the NG-CDF. That is why the model of the NG-CDF is being followed even with the new classrooms being constructed. We need to instill a model of the NG-CDF within the counties so that we can make sure that projects are completed and done in the way we work with the *wananchi*, so that people's money is used properly. It has not been used properly in the past. There is a lot of outcry. The audit is not yet complete. The Senate is behind by some years. Every other time governors are called to the Senate to account, they have every manner of excuse to postpone and delay. Some of them are waiting to exit. But the truth of the matter is that governors must be held accountable over this money. Even if this money is lost, whoever in whose hands the money gets lost, must be brought to book even if it takes 10 or 20 years.

Otherwise, we have started devolution in the wrong footing. We are actually, as a country, limping. We need to improve devolution. Although this money is being allocated as extra money, the question is: What has been happening with those other grants which have been given before? Have they been illegal? Have they been used properly? Have they been monitored properly? You know the international community is very keen. I know that the USAID was very keen to complete

the work by itself. It followed up the procurements and things like that, but, is every organisation able to do so? It is the World Bank that is also doing the high courts. You can see the job has been done very well. But when it comes to money that has been given to a county government, automatically, the county assembly must oversee. But look, it is not the county assembly giving the money this time round. It is the National Assembly. That is why this Bill has been brought here. So, do we have the mandate to go and oversight the money? The answer is no. When will it get to the Senate and we are just going to elections? Which Senate will oversight this? Certainly not the current Senate. Probably this will not be completed in the next two or three years. Probably, this will be done many years after today. Some of the projects will probably take a longer time. If projects of smaller magnitude have failed in the counties and you only see the NG-CDF projects, you cannot see even health centres belonging to county governments, then these projects have an issue.

Therefore, it is the responsibility of this House to make sure that this Bill is properly scrutinised at the Third Reading. If need be, the Committee and ourselves should bring necessary amendments to tighten the ropes because there are very many loose ends here. We have to make sure that this money does not go into waste the moment it goes to the counties, and it goes into proper use. We should improve the definitions because you can see the CS here is the one responsible for finance. Ordinarily, the CS responsible for devolution should be the one dealing with this matter. If it is the CS for the National Treasury and Planning, is he answerable to the Senate or to ourselves? How is he going to follow up this money to make sure it is used for the right purpose and there is a proper audit of the particular projects they were allocated for? How then do you do a joint audit between the World Bank, which is mentioned here many times, and the European Union? It means that the national Government will eventually pay this loan. Who will make sure that the job is done? It is not the county assembly. It is not the National Assembly. The Senate, perhaps. But there are loose ends. If you look at the whole matter, it is county headquarters that qualify, if there is a thing that qualifies. They can, in a way, be accounted for. The rest of the allocations are very questionable. Those are projects which can still be funded through the normal budgeting process of the county.

I submit, accept and support this with reservations, hoping that we will make amendments. I will make amendments to improve it and the whole House will be very keen to make sure that this money does not go into waste in the counties.

I thank you, Hon. Temporary Deputy Speaker and I take this opportunity to welcome all Kenyans coming to Makueni Constituency for the Devolution Conference, although we, as Members of the National Assembly, have not been invited. I am yet to know how to participate when there is no invitation yet I am the host Member of Parliament.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Maanzo, you have not been invited and it is in your constituency, but you are also inviting us. So, where are you inviting us to? Hon. Rindikiri, Member for Buuri.

**Hon. Mugambi Rindikiri** (Buuri, JP): Thank you, Hon. Temporary Deputy Speaker. I rise to support this Bill specifically because it addresses the delivery of services to our communities through county governments. There are two types of grants. One is from the national Government of Kenya that is specifically with county headquarters. The other one is from development partners' grant which has been classified into 12 items. The grants, from either the national Government or the development partners, are channelled to various essential services in the counties.

There is a lot of focus on agriculture, climate change, health care and capacity building. These are essential activities that need to be done through the grants. However, just like my colleagues have stated, we have a lot of problems in accounting for the grants. One condition that is given from the World Bank or the national Government on the construction of counties headquarters... For many years, a lot of money has been allocated for the construction of infrastructure in county governments' headquarters, and that defeats logic. Just as we know, we come from constituencies within counties that are sub-counties' headquarters. What has happened is that county headquarters have developed more compared to sub-county headquarters. The Senate needs to address the construction aspect of county headquarters through grants. It needs to be devolved to sub-county headquarters.

Great concern is the use of grants for capacity building. How do you account for capacity building? We all come from counties. For a long time, I have not seen county programmes for capacity building. That is a weakness that the Senate needs to address. What kind of capacity building are we talking about? If you check the grant given for health services, there are few capacity building items in it. The same case applies for the climate change grant. That is a serious concern for this country and that is where many counties have failed. Having an organised tree planting session per day in a certain area does not translate to addressing totally climate change. What we are lacking in some of the counties is identification of clear programmes that grants need to address.

There is a problem in accounting for grants. The use of funds by counties needs to be strictly followed to the letter. We have been talking about grants for many years. It is high time, before we proceed with giving more grants to the counties, they accounted, either in terms of finances or outcomes, of the grants. We need to have some amendments because there is no model in the Bill that shows how this fund is going to be managed other than that money will be released to county revenue offices. The Bill does not tell us how and where the money will be used. If we use the model of the NG-CDF, we will state the project, its location and estimates, and then we have a monitoring and evaluation programme. That is missing in the Bill. Instead of the Senate putting more emphasis on the oversight in the Bill, the Bill is only talking about giving out money and how it will be released. I have seen a schedule that shows where and how much money is going to be used, but it is not telling us how the money will be accounted for at the end of the 2021/2022 Financial Year. At the end of the financial year, they will ask for more grants in the following 2022/2023 Financial Year.

We cannot continue to encourage grants from the national Government or from the development partners without seeing tangible results from the grants that have been previously given. One area of concern is healthcare. There is only one county level 5 hospital that is given priority. We have sub-county hospitals and dispensaries that have no medicine and essential services. There is a problem. There is a level 4 hospital in my constituency called Timau, which does not have an x-ray, maternity and casualty facilities. One has to travel for, for example, 50 kilometres to the district headquarters that are funded by grants. So, if the Senate and county governments are serious, they need to have the grants going direct to the grassroots and not only ending up at the headquarters. I support the Bill with reservations. I will work with my colleagues to bring amendments to this Bill.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Kubunguchy, Member for Likuyani.

**Hon. (Dr.) Wamalwa Kibunguchy** (Likuyani, FORD-K): Thank you, Hon. Temporary Deputy Speaker. From the outset, I support the Bill for the simple reason that more resources in

an organised way are coming down to the counties. Just like most of my colleagues have said, there is a lot of reservations in how devolution as a concept has been practiced in this country and how it has evolved over the 10 years. There are many examples that I can quote. Devolution as a concept was meant to do two or three main things. One, just like everybody has said, is to take services close to the people. Let people participate in deciding priorities in their areas. More importantly, devolution was meant to exploit natural resources that are found in different parts of the country. Natural resources are not uniform throughout. There are places where people have natural resources like water, lakes and oceans. What can we exploit from these natural resources to create employment and wealth for our youth? That is not what has happened with devolution in this country. In the end, devolution has tended to be a club that creates employment bureaus. Most of the money that goes to the counties goes towards recurrent expenses like payment of salaries of the bloated workforce. In the process, very little money goes to development. That is why when you walk around, most of what you see in terms of development has been done by the NG-CDF.

As I keep saying, we devolved funds from the centre, which is Nairobi, to various counties. When this money gets to county headquarters, most of it is tied up there. Very little trickles down to the wards or sub-counties. That is why you hardly find any development there. As Members of Parliament and lawmakers in this country, I think it is up to us, and probably we will start with this Bill, to see if we can put mechanisms in place so that the people who receive this money are directly accountable. We need to establish rules and parameters so that we do not give individuals a blank cheque at the county level. They should account for the money in the long-run.

I would like to speak a little about health. Being a medical doctor, I feel very sad. I feel sad because instead of moving forward and looking at some of the diseases that were being eradicated, we are going back probably to 30 years ago just because we devolved health services to county governments. I think that was the biggest mistake. When history will eventually be written, the biggest mistake we made in this country was to devolve health services. County governments have no capacity to handle health services. If we are going to provide services in this country, and if I may believe some of our big brothers who say that the BBI will come back after elections, I think one of the areas that we are going to push for is to see either the whole of health services or the aspect of human resource, reverting to the national Government. That way, we will have something akin to what is in the teaching profession. We should have a health service commission to handle the human aspects of health. I am sure the intention of leasing medical equipment was noble, but people did not think hard about it. We have a totally skewed distribution of health experts in this country. In some rural areas, you will hardly find nurses that know how to deal with dialysis, yet one of the equipment that were leased was dialysis machines, and they are required in virtually every corner of this country.

If we had a centralised commission dealing with human resource, it would have been handled in a better way. We know that at every given time, for example, Likuyani Hospital does not have a nurse that deals with dialysis, that commission would then post one there. What happens is that every county does their own thing. We have reached a level where things that were unheard of some years back are now an everyday thing. Doctors are on strike. Nurses are on strike. Clinical officers are on strike. Laboratory technicians are on strike. They are on strike at different times. Health workers in Kakamega County are on strike while the ones in Kirinyaga County are working. It is like some places are condemned. I wanted to emphasise that bit, being a medical doctor. It is a mistake. Something we must look at again. Health services must be centrally controlled. If we are going to have universal healthcare and make sure that it is implemented uniformly throughout the country, it must be controlled from a central place. It cannot succeed with everybody doing

their own thing, where some people think health should be equated to other things. Health is a fundamental human right. I wanted to take time and talk about that because I get frustrated and very sad that we have reached a point where we have medical personnel going on strike. Otherwise, like most of my colleagues have said, we will have to look at this Bill very keenly and make some pertinent amendments.

Thank you, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Very well spoken, Hon. Kibunguchy. I would not have put it any better. I can assure you, if we ever reconsider the health component in the Constitution, I will second the argument you make. Hon. Nakara Lodepe, the Member for Turkana Central.

**Hon. Lodepe Nakara** (Turkana Central, ODM): Thank you, Hon. Temporary Deputy Speaker. I want to put emphasis on what Members have already said. This Fund must be allocated to the basic services that we need in our counties. As *Mheshimiwa* said, we need this money allocated to health, which is the fundamental right of our people. Secondly, this money should be allocated to water services, which some counties are in need of. This money should not be used for seminars or unnecessary services. That is why we emphasise the basic services that our people require.

The second thing is accountability. This is a grant and it can be misused if there is no accountability in our counties. If we are not going to use the money appropriately in the right services, then the governor or whoever is concerned will be responsible in repaying the grant to the county government. Without accountability, governors or any other person can misuse the money because there are no reports given or specific measurements made. People may not have seriousness in using the money because it is a grant.

Another thing that we need to put emphasis on is responsibility. Every county government must be responsible for the money and account for it to the last coin, so that donors can appreciate that our county governments use the money responsibly. Therefore, as Members of Parliament, these are the things we want to see in our counties and that the money is benefiting our people. Even the donors giving the money will say their donations have improved the lives of people, changed their lifestyles and brought some development in the county. These are the things we want to see after giving the money to our counties.

Hon. Temporary Deputy Speaker, many Members have spoken, and as *Mheshimiwa* Kibunguchy has said, we have had devolution for 10 years in this country. Some counties have not used even 30 per cent of what they were given to improve the lives of their people. Some have done very well while others have improved and made some steps forward. We do not want to condemn them generally, but there are some that have done very well. You can go to those counties and say surely, this was not there before; I can see a road, a water pump, or college or institution.

Hon. Temporary Deputy Speaker, I am proud of my county, Turkana. It is one of the counties that were behind in many ways, but devolution has really changed it. We are like any other county in this country because of how money has been used. We cannot say the money has been used 100 per cent, but it has changed our situation and face. In my county, there are tarmac roads in villages and water services are closer to the people. We need more than this and not only in Turkana County, but also in other counties. As Members of Parliament, we want to see development across the country. We are representatives of the people and not representatives of our villages. We are saying all the governors must be held accountable and responsible for the grants. So, if they misuse the money, some measures should be taken against them.

Finally, one thing that we need to know about the grants is that today they are here, and tomorrow they will disappear. We need to encourage our counties to generate more money so that when the grants are not there, the money generated can continue to help them to offer services to the people. If the money is put in projects that cannot generate income, that is the end. When donors stop giving grants, then we are finished. We want to encourage the counties to take some of the money and invest in activities that can generate money for them so that when donors pull out, they can continue to sustain services in the counties.

As Members have said, I also have reservations. We need to re-look into this Bill and do some few amendments before passing it.

Thank you, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Koyi Waluke, Member for Sirisia

**Hon. John Waluke** (Sirisia, JP): Thank you very much, Hon. Temporary Deputy Speaker, for giving me a chance to contribute to the County Governments Grants Bill. We need to give money to our counties. Indeed, devolution has done a good in this country. We can commend a few counties because we have seen their development and progress, but many are mismanaged. They misuse funds and grants just like allocations from the National Treasury.

Let me take this opportunity to thank the Jubilee Government. People who do not know may say that the Jubilee Government has not done many developments as they promised. However, I want to assure you that, indeed, the Jubilee Government has done a lot of development in this country. In terms of infrastructure, they have opened roads in every corner of this country where we never expected that a tarmac road might appear.

If something good has been done, we must commend. Most county governments misuse their revenue collections. I think most of them have two accounts, one for sending money to the National Treasury and another for themselves. That is why revenue collection in this country has gone down. Yes, there is COVID-19, but still people are paying rent for their shops and premises and even *Mama mboga* has never stopped paying money to the county government. With COVID-19, people still pay their dues, but the money is not seen as it was seen before devolution came. Devolution meant well for our people, so that money would go to the counties.

For devolved functions like health, many of our hospitals, dispensaries, and health facilities were either built by the national Government, or using the NG-CDF, which is still national Government. Where I come from, there is no dispensary that has been put up by the county government 10 years down the line. So, where does the money go? All level five hospitals are devolved, but the national Government has been building infrastructure and other things we see. We saw the First Lady taking some equipment to my county worth hundreds and millions of shillings. So, accountability is lacking in devolved functions. County officers collect money from the public, especially poor mothers, yet the money is taken elsewhere. The donors are donating the grants for the people to eat although it is here for us to discuss. Yes, many Members have supported it, some with reservations, saying that they are doubting whether the money is going to be used well. I support that. A dispensary in a sub-county has been without an x-ray machine or any dialysis machine for 10 years. We need to change and amend some laws that help *mwananchi* to benefit from what he/she contributes.

This country has a lot of resources. If it was another country, it could have been on its knees, but God loves this country, and that is why we are proud of our country, Kenya. It goes down and within a month or so, you will see it up again. As leaders, if we can take care of resources

that we have in this country, I think we can move to another level. As I said, many requirements are not there in the facilities that the common *mwananchi* expects to see or use in the village.

I support this Bill, but with very little support because we want the money to go to the counties. We need it. I need it in Bungoma. We cannot oppose the Bill, but I support it with reservations and say that people are supposed to look after the money in county governments, right from the governor to the common officer who is supposed to look after the money. If this money is a grant, grants come at different levels, even on a national level.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): I allow Hon. Waluke one more minute to finalise his contribution.

**Hon. John Waluke** (Sirisia, JP): Thank you, Hon. Temporary Deputy Speaker. The money comes at different levels, even to the national Government itself, but when the money reaches the Treasury, also there is a problem in the Treasury. Treasury also takes advantage of these grants. I am speaking on what I have seen like in the Public Accounts Committee in allocating grants and sometimes loans. People tend to think that they can just misuse grant money that is donated from outside the country the way they feel or want, because they think that there is no accountability, and so they take advantage. The government needs to put strong measures about these donations and grants that come from outside the country.

With those few remarks, because of time, I support with reservations. Thank you, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Odege, Member for Nyatike.

**Hon. Tom Odege** (Nyatike, ODM): Thank you, Hon. Temporary Deputy Speaker, for allowing me to contribute on this Bill. To start, allow me to support. I want to support with the following recommendations. As a Member of Parliament from a rural place down in Migori County, I would feel very sad to object to any money going down to my people. I know that as Members, who represent members of the public, we have a lot of disappointments when it comes to issues related to county governments, especially the management of funds by county governments.

When we talk about development, in fact, it is almost across the country. If you ask all of us, everybody is having issues with his county and the way they manage funds. There are two concerns which I wanted to raise. As we are recommending money to go down to the grassroots, we need to wake up a number of institutions which I would say are sleeping on the job. The fact that governors are elected should not make them untouchables. Like now, we want to think otherwise because money is not being put in the right place, yet we have the National Treasury releasing money to them. We have the Ethics and Anti-Corruption Commission (EACC), which we fund ably to deal with corruption. We have the Directorate of Criminal Investigations (DCI), who are supposed to monitor how everything is being done at the county and all over the country. We are now turning to ten years down the line. If we look at accountability in the counties and how county governments have worked, we will give them less than 10 per cent, because we have allowed people to consume public funds and go scot free. Even if you look at the actions being taken, they come too late. You will also agree with me that those who are sent to investigate are somehow the beneficiaries. That is why getting accountability, taking people to court, charging them and forcing people to see justice down there has been very slow. That is why if you look at the interest people are developing to contest for the post of governor, you will agree with me that 50 per cent of the people who have developed interest are thinking they can make quick wealth. They have seen how the occupants of the office have made wealth. However, the Government and

the agencies entrusted with the responsibility should make the job very difficult for people who are going down there, and make it to be seen as if they are going down there to look for problems, so that we can make things work.

My second concern is that for real development to be seen in the counties, we have to look for ways. I do not know whether this will force a referendum to come in. We need to separate the management of human resource issues with issues related to county governments. If you ask me, we do not need to transfer human resource issues back to the national Government. We need to establish a working secretariat at the Council of Governors' level, mandated in law to manage nationally the issues related to human resource. This will control the nature of employment we are seeing in the counties. If you go to some counties, mine included, almost a half of the newly employed staff are related to people who are supposed to run the counties.

Again, if you look at the issues relating to accountability, county assemblies have failed. This is another issue which we need to look into seriously as a country. Do we need county assemblies if they are toothless? If not, do we empower the Senate to do the same job? Why do we have the Senate and the county assemblies and there is nothing they are doing?

Why do we have the Senate and the county assemblies and nothing is being done? Look at the issues of corruption and accountability. Sometimes you see governors being summoned to Nairobi and you wonder why they are coming. This is because you do not see anything tangible happening. I have never seen a governor taken to task over funds. If such things happen in your county, you will realise that maybe it is a bargain for MCAs to get some money from the County Executive. Issues related to development or protection of public resources are lacking. We have some weaknesses in the formation of county governments. We need to re-examine these weaknesses so that we...

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Odege, I heard you say that where there is any show of question to the Executive, it is always a conspiracy.

**Hon. Tom Odege** (Nyatike, ODM): I want to repeat. That is exactly what is happening in our counties. You will never see a serious accountability issue related to services to *wananchi*.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): It is true. Even in my county, I have not heard of the governor being put to task.

Proceed.

**Hon. Tom Odege** (Nyatike, ODM): As much as we may say that we want money to go down there, we also need to challenge the organs entrusted with the responsibility of ensuring that money is devolved.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Odege, Hon. Wangwe seems to also want to weigh in on this point.

**Hon. Emanuel Wangwe** (Navakholo, JP): Thank you very much, Hon. Temporary Deputy Speaker. I rise under Standing Order No. 83. My very good friend, Hon. Odege, has said that where there is a challenge or an issue and the MCAs weigh in, it appears to be a conspiracy or they are interested parties. Is the Member right to say so yet he is a representative of the civil servants union? He is the one who is supposed to reprimand those who are not doing the right thing. Is he in order to allude to that fact yet these are his employees?

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Wangwe, the Member for Nyatike is in order. It is true that we are not seeing results from the money that is sent to the counties. I see no problem with what he is saying.

Proceed, Member for Nyatike.

**Hon. Tom Odege** (Nyatike, ODM): Thank you very much, Hon. Temporary Deputy Speaker. I think you have answered him. I am not going to weigh into it. It is true that I represent civil servants



in this country but I stand here as the Member of Parliament for Nyatike. I talk on behalf of the people I represent. The money we are talking about is for the people of Kenya. We are now crying aloud that this money is not doing a tangible job for our people and we want to see real development.

I was interrupted when I was talking about the issue of centralising the issues of Human Resource (HR) in the county governments. There is nothing to be desired in how we handle HR issues in the counties. We cannot have counties where employment is not tied to service needs. We also should not have a situation where employment cannot be measurable. When you see the kind of employment currently happening in the counties, no one can get employed in the county if they are not known by those who are in charge down there. Look at all the governors and county assemblies around. All new employees are relatives of the governors. From the experience I got from the union, I would say that if we centralise HR issues in the country at one level – even if it is at the Council of Governors level or at the National Government level – it will ensure fairness for those who compete for jobs. It will also ensure fairness when it comes to award of salaries. At the moment, when you go to the counties, you will find somebody who is just three years from university earning more than someone who did the same course in the university and has been in public service for over ten years because there are no clear structures of engagement on how we recruit people in the counties. Experience is put aside; interest is put ahead.

I support that the money should go to the counties but we should allow the relevant agencies to follow up on the appropriation of this money so those who interfere with it can be held to account.

With those remarks, I support.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Shimbwa Mwinyi, Member for Changamwe.

**Hon. Omar Mwinyi** (Changamwe, ODM): Thank you, Hon. Temporary Deputy Speaker, for giving me an opportunity to weigh in on this very important subject of national importance. I would also like to support my other colleagues who have spoken on this matter. Governments are supposed to be responsible organs that reflect the wishes of the people – the ambitions, dreams and expectations of the people they serve. As much as we would all like to see money trickling down to the counties, looking at the history of our county governments for the last two terms, it is lamentable, disappointing and in fact apart from members of the public celebrating the campaigns, they do not see the fruits of what they campaigned for. It is very important to note that our governors have done better on individual basis than what they have done for the counties they have been serving.

As Hon. Odege and other Members have put it, those who are scrambling for positions of governorship are aspiring to become the new governors at large, flying from one European capital to the other in pursuit of goals which are not relevant to the counties they serve. As we are also aware, the Senators – due to the fact that they are toothless – have also resorted to playing ball with the governors. We have never seen any governor taken to court or to task over any matter that is seen to be serious. So, whenever we see such moves by the Senate, we know that it is simply a game where certain things are done and the governors are left to go scot-free.

Hon. Temporary Deputy Speaker, the biggest culprit is the National Government. The National Government is expected to be an example for the county governments to follow. It is very sad to note that there is a serious competition in terms of doing the wrong things in the public financial sector in this country. This element of competition to become rich fast without doing any tangible work is making the county governments irresponsible. They are following the direction of the National Government. In the National Government, nothing is done to whoever steals or does anything wrong. It is high time that governments become responsible for their people. They should be accountable to their people. They should enforce the law to make sure that anybody in a position

of delivery is taken to task and even taken to jail in case he misappropriates funds meant for public development.

Currently, there is a lot to show for the National Government Constituencies Development Fund (NG–CDF) money in our respective areas of representation but there is nothing to show for the many billions of shillings that have trickled down to the county governments. As much as we want to have equitable distribution of development resources, the National Government should, first, take the lead by doing the right thing. Apart from doing the right thing in terms of selection of their personnel, governors and their county governments should also be wary in terms of carrying out their responsibilities. They should know that the money they have is meant for development of their respective counties. The most painful part is that the governors come from those areas. Sometime back, we used to complain that all the money was being held up in Nairobi. Currently, all the money meant for development in the counties is going to *mashinani* areas. People from those localities are now the ones doing the wrong things, which is a very sad moment in the history of our country. As much as devolution is good, and as much as we would like grants to go down to the counties; if that money is not put into proper use, we will be wasting the voters' energies and time. We will be frustrating our people and we will fail as a country because of our own undoing. Everybody would like to become rich but there are right ways of doing business and becoming rich. We currently have overnight millionaires and billionaires without the public knowing what they do for a living.

On the aspect of development, I am very pained when I see that there is no equitable distribution of resources in all our budgets. If you look at all the departments that present their budgets, you will see that there is nothing to show that those people who were given those responsibilities look at Kenya as a country where everybody pays taxes and is supposed to get an equitable share of development from their taxes. That is very clear.

There is no single underdeveloped area in Europe. If you travel there, you will find that there is development in every region. When we were in Germany, we learnt that when the Berlin Wall was demolished, there was deliberate effort by the Government to ensure that the Eastern part of Germany was developed to the level of the Western part. If you visit those two parts of Germany today, you will not see any difference. So, anybody who serves in any office in Government should know that he or she is a Kenyan first. His or her tribe should come second.

Finally, I am also looking at the Port of Mombasa. It is an asset to the nation but unfortunately, we see it being used not for the benefit of the locals but to serve some individuals in this country. We understand that there will soon be a signing off of the second port to be transferred to the Global Container Shipping Company (MSC), which is an Italian firm. I am sure that there are Kenyans who can buy this facility. It will serve Kenya's interests better than if it goes to an Italian firm. I take this opportunity to warn those who are behind this to make sure...

**The Temporary Deputy Speaker** (Hon (Ms.) Soipan Tuya): Conclude in a minute, Hon. Mwinyi.

**Hon. Omar Mwinyi** (Changamwe, ODM): Hon. Temporary Deputy Speaker, we want to take it seriously. This is an asset which should serve our people. If there is any agreement to transfer it to MSC, we have to go to court to make sure that it never happens, especially now that we are getting to the end of the current regime. If there is anything to be done, let it happen during the next regime. Otherwise, no such thing should be allowed to happen during the current dispensation.

I am calling out the Principal Secretary for Maritime and Shipping Affairs. I hear that she is behind this plan. She should stop it. She has been lying about employing many people from our area to serve in the blue economy subsector but nothing has happened so far. Giving away our port

facilities to MSC and to some individuals in this country is taking away the rights of our people. It is very unfair and it should never be allowed to happen.

Hon. Temporary Deputy Speaker, I thank you for giving me an opportunity to say what I wanted to say for the benefit of this country, which we all love.

**The Temporary Deputy Speaker** (Hon (Ms.) Soipan Tuya): Let us hear the Member for Saku.

**Hon. Ali Rasso** (Saku, JP): Thank you, Hon. Temporary Deputy Speaker. I want to add my voice to the debate on this very important Bill from the Senate.

Article 96 of our Constitution is very clear that the Senate has a role to superintend and oversee the counties. Article 175 of our Constitution is also very clear that the counties must have reliable sources of revenue for them to be governed and provide services to their people. Unlike the National Government that looks at the broad canvass of Kenya, if you are from the counties of Kisumu, Kitui, Marsabit or Turkana, you address the specific needs and issues that pertain to the people that occupy that geographical region. Once resources go to a county such as Narok, they are not national resources. They are resources for the people of Narok County.

Article 174 of the Constitution is about public participation, and resources and governance going close to the people so that at the end of the day people in any given county, almost to a man or woman, decide how their resources will be used. In this case, the grants that are given to our counties cannot be used willy-nilly by the Executives in those counties. They have to be properly utilised to provide public services, social amenities and development for our people.

Some of my colleagues who spoke before me talked about there being no visible development in the counties. In the region I come from, devolution is like a second Independence for us. Where there were no offices, today there are offices. Where people were not working, today some of them are working and earning wages. This House must insist that the resources that go to the counties must not be wasted. They must be properly utilised for the well-being of our communities.

Hon. Temporary Deputy Speaker, before the advent of devolution, some of our counties used to receive less than Kshs200 million per year for development. We had District Commissioners (DCs), under the previous Provincial Administration, sitting with chiefs to decide what small developments could take place. Today every county receives billions of shillings annually. This aspect of devolution is what can change the face of this country. If you travel across our counties today, you will see spendthrift county official elements with total disregard of the things that can turn around this country's economy. That is why some of us have joined the "Hustlers". Investing in the rural economy where agriculture, livestock rearing and mining take place is what can turn this country around. If counties are going to spur development within their areas, then they must invest in what is likely to generate growth within their geographical spaces.

Whereas we are just talking about the counties in the face of this Bill, we must also talk about the National Government that retains almost 85 per cent of the National Budget. When that Budget is used, it has to correlate with the development taking place in the counties. We should not be blaming the 15 per cent and forget to ask about the 85 per cent. There are only three areas that we may have very little to question in terms of what goes on in the National Government: The Ministry of Defence, the Ministry of Foreign Affairs, and the National Treasury and Planning. All other functions, including agriculture, water, health and other Ministries and Departments, have been devolved. Are the resources associated with these devolved functions going to the counties? Is there proper oversight of those resources to ensure that they are used for the wellbeing of the people of this country?

Article 1 of the Constitution states that all sovereign power belongs to the people of Kenya. Article 95 (c) states that the National Assembly shall deliberate on and resolve on matters of concern to the people. This Bill is important because it is about the resources that go to the counties for the wellbeing of our people. It is important that resources going to our counties are properly accounted for and managed for the wellbeing of our people.

With those remarks, I beg to support.

**Hon. Jared Okelo** (Nyando, ODM): On a point of order, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Hon. Okelo, what is out of order?

**Hon. Jared Okelo** (Nyando, ODM): Hon. Temporary Deputy Speaker, allow me to rise under Standing Order No.95, noting the mood of the House and the exhaustive nature of this debate, which now borders on repetition, to move that the Mover be called upon to reply.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Have you spoken to this debate?

**Hon. Jared Okelo** (Nyando, ODM): Yes.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Then you cannot gag the rest of the Members after you have spoken to it.

**Hon. Jared Okelo** (Nyando, ODM): Then put the Question.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): No. You cannot order me to put the Question. You are out of order.

**Hon. Jared Okelo** (Nyando, ODM): I request you to put the Question.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): I have two Members who want to speak – Hon. Bunyasi and Hon. King'ara. They seem to be the only Members interested in contributing to this debate so far. Let me allow them to speak.

Hon. Bunyasi, proceed.

**Hon. Sakwa Bunyasi** (Nambale, ANC): Thank you, Hon. Temporary Deputy Speaker. You are a true heroine. You are particularly considerate of the fact that we have come to participate in these late-night sessions.

I support this Bill from the Senate. I think they are doing the right thing. It amazes me that we are very good at looking over our shoulders at others and judging them as being less accountable or less transparent than we are in this House. When we talk about oversight, we should think about how this function has slipped through our hands. That is why today we have an accumulating debt which should be entirely within our control. We have more human resource here than the counties have but oversight is still a challenge. Devolution is barely 10 years old. This is the time we should give them every support they need.

Hon. Temporary Deputy Speaker, these grants save the counties from seeking to tax people more. It is a good thing that grants are going to the counties. It is going to take a while for all the systems in the counties to fall into place. We can, however, demonstrate our commitment in that regard if the National Assembly had a zero-tolerance to corruption and wastage policy. We speak a lot about it. We use a lot of English but we do not seem to get it fixed. It is going to take time.

The amount of money that goes to the counties in total is about Kshs370 billion, which is about 10 per cent of the National Budget. We worry about losses that occur with regard to 10 per cent of the National Budget but we do not seem to worry about the losses that occur with regard to the 90 per cent. We have had the Kenya Medical Supply Authority (KEMSA) scandal and everything just seems to slip through our fingers. We will use the loot for campaigns and we run the nation that way.

As a House, we have the big responsibility of looking inward at the reflections from mirrors on our walls and not yonder and say, “Those are the guys.” Doing so would be pointing fingers at others. As they say, as you point one finger at somebody, at least three fingers of your own palm will be pointing at you. We must take an honest reckoning of where we are.

Hon. Temporary Deputy Speaker, this idea of grants is great. They are targeted grants. If there is failure of oversight, we should also take the blame. We should strengthen the Office of the Auditor-General (OAG). When they come for budget allocation, there is usually a lot of wavering and we continuously cut their requests. We worry about the amount they were allocated the previous year. We also tell them that they are not the only ones who need more money. It is a fact that they need more money. It is about the Judiciary. We have slashed them thin yet without those institutions, we cannot move on regarding issues of corruption and what the Director of Public Prosecutions (DPP) should do. The DPP only seems to be active when State House barks. After a while, all the drama around the arrests go silent. There are institutions that are meant to handle these issues well. Let us not mess up with the wonderful restructuring of governance by the current Constitution in terms of the devolved units. Let us fix the malpractices that are giving a bad name to devolution.

In counties like Busia, we begun to see development only after devolution. The rest of it was just a little thing that you got in a long while. For example, courtesy of devolution, I was to have eight kilometres of tarmac road running through my constituency from Bungoma County. It has been two-and-a-half years since the project was commissioned but the contractor is off-site. He claims that he is not being paid and that his bills are now pending. The other day, he was told that the pending bills were waiting for audit verification. He has done legitimate work. He is not being challenged for submitting an erroneous bill. He has been told that he has to wait for the auditors to complete the audit. That could be a time-buying tactic by the Government simply because the National Treasury does not have the money to pay or the money is going elsewhere.

Hon. Temporary Deputy Speaker, I was recently following some discussion where pressure was being mounted on His Excellency the President by people from his home region. He was accused of not having done much for his region. Those who were in support of the President came up with some statistics, which I trust. They said the President had done a lot. In the Central Region alone, a sum of Kshs540 billion has been put into road construction. I asked, “Kshs540 billion in one region?” That was in defence. The other day I heard two Members of Parliament discussing about supply of electricity in their respective constituencies. While one Member said his constituency was at 99 per cent connectivity, the other said his constituency was still at 96 per cent connectivity. I asked myself whether I was in the same Republic with them.

Devolution is an equaliser. Let us ensure that the system works. Let us support it to ensure that it works as we fix the things that are in our purview and where we have influence. For Heaven’s sake, we cannot expect miracles overnight. We should be intolerant to corruption wherever it occurs. If corruption occurs in 10 per cent of the Budget, what happens to the 90 per cent? Do we think there are saints in the 90 per cent? We must disapprove of the corruption taking place in that area in equal measure. Corruption should be intolerable wherever it occurs.

Hon. Temporary Deputy Speaker, devolution is not necessarily about county governors. We have some good governors and some bad governors. We have some good senior officials at the National Government level and some really bad ones. It is a matter of systemic weaknesses. That is what we should seek to solve. Let us not confuse issues that occur because of the deviance of some officials with systemic improvements that are intended to put resources in remote areas. I live next to a dispensary. When it used to be under the National Government, we did not have a

fridge because we had no electric power. We only got power after devolution. A fridge now runs. We do not have medicines but I hope one day they will be brought. I hope KEMSA at the national level and its equivalent in the counties will begin to function someday so that Madende Dispensary will have supply of medicines throughout the year – particularly medicines for children and expectant mothers, who are most vulnerable.

We have a lot of weaknesses in the system that is otherwise good. Re-centralising anything would be taking us back to the dark ages. How can the National Government ever know what Madende Dispensary needs? How will they know the staffing needs of Madende Dispensary? That will not happen. We need to devolve primary healthcare services to the counties and insist, as we are doing now, through various legislations and policy options; that devolution goes down to the ward-level so that they, too, have access to resources and use them for betterment of the people. Corruption has become completely unholy to an extent that money stolen at the national level is exported. We hear it being in various places in the world. Money at the county level goes to markets within the counties. A new storey building of a chief officer comes up and the money circulates locally. It is not legal. We must stamp that out but let us not pretend that it is the only leakage in this Republic. If it was the only leakage, it would be only 10 per cent of the National Budget. Even if it all leaked, it would be 10 per cent of the Budget. The 90 per cent is where the big problems are. As it is, we should have zero-tolerance for any of the malpractices we have.

I like the idea of grants going to the counties. Let us follow up the application of these funds through good oversight by our relevant institutions, and not just the County Assemblies. The County Assemblies are weak. In this Parliament, we have passed some ugly laws, and we have put aside some things that ought to have been brought up. Let us not be holier than thou at all. Let us regroup and completely stamp corruption out. We are headed in the right direction. That is why the countries ahead of us have followed. They have also not been spared from these issues. Let us go with them. We hear about such issues in India and even in China – which is completely intolerant to corruption. We hear about corruption in the United States of America (USA). It is not that I am sanctioning these issues. Let us realise that these are growing pains we should keep our eyes on at all times.

With those remarks, I support.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuyu): Member for Ruiru, Hon. King'ara.

**Hon. Simon King'ara** (Ruiru, JP): Thank you very much, Hon. Temporary Deputy Speaker, for giving me an opportunity to share my thoughts in support of this Bill. It was not for granted that we went the devolution way. We had some reasons. It was well guided. As much as it has not worked 100 per cent, it does not mean that it cannot improve.

The main reason for the Bill is to disseminate money from the National Government to upcountry and remote areas in the counties in order to decongest our very congested cities. As much as money is required down there, it is important to put in place very strict measures on how that money should be utilised. I do not see any reason as to why we should blame lack of accountability in the devolved functions. It is important to come up with laws and ways of managing the resources that go to the county level or to even a lower level like municipalities. Such a mode of governing a country has been tested elsewhere. If the money is well utilised, and if there is efficiency, I do not see any problem.

When devolution started, a lot of incompetent people were hired to work in county governments and other devolved sectors. Maybe, this is where we got a problem because unaccountability became a very serious threat to the money that was devolved from the National

Government. However, we should not say that devolution is bad. Actually, if performance at the county level were to be measured, we would conclude that devolution is over 70 per cent successful. Even the number of cases that have been taken to court is very small. This can be a good gauge to determine whether devolution is working or not. If one or two officers or servants of the people misbehave, it does not mean that everybody misbehaves. It should, therefore, not be taken that devolving or sending more money to county governments will not work.

I want to pick on health. When county governments started working, many hospitals were upgraded. Many new hospitals came up. More money was required. So, when somebody comes to seek for more money in order to improve our health sector to work better, it is very much in order. The issue is: Who is working there? If we reflect backward and remember the incompetent and unqualified staff that used to work there, everything should be in order. What is required out there is very regular audits. It normally takes so long for those facilities to be audited. That is why issues accumulate and it becomes very hard to resolve them. We have seen people in court with bags of documents. Imagine if audits were done quarterly or even monthly. We will be able to sort out the problem of lack of accountability.

It is also important to continue strengthening county governments with financial and human resources and even improving the skills of existing staff, especially through benchmarking programmes to enable them benefit from people who have been successful in the same field. If we do so, I do not see any problem that would make the use of money out there impossible or not in order. When we used to work with the central Government, many people were very poor out there. Many roads were not done and many schools out there were not functioning properly. When devolution came in, we started to see development all over Kenya. So, if we send more money to the counties and put in place very good accountability measures, we will be good to go.

People may cite areas where devolution may not have been successful so far but I remind those people, including my own self, that there is a law in this country which can also be improved to take care of the devolved system of governance. We can even review the existing laws to strength or improve the county governance system with a view to holding county government workers to account. We can even improve the systems they use for accountability and any other form of operation at that level. This has also made it easy because a problem in one county may not be similar to that of another county. We have had consolidated problems and that is why we are now having issues. That is why you find certain matters being reported in some counties while other counties are safe and doing very well.

Finally, it is also important to rank development or usage of money down there in the counties. We can set benchmarks or pacesetters as far as utilisation of funds down there is concerned. We can pick the best to help us improve the entire sector. It is also important for this House to consider other matters which are not in this Bill that can help in improving the county governments' utilisation of funds.

Hon. Temporary Deputy Speaker, I support this Bill and hope that other Members support it, so that we improve utilisation of money within the county governments.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): There being no other Member willing to contribute to this debate, I call upon the Mover to reply.

**Hon. Benard Shinali** (Ikolomani, JP): Thank you, Hon. Temporary Deputy Speaker. I wish to make some comments as I reply.

First of all, I want to thank all the Members who have contributed to this Bill because they have brought up very critical issues. As a Committee, we shall go through *The Hansard* and ensure that we pick all those points and include them in our amendments.

As a Committee, we put an advertisement on 3<sup>rd</sup> November 2021 for stakeholders and members of the public to bring their comments. We received several memoranda. Most importantly, we had four key stakeholders led by the Council of Governors (CoG), the Commission on Revenue Allocation (CRA), the Office of the Auditor-General and the National Treasury, who appeared before us. We have put their comments and suggestions in our records. This is because we intend to move their amendments together with the ones Members have come up with so that we may achieve the objective of this Bill.

The objective of this Bill is to provide procedures for implementation, accountability and ensuring that grants allocated to the counties go to designated projects and we get value for money. I do not intend to speak about many other issues Members intend raise during the next stage of this Bill to ensure that it is aligned to the High Court's ruling that was issued. As a Committee, we also note that if this Bill is passed as it is, it will be contradicting the same court ruling.

Hon. Temporary Deputy Speaker, I beg to reply and request that you defer putting of the Question to the next sitting, pursuant to the provisions of Standing Order No.53 (3).

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): That is in order, Hon. Shinali. Let us go to the next Order.

*(Putting of the Question deferred)*

## MOTION

### ADOPTION OF THE TENTH REPORT OF THE SPECIAL FUNDS ACCOUNTS COMMITTEE

THAT, this House adopts the Tenth Report of the Special Funds Accounts Committee on audited financial statements for the Local Authorities Provident Fund, the Unclaimed Assets Trust Fund, the National Environment Trust Fund, the Land Settlement Fund and the Petroleum Fund, laid on the Table of the House on Tuesday, 10<sup>th</sup> August 2021.

*(Hon. Erastus Nzioka on 18.11.2021)*

*(Resumption of Debate interrupted on 18.11.2021)*

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Hon. Members, we are resuming debate. The Motion had been moved. Is the Mover here? Hon. Kivasu, you were to call upon somebody to second.

**Hon. Erastus Nzioka** (Mbooni, Independent): Thank you, Hon. Temporary Deputy Speaker. I moved the Motion on adoption of the Report of the Special Funds Account Committee on audited financial statements for the Local Authorities Provident Fund, the Unclaimed Assets Trust Fund, the National Environment Trust Fund, the Land Settlement Fund and the Petroleum Fund on Thursday, 18<sup>th</sup> November 2021, at the tail-end of the day's business. What we missed was seconding.

I now call upon Hon. Jared Okelo to second the Motion.

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



**Hon. Jared Okelo** (Nyando, ODM): Thank you, Hon. Temporary Deputy Speaker, for giving me an opportunity to second this Motion.

My colleague, Hon. Nzioka, has already delivered justice to this Report. It is important from the outset to make it clear that we are looking at three financial years in these five sets of Reports – Financial Years 2016/2017, 2017/2018 and 2018/2019.

In the interest of time, I will not delve into all these Funds, but I want to only look at the Local Authorities Provident Fund and, firstly, say it is anchored in law. It emanates from an Act of Parliament. It is a retirement benefits scheme for county government water and sewerage companies hinged together with other affiliated companies. Its mandate is mainly to collect funds from contributors and their employers or any sponsor, on behalf of the beneficiaries.

As I said, it is a retirement fund. So, it also makes payments to members upon retirement or upon earlier withdrawal by beneficiaries in cases of death by a contributor. The Fund operates as a parastatal under the Retirement Benefits Authority Act (RBA). Currently, it has a membership of 52,000 people. A member contributes 12 per cent of their monthly income and the employer, together with sponsors, contributes 15 per cent. That money goes into a Fund that is currently standing at Kshs35 billion in assets. These assets come from property that is held by the Fund in terms of Government securities, equities and deposits made by individual contributors.

The Local Authorities Provident Fund, the Unclaimed Assets Trust Fund, the National Environment Trust Fund, the Land Settlement Fund, and the Petroleum Fund are what the Report we have given out will be looking into. That is for the three years of their transactions, between years 2016 and 2019.

With those remarks, I beg to second.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Order, Members.

*(Question proposed)*

We have two Members who want to speak on this Motion. To start us off is Hon. Shabbir, Member for Kisumu East.

**Hon. Shakeel Shabbir** (Kisumu East, Independent): Thank you very much, Hon. Temporary Deputy Speaker. I beg your pardon. I am out of order. Before I speak, let me put on my mask. I am sorry about that oversight.

My colleague has detailed the five Funds that the Special Funds Accounts Committee (SFAC) looked at. I am a Member of the Committee. It has taken a great amount of time to look at the accounts of some of these Funds, which had never been sorted out for some time. There is one Fund that I want to bring to the attention of the House. I was a mayor of a city. Many of us here have been councillors or have somehow been connected with the previous local authorities before they were taken over by the county governments. There is something called the Local Authorities Provident Fund (LAPF). It has a lot of money though much of it is due for payment to its members. There is a lot of debt due to the cities of Mombasa, Nairobi, Kisumu and other former local authorities, but the bigger ones are Nairobi, Mombasa and Kisumu. So, the LAPF monies are debts. There has been a proposal that the County Pension Fund takes over the assets and liabilities of LAPF. However, the counties do not wish to be involved with LAPF. Neither do they have a desire to acknowledge the liabilities of the local authorities yet they keenly wished to take over assets of those local authorities. In Kisumu, where I was the mayor, the issue had become one of debt swaps. The debt swap in Kisumu was depending upon the Makasembo Estate that was taken over by the LAPF, which had a lot of contributions.

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The first thing we want to raise in respect of the LAPF is to ensure that it has the first charge on assets. As a member of City Hall or county staff, I was making my pension deductions but the local authority never transmitted those contributions to the LAPF. When I retire, I will go to the LAPF and demand my pension. The LAPF will not manage to pay the pension because it will say that the pensions were never remitted to it. Unfortunately, that is the situation we found the LAPF in. The remittances from the local authorities had not been paid.

One of the problems we had, and which we were looking at and trying to solve when we were auditing the LAPF, is what is due to who and by whom? The LAPF came and told us they are owed so much money by Kisumu, Mombasa and Nairobi. Our Committee felt that it was very important that, apart from looking at the audit, the comments and whatever, we facilitate some of these issues. I remember proposals had been made but not honoured. The City of Kisumu or the County of Kisumu had made proposals but did not honour them. I am specifically bearing on Kisumu because I know about Kisumu. There are issues about Nairobi and Mombasa but I do not want to bear upon them. It was then decided by the Committee that the Fund continues diversifying its investment portfolio in the country's Big Four Agenda and bring out affordable housing but they could not have the affordable housing. The Committee also suggested that Kisumu County Council pays an amount of Kshs11.9 million within three months of the Report. They had agreed to pay it. They had given over their debts swap. Although it was not our mandate, as SFAC, we had to look at the audit reports. The Committee was able to put it to the parties that before finalisation of the audit, these things would have to happen. The audit report even says that certain amounts of money have to be paid but the payee refused to pay. What are we going to do? Our job as SFAC was not to just look at the audit comments but to also zero in on the audit comments and ask why this or that had not been done and whether it had been resolved. If it had not been resolved, we passed it on for further action. That aspect was looked at by our Committee and we said that we should be facilitators to make sure that before we pass these accounts, we insist that the County Government of Kisumu, for argument's sake and this one case, must honour its debt. If it does not honour its debt, we shall send an adverse Report through the House, which we are doing now. We are saying that if the County Council of Kisumu does not honour that debt of Kshs11, 979,000, which LAPF requires in order to process the development of the housing units, the Committee will recommend to the House that further action be taken against the County Government of Kisumu. That is it about that specific asset in LAPF.

As far as the Unclaimed Assets Trust Fund is concerned, the Committee also recommends that the Fund expedites the process of engagement with MPs to increase the reunification rule. The Committee found out that Kshs25 billion worth of assets is being held by the Fund. Only Kshs34 million had been settled. We were wondering what the Unclaimed Assets Trust Fund is meant to do. The Unclaimed Assets Trust Fund is supposed to say when the Fund has unclaimed assets. One of the responsibilities of the Fund is to try and determine the rightful owners of those funds. If you are looking at Kshs25 billion of assets and you have only been able to identify owners of Kshs34 million, then you are failing in your duty. What extra steps are you taking to find out who owns these unclaimed assets? We noted that there must be a time-frame for these unclaimed assets to be claimed. They cannot just sit in a bank account. There are certain countries such as Singapore that use assets that have been unclaimed for more than 10 years to develop programmes that citizens can benefit from.

On the Land Settlement Fund, it was observed that there are land loans of Kshs6.9 million and development loans of Kshs70 million to settlers from 1962 that remain outstanding to date. I am wondering what the Land Settlement Fund has been doing from 1962 up to now. That was

attributed to the slow pace of loan repayment by settlers and beneficiaries due to a tedious manual process. Nobody has been looking at that. We have loans of Kshs70 million.

I beg to move.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): You are not moving, Hon. Shabbir. You are supporting. You should put it on record that you are just supporting.

**Hon. Shakeel Shabbir** (Kisumu East, Independent): I beg to support.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): That is now in order. We do not need to move twice. Let us have the Member for Nambale, Hon. Bunyasi.

**Hon. Sakwa Bunyasi** (Nambale, ANC): Thank you, Hon. Temporary Deputy Speaker. I rise to comment on two of the funds.

First is the Local Authorities Provident Fund. These kinds of funds, whether pension or provident, are useful to workers. People get into them at a young age. They look forward to joining them and ask how they can begin to invest so that when it is time for them to quit, they can be rewarded. They are trust funds and those obligations will be honoured.

With respect to the Local Authorities Provident Fund, I know of councilors whose deductions were made from their salaries. The local authorities did not always tally their contributions. They may not have submitted their contributions for other reasons. Whereas they paid every month, the net effect is that their funds were never transferred. After devolution came, many of them were in this city frantically looking for ways in which they came make up for lost time. Some of them contributed funds to fill up the shortfalls in their contributions so that they are part of the Fund, but that never happened. That is disappointing as it makes it difficult for them. As a House, we are within reach to punish the institutions that do not fully remit on their obligations, particularly on trusts for provident and pension funds.

If you have noticed, with regard to the National Social Security Fund (NSSF) and the National Hospital Insurance Fund (NHIF), there are many cases where workers' monies are deducted, but funds are not remitted. Individuals are left helpless. It is only through collective action and with the support of institutions like ours that they can be listened to. It is important for people to avoid being desperate in the latter years of their lives.

Many people in this House and other institutions are young and think that there will be a miracle when they get old. When they get there, they may find that they are unable to make ends meet and end up leading a miserable old life. Nowadays, children cannot be your pension or provident fund provider or your medical and social security provider. I am glad that this is a modern institution. When you have that type of institution, it takes away the burden of worry from individuals and the Government of the day and transfers it to the commitment one makes by surrendering part of their salary.

I hope that the Local Authorities Provident Fund will correct these problems. I do not think they will be able to generate a piece of legislation that will force 100 per cent compliance. Even though I do not have an idea, that is something that I jointly propose should be done. The outcomes that we should seek are in the areas of trust in which workers commit their active years to pay up so that they finally receive a payback. It is important that we all pull up our socks.

In the campaigns, you have heard the issue of social protection being a frontline concern. That is important. People are realising that the social structures they depended on and the fiscal assets they had can dissipate and not provide while they are working. That will be an important provision.

One of the challenges that devolution has had is with regard to human resource. Must workers be stuck with one employer so as to provide for their retirement? We should move away

from that. Provident funds provide opportunities where you can remit from diverse contributors or subscribers. Institutions should have the professional responsibility to manage resources in a way that they can look back on 20 or 30 years from now. They should manage funds for people, more for some and less for others, so that whether they are in private or public institutions, they can contribute with the expectation that their funds will be managed within a legal environment. We and the Senate are custodians of the legal environment for making laws that will ensure that those promises are kept apart from issues of financial probity, and that they are observed in situations of that nature.

I know that many countries use those resources for long-term investments like housing and claim that that will benefit workers. However, that must only be done where there is sufficient liquidity to guarantee payments when time is due. Otherwise, that is the kind of thing that leads people to suicide when they are desperate and do not know which way to go.

All in all, I support the work of the Office of the Auditor-General in looking at this. I hope that we will get answers and pass legislation that will tighten the loose ends. Kenya is doing well in having these kinds of institutions in place. We will always seek to improve them.

I support.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): We only have two minutes to go. I see no other Member interested in contributing. Is the Mover here? Will you be able to reply in two minutes?

**Hon. Erastus Nzioka** (Mbooni, Independent): Thank you, Hon. Temporary Deputy Speaker. I thank the Members who have already contributed to this Report. It is my hope that the recommendations that the Committee has put forward will be implemented by the Select Committee on Implementation, so that the funds we have talked about can benefit Kenyans. That especially applies to the money that has not been paid in the Local Authorities Provident Fund.;

On the Unclaimed Assets Trust Fund, if, by any chance, the rightful owners of the Kshs25 billion that is sitting idle in the Central Bank of Kenya are found, they will benefit from that money.

I beg to reply.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): We shall defer putting of the Question until when the Motion comes back on the Order Paper.

*(Putting of the Question deferred)*

## ADJOURNMENT

Hon. Members, the time being 8.59 p.m., this House stands adjourned until Wednesday, 24<sup>th</sup> November 2021 at 9.30 a.m.

The House rose at 8.59 p.m.