

**PARLIAMENT OF KENYA****THE NATIONAL ASSEMBLY****THE HANSARD****Thursday, 17<sup>th</sup> February 2022**

The House met at 2.30 p.m.

*[The Speaker (Hon. Justin Muturi) in the Chair]***PRAYERS****Hon. Speaker:** Can you ring the Bell for Quorum.*(The Quorum Bell was rung)*

Hon. Members, we now quorate. Let us start today's business.

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

Legal Notice No.28 relating to the Traffic (Driving Schools, Driving Instructors and Driving Licences) Rules, 2020 from the Ministry of Transport, Infrastructure, Urban Development and Public Works and the following accompanying documents:

- (i) The Explanatory Memorandum;
- (ii) Nairobi High Court Judgement (Petition No.E251 of 2020);
- (iii) Letter dated January, 2020 by the Principal Secretary, State Department of Transport on the Traffic (Driving Schools, Driving Instructors and Driving Licences) Rules, 2020; and,
- (iv) Notice to members of the public, Report on the Public Participation and list of attendance of members of the public to the public participation forums.

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:

- (i) Combating Poaching and Illegal Wildlife Trafficking in Kenya Through an Integrated Approach Project – State Department for Wildlife;
- (ii) Kenya Water Towers Project – Kenya Forest Service;
- (iii) Integrated Programme to Build Resilience to Climate Change and Adaptive Capacity of Vulnerable Communities in Kenya – National Environment Management Authority;
- (iv) Northern Kenya Conservation Project – Kenya Wildlife Service;
- (v) Green Growth and Employment Thematic Programme – Ministry of Environment and Forestry;

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- (vi) International Partnership Programme – Kenya Forest Service;
- (vii) GCF Readiness and Preparatory Support Capacity Strengthening Programme Towards Accessing Climate Finance from Green Climate Fund – National Environment Management Authority;
- (viii) Kenya Industry and Entrepreneurship Project – Statement Department for Industrialisation;
- (ix) Independent Policing Oversight Authority;
- (x) Centre of Excellence Sustainable Agriculture and Agribusiness Management – Egerton University;
- (xi) Kenya Towns Sustainable Water Supply and Sanitation Programme –Kenya Valley Water Works Development Agency;
- (xii) Kenya Towns Sustainable Water Supply and Sanitation Program – Athi Water Works Development Agency;
- (xiii) Integrated Health and Environment Observatories and Legal and Institutional Strengthening for the Sound Management of Chemicals in Africa – Ministry of Environment and Forestry;
- (xiv) Water and Sanitation Services Improvement Project – Athi Water Works Development Agency;
- (xv) Mwea Irrigation Development Project – National Irrigation Authority
- (xvi) Nairobi Rivers Basin Rehabilitation and Restoration Program (Sewerage Improvement Project Phase II) – Athi Water Works Development Agency;
- (xvii) Mwea Irrigation Development Project – National Irrigation Authority;
- (xviii) Nairobi Rivers Basin Rehabilitation and Restoration Program (Sewerage Improvement Project Phase II) - Athi Water Works Development Agency;
- (xix) National Action Plan on Artisanal Small-Scale Gold Mining Project – Ministry of Environment and Forestry;
- (xx) Kenya-European Union (EU) partnership for the implementation of the national Strategy to counter violent extremism in Kenya – National Counter Terrorism Centre;
- (xxi) Kenya-Italy Debt for Development Programme – Ministry of Water, Sanitation and Irrigation;
- (xxii) Kenya Forest Service -Capacity Development Project for Sustainable Forest Management in Kenya;
- (xxiii) Sound Chemicals Management Mainstreaming and Unintended Persistent Organic Pollutants (UPOPS) Reduction in Kenya – Ministry of Environment and Forestry;
- (xxiv) Kenya Institutional Strengthening Project Phase XI - Ministry of Environment and Forestry;
- (xxv) East Africa Trade and Transport Facilitation Project – Kenya National Highways Authority;
- (xxvi) Kenya Transport Sector Support Project – Kenya National Highways Authority;
- (xxvii) Arusha-Namanga-Athi River Road Development Project – Kenya National Highways Authority;
- (xxviii) Kenya Urban Water and Sanitation OBA Project Fund for low income Areas – Water Sector Trust Fund;

- (xxix) Mombasa-Nairobi-Addis Ababa Road Corridor Project Phase III – Kenya National Highways Authority;
- (xxx) Technical Assistance to enhance the capacity of the President’s Delivery Unit Project – State Department for Interior and Citizen Services;
- (xxxii) Kenya Nairobi-Thika Highway Improvement Project (Lot 3 Government Concessional Loan Agreement) – Kenya National Highways Authority; and,
- (xxxii) Multi-National Arusha-Holili/Taveta-Voi Road Corridor Development Project Phase I – Kenya National Highways Authority.

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:

- (i) Kenya Accreditation Service; and,
- (ii) Tana and Athi Rivers Development Authority.

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

- (i) Siala Technical Training Institute; and,
- (ii) Kiambu Institute of Science and Technology.

I thank you, Hon. Speaker.

**Hon. Speaker:** Chairman of the Committee on Delegated Legislation.

**Hon. Kassait Kamket** (Tiaty, KANU): Hon. Speaker, I beg to lay the following Paper on the Table of the House:

Report of the Committee on Delegated Legislation on its consideration of the Public Finance Management (National Roads Toll Fund Regulations 2021) Legal Notice No.222/2021

**Hon. Speaker:** Chairman of the Departmental Committee on Agriculture and Livestock.

**An Hon. Member:** He is not in the House.

**Hon. Speaker:** Does he know the time that the House sits? Does Hon. Tiren have a Vice-Chair?

**Hon. Members:** He is around.

**Hon. Speaker:** He cannot be around. We are on Order No.5. Some of these people need to be told again when the House sits.

We will go to the next Order.

## NOTICES OF MOTIONS

### ADOPTION OF PUBLIC FINANCE MANAGEMENT (NATIONAL ROADS TOLL FUND) REGULATIONS 2021

**Hon. Kassait Kamket** (Tiaty, KANU): Hon. Speaker, I beg to give Notice of the following Motion:

THAT, this House adopts the Report of the Committee on Delegated Legislation on its consideration of the Public Finance Management (National Roads Toll Fund) Regulations 2021, laid on the Table of the House on Thursday, 17<sup>th</sup> February 2022; and pursuant to the provisions of Section 24(4) of the Public Finance Management Act (2012) and Section 6(a) of the Public Roads Toll Act, approves the Public Finance Management (National Roads Toll Fund) Regulations 2021 published as Legal Notice No.222/2021.

I thank you, Hon. Speaker.

**Hon. Speaker:** Chair of the Public Investments Committee (PIC).

ADOPTION OF PIC REPORT ON SPECIAL AUDIT ON  
UTILISATION OF COVID-19 FUNDS BY KEMSA

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

THAT, this House adopts the Report of the Public Investments Committee on its consideration of the special audit report on utilisation of COVID-19 funds by the Kenya Medical Supplies Authority, laid on the Table of this House on Wednesday, 22<sup>nd</sup> September 2021.

**Hon. Speaker:** Chairperson of Constituencies Development Committee.

**PAPER LAID**

**Hon. Wafula Wamunyinyi** (Kanduyi, FORD-K): Thank you, Hon. Speaker. I apologise for coming late. I was involved elsewhere.

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

Report of the Select Committee on National Government Constituencies Development Fund on its consideration of the nominees to the Ugenya Constituency Committee of the National Government Constituencies Development Fund  
I thank you, Hon. Speaker.

*(Hon. Wafula Wamunyinyi consulted Hon. Speaker)*

**Hon. Speaker:** Do you have a Notice of Motion? Proceed.

**NOTICE OF MOTION**

APPROVAL OF NOMINEES FOR APPOINTMENT TO  
UGENYA CONSTITUENCY COMMITTEE

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

THAT, pursuant to the provisions of Section 43(4) of the National Government Constituencies Development Fund Act, 2015 and paragraphs 5(2) and 10 of the National Government Constituencies Development Fund Regulations 2016, this House approves the list of nominees for appointment in the Ugenya Constituency Committee of the National Government Constituencies Development Fund, laid on the Table of the House on Thursday, 17<sup>th</sup> February 2022.

I thank you, Hon. Speaker.

**Hon. Speaker:** Very well. We will now go to Order No.7. The first Question is by the Member for Tharaka.

## ORDINARY QUESTIONS

*Question No.006/2022*

## DISBURSEMENT OF PENSION TO FORMER COUNCILLORS

**Hon. George Gitonga** (Tharaka, DP): Hon. Speaker, allow me to ask the Cabinet Secretary for the National Treasury and Planning the following Question:

- (i) Could the Cabinet Secretary state the amount of money set aside for payment of pensions, gratuities and other benefits to former councillors who served in the defunct County Councils between 1963 and 2012?
- (ii) Could the Cabinet Secretary state the number of the said former councillors who are set to benefit from the allocation?
- (iii) When does the Ministry plan to disburse the payments to the said former councillors?

Thank you, Hon. Speaker.

**Hon. Speaker:** The Question will be replied to before the Departmental Committee on Finance and National Planning.

The next Question is by the Member for Kibwezi East, Hon. Jessica Mbalu. She was absent on Tuesday. She requested that the Question be re-scheduled to today. She is not in the chamber. It is dropped because she is the one who specifically wrote and requested that it should be re-scheduled to 17<sup>th</sup> February 2022, Afternoon Sitting. What is good for the goose is good for the gander.

*Question No.037/2022*

IMPLEMENTATION OF ELECTRICITY  
PROJECTS IN KIBWEZI EAST

*(Question dropped)*

The next Question is by the Member for Mathioya, Hon. Kihara.

*Question No.043/2022*

## NON-COMPENSATION FOR LAND TO MATHIOYA RESIDENTS

**Hon. Peter Kimaru** (Mathioya, JP): Hon. Speaker, I rise to ask the Cabinet Secretary for Lands and Physical Planning the following Question:

- (i) Could the Cabinet Secretary explain why persons living along the Kiriaini-Kairo Road in Mathioya Constituency are yet to be compensated for land compulsorily acquired by the Government for the upgrading of the road to bitumen standards?
- (ii) Could the Cabinet Secretary state the timelines when the said residents will be compensated?

Thank you, Hon. Speaker.

**Hon. Speaker:** The Question will be replied to before the Departmental Committee on Lands.

The last Question is by the Member for Matuga, Hon. Tandaza.

*Question No.045/2022*

IMPLEMENTATION OF FOOD RELIEF CASH  
TRANSFER PROGRAMME IN MATUGA

**Hon. Kassim Tandaza** (Matuga, ANC): Hon. Speaker, I rise to ask the Cabinet Secretary for Public Service, Gender, Senior Citizens Affairs and Special Programmes the following Question:

- (i) Could the Cabinet Secretary provide a list of all beneficiaries under the Food Relief Cash Transfer Programme in each sub-location in Matuga Constituency?
- (ii) What are the criteria used in the identification of households and/or individuals to benefit from the Programme in the country and in particular in Matuga Constituency?
- (iii) What action has the Ministry taken to ensure that all deserving households and/or individuals in Matuga Constituency are registered to enable them to benefit from the Programme?

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

The next segment is Requests for Statements. Member for Lungalunga, Hon. Mwashetani.

**REQUESTS FOR STATEMENTS**

IMPLEMENTATION STATUS OF RESOLUTION TO RECOGNISE  
THE PEMBA PEOPLE AS KENYAN CITIZENS

**Hon. Khatib Mwashetani** (Lungalunga, JP): Thank you, Hon. Speaker, for giving me this opportunity. I rise to request for a Statement on recognition of the Pemba people of Kenya as citizens of Kenya.

Hon. Speaker, pursuant to the provisions of Standing Order 44(2)(c), I wish to request for a Statement from the Chairperson of the Committee on Implementation on the status of the implementation of the report on a public petition regarding recognition of the Pemba Community of Kenya as Citizens of the Republic of Kenya.

On 19<sup>th</sup> November 2020, a Petition regarding recognition of the Pemba people as citizens of the Republic of Kenya was presented to the House by the Member for Kilifi North, Hon. Owen Baya. Consequently, it was committed to the Departmental Committee on Administration and National Security for consideration, pursuant to the provisions of the National Assembly's Standing Order No.227. Upon consideration, the Committee tabled its Report on the same, which was considered and adopted by the House on 11<sup>th</sup> August 2021.

Consequently, a letter forwarding the said Report to the Principal Secretary in the Ministry of Interior and Co-ordination of National Government, which was copied to the Cabinet Secretary for the Ministry, was dispatched on 6<sup>th</sup> October 2021. However, since then, and despite several inquiries having been made on the matter, no action has been taken to commence the process of issuing the Pemba Community citizenship as approved by the House.

Hon. Speaker, it is worth noting that the said Report recognised the Pemba Community as Kenyans, just like any other community. The Pemba people are indigenous to Kenya, unlike those other communities who came to Kenya from other countries, who have since been granted citizenship. These are Kenyans who through a historical oversight were left out of the list of Kenyan communities at Independence. Therefore, they have remained Stateless and they live an undignified life in their own country.

Cognisant of the Huduma Bill, 2021 currently before this august House being processed to take effect as soon as possible, the Pemba Community is definitely going to be left out of the Huduma number registration. If the Bill is enacted, the Huduma Number will be the central master population number for all services provided by the Government.

It is on this basis that I seek a Statement from the Chairperson of the Committee on Implementation on the implementation status of the recommendations contained in the Report on a public petition regarding recognition of the Pemba people of Kenya as citizens of the Republic of Kenya.

I thank you, Hon. Speaker.

**Hon. Speaker:** Who do you direct it to? Is it the Departmental Committee on Lands? It is directed to the Committee on Implementation. That is Hon. ole Kenta's Committee. As you can see, Hon. ole Kenta is present in absence. The Member is asking for the implementation status. Maybe, Hon. Kenta can respond when the time comes. Let the request be channelled through the Office of the Leader of the Majority Party to see whether he can respond.

There is another request by Nominated Member, Hon. Sossion.

DISMISSAL OF LATE ALEXANDER  
KIPKORIR CHERUIYOT BY TSC

**Hon. Wilson Sossion** (Nominated, ODM): Thank you, Hon. Speaker. Pursuant to Standing Order No.44(2)(c), I rise to request for a Statement from the Chairperson of the Departmental Committee on Education and Research regarding the dismissal of a disabled teacher, the late Alexander Kipkorir Cheruiyot (TSC No.388095) by the Teachers Service Commission (TSC) as he was undergoing medical treatment.

It is of great concern that on 7<sup>th</sup> October 2021, the TSC Disciplinary Committee un-procedurally and without due diligence, dismissed Mr. Alexander Kipkorir Cheruiyot from employment for the alleged charges levelled against him that he had deserted duty with effect from 26<sup>th</sup> July 2021 while he was serving at Kabolwo Secondary School in Bomet County. All along, Mr. Cheruiyot's right forelimb was amputated due to injuries sustained in a road accident while on official duty on 10<sup>th</sup> June 2004, specifically on a benchmarking visit - a misfortune which reduced Cheruiyot to a physically challenged person, which further led to post-traumatic stress disorder (PTSD) until he succumbed to the complications at Chelymo Nursing Home on 1<sup>st</sup> February 2022. The PTSD condition could not allow Cheruiyot to request for sick leave since most of the time he was deeply traumatised and stressed. Frequent admissions to hospital resulted in a state of traumatic stress and depression that resulted to rehabilitation referrals and complete detachment from reality.

Hon. Speaker, it is on the bases of the circumstances that led to the dismissal, following the deterioration of the health of Mr. Alexander Kipkorir Cheruiyot that I seek for a Statement from the Chairperson of the Departmental Committee on Education and Research on the following:

- (i) Could the Commission explain why Mr. Alexander Cheruiyot, who was suffering from mental imbalance, was summoned for the hearing of a disciplinary case by the TSC?
- (ii) Could the Commission explain why Mr. Alexander Kipkorir Cheruiyot was punished through dismissal considering that he was out of duty station because of the injuries and PSTD arising from the accident he had while on official duty on 10<sup>th</sup> June 2004?
- (iii) Could the Chairperson explain why the Commission ignored apologies tendered by Mr. Cheruiyot and the request to review his case?
- (iv) Could the Commission consider reinstating Mr. Alexander Kipkorir Cheruiyot posthumously so that his next of kin can pursue his full benefits accrued since he was employed by the TSC as stated in Section 176 of the Code of Regulations for teachers?
- (v) Why did the TSC not retire Mr. Alexander Kipkorir Cheruiyot on medical grounds as stated in Section 162(1)(a) of the Code of Regulations for teachers if they found that he could no longer deliver the classroom teaching as expected?

Thank you, Hon. Speaker.

**Hon. Speaker:** The Question will be replied to before the Departmental Committee on Education and Research. It will be challenged through the Office of the Leader of the Majority Party.

While still at that same segment, I will allow Hon. ole Kenta to respond to the Request for Statement by Hon. Mwashetani. It was about implementation status.

Proceed, Hon. Kenta.

**Hon. Richard ole Kenta** (Narok North, ODM): Thank you, Hon. Speaker. The issue that has been raised by Hon. Mwashetani was actually raised by Hon. Baya the other day through my Committee. I would like to assure the Member who has raised the matter that the Committee, through the Clerk, wrote to the Principal Secretary for the Ministry of Interior and Coordination of National Government about the issue on 23<sup>rd</sup> January 2022, exactly 60 days after the resolution of the House.

It is a matter that should be addressed as fast as possible because it affects many communities that have lived in Kenya for over 100 years trying to gain citizenship. The other day, I saw members of the Nubian Community in Kisii crying about the suffering they are going through because of the fact that they have been denied citizenship. It is something that should be pursued relentlessly until these people are given citizenship because they have no other place they can call home.

We have already taken the necessary steps and I assure the Member that it will be done because the Government is also keen on doing these things, and it has done a similar thing in the past in regard to other communities.

Thank you very much, Hon. Speaker.

**Hon. Speaker:** Hon Mwashetani.

**Hon. Khatib Mwashetani** (Lungalunga, JP): Hon. Speaker, it is quite in order as we know that members of the Pemba Community in Kenya have waited for long. I believe the report he has given us will be pursued with the Ministry and it will be effected.

Thank you, Hon. Speaker.



**Hon. Speaker:** I approved another request, but I do not remember by which Member. There is another Member who had presented a request for Statement to my Office, which I approved. The Member himself is not there.

Leader of the Majority Party, present your Statement, on behalf of the House Business Committee.

### STATEMENT

#### BUSINESS FOR WEEK COMMENCING 22<sup>ND</sup> TO 24<sup>TH</sup> FEBRUARY 2022

**Hon. Amos Kimunya** (Kipipiri, JP): Hon. Speaker, pursuant to the provisions of Standing Order No.44(2)(a), I would like to give the following Statement, on behalf of the House Business Committee which met on Tuesday, 15<sup>th</sup> February 2022 to prioritise business for consideration.

As Members are aware, the process of reorganising the various committees of the House has been on-going, and in this regard a number of elections have been conducted for the positions of chairpersons and vice-chairpersons in committees that had been affected by the changes. For the purposes of record, I wish to relay to the House that Members have been elected as chairpersons and vice-chairpersons of committees as follows:

Hon. Abdikhaim Osman has been elected the Vice-Chair of the Departmental Committee on Agriculture and Livestock. In the Departmental Committee on Communication, Information and Innovation, Hon. Jane Wanjiku Njiru has been elected the Chair while Hon. Mark Nyamita Ogolla has been elected the Vice-Chair. In the Departmental Committee on Defence and Foreign Relations, Hon. Richard Tong’i has been elected the Chairperson, while Hon. Elijah Memusi Kanchory has been elected the Vice-Chair. Hon. Jeremiah Ng’ayu Kioni has been elected the Chairperson of the Departmental Committee on Energy, while Hon. Mishi Mboko has been elected the Vice-Chairperson of the Departmental Committee on Lands. Hon. Sophia Abdi Noor has been elected the Chairperson of the Departmental Committee on Environment and Natural Resources while Hon. (Eng.) Paul Musyimi Nzengu has been elected the Vice-Chairperson. Hon. (Capt.) Ruweida Mohamed has been elected the Chairperson of the Regional Integration Committee.

I also wish to note that the Select Committee on Regional Integration as well as the Members’ Services and Facilities Committee are conducting elections of their vice-chairpersons this afternoon and tomorrow morning. I will communicate that information to the House when the process is concluded once I get an update.

Hon. Speaker, for the Sitting of Tuesday, 22<sup>nd</sup> February 2022, the House Business Committee has scheduled the following Motions for consideration:

- (i) Adoption of the Report of the Budget and Appropriations Committee on the Budget Policy Statement for the Financial Year 2022/2023.
- (ii) Adoption of the Report of the Budget and Appropriations Committee on the Medium-Term Debt Management Strategy for the Financial Year 2022/2023.

The following Bills have also been scheduled for consideration at Second Reading:

- (i) The Children’s Bill;
- (ii) The Huduma Bill;
- (iii) The Coffee Bill (Senate Bill No.22 of 2020);

- (iv) The Universities (Amendment) Bill, 2021(Continuation); and,
- (v) The Advocates (Amendment) Bill, 2021.

Hon. Speaker, in accordance with the provisions of Standing Order No.42A (5) and (6), I wish to inform the House that the Cabinet Secretary for Health is scheduled to appear before the Departmental Committee on Health on Thursday, 24<sup>th</sup> February 2022 to respond to the following three Questions:

(i) Question No.001/2022 by Hon. Bernard Okoth regarding the status report of key medical equipment for treatment of cancer and kidney ailments available at the Kenyatta National Hospital, in particular radiotherapy and dialysis equipment;

(ii) Question No.036/2022 by Hon. Faith Gitau regarding the nature and recent contractual disagreements between the Kenya Association of Private Hospitals and the National Hospital Insurance Fund, which were reported to affect services at both private and public hospitals; and,

(iii) Question No.038/2022 by Hon. Safia Sheikh regarding implementation status of the Universal Health Coverage in Marsabit County.

The House Business Committee will convene on Tuesday, 22<sup>nd</sup> February 2022 to schedule business for the rest of the week.

Hon. Speaker, I lay the Statement on the Table of the House.

*(Hon. Amos Kimunya laid the Document on the Table)*

**Hon. Speaker:** We will temporarily go back to Order No.5 to allow the Member for Moiben, Hon. Silas Tiren, to table some report. However, Member for Moiben, I must caution you that if you have business to transact here, you must be in the House at 2.30 p.m. The way I saw you walking out there, you appeared like you were in the village, and you were not coming to *Bunge*.

Proceed.

### PAPER LAID

**Hon. Silas Tiren** (Moiben, JP): Thank you, Hon. Speaker. Accept my apologies. It will not happen again.

I beg to lay the following Paper on the table of the House:

Report of the Departmental Committee on Agriculture and Livestock on its consideration of the Coffee Bill (Senate Bill No.22 of 2020).

Thank you.

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

### CONSIDERATION OF REPORT AND THIRD READING

#### THE SACCO SOCIETIES (AMENDMENT) BILL

**Hon. Speaker:** Hon. Members, this Bill is at the stage of putting of the Question for agreement of the House with the Report of the Committee of the whole House.

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*(Question put and agreed to)*

**Hon. Amos Kimunya** (Kipipiri, JP): Hon. Speaker, I beg to move that the Sacco Societies (Amendment) Bill (National Assembly Bill No.55 of 2021) be now read the Third Time.

Hon. Speaker, I hope this completes our bit as the National Assembly and we can now take it to the Senate for them to complete the process that led to it being re-submitted here.

I beg to move and request Hon. Wangwe to second.

**Hon. Speaker:** Hon. Wangwe.

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

*(Hon. (Ms.) Faith Gitau consulted loudly)*

**Hon. Speaker:** Member for Nyandarua, this is not a market place.

*(Question proposed)*

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

*(Question put and agreed to)*

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

**Hon. Speaker:** Next Order.

## **BILL**

### *Second Reading*

#### THE WILDLIFE CONSERVATION AND MANAGEMENT (AMENDMENT) BILL

*(Hon. (Ms.) Sophia Noor on 15.2.2022)*

*(Debate concluded on 16.2. 2022)*

**Hon. Speaker:** Hon. Members, you will recall that on Wednesday, 16<sup>th</sup> February 2022, during the Afternoon Sitting, when the Order for Second Reading was read, the Chairperson of the Departmental Committee on Environment and Natural Resources, the Hon. Sophia Abdi, moved a Motion that the Wildlife Conservation and Management Bill (Senate Bill No.30 of 2020) be read a Second Time.

In moving the Motion, the Chairperson expressed reservations on the Bill. In particular, the Chairperson claimed that the proposed Bill contains provisions that have monetary implications and that it ought not to have originated from the Senate. She further indicated that following the public participation exercise undertaken, the Cabinet Secretary for Tourism and Wildlife submitted to the Committee that a more comprehensive draft Bill from the Ministry on

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wildlife conservation and management was in the offing. She indicated that the publication of the Bill was at an advanced stage and it was her considered view that the proposed Bill is a piecemeal review of the Act. The Committee agreed with the Cabinet Secretary.

The Chairperson also indicated that she was moving the Motion albeit reluctantly since it was her obligation to move it. At the end, she asked the Member for Laikipia North, Hon. Sara Korere, to second the Motion for Second Reading of the Bill. On her part, the Member declined to second the Motion. Consequently, the Speaker was not able to propose the Question in accordance with Standing Order No.57, which reads as follows:

“The Question on any Motion shall not be proposed unless it shall have been seconded and any Motion that is not seconded shall be deemed to have been withdrawn and shall not be moved again in the same session.”

Hon. Members, since this is a Bill originating from the Senate, I wish to invoke the provisions of Standing Order No.1 and pause for a moment to find out whether there is any other Member in the House desirous of seconding the Motion for Second Reading of the Bill.

**An. Hon. Member:** None!

**Hon. Speaker:** Hon. Members, there being no other Member desirous of seconding the Bill, I direct that the provisions of Standing Order No.57(1) as stated above shall apply. The effect of my direction is that the Bill shall not proceed to Second Reading. It will, instead, be referred to a Mediation Committee.

May I, therefore, request that the Leader of the Majority Party consults with the Leader of Minority Party and propose five Members to sit in the Mediation Committee so as to enable me to communicate the decision of the House to the Senate, in light of the provisions of Article 112 and 113 of the Constitution? In the meantime, the Wildlife Conservation and Management (Amendment) Bill (Senate Bill No.30 of 2020) stands defeated and the provisions of Articles 112 and 113 of the Constitution shall apply.

The House is accordingly guided.

Hon. Members, before we proceed to the next Order, which is Committee of the whole House, I wish to guide the House that the Departmental Committee on Finance and National Planning, which was moving some proposals on this Bill, is in agreement with the Departmental Committee on Communication, Information and Innovation, which just concluded public participation on the Copyright (Amendment) Bill (National Assembly Bill No.44 of 2021), to complete their Report and table it on Tuesday, 22<sup>nd</sup> February 2022. Therefore, the request from the Chairperson of the Departmental Committee on Communication, Information and Innovation is that the Bill be stood down today. I have acceded to that request. Therefore, when the House moves into the Committee of the whole House, it will only deal with the Public Procurement and Asset Disposal (Amendment) Bill and thereafter proceed as indicated on the Order Paper.

*(Committee of the whole House proceedings for  
the Copyright (Amendment) Bill deferred)*

## COMMITTEE OF THE WHOLE HOUSE

*(Order for Committee read)*

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

## IN THE COMMITTEE

*[The Chairman (Hon. Moses Cheboi) took the Chair]*

THE PUBLIC PROCUREMENT AND ASSET  
DISPOSAL (AMENDMENT) BILL

**Hon. Chairman:** Hon. Members, we are in the Committee of the whole House on the Public Procurement and Asset Disposal (Amendment) Bill (National Assembly Bill No.32 of 2021). We will be moving pretty fast. So, we ask you to take a keen interest.

*Clause 3*

**Hon. Chairman:** We have an amendment proposal by the Chairperson of the Departmental Committee on Finance and National Planning.

Hon. Wanga, I do not know if you have any issues with the microphone. I think it is working. You are proposing a deletion.

**Hon. (Ms.) Gladys Wanga** (Homa Bay CWR, ODM): Yes, Hon. Chairman. I beg to move:  
THAT, the Bill be amended by deleting Clause 3.

This is because the role of promoting capacity development of procurement professions should rest in the Authority and not with the National Treasury. In addition, the function of managing the State portal on procurement and asset disposal should be performed by the Public Procurement Regulatory Authority (PPRA) and not the National Treasury.

*(Question of the amendment proposed)*

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

*(Clause 3 as amended agreed to)*

*Clause 4*

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

THAT, the Bill be amended in Clause 4 by deleting paragraph (a).

This amendment is consequential as a result of deletion of Clause 3. The amendment is intended to retain the function of developing and managing the State portal on procurement and asset disposal with the PPRA.

*(Question of the amendment proposed)*

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

*(Clause 4 as amended agreed to)*

*(Clauses 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14 agreed to)*

*Clause 15*

**Hon. Joseph Nduati** (Gatanga, JP): Hon. Chairman, I beg to move:

THAT, Clause 15 of the Bill be amended by inserting the following proposed new sub-section immediately after the proposed new sub-section (2A) –

(2B) For infrastructure projects, the head of the procurement function in liaison with the head of the technical function in a procuring entity shall prepare a market survey at the beginning of every financial year of the cost of goods and services and thereafter prepare a current costs handbook to be revised every six months for use in the decision making in the procurement process by the procuring entity.

My suggestion is that, for infrastructure projects, the head of the procurement in liaison with the head of the technical service shall prepare a market survey at the beginning of every year of costs of goods and services and thereafter prepare a costs handbook to be revised every six months. This will enable the users of the booklet, if you have many team members in a technical department, to come up with cost estimates that are standard. Otherwise, if we just leave it open, there will be nothing to compare. It has happened before in the ministry. There is something which used to be called “Current Construction Costs Handbook”, which is very appropriate.

*(Question of the amendment proposed)*

**Hon. Chairman:** I will give the first shot to the Chair of the Departmental Committee on Finance and National Planning if she wants to comment on this proposed amendment. Seeing that she is not interested, let us hear Hon. Sankok.

**Hon. David ole Sankok** (Nominated, JP): Thank you very much, Hon. Chairman. Coming from Hon. Nduati, it is automatic that he is an experienced fellow in that field. So, we support.

**Hon. Chairman:** Hon. Sankok, that is not a very good ground of support, but you have supported anyway. I would have expected you to give us what you actually think is worth supporting, not the person you are supporting.

*(Laughter)*

**Hon. David ole Sankok** (Nominated, JP): Hon. Chairman, you know, having a handbook that prescribes the current costs is a good idea. What I am telling you is that I have read his proposed amendment. I support it 100 per cent because I have understood it.

**Hon. Chairman:** All right. That is okay, Hon. Sankok.

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

*(Clause 15 as amended agreed to)*

*(Clauses 16, 17 and 18 agreed to)*

*Clause 19*

**Hon. Chairman:** Chair of the Departmental Committee on Finance and National Planning, please, do not allow any Member to come very close to you. There are two issues that will arise. One, the social distancing rule will be violated. Secondly, I am sure they will interfere with your concentration. So, even those who support you in other lives that you have should keep some distance for the rest of the afternoon.

*(Laughter)*

**Hon. (Ms.) Gladys Wanga** (Homa Bay CWR, ODM): Thank you, Hon. Chairman. I am well-guided. As soon as we are through with the consultations, the Member will retreat. Nonetheless, I beg to move:

THAT, the Bill be amended in Clause 19 by –

(a) deleting paragraph (b);

(b) deleting paragraph (c).

This is meant to retain the evaluation period as provided for in the principal Act, which is within a period of a maximum of 30 days.

*(Question of the amendment proposed)*

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

*(Clause 19 as amended agreed to)*

*(Clauses 20, 21, 22, and 23 agreed to)*

*Clause 24*

**Hon. Chairman:** Hon. Wanga, I warned you. Now, you can see that your neighbours are giving you trouble. Please, let them not consult you for now until after about another 30 minutes when we will be through.

**Hon. (Ms.) Gladys Wanga** (Homa Bay CWR, ODM): It was actually my sister, Cess; she has now gone. The Governor of Embu.

**Hon. Chairman:** What did you say on record? Is there any stranger in the House?

**Hon. (Ms.) Gladys Wanga** (Homa Bay CWR, ODM): No. I meant the incoming Governor for Embu.

**Hon. Chairman:** Okay. Proceed.

**Hon. (Ms.) Gladys Wanga** (Homa Bay CWR, ODM): Hon. Chairman, Hon. Machungwa is a bit loud today.

**Hon. Kimani Ichung’wah** (Kikuyu, JP): On a point of order, Hon. Chairman.

**Hon. Chairman:** What is your point of order, Hon. Ichung’wah?

**Hon. Kimani Ichung’wah** (Kikuyu, JP): Hon. Chairman, the Hon. Nyasuna Wanga has referred to somebody as the “Hon. Machungwa,” and I was the only loud Member in the House. You know, I have no relationship at all with anything close to a *machungwa*, which is an orange.

I know she is a fervent follower of the Orange Party, but I have no relationship with oranges. If anything, I can only put oranges on wheelbarrows as I wheel them away to the market to make sure that there is money in people's pockets in our markets. I just needed her to clarify that she was not, in any way, referring to me as "Hon. Machungwa;" my name is Kimani Ichung'wah.

**Hon. Chairman:** Hon. Ichungwa.

**Hon. Kimani Ichung'wah** (Kikuyu, JP): Now, Hon. Chairman, you are also referring to me as Ichungwa. It is Ichung'wah – ng'wah – with an apostrophe!

**Hon. Chairman:** Order, alumni of Alliance. Maybe I should just inform you that the Chairman has a right to pronounce your name anyway and in any manner.

*(Laughter)*

I really do not have to go by your apostrophes and comas in between. Most importantly, I did not hear any Member being loud. In this House, Members are never loud; they consult with a little higher decibels. So, for you to ascribe yourself the name "*Chungwa*", I did not hear that. Hon. Wanga, you do not need to deal with that. Just go straight to the amendment. I noticed that there was one Member, Member for Kikuyu, who took keen interest on where you were sitting, who you were sitting with and who you were consulting. That is not important for now.

Proceed Hon. Gladys Wanga.

**Hon. (Ms.) Gladys Wanga** (Homa Bay CWR, ODM): I am well guided.

Hon. Chairman, I beg to move:

THAT, the Bill be amended by deleting clause 24.

The justification is that the amendment is intended to retain the prequalification period of 14 days, as is provided for in the principal Act for candidates to prepare and submit applications to be prequalified. The Committee felt that seven days are insufficient.

*(Question of the amendment proposed)*

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

*(Clause 24 deleted)*

*(Clauses 25, 26, 27, 28, 29, 30 and 31 agreed to)*

*Clause 32*

**Hon. Chairman:** Hon. Wanga.

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

THAT, the Bill be amended by deleting clause 32

The justification is that we want to retain the timelines as they are in the principal Act. The reduction of timelines within which evaluation shall be carried out from 21 to seven days will affect the procurement process. Seven days is too short to carry out any proper evaluation.



*(Question of the amendment proposed)*

**Hon. Chairman:** Hon. Sankok, you do not have to put your hand up. Once your name is here, it is okay.

Proceed, Hon. Sankok.

**Hon. David ole Sankok** (Nominated, JP): Thank you, Hon. Chairman. I support the amendment. When you reduce the timeline to seven days... Persons with disabilities have what we call “Access to Government Procurement Opportunities (AGPO).” Most of them are in rural areas and there is a vicious circle of poverty within persons with disabilities. Therefore, they will not be able to access these opportunities. The 21 days as proposed by Hon. Gladys Wanga Nyasuna is in order so that persons with disabilities can access the opportunities.

Thank you.

**Hon. Chairman:** I can see this afternoon you are fond of Hon. Wanga. Everybody is ascribing one name or another, or telling us what she did over the weekend. Let us proceed with this as is on the Order Paper.

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

*(Clause 32 deleted)*

*Clause 33*

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

THAT, the Bill be amended by deleting clause 33

The justification is to retain the timelines as they are in the principal Act. The amendment is on the timelines within which a written contract shall be entered into.

*(Question of the amendment proposed)*

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

*(Clause 33 deleted)*

*(Clauses 34 agreed to)*

*Clause 35*

**Hon. Chairman:** Hon. Wanga, you have an amendment which is a deletion and a substitution. Hon. Nduati also has an amendment. Just to be clear, if Hon. Wanga’s is taken, then

Hon. Nduati's will fall. Let us have Hon. Wanga first. Hon. Nduati, as far as I am concerned, both of you, from the records I have, are proposing a deletion and an alternative...

Let us go slowly, Hon. Nduati. Looking at the proposals, we might want to see what will happen to the Chair's amendment. Once that happens, we will come back to yours and see whether it has any space.

What is it, Hon. Ichung'wah?

**Hon. Kimani Ichung'wah** (Kikuyu, JP): Hon. Chairman, I was worried by your pronouncement that if Hon. Wanga's amendment passes, Hon. Nduati's falls. But I can see Hon. Nduati's amendment touches sub-section 2 while Hon. Wanga's concerns sub-section 4. So we need clarity so we may know how to proceed.

**Hon. Chairman:** Well, if a deletion is approved, what bit would Hon. Nduati have to deal with? In the meantime, let us understand what Hon. Wanga is proposing so that we can see whether there is any other sub-section to deal with. If, for example, you are proposing to delete paragraph (b), then there would be nothing for Hon. Nduati to do even if he has a good amendment. But let us see first. Once we go through Hon. Wanga's amendment and it is carried, we will come back and see Hon. Nduati's chances to proceed.

**Hon. Kimani Ichung'wah** (Kikuyu, JP): Hon. Chairman, with all due respect, what she is proposing does not affect what Hon. Nduati is proposing. It was your pronouncement that got me worried.

**Hon. Chairman:** Take your seat, Hon. Ichung'wah and keep your peace. Let us have Hon. Wanga to process her amendment.

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

THAT, the Bill be amended by deleting clause 35 and substituting therefor the following new clause 35—

Amendment of section  
139 of No. 33 of 2015.

35. Section 139 of the principal Act is amended in sub-section (4) by deleting the words "any variation of a contract shall only be considered after twelve months from the date of signing the contract" and substituting therefor the words "a variation of a contract shall be considered at any time in the case of a quantity variation, but shall only be considered after twelve months from the date of signing of the contract in the case of a price variation".

We are saying in case you want to vary quantities, you can do so at any time. But in case you want to vary price, it has to be one year after signing the contract. That is what we are proposing. I beg to move.

*(Question of the amendment proposed)*

**Hon. Chairman:** We will allow her time to consult on the amendment because we really want to see what would happen once it goes through. Let us have the Leader of the Majority Party, if he wants to speak. Hon. Nduati.

**Hon. Joseph Nduati** (Gatanga, JP): Thank you very much, Hon. Chairman. I want to oppose what Hon. Wanga has proposed. You know prices can also vary within one year, like what happened during the COVID-19 outbreak. The proposal would punish a tenderer. If you tie a contractor to prices for one year, what would happen if those prices change after three months? It

is the work of the procuring authority to check whether there are any variations to rates. This proposal is very punitive and a contractor can suffer a lot.

**Hon. Chairman:** Hon. Wanga, I would be very happy if you concentrated on the proceedings. This is very critical. You can see Hon. Nduati is opposing your amendment for the reasons he has cited. Be keen so that one way or another, you make a decision. I will give an opportunity to Hon. Ichung'wah then I will come back to the Chair of the Departmental Committee on Finance and National Planning.

What is it, Hon. Wanga?

**Hon. (Ms.) Gladys Wanga** (Homa Bay, ODM): Hon. Chairman, on consultation with the mover of the Bill and listening to what Hon. Nduati is saying, I opt to withdraw the amendment.

**Hon. Chairman:** Even if the amendment is withdrawn, Hon. Nduati is proposing a new item, which should come under new clauses. Let us look at it properly. The amendment by Hon. Wanga is withdrawn. We are now on the one by Hon. Nduati.

*(Proposed amendment by Hon. (Ms.) Gladys Wanga withdrawn)*

**Hon. Joseph Nduati** (Gatanga, JP): Hon. Chairman, I beg to move:

THAT, the Bill be amended by deleting clause 35 and inserting the following new clause—

Amendment of section  
139 of No. 33 of 2015.

35. The principal Act is amended in section 139—

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

(2) An accounting officer of a procuring entity, on the recommendation of an evaluation committee or as prescribed in the signed Contract Agreement, may approve the request for—

- (a) use of prime costs;
- (b) use of contingencies;
- (c) reimbursable costs; and
- (d) use of provisional sums.”

(b) by inserting the following new subsection immediately after subsection (2)—

(2A) Despite subsection (2), an accounting officer of a procuring entity, on the recommendation of an evaluation committee or as prescribed in the signed contract agreement, may approve the request for the extension of the contract period, which request shall be accompanied by a letter from the tenderer making justifications for such extension.

(c) by deleting subsection (4) and inserting the following new subsection—

(4) For the purposes of this section, any variation of a contract shall only be considered if the following are satisfied—

- (a) the price variation from the original price is based on the prevailing consumer price index obtained from Kenya National Bureau of Statistics;
- (b) the quantity variation for goods does not exceed fifteen per cent of the original contract quantity;
- (c) the price or quantity variation is to be executed within the period of the contract;
- (d) the cumulative value of all contract variations for goods do not result in an increment of the total contract price by more than twenty five per cent of the original contract price; and
- (e) the cumulative value of professional services does not result in an increment of the total contract price by more than twenty five per cent of the original contract price.

(d) by inserting the following new subsection immediately after subsection (6)—

- (7) The method for computing price variation shall be prescribed in regulations.

This clause went into the Bill by mistake and it is against international practice. What the principal says is that the tenderer has authority to consent for the use of contingency. It is like going to a shop and the shopkeeper gets the authority to tell you what to spend. Prime costs are sums which are used to undertake specialised works such as electrical and plumbing works. And the main contractor is given authority over the procuring authority to authorise use of prime cost sum. Professional sums are amounts which are set aside to undertake works which cannot be measured accurately in the bill of quantities. It is the tenderer who is given the authority. In practice, it is the engineer, architect or quantity surveyor or the procuring authority who has the authority to do that. We wanted to correct that. In paragraph (b), it is the contractor who will apply to the project manager for extension of time. That is what the amendment proposes.

**Hon. Chairman:** Alright. I think it is okay now. I do not think there will be an issue now. So just leave it.

**Hon. Joseph Nduati** (Gatanga, JP): Do not hurry me a lot, Hon. Chairman. Just give me time. I know you want to go and campaign.

**Hon. Chairman:** Order, Hon. Nduati. Do not repeat that statement.

**Hon. Joseph Nduati** (Gatanga, JP): It is on a light note.

**Hon. Chairman:** There is nothing light about that. Campaigns are very heavy undertakings. So let us proceed.

*(Laughter)*

**Hon. Joseph Nduati** (Gatanga, JP): On sub-section (4)—and here I would like the Leader of the Majority Party to agree with me—the principal Act provides that original price is based on consumer index or inflation rate. If you use inflation rate, it is punishing to the Government because if it goes up by 15 per cent, it means that everything in a contract goes up by 15 per cent. If in the next year it goes up by 20 per cent, it means everything will go up by 20 per cent. So, I propose that we omit inflation rate and substitute it with the consumer price index obtained from

the Kenya National Bureau of Statistics (KNBS). The other thing that has not been provided for in the principal Act is that the cumulative value of professional services should not exceed 25 per cent. We need to make provision for it.

Thank you very much, Hon. Chairman.

*(Question of the amendment proposed)*

**Hon. Chairman:** Hon. Ichung'wah.

**Hon. Kimani Ichung'wah** (Kikuyu, JP): Hon. Chairman, I rise to support this amendment by Hon. Nduati and thank the Chairlady, Hon. Nyasuna, for dropping her amendment.

As Hon. Nduati has indicated, it was quite dangerous to allow contractors of tenderers to be the ones to allow the use of provisional sums. A case in point is the parliamentary office block that we are doing here. You will learn from the Parliamentary Service Commission that most of the delayed works have been as a result of the main contractor's refusal to use these provisional sums and prime costs to sub-contractors. This proposed amendment now provides that the Chief Executive Officer (CEO), for instance for Parliament, would have the authority to allow the use of those provisional sums. In practice, this is the right thing to do. This is because even the main contractor could pass on and the contract comes to a halt but if the accounting officer has authority to allow sub-contractors to carry on with the work, then it is okay.

Secondly, I was begging if you could allow Hon. Nduati to prosecute parts (b) and (c), particularly (c) on quantum and price variations. It was dangerous because the Bill was providing that you cannot vary a contract until after 12 months. That means that if you were to do a contract and finish it in 11 months and there are variations, you cannot vary anything. It is only fair to allow variations both on quantum and pricing as it is being proposed at 15 per cent on quantum and up to 25 per cent on both quantum and price. Therefore, I think we should support this amendment because it is in line with what is actually in practice today and what happens in such contracts.

I support.

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

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

*(Clause 35 as amended agreed to)*

*(Clause 36 agreed to)*

*Clause 37*

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

THAT, the Bill be amended in Clause 37 by deleting Paragraph (a).

Hon. Chairman, this is to retain the timelines as provided for in the principal Act. Sub-Section (a) was talking about deleting the words "14 days" appearing immediately after the words, "review within seven days". It was reducing the review period from 14 days to seven days but we just want to retain it at 14 days.

I beg to move.

*(Question of the amendment proposed)*

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

*(Clause 37 as amended agreed to)*

*(Clauses 38 and 39 agreed to)*

*Clause 40*

**Hon. (Ms.) Gladys Wanga** (Homa Bay CWR, ODM): Hon. Chairman. I beg to move: THAT, the Bill be amended by deleting Clause 40.

Hon. Chairman, the Bill seeks to introduce an amendment that if the court delays in making a determination on any decision of the Public Procurement Review Board, then the decision of the Board will take effect. This amendment may not be necessary since a timeline has already been provided within which the court should make such a determination.

Hon. Chairman, I beg to move.

*(Question of the amendment proposed)*

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

*(Clause 40 deleted)*

*(Clauses 41, 42, 43 and 44 agreed to)*

*Clause 2*

**Hon. Chairman:** On this particular one, I want us to be very clear. Hon. Wanga is proposing a deletion of the entire clause in paragraph (a). If this is taken for sure, Hon. Nduati's amendment falls because he will have nothing to delete. Let us hear what Hon. Wanga has to say, but basically that is the position. Hon. Wanga.

**Hon. (Ms.) Gladys Wanga** (Homa Bay CWR, ODM): Thank you, Hon Chairman. Since Hon. Nduati is proposing some amendments, it will be unfair for me to delete the clause before he proposes his amendments. So, I beg to drop my amendment so he can have an opportunity to amend further and may be add value.

*(Proposed amendment by Hon. (Ms.) Gladys Wanga dropped)*

**Hon. Chairman:** Then we go to Hon. Nduati

**Hon. Joseph Nduati** (Gatanga, JP): Hon. Chairman, I beg to move:

THAT, clause 2 of the Bill be amended in—

- (a) paragraph (a) by deleting the words “or any other supply chain professional body” and substituting therefor the words “or any other procurement or supply chain professional body recognised in Kenya”; and,
- (b) paragraph (b) by inserting the following proposed new definition in proper alphabetical sequence—  
"complex and specialised contracts" means contracts that include procurement where the terms and conditions of an agreement are different from standard commercial terms and conditions, and includes contracts for infrastructural works performed under international agreements containing international terms and conditions;

Hon. Chairman, my proposal is to allow other professionals to be able to procure works. In Hon. Wanga’s amendment it is only somebody called a ‘procurement professional’ who is allowed to procure works. There are many other professionals who procure works like quantity surveyors, architects and engineers. This professional called ‘procurement professional’ has come to delay works.

You see, if you want to procure this hall, it will be designed in the morning, the bills will be made in the evening and you procure. By introducing another person, it will delay the works and take a lot of time. We wanted to open this up like it happens in the private sector. The ‘procurement professional’ is only recognised in Government, but in the private sector, there is nothing like that. If they are engineering or architectural works, they are procured directly. That is why I wanted us to open this up and allow other people to do the works.

*(Question of the amendment proposed)*

**Hon. Kimani Ichung'wah** (Kikuyu, JP): On a point of order, Hon. Chairman.

**Hon. Chairman:** What is it Hon. Ichung'wah?

**Hon. Kimani Ichung'wah** (Kikuyu, JP): Hon. Chairman, there is (b), and I think what Hon. Nduati has spoken to is (a). So, if you can just allow him to prosecute (b).

**Hon. Chairman:** I do not see why, unless you have an issue.

*(Hon. Joseph Nduati spoke off-record)*

Hon. Nduati if you progress like that, you will have a lot of problems with this. So, take your seat.

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

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

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

*(Clause 2 as amended agreed to)*

*(Title agreed to)*

*(Clause 1 agreed to)*

Let us have the Mover of the Bill to move reporting.

**Hon. Amos Kimunya** (Kipipiri, JP): Hon. Chairman, I beg to move that the Committee do report to the House its consideration of the Public Procurement and Asset Disposal (Amendment) Bill (National Assembly Bill No. 32 of 2021) and its approval thereof with amendments.

*(Question proposed)*

*(Question put and agreed to)*

*(The House resumed)*

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

## REPORT

### THE PUBLIC PROCUREMENT AND ASSET DISPOSAL (AMENDMENT) BILL

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Order, Members. You can resume your seats. Can I have the Chairperson to report to the House?

**Hon. Moses Cheboi** (Kuresoi North, JP): Hon. Temporary Deputy Speaker, I beg to report that a Committee of the whole House has considered the Public Procurement and Asset Disposal (Amendment) Bill (National Assembly Bill No. 32 of 2021) and approved the same with amendments.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Very well. Let us have the Mover of the Bill to move agreement with the Report.

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

I also request Hon. Engineer Nduati to second the Motion for agreement with the Report of the Committee of the whole House.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Let us have Hon. Engineer Nduati for seconding.

**Hon. Joseph Nduati** (Gatanga, JP): Hon. Temporary Deputy Speaker, I second.

*(Question proposed)*

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Cognisant of our Standing Orders, I am not in a position to put the Question. I order that the Question on the same be put in the next Sitting.

*(Putting of the Question deferred)*



Next Order.

## BILL

### *Second Reading*

#### THE UNIVERSITIES (AMENDMENT) BILL

*(Hon. Amos Kimunya on 16.2.2022)*

*(Resumption of Debate interrupted on 16.2.2022 – Afternoon Sitting)*

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): We are in Order No.11 on the Universities (Amendment) Bill (National Assembly Bill No.35 of 2021). This is a resumption of debate which was interrupted on Wednesday, 16<sup>th</sup> February, 2022, in the Afternoon Sitting. Hon. Amos Kimunya was the Mover and Hon. Mutua Florence Mwikali had seconded. The Question was proposed. There are a number of requests from Members who wish to debate on the Bill.

Let us have the Member for Sirisia. He is consulting; so let us have the Member for Ruaraka Constituency, Hon. T. J. Kajwang’.

**Hon. T.J. Kajwang’** (Ruaraka, ODM): Thank you, Hon Temporary Deputy Speaker. I want to make four quick points on this Bill. If you want to make money today, you just need to start a private university and get all the faculties and the units that are taught in the public universities. You will be a rich lady within one year. This is because you will be using public funds to enrich yourself. The Government has become the biggest market for people who are doing businesses in the name of private universities. This began sometime in 2021, when we passed the Kenya Universities and Colleges Central Placement Service (KUCCPS) (Amendment) Bill. The Bill is one of those that is under review in this amendment.

I want to bring your attention to Clause 21, which is discussing the management of KUCCPS. It is a shame...

Hon. Temporary Deputy Speaker, there is a gentleman from a constituency that I have a lot of respect for: They are in the business of selling oranges but he is taking away your attention.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Hon Kajwang’, you will be heard in silence. I so order!

**Hon T.J. Kajwang’** (Ruaraka, ODM): Thank you, Hon Temporary Deputy Speaker. When we passed the KUCCPS (Amendment) Bill, it was not a norm, but an exception. At that time, it was said that we had students and every student has a right to education and since the public universities do not have enough bed space for the students, we should have private students and we would roll in some money for capitation for the tuition to be able to get them to school. That did not become the norm. It was an exception. It was an affirmative action which should have ended at some point. Today, it is considered prestigious to go to a private university. When Hon. Amos Kimunya and I went to school, of course he went much earlier than me, it was considered prestigious to go to public schools. This is because public universities benefited from the best lecturers and facilities. But today, nobody wants to go to the University of Nairobi. If you go to the Law Faculty in the University of Nairobi in Parklands, you will find that they do not even have enough seats for students to sit on. This is because attention has been diverted from public universities to private universities. If you go to Strathmore University today, you will find it is

very cozy. You will have a wonderful time being in that university, which has used public funds to develop. In fact, today, in the Supplementary Estimates that we are considering, Kshs300 million is going to the private universities for purposes of capitation. If every year we were to use that kind of money we are pushing through the Exchequer to build public universities since 2012, then we would now have had enough universities for our children to go.

Lastly, our children are taken to private universities against their choices. You just find that you have been admitted to Baraton University, Daystar University or to one of those universities against your wishes, yet your parents worked hard so that you may be able to join the University of Nairobi, Lower Kabete to take a course in Accounting. Despite the fact that I support this Bill in entirety, there are three clauses that I have a problem with; namely Clause 21, which talks about management of the KUCCPS, where they are attempting to put people they are calling representatives from private universities to sit together with people who are controlling public universities. That is a misnomer and it cannot happen. It is only in Kenya where this kind of thing is proposed.

Secondly is Clause 18, which is discussing Section 54 of the Act, and has something to do with funding. A Universities Fund has been created and looking at its composition, there is a representative of a private university sitting to discuss matters and to decide how money will go to him. If this is not conflict of interest, what is it? How can a person sit down to discuss how public money will be issued to himself, yet he is declared a private person who is in business to make profits? What we are doing is allowing people to go to the Exchequer and sit down on a table to discuss how much of the cake will go to them, yet they are private people. This cannot happen!

Lastly, if you want a professional Vice Chancellor, you must divorce politics from this. Why on earth would you put a Cabinet Secretary in the process of selecting a Vice Chancellor? That is what used to happen during Moi's time, because he was the professor excellent and everything. So, he would decide who became a Vice Chancellor or not. Why would you have George Magoha and what value would he add in appointment of a Vice Chancellor? If you want a professional Vice Chancellor, remove the Cabinet Secretary from this and let it be professional; an academia should decide who is to be the Vice Chancellor.

You know as we sit now – and Hon. Amos Kimunya will tell you – there is an active audit going on in the Public Accounts Committee (PAC) about ghost students. Those private universities have ghost students. No law stops them from saying how many students they have because, after all, they are expecting money to go to them. Right now, there is an active special audit on these capitation funds, and this is what we want to encourage. I want to say to the Mover of the Bill, if she wants us to accept it as it is, then she must make an amendment to bring in the Auditor-General, who must audit these funds. How else will they place this money without any audit at all? There must be a composite amendment to the Public Audit Act to enable the Auditor-General to know how much of this money is going to the so-called private students or public students in private universities.

I have the Report here and I have looked at it - these are the issues that this Committee was given. For example, I have on record on page 31 that the Universities' Academic Staff Union (UASU) came before them and said that they should not have a Cabinet Secretary trying to select a Vice Chancellor. Then, they said it was not in order to allow private universities the autonomy to determine the methodology for representation in the Board. These are the things which were brought up, but in the end in the recommendations and text which the Committee has brought before us, they are not seeking to amend these provisions. The Committee is not doing that, when all the stakeholders told them to do so. I leave it to you to guess what may have happened, when

they were clearly told what they should put in the recommendations but they came up with different things.

In as much as I will support the Bill because it is an improvement to the Universities Act, I will bring amendments on these issues. We will discuss them to bring change. Let public universities be public, and let it be prestigious to go to them and not to private universities. If people want to go to private universities, it should be by choice. If a child has a rich father, let them go there.

I thank you.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Very well. You have even cited a matter that is before the Public Accounts Committee, where I am Member; I am actually the Vice-Chairperson.

Let us have the Member for Kanduyi.

**Hon. Wafula Wamunyinyi** (Kanduyi, FORD-K): Thank you, Hon. Temporary Deputy Speaker, for the opportunity to speak on this important Bill.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Hon. Members, can you put on your masks?

*(Several Hon. Members raised their hands)*

**Hon. Wafula Wamunyinyi** (Kanduyi, FORD-K): Hon. Temporary Deputy Speaker, they should not be raising their hands. This is not a classroom. This is not kindergarten; this is Parliament, which has cards and gadgets that you can press so as to be detected by the Speaker.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Correct. Please carry on.

**Hon. Wafula Wamunyinyi** (Kanduyi, FORD-K): Hon. Temporary Deputy Speaker, this is an important Bill because it touches on institutions of higher learning in our country. It provides the framework for both regulation and institutionalisation of programmes to help run the education sector.

I have looked at the Bill briefly and I notice that it proposes quite a number of amendments, which are very substantial. Going by what Hon. T. J Kajwang' has just pointed out, the Bill is generally good, but it should be relooked at. There are certain sections that will need to be relooked at in order to harmonise them, avoid ambiguity and ensure that the Bill supports the education sector.

In the recent past, many campuses of public universities have been closed. Many satellite campuses and constituent colleges have been closed. The University of Nairobi, Moi University, Masinde Muliro University and even my own Kibabii University in Bungoma have closed campuses and satellite campuses. Many students who would otherwise have been at these public universities have been placed in private universities.

As Hon. T.J Kajwang' pointed out, it has always been prestigious to be admitted to a public university like the University of Nairobi. I know some students who are admitted to a private university in Thika called Gretsia University; I had never heard of it. I just found out this year that there is a Gretsia University in Thika, with students who qualified to join the University of Nairobi and many other public universities. While they are institutions of higher learning, students have been placed in private universities against their will by the institution responsible for placement of students. This needs to be relooked at because campuses belonging to public universities, such as the University of Nairobi have been closed.

I am sure that could be one of the reasons why some universities are going bankrupt, like Moi University. They relied on the number of students because the money going into these universities is public money. Why should you close a campus of a public university, take the students to a private university and pay all the money to that private university? We are empowering private universities against public universities. We need to look into that. I am sure that, that must be one of the reasons why Moi University went under. All the Moi University campuses that had students were closed, which brought down the earnings of the university. It must have contributed immensely.

The other important thing that Hon. Kajwang' mentioned, and is well captured in the Bill, is the question of declaration of universities. We have had colleges and even teachers' colleges that have been declared as universities. If I could recall, we had a popular teachers' diploma college called the Kenya Science along Ngong Road that trained teachers in sciences' Agriculture and Biology. The best Biology, Agriculture and Chemistry teachers came from Kenya Science, but it was declared a university and taken over by the University of Nairobi.

You will also recall the popular Kenya Polytechnic along Haile Selassie, which is no longer there and we now have the Technical University of Kenya. This has affected the growth of that technical cadre. We no longer have those popular science teachers that came from Kenya Science. We no longer have the technical people at that level who were trained at Kenya Polytechnic. Once it became a university, it neutralised the junior courses that were being offered such as certificate, diploma, higher diploma. Those courses are no longer there, but if they are there, they must be at a moderated level to allow the university to offer degrees.

Hon. Temporary Deputy Speaker, on a good note, this Bill also provides clarity by removing ambiguity in the management of the affairs of universities, particularly when it comes to the commission. Therefore, this Bill should be passed because it would generally ensure that our institutions of higher learning are well run and our universities offer courses that would ensure that graduates are absorbed in the market for the betterment of the society. This Bill will also ensure that the courses that are being offered in our universities are relevant to the requirements.

Just as I said at the outset, I want to state that I support this Bill. I also want to join my colleague in saying that we will bring some amendments to areas that will need to be relooked at during the Committee of the whole House.

Thank you, for the opportunity and I support the Bill.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Very well. You support the Bill. Thank you, Member for Kanduyi. Let us have the Member for Suba North.

**Hon. (Ms.) Odhiambo-Mabona** (Suba North, ODM): Thank you, Hon. Temporary Deputy Speaker, for giving me this opportunity. From the onset, I just want to say that I do support the Bill with amendments.

*(Loud consultations)*

I know there are people who do not want to continue working and the only thing they want to do is to disrupt debate. My issues almost qualify to points of order. There are people who at this point do not want to work. They just want to be politicking and do not want us to work.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Please, put your card on the intervention. Please, allow Hon. Millie Odhiambo to finish her debate.

Hon. Millie Odhiambo, there is a Member that I do not want to mention who is not even on an intervention, but he is shouting. Hon. Millie Odhiambo, please, carry on.

**Hon. (Ms.) Odhiambo-Mabona** (Suba North, ODM): Thank you, Hon. Temporary Deputy Speaker, for protecting me against persons who are hell-bent on disrupting the House for no reason. The place where people exercise business of Parliament is on the Floor of the House and not in political rallies. So, those who think the time is ripe for them to politic, please, go and do so. Let those of us who want to work do so. Having said that...

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Order, Hon. Millie Odhiambo!

**Hon. (Ms.) Odhiambo-Mabona** (Suba North, ODM): Hon. Temporary Deputy Speaker, I support the Bill with amendments and the reason why I support...

*(An. Hon. Member stood up in his place)*

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Order! Who is this Member up standing? You are out of order. You cannot be up standing. Just do it the right way and you will get your chance.

**Hon. (Ms.) Odhiambo-Mabona** (Suba North, ODM): Hon. Temporary Deputy Speaker, if they do not catch your eye, they cannot force you to give them the microphone.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Hon. Millie Odhiambo, please, carry on. I am in control.

**Hon. (Ms.) Odhiambo-Mabona** (Suba North, ODM): Thank you, Hon. Temporary Deputy Speaker, I will continue. The reason why I want to support the Bill with amendments is because of late, our universities have been facing a lot of governance challenges. The amendments in some parts are seeking to address these issues, yet they are not touching the core issues in the way they are crafted.

I want to agree with Hon. T.J. Kajwang' and encourage him to bring the amendments which the Committee has not brought. I listened to the Chair of the Departmental Committee on Education and Research raising issues brought to them during public participation. She raised some significant issues which are not covered in the Committee's Report. I want to indicate some of the issues which are of concern to me. We are a very unique country that seems to want to kill its public universities. Yet they are the ones which are accessible to poor and struggling children. So, we want to strengthen our private universities, many of which do not even have capacities to manage.

In as much as we want to encourage and support private entities, it cannot be at the expense of our public universities. I have been one of the proponents of a public university per county. If we are able to do this and give resources per county, then we can go very far in terms of making education accessible at a higher level. I am very pleased to see Tom Mboya University College, a constituent college of Maseno University, having grown exponentially. It was an idea we started here with the late Hon. Otieno Kajwang, when devolution was coming in. We saw we needed a constituent college that would then move to a university. We are waiting because the President has promised we will get a Charter.

Recently, I passed by there and did not go into the university, but I saw what it has become from one small building at Farmers' Training College (FTC) - which had the only public television when I was growing up in that town. That is where we all watched television in Homa Bay FTC. It has grown to a very big college that is good enough to become a university. That would not have been possible if we did not put in sufficient funds for that public university. Instead of putting in

too much energy on private universities, which I do not have a problem with, first, let us give attention and focus to our public universities before we move to our private ones.

The other issue I would want to raise which Hon. T.J. Kajwang' has said is even when we want to support private universities, we should not violate people's rights to choices. In my own house, I have my two grandchildren who were admitted to private universities. I did not want them to go there. I preferred if they went to public universities where some of us went so that they could get all rounded education. Instead, they were taken to private universities under the pretext of being supported by the Government because they passed.

We are being forced to pay higher money for our children to go to those private universities. I have no quarrel with private universities, but as a parent, if you choose for your child to go to a public university, that should be the first preference or choice. I would have preferred them to go my university; the University of Nairobi (UoN). So, I think the freedom of choice should be there.

Finally, of serious concern to me is one of the issues that affects both public and private universities, which I do not know how we can address in this Bill. I do not know how we can address the issue of missing marks in this Bill. I do not think we have universities any longer. I have nephews and nieces in public universities and one of them finished his degree and could not graduate because his marks were missing. So, he wasted one year because of missing marks, not because he did not do the exams. He did them, but his marks went missing. He went back and did the exams again, but the marks were still missing. When he went to the university, one of the officers gave him a very ethnic-laden remark around election time. The officer did not know that that was my nephew. I decided to be magnanimous because if I had seriously picked up on that issue, such a person would have been fired. You cannot tell somebody that because they are a Luo and they look like they support Azimio, you cannot help them to follow up and get their marks.

Our universities must also be de-ethnicised. I do not even know which words to use - let me not use bad words. My nephew has to spend a whole year out of university because of marks which went missing twice. That was unheard of in our time. You would do your exams and the results would come out.

One of the issues that should be addressed is beefing up our universities so that they are able to function effectively. I thought it was only a problem in public universities. I have another niece who, through no choice of hers, was taken to a private university. Her graduation was delayed because of missing marks. I do not know what is going on in universities. We hear stories of how you have to offer a bribe to get your marks. What nonsense is that? Are we producing graduates or graduates in corruption?

There are very serious governance issues affecting our universities. We cannot address them by killing public universities, but by strengthening them. I encourage Hon T.J. to bring the amendments that I indicated. If he does not, I will bring them, so that we can make our public universities the first place of choice.

When I went to my university, the University of Nairobi, it was one of the best universities in the world. It is now struggling. They are bedeviled by issues of ethnicity, governance and corruption. I am not saying that those issues are specific to the University of Nairobi, but those are the issues currently bedeviling our universities.

There was a report done by the National Cohesion and Integration Commission (NCIC) which showed that almost all universities are guilty. Moi University was employing a majority of Kalenjins. Maseno University was employing a majority of Luos and Luhyas. The same was true of Karatina University and the rest. We cannot run a country with that kind of madness. Even in

employment, our universities should show the face of Kenya. We will breed a terrible nation if we put ethnicity and other considerations ahead.

I support the Bill with amendments.

**The Temporary Deputy Speaker** (Hon (Ms.) Jessica Mbalu): Let us have the Member for Seme. Hon. Members, for your guidance, you must get a way of catching the Speaker's eye. There is a way of doing it. If you are rising on an intervention, make sure you do it the right way. Yes, Member for Seme.

**Hon (Dr.) James Nyikal** (Seme, ODM): Thank you, Hon Temporary Deputy Speaker. I also rise to support the Bill.

**The Temporary Deputy Speaker** (Hon (Ms.) Jessica Mbalu): Member for Navakholo, what is your intervention? Your card has been captured.

**Hon. Emmanuel Wangwe** (Navakholo, JP): Thank you, Hon Temporary Deputy Speaker. You have just mentioned that we need to know how to catch your eye. I was hoping that after the good Professor finishes his contribution, I can support the Bill.

**The Temporary Deputy Speaker** (Hon (Ms.) Jessica Mbalu): You were on intervention. Very well. Carry on, Member for Seme.

**Hon (Dr.) James Nyikal** (Seme, ODM): Thank you, Hon Temporary Deputy Speaker. I also rise to support the Bill, but with a lot of reservations.

Although I support the Bill, the first issue I have with it is the timing. We have such an important Bill touching on national institutions and making very major changes which come at a time when, obviously, all of us are not able to contribute for reasons well known to most of us. We all know what time it is and are concerned with the situations in our constituencies. I do not know whether this is intended and if it is, then it is definitely in bad faith. There are issues which should be discussed very seriously.

The Universities Act seems to be having a plethora of amendments on and off. This means we did not look at it seriously the time we were putting it in place. It was enacted in 2012 and in the same year, there was a legal notice based on it. It was amended in 2014, twice in 2016, in 2018, 2019 and 2020, it was amended again including now. Probably, it is time we looked at this Act very seriously to see why we keep making so many amendments.

If you look at these amendments, they all seem to be about how public universities relate with private universities. Even the amendments we have now are bringing a lot of involvement of the private sector into public universities. In as much as this is good, it is happening in such a way that it disadvantages children who would have otherwise benefitted from public universities.

For example, talking of the Kenya Universities and Colleges Central Placement Service (KUCCPS), it is now admitting students across the board in both public and private universities regardless of what the child's choice was. So, children are finding themselves in private universities when they intended and wished to be in public universities.

There is a proposed amendment to create a fund and board instead of the trustees who were there. Again, looking at the membership, you will see a lot of people from the private sector coming in. Considering how the funds will be distributed, before they were meant for public universities, but now this is being opened up using the words 'participating university' and this may also mean private universities. So, to a large extent, I am seeing invasion of public universities by the private sector, not to improve them, but to get the tax payers' funds, into private universities, which is not fair.

In this country, you see this even in the health sector. When we were dealing with the NHIF, we saw a lot of scrambling for public funds to support the private sector. This is okay, but

not at the expense of public institutions which most of our poor people go to. If you want to go to a public university, you find yourself in a private one. Of course, you get some money from the Higher Education Loans Board (HELB), but the fee is much higher than you would have liked.

As a country, we must look at ways of distributing resources - not in such a way that the poor support the rich. We are moving money in a way that the poor are now subsidising the rich. I think to that extent, we have to make very serious amendments to this Bill and probably the Universities Act as a whole. This will ensure that public universities to a large extent remain that way in terms of funding.

When people choose to go to private universities many times, they can afford it. We should spend more money opening more spaces in public universities and supporting those who cannot afford. So, using public funds to support private universities which sometimes are motivated by profit, to me, is not right.

There is a proposal to get the cabinet secretary to vary the decisions of the council. Whereas it is important that there should be a level at which a cabinet secretary can intervene when there are issues in the council, we must be very careful because when we start to do that, the independence of universities and councils will be so severely eroded to a level that they will not be very useful. They may become puppets.

The points I have raised show that I have great reservations with regard to this Bill. I support it, but we need to look at the amendments thoroughly to ensure that we support public universities and prevent their invasion by private universities.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Very well. The next Member on my request list is the Member for Kiambaa, Hon. Njuguna. He is present.

**Hon. John Njuguna Wanjiku** (Kiambaa, UDA): I am present. Thank you, Hon. Temporary Deputy Speaker for this opportunity to contribute to the funding of public universities.

I rise to contribute to the debate on the Second Reading of the Universities (Amendment) Bill. I have had a chance to read through the Bill and the best title for the Bill should have been a Bill for private universities. It has nothing to do with public universities. Our public universities are on their knees because of lack of funds and bad management.

Every clause in this Bill is geared towards fostering the interests of private universities and thereby killing public universities. This is quite unfortunate. I see an attempt to micromanage public universities. Case in point is Clause 14 of the Bill which provides for the procedure for the appointment of a vice-chancellor. As you are aware, public universities are body corporate and should not be run like personal entities. The Bill proposes that the vice-chancellor of a public university shall be an appointee of the cabinet secretary. If that is not micromanagement, I do not know what it is. Meanwhile, for private universities, vice-chancellors shall be appointed by the university council.

We all recall what transpired during the appointment of the current Vice-Chancellor of the University of Nairobi. The Cabinet Secretary had a preferred candidate and kept rejecting certain successful nominees until the issue went to court. Is this what we want? Why can a vice-chancellor not be competitively recruited by the Public Service Commission without its current diminished role where the Cabinet Secretary appears to be the one determining who is appointed as a vice-chancellor of a public university? It is my submission that the vice-chancellor should be competitively recruited exclusively by the Public Service Commission. Only the principal to a college should be recruited by the council. With continued micromanagement, public universities are all bound to fail. Management of any institution is everything. If you do not get it right, you get everything else wrong.



For that reason, I oppose the Bill.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Do you oppose the Bill?

**Hon. John Njuguna Wanjiku** (Kiambaa, UDA): Yes

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Very well. You are on record as opposing. This is a House of debate. You are very welcome. Let us have the Member for Ndaragwa, Hon. Jeremiah Kioni. You have the Floor.

**Hon. Jeremiah Kioni** (Ndaragwa, JP): Thank you, Hon. Temporary Deputy Speaker for this opportunity to contribute to the Bill. We always have issues with public universities. It is useful to have an opportunity to address university issues on the Floor of the House. I have not gone through the Bill in a detailed manner, but the little I have seen is a little worrying. Instead of us trying to look for solutions for public universities, it is like we are looking for solutions for private universities and creating an opportunity for them to access public coffers. It is important to say the following:

First, across this country and I have seen it in my constituency in Ndaragwa, we have young people being admitted to university, who are from very poor families. These are families that perhaps never thought they will ever have their children at university level. However, what is worrying is that when they come to you, they have admissions to private universities and the amount of money they are expected to pay is much higher than what is being paid in public universities. The question will then be: How did you get yourself admitted to the private university? They have no idea. Somebody just sits somewhere and decides that some will be admitted to private universities and others to public universities and there are those who will pay more and others who will pay less. This is theft and it is fraud on our education system. We have done so well in this country by having free primary and secondary education, but we seem to be messing it up at the university level.

I do not understand how this Bill would be a Government Bill. I was struggling to find whose name is on it and I can see Hon. Amos Kimunya's name. My question is: How on earth would the Government have this kind of a Bill on the Floor? This Bill is taking away the right of education from our young people and especially children from poor families.

Hon. Temporary Deputy Speaker, every child needs to have the right to decide where to go and I think one of the amendments that we should have is a sunset close. We should introduce a sunset close such that those private universities that have been enjoying money from public coffers will know that that time that will come to an end. If we are choosing to give private investors money, why are we not giving the ones in the motor industry? Why are we not allowing other sectors to access public coffers or to access money that we have paid? I wonder how we got here in the first place.

We do not even conduct audit. We have young kids who drop out because they cannot afford fees in the private universities, but I am certain the Government continues pumping in money until the fourth year, yet some of the kids will have dropped out in the first or second year. It is really a conduit. I do not understand how this document will be coming from the Government.

Look at the lecturers who mark examination sheets, you have a lecturer marking five hundred or six hundred examination sheets. How on earth can you do that? I have tried it. I was struggling with fifty, yet somebody is trying to lie to me that you can mark six hundred answer sheets. You cannot do that and that is why marks are lost. We have commercialised this aspect so badly. Prof. Magoha must come up with a better thing before the end of his tenure. We associate him with better things and I hope he has not looked at this Bill because if he has and given it an okay, then there is something that we are not seeing that he should come and explain to us.

Hon. Temporary Deputy Speaker, I do not want to add anything more. I oppose because this is not a good Bill, if it is for purposes of helping at the university level.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): You oppose. Let me have the Member for Navakholo, Hon. Emmanuel Wangwe, to give his contribution.

**Hon. Emmanuel Wangwe** (Navakholo, JP): Thank you, Hon. Temporary Deputy Speaker. Allow me to say that I reluctantly support the Bill. For that matter and in proper English, I want to say that I will support it with amendments. I would also be proposing some amendments on my own together with those which have been cited by the good Professor of Medicine, Hon. (Prof.) James Nyikal and others. Once the Bill is before this House, it is now our property. We will have a right to assess the various sections of the Bill and propose amendments.

Education is the only gift you can give to the society, especially the youth, and failure to give them the right education means that you are building a population which is going to be full of anarchy. If you educate children to a free basic education as enshrined in Article 43 of the Constitution and deny them higher education, properly nurtured to their needs, then all you are doing is building anarchy. You would have enlightened the boys and girls, but you are not able to conclude and give them the right education.

Hon. Temporary Deputy Speaker, on its own, the Committee's observation is giving direction on where we are headed to. In its wisdom, the Committee intends to ensure that the governance of specialised degree award institutions is within the framework of the Universities Act, which has already been effected through the Statute Law Miscellaneous (Amendment) Bill No.20 of 2020. This Bill is overriding what already exists. The aim of the Bill is not to drive anything new. Instead, it is going round in cycles to hit on private institutions.

I wish to speak as a Member from the western region where at the moment, we do not have a private university. The only university that has received funding in the last five years is Masinde Muliro, which got its charter last year. The Kibabii University has been struggling, and Kaimosi and Alupe are yet to get their charters. The people of Western cannot be sustained by anybody who is coming up with a private university to support higher education. If we cannot bankroll and invest in public universities, some regions in this country will continue failing in terms of the economy at the expense of the ones doing well. This amendment Bill should be relooked into thoroughly, so that any direction to enhance, improve and advance issues of private universities *vis-a-vis* public universities are down played. Any investor who wants to invest should be ready to make feedstock available and put in capital to drive his business.

The issue of relying on KUCCPS for supply of students should end. Instead, let us support public universities so that research cuts across the world, and not only in the Kenyan best.

Our professors' sons are working in various universities all over the world, for example USA, UK, Canada and India, because universities in the West are open to academic challenge. If we advise that we enhance private universities, we will be killing research and instead, promoting search for resources in terms of money rather than knowledge.

I would, therefore, wish to look at it in that angle. I will be proposing amendments. I have about four amendments which I will be putting across when it comes to the Committee the whole House.

Section 23 of the Act should be amended to ensure that the cabinet secretary publishes the Gazette Notice within 90 days from the date of submission. Failure to which, the statutes become effective to avoid inordinance delay of gazettelement of statutes.

That citation as it is absorbed in the Act is something that we need to look at so that we align it with the Universities Act. We should focus on the management of universities. The

appointment of the Commission Secretary is limiting as it excludes other qualified persons working outside the university environment, who would have similar experience and management competences like officers working in institutions such as the Commission for University Education.

Usually in an institution of knowledge, you allow competition to come from outside and not just to do inbreeding. If you only allow competition from within, this is inbreeding. We should be looking at it at the Committee of the whole House.

It is proposed that the chair of the council should be a PhD holder with vast experience in research, which is one of the key functions of the university. It is also important to ensure that the qualifications of chair of the council match that of senior management. It is okay to have a chair with elevated level of academics, we accept it. However, this is just but a small observation trying to drive away the majority. You only have one gift at the convenience of very many ills. We will not be looking at it from that angle. Instead, we have to focus.

We should not look at it as they put it. Councils like any other public university boards, operate on delegated authority. However, it is unnecessary for the cabinet secretary to review council decisions while recognising that he is ably represented in the council.

The Bill is giving powers to the cabinet secretary to review council decisions on delegated positions. Supposing the cabinet secretary does not want to align himself with the decision of the council? He would simply be remote controlling the council from wherever he is. It is a challenge that we need to look at. We will make the various positions clear during the Committee of the whole House.

Finally, we will look at the issue of appointments. The vice-chancellors are the accounting officers of universities, and having them sit in the universities fund board will resonate with their role as the chief executive officers of the respective universities, which is okay. This Bill should not be passed the way it is without including a sunset clause to provide what happens if the vice-chancellors sit in the university fund board. We must have the sunset clause to give limitations in terms of the vice-chancellors sitting in universities' fund board.

Most universities are at the verge of collapse because of accountancy issues. Accountability is a challenge. About three to four years ago, there was an issue in one of the universities where school fees were not reflecting in the printout sheets, and was discussed on this Floor. Today, that university is down in limbo. We need to enhance accounting structures. The university administrator should be a professional in the vice-chancellor's office and should not be appointed on the basis of being a Luhya, and therefore, Masindo Muliro University should have one. The answer is no. Or if he is a Luo, Maseno University should therefore have one. We want to have a transparent administrative unit such that a vice-chancellor is a full professor in charge of the institution. He should not pay homage to any other person other than have loyalty to the instruments that a vice-chancellor given to him.

I end there with my mega amendments that I will be proposing in the Committee of the whole House.

Thank you.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Very well. Your proposed amendments have come at the right time and would be prosecuted, appropriately.

Is the Member for Mwingi West in the House? I have seen him walk out to consult. Member for Kanduyi has spoken to this. Member for Kikuyu.

**Hon. Kimani Ichung'wah (Kikuyu, JP)**: Thank you, Hon. Deputy Speaker.

I want to join many of my colleagues who have contributed to this debate. This may seem like a good Bill, but very bad for public institutions.

Hon. Temporary Deputy Speaker, during the reign of the late Hon. Michuki, who was the Minister for Transport, all *matatus* were to be painted with yellow strips, and we assumed they would have all behaved properly. History has, however, shown us that a *matatu* is a *matatu* whether painted with a yellow strip, blue, green or yellow like they were supposed to.

If you want to deal with our universities' problems, we must deal with KUCCPS. It is the predecessor of the Joint Admissions Board of Kenya (JAB) that was said to have been riddled with corruption. However, even after changing JAB to KUCCPS, corruption that existed in JAB persists still in KUCCPS.

This week, the Member for Njoro requested for a Statement or a Question on the financial wars bedeviling Egerton University. It is not just Egerton University, Kenyatta University, the University of Nairobi - the premier university of this country - Masinde Muliro, where the Chief Whip comes from and Muranga University. During the Public Accounts Committee (PAC), the Principal Secretary and the Vice-Chancellor of Murang'a University said they have no students. The reason why public universities have no students is because KUCCPS is not placing students there.

Hon. Temporary Deputy Speaker, that is why many public universities in our backyards have no students. This means that they have no capitation from the taxpayers' money that we allocate in this House. We should deal with KUCCPS. This Bill does not seek to empower KUCCPS or to deal with its problems.

Clause 21 of the Bill proposes to change the membership of KUCCPS to have a service that will have 11 members. Only four members will represent the Government interest in public universities. Indeed, public universities are supposed to be represented by only one person. The bulk will represent other interests, which is the problem. We will find ourselves in a situation where there will be nobody to speak for public universities within KUCCPS.

Being the body that gives students to universities, then Murang'a University and Egerton University will continue to be on their knees. Probably, Kenyatta University will have died before Murang'a University because of lack of students. We cannot say that this is caused by the courses that are being offered. We have very many public universities that offer very good courses, but students are not placed before them by KUCCPS. If we want to deal with the problem that bedevils our public universities, we must deal with KUCCPS. We should deal with how it is constituted. It must be heavy with Government representation from public universities, but not private interests.

Two, there is the question of the cabinet secretary. The Bill proposes the cabinet secretary to completely micromanage public universities. I served as the Vice-Chair of the Public Investments Committee (PIC) in the last Parliament and public universities are body corporates. They report to this House through the PIC. The State Corporations Act stops ministries from micromanaging State corporations or parastatals. The Cabinet Secretary for Education cannot then be allowed by this Bill to micromanage our public universities by being the person who appoints vice-chancellors.

For example, you remember the most recent case of Cabinet Secretary Magoha and Prof. Kiama at the University of Nairobi. That issue went to the courts to be resolved. Prof. Kiama is the Vice-Chancellor who was recruited by the University Council competitively. If we allow cabinet secretaries to pinpoint vice-chancellors...

I support what Hon. Wangwe said that the cabinet secretary would pinpoint Mr. Maina to be the vice-chancellor of Murang'a University, Karatina University or Kikuyu Campus when it

becomes a university one day. Then, Mr. Masinde must be the vice-chancellor of Masinde Muliro University. Bondo University must be led by Mr. Otieno. If we allow the cabinet secretary to appoint vice-chancellors, that is what we risk doing. Let vice-chancellors of public universities be recruited competitively and on merit. Even Members of this House will hold those vice-chancellors to account on both public money and how they educate and take care of our children, whom we send to public universities.

Many of us in this House attended public universities. We are at the forefront of defending our public universities from collapse. If this Bill is passed in its current form, it will spell a death knell to our public universities. We must do all we can do. We will bring amendments. I will have amendments to ensure that KUCCPS is properly constituted with heavy Government representation and public interest vis-à-vis the interest of private institutions.

Lastly, is the question of funding for our students. Early last week or last week, but one, many of you read in the Business Daily that our students in public universities are unable to get funds from HELB. I am sure many of the Members here, including myself, saw the face of a university because of HELB. I am sure that Hon. Temporary Deputy Speaker knows where she comes from. Just like me, she saw the face of a university because of the funds that came through HELB. It is sad today because our students are unable to access funds from HELB, and yet we are not dealing with those issues even as we deal with a Bill like this.

I wish the Leader of Majority Party was seated here. However, I can see his deputy, Hon. Jimmy Angwenyi, is here. I can see that Hon. Kimunya is here. Hon. Amos Kimunya was the leader of the Government Business in the 10<sup>th</sup> Parliament. Hon. Nyikal spoke about it. The Leader of the Majority Party must be very careful, so that he does not do what he did in the 10<sup>th</sup> Parliament. He should not bring retrogressive Bills that are unpopular with the public at a time when many Members of Parliament are out there campaigning. We must be cautious. We should not bring and pass retrogressive Bills that will kill our public institutions. The Leader of the Majority Party does not care. He used his time in the 10<sup>th</sup> Parliament and he lost his seat. He brought very retrogressive Bills and passed them when Members were not in the chamber and he ended up losing his seat. We do not want to lose our seats because we are not in this House when retrogressive Bills that infringe on the rights of the ordinary hustler students to access university education are passed.

I really want to implore on the Leader of the Majority Party to either withdraw this Bill or allow enough opportunity for us to engage on all the issues, especially on funding of our public universities, placement of university students in public universities and the management of public universities without undue interference by the Government through the cabinet secretary.

With those remarks, I beg to oppose this very retrogressive Bill vehemently.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Very well. Let me have the Member for Masinga, Hon. Mwalyo Mbithi.

**Hon. Joshua Mwalyo** (Masinga, WDM-K): Thank you, Hon. Temporary Deputy Speaker for giving me this opportunity to speak about the Universities (Amendment) Bill, 2021. I will support it with amendments because majority of the items in this Bill are not in line with how universities are supposed to be run.

One, public universities are on their knees. They are almost going under. I know one that has already been closed because the money they used to get through the parallel courses is no longer there. Universities were doing very well. They opened so many branches because they had extra money from the parallel courses. Since the parallel courses were stopped by the management of universities and the cabinet secretary, universities are no longer expanding. We had given Machakos University 40 acres of land in my constituency to build another university there. Since

the parallel courses were stopped, they stopped the construction. We had already given them the land. We have been asking where they went, but I found out later on that they had no money at all. We need to find a solution for the universities before they go under. The contractors who have built for them houses, institutions and many things at the universities, have not been paid. Therefore, we need to come up with a solution to save our institutions because nowadays attaining a degree is the basic education. It is no longer the Form Four that we used to boast about that if you are in Form Four, you have really gone to school. The basic education now is to have the first degree and to be learned is to have a master's degree also. We need to save our universities.

Secondly, the recruitment of the Vice Chancellors needs to be looked into. You will find the Senate has recruited vice chancellors and they give them to the Cabinet Secretary to appoint. They do not even insist on the management skills. Whether you have a PhD or whether you are a doctor or professor, the most important thing is to have management skills. If you have no management qualities in an institution and you have no skills and experience, then you will not be able to take that institution very far. There are some vice chancellors who inherited good institutions and after a while, the institutions are dry, they have no finances and they have nothing. There is no income and therefore they are struggling even to be able to stand on their feet.

I urge that this Bill includes, in the recruitment of vice chancellors, a course or degree on management and also financial management as an added advantage. This is so that you may be able to know after the income of the school has come in, how you share or divide and keep a surplus and save the institution from even going to bad debts. With those few remarks, I support with amendments.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): The proposed amendments are welcome at the Committee of the whole House. Member for Rangwe, Hon. Gogo Achieng, you have the floor.

**Hon. (Dr.) Lilian Gogo** (Rangwe, ODM): Thank you so much, Hon. Temporary Deputy Speaker. I rise to support this Bill with amendments for the very reason that touches on the core element of our nation, that is, education. As it were, much has been said about this particular Bill. As far as it touches on the joint between private and private universities and monies that go to private universities from the public coffers, the first thing that comes to question is accountability.

Before I speak to this, I want to appreciate what our private universities are doing in this country in terms of provision of employment to the Kenyan citizenry, in giving education and also conducting research in their level and the many things that they do to enhance education in this country. However, this particular Bill does not address the issues of education governance in this country especially higher education. We have seen in the recent past our higher education institutions especially our universities literally go down on their knees. The university that I did all my degrees, that is, Egerton University, was literally salvaged from extended closure the other day. Somebody thought it wise to just give it another lease of life and it was hurriedly reopened when it was actually facing extinction. We know the capacity and the work Egerton University has contributed in this country especially in the field of high notch agriculture.

This particular Bill does not strictly address issues of governance that bedevil our higher learning institutions. It is very important that these issues of financial management are addressed. Bills should come into this House that substantively address how monies should be given to our public universities. We know that as far it is, most of our students from vulnerable backgrounds end up in our public universities and these public universities should be well funded. If there is any scarcity of funds, then priority should be given to our public universities. If there is any sharing that should be given in such a way that funding from public coffers is directed to private

universities, that is, monies that ought to have been used to build the financial capacity of our public universities, then I should think that these are the matters that should be addressed by such a Bill. Of course colleagues who have spoken ahead of me have touched on the matters of governance in terms of nepotism that we see in management in our universities where preference... If it is brought at a certain echelon of management, then you would find preference being given to certain tribes or people from certain localities to be at the highest level of management of our public universities. These are the things that we really honestly need to address.

When you look at this Bill, there is the element of making the provision of charter a bit difficult. I am looking at the Tom Mboya University in Homa Bay County where I come from. Provision of charters should be made easy such that we have even more and more public universities. Among other things that our universities do is to conduct research and when it comes to rating of universities in terms of their output internationally and nationally, you look at how much they contribute in terms of public knowledge and generation of knowledge from research that they conduct. I get curious to find out how much money is given to our public universities for research purposes. We cannot have our universities only teach. We need to have our universities especially public universities to be funded so that they can conduct research and generate new knowledge.

I want to specifically talk to equipment that are at Egerton University that are used for teaching. Some of them are completely old and especially in the field of engineering we need to buy new ones. I am talking about the Department of Food Science and Technology. This is a specific department that requires new equipment but we find that the little money that is there is divided among public universities and part of it is taken to private universities when our public universities require new equipment especially in the field of engineering. I think this one resonates around all public universities across the country. It is really serious. It is a serious matter that we looked at our public universities with an eye of mercy. What happened to our public universities where most students from poor backgrounds go? We know very well that education is an equaliser; education levels the playing field for people no matter their background. One struggles hard to get to university only to find that there are things one cannot access. These are matters of governance and essentially when it comes to funding, these are things we should bring to the Floor of the House, substantively discuss them and see how we can add more money to our public universities.

When it comes to matters accountability, when we take money to private institutions from public coffers, how do they account for these monies? How do public auditors go to private institutions to follow up funds from public coffers, audit them and give a report? Probably, these are the places where we get our money disappearing. So, we should re-think this Bill, as much as I support it. When it comes to the Committee of the whole House, we will amend it so that it is better.

Our public universities have suffered a lot of riots and stay-ins by our lecturers. Look at the qualifications required to be a university lecturer. One must have a masters' degree at least. One takes a long time to get a masters' degree and put a lot of academic effort to have a masters'. One must also do publications. We even have university lecturers who must do certain publications, must supervise certain number of students, and what happens? It is our university lecturers, in this country, who are least paid. As much as we want to discuss matters higher education, it is important that we re-think funding of our national universities especially public as we appreciate what the private universities are doing.

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

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Let me have Hon. Kiarie, Member for Dagoretti South. I am aware you do not have a card. You can use the Dispatch Box.

**Hon. John Kiarie** (Dagoretti South, JP): Hon. Temporary Deputy Speaker, I greatly appreciate this opportunity and it is not my habit not to have my card. As you would know, I have a good record of carrying my card with me always.

When the public elects a government, when people elect their representatives, they do so expecting that the government is going to invest in social good. Kenyans expect the Government to offer good schools. Kenyans expect the Government to give good hospitals, to give good universities, and good roads. Public education is one of the social good that Kenyans expect from this Government. That is why I rise to vehemently oppose this Bill in the format that it is in. I oppose it because the financing of public universities is a critical matter. With a well-trained population, two things normally happen: considerable human development but more so investment in research that moves the human being even further, so much so that if we want a country to develop, want educated people and want educated people to produce research that will inform the development of a country. When a Bill such as this is presented to the House, where we see ourselves taking public monies out of public investments and putting it in private people's pockets, then some of us will definitely stand on the Floor of this House and oppose such an effort.

In its current form, this Bill is leading to the privatisation of functions that should be taken up by the national Government. The easiest way for a country to hand over itself to cartels is by privatising social good that belong to the public. As we speak, we know the state of our primary school education and we know the state of our secondary school education. While the Government is really investing to ensure that we have 100 per cent transition and preferably to national Government funded schools, on the other hand we want to make a bigger investment on private universities at the expense of public universities. We would be doing what we call in maths a zero sum game.

The essence of this Bill is that ultimately it will bankrupt our public universities at a time when we can have a Petition that was brought to this House recently where public universities are even decrying the state of their finances as we speak. They are even asking whether alumni of public universities could join the summit so that they can help with ideas to take universities further. It is a time when public universities are collapsing, universities without number like Kenyatta University in dire financial straits; the University of Nairobi, dire financial straits; and Egerton University is in abeyance. At the moment we do not know how it will be opened. The students are crying wishing they could go back to school, and at least, graduate. Just across the road at the Technical University of Kenya, students who should have graduated in the year 2020 cannot graduate because there is no substantive leadership in that school and it is underfunded. In essence, this is a badly timed Bill coming to do bad things to public education especially in public universities.

This House, through the Public Accounts Committee, has processed a matter where it has been proven that the public has been investing in ghost students in private universities where the universities over declare student numbers. There are many ghost students declared by private universities so that they can benefit from public funding. This is at a time when national and public universities are struggling to even fill up their classes rendering our public universities to become kiosks. Today, the University of Nairobi is trying to do anything it can to raise money. Kenyatta University is no longer concentrating on academia or teaching its students or even doing research, they are concentrating more on what can bring money to the table because the University is facing collapse. Now here we are, the people who appropriate public monies through the national Budget



saying we now want to take money from our public university and put it in private investors. That is a big shame.

We should now also, as we process this, focus on where the problem is. There is an institution by the name Kenya Universities and Colleges Central Placement Services (KUCCPS). The problem emanates from there. It is now in the public domain that KUCCPS has been denying public universities students and placing them in private universities and students are locked in private universities due to the bureaucracy and process of getting themselves out of placement in a private university if they want to go to a public university so that KUCCPS can follow the monies to these private students they place in private universities and at the end of the day, killing our public universities.

The denying of funds or the underfunding of public universities is a very elaborate and complex scheme. Right at the centre of this scheme is the KUCCPS.

There is an issue in this Bill of giving veto powers to the Cabinet Secretary in the council. One of the biggest things that universities fought for is to be separated from the Executive of this country. There was a time when nothing could happen in a university senate or a university administration without the direct assent of the Head of State. That was many decades ago. We cannot go back there. The veto power being given to the CS in these university councils is something that should not be tolerated by this House. It should be opposed vehemently. Universities will need to be independent of the Executive as they run their business and affairs.

Hon. Temporary Deputy Speaker, we are the House that appropriates monies. If by chance or any stroke of bad luck this Bill goes through in the format it is in, I would love to call upon this House to reconsider the monies that will be appropriated to this sector in the Supplementary Budget and in the main Budget. If we are going to invest monies that have should been going to our public universities and they end up in the pockets of individuals who run private institutions, then we would as this House be doing a very sacrilegious act. In fact, a big disservice, not only to this country at this moment but also to future generations. I stood to vehemently oppose this Bill in the format and form it is in.

As I conclude, the issue of financing public universities is a very critical matter to Members of this House. So, I take this opportunity, as I am sitting, to call your attention to the quorum situation in this House. I believe that this matter should be debated at such a time as when we have good quorum. That is so that we can bring these matters to the attention of the Members of this House and members of public. I wish we could postpone this debate so that it can be debated at such a time as when there will be in good quorum to attend to such an important matter of public interest.

Thank you very much, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Order. Hon. Kiarie, you made your contribution so well. But you are in order to call for quorum. So, I order that the Quorum Bell be rung.

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

Hon. Kiarie, can you be on record on the issue you were proposing?

**Hon. John Kiarie** (Dagoretti South, JP): Hon. Temporary Deputy Speaker, the issue I was raising is that such an important Bill is coming at a very curious time. As you can see, looking around the House, you can see what our quorum looks like. So, the timing of the tabling of this Bill is to me a bit curious. I wanted to go on record to say that I wish that this debate could actually

be when we have a good quorum so that Members can get a chance to contribute to such an important matter. I was calling your attention to the quorum status in the House.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Very well. He is on record, as a matter of procedure, calling on the quorum status. You have already contributed. You cannot be the one who is raising matters of quorum after debating and closing your contribution. You are doing the right thing but not in the right way. I think he was trying to say how important this Bill is. Of course, every other Member would also be interested in contributing to the same. It is a very important Bill. It was just a point of noting.

Then, let me have the Member for Kibwezi West, the Hon. Musimba Patrick.

**Hon. (Dr.) Patrick Musimba** (Kibwezi West, Independent): Thank you, Hon. Temporary Deputy Speaker, for this opportunity to contribute to this Bill. In essence, our biggest contribution will come in the Committee stage. But, we must be alive to particular things and proposals that have been brought by the Executive as concerns this Universities (Amendment) Bill.

The role of universities is in the development of human capital. The bigger question or thought to ponder upon is: Do young people need Kenya or does Kenya need those young people and their brains? Indeed, the answer is obvious: Kenya needs its young people to be developed to give us their intellect and, indeed, their output towards growing our GDP as a nation. You will increasingly find that the model we have as a nation taken towards university education is talking about placing university admission towards the haves. It is a crime not to have money and to come from a disadvantaged home or background. You will find that people have been placed to the Masinde Muliro University of Science and Technology and they come from Kibwezi. It is quite an expense for them to access universities, based on the localities they come from. It is expensive. We need to go back to the times when we said universities were purely on grant basis because the student has done their work. Their work was to excel at form four level and get admission to these universities. Surely, you cannot punish that sort of output by saying that the child has performed in year one and two then say you are sending them home because they lack fees by the time they get to year three. This is unfair. That is why I say it is a great shame for us as a nation. If you go back to the sixties and the seventies when there we great airlifts, the only thing anyone needed to do that time was to excel in their secondary education and be treated to sausages and a lifestyle that was in the movies when they went to the University of Nairobi. Now, the same people who benefitted and are now coming to retirement are pushing these sorts of Bills and formations. It is to punish students who are coming from needy environments, without having provided them with an enabling framework.

We as legislators, when dealing with the National Government Constituency Development Fund (NG-CDF), are at great pains to allocate funds like Kshs10,000 to people who require a lot more to be able to have sustenance. When you look at their environments, they have nothing yet the person is going to study actuarial science, medicine or engineering. Even if it is the arts, we need people who can look at society and tell us what the behavioural patterns are so that we have the right mixes when we are discussing in meetings and the way we position Kenya in terms of our diplomatic relations abroad. These are the times you see people who have been celebrated in Kenya—people like Prof. Mabel Imbuga at the helm of the Jomo Kenyatta University of Agriculture and Technology (JKUAT); Prof. Olive Mugenda at the Kenyatta University (KU), and she has grown it into a huge institution and economy that has defined Juja and the Thika Superhighway; and people like Prof. Arthur Obel whom you see even when you are studying medicine. Particular books are written by them. They are authorities around the globe.

Now, you increasingly find students who are suffering from lack of boards in universities. My alma mater is the University of Nairobi, at the Lower Kabete Campus. I went there and I could not imagine the deplorable conditions students are living in. The rooms which we went to were good. Theirs are not rooms you would say a parent is bequeathing their children to go and stay in. On where they eat, we used to go to the CCU. It was such a nice place to go and eat at. Today, they are going to *bandas* yet they say they celebrate going to university. Surely, these are things which have to be done.

We celebrate minds like Prof. Mbugua here in the engineering faculty. He came up with technologies people like Elon Musk are using until today in the development of nanosatellites around this world. These are bringing big monies to the globe and changing lives. What are we doing to students who would in future bring these innovations? We are killing them; we are destroying them. Strictly speaking, public money must be used for public purposes. We started this game in Kenya with the NHIF. We took public money and gave it to private hospitals. When will a Level 3 Hospital or a Level 4 Hospital in Makindu look like MP Shah Hospital when we are giving private hospitals more that Ksh100 million in a month? When will we have hope in Makindu? It is impossible. They will never catch up. When, for example, I go and set up a university as a capitalist – and I must confess that I am a pronounced capitalist – I should not hope to benefit from what taxpayers give. If I build that university, I must make it competitive and ask people to come to it because it will give them an edge. When they come to my University, it will give them an experience. But, you cannot kill a University of Engineering by not giving it equipment and drive it to ---

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): The Hon. Member for Kibwezi West, we have a point of order from the Majority Party Whip.

**Hon. Emmanuel Wangwe** (Navakholo, JP): Thank you, Hon. Temporary Deputy Speaker. I rise on a point of order seeking clarification from the Member. I must declare that he is my own nephew. He has said that he is a pronounced capitalist. Not everybody will understand that. I want him to clarify that now that he is delivering a serious point to Kenyans, so that everyone can know what he means by a pronounced capitalist.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Very well.

**Hon. (Dr.) Patrick Musimba** (Kibwezi West, Independent): To my uncle, my *khocha* who I love ---

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Order, Hon. Musimba! You cannot call each other uncles and nephews here. You are Hon. Musimba even if you happen to be his nephew. Proceed.

**Hon. (Dr.) Patrick Musimba** (Kibwezi West, Independent): Thank you, Hon. Temporary Deputy Speaker. The point I am driving is that I am an entrepreneur. I am a person who sees gaps and moves. We inspire Kenyans and that is why we are here. Ours is a land of possibilities; it is a land that you can come from whatever background, grow and become something. The point I was delivering is this, as an entrepreneur, I cannot seek to use public funds to make myself wealthy. I cannot do that. It is not the ethos that we were brought up with. We have to see ourselves... Kindly, with your indulgence, I beg for some minutes because some of my time has been taken away.

Public universities came up with parallel programmes that were supposed to boost their bottom lines. They set up campuses across Africa and the University of Nairobi aspired to have campuses in London, Côte d'Ivoire and Tanzania. We wanted our universities to be the bedrocks and have the brand of being the best in particular fields. However, a policy came from the Ministry saying that all public universities should close these programmes. We had a big programme at the

Jomo Kenyatta University of Agriculture and Technology (JKUAT) that was in Kaduna, Nigeria. It was to bring dollars to us as a nation but we killed it. When we say our exports as a nation are dwindling and the balance of trade is shifting to the negative we need to probably sell our education as the next frontier for this country. We have to ensure that our brains and innovations that we have heralded to the world count for us. You can now see that Financial Technology – Fintech is the big thing. It has come out of the development of the National Optic Fibre Network Backhaul Initiative (NOFBI) that we installed around the country. It is taking us at the helm of Information Technology. Are we developing virtual universities? The answer is no. Our population is growing; it stretches the existing facilities today in our existing universities by far. We need to expand our facilities and be like the University of South Africa (UNISA). We need to emulate the University of London by having the biggest correspondence university in the world so that if, for example, our own civil servants are posted around the world, there will be no lacuna in them accessing our education.

This is to the Leader of the Majority Party and this House. We need to come together and remember what made us great and a powerhouse in the 50s, 60s and 70s. We have to accept that our people from whatever background must have access to universities and higher learning. We cannot say we have HELB funds... Let them contribute. Once they contribute to us, we will all benefit from the bottom line. Some of us would not be...

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): You are making an important point. You will have one minute, Hon. Musimba, Member for Kibwezi West.

**Hon. (Dr.) Patrick Musimba** (Kibwezi West, Independent): Thank you, Hon. Temporary Deputy Speaker. The whole purpose of merit is that if you perform well from Mombasa or Kilifi you are given an opportunity to go and interact with your peers. Let us not take that away. There is a lesson you get when you come knowing you are the king of your village and meet you equal peers with bigger minds. That humbles you. It makes you to work harder and focus your contribution to this country.

Thank you.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Very well. Member for Butula, the Hon. Oyula Maero you have the floor.

**Hon. Joseph Oyula** (Butula, ODM): Thank you, Hon. Temporary Deputy Speaker for giving me this opportunity to contribute to this Bill. I will have a few comments. Based on what we have learnt, this Bill has been brought at the wrong time. You will notice that most of the public universities in Kenya are bankrupt because the Ministry of Education decided to shut all their branches from where they could raise some funds. Because of lack of sources of funds, our universities are bankrupt. The Higher Education Loans Board (HELB) was supposed to finance students from poor backgrounds but they have been denied this opportunity. There is no more funding from HELB. As a result of these, a lot of university students are seeking support from NG-CDF bursaries which is not enough to support them. So, it is important that the Ministry of Education comes up with a way that will help universities to get back to the position they were in by encouraging them to raise their own funds.

On source of funds was a good system which our public universities had. Today, as we speak, our universities are in a terrible situation. It is only this House that can come out and support universities to go back to the level they were in the past. Otherwise, our universities cannot compete internationally like they used to compete because most of the students are depressed and they are not able to finish their courses on time for lack of funds. Therefore, it is important that the Ministry of Education relooks at this Bill and stops funding private universities at the same level

with public universities. Private universities have their directors who are able to fund them. If you give them a lot of leeway to get funds from the public coffer, we will be killing our own public universities. If you have noticed, there is a lot of tribalism that is being practiced in our universities. You will find a university in western recruiting only lecturers from western. That is not a good way of expanding our knowledge. If a lecturer was born in western, went to primary and secondary schools in western and works in western, it is not healthy. The Ministry of Education should be encouraged to change the whole system and enable public universities to get funding for research and development.

With those few remarks, Hon. Temporary Deputy Speaker, I wish to support this Bill with amendments. Thank you.

**The Temporary Deputy Speaker** (Hon. Jessica Mbalu): You support with amendments, which is very welcome. Let us have the Member for Migori County, Hon. Ochieng' Awuor.

**Hon. (Ms.) Pamela Ochieng** (Migori, ODM): Thank you very much, Hon. Temporary Deputy Speaker, for giving me a chance to add my voice to this Bill. As a member of the Departmental Committee on Education and Research, I support the Bill. Allow me to express gratitude to Members who are willing to support with amendments. Discussions are allowed to improve any decision that we make on behalf of Kenyans. There are a few highlights from the Bill and the report that I would like to speak to.

One is the idea of placing our children in universities. What the Committee proposes is not to say that private universities should be funded at the expense of universities. You will recall that at some stage, we had overflow of students who required university spaces. Our public universities were full. They even had self-sponsored students. This is what informed the decision of the government then to seek places in private universities for merited students. Right now, whatever funding that goes to private universities is not for newly-admitted students but for continuing students. What we are saying in this Bill is that when we admit students, the KUCCPS needs to ensure that public universities are filled first before any student is sent to a private university. Should there be a student that should be placed in a private university, the government will sponsor that student only to the extent that he or she would have been sponsored in a public university. And their admission to a private university should be because the course they are interested in is not offered in a public university. As Members debate this Bill, let it not be seen as if the Committee is not aware of what is happening. I thought I needed to make that clarity. That is what the Committee has recommended.

You will agree with me that universities are public entities that belong to the government. All education matters are managed by the government through the Ministry of Education. When university councils and vice-chancellors are appointed, the Ministry should be the one in charge, of course through a panel that is agreed upon by the councils and senates of the same universities. This Bill also seeks to solve the problem that we have had in the past where the Public Service Commission was doing appointments. We have had cases where a university stayed for one, two or three years with an acting vice-chancellor, thereby curtailing prompt decision making that should make academic programmes move smoothly the way they ought to be. That harmonisation is very important so that university programmes can move well and make students in public universities move at the pace of the rest of students. It is important to recognise that Kenyan students in public universities are not just competing against themselves. They are also competing against time together with millions of the same age and courses in all universities in the world. Therefore, the flow of programmes is important so that they can get out on time. When there are

bottlenecks that would hinder the efficient progression of students, then we are not doing a good service to our young ones.

It is important to note that even as we talk about funding public universities, private universities should not cash in on public money. In Kenya, there is a policy that encourages public private partnerships. On that note, it is important that as we make decisions we understand that good neighbourliness is not as bad. But we emphasise the fact that we want public universities to be properly funded and managed. And all these things should be done adequately and on time for quality. If you undertook some little study in most universities in the world, the best are publicly managed by governments, ranging from financing to staffing. This is what we pray for in Kenya. This Bill also seeks to establish the Universities Funding Board. We have noted that there are challenges that public universities have been going through that are not in the public eye. For example, during Covid-19 students could not go to class and there was little income. Some universities, we learnt, were suffering financially, but they had assets that could have been disposed of. As opposed to the University Trust Fund, we propose the establishment of the Board to deal with all financial matters and encourage universities to raise funds on their own, especially through research. By and large, a university should have top-notch brains who do not only go to class as teachers per se but also be creators of knowledge. And that can only be done through research. The Board is meant to ensure that all funding that goes to universities is properly distributed and managed. What belongs, for example, to Kenyatta University should go to Kenyatta University and what belongs to the University of Nairobi should be used to facilitate operations at the University of Nairobi in a qualitative and efficient manner.

There has been the argument that a Kenyan student is a Kenyan student and regardless of where they are, funds should follow them. The truth of the matter is, if we have a policy to sponsor students for higher education or education at whatever level, it is only in order that we do not let any of our children suffer because the government is restricted to a particular place where a student can be sponsored. As the Departmental Committee on Education and Research, we support this Bill to ensure that our universities get what is due to them in the most efficient and qualitative way so that we can live to the truth of affordable, accessible and quality education for all Kenyans.

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

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): The Member representing the people of Kajiado North, Hon. Manje.

**Hon. Joseph Manje** (Kajiado North, JP): Thank you, Hon. Temporary Deputy Speaker. Let me contribute to the Universities (Amendment) Bill. I support because any initiative meant to mitigate our education will come in handy.

Of the many things that we have done in the country, education is the best. If you compare Kenya with other African countries, you will realise that Kenyans are educated and at least have a university education.

Some of these amendments are very good. Introduction of Clause 26 will control mushrooming of universities. There is mushrooming of universities in all counties, which is not a viable thing at all. The clause will give the Cabinet Secretary in charge power to ensure that only viable universities are established in our country.

The proposed law will help in management of our apex institutions where the CS is given power to establish the council and appoint its members. Many members of a university come from the area the university is domiciled. So, in order to equalise things, it will be good to give the CS in charge of university education the power to appoint and transfer principals of various colleges.

About establishment of the university fund, indeed, our universities are not properly funded. It, therefore, means they cannot introduce and manage good courses in the university. Engineering courses, for example, require lots of research thus good funding. Establishing a fund to be appropriated by Parliament is the right way to go so that our universities can be up to date with research and be responsive to the needs of Kenyans.

Our universities do not respond to the day to day needs of what is happening in the country. The *jua cali* sector is doing better than our universities. If you have a car, you will tend to take it to *jua-cali* instead of our premier institutions and their workshops. This law will come in handy also because it seeks to address emerging issues like Covid-19. We should have a law that can respond to whatever is happening currently. Learning has also changed from physical to internet learning. It is now the right time to pass these amendments and introduce of a few others to make the law responsive.

I support

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): The Member for Bondo Kasipul, Hon. Obara Akinyi. You have the Floor.

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

I will not get into the details of financial challenges; mushrooming of universities across the country; matters of private versus public; or the establishment of a university fund because other Members have talked about them in great detail. My contribution will be informed by the amendments and matters management where there have been serious challenges, gaps and delay in decision making by the various universities.

I am happy we were able to enhance amendments to Clause 9 on enhancement of accessibility to universities. That authority has now been given but is subject to viability after establishing those universities. Counties will not wake up and establish universities without doing a viability study, which must be approved by the Ministry.

Secondly, selection panels of vice-chancellors and their deputies have been a challenge thus delaying decision-making. I am now happy that it has been taken back to the council and not to the Cabinet Secretary because he is the appointing authority and cannot establish the selection panel. This is clear and we will no longer have the challenges that we have seen over the years, where there has been delays in appointment because of the gaps that I have just mentioned.

Two, is to retain functions of the council. They are the ones who will be appointing principals and their deputies. It is proposed under Clause 11 that that function be bestowed on the council.

Clause 12 now makes things clear because we had serious problem with lecturers being appointed Chancellors and that kind of thing, that is, people who did not have the requisite qualifications holding the said positions. It is now clear that the Chair must be a PhD holder with vast experience in research. Also, a council member must, at least, have a Master's degree because all the managers of universities have PhDs. I mean, how do you put people with lesser qualifications to be in charge? This law is very good and will ease the problem that they have had over the years.

On decision-making, the CS would take forever to review deliberations, decisions or resolutions of the council. It is no longer necessary because the CS is represented on the council by a member. The CS has been removed and the problems sorted because boards operate on delegated authority.

With those few issues I have picked up on matters management, I support. Thank you.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Very well. You support. There being no other Member, I now call upon the Mover to reply.

*(Hon. (Ms.) Edith Nyenze spoke off-record)*

Hon. Nyenze, I cannot see you on the card. You have, however, caught my eye.

**Hon. (Ms.) Edith Nyenze** (Kitui West, WDM-K): Thank you, Hon. Temporary Deputy Speaker. I am sorry. My card has been on but I do not know why it is not showing.

Let me comment on The Universities (Amendment) Bill. I briefly, want to comment on funding.

University education is not affordable, especially to financially challenged students. Students are expected to pay tuition fee, get their own accommodation and feed themselves, which is expensive. If students are left to look for their own accommodation, they will definitely get lost in towns doing other things when they are supposed to be in class. We have lost many. The funding of the universities should be improved. It should take care of the welfare of the students, so that they can focus and study instead of doing other things.

Let me also touch on the management of the universities. Some students register a course in a certain field. They do it for four years. At the end of the four-year course, they are told that they cannot graduate because the said university has no charter for that field. I have an example of such students. That is very discouraging, after spending so much time and money in the university. The management of the universities should help our students.

The Bill proposes to amend the provisions of the Act which say that universities should be in all the counties. This Bill seeks to amend that by stating that it can only happen where it is viable. This is not good. When we have universities in all the counties, even in the marginalised areas, then development will go to those areas. We will have roads, electricity and water going to those universities. In doing so, we will open up the counties and take development close to the people. Students will go to the universities which are near their homes. This will be affordable. Therefore, we will have first degree holders in all our counties. If we say that we have universities only when it is viable, I think that is limiting.

Currently we have 33 public universities and 7 constituent colleges, which are spread in 30 counties. That means that the other counties do not have public universities. This Bill will not allow such counties which lack universities to have them. Therefore, development will not go to such counties.

Hon. Temporary Deputy Speaker, with those remarks, I support the Bill with amendments. Thank you.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Very well. Hon. Members, we are done with the debate on this Bill. I call upon the Mover to reply.

**Hon. Amos Kimunya** (Kipipiri, JP): Hon. Temporary Deputy Speaker, I thank the Members who have contributed, particularly the Members of the Departmental Committee on Education and Research. They have really gone through this Bill.

Several Members expressed reservations in terms of the provisions. That is why they were brought to the Floor so that Members could have a conversation on the matters. There are also issues which arose during public participation. When we bring together issues raised on the Floor and those arising from public participation which are contained within the Report of the Committee, I am sure that we will generate the necessary amendments at the Committee of the



whole House. That way, the Bill will be finalised or processed by taking into account the issues that were raised.

There is the issue of financing university students in private colleges at the expense of those in public universities. There was an issue of the appointment of the Vice-Chancellors and the role that the Government should play, bearing in mind that it is the main financier of those public universities. It also has a stake in determining who runs them. There is also the issue of localisation of the management of the universities. Examples were given on how it is bad or what contributes to the decline in the standards and even the operation efficiency of some of those universities. Very good points were raised. I am sure that we will collate all that before we come to the Committee of the whole House. We will come up with the necessary amendments to the Universities (Amendment) Bill that will propel the country forward rather than backward.

I also want to put it on record that there is no Bill that I have ever brought to this House that is retrogressive. Any Bill is brought to amend an Act because a need has arisen. It is up to the House to see its impact and then support or amend it to make it better. A Member claimed that we are bringing retrogressive Bills at the tail end of the House. Parliament is on until 8<sup>th</sup> August 2022. We are only taking a break in June for convenience. We can even introduce a Bill on 7<sup>th</sup> July, if it is required. There is no proper or wrong timing of a Bill. The National Assembly sits from 2.30 p.m to 7 p.m. A Bill can be introduced any time. A Bill is about to be introduced now, regardless of the number of Members who are not there. Members who have an interest are expected to be here. I want to debunk those myths that some Bills are being brought at the last minute because of special reasons. We are only doing it because the Bill has been reached in the pipeline. It can only be processed, when it is ready.

I thank Members for their contribution. I also want to thank Hon. Temporary Deputy Speaker for making some tough decisions to ensure that the House continues operating regardless of some Members who want to interrupt it for their selfish reasons. With those few remarks, I beg to reply.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Very well. That is quite in order. Hon. Members, cognisant of our Standing Orders and procedures of the House, I order that the putting of the Question on Order No. 11 in the Order Paper, the Universities (Amendment) Bill (National Assembly Bill No. 35 of 2021), be deferred.

*(Question deferred)*

Next Order!

## **BILL**

### *Second Reading*

#### THE NATIONAL GOVERNMENT CONSTITUENCIES DEVELOPMENT FUND (AMENDMENT) BILL

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Can we have the Chairperson of the Constituencies Development Committee, Hon. Wamunyinyi Wafula, to move Second Reading?

**Hon. Wafula Wamunyinyi** (Kanduyi, FORD-K): Hon. Temporary Deputy Speaker, I beg to move that the National Government Constituencies Development Fund (Amendment) Bill, 2021 be now read a Second Time.

This Bill seeks to amend the National Government Constituencies Development Fund Act, 2015 to provide for the opening and operating of constituents' accounts, in order to facilitate third party transactions. The proposed amendment shall facilitate timely and efficient disbursement of funds to constituencies. It will also establish structures for the efficient and prudent management of the Fund. This piece of legislation has gone through the procedures as envisaged in our Standing Orders. The Committee undertook adequate public participation. We had many meetings across the country. We received submissions from many institutions including the NG-CDF Board, the Kenya Law Reform Commission, the Attorney- General's office, the National Treasury, the Office of the President. We also had public hearings across 27 counties. So it has been given adequate public participation.

I will briefly demonstrate what it intends to amend. The amendment to Section 2 seeks to provide definitions of new terms such as Constituency Operations Account. The term is defined as the account that will be used to keep third party monies. For instance, in our constituencies, we have staff that are employed who expect to be paid their terminal benefits at the end of each term. Normally these monies are lumped together in one account with the money for the constituency projects and so on. So, this amendment seeks to create a new account which will safeguard all the monies for such purposes. That money will be deposited in that account and it will not be interfered with. It will be available to be paid off to the people who are beneficiaries.

Amendment to Section 5(3) deals with the insertion of the term "operations". This is basically to distinguish the accounts. This is also a definition. Amendment to Section 6(3) seeks to provide clarity, to remove ambiguity and to align with the provisions of Sections 12 and 7 of the Act. Amendment to Section (7)(1) is to also align the provisions of the side notes and to provide clarity as referenced under the Section which did not have any correlation. Section 12(1) of the Act is amended to make operations easy and to ensure the constituencies meet third party obligations when they fall due. This is related to the other one where current issues such as complaints and litigation concerning employment and gratuity being faced are largely due to lack of a separate account in which they retain these monies. Further analysis of bank balances is normally required for constituencies when they are operating a single bank account due to capturing the gratuity as an expense yet the financial statement shows that the funds are already expended. This holds retentions on behalf of the project management committees. This section has also been amended to clarify the issue of signatories. So, a separate account, for instance, a new account that is made for gratuity or retention money in a project will have different signatories. They will not be the same as this will be provided for in regulations.

Amendment to Section 13 of the Act is in regard to the signing mandate of the board while disbursing funds to constituencies. As I said, regulations will have to be developed to make it clear who signs when monies are disbursed and to which operational account. Money for gratuity, salaries and administrative purposes will have to be separated from that meant for projects. The amendment is aimed at enhancing timely and efficient disbursement of funds to every constituency and to ensure efficient management of the fund in line with Section 16(a) and (b) of the Act to conform to the practice at the Central Bank. It is also a requirement of the CBK that the funds must be separate to reduce encumbrances as directors are not executives.

Hon. Temporary Deputy Speaker, amendment to Section 16 of the Act rather re-arranges the paragraphs to provide a logical chronology of events from projects approval to funds

disbursement. This is merely to re-organise the clauses in the Act. Amendment to Section 28 seeks to conform to the current provisions of the Act where allocation tables no longer apply and instead we have budget ceilings. You will recall every end of a financial year before proposal for projects are submitted, we are now required to table the ceiling as captured by the Budget and Appropriations Committee. The Committee having set the ceiling, it is laid on the Table of the House. That should be the guiding factor. It must also be made clear in accordance with the law that this ceiling that has been set by the Budget and Appropriations Committee is what guides the constituency committees. Members should ensure it is submitted for verification and approval by the board to ensure not only accountability on the part of the committees, but also enhanced efficiency. We must comply with the requirements of the law.

Amendment to Section 36 is to help curb challenges brought about by the limited number of government practitioners in implementing the projects. The committees at the constituency level rely on public works officers for bills of quantities, consultancy services, supervision and all those kinds of technical expertise and support that are needed. In the current Act, constituencies are not allowed to hire consultants and we have had disputes in a recent case. You remember I tabled a report about Taita Taveta Constituency where a huge project costing about Ksh500 million forced the constituency committee to hire a consultant because the public officers were not available in the area and they could only seek help from Mombasa, Nairobi or distant counties. Due to the difficulties, they hired a consultant to supervise the project but because this is not in law, it has caused some dispute. In fact, we have been forced to engage in arbitration of some sorts with the ministry and the project beneficiaries.

This Section, if amended, will allow the committees to hire external experts such as those within the public works, quantity surveyors, engineers, and consultants. It is to ensure the project is properly supervised, standards are met and compliance is ensured. This amendment is important when it comes to huge projects that would require so much money and require experts. It is going to help us ensure we implement the projects as required by the law.

The other important section is amendment of Section 43 of the Act. It takes a long time to select and gazette committee members from the constituencies. This happens after elections. There are many players involved including the National Assembly, our Committee, the National Government Constituencies Development Fund (NG-CDF) Board, the parent Ministry, the National Treasury, the Attorney-General, and the Government Printer, each of whom takes considerable time before the process is passed on to the other for conclusion.

It will also help provide autonomy and eliminate possible delays. In the current provision of Section 43, only 60 days are allowed within which to submit names of members of the committee for processing and publication. The amendment seeks to increase the number from 60 days to 120 days so that we do not fall on the wrong side of the law. Just after an election, sometimes there is a petition and Members facing petitions many times have difficulties constituting such committees. So, this seeks to allow more time before the window closes for the establishment of committees.

Amendment of Section 46(i) is also an alignment similar to the one of Section 36 to fast-track completion and submission of proposals. Amendment to Section 48 of the Act touches on funding. This amendment will ensure we cater for unique circumstances faced by constituencies. There are urban constituencies, or even some rural ones, that may have their own uniqueness. It gives constituencies some latitude to re-allocate funds from certain budget lines to others. They may want to move money, say, from a particular project to a bursary which had been approved. It could as well be a case of re-allocating some money from one project to another. It has been very

difficult to undertake such but we are now seeking to make it a little easier to happen. There are many examples to cite. In Nairobi, we have a constituency with two five schools, but there is a requirement for more bursary than for implementing infrastructure projects. One constituency may have no place to build a school let alone space for expansion. They would still get money which they want to utilise. I looked at Kasarani Constituency. It has a population of about 900,000 people and about 80,000 students apply for bursary. But in another constituency, you find that it has a population of 200,000 and maybe only 10,000 students apply for bursary. So, Kasarani Constituency would want more money for bursary. They have less schools but have a bigger population of students who require support in form of bursary. So, they need to balance their needs. Each constituency has its uniqueness. We want to make it possible for re-allocation. We realise that bursary is a statutory requirement and there is a limit to it. There is a certain percentage which is fixed for bursary. We want to make provision to allow... Where MPs think they can raise the amount of bursary, they can do so for as long as it does not affect other projects in their respective constituencies. That is what this Clause is seeking to bring about.

Amendment to Section 53 of the Act seeks to provide for sufficient funding for constituency oversight committees and to ensure that the said committees are operationalised and sufficiently facilitated to undertake their important role. This one applies to all of us. Constituencies, including mine, set up an oversight committee whose chair is the Member of Parliament. He is supposed to ensure full implementation of the projects approved in the constituency. It is the requirement of the Act that approved projects are implemented in totality. The MP plus some selected or appointed members from the constituency constitute an oversight committee where the MP is the Chair. In the last four years, some constituencies established the oversight committees but they were never operationalised or have not been able to do anything because they were not facilitated. They are not captured anywhere even for allowances when they go to work. The constituency committee is well recognised and the remuneration is clearly provided for but for the oversight committees, there is nothing and I do not think any MP has enjoyed being the Chair of the oversight committee in the constituency. They have done it as they are employed to do it but the teams that constitute the oversight committees cannot do it because there is no facilitation for them. An MP can do it because he or she is the Member of Parliament, the leader in the constituency and they want to see things done properly. The problem is that the committee has not been operationalised. I have received complaints from nearly all MPs. The need to have this amended was driven by non-operationalisation of constituency oversight committees and the lack of some good will from the board that could not give any regulation or did not show any effort to resolve this matter. So, we need to get it now properly captured in law.

Section 56 is proposed to be amended to clear ambiguities on the role played by complainants in dispute resolution processes and mechanisms. We have had some people going to court to file cases against National Government Constituencies Development Fund; leave alone the civil society and Non-Governmental Organisations because sometimes these things are opponent-engineered. They go to court to seek to freeze NG-CDF operations. Others may seek mitigation due to non-payment for projects they would have undertaken in the constituency. Many examples can be given. The Committee seeks to make it clear that you cannot sue a Member of Parliament and you cannot sue the constituency committee. If you want to sue anything related to operations of the NG-CDF, it would be the ministry to take responsibility. The state department would be sued. Therefore, the Attorney-General takes up the matter to defend constituency committees. Instead of a Member of Parliament (MP) or the Committee looking for an advocate or lawyer to defend, this will be the responsibility of the state department. When we say that, of

course, the Attorney-General is always there for Government in any litigation. If they do not do it themselves, they will always appoint some lawyer.

It also provides a mechanism for arbitration in Clause 56. All complaints and disputes by persons arising to deal with the administration of this Act shall be forwarded to the board in the first instance. Complaints of criminal nature shall be forwarded to the board and the relevant Government agencies with prosecutorial powers, that is, the Attorney-General. Disputes of civil nature shall be referred to the board, at the first instance and where necessary, to an arbitration panel. So, this Clause 56 seeks to provide for those mechanisms for resolution, including arbitration. It gives the ministry responsible the responsibility to deal with them.

The amendment in the Second Schedule deals with the termination of a membership of the NG-CDF. It lists the conditions for termination—when one may cease to be a member of the NG-CDF Board, including that criminal aspect and the inability to work, and so on and so forth. It leaves out resignation. It is not among them. We are just seeking to insert resignation as one of the reasons for which a member may be removed or cease to be a member of the NG-CDF Board.

As I move this Bill, because there is another one which will be coming which is related to the NG-CDF but is introduced by a Private Member, I am negotiating with the Member so that he can allow the Committee to take over and amalgamate with this one in the next stage. If he agrees, I will seek the Speaker's approval. That other Bill is by the Hon. Tindi Mwale. It seeks to raise the percentage from 2.5 to 5. For obvious reasons, everybody has supported this Bill, including the Office of the President, the Ministry of Education, Science and Technology, and the National Treasury. They have all supported it during the public participation that we have undertaken. We have done for both these Bills. It has been supported by all—the public, the Government, the ministries, the National Treasury, the Office of the President and the Ministry of Education, Science and Technology—given the understanding that the NG-CDF is expected to give more infrastructure, particularly for the Competence Based Curriculum (CBC) to get more classrooms both for primary and secondary education. You remember His Excellency the President also asked MPs to concentrate more on construction of classrooms. Because the money is not enough, we sought an increase. It came after the Member had submitted his Private Member's Bill. It was at an advanced stage. So, we are seeking to get this because the Private Member's Bill may take time. The few Wednesdays remaining may not be possible. So, I will be seeking to get to see if the Speaker can allow us to get these amalgamated so that we get this done.

As I move this, I also want to mention that we have received funds for the constituencies. We are now in the third quarter. Possibly, by the end of this month, I think we will have received money for the whole of the third quarter. There was a problem during the recess. The National Treasury did not comply with their earlier undertaking, through the board, that funds would be released to the constituencies on a weekly basis in the normal way. That stopped in December and January, but now it has resumed. I think the release of funds to the NG-CDF Board is flowing. I can confirm that we received Kshs2 billion yesterday. Last week we received Kshs2 billion. These amounts are yet to be disbursed to the constituencies. We are hoping the process of disbursement will start by next week. Members will have to do with these piecemeal disbursements because we are getting deep every week. Members would like to give bursaries which are delayed. We will let them get what has been received. If it is going to be Kshs10 million or Kshs12 million for each constituency, that will be done next week. We appeal that we get all these funds to see all projects implemented. It is usually difficult during transition. That is where funds have been carried forward, either they are not expended or they are not released to the constituencies. Therefore, we are trying this time to see that all monies for this Financial Year are released to the constituencies.

Most importantly, we have the arrears of Kshs4.9 billion about which we are telling the Budget and Appropriations Committee that it is now the responsibility of this House. The Budget and Appropriations Committee has to make sure it does not bring the Supplementary Budget next week without the Kshs4.9 billion which constitutes the arrears due to many constituencies. The constituencies have about Kshs10 million to Kshs15 million in arrears carried forward from previous years. It is because of someone who failed at his work in the National Treasury. He thought he would get away with it. He started raising unnecessary questions, but we have since established that the money never left the National Treasury. Therefore, it is needed to go to the constituencies. We agreed, this House resolved, that it should be part of the Supplementary Budget to be brought.

Finally, my appeal is to Members: that we utilise the funds... We must supervise utilisation of the funds to ensure that the projects we initiated are completed. This is transition time. We do not want to see projects carried forward and then they are left to be white elephants. Colleagues, ensure that the projects are concluded. Now, having said that, I appeal that we push to the conclusion of this Bill and the other one I talked about. I will be seeking your approval to amalgamate it with this one so that we do it all at once.

I now beg to move and ask Hon. Oyula, who is also a Member of the Committee, to second.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Very well. Member for Butula, Hon. Oyula Maero.

**Hon. Joseph Oyula** (Butula, ODM): Thank you, Hon. Temporary Deputy Speaker. I stand to second this Bill. I have a few comments to add on what the Chair has mentioned. There are areas that I want to stress. One of them is the issue of separate accounts for separate activities. Constituencies have had a lot of problems, particularly regarding payment of gratuities and other funds retained from projects. The funds are usually left in one account so payment becomes a problem. This Amendment Bill will help constituencies to have separate accounts from the main account that receives funds from the board. It will help in ensuring that the funds deposited in the separate accounts are utilized according to the purpose for which they were established.

The other area that I need to mention is on oversight committees. As it has been indicated, most projects are not inspected by oversight committees for lack of funding. Unless an MP compensates the committee from his own source of funds, most of the oversight committee members are not willing to go out to supervise projects without payment. However, I am sure that with the amendment that is being proposed, we will have an active oversight committee that will visit all projects and ensure that the work at that level is done properly. With those few remarks I beg to second.

*(Question proposed)*

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): The first one on the request list is the Member for Suba North, Hon. Millie Odhiambo.

**Hon. (Ms.) Odhiambo-Mabona** (Suba North, ODM): Thank you, Hon. Temporary Deputy Speaker for giving me this opportunity. I wish to support the proposed amendments. I want to make a few remarks even as I support. One of the things that the country does not know is that the NG-CDF is probably the best managed fund in the country. A lot of people throw dirt at it but it is the best governed fund because everyone has their eyes on MPs. I wish much attention was paid on other funds as is placed on NG-CDF which is audited by three different agencies.

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I agree with the Chairman that there is a clear need to increase the amount of money that is due to NG-CDF. I want to encourage the Chairman. It will be very difficult to amalgamate the Bills procedurally, but to the extent that you may be allowed to bring further amendments to your own Bill, you could then bring that proposed amendment. I know the issue that will be raised will be about approval from the Treasury. If that be the situation, then let the private Member bring the Bill. If I were you, I would ask the House Business Committee to prioritise such a Bill. There is no Bill that actually makes an impact on the public as the NG-CDF one. Because of delays in release of funds, in my constituency we have been able to disburse funds to three wards only. We have two other wards waiting. Where I sit, out of every 10 messages I receive, eight are on bursary. People are requesting for bursary. The NG-CDF bursary reaches the public. Enhancing NG-CDF allocation should have been the priority of the Committee.

The other issue that the Committee missed is to expand the scope of what NG-CDF can finance. The sister fund, the Affirmative Action Fund, can be used to buy umbrellas, give women money and do all manner of things. Yet it is like the NG-CDF came from heaven and is cast in stone that the only things we can build are classrooms and chiefs' offices! There are also needs when people are sick. The same way woman representatives can give sick people money, we should do the same. We are all Members of Parliament. Because woman representatives are allowed to undertake infrastructure developments, why isn't the NG-CDF equally flexible? We are the ones who make the laws. We should change and expand the scope of NG-CDF so that we are able to meet people's needs. There is no reason why as a Member of Parliament I should use money from my pocket to meet every single need of my constituents when there is a government fund that should deal with those genuine needs.

The other issue of concern to me is oversight. Our core role is oversight yet that aspect is almost zero in this Bill. How can we have an oversight committee with no funds? The amount of money that the oversight committee is allowed to spend is Ksh30,000 a year. How do you oversight funds of over Ksh100 million using Ksh30,000 year? When there are problems with the NG-CDF, a Member of Parliament is the first person to be held to account yet we are not accounting officers. How do I oversight a fund of over Ksh100 million using Ksh30,000? It is impossible. I would encourage the committee to enhance allocation for oversight and strengthen the oversight function. I have indicated that I would want to specifically introduce an oversight Bill. People keep telling us to keep off NG-CDF funds because our role is oversight. I cannot use my own money to oversight. What legal framework gives me the mandate to oversight? This is one of the areas I would like to see enhanced.

I can give another example in terms of oversight. The other time the Auditor-General said that Suba North NG-CDF could not account for money sent to one student. I think that is the only issue that was major, but it was splashed by all media houses. The report turned out to be an error because the student was actually given money. When such an issue comes up, the first person who is asked and who the media reports about is the Member of Parliament. By law, I have no mandate to even ask for the accounts. If my NG-CDF constituency manager and chairman decide to steal money on a daily basis, unless the bank is magnanimous, I have no way of knowing. I have to use the Access to Information Act, like every other person, to find that out. By law, we should be given information on a weekly and monthly basis by the bank and the Fund Accounts Manager. Giving misleading information should be made a criminal offence. A lot of times when money is lost, it has nothing to do with a Member of Parliament, but we are the first ones to be held to account. We are not the accounting officers of the Fund. Should the NG-CDF staff steal, how do you hold them to account?

The other issue is: should a staff of NG-CGF steal, how do you hold them to account? There are no punitive measures here to hold them to account. If a fund account manager was to steal money, how do you ensure that they return that money? How I wish that the Bill could have provided for another account in which stolen money would be returned if a Fund Account Manager or a Chairman steal money. That way, the affected projects would be dealt with using the same funds.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Very well, Hon. Millie Odhiambo. You are making very important points, but I have to interrupt you because of time. You will have a balance of four minutes next time the House debates the same Bill.

### ADJOURNMENT

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Hon. Members, the time being 7:01 p.m., this House stands adjourned until Tuesday, 22<sup>nd</sup> February 2022 at 2:30 p.m.

The House rose at 7:01 p.m.