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Wednesday, 27th November 2024

The House met at 2.30 p.m.

[The Speaker (Hon. Moses Wetang'ula) in the Chair]

PRAYERS

QUORUM

Hon. Speaker: Hon. Members, there is no quorum in the House. Serjeant-at-Arms, ring the Quorum Bell.

(The Quorum Bell was rung)

Order, Hon. Members, we now have quorum to transact business. Clerk-at-the-Table, proceed. Hon. Members on your feet, take your seats.

Hon. Members, I have two pieces of communication to make.

COMMUNICATIONS FROM THE CHAIR

AUTHENTICITY AND ADMISSIBILITY OF PAPERS

TABLED BY HON. JOHN KAGUCHIA

Hon. Speaker: Hon. Members, you will recall that during the Afternoon Sitting of Wednesday, 20th November 2024, the Cabinet Secretary for Education appeared before the House to respond to Questions asked by Members. In that Sitting, while asking a Supplementary Question to Question No.096 of 2024, relating to the University of Nairobi, the Member for Mukurweini, the Hon. John Kaguchia made various claims on management and operational issues at the University of Nairobi. In line with Standing Order 91, the Hon. Kaguchia tabled copies of documents from the Ethics and Anti-Corruption Commission, the Commission for University Education (CUE), the University of Nairobi (UoN), and the Pontifical Urbaniana University, to substantiate the claims.

I directed the Clerk to examine the documents and advise on their authenticity and admissibility, and the Clerk has since discharged that responsibility. In this regard, I have determined that the documents from the EACC and the CUE as submitted by the Hon. Kaguchia are authentic, admissible and now form part of the record of the House. I will guide the House on the remaining documents once they are authenticated.

I thank you. Is Hon. Kaguchia in?

PROPOSED AMENDMENTS TO THE ETHICS AND ANTI-CORRUPTION COMMISSION (AMENDMENT) BILL
(National Assembly Bill No.11 of 2024)

Hon. Speaker: Hon. Members, before we proceed to the Order on this matter, being the Committee of the whole House to consider the Ethics and Anti-Corruption (Amendment) Bill (National Assembly Bill No.11 of 2024), I wish to make the following guidance relating

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to consideration of the proposed amendments to the said Bill - whoever will be chairing the Committee of the whole House should consider this communication.

*(Hon. Elizabeth Kailemia, Hon. Charles Nguna
and several Members walked into the Chamber)*

Hon. Members at the back, take your seats. Hon. Kailemia and CNN, take the nearest seats.

Hon. Members, as you may have observed, the Notices annexed to the Supplementary Order Paper for this Afternoon's Sitting contain several amendments that have been proposed to the Ethics and Anti-Corruption (Amendment) Bill (National Assembly Bill No.11 of 2024). The amendments have been proposed by the Leader of the Majority Party; the Chairperson of the Justice and Legal Affairs Committee; Hon. Caroli Omondi and Hon. Shakeel Shabbir.

Standing Order 47(3) obligates the Speaker to exclude a Motion from being debated or direct the amendment of a Motion in an appropriate format where the Motion either offends the Constitution, an Act of Parliament or the Standing Orders. The Standing Order provides, and I quote—

“(3) If the Speaker is of the opinion that any proposed Motion—

(a) is one which infringes, or the debate on which is likely to infringe, any of these Standing Orders;

(b) is contrary to the Constitution or an Act of Parliament, without expressly proposing appropriate amendment to the Constitution or the Act of Parliament;

the Speaker may direct either that, the Motion is inadmissible, or that notice of it cannot be given without such alteration as the Speaker may approve or that the motion be referred to the relevant committee of the Assembly, pursuant to Article 114(2) of the Constitution.”

Hon. Members, with respect to amendments proposed to a Bill under consideration by the House, the Speaker is obligated to ensure that the Bill under consideration by the House is insulated from any amendment or revision that may place it at odds with either a constitutional or statutory provision or violate the procedural prescriptions of the Standing Orders.

Both my predecessors and I have ruled on the solemn duty outlined in Standing Order 47(3). On several occasions, we have reiterated that a Speaker cannot fold his or her arms and preside over deliberations that may lead to an unconstitutional or absurd result. Additionally, we have also consistently ruled that the question of the constitutionality of a matter under consideration by the House should NOT be put to a vote.

The Ethics and Anti-Corruption (Amendment) Bill (National Assembly Bill No. 11 of 2024) is one of the Bills that were co-sponsored by the Leader of the Majority Party and the Leader of the Minority Party to actualise the recommendations of the National Dialogue Committee (NADCO).

The Bill seeks to amend the Ethics and Anti-Corruption Act, Cap. 7H to review the qualifications for appointment of the Chairperson of the Ethics and Anti-Corruption Commission. Clause 2 of the Bill outlines the proposed new qualifications.

Additionally, Hon. Members, Clause 3 of the Bill saves the person currently serving as the Ethics and Anti-Corruption Commission (EACC) Chairperson from the effect of the reviewed qualifications if the same are passed by the House. This is in keeping with the practice of this House when reviewing the provisions relating to the qualifications or terms of persons appointed to public office.

In the Notice in the Order Paper for this Sitting, the Chairperson of the Departmental Committee on Justice and Legal Affairs, Hon. Caroli Omondi, and Hon. Shakeel Shabbir all

propose amendments to delete Clause 3 of the Ethics and Anti-Corruption (Amendment) Bill, 2024 (National Assembly Bill No. 11 of 2024). The implication of their proposed amendments is that, if the House were to pass the new qualifications contained in the Bill, the qualifications would immediately apply to the current holder of the office.

The proposed deletion of Clause 3 by the Chairperson of the Departmental Committee on Justice and Legal Affairs, Hon. Caroli Omondi and Hon. Shakeel Shabbir flies directly in the face of the provisions of Article 250 of the Constitution on the composition, appointment and terms of office of members of a commission or holders of independent offices.

In particular, Article 250(3) of the Constitution provides that for a person to be appointed as a member of a commission or the holder of an independent office, such person must have the specific qualifications required by this Constitution or national legislation.

This House approved the appointment of the EACC Chairperson based on the specific qualification required by the Constitution and the Ethics and Anti-Corruption Commission Act, Cap. 7H. It would, therefore, patently offend the Constitution for the House to contemplate amending the qualifications midstream, and to subject a current office-holder to new qualifications without providing an appropriate saving or transitional provision.

In this regard, Hon. Members, I have declined to approve the amendments proposed by the Chairperson of the Departmental Committee on Justice and Legal Affairs (JLAC), Hon. Caroli Omondi and Hon. Shakeel Shabbir for the deletion of Clause 3 of the Bill.

I have approved the amendment proposed by the Leader of the Majority Party to Clause 3 of the Bill for consideration by the Committee of the whole House. The proposed amendment is in keeping with the requirements of the Constitution and the established practice of the House as cited in this Communication.

The House is accordingly guided.

Hon. George Best, I hope you have heard me.

Hon. George Murugara (Tharaka, UDA): Thank you, Hon. Speaker. I have heard you. I am partly in agreement and partly entitled. I may not agree because of two reasons. First, the Bill is not going to act in retrospect. The amendments will have to apply possibly to the next office holders.

Secondly, we cannot take away the accrued rights of the Chairperson of the EACC. That position was accrued to him in accordance with the Act that is in force now, and any amendments would possibly not apply to him. I am bound by your ruling. I will abide by your ruling and observation. It does not do any harm.

Hon. Speaker: Hon. George, your words do not indicate any dissent. You can take your seat.

Hon. George Murugara (Tharaka, UDA): Correct. Thank you very much. Thank you, sir.

Hon. Speaker: Avoid any situation of legislating people out of office when they have a contractual arrangement.

Next Order.

PAPERS

Hon. Naomi Waqo (Marsabit County, UDA): Hon. Speaker, I beg to lay the following Papers on the Table:

Reports of the Auditor-General and Financial Statements for the Years ended 30th June 2021, 30th June 2022 and 30th June 2023 and the certificates therein in respect of:

- (a) Griftu Secondary School;
- (b) Makwa Boys Secondary School;

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- (c) Nairobi School; and,
- (d) Limuru Girls Secondary School.

Hon. Speaker: Chairperson of the Public Petitions Committee, Hon. Nimrod.

Hon. Nimrod Mbai (Kitui East, UDA): Hon. Speaker, I beg to lay the following Papers on the Table:

Reports of the Public Petitions Committee on its consideration of:

- (a) Public Petition No. 3 of 2023 by Mr Amos Nyasani regarding the management of Standard Gauge Railway (SGR) services.
- (b) Public Petition No.31 of 2023 by Hon. Ali Wario regarding a review of the boundaries of the Tana Delta Irrigation Project.
- (c) Public Petition No. 33 of 2023 by Hon. Bady Twalib regarding compensation of persons affected by the Mombasa-Mariakani Road (Dual) Project.
- (d) Public Petition No.41 of 2023 by the Hon. Francis Nguga, MCA, regarding punitive charges levied by the Kenya National Highways Authority (KNHA).
- (e) Public Petition No.43 of 2023 by Hon. Adams Kipsanai, regarding Human-Wildlife Conflict in Keiyo North Constituency.
- (f) Public Petition No.45 of 2023 by Hon. Chiforomodo Mangale regarding delayed adjudication and settlement of residents of Kidomaya/Miungoni Village in Vanga Ward, Kiwegu Sub-Location.
- (g) Public Petition No.50 of 2023 by Hon. (Dr) Charles Onchoke regarding delayed payment of pension by Kenya Railways Corporation.
- (h) Public Petition No.82 of 2023 by Hon. Bady Twalib, regarding delay in the completion of Jomvu Kuu-Jitoni-Rabai Road in Jomvu Sub-County.
- (i) Public Petition No.6 of 2024 by Hon. (Dr) Robert Pukose, regarding delays in posting medical interns, absorption of Universal Health Coverage (UHC) contract staff, conclusion of Collective Bargaining Agreement (CBA) and recognition of agreement in the health sector in the country.

At the beginning of this term, when the Committee of Public Petitions was being formed, at some point Members were dissatisfied with the performance of the Committee in generating the reports. I want to appreciate your patience, advice, budgetary support and training programmes accorded to the Committee Members, and also thank our staff from the Parliamentary Service Commission (PSC) who have been working with the Committee to look into the petitions.

I want to assure Members that before we proceed for recess this year, this Committee will have no pending petitions. All the other reports will be tabled next week. Next year, we will start on a clean slate.

Thank you. I beg to lay.

Hon. Speaker: Well done, Hon. Nimrod. Last time you were in focus for all the wrong reasons, and now you have done pretty well. Congratulations.

Next is the Chairperson of the Departmental Committee on Communication, Information and Innovation. Is that Hon. Alfah?

Hon. Alfah Miruka (Bomachoge Chache, UDA): Hon. Speaker, I beg to lay the following Paper on the Table:

Report of the Departmental Committee on Communication, Innovation and Communication on its consideration of the Public Relations and Communication Management Bill (National Assembly, Bill No.17 of 2024).

Thank you.

Hon. Speaker: Chairperson of the Departmental Committee on Finance and National Planning Finance. Hon. Osoro, where is the Chairman?

Hon. Silvanus Osoro (South Mugirango, UDA): Thank you, Hon. Speaker. Members of the Departmental Committee on Finance and National Planning and the Chairperson are conducting public participation on the Tax Laws (Amendment) Bill, 2024.

Hon. Speaker: Okay. We, therefore, stay that up to tomorrow.

Next Order.

Hon. Ruku, what is it?

Hon. Ruku GK (Mbeere North, DP): Hon. Speaker, on 2nd October, I asked for a statement...

Hon. Speaker: Order, Hon. Ruku. We have not reached Statements.

(Hon. Ruku GK spoke off the record)

You legitimately raise a point of order when we reach that Order.

Hon. Ruku GK (Mbeere North, DP): Okay, thank you.

Hon. Speaker: Before we call the next Order, allow me to recognize a delegation from the Parliament of Uganda, who are seated in the Speaker's Gallery. The delegation comprises of six members of staff from the Directorate of Hansard and Audio Services of the Parliament of Uganda.

The delegation is on a one-week benchmarking visit to the National Assembly. They are welcome to observe the proceedings of the National Assembly.

Thank you.

(Applause)

On Order 7, we start with the Member for Uasin Gishu, the Deputy Speaker.

QUESTIONS AND STATEMENTS

STATEMENTS

MEMBERS' GENERAL STATEMENTS

THE UN WOMEN'S REPORT ON STATISTICS OF GENDER-BASED VIOLENCE AND FEMICIDE IN KENYA

Hon. Gladys Boss (Uasin Gishu County, UDA): Thank you, Hon. Speaker, for giving me the opportunity.

Pursuant to the provisions of Standing Order 43(1), I wish to make a General Statement regarding the UN Women's Report on Statistics of Gender-Based Violence and Femicide in Kenya as we start and mark the 16 days of activism against Gender-Based Violence (GBV) violence.

The report on Femicides in 2023: Global Estimates of Intimate Partner/Family Member Femicides by UN Women and United Nations Office on Drugs and Crime (UNODC), reveals that femicide remains pervasive considering that every 10 minutes, a woman or girl is killed by an intimate partner or family member. In 2023, 85,000 women and girls were intentionally killed globally and 60 per cent of these femicides, totalling 51,100, were committed by an

intimate partner or a family member. That means an average of 140 women and girls worldwide die every day at the hands of their partners or close relatives.

Closer to home, the statistical data provided by the report alarmingly reveals that Africa recorded the highest rates of intimate partner and family-related femicide. In addition, the Kenya National Bureau of Statistics (KNBS) indicates that 45 per cent of women aged 15 to 49 years have experienced physical violence, and that the main perpetrators of such violence against women are husbands or intimate partners. I will repeat that statistic: 45 per cent of women aged between 15 and 49 years have experienced physical violence. This is attributed to the deeply rooted patriarchal systems within African societies that afford men undue authority over women in nearly every aspect of life; from politics to economics and social norms.

Statistical data continues to show the prevalence of social intolerance for violence against women in Kenya, with 42 per cent of women and 36 per cent of men believing that a man can be justified for beating up his wife or partner under certain circumstances. This highlights the urgent need to address gender-based violence and femicide in Kenya through a comprehensive approach that includes legal reforms, social change, increased awareness and support services. We must all become champions of the campaign within political, religious and societal spheres to eradicate the negative social norms and attitudes that normalise gender-based violence.

A home is known to be a place of refuge but approximately 80 per cent of femicides take place within the confines of a home, while 12 per cent of male homicides are perpetrated within a home. This, therefore, calls upon us to make our homes safe again for women and girls. Male leaders, particularly, must take up the role of ensuring such safety within their communities and to speak up against femicide. We need male voices.

Despite progress made in recent years, significant obstacles continue to block the path of women leaders attaining parity with their male counterparts. A landmark survey by the Inter-Parliamentary Union (IPU) revealed that 82 per cent of women parliamentarians worldwide had been subjected to psychological violence in the form of sexist remarks, threats and harassment. Gender-based violence is not only physical. Technology-facilitated violence has also become the order of the day with social media as the main platform for this type of abuse, where women lawmakers have reported receiving death, rape, assault and abduction threats towards themselves and their families. Those acts produce another form of gender-based violence – psychological abuse.

Chapter 4 of the Constitution, which is on the Bill of Rights, recognises the rights and fundamental freedoms of citizens, and guarantees equality and freedom from discrimination of any form, including sex. Furthermore, Article 27(3) of the Constitution provides that women and men have the right to equal treatment, including the right to equal opportunities in the political, economic, cultural and social spheres. Other legal frameworks include the Sexual Offences Act, Cap 63A; the Victims Protection Act, Cap 79A; the Prohibition of Female Genital Mutilation, Cap 62B; and the Computer Misuse and Cybercrimes Act, Cap 79C, which are laws that are in place to protect the various rights of women. Despite such a broad legislative framework, gender-based violence and femicide continue to be increasingly prevalent in our society.

As we mark the 16 days of activism against gender-based violence, I wish to implore my colleagues to be voices of awareness through recruiting local churches to be a voice against the same and persuading our schools to dedicate at least one hour per week to teach our children about this matter.

As I conclude, allow me to use this platform to plead with my colleagues, including our male colleagues, to join this campaign.

Thank you, Hon. Speaker.

Hon. Speaker: Thank you, Hon. Deputy Speaker. Hon. Millie, do you want to joyride on that? Go ahead.

Hon. Millie Odhiambo-Mabona (Suba North, ODM): Thank you, Hon. Speaker. I want to thank Hon. Gladys Boss Shollei for that General Statement marking the 16 days of activism against gender-based violence. For those who do not know why we mark the 16 days of activism against gender-based violence, two incidents inspired that observance. One was the killing of the Mirabal sisters by the Trujillo dictatorship because of politics. They wanted change in governance and they were assassinated by the Trujillo dictatorship in the Dominican Republic.

The other incident was a case in Canada, where a young man walked into an engineering class and shot women dead because they were studying engineering, which he considered to be a male subject. While those may be extreme cases, we are experiencing different forms of violence against women. When we mark the 16 days of activism against gender-based violence, it is not just about women. It involves both men and women although we realise and acknowledge that women are disproportionately affected.

Whenever we raise those issues, people normally ask us why we keep talking about women. My deputy has just challenged me and said that we are all talking about gender this week. In fact, I want to congratulate Hon. Esther Passaris for her commitment because she has even been wearing outfits with orange colour.

Hon. Ruku GK (Mbeere North, DP): On a point of order, Hon. Speaker.

Hon. Speaker: Order, Hon. Millie. There is a point of order from Hon. Ruku.

Hon. Ruku GK (Mbeere North, DP): Hon. Speaker, Millie is raising a very important...

Hon. Speaker: Hon. Millie.

Hon. Ruku GK (Mbeere North, DP): Hon. Millie is raising a critical point, but the men are not listening. Hon. Mbui, Hon. CNN and Hon. Mwenje are busy discussing other issues. Women's issues are critical in our society. As the Head of State said, when those issues are being discussed in Parliament, all men need to be attentive. It is sad to see Hon. Mbui and Hon. CNN very busy talking next to Hon. Millie while she is raising a critical point. Are they in order, Hon. Speaker?

(Hon. Dorice Donya spoke off the record)

Hon. Speaker: Yes, Hon. Donya. Get the microphone first.

Hon. Dorice Donya (Kisii County, WDM): Hon. Speaker, is he a god to know what they are discussing? He is mentioning their names and yet the electorate is listening. He claims that Members of Parliament are idle. Can he apologise? How did he know what they were discussing? They could be talking about women's affairs, promoting Bills and supporting our Speaker. Can he withdraw his statement and apologise?

Hon. Speaker: Go on, Hon. Millie.

Hon. Millie Odhiambo-Mabona (Suba North, ODM): Thank you, Hon. Speaker. I can see that Hon. Donya is a very good student. She has learnt to be heard. In my mother tongue, we say 'telo ikawo; telo ok mi ng'ato', which translates to 'leadership is grabbed; it is not given.' That is why my book is titled *Rig Or Be Rigged*. It is because if you do not rig, you will be rigged.

I want to pick on what Hon. Ruku has said. I am glad that he has brought the male Members to attention, especially Hon. CNN. Hon. CNN, listen to me. Earlier today, we were talking about a Member of the County Assembly of Kiambu County who said or is alleged to have said very derogatory things about women. I shared his statements on my social media pages. I hope the men in this House are listening. Do not blame women when you are not playing your roles. I shared his statements on my social media pages, and I saw that Hon.

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Mayaka had also shared the same on her social media pages. Go and see what young men in their 20's are saying. It is toxic. They are celebrating the abuse of women, objectifying women, and allowing or encouraging abuse against women. Those are not old men but young men in their 20's. We have been empowering young women but what happens to our boys? Can I empower young women and then I empower boys and yet there are men in this House? The men in this House should empower the boys. They are going astray. You are raising toxic men in this country. It is not us.

(Hon. Silvanus Osoro spoke off the record)

I want to tell Hon. Osoro that this is a very serious issue. Unless we take this matter seriously...

Hon. Speaker: Order.

Hon. Millie Odhiambo-Mabona (Suba North, ODM): Why would I call anybody 'Ka-daddy' at my age? I am menopausal. I cannot call anybody 'Kababa'.

(Laughter)

The men in this House need to understand. I am not saying this jokingly. Our boys are going astray. I have said here before, and Hon. Esther also mentioned that during the protests, they were sending us pictures of their private parts. What do I do with the private parts of a boy who is young enough to be my grandchild? Am I studying biology? No. But at least with the girls, we are mentoring them. We need you men to mentor the boys as well. Our boys are going off track.

Thank you, Hon. Gladys. Let me stop there, Hon. Speaker.

Hon. Speaker: Thank you. We will end there on that.

(Several Members raised their hands)

Hon. Kwenya, are you on the same issue?

Hon. Kwenya Thuku (Kinangop, JP): Indeed, yes, Hon. Speaker. Allow me to say something.

Hon. Speaker: Proceed.

Hon. Kwenya Thuku (Kinangop, JP): Thank you, Hon. Speaker. This is a very important matter that has been brought to the attention of this House. I want to thank Hon. Boss for the Statement. However, issues related to gender-based violence are not solely in the purview of our sisters. It is a communal matter in terms of who should deal with these issues. I am a father of girls. It has, indeed, come to a time when we need to protect the gender that is endangered—women. Today we have predators in the form of men who lure our girls with cheap lies and lead them to danger. I wish to appeal to every leader who is worth his salt that it is time we took charge of the protection of our children – both women and men – because we are all endangered.

Yesterday, I watching a video clip of the kind of violence affecting both genders, and I thought to myself as much as we talk about our women and girls...

Hon. Speaker: Be careful. Some of those clips are Artificial Intelligence (AI)-generated.

Hon. Kwenya Thuku (Kinangop, JP): Yes. Either way, we must address the real issues so that we tackle the issue of gender-based violence. I support the Statement and I believe that during the 16 Days of Activism against Gender Based Violence, we are going to be available

in our constituencies to address our people and to bring them to speed on the dangers that we are facing today.

Thank you, Hon. Speaker.

Hon. Speaker: Thank you.

(Several Hon. Members raised their hands)

Is it on the same issue? Who is the Member at the back? Proceed, Hon. Kirima, the Bishop.

Hon. Moses Kirima (Central Imenti, UDA): Thank you, Hon. Speaker, for giving me this opportunity. The issue before us, as it pertains to our boys and girls in Kenya and gender-based violence, should not be separated from the religious aspect of it because Kenya is primarily a religious society. Over 70 per cent of Kenyans are Christians, while about 25 per cent are Muslims. The rest follow other religions. Young men and women who attended nursery school in their churches have been mentally poisoned after leaving their original backgrounds. They have become bitter because, from the beginning, before the multiparty system, there was a time when we used to promote only girls, which made boys jealous of the situation. Everywhere, including in Meru, there are schools like Moi, Maua, and Kapropita Girls' High Schools. Everywhere, it was about girls. We forgot about the boy-child.

(Applause)

Then came activism. When activism came, it was imposed on us as the Kenyan society, and we forgot our culture and background, where boys used to protect their sisters in all aspects of life. They used to view them as their young mothers and future wives. They felt obliged to protect the girl next to them even when we were in primary school. It has now come to a point where we are competing for the few resources available, and we have removed religion from the fabric of society. In this House, when it comes to debating issues, especially those pertaining to parenthood, sexuality, and different genders, we mention things that are not spoken of outside this House. As a result, these things are taken for granted out there. Violence is entrenched in our young men through adult utterances. For that reason, we must develop policies. As leaders, we must step up our effort. We should have opportunity at every meeting to advocate for the protection of girls. While advocating for registration with the Social Health Authority (SHA) and other government policies in our constituencies, we should also advocate for the protection of girls in our societies. If we do not mount such campaign, we will continue to have bodies of young girls dumped in various places.

Finally, we should consider what is ailing society, where girls are being killed by young men and even older men. Why is this happening? The point is that we are not looking at the root causes of violence in a neutral way. We should advise our young boys and men that girls are to be protected. As for the girls, what should be done for them? Mothers do not mentor girls to challenge men. Mothers should be mentoring girls and boys to respect one another. That way, the society will coexist peacefully.

Thank you, Hon. Speaker.

Hon. Speaker: Thank you. Next is Hon. Kemei. Each Member should take just a minute.

Hon. Beatrice Kemei (Kericho County, UDA): Thank you, Hon. Speaker. I want to thank Hon. Boss for bringing this Statement. As we campaign against gender-based violence, I want to emphasize that this is a monster. While we are concerned with economic improvement in this country, we should be even more concerned about the social issues. I say this because, in Kericho County, as of March 2024, there have been 936 reported cases of gender-based

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violence. This is a very big number. There have also been 5,448 cases of teenage pregnancies. There is a lady who is currently hospitalised. Her husband almost killed her because of a balance of Ksh336 that she had given him back. Another woman had her ears chopped off. Her husband claimed that she was not listening. So, he felt the need to remove her ears. I do not know how she will hear now.

Hon. Speaker: Hon. Osoro.

Hon. Silvanus Osoro (South Mugirango, UDA): Thank you very much, Hon. Speaker. I also rise to support the Statement by Hon. Gladys Boss. I look at this whole issue as a matter of immorality caused by poor parenting, sandwiched with mental health challenges. The level of frustration out there is such that people are looking for avenues of venting it out, and the weaker gender becomes the easiest target. However, even as we say that, we also need to...

Hon. Gladys Boss (Uasin Gishu County, UDA): On a point of order, Hon. Temporary Speaker.

Hon. Speaker: Yes, Hon. Boss.

Hon. Gladys Boss (Uasin Gishu County, UDA): Thank you very much, Hon. Speaker. Let me correct Hon. Osoro, who is also my student. He has probably forgotten that part of the class. We are not the weaker sex. That is how the bias begins. We may be weak in our muscles but our 'muscles' are in our brains, not in our hands like yours.

(Applause)

Hon. Silvanus Osoro (South Mugirango, UDA): I agree, Hon. Speaker. What she just said is that they may be weak in their muscles, and that is exactly what I meant — that, their muscles are weak.

(Laughter)

I say that with tremendous respect to my former teacher, Hon. Boss.

Hon. Speaker, it is also a societal challenge. The communal way of correcting mistakes in young men and young women while they grew up is no longer applicable. People have now left parenting to churches, teachers and the social media. It is a big problem that calls for a campaign to rectify. The Statement is timely. Within the 16 days, we need to tell people that parenting is personal. Talk to your kids and make them understand that they need to grow to be upright persons in the society.

Thank you very much, Hon. Speaker.

Hon. Speaker: Thank you. Is that Hon. Kiamba? Who is the lady? Your hair is so thick I cannot see your face. Who is it? Is it Hon Christine?

Hon. (Dr) Christine Ombaka (Siaya County, ODM): Yes, it is me.

Hon. Speaker: Your hair is covering your entire face.

(Laughter)

Hon. (Dr) Christine Ombaka (Siaya County, ODM): Thank you for giving me this opportunity.

Gender-based violence has been with us for years, from time immemorial. We thought it would be eradicated with time. Traditionally, women were looked down upon. They were trodden on. They were beaten up, insulted and mistreated. They never had a chance in any positions of leadership, and so on. In modern society, I thought modern men would have learned that women have a right to be protected. However, the perpetrators of gender-based violence are the modern, educated young men of the time.

Hon. Speaker: Your minute is over. Let us go to the next Member, Hon. Innocent Momanyi of Bobasi.

Hon. Innocent Obiri (Bobasi, WDM): Hon. Speaker, our culture is the genesis of this matter.

Hon. Speaker: I have given you an opportunity to make your General Statement.

(Laughter)

TRIBUTE TO THE LATE HONOURABLE ANDREW NYANANGA ROSANA

Hon. Innocent Obiri (Bobasi, WDM): Hon. Speaker, I wish to make a Statement on the passing on of Hon. Andrew Nyananga Rosana, who is a former Member of Parliament for Bobasi Machoge Constituency.

Pursuant to Standing Order 259D(2), I rise with a heavy heart to pay a glowing tribute to the late Hon. Andrew Nyananga Rosana. He is the former Member of Parliament for the then Bobasi Machoge Constituency in the years between 1974 and 1979. The late Hon. Andrew Nyananga Rosana passed away on Tuesday, 19th November 2024 at the age of 85. His passing on is a profound loss to his family, friends and the community he served with unwavering dedication and commitment. The late Hon. Rosana was born on 4th August 1939.

He will be remembered for his tireless effort to improve the livelihood of his constituents through numerous transformative initiatives. Among his remarkable achievements was the initiation of the Kisii-Kilgoris Road project in 1978. It was completed in 1982. The road greatly enhanced connectivity in the region. He also spearheaded the establishment of the Ogembo and Nyamache Tea Factories, fostering economic growth for tea farmers in the area. Additionally, the late Hon. Rosana was instrumental in the development of critical infrastructure. The infrastructure includes Sameta Water Project, constructed by Isaaco Company Ltd, whose water tanks still stand as a testament to his vision. He also oversaw the construction of the Ria-Rosana Bridge near the Nyamokenye area. That critical project addressed a history of tragic accidents in the region.

Hon. Nyananga's passion for education was evident in his role in initiating several *Harambee* schools, many of which were later adopted by the government. These include Bishop Mugendi Nyakegogi Secondary School, Nyagiki SDA Secondary School, Nyamache Secondary School, Nyamagwa High School, Gionseri High School, his personal project of Kenyerere High School, among others. Beyond his development contribution, he served in the Catering Committee and the Speaker's Committee diligently, demonstrating commitment to Parliament and national progress.

On behalf of this House, I extend my deepest condolences to the family of the late Hon. Andrew Nyananga Rosana. I condole with his friends, the people of Bobasi Machoge Constituency, and the entire nation. We draw inspiration from his extraordinary life of service and dedication to humanity as we mourn his loss. May his soul rest in eternal peace. May his family and loved ones find comfort in the indelible legacy he leaves behind.

Thank you, Hon. Speaker.

Hon. Speaker: May you pass our collective condolences to the family of our departed former colleague.

Hon. Members, before we come back to continue with Statements, let us go to Order No.8 and Order No.9. We will put their Questions and come back to Statements.

Clerk-at-the-Table, call out Order No. 8.

MOTION

CONSIDERATION OF REPORT OF THE COMMITTEE OF THE
WHOLE HOUSE ON THE COFFEE BILL
(Senate Bill No.10 of 2023)

THAT, this House do agree with the Report of the Committee of the Whole House on its consideration of the Coffee Bill (Senate Bill No.10 of 2023).

(Moved by Hon. Kimani Ichung'wah on 26.11.2024 – Afternoon Sitting)

(Resumption of consideration interrupted 26.11.2024 – Afternoon Sitting)

Hon. Speaker: Hon. Members, the Question was proposed during last evening's Sitting.

(Question put and agreed)

BILL

Third Reading

THE COFFEE BILL
(Senate Bill No.10 of 2023)

Hon. Silvanus Osoro (Mugirango South, UDA): Hon. Speaker, I beg to move that the Coffee Bill (Senate Bill No.10 of 2023) be now read a Third Time.

I request Hon. Dido Raso to Second.

Hon. Speaker: Hon. Raso.

Hon. Ali Raso (Saku, UDA): I second.

Hon. Speaker: Thank you.

(Question proposed)

Hon. Members, I will now put the Question. I confirm that we have enough Members to vote.

(Question put and agreed to)

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

Hon. Speaker: Thank you. I say *hongera* to those of you who stayed until past 9.00 p.m. to pass this Bill. That was tremendous industry from Members. I think that is the way things should go.

(Hon. Mark Mwenje raised his hand)

Hon. Mwenje, why are you raising your hand? Were you also among them?

(Laughter)

You are congratulating yourself. Very good, well done. Let us proceed to the Next Order.

SPECIAL MOTION

CONSIDERATION OF NOMINEES FOR APPOINTMENT TO THE NATIONAL GENDER AND EQUALITY COMMISSION

THAT, taking into consideration the findings of the Departmental Committee on Social Protection in its Report on the vetting of nominees for appointment as Chairperson and as a Member of the National Gender and Equality Commission, laid on the Table of the House on Tuesday, 26th November 2024, and pursuant to Article 230 of the Constitution, Section 11(7) of the National Gender and Equality Act CAP 7K, and Sections 3 and 8 of the Public Appointments (Parliamentary Approval) Act CAP 7F, this House approves the appointment of the following persons to the National Gender and Equality Commission –

- (i) Hon. Rehema Dida Jaldesa - Chairperson; and,
- (ii) Mr. Michael Nzomo Mbithuka - Member.

(Moved by Hon. Hilary Kosgei on 26.11.2024 – Afternoon Sitting)

(Resumption of consideration interrupted on 27.11.2024 – Morning Sitting)

(Several Members consulted at the Dispatch Box)

Hon. Speaker: Order, Hon. Members. Hon. Milemba and group, resume your seats.

(Question put and agreed to)

Hon. Speaker: Call out Order No.10. Leader of the Majority Party, let it be called out first.

SPECIAL MOTION

CONSIDERATION OF NOMINEES FOR APPOINTMENT TO THE SALARIES and REMUNERATION COMMISSION

THAT, taking into consideration the findings of the Departmental Committee on Labour in its Report on the vetting of nominees for appointment as chairperson and as members of the Salaries and Remuneration Commission, laid on the Table of the House on Tuesday, 26th November 2024, and pursuant to Article 230 of the Constitution, Section 7(11) of the Salaries and Remuneration Commission Act, CAP 412D, and sections 3 and 8 of the Public Appointments (Parliamentary Approval) Act, CAP 7F, this House approves the appointment of the following persons to the Salaries and Remuneration Commission–

1. Mr. Sammy Chepkwony - Chairperson;
2. Maj. Gen. (Rtd) Martin Kizito Ong’onyi, CBS - Member, nominated by the Defence Council;

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3. Mr. Mohamed Aden Abdi - Member, nominated by the Senate on behalf of County Governments;
4. Ms. Jane Gatakaa Njage - Member, nominated by the Teachers Service Commission;
5. Dr. Gilda Odera - Member, nominated by an umbrella body representing employers;
6. Dr. Geoffrey Apollo Omondi - Member, nominated by an umbrella body representing trade unions; and,
7. Mr. Leonid Ashindu - Member, nominated by a joint forum of professional bodies.

Hon. Speaker: Leader of the Majority Party, you had an application to make on this.

Hon. Kimani Ichung'wah (Kikuyu, UDA): Hon. Speaker, I beg your indulgence to drop this Special Motion under Order No.10 on Consideration of Nominees for Appointment to the Salaries and Remuneration Commission for reasons I had discussed with you. I will stand it down to some time until next week when the House will be ready to consider it. The House Business Committee will allocate time next week, whichever time.

Hon. Speaker: You are indulged and the matter will appear before the House Business Committee on Monday, 2nd December 2024 at midday for further consideration.

(Motion deferred)

Let us go back to Statements.

QUESTIONS AND STATEMENTS

REQUEST FOR STATEMENTS

Hon. Speaker: Hon. Samuel Parashina, Member for Kajiado South.

THEFT OF A SAFE BOX BELONGING TO MBIRIKANI GROUP RANCH IN KAJIADO SOUTH SUB-COUNTY

Hon. Parashina Sakimba (Kajiado South, UDA): Hon. Speaker, pursuant to the provisions of Standing Order 44(2)(c), I rise to request for a Statement from the Chairman of the Departmental Committee on Administration and Internal Affairs regarding the theft of a safe box belonging to Mbirikani Group Ranch in Kajiado South Sub-county.

The Mbirikani Group Ranch located in the western part of Kajiado South Constituency was established in 1968 primarily to facilitate the transfer of ownership of Maasai land from communal to private group property. The group ranch also runs various initiatives including the Predator Compensation Fund (PCF), a programme for compensation of livestock owners for losses due to predators thereby reducing retaliatory killings of lives by affected residents. Unfortunately, on 24th August 2024, unknown individuals who purported to be police officers trespassed the Mbirikani Group Ranch office at Paran Hotel and stole a safe box. The stolen safe box contained uncollected title deeds and other official documents critical to the roles played by the group ranch in transferring land to its members.

Although the matter was reported to Kimana Police Station under Occurrence Book No.14/24/08/2024 (OB No. 14/24/08/2024), the authorities are yet to locate the safe box or recover its contents. Members of the group ranch are apprehensive that they are likely to face the risk of the stolen title deeds being used for fraudulent transactions exposing them to financial and legal vulnerabilities. It is, therefore, essential for the security agency to promptly

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recover the safe box and its contents to safeguard against such risks and secure ownership of the land.

It is against this background that I request for a Statement from the Chairman of the Departmental Committee on Administration and Internal Affairs on the following:

1. A report on the investigation conducted including whether any arrests have been made since the incident was reported by Mbirikani Group Ranch to Kimana Police Station under OB No.14/24/08/2024.
2. The measures being taken by the Ministry of Interior and National Administration to facilitate the recovery of the title deeds and other official documents belonging to Mbirikani Group Ranch.

Hon. Speaker: Chairman of the Departmental Committee on Administration and Internal Affairs. Hon. Raso, you are the Vice-Chairman?

Hon. Ali Raso (Saku, UDA): Yes, Hon. Speaker.

Hon. Speaker: Are you able to bring a response before we involve the Cabinet Secretary?

Hon. Ali Raso (Saku, UDA): Hon. Speaker, the Departmental Committee on Administration and Internal Affairs is sitting tomorrow at 10.00 a.m. I would like Hon. Parashina to appear before the Committee because it is about the interest of the people which cannot wait until February 2025. For that reason, on our own Motion, we will try to pursue it.

Hon. Speaker: If you do not respond by Friday, the Question will collapse unless it is asked again when we resume. Hon. Parashina, appear before the Committee tomorrow at 10.00 a.m. to prosecute your matter.

Hon. Parashina Sakimba (Kajiado South, UDA): I will, thank you, Hon. Speaker.

Hon. Gladys Boss (Uasin Gishu County, UDA): On a point of information, Hon. Speaker.

Hon. Speaker: Do you want to be informed by the Deputy Speaker, Hon. Parashina?

Hon. Parashina Sakimba (Kajiado South, UDA): Yes, Hon. Speaker.

Hon. Speaker: Go ahead.

Hon. Gladys Boss (Uasin Gishu County, UDA): Hon. Speaker, allow me to give him some information to assist your people so that you are not worried that the title deeds are in wrong hands. Remember a title deed shows that you are the owner, but the actual records at the lands office are the most important. Take that OB Number report that you have to the Ministry of Lands office so that it is entered in as a caveat. This way, nobody can deal with that property as you wait to have the matter heard by the Committee. You will be mitigating any further losses and damage.

Hon. Speaker: That is free legal advice, Hon. Parashina. Hon. Tongoyo, your Vice Chairman has already spoken.

Hon. Gabriel Tongoyo (Narok West, UDA): I want to add something.

Hon. Speaker: Go ahead. Give Hon. Tongoyo the microphone. The microphone is back on, the one you are running from.

Hon. Gabriel Tongoyo (Narok West, UDA): Hon. Speaker, as much as I would want to agree with the Vice-Chairperson, and advice of the Deputy Speaker, we had a one-hour discussion with Hon. Parashina in my office a few hours ago over the same issue. We know Narok and Kajiado border each other and share some police stations. I understand in depth what transpired. I asked around for advice and learnt that he needs to register the OB Number and then it will be gazetted. It is a norm for missing title deeds because it is not about security as per now. It is about missing of vital documents. I also support the position of the Deputy Speaker.

Hon. Speaker: Thank you. Hon. Parashina, *umeelewa?*

Hon. Parashina Sakimba (Kajiado South, UDA): I agree with the advice given by the Deputy Speaker and I will do that. I appreciate as well Hon. Dido's advice because of the nature of the issue which is very emotive. I will appear before the Committee on 28th November 2024 at 10.00 a.m. I also request the Chairperson of the Committee to try and help us. The public has been holding demonstrations on the roads and it is becoming insecure in our place.

Hon. Speaker: Thank you. Hon. Mark Mwenje.

DISMISSAL OF POLICE CONSTABLE JOSEPH WAMUGUNDA

Hon. Mark Mwenje (Embakasi West, JP): Hon. Speaker, pursuant to the provisions of Standing Order 44(2)(c), I rise to request for a Statement from the Chairman of the Departmental Committee on Administration and Internal Affairs regarding the dismissal of Mr Joseph Wang'ondy Wamugunda, a Police Constable of Police Force No.64064.

Mr Joseph Wang'ondy was employed by the National Police Service (NPS) as a Police Constable on 2nd May 1992 and deployed to the Northern Frontier Province where he worked for five years before being transferred to Jogoo Road Police Station. On 9th August 2000 while discharging his duties, he arrested a civilian who was impersonating a police officer working for the Alpha Five Flying Squad. The suspect together with his taxi driver were arrested and booked under OB No.5/10/8/2000. Mr Wang'ondy was later summoned by his superiors where he was interrogated regarding the arrests and later served with a waiver notice disciplinary charge.

Subsequently, Mr Wang'ondy was charged with unlawful detention of a taxi driver and breaking out of a police line, contrary to NPS regulations, under OB No.82108/2000. He was later acquitted on 30th July 2002 due to lack of evidence. Following his acquittal, Mr Wang'ondy appealed for reinstatement to NPS on 17th December 2014 and subsequently on 19th February 2020, but NPS is yet to reinstate him.

Hon. Speaker, it is against this background that I request for a Statement from the Chairperson of the Departmental Committee on Administration and Internal Affairs on the following:

1. A detailed report on the circumstances that led to the arrest, prosecution and dismissal of Mr Joseph Wang'ondy from NPS while undertaking lawful duties.
2. Status of appeal for reinstatement to the Service made by Joseph Wang'ondy on 17th December 2014 and on 19th February 2020, and the reasons for the inordinate delay in reinstating the officer.
3. The relief measures being put in place, including payment of outstanding remuneration and compensation, for Mr Joseph Wang'ondy for the violation of his rights as guaranteed under Article 41 of the Constitution.

Hon. Speaker: Thank you, Hon. Mark Mwenje. Hon. Tongoyo, when can you bring a response?

Hon. Gabriel Tongoyo (Narok West, UDA): I will try, Hon. Speaker, by Thursday next week.

Hon. Speaker: Thursday. Thank you. Hon. Tongoyo, we have already allocated too many responses for Thursday. Do it next Friday morning.

We have a response to a request for a Statement by Hon. Dorice Donya. Chairman of the Departmental Committee on Agriculture and Livestock, Dr Mutunga.

STATEMENT

PAYMENT OF ANNUAL BONUSES TO TEA FARMERS

Hon. (Dr) John Mutunga Kanyuithia (Tigania West, UDA): Thank you Hon. Speaker. I have a response from the Ministry of Agriculture and Livestock Development on the Statement Hon. Dorice Donya requested.

The request had three parts and the response is structured in three parts. The first part deals with the criteria used to determine the rate of annual bonuses paid to tea farmers across different regions and factories in Kenya.

In response, the Ministry alludes that tea bonus is a second payment to tea farmers, which is paid at the end of the financial year. Each month, tea farmers are usually paid an initial amount of Ksh25 per kilogramme for tea factories in the East Tea Block, Ksh24 for tea factories in Kisii, Nyamira and Nandi, and Ksh23 for factories in Kericho, Bomet, Vihiga and Trans Nzoia. This is usually an advance against their green leaf delivery, since proceeds from tea are only realised 45 days from the delivery of the green leaf to the factory due to the timelines involved in the processing and sale activities. The bonus, which is a second payment, is therefore, the net of the price realised minus the cost of production, including the monthly payments.

The second payment is usually dependent on two factors. Number one is the price realised at the tea auction. The price realised at the auction is dependent on the quality of tea produced by each factory, which is dependent on many factors including the quality of green leaf, that is, the agronomical practices and packing, post-harvest handling and manufacturing practices at the tea factory. In addition, the price of tea is also influenced by history - historical tea buyers' perceptions regarding the quality of tea produced by a specific tea factory. Other key factors include the prevailing demand and political situation in the market and the effect of global economic shocks. There is a large table with different factory prices. I do not know whether, for the sake of the Members, I need to read it. It is about one-and-a-half pages.

(Hon. Speaker spoke off the record)

The second issue in the determination of bonuses is the cost of production. The cost of production also varies from factory to factory, depending on various factors such as transportation, cost to Mombasa, labour and administration costs, and energy cost. Factories with efficient machinery and operations can realise lower costs of production. This means that a factory which realises a lower price and has a relatively higher cost of production will end up with lower net income and will, therefore, pay less bonus to farmers.

The third issue is the process involved in bonus determination. Tea bonus is usually calculated at the end of each financial year, after all revenue and costs have been determined and financial statements prepared and audited by an external auditor. The financial statements are then presented to factory boards for approval, together with the proposed rate of bonus, subsequent to which the directors disseminate the same to factory shareholders or growers.

The second issue in the request is the reasons behind the significant variations in bonus payments to tea farmers in the country. The disparities in bonus payments between different factories in the country are determined by the price realised at the tea auction and the cost of production. A summary of the bonus paid in the year 2023/2024 compared to year 2022/2023 is shown in the table provided. I will just give the average of the summaries. In the East Block, the first four factories, which are basically in Kiambu, paid an average of Ksh73 per kilogramme in the year 2023/2024. The previous year, the factories paid Ksh62.70 per kilogramme. Factories in Murang'a paid an average of Ksh81.5 this year and Ksh64.3 last year. Factories in Nyeri paid an average of Ksh74.40 this year and Ksh64.30 last year. Factories in Kirinyaga paid an average of Ksh77.10 this year and Ksh65.50 last year. Factories in Embu paid Ksh84.20 this year and Ksh64.20 last year. Factories in Meru paid Ksh67 last year and

Ksh76.80 this year. Factories in East Block paid an average of Ksh78.10 this year and Ksh64.80 last year.

In Kericho County, last year, factories paid Ksh55.10 and Ksh54.90 this year. Factories in Bomet County paid Ksh43 this year and Ksh51.50 last year. Factories in Nyamira paid Ksh54 this year and Ksh52.30 last year. Factories in Kisii paid Ksh44.30 last year and Ksh46.60 this year. Factories in Nandi, Vihiga and Trans Nzoia paid Ksh48.80 last year and Ksh50.90 this year. On average, factories to the west of the Rift Valley or the Western Block paid Ksh65.95 this year and Ksh59.10 last year.

From the above analysis, it is apparent that the average total payment increased by 12 per cent from an average of Ksh52.02 in the year 2022/2023 to Ksh65.95 in the year 2023/2024. Likewise, the total payment to farmers increased by 34 per cent, that is, from Ksh67.6 billion in the year 2022/2023 to Ksh90.5 billion in the Financial Year 2023/2024. Notably, and due to the high volume of green leaf, farmers in some of the factories in the West Rift earned more income than those in the East Rift.

The other issue was the measures the Ministry, through the relevant agencies such as the Tea Board of Kenya and the Kenya Tea Development Agency, is taking to ensure that all tea farmers receive fair, uniform, and transparent bonuses based on their production levels. The response is as follows: Generally, tea factories within the West Rift fetch lower prices compared to the ones in the East Rift due to quality differential occasioned by the farmers' husbandry practices. In addition, the cost of production in various factories differs owing to the differences in the style of management and the oversight by various factory boards of directors.

Most factories in the West Rift Valley have loans for establishing satellite factories, which attract high financial costs as compared to the factories in the East Rift Valley. Therefore, it is not possible to have uniform payment, but it is possible to reduce the gaps between the factories in the two regions. Cognisant of the differences in tea prices, the Tea Board of Kenya has initiated a Strategic Tea Quality Improvement Programme (STQIP) which is aimed at assisting tea factories with lowest tea quality to improve and meet the market requirements. The Ministry has appointed a committee to develop a minimum standard on leaf quality, which once fully implemented, will address most of the quality challenges affecting the tea factories in the western tea block.

Since green leaf quality is a key determinant factor to the quality of made tea, and which in turn determines the price of made tea offered by the buyers, the Tea Board of Kenya, in collaboration with the counties, will continue to sensitise farmers about it. Other measures taken by the Ministry include interventions aimed at reducing the cost of production at the farm level, which have been put in place in collaboration with the Kenya Tea Development Agency behalf of all the smallholder tea farmers.

The KTDA imported 97,000 metric tonnes of fertiliser at a cost of Ksh3,400 per 50 kilogramme bag. To reduce the cost borne by the farmer to about Ksh2,500 per 50 kilogramme bag of fertiliser, the Government will allocate Ksh2 billion as fertilizer subsidy to the tea farmers. The Government support on access to fertilizer at subsidised prices has continued to enhance productivity at the farm level and the quality of tea and ultimately the earnings to the tea farmers as has been envisioned under the Bottom-Up Economic Transformation Agenda (BETA). The fertiliser imported by the KTDA is currently being distributed to farmers across tea growing areas.

Finally, there was the question on the timeline within which the Ministry will address the disparity to ensure that tea farmers across the country are treated fairly. The response is that development of a draft of minimum standard on tea leaf quality is ongoing and expected to be completed by November 2024, which is by the end of this month. However, for it to be enforced, it requires proper public participation as required by the Constitution. The Ministry, therefore, requests the National Assembly to provide additional budgetary allocation to

undertake public participation on guidelines/standards and other regulations necessary to address most of the quality challenges facing tea farm factories in the west tea block.

The STQIP is a five-year programme which has been ongoing for the last two years, which is aimed at assisting tea factories with lowest tea quality to improve and meet the market requirements. The programme has achieved notable milestones and some factories in the west of the Rift have gradually started making improvements in the quality of tea produced, such as the Momul and Ogembo tea factories. The initiative on quality improvement programme is expected to ensure factories manufacture tea of high quality that is discerned by the market. Once this is achieved, prices of the affected factories are expected to improve gradually within a period of one year, taking into account the market dynamics of supply and demand in the global market.

I submit.

Hon. Speaker: Hon. Dorice.

Hon. Dorice Donya (Kisii County, WDM): Thank you, Hon. Speaker. It is very peculiar for the Committee to tell the Kisii Community that it is because of historical tea buyer perceptions that their bonuses are less. Perceptions. It is like saying, for example, that all African communities are wizards and night runners. You then believe such a perception. Telling the people of the Rift Valley, Kisii and Nyamira County that perceptions have made their farmers not to have good bonuses is an abuse. They are also talking of plucking. I am not a tea farmer, but from our neighbours, I know that they are told that when plucking tea, you pluck two leaves and bud. It is even taught in schools. They are making it reason as to why these people do not get good bonuses. Really? They also talk of political influence. It is as if in the Rift Valley, we have intense politics. An analyst can say that Kenyan political scenes are more or less the same. I take this answer back to the sender. It is half-baked. Please, have it back! It is not making any sense.

Historical perceptions! Is that really what you are telling Kisii farmers? No! Back to the sender.

Hon. Speaker: Hon. Mutunga, return to sender.

Hon. (Dr) John Mutunga Kanyuithia (Tigania West, UDA): I will do the needful, Hon. Speaker. Even as I do that, I think it is important for the Member to realise that it is not...

Hon. Speaker: Hon. Mutunga, listening to your answer raises more questions than answers.

(Applause)

It does not make a lot of sense even to the Speaker. I even saw from your body that you did not seem to be convinced with what you were reading. Go back to the Ministry and ask them to give you a better explanation. Tea grown in the east and west of the Rift Valley is Kenyan tea.

(Applause)

Those explanations are not plausible. They are created by some bias that you need to address.

Hon. (Dr) John Mutunga Kanyuithia (Tigania West, UDA): I will do exactly that, Hon. Speaker.

Hon. Speaker: Thank you. Yes, Hon. Kaluma.

Hon. Peter Kaluma (Homa Bay Town, ODM): Thank you, Hon. Speaker. Hon. Kwenya Thuku has gone with my card and instead left his here.

This matter is not just limited to tea, it cuts around all our cash crops like coffee and rice. The prices of rice are varied across the country. What is happening is that people currently take rice cheaply from farmers in Homa Bay, for instance, at Kimira-Oluch, and sell it to the bulk handlers in the areas where the prices are high. I agree and emphasise that as he goes back, we are looking at the major issue of harmonisation of prices and equality of treatment of all our farmers so that the produce is not just being shuffled by middlemen, but benefits all Kenyans equally.

Hon. Speaker: Hon. Francis Sigei.

Hon. Francis Sigei (Sotik, UDA): Thank you, Hon. Speaker, for giving me this opportunity to contribute. I rise as a small-scale tea farmer. The Statement given by the Chairman is below average. He has given us an answer from Kenya Tea Development Agency. That is a script from there. I take my tea to Kapkatet and Mogogosiek tea factories. We got Ksh20 as tea bonus in Mogogosiek Tea Factory, and then somebody got Ksh56 to 60 in the eastern side. There is no justification whatsoever. Our people from the west have had a very raw deal for a long time. We need some serious answers for tea farmers.

On the issue of tea tasting, somebody does it by mouth in the auction in Mombasa and then he tells us it is high quality. We want a serious technological approach on how to taste tea.

We have a lot of problems. Our farmers toil. They go to the farm very early in the morning. They are rained on and then they get a raw deal. We cannot accept it. There must be an answer. We have a big problem. My people in Sotik are suffering. We need a better answer. We need to probe what is happening at the KTDA. Otherwise, we will continue suffering. We cannot allow it to continue. Our people are given a raw deal. I agree with my colleagues that the answer should be thrown out.

Hon. Speaker: Hon. Mukunji.

Hon. Gitonga Mukunji (Manyatta, UDA): Thank you, Hon. Speaker. Firstly, I come from Embu where we have three factories that are always ranked amongst the ones that produce the best tea. In the world we are in, quality really matters. Quality of tea comes from usage of machines to harvest tea and the other ones that are done manually by people. It is true that prices of tea in Embu are better than in some other places. This is simply because of the quality of tea. The world is very competitive these days. We cannot ignore that we need to raise the standards of what we are giving to the world, so that we can get good tea.

I want to educate my colleagues. Two leaves and a bud of tea are plucked. When you use a machine, it normally cuts more than five or six. When it is done that way, it cannot cost the same way. There is something called orthodox tea these days which gets the best prices in the world. This is the tea that has only the bud and it is well rolled up. With machinery harvesting, it is hard to achieve the quality of tea that we get in Embu. Even our prices will continue getting better because we are doing a huge campaign of ensuring that we focus on quality of tea rather than the quantity. There is a backlog in terms of months for tea that is not in the right grades from our friends in the east. I propose that they engage the farmers and the KTDA for civic education on getting and fetching better prices of tea.

Hon. Speaker: Hon. Cynthia.

Hon. Cynthia Muge (Nandi County, UDA): Thank you, Hon. Speaker. I thought Hon. Donya had done justice to this Statement. It is not proper for Hon. Mukunji to bastardise the quality of tea from the other areas. He cannot insinuate that the other tea farmers in this country, apart from those from his constituency, do not know better ways to grow tea. That is not proper.

My point is not on the tea, but on the colloquial manner that the Executive answers Statements that are raised by the Members of this House. I have sat here several times, listened and heard the chairpersons of respective committees respond to Statements in this House. I can deduce from my very little and common knowledge that they do not take it as seriously as they should. That response does not even qualify to come from a layman who has no expertise in

tea matters. The Executive must take this House seriously and give us proper answers. We are not asking these questions for the sake of it, but we have real issues at home. We have large-scale and small-scale tea farmers in Nandi County. They go to the streets everyday because they go through a lot to get that tea to the factory. What do they earn? They earn petty peanuts here in the name of quality and standards. We all know the quality and standards of tea. They are lying to us.

They should take this civic education they keep referring to, to the village so that those people can take it up, if they feel that is the problem. Otherwise, the Executive needs to up their game and give us proper answers for the serious questions we ask in this House.

Hon. Speaker: Member for Gichugu.

Hon. Gichimu Githinji (Gichugu, UDA): Thank you, Hon. Speaker. I represent Gichugu where we have two factories: Thumaita and Kimunye tea factories.

Connected to the question that was asked by Hon. Donya, I had also asked some questions which were responded to unsatisfactorily. I agree with the Member for Sotik that this is most likely a response that the Cabinet Secretary was given by the KTDA. There is no harm in doing that, but the Cabinet Secretary should do more to get proper information. Farmers are suffering. The KTDA has a tendency of keeping some money for farmers for unknown reasons. Without going to the details as you have already given direction on this matter, the Departmental Committee on Agriculture and Livestock needs to do something about the KTDA, including a thorough probe on the activities that happen there. They are still exploiting farmers. These people are employed by the farmers, but it appears like they are farmers' employers. That is the direction to take.

Hon. Speaker: Hon. (Dr) Mutunga, like I said, your answer is far away from the mark. It falls short of expectations. Avoid the stereotyping from Hon. Mukunji because it is not good in building a united Kenya. A tea farmer in Mt. Elgon is the same as the one in Embu, Sotik, Nyamira and everywhere.

Find a way, Hon (Dr) Mutunga, I know how thorough you are, to create equity, fairness and just returns for every farmer. Do not fall into the trap of Hon. Mukunji's stereotyping.

(Applause)

Hon. Ruku GK (Mbeere North, DP): On a point of order, Hon. Speaker.

Hon. Speaker: I will come to you, Hon. Ruku. Is Hon. Brighton Yegon here? Yes, Hon. Mutunga.

Hon. (Dr) John Mutunga Kanyuithia (Tigania West, UDA): Hon. Speaker, I have another response for Hon. Brighton Yegon.

Hon. Speaker: He is not here.

Hon. (Dr) John Mutunga Kanyuithia (Tigania West, UDA): I wish to lay it on the Table of the House.

Hon. Speaker: Lay it on the Table of the House because he is not here.

Hon. Muchangi Karemba (Runyenjes, UDA): On a point of order, Hon. Speaker.

Hon. Speaker: Hon. Karemba, what is it?

Hon. Muchangi Karemba (Runyenjes, UDA): Hon. Speaker, I desire that you give me a moment to discuss about tea because I am a Member of Parliament from a tea growing constituency.

Hon. Speaker: We have crossed that rubicon.

(Laughter)

Hon. Muchangi Karemba (Runyenjes, UDA): With your powers, Hon. Speaker.

(Laughter)

Hon. Speaker: We have crossed the rubicon. The judge has made the decision and dropped the gavel.

Hon. Ruku GK (Mbeere North, DP): On a point of order, Hon. Speaker.

Hon. Speaker: Yes, Hon. Ruku?

Hon Ruku GK (Mbeere North, DP): Thank you, Hon. Speaker for this opportunity. On 18th September, I requested for a Statement from the Departmental Committee on Health on the status of payment of the last expense and death gratitude to the survivors and beneficiaries of the National Health Insurance Fund (NHIF) and the Public Service Superannuation Scheme (PSSS). The Chairman of the Departmental Committee on Health agreed to give a report...

Hon. Speaker: Hold on, Hon. Ruku. Hon. Pukose is a regular attendant. He is not here. I would prefer that you raise your issue when he is here so that he can give you a response. But if you want it to go on the *Hansard* and he reads, I have no problem. If you want to raise it in his presence, we can do that tomorrow morning. You will get a better response when you raise it in his presence. He is one of our most regular Members.

Hon Ruku GK (Mbeere North, DP): Much obliged, Hon. Speaker

THE NATIONAL TREASURY CIRCULAR TO TEACHERS SERVICE COMMISSION

Hon. Omboko Milemba (Emuhaya, ANC): On a point of order, Hon. Speaker.

Hon. Speaker: Hon. Milemba, what is your point of order?

Hon. Omboko Milemba (Emuhaya, ANC): Thank you, Hon. Speaker for this chance. This House has stood for Kenyans in many sectors, including education. Education is an enormous sector. I want to thank the President because we needed teachers and he went ahead to employ 56,000 of them and 20,000 interns, making a total 76,000 teachers. I also want to thank this House because it allocated about Ksh1 billion – though small – for promotion of teachers. The vacancies for promotion have already been advertised.

There is a circular from the National Treasury that has been directed to the Teachers Service Commission (TSC) instructing them not to use funds that are within the Commission. These funds arise because of teachers who leave the profession through natural attrition, resignation and many other ways. These funds are usually put together and used for promotion and employment of teachers. Education is a sector that we guard all the time. However, this circular in Clause 25 to be specific, has stopped the Commission from doing so and yet money is available. The TSC does not need money from the Treasury to promote 45,000 teachers. Therefore, what is preventing the promotion of 45,000 teachers in Kenya is a circular from the Treasury.

It is against this background that I seek your indulgence for the Cabinet Secretary and the Permanent Secretary of the Treasury to be called upon, through the Majority Leader or the Chair of the Departmental Committee on Education, to rescind that circular. Teachers' challenges are handled on a need basis. As teachers leave the profession, others need to come in because there is a continuous shortage of teachers. That is my prayer.

Hon. Speaker: Thank you. Is Hon. Meli here?

Hon. Naomi, you will tell Hon. Meli to look at the *Hansard* and speak to this issue on Tuesday afternoon.

Hon. Naomi Waqo (Marsabit, UDA): Hon. Speaker, I will do so.

Hon. Speaker: Thank you.

Let us go back to Order No.5 and invite the Chairman, Departmental Committee on Finance and National Planning.

Chairman, you are on Statement?

(Hon. Robert Mbui Spoke off the record)

On what issue? Let him lay his Papers first.

PAPERS

Hon. Speaker: Hon. Chairman, we are back to Order No.5. Go ahead.

Hon. Kuria Kimani (Molo, UDA): Thank you, Hon. Speaker.

I beg to lay the following Papers on the Table:

Reports of the Departmental Committee on Finance and National Planning on consideration of the following two Bills –

(a) The Unclaimed Financial Assets (Amendment) Bill, National Assembly Bill No.15 of 2024 and,

(b) The Kenya Revenue Authority (Amendment) Bill No.35 of 2024.

Hon. Speaker: Thank you. Go ahead and lay the Papers.

DISBURSEMENT OF NG-CDF FUNDS

Hon. Robert Mbui (Kathiani, WDM): On a point of order, Hon. Speaker.

Hon. Speaker: Yes, Hon. Robert Mbui.

Hon. Robert Mbui (Kathiani, WDM): Thank you, Hon. Speaker. I want to seek your indulgence. We have just one week to the close of business of this House this year. I note that the National Government Constituencies Development Fund (NG-CDF) and maybe the National Government Affirmative Action Fund (NGAAF) have not received the last batch of money that was supposed to be given in the last financial year. We are already in the second quarter of the 2024/2025 Financial Year. Part of that money was meant to be used for the construction of the Junior Secondary School classrooms for Grade 9. With your indulgence and support – you have done this in the past – you can find a way of getting the Treasury to explain to us when this money will be availed to the constituencies, so that these classrooms can be built in good time.

We are already halfway the 2024/2025 Financial Year and we do not have this money. I know in the next one week or so, we will be discussing other revenue raising measures. It is important that the Treasury comes clean. Why can it not give the NG-CDF money it has already raised, so that we can construct classes and in January children can be in school without a problem. I am just asking for your indulgence. Please, establish in what way you can help us. You did it in the past and it helped us.

Hon. Speaker: Who is that? Is it Mwalyo? Yes, Honourable Mwalyo?

Hon. Joshua Mwalyo (Masinga, Independent): Mr Speaker, I want to report on the disbursement of the last financial year's balances. I can confirm that all the balances of the last financial year were disbursed to all the constituencies. So, you can check in your...

Hon. Speaker: Are you a Member of the National Government Constituencies Development Committee?

Hon. Joshua Mwalyo (Masinga, Independent): Yes, I am a Member of that Committee. I am talking with authority because I am a Member of that Committee.

Hon. Speaker: Hon. Robert Mbui, your colleague, the other side, has spoken with a lot of authority.

Yes, Mwenje.

Hon. Mark Mwenje (Embakasi West, JP): Thank you, Hon. Speaker. It is not good to disagree with a colleague, but I want to bring this to your attention. Previously, I have engaged the Members of the National Government Constituencies Development Committee. When they report that we have received funds, it means that only the Members of Parliament of the Committee have received the funds first. So, the rest of us have not received. We have confirmed with our fund managers. Actually, I need to make that clear. The fund managers of those constituencies that are not represented in that Committee are the ones who have not received. So, that response is inaccurate. I spoke with my fund manager this morning, and he had not received a balance of about Ksh13 million as of this morning.

Hon. Speaker: Ngogoyo.

Hon. Onesmus Ngogoyo (Kajiado North, UDA): Thank you, Hon. Speaker. For the interest of the Members that have not received, like myself... Kajiado North lacks Ksh33 million. I can confirm that we have not received that money. It is possible that some Members of the National Government Constituencies Development Committee have received. Nevertheless, your indulgence is needed for the sake of the Members who I can confirm do not have the cash in their accounts. The JSS classes will remain to be a big headache, especially in the constituency that I come from, where we need about 78 classes for Grade 9 before January.

Hon. Speaker: Yes, Oundo?

Hon. (Dr) Ojiambo Oundo (Funyula, ODM): Thank you, Hon. Speaker. Let me also echo the sentiments of Hon. Mbui, that for the 2024/2025 Financial Year, most constituencies have not received their funds. Probably this could be as a result of most constituencies not having submitted their proposals for this financial year. I want to ask our fund managers, wherever they are, to make all efforts to ensure the proposals are submitted in good time.

(Hon. Peter Kaluma spoke off the record)

For record purposes, I want to urge my Members... As you know, we are in court in respect of the NG-CDF. At any given time, let us try to dissociate ourselves from the talk of: 'I have not received' or 'we have not received', so that we can remove the general public perception that NG-CDF is a fund for the Member of Parliament. It is good for the public to understand that we just merely provide oversight and nothing else.

I want to confirm that I have just spoken to the Fund Account Manager for Funyula Constituency and he has confirmed that the balance for the Financial Year 2023/2024 was received early this week. So, it is probably just a matter of the efficiency of the Fund Account Managers, which, we, as those who provide oversight through the NG-CDF committees, need to emphasise to ensure that the reports are accurate and updated.

Hon. Speaker: Hon. Ferdinand Wanyonyi, do you want to speak on the same issue?

Hon. Ferdinand Wanyonyi (Kwanza, FORD-K): Yes, Hon. Speaker. I want to confirm that I have just talked to my Fund Account Manager. Hon. Speaker, just help us to get that money. We are going for the long recess, and without the NG-CDF money, we will have many problems. I request you to get involved and assist us to get the money, so that we can move. There is nothing we can do at home without the NG-CDF. There are very many pending projects.

Hon. Speaker: Hon. Mwalyo, you purported to speak with authority. Has each constituency received funds?

Hon. Joshua Mwalyo (Masinga, Independent): Hon. Speaker, I was talking about balances from the Financial Year 2023/2024. The National Treasury wired all the money to the NG-CDF Board account. The balances were wired last week to all the constituencies. You may not have received the money if your entire proposal was not approved. I am not talking about

the Financial Year 2024/2025. I am talking about the Financial Year 2023/2024. The NG-CDF Board received all the balances. If you have not received your money, you will get it soon.

Hon. Speaker: We will transmit the *Hansard* that captured Hon. Robert Mbui's issue. Tell your Chairman, Hon. Musa Sirma, to issue a statement during the Monday afternoon sitting. If there are any difficulties, I will intervene.

Next Order.

SPECIAL MOTION

CONSIDERATION OF NOMINEE FOR APPOINTMENT AS THE DEPUTY DEPUTY GOVERNOR OF THE CENTRAL BANK OF KENYA

Hon. Kuria Kimani (Molo, UDA): Thank you, Hon. Speaker. I rise to move that the approval of Mr Gerald Nyaoma Arita as the Second Deputy Governor of the Central Bank of Kenya (CBK) be now read a Second Time.

Article 231 of the Constitution sets out the establishment of the CBK, which is responsible for formulating monetary policies, promoting price stability...

Hon. Speaker: Hon. Kimani, you know how to move a Motion, do you not?

Hon. Kuria Kimani (Molo, UDA): Oh, yes.

Hon. Speaker: You are supposed to say, "I beg to move the following Motion...", and then you read the Motion as it appears on the Order Paper. After that, you can start your discourse.

Hon. Kuria Kimani (Molo, UDA): My apologies, Hon. Speaker.

Hon. Speaker, I beg to move the following Special Motion:

THAT, taking into consideration the findings of the Joint Committee of the National Assembly Departmental Committee on Finance and National Planning and the Senate Standing Committee on Finance and Budget in its Report on the vetting of a nominee for appointment as the Deputy Governor of the Central Bank of Kenya, laid on the Table of the House on Wednesday, 27th November 2024, and pursuant to Section 13B(1) of the Central Bank Act, CAP 491, and Sections 3 and 8 of the Public Appointments (Parliamentary Approval) Act, 2011, this House approves the appointment of Mr Gerald Nyaoma Arita as the Second Deputy Governor of the Central Bank of Kenya.

Article 231 of our Constitution sets out the establishment of the CBK, which is responsible for formulating monetary policies, promoting price stability, issuing currency and performing other functions conferred to it by an Act of Parliament. The Joint Committee conducted approval hearings of the nominee to ascertain his suitability for the role of the Deputy Governor of the CBK.

The Deputy Governor plays a very critical and pivotal role in ensuring that the institution fulfills its constitutional and statutory mandates. Those responsibilities are outlined in the Constitution of Kenya and the CBK Act, CAP 491. They include, among others, the development and execution of monetary policies to maintain price stability and to promote sustainable economic growth, financial stability, bank supervision, ensuring efficiency in the payment systems, and supporting the Governor in executing duties that may be assigned to the Deputy Governor.

[The Speaker (Hon. Moses Wetang'ula) left the Chair]

[The Temporary Speaker (Hon. Peter Kaluma) took the Chair]

In determining the nominee's suitability, the Committee considered the provisions on leadership and integrity as outlined in Chapter 6 of our Constitution. Also, the Committee considered the nominee's academic qualifications, employment record and work experience, membership to relevant professional associations, roles in public office, political activities and affiliations, potential conflict of interest, suitability to that position, tax compliance obligations, and other thematic areas relevant to the duties and responsibilities of the job that would be assigned to him, if this House approves him as the Deputy Governor of the CBK.

Having considered his suitability, the Joint Committee noted that the nominee is a Kenyan citizen and is not a citizen of any other country and, therefore, meets the requirements of Article 78(1) of the Constitution. He demonstrated an aspiration for integrity in public service, and thus meets the requirements of Chapter 6 of the Constitution on leadership and integrity.

After scrutiny of his educational background, academic credentials and professional qualifications, work and professional experience, personal integrity, as well as his performance during the approval hearing, the Joint Committee found that the nominee possesses the relevant experience for the position of the Deputy Governor of the CBK, having served for over 36 years in the banking and financial regulations sector, including playing pivotal roles such as that of Director of Banking Supervision, Financial Markets and Banking Services at the CBK, in addition to being an alternate board member in several key boards in the country.

The nominee holds a Master's Degree in Philosophy from the University of Cambridge in the United Kingdom, and a Bachelor of Arts Degree in Economics from the University of Nairobi. He is a Certified Public Accountant (CPA) and a Certified Public Secretary (CPS), certified through the Kenya Accountants and Secretaries National Examinations Board (KASNEB). He is also an associate of the Kenya Institute of Bankers.

The nominee has over 36 years' experience across many sectors in the CBK, including payment systems, quality control, banking supervision, banking services and financial markets. He said that working in those sectors has equipped him with the skills and experience needed to be the Deputy Governor of the CBK.

A key factor to note is that when M-Pesa was introduced in this country, it is this nominee, through his role at the CBK, who gave a hearing to the investors who wanted to invest in M-Pesa and facilitated the issuance of the appropriate licences. He is one of the reasons why we have such a robust mobile payment system like M-Pesa, which is one of the best mobile payment systems, not just across Africa, but across the globe. Were it some other public servant who this idea came to, they may have been threatened because this was a new technology. They may have been afraid, developed cold feet and not given such approvals. However, his role in the revolution of mobile payments shows that he is visionary and best suited to be the Deputy Governor of the CBK.

Hon. Temporary Speaker, you may remember the crisis that came with the collapse of Chase Bank, and the merger of the National Bank and Spire Bank. This nominee, sitting at the CBK, and in charge of bank supervision, ensured that despite the challenges with those banks, there was minimal crash in the financial sector. The challenges found in these banks resulted in minimal crashes in the financial sector and minimal losses in Kenyan deposits. This demonstrates someone able to work under pressure, make a difference, and has a revolutionary mindset when making development in this country. It is also inspiring to see someone who joined the Central Bank of Kenya as a management trainee, as a very young man, rising through the ranks to become the Deputy Governor of the Central Bank of Kenya.

Hon. Temporary Speaker, when we appoint individuals who have worked in other sectors to head institutions at the expense of officers who have diligently worked their way up through the ranks of that particular institution, it sometimes demoralises the professionals. However, it can be good for diversity. This is a clear demonstration that Kenyan systems work:

you can be employed as a young person and rise all the way up to the position of Deputy Governor of the Central Bank of Kenya.

The nominee exhibited a clear understanding of the current issues affecting the Central Bank of Kenya and shared practical strategies to address these issues. Additionally, he demonstrated a satisfactory understanding of the Central Bank of Kenya's mandate and extensive knowledge of payment systems, monetary policy, and risk-based supervision.

The nominee also emphasised the need for adaptive regulatory frameworks for emerging technologies such as fintech, digital currencies, virtual assets, cryptocurrency and blockchain technology. He advocated for robust internal controls to prevent financial fraud. He highlighted strategies to ensure effective monetary policy implementation and address challenges such as high non-performing bank loans.

The Joint Committee, having conducted approval hearings of the nominee regarding his stability, observed that due process was followed in his nomination in accordance with Article 153 of the Constitution, as read together with Sections 3 and 5 of the Public Appointments (Parliamentary Approval) Act, 2011, and Section 12 of the Competition Authority Act of 2010. Therefore, the Joint Committee recommends that this honorable House approve the nomination of Mr Gerald Nyaoma Arita as the Deputy Governor of the Central Bank of Kenya.

It is against this background that the approval of Mr Gerald Arita is before this honorable House for consideration and adoption of the Report by the Joint Committee of the Departmental Committee on Finance and National Planning and the Standing Committee of Finance and Budget of the Senate.

Hon. Temporary Speaker, I beg to move. I request Hon. Caroli Omondi to second.

Hon. Caroli Omondi (Suba South, ODM): Thank you very much, Hon. Temporary Speaker. I also thank Hon. Kimani for giving me the opportunity to second this Special Motion. I have known this gentleman for quite some time. During my days at the University, he was slightly ahead of us. I believe Gerald exhibits all the qualities required for the position of Deputy Governor of Central Bank of Kenya, especially at this particular time in the history of our country. If you look at his academic record, he graduated with First Class Honours in Economics from the University of Nairobi. He then proceeded to Cambridge, where he graduated with a Master's Degree in Philosophy and Economics with distinction. There are very few people who can boast such a record.

Many years ago, I came across a gentleman named Tomik Konyimbih when we were recruiting someone for membership in the National Land Commission. He is the only student in the history of Kenya who transitioned from an undergraduate degree directly to a PhD at Cambridge without doing his master's degree. Why? He challenged a professor, and the Senate moderated the contest, which proved him right in his theory. They awarded him a direct PhD scholarship.

Mr Nyaoma Arita has what we call deep domain knowledge of the central banking environment in this country. All his life, he has worked at that bank in several departments: Banking supervision, the financial sector, fintech and policy. If there is someone who can boast such deep domain knowledge, I am not sure you will find anyone with more expertise. If you look at his experience and presentation before the Committee, you can clearly see someone well-suited for this job and well-prepared to discharge the functions of the Deputy Governor's office.

I strongly recommend this candidate and call upon this House to approve him so that we can have someone with the academic credentials, integrity, and domain knowledge required for the job.

(Question proposed)

Is it the mood of the House that I put the Question?

Hon. Members: Yes.

*(Hon. Gitonga Mukunji and several Members
stood in the gangways)*

Who are those moving? Hon. Mukunji, the Temporary Speaker, is on his feet.

(Question put and agreed to)

Next Order.

BILLS

Second Reading

THE PUBLIC FINANCE MANAGEMENT (AMENDMENT) (NO.3) BILL (National Assembly Bill No.44 of 2024)

The Temporary Speaker (Hon. Peter Kaluma): The Mover of the Public Finance Management (Amendment) Bill, Hon (Dr) Naomi Waqo, proceed.

Hon. Naomi Waqo (Marsabit, UDA): Hon. Temporary Speaker, I beg to move that the Public Finance Management (Amendment) Bill be now read a Second Time. The Bill was read the First Time on 13th November 2024. I thank the Departmental Committee on Finance and National Planning for a well-done job.

Hon. Temporary Speaker, Chapter 12 of the Constitution of Kenya emphasises the principles and importance of prudent public finance in ensuring an equitable and transparent management of the country's resources. With that background, the Public Finance Management (Amendment) (No. 3) Bill (National Assembly Bill No. 44 of 2024) seeks to amend the Public Finance Management Act to provide for financial management in the transfer of functions under Article 187 of the Constitution. With the foregoing, this Bill is a key legislative instrument to enhance cooperation and efficiency between the two levels of Government—the national and county governments.

Clause 2 of the Bill seeks to amend the principal Act by inserting a new Part immediately after Section 183. This provides the definition of ‘county governments,’ ‘linked cooperation’, and ‘invest’. Clause 186A in this part, unless the context otherwise requires, a transfer agreement means the agreement on transfer or delegation of powers, functions, or competencies, as provided for under Section 26 of the Intergovernmental Relations Act. It speaks to the agreement on the transfer or delegation of power, functions, or competencies.

Clause 186B applies to the transfer of functions as provided for under Article 187 of the Constitution: the transfer of functions and powers between levels of Government, and Sections 24 to 26 of the Intergovernmental Relations Act. Section 24 transfers and delegates powers, functions and competencies. Section 25 deals with principles of transfer or delegation of powers, functions and competencies. Section 26 is on agreements on the transfer or delegation of powers, functions, or competencies. Members will agree that this is undoubtedly an essential aspect of devolution.

In Clause 186C, the amendment applies to financing transferred functions. It stipulates that transferred functions shall continue to be funded from previous sources as contained in the approved budget of the transferring level of Government. Clause (2) (a) and (b) applies where

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there is a need for additional financial resources for a transferred function. Part (3) outlines the process of approval and disbursement of additional financing resources in sub-section (2) in the transfer of agreement between the two levels of Government.

This protects against potential financing gaps during the transfer process and guarantees the continuous provision of services for citizens during such transition.

Again, Clause 186D addresses the cost of transferred functions. It stipulates that the cost of transferred functions shall be based on the costing framework provided in the national and county government budget manuals. It also provides that the cost of transferred functions, as determined under sub-section (1), shall form the basis for additional financial resources for the transferred functions.

Part (3) (a) and (b) addresses additional financial resources for transferred functions in the case of a county government and the national Government, clearly specifying Appropriations-in-Aid, additional allocation, and proceeds from loans and grants.

Part (4) provides that the allocation under sub-section (3) shall be included in the budget estimates of both the county and national Government and shall be submitted to Parliament and respective county assemblies for approval.

This provision aims to regulate the distribution of resources and guarantee that the receiving government level has sufficient resources to conduct the transferred function.

Clause 186E outlines the management of assets and liabilities. It stipulates that a transfer agreement between the two levels of Government shall include a provision for the acquisition, disposal, and transfer of assets and liabilities. It addresses the management of assets acquired and liabilities incurred in the duration of the transfer of function to either level of Government. It also outlines the process of transferring assets and liabilities upon the expiry of the transfer period. That shall be in accordance with the transfer agreement or as may be prescribed by the Cabinet Secretary in Regulations.

Clause 186F concerns cash flow projections for transferred functions, which shall be based on revenue projections from various sources of income. The projections shall be published and publicised within 15 days of the commencement of the transfer period. Sub-section (2) strengthens public finance management by guaranteeing responsible financial planning and implementation of transferred tasks.

Clause 186G provides for quarterly and annual financial and non-financial reporting. That means it obliges accounting officers in county governments, in case of transfer of a function from county government, and the national Government in case of transfer from county to national Government to submit quarterly and annual financial and non-financial reports to the Controller of Budget, the County Treasury, and the responsible county government entity. It also stipulates that the copies of these reports be submitted to the Senate and the National Assembly, the Auditor-General, and respective county assemblies.

Therefore, I urge Hon. Members to support this Bill, contribute, and debate effectively. I beg to move and ask the Leader of the Majority Party, Hon. Ichung'wah, to second.

The Temporary Speaker (Hon. Peter Kaluma): Leader of the Majority Party.

Hon. Kimani Ichung'wah (Kikuyu, UDA): Thank you, Hon. Temporary Speaker. I rise to second this Public Finance Management (Amendment) (No. 3) Bill (National Assembly Bill No. 44 of 2024).

As the title stipulates, the Bill principally amends the Public Finance Management Act to actualise the provisions of Article 187 of our Constitution. Just for the record, Article 187 of the Constitution deals with the transfer of functions between the two levels of Government—the national and county governments. Article 187(1) says that a function or power of government at one level may be transferred to another by agreement between the two levels if one of the functions or powers would be more effectively performed or exercised by the

receiving government. It is if the transfer of a function or power is not prohibited by the legislation under which it is to be performed.

That is to tell you that the drafters of our Constitution 2010 anticipated or envisaged situations where there is no prohibition by legislation that the two levels of Government may transfer functions. The drafters of our 2010 Constitution anticipated or envisaged that situations may arise where there is no prohibition by legislation that the national Government may find that a particular function that is given to it under the Fourth Schedule of our Constitution is better performed at the county level and may therefore seek to transfer that function. Conversely, also, a county government may find that a particular function conferred to them under the Fourth Schedule of our Constitution is better performed by the national Government. Therefore, we need a law or this amendment to actualise the provisions of this Article of the Constitution. Article 187(2) of the Constitution says that if a function or power is transferred from a government at one level to a government at the other level, arrangements shall be put in place to ensure that the resources necessary for the performance of the function or exercise of the power are transferred. Article 187(2)(b) says that constitutional responsibility for the performance of the function or exercise of the power shall remain with the government to which it is assigned by the Fourth Schedule. The Mover of the Motion, my very able Deputy Whip, said that we are actualising the resourcing of these transferred functions. In doing so, we are actualising Article 187(2)(a) of the Constitution that we shall have in place arrangements to ensure resources necessary for the performance of that function that is being transferred follow that function.

Our colleagues in the Senate are fond of saying that resources follow functions. That is what Senators keep telling us. In fact, even governors have, for the last 10 years, been saying that resources follow functions. Therefore, if we have devolved functions to county governments, resources must follow. We are now also, from the National Assembly today, telling them the same. A county government may decide by agreement to designate a certain function that belongs to the county government to the national Government. For instance, the county government of Kiambu, where I come from, may decide to designate the running of level one, two and three hospitals to the national Government because they feel they do not have the adequate capacity or that function will be better performed by the national Government. I encourage many county governments to consider ceding, for instance, Level 4 hospitals to the national Government. What we are now saying in this Bill is that if that situation arises by agreement, then the particular county government, as I gave the example of Kiambu County, if they had budgeted for resources for that particular function, then those resources must follow that function to wherever it is going and the budget as was approved.

I do not want to belabour what the Mover of the Motion has already said. We must have cash flow projections as provided for in Clauses 186F and 186E. All those speak to that particular issue. Therefore, this is a simple and easy Bill with only two clauses. I ask Hon. Members to support the Bill. There is another Bill with amendments to the Public Finance Management Act.

Without anticipating debate, I beg to second and ask members to support.

(Question proposed)

The Temporary Speaker (Hon. Peter Kaluma): Hon. (Dr) Wilberforce Oundo.

Hon. (Dr) Ojiambo Oundo (Funyula, ODM): Thank you, Hon. Temporary Speaker. I stand to support the Public Finance Management (Amendment) (No.3) Bill (National Assembly Bill No.3 of 2024). As I do so, it evokes the memory of Nairobi Metropolitan Services. It takes us back to the turncoat when the Governor signed the transfer instrument, but a few hours later, he said he had been intoxicated and did not know what he was signing. That

is why I must laud the Leader of the Majority Party for bringing the Bill that structures the engagement between the county and the national Government in whichever direction we look at it.

The drafters of the Constitution set out the mandate of each level of Government as clearly set out in Article 186 of the Constitution of Kenya, which is clearly stipulated in the Fourth Schedule. The running theme in the Constitution is that Kenya is one undivided nation, and the various levels of Government are purely for service delivery and administrative purposes. Consequently, none of the functions should ever be left unattended because there is a struggle or a tiff between the national Government and county government. The Bill has been presented pursuant to Article 187 of the Constitution, which contemplates that at one time or another, either of the levels of Government will be unable to undertake those functions or will find it more suitable and fit for either level to undertake them. The provisions provided for here provide adequate safeguards so that we do not have a situation that happened in Nairobi Metropolitan Services where there were no structures at all. There was no enabling legislation or law to support the transfer.

I sit in the Public Accounts Committee, and one of the biggest pending bills on account of the State House and the Office of the President literally comes out of this kind of arrangement, where the county government transferred some services or functions to the national Government but without a legal framework on how to transfer the liabilities and assets. That is why it is refreshing that Clause 186E of the Bill provides a framework for recording assets and liabilities and transferring them to the end of the transfer arrangement.

I know this contemplated the transfer agreement, but it would have been better if the period of the transfer was clearly stipulated in the law at any given time. If we have a strong presidency that can arm-twist, like what happened between the last regime and Nairobi City County, it means any transferred function will be done in perpetuity or for a more extended period than it is. Actually, it should be done so that there is capacity building during the transfer.

I would request, if time allows, that any transfer agreement, especially from the county to the national Government, should be for the purposes of capacity building to ensure the county government has developed adequate capacity and infrastructure to run those services more so, where the service is a devolved function as contemplated in the Fourth Schedule of the Constitution. Essentially, we must let the counties perform regardless of their failings and shortcomings. We must put in place mechanisms to allow them to operate. We could have also provided for some element of public participation such that before a transfer of a function occurs, there must be some semblance of public participation. Residents of a particular county should be asked if they agree that a county has failed, is unable or is lacking adequate capacity so that the function can be transferred to the national Government. It must be a consultative process. As it is now, it is going to be a unilateral process whereby the county, the Governor and the president can simply sit down and transfer a function. In the same way, since the National Assembly represents the people of Kenya and their interests, there must be a mechanism in this Bill to allow some approval process at the national level by the National Assembly to permit the national Government to transfer a function that is exclusive of the national Government to the county government. At any given time, everybody must carry their responsibility.

With the challenges the county governments are facing in the health sector and the education sector in Early Childhood Education (ECD), we can have a structured debate to find out what functions should be transferred. As the Leader of the Majority Party has indicated, we can, for instance, discuss if the Level 4 referral hospitals can be transferred to the national Government. There is a hospital in Kiambu County where an intern doctor committed suicide. In the same hospital, four months later, another intern nurse committed suicide. Does it mean professional standards are different? We do not hear of a medical doctor committing suicide in

the Moi Teaching and Referral Hospital; we do not hear of a medical doctor committing suicide at the Kenyatta National Hospital. Even if they do, it is not reported. These are challenges that we must address as a nation. We need to urge the county governments that failure is never too bad and that admitting failure is not a sign of weakness. Strong people admit that they do not have adequate capacity.

Hon. Temporary Speaker, with those few remarks, I support the Bill. Time permitting, I will propose a few amendments and I hope the Committee will listen to us to make a better Bill for posterity.

Thank you,

The Temporary Speaker (Hon. Peter Kaluma): Hon. Innocent Mugabe. He requested to speak on another matter. Hon. Caroli Omondi, do you want to speak to this Bill? Hon. Irene Mayaka will be the last one.

Hon. Irene Mayaka (Nominated, ODM): Thank you, Hon. Temporary Speaker. I support this Bill. My main reason is that I am a big fan of structured and seamless things. There have been a lot of situations between national and county governments that have gone on and on because of the transfer of functions. As the Mover of the Bill has clearly stated, it is proper when money follows functions. One of the reasons I support this Bill is because it gives us clear guidelines on the transfer of functions between national and county governments. It also shows us that service delivery will not be disrupted. Because of bureaucracies involved in the transfer of funds a gap is created. This Bill is going to fill that gap.

The other reason is that the costing framework will now be uniform, not only between national and county governments, but it will also be seamless and uniform across counties. We have had situations where different counties come up with their own mechanism of financial management. This Bill provides a specific framework. The other thing, from my experience as a member of the County Assembly, is that county assemblies grapple with temporary loans from banks when there are delays at the national government level. There is no specific structure between the county executive and the county assembly. This Bill will enable county assemblies to not grapple with financing their functions by borrowing additional funds from different financial institutions. That is taken care of. The other thing that I like about this Bill is that it provides a specific timeline of 15 days from the start to the finish of the process, which is very important. When we do not provide a specified timeline, it could be taken advantage of. Anyone who wants to disrupt the process or be mischievous can take advantage of it when there is no specified timeline.

I also take note of the public participation that the Committee conducted. I note that Isiolo, Mombasa, Kericho, and Taita Taveta counties supported this Bill. Residents of Mombasa County said they like the Bill because when money is available to counties, it is available to them because they have access to it. I also note support from the Westminster Consulting and Kenya Private Sector Alliance (KEPSA). In particular, they took note of the uniform and well-defined agreement being proposed in this Bill.

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

The Temporary Speaker (Hon. Peter Kaluma): Chairman, Departmental Committee on Finance and National Planning.

Hon. Kuria Kimani (Molo, UDA) Thank you, Hon. Temporary Speaker. The Public Finance Management (Amendment) Bill, sponsored by the Leader of the Majority Party in the House, was referred to our Committee. As Hon. Irene Mayaka has said, we conducted public participation in six counties: Isiolo, Siaya, Bungoma, Kericho and Mombasa counties. It was interesting how members of the public reacted, especially after we explained it to them. We are noticing something very interesting in the Kenyan population - a great interest in how this House makes laws, and a better understanding of how those laws affect them. This was also a good moment for us to do civic education to Kenyans. People now appreciate what we are

doing and for what reason. One of the amendments we recommend is the need for public participation in the transfer of functions. I confirm to my good friend, Hon. Wilberforce Oundo, that that is one of the recommendations the Committee made in the Report we tabled yesterday. The Committee recommends an amendment so that public participation becomes part and parcel of the transfer of functions. When counties feel that they need to transfer functions, it should not be a show of laziness where you want someone else to do your job.

We also took time to explain to Kenyans. One of the challenges we had to deal with was the trust deficit in expenditure between Kenyans and the Executive. I dare say that part of the trust deficit is due to lack of understanding of the different functions performed by the national and county governments. There is also the excuse of the transfer of the equitable share of revenue to counties. In one of the counties, Kenyans lamented that there was no medicine in hospitals or that a project had not been done. And they were saying they have been told the national Government *haijatuma pesa*. We had to call the Cabinet Secretary for the National Treasury to tell us the amounts sent to counties. We had to seek the Governor of the Central Bank to find out the balances held in the accounts of the county. In the account of the county, there was more than Ksh500 million. It is a fact that the disbursement of money to counties for July, August, September, October and, I hope by now, November has been done. Therefore, there should not be an excuse why counties should not deliver services to Kenyans. My appeal to this honourable House is to support this Bill and the amendments the Committee will propose, which were developed after conducting very elaborate and extensive public participation across the country.

With that, Hon. Temporary Speaker, I beg to support.

The Temporary Speaker (Hon. Peter Kaluma): Hon. Julius Melly.

Hon. Julius Melly (Tinderet, UDA): Thank you, Hon. Temporary Speaker. This Bill is very timely and important. It will ensure that accounting officers at the two levels of Government are accountable to the people. The Bill explicitly explains the relationship between a transferring entity at the national or county Government and the responsibilities conferred to the receiving entity. As the Budget and Appropriations Committee Chairman said, we have had cases where county government officers often complain that they cannot provide a service because it is not their function. That the service is not catered for in their level of Government.

This Bill seeks to emphasise what the transferred entity is supposed to do, the cash flow from the national Government or the county government to the receiving entity and, more importantly, the sources of revenue. It puts the officers and the institutions that are receiving the responsibility, for example, in agriculture and health sector... Several people at times do not have drugs and requisite facilities, yet the national Government has already transferred those services to the county governments. On that same note, this requirement, Leader of the Majority Party, is that the two entities transferring services are supposed to transfer and sign off that they have received that function and start providing the services from that particular time going forward.

The Bill clearly specifies that functions that have been transferred from the national or county Government, or vice versa, shall be audited immediately, and those documents shall be provided to the Office of the Auditor-General. The document should be tabled in the Senate and the National Assembly because these are the Houses representing the people of Kenya. Leader of the Majority Party, there is no better time we need this document than now.

Across the country, dissatisfaction is common among citizens. We do not have citizens of the county or national Government; we have citizens of the Republic of Kenya. This is the time that we need to put our foot down to ensure accountability across all government functions.

Lastly is the issue of assets and liabilities. At the start of devolution, many government assets and liabilities got lost, especially in what we used to call the county councils. Regarding

the assets owned by county councils and the national Government within the counties, there was no clear structure on how they were handed over and who took them over. The records, at some point, vanished. This Bill is trying to secure the assets of the Republic, both at the county and national levels. It is entrenching the Constitution by recognising that we have 48 governments — the national Government and 47 county governments.

I support this very timely Bill. Thank you.

The Temporary Speaker (Hon. Peter Kaluma): There being no more interest, the Mover may reply.

Hon. Robert Mbui, I am very sorry. The Mover, how long are you going to speak? You could donate half of your time to Hon. Mbui.

Hon. Kimani Ichung'wah (Kikuyu, UDA): I will reply in one minute.

The Temporary Speaker (Hon. Peter Kaluma): Two minutes would be limited. Could you leave at least five? Hon. Mbui wanted to talk.

(Hon. Robert Mbui spoke off the record)

Whether you agree or oppose, I take your contribution to the House very seriously. That is why I was seeking indulgence for you. You can do it in five minutes.

Hon. Robert Mbui (Kathiani, WDM): Thank you, Hon. Temporary Speaker, for the opportunity. I will be very brief. I also rise to support because, from 2010, when our new Constitution was promulgated, one of the most important things that came up was the devolution of powers and functions. Schedule Four is very clear about the functions that are at the national level and the ones that are devolved to the counties. Over the years, we have seen a lot of meddling, sometimes by the national Government on things being done by the counties.

In the last two Parliaments, we had issues in the health sector, for example, where the national Government would even procure equipment for the county governments without any plan or agreement whatsoever regarding the clinics that were bought and the medical equipment. It has been a very difficult time. This Bill will help us because it will help put order in how each level of Government does its things.

Article 187 of the Constitution identified that once we promulgate the Constitution, there will be times when we will need one level of Government to take over some roles and support the other.

This happens when one level of Government is more effective or can effectively carry out whatever procedure. Sometimes, it is also when the resources are available, and sometimes, it is when the timelines are not well thought out. This Bill is a game changer because it is going to allow us to be able to get rid of the situation that we saw in Nairobi, where somebody rushed and signed something and then later on, in the full glare of the media, said that they did not know what they were signing. This ensures that every time a situation where the two levels of Government come together and want to agree on who can do what for the other, there will be an agreement that everybody will participate in and be able to see.

This is a game-changer, and I strongly support it. Thank you.

The Temporary Speaker (Hon. Peter Kaluma): Mover.

Hon. Kimani Ichung'wah (Kikuyu, UDA): Thank you, Hon. Temporary Speaker. I beg to reply. Picking up from what Hon. Melly was saying, it is indeed true that there were issues with the transfer of assets and liabilities even at the time of the local government authorities. This Bill indeed addresses the concerns that Hon. Melly has mentioned.

Clause 186E deals with the management of assets and liabilities between the two levels of Government, including the list of assets and liabilities that would accompany a transfer agreement. A transfer agreement between the two levels of Government shall, in addition to the requirements under Section 26 of the Intergovernmental Relations Act, include a provision

for the acquisition, disposal and transfer of assets and liabilities. It even goes further to say that the process of transfer of assets and liabilities upon the expiry of the transfer period shall be in accordance with the transfer agreement. This, therefore, caters for the concerns that Hon. Melly has raised.

I also agree with the Hon. Robert Mbui. It is true that the impeached Governor of Nairobi once told us that he signed a document and did not know what he was signing. It is important to have this kind of law. I do not know whether it had something to do with the lack of law at that time or it is something that happens with those who get impeached. I also heard another one who was impeached saying he did not know anything to do with Adani, but then he went to a church and said he had told the President that Adani was not good. But when he was in office, he told us that he did not know anything about Adani and could not comment on Adani because it was beyond his purview. It is probably some sickness with impeached people or something you get infected with upon impeachment.

This law is a very important piece of legislation because it will ensure that any transfer of functions between the two levels of Government is superintended very well. Resources follow functions, and when the function is going back to the level of Government that may have been designated to the other level of Government if there are any assets and liabilities that went with it, then there is a process provided for within the transfer agreement.

With that, I beg to reply.

The Temporary Speaker (Hon. Peter Kaluma): The question to this particular Bill will be put in future for the convenience of the House.

(Putting of the Question deferred)

Next Order.

Second Reading

THE PUBLIC FINANCE MANAGEMENT (AMENDMENT) (NO. 4) BILL (National Assembly Bill No. 45 of 2024)

(Hon. Robert Mbui spoke off the record)

The Temporary Speaker (Hon. Peter Kaluma): Hon. Robert Mbui, approach the Speaker first.

Mover, proceed.

Hon. Kimani Ichung'wah (Kikuyu, UDA): Hon. Temporary Speaker, I beg to move that the Public Finance Management (Amendment) (No. 4) Bill (National Assembly Bill no. 45 of 2024) be now read a Second Time.

This is a very short Bill amending the Public Finance Management Act around the issues of our debt management. We amended the Public Finance Management Act about two years ago, setting the thresholds for our public debt.

Hon. Temporary Speaker, this Bill seeks to strengthen our public finance management framework by addressing a number of critical issues: compliance, accounting and governance. On accounting and governance, Clause 3 of the Bill provides for the amendment of Section 194 of the principal Act to provide a framework for the implementation of accrual accounting in Government and risk management by the Public Sector Accounting Standards Board (PSASB). This is meant to improve the accounting standards for better transparency in Government. We have been under the cash-based accounting system but are now moving to an accrual-based system. To do that, we need to create the legal framework which Clause 3 of the Bill seeks to do.

Clause 2 of the Bill outlines the effective dates for complying with the prescribed borrowing threshold. As I said earlier, the Bill seeks to strengthen compliance, accounting and governance in Government. I have already spoken about accounting. On compliance, Clause 2 of the Bill gives us the debt threshold I had alluded to earlier. We amended the Public Finance Management Act, which requires we amend it again in Section 50. Clause 2(a) of the Bill seeks to delete subsection 2(C) of the principal Act that we amended some time back. For the benefit of Members, Clause 2 of the Bill provides that the borrowing of the national Government referred to in subsection (2) shall not exceed 55 per cent of our Gross Domestic Product (GDP) in net present terms. Notwithstanding the provisions of subsection 2(a), the national Government may, in exceptional circumstances, exceed this threshold set under this subsection by not more than 5 per cent and shall come into force on the date that is five years from the date of the commencement of this Act.

We set our public debt threshold at 55 per cent, plus five or minus five, of our GDP in net present terms. It will be plus five because in minus five, you will still be within the 55 per cent threshold. Therefore, it says that under exceptional circumstances, then your debt to GDP ratios can rise from 55 to about 60 per cent. But at the time we enacted this debt anchor threshold, we had already passed it. Therefore, we needed a transition period under which the national Government or National Treasury is obligated to ensure that we sustain our debt levels within that debt anchor ratio of 55 to a maximum of 60 per cent of our GDP under very exceptional circumstances. That is what we seek to do by complying with this particular provision, to ensure that we set a period that will not exceed five years. From the time this Act came into being about two years ago, within a period of five years, which is by the end of 2027, the National Treasury must ensure that our national debt levels do not go beyond 55 per cent of GDP. Therefore, it is important that we amend this provision. If we leave it like that, it is possible that in the year 2037 or 2042, when Hon. Robert Mbui will run for presidency, he will tell us...

(Hon. Robert Mbui spoke off the record)

He will run for the presidency in 2032. Sorry, I thought you wanted to do it in 2042. He told me he would do it in 2032, which is very encouraging. It means that his Party Leader will not be a President by then to run for the position. That is on a light note.

(Laughter)

If we do not put that debt ceiling in terms of timelines, then it is possible that bureaucrats in Government may push it, and it remains above 55 per cent of the GDP all the way to 2050. As a result, the generations after us will say they are still within the debt ceiling because the timeline was not set. That is why we need to enforce compliance and force the National Treasury to make sure that within this period of five years, they move that compliance level to what is set out in the Bill.

Hon. Temporary Speaker, as I said, this is a very short Bill with only three clauses. Therefore, I have nothing more important to add. I beg to move and request the Chairman of the Departmental Committee on Finance and National Planning, Hon. Kimani Kuria, the one and only Member for Molo, to second.

The Temporary Speaker (Hon. Peter Kaluma): The Member for Molo.

Hon. Kuria Kimani (Molo, UDA): I thank you, Hon. Temporary Speaker. I rise to second this Bill. This is one of the Bills that was referred to the Departmental Committee on Finance and National Planning.

We conducted public participation across the six counties and received several memoranda. Kenyans told us they were concerned that this Bill would give the Executive a blank cheque for borrowing. For sure, from the initial drafting of the Bill, that was what would have happened. The Bill says that five years from the enactment of this Bill, the Cabinet Secretary will be required to adhere to debt levels that do not exceed 55 per cent, plus or minus 5, of GDP in net present terms and report to this House. A further clause states that it will come into effect after five years. Essentially, it means we would have given the National Treasury 10 years of the time that they would need to come and report to this House or adhere to a debt level that is 55 per cent of GDP in present value terms. Therefore, we will propose amendments to this Bill so that we do not give the National Treasury a blank cheque on this borrowing. Kenyans said they are concerned about the borrowing that can cripple the economy and increase an unnecessary burden to future generations. They want our debt to be checked.

In addition to the already existing debt, pending bills should be accounted for as debt. We have a cash crunch in the country, and many Kenyans do not have money in their pockets. This is because some of the developments we enjoy, including the schools, roads and hospitals built, are financed by private Kenyans' money—the contractors who have not been paid. The verified pending bills now are in excess of Ksh500 billion, and there are others in counties. If this money is released back into the economy, we will see a better flow of money, and Kenyans will have money in their pockets. People might say that this is not true because the big boys who make contracts with the Government are the ones who will be paid. But remember, the contractors have employees who have not been paid. They have not paid rent. These employees also support their families. When this money is not paid, we then get that cash crunch in the economy.

Let me speak a little about the change. This honourable House passed the debt ceiling from nominal terms, where the debt ceiling was moved from Ksh6 trillion to Ksh11 trillion. Three years ago, this honourable House changed that to not only nominal terms, but also that debt to be a percentage of GDP in present value terms. This means that when calculating our loan liabilities, you will have to discount that for inflation. That discounting is very important. It shows that for you to adhere to the 55 per cent threshold, the borrowed money must come to the economy. We are not only measuring debt but also its effect on GDP. So, where that debt does not lead to GDP growth, you will consequently see a rise in the percentage, which will be against this law.

This Bill also proposes changing our accounting system from accrual accounting to cash accrual. But many people are asking what cash accruals are. A very easy example of cash accounting is recording your expenses and liabilities after paying. This transaction is cash-based. This method is used by small institutions or businesses because they are purely cash businesses. Someone who operates a kiosk in Molo on a cash basis will have the supplier bring the stock, pay in cash, and record that as purchases. People will buy and pay in cash, which is recorded as sales. Therefore, the person can easily calculate their profit, sales and purchases. This is cash accounting.

Accrual accounting is done by a bigger entity that gets supplies on credit and sometimes sells on credit. Accrual accounting will recognise the goods supplied even before they are paid for. It will also account for when those items are sold. Therefore, if a big business cannot operate under cash accounting, why is our country operating on cash accounting? That is why we have pending bills. This is because we rely on the Exchequer sent to the Government entity which has procured. At the end of the year, that money has to be budgeted and accounted for again. That is why sometimes we have no record of how many pending bills we have.

Accrual accounting also takes note of all assets and liabilities. This is something that is not done in cash accounting. If you ask how many motor vehicles, land or assets in terms of buildings the Government of Kenya owns, this information is not available because of the cash

accounting system we use. We are hoping that once we move from cash to accrual accounting, we will see more accountability and be able to verify our pending bills. Also, we need to know how much we own as a country and how many assets exist. This is one of the best practices globally.

I urge this honourable House to support this Bill. I assure you that the proposed amendments do not give a blank cheque to the Executive. In fact, it is putting them to account that the debt they borrow must be used to grow our GDP. We are also providing a clear timeline for when they should come to this House, report, and show proof that they have adhered to 55 per cent of debt as a percentage of GDP in present value terms.

The migration from cash to accrual accounting is something the accounting profession has discussed over the years. If you go to some public schools, for example, a day secondary school in my constituency had pending bills of Ksh30 million. We wondered why they had such a huge outstanding debt. When we called the suppliers, someone said they supplied milk worth Ksh5 million. Yet, the only people who consume milk in the school are the principal and teachers. It is not possible for a school that does not give its students milk to incur such a bill. When we asked for receipts, they did not have them because our schools use a cash accounting system.

We urge all Government entities... This matter will have a lot of resistance from accounting officers because they do not want to change the system. This will allow the National Treasury or anyone in this country to check the financial health of a particular institution. In the same way, if you want to buy a business, you go to a bank and can clearly tell the strength of the assets, debts, liabilities and profitability.

In as much as there is no profitability in offering public service, at the very least, we need to have a clear view of the assets and liabilities that our Government has. Migration from cash to accrual accounting has globally demonstrated it works.

Thank you, Hon. Temporary Speaker. With that, I beg to second.

(Question proposed)

The Temporary Speaker (Hon. Peter Kaluma): Hon. Robert Mbui.

Hon. Robert Mbui (Kathiani, WDM): Thank you, Hon. Temporary Speaker. I rise to also add my voice to this amendment to the Public Finance Management Act.

First, I want to agree with and support the amendment of Section 194 of the Principle Act, which is Clause 3 of this Bill. This section basically talks about moving from cash accounting to accrual accounting. I have attended a few functions with the Institute of Certified Public Accountants of Kenya (ICPAK), and that has been their proposal.

If the accountants of Kenya, among them our chief accountant, the Leader of the Majority Party, think it is a good system, it may be a good idea to move our country towards that direction. But I have serious questions about the issue of the second amendment, which has all to do with the matter of borrowing. Previously, we used to have a system where there was a relation between our debt and GDP. It later changed, and we moved to a fixed figure. I remember we talked about Ksh7 trillion at some point; it went to Ksh9 trillion, then we went back again and said we were going to deal with the issue of debt to GDP ratio, and I think it was set at 55 per cent. But I have looked at the way the law is, and I am comparing it with the amendment that we have, and I am asking myself some serious questions.

If you look at what Clause 50 says, and that is on the obligations and restrictions on national Government guaranteeing and borrowing, (2C) says that the Cabinet Secretary shall, not later than five years from the date of coming into force of subsections (2A) and (2B) take measures to ensure that borrowing by the national Government complies with the threshold set out in subsection (2A). Now, the proposed amendment reads similarly that the Cabinet

Secretary shall, not later than five years from the date of coming into force of this Act, take measures to ensure that borrowing by the National Government complies with the threshold prescribed in sub-section (2A). For me, what I am seeing is the starting point, because the five years is already there in law. At what point do we start measuring the five years? Apparently, if we pass this Bill, my understanding is that we will start counting the five years from now. That will take us to five years from today. But if we use the previous law, it is five years from the date we passed it. We are actually pushing forward the Government's borrowing, within the period in which they would be following the law. Because we passed the law, they are not able to do it immediately. So, it takes a while before the Government can build the GDP and ensure that the borrowing we have already done is within the law. Therefore, that period started when we passed the previous law. But now, if we make this amendment because it is very similar, we will begin counting the time from now on. That means we are allowing another five years from today. I do not think it is the right thing to do. We should put pressure on the National Treasury to try to do it within the remaining period so that they can balance. Otherwise, we have to come back to the House in order to put another fixed figure in place to push our debt ceiling to Ksh13 trillion. We are moving from debt to GDP, and we want a fixed figure again. Let us sort it out. Let the National Treasury sort it out based on the law that we have already passed. Let us not give them an opportunity to increase or extend the time.

With that, Hon. Temporary Speaker, I submit.

The Temporary Speaker (Hon. Peter Kaluma): Member of Parliament for Tetu.

Hon. Geoffrey Wandeto (Tetu, UDA): Thank you, Hon. Temporary Speaker.

I also rise to support this Bill, especially the amendment regarding accounting principles. We all know that globally, we use the accrual system of accounting. But maybe what the Chairperson and the Mover of the Motion need to tell this House is how a shift from cash to an accrual system will make the Government's books look. Is it going to, for example, exaggerate our debt? Is it going to exaggerate our assets or diminish them? I would have expected that for such a substantial Bill, some scenario analysis would have been included.

However, I support my colleague, Hon. Mbui, on the issue of the debt ceilings because that matter has kept shifting from one regime to another, and from one Parliament to another. As a country, we need to determine how we want to measure our debt once and for all. It looks like many of those moves are for the convenience of the Government or regime of the day. Sometimes we want a debt ceiling of Ksh10 trillion or a percentage of the GDP. Now we are shifting to the number of years that we are supposed to pay back the debt. That lack of clarity makes economic planning very difficult. If we have already passed the 55 per cent debt to GDP ratio that is already in law, it may be okay for us to proceed with that.

Remember, the single biggest problem ailing this country is public debt. We are spending up to 68 per cent of all the revenue that we collect on servicing debt. We all know that domestic borrowing is choking small businesses from being able to borrow from banks and operate in the economy. Anything that we can do to ensure that our debt is sustainable and that it is not taking the "oil" that fuels the economy is very important. Anything that we can do to ensure that small businesses are not put out of business because they cannot compete with the Government in domestic borrowing is also very important.

I also expected that as we discussed the debt ceiling, we would also get some clarity on the difference between foreign debt and local debt. We have just lumped everything together. We have all been saying that we need to move progressively towards more foreign debt, so that we stop crowding out small businesses and individuals from the local debt market, which limits consumption in the country and slows down the economy.

I would like to seek clarity on those points from the Mover of the Bill. However, there is too much shift in policy. While I support the passing of the accrual system, I do not support the changes in terms of the five-year wait for the operationalisation of the new debt ceiling.

Thank you, Hon. Temporary Speaker.

The Temporary Speaker (Hon. Peter Kaluma): Hon. Wilberforce Oundo.

Hon. (Dr) Ojiambo Oundo (Funyula, ODM): Thank you, Hon. Temporary Speaker. I support the Bill in principle. Allow me to first of all delve into Clause 3, which is an administrative reporting matter that is required under the Constitution and the parent Act. Let me also share my experience as a Member of the Public Accounts Committee, where that matter is routinely featured in terms of how to account and prepare reports of accounts.

I am not an accountant, but I was once a reporting officer or an officer of a company. At the end of every financial year, companies must prepare books of accounts. While in the private sector you will see a balance sheet with assets and liabilities clearly enumerated together with the loss and income statement, that has not been there in the Government. This is to the extent that pending bills could have been cured through an accrual system. As the Chairperson said, the Government does not know its assets in entirety with the current system. No single accounting document can tell you all the assets of the Government. That is why it is important that we shift to an accrual basis, so that we are able to tell the assets and liabilities of the Government, for purposes of assessing the net worth of the Government.

[The Temporary Speaker (Hon. Peter Kaluma) left the Chair]

[The Temporary Speaker (Hon. Farah Maalim) took the Chair]

My only concern is that the commencement date of the accruals accounting system has been shifting all along. This leaves me wondering: does it really mean that the Government, or the Executive at both the national and county levels, lack the technical capacity to swiftly transition to the accrual basis? Many times, accounting officers come to you and say that they do not have a fixed asset register because they do not have money to prepare one. It is important that this process is expedited so that we can move to the accrual system.

As I conclude on the issue of Clause 2, the parent Act states that the Cabinet Secretary shall, not later than five years from the date of commencement of sub-sections (2A) and (2B), presentably state the debt limit, taking measures to ensure that borrowing by the national Government complies with the threshold prescribed in sub-section (2A). The new amendment shifts and proposes that the provisions of sub-sections (2A) and (2B) shall come into force on the date that is five years from the date of commencement of this Act. In principle, this Bill shifts the date by which we have to comply with the provisions (2A) and (2B) to a date after five years from the date this Bill is assented to or comes into force. Therefore, it gives the current or the next Government the latitude to play around and probably not adhere to the regulations.

A more important issue that needs to be addressed as a nation is the matter of pending bills. It is extremely unfair to insinuate that pending bills are not debt. Article 214 states that for the purposes of this Article, "the public debt" means all financial obligations attendant to loans raised or guaranteed and securities issued or guaranteed by the national Government. I urge the national Government to capitalise on pending bills and issue guarantees so that loans covering the debts of the national Government can be adequately and correctly reported. As it stands, we are essentially understating the loans and debts of the national Government. This might not even include all the historical pending bills, let alone the current ones. It could be almost 70 per cent or close to 80 per cent of the national GDP. It is important that we deal with this issue and determine how to proceed.

I hope the Committee listened to the people of Kenya and that amendments will be made to address the concerns we have raised here. We understand the need to move these things in good time so as to unlock very many things that are stuck.

With those few remarks, I support.

The Temporary Speaker (Hon. Farah Maalim): It seems no other Member is interested in contributing to this. The lady there is interested in contributing. Proceed.

Hon. Haika Mizighi (Taita Taveta County, UDA): Thank you, Hon. Temporary Speaker. From the outset, I appreciate you for giving me this opportunity to contribute. There is nothing as important as transparency in governance. The Public Finance Management (Amendment) Bill seeks to do exactly that by strengthening the Public Finance Management framework. Most of the issues addressed in this Bill, such as compliance, accounting, and governance, work towards strengthening governance by ensuring that every detail and work done is well-managed. Since it is time for the Mover to reply, I support this Bill.

The Temporary Speaker (Hon. Farah Maalim): Fair enough. My screen does not show anybody else who has an interest. I now call upon the Mover to reply.

Hon. Kimani Ichung'wah (Kikuyu, UDA): Thank you, Hon. Temporary Speaker. I rise to reply. Allow me to appreciate all the contributions made. To an extent, I agree with Hon. Oundo on the question of pending bills. It is important that we settle all our pending bills. Hon. Oundo knows that under the Public Finance Management Act, pending bills constitute the first charge to the Exchequer. Therefore, that is the only point of variance in using pending bills as part of our public debt. They are not part of public debt, they are by law supposed to be the first charge to the Exchequer.

With accrual accounting, we also cure some problems with pending bills. When people have not been paid at the end of every financial year, debts have automatically become pending bills. With accrual accounting now, we will sort out many of those issues in a big way.

Secondly, I engaged with the Deputy Leader of the Minority Party on provisions around the amendment of Section 50 of the Bill. You will see differences if you carefully read what is in Clause 50(2C) versus what was in Section 50(2C) of the principal Act. The principal Act says that the Cabinet Secretary shall, not later than five years from the date of coming into force of subsections (2A) and (2C) that set the threshold of 55 plus 5 per cent, take measures to ensure that borrowing by the national government complies with the threshold prescribed in subsection 2A. That meant the Cabinet Secretary had five years to ensure compliance. As we speak, we are in breach of a law that we created. This amendment came from the advice of the Attorney-General that we are actually in breach of a law that we set.

That is why it is now reworded to say that the Cabinet Secretary shall, not later than five years from the date of coming into force of this Act, take measures to ensure that national government borrowing complies with the threshold prescribed in subsection 2A. It is just to create room. The country will not be considered to be in breach of the law within that period of five years. We will have a five-year period within which we must correct what is breached. As I said, we were already in breach as of the time we enacted this amendment. That breach has continued. That is why the Attorney-General advised that we reword that section to comply with the law.

With that, thank you to all the Members who have contributed. I beg to reply. Thank you.

The Temporary Speaker (Hon. Farah Maalim): Hon. Members, the Chair directs that this Question be put at a convenient date in the future.

(Putting of the Question deferred)

I now call on the next Order.

Second Reading

THE PUBLIC PROCUREMENT AND ASSET DISPOSAL (AMENDMENT) BILL
(National Assembly Bill No. 48 of 2024)

The Temporary Speaker (Hon. Farah Maalim): Chairperson of the Departmental Committee on Finance and National Planning.

Hon. Kuria Kimani (Molo, UDA): I rise to move that the Public Procurement and Asset Disposal (Amendment) Bill of 2024 be now read a Second Time.

The Bill embodies our commitment to fostering economic inclusivity, promoting local enterprises, and ensuring that public procurement serves as a strategic tool for national development. By introducing clarity to address inefficiencies and reinforcing accountability, this amendment Bill aligns with best practices globally while tailoring solutions to the unique needs of our nation. Public procurement accounts for a significant portion of our GDP. As articulated by economists such as Keynesians, government spending is a vital tool in stimulating economic activity. By channelling resources through fair, transparent and equitable procurement systems, this Bill will not only reduce market inefficiencies but also be a catalyst for the economic growth of our great Republic.

Clauses 4 and 10 reflect on the deliberate effort to integrate local content policies. That is a cornerstone of industrial development in many emerging economies. Michael Porter, on competitive advantage, tells us that this will foster local industries, enhance value addition, build competitive industries and strengthen the domestic economy.

Prioritising local goods and services in procurement is not merely patriotic, but economically prudent. The provisions of Clause 11 and related clauses are to reserve specific procurement thresholds for local firms. This is a recognition of the structural challenges that are faced by Kenyan contractors. Historically, Kenyan contractors have been side-lined in favour of foreign firms, even for contracts well within the capacity of our local contractors. By reserving contracts that are Ksh1 billion or less for local firms and ensuring joint ventures for larger contracts, we aim to create a level playing field. This approach is consistent with the principle of comparative advantage that ensures domestic firms build expertise in areas where they are best positioned.

Moreover, incentivising joint ventures with a monthly 30 per cent local participation ensures technology transfer and capacity building. This Bill expressly says that contracts that are Ksh1 billion and below shall be reserved to local contractors, unless there is no availability of expertise or technology in Kenya, which the Bill envisioned they would not. For contracts that are above Ksh1 billion, we are making it a requirement that they must enter into a joint venture with a Kenyan firm and get 30 per cent of that venture be owned by Kenya. We have outlined that there must be technology transfer where we do not have. This is because we cannot continue to have the hard-earned resources of this country benefiting people from other countries. We should make sure that the resources of this country, through proper public procurement, remain here to ensure economic growth.

This Bill also seeks to foster transparency and accountability. Transparency is a linchpin of good governance as it is outlined in best practices, such as the Open Contracting Data Standards (OCDs). Public Procurement Systems must prioritise openness and accessibility to curb corruption and inefficiency. By requiring proper documentation and public disclosures, this Bill will ensure that there is trust in the procurement process, which is very critical for economic and political stability.

Clause 13, which expounds on the clarification of tenders, is a practical measure to eliminate ambiguities that often lead to disputes or unfair practices. Clause 22 underscores the importance of compliance by accounting officers emphasising their roles as custodians of public goods. This Bill restores the responsibility of procurement, not just on the accounting officer, but also on the head of the procurement in that entity. This is because sometimes when

mistakes happen, the liability falls on the accounting officer whereas the procurement has been done by the head of procurement.

Any impropriety in a tender will impose the criminality to the beneficiary of that tender, so that the beneficiary, the accounting officer and the officer who breached the law, all become accountable, since these are the custodians of our public funds.

On matters delayed payments, Clause 30 of the Bill seeks to address that chronic issue. This is a problem that has perpetuated economic stagnation among lower contractors. It is disheartening to see businesses being auctioned every Thursday. And when you look at the kind of businesses being auctioned, it is people with excavators and tippers. By this you can tell the kind of businesses these people do. Delayed payments not only cripple businesses, but also public trust in government systems. Therefore, ensuring that there is timely payment, which is defined here as payment within the quarter, will inject liquidity into the economy and foster a more vibrant entrepreneurial ecosystem. This will align with the liquidity preference which underlines the importance of cash flow for sustaining economic activity. Efficient payment systems are not merely administrative reforms; they are critical economic interventions.

This Bill also seeks to expand opportunities for citizen contractors. As I have explained, the proposal to increase maximum contract amount for citizen contractors from Ksh500 million, as currently provided in the law, to Ksh1 billion, is a very significant milestone. This adjustment also reflects an acknowledgement of the evolving capacity of local firms and their readiness to undertake larger projects that are of benefit to this Republic. Therefore, by aligning procurement laws with economic realities, we are going to empower local contractors to scale up their operations, create jobs and contribute meaningfully to national development.

The Bill also seeks to ensure that public procurement becomes a tool for inclusive growth. The introduction of penalties for individuals who fraudulently register companies on behalf of foreigners is a bold step towards eliminating anti-competitive practices. Monopolies and unfair competition undermine the principles of market economics, as articulated by Adam Smith, if you are a student of economics like myself, in the book *Wealth of Nations*. This Bill therefore seeks to promote healthy competition for the benefit of all stakeholders. What we have seen is that international companies come to Kenya and register as local contractors. Chinese contractors will come, pick ID cards of some young people, register as local contractors and get to benefit from contracts that should be given to the young people. There are cases where matters have been taken to court and the directors of the companies have no knowledge whatsoever about the running of the companies. This means it is somebody else using their identity to take advantage of the procurement process and benefit. This Bill will prohibit that.

This Bill also provides for technology advancement and skills transfer. Clauses 4 and 20 emphasise technology and skills transfer, which is forward-looking. By leveraging foreign contracts to build local capacity, we will ensure that Kenya reaps both immediate and long-term benefits from international collaborations. This policy will align with the principles of endogenous growth theory, which underscores the role of innovation and knowledge in driving sustainable development.

In conclusion, this Bill is more than an amendment. It is a statement of intent. It aligns our procurement laws with evolving economies, technological and governance needs, ensuring that public procurement supports our national development goals. By fostering transparency, building local capacity and addressing inefficiencies, we will position Kenya as a model of economic resilience and inclusivity.

Hon. Temporary Speaker, I thank members of the Departmental Committee of Finance and National Planning. This is a Private Member's Bill. I have been working on it for a few years now, since the last Parliament. I was able to convince the Committee to adopt it as a

Committee Bill, so that we can fast-track it. I really hope that this honourable House will consider it to make sure that we protect local contractors, grow our economy, build our capacity and ensure technology transfer. There is no reason why things like excise stamps used by KRA on bottles are supplied by a multinational. The service comes to us but all the revenue goes back to that particular country. Once we work on this Bill together, we are going to make Kenya a model of economic resilience and inclusivity.

With that, I beg to move and request the Leader of the Majority Party to second. I thank you.

The Temporary Speaker (Hon. Farah Maalim): The Leader of the Majority Party.

Hon. Kimani Ichung'wah (Kikuyu, UDA): Thank you, Hon. Temporary Speaker. I beg to second this Bill. Since the Chairman of the Committee has articulated its provisions and the real intent, allow me to thank the Committee for having adopted this Bill as a Committee Bill. It indeed addresses very critical issues in our economy. Principally, it is creating or prescribing a threshold of procurements which shall – the word “shall” has been famously used as mandatory – be awarded to local firms in order to promote the growth of local enterprises and local industry.

If you look at Clause 21 of this Bill, it seeks to amend Section 149 of the principal Act, the Public Procurement and Disposal Act, 2015 to task the Public Procurement Authority, referred to as “authority” to ensure that priority is given to citizens in subcontracting of tenders. You know the problems the local contractors and entrepreneurs have found themselves in.

When the President delivered his State of the Nation Address to this House and to the nation last week, he directed that within the first quarter of next year, e-procurement must become a reality. I was very encouraged. We must deal with the elephant in the room, which is corruption. We keep talking about it. We have forever talked about corruption. Children go to school, grow up and become old and still find people talking about corruption. They also start talking about it themselves and they become corrupt. That is what bedevils our country. It is time we stopped talking about corruption and acted on it. I must commend what the President directed last week that e-procurement should become a reality and not an aspiration. That is the way to go. We must ensure that we no longer just speak about corruption but we are doing something to deal with it.

Digitisation and e-procurement will cure in a big way all the issues we have around corruption in the procurement space. Corruption always begins at the procurement level in any organisation. In the process, many of our contractors and entrepreneurs lose opportunities to grow as entrepreneurs. They also lose opportunities to be awarded Government contracts and tenders at the national and county levels and even in State corporations because those with financial muscle come from outside the country and grease the hands of procurement officers in various entities. Therefore, it is important that we have in law a certain threshold of procurement that can never go to other people other than our local entrepreneurs. We have very many people who have the capacity but they never get an opportunity.

I had particularly mentioned Clause 21 because you find situations where there is a huge tender worth hundreds of billions of shillings and the main contractor who comes from outside the country comes with subcontractors from his country. That is the case in donor-funded projects...

(A whistle was heard)

I was wondering who is whistling. But it has gone quiet.

As I had stated, that happens, especially with donor-funded projects. You will find, for example, a donor who is financing the construction of a huge highway, maybe from Nairobi Central Business District (CBD) to Moyale insisting that the contractor must be from his

country. However, in between, you may find there is a contract for bush clearing or doing road earthworks and the contractor still brings people to do the bush clearing by subcontracting other companies from his country. That will be a thing of the past with the enactment of this Bill. If there will be work to be subcontracted at certain levels, it will not be subcontracted to people who are not local entrepreneurs. That is the only way to ensure that there is transfer of skills.

The Bill also speaks to transfer of skills and technology. That will ensure that if there are specialised jobs... We have just come from the era of Adani. If Adani, for instance, has specialisation in construction, running and management of airports, we need to have local entrepreneurs protected by law. This is to ensure that if it is the construction of aprons, there is transfer of technology and skills in the construction so that years after our generation, our children will not go out to look for another Adani or other foreigners to come and build their airport. They will have skills.

The tragedy that befell this country is the construction of the Standard Gauge Railway (SGR). I remember, Hon. Temporary Speaker, because I was here as a Member of the Public Investments Committee. Part of the things that we insisted on to be done in the reports that we tabled before this House was to ensure that subcontracts were being given to local entrepreneurs but because there was no law — it was just a recommendation of a parliamentary committee — it was never done. Today, if we want to extend the railway from where it ends, some sections call it railway to nowhere, in a bush somewhere near Naivasha... If we are to extend that railway today, as the intent is to Malaba, we have no local contractors with the expertise and the technology in the construction of rail. Ten years ago, if we had insisted, this law would be there. If we had also insisted that local entrepreneurs be subcontracted, we would be having people today with the technology and the skills in the construction of rail and local contractors would have benefited. I hope that by the time we get a new Public Private Partnership (PPP) to construct the Jomo Kenyatta International Airport (JKIA), this law will be in place. By the time we are building a new SGR, signing a contract to transmit power, this law will be in place and whichever other partners come in with skills, there is a process through which we can transfer skills, transfer knowledge, empower our local contractors and entrepreneurs.

Therefore, I support this Bill. I do not want to say much so as to allow others the opportunity to speak because the Mover spoke in great detail. I want to thank the Committee for having considered this Bill and seen the need to have a Bill that protects our local entrepreneurs. It ensures that we are not giving all Government contracts and tenders to outsiders, but we are also encouraging our own people and our entrepreneurs and industry to grow by giving them jobs in Government. The greatest spender of resources is Government. For enterprises and industries to grow in this country, it must be grown by Government in spending. If we are to manage our foreign exchange reserves and foreign exchange rate, we have to ensure that we stop what has been going on, where some contracts are given to foreigners and the people financing them insist on paying them outside this country and we end up expatriating a lot of our money.

We need to have laws that make sure that many of these contracts are done by locals because that money will stay in this country. They will employ our local people. Look at the expressway that was built, even handsmen came from foreign countries; work that could be done by Kenyans. If we had transferred the necessary skills and technology to build expressways, like the ones Kenyans refer to as "*barabara ya ghorofa*," and empowered our local contractors with this expertise, they would be able to employ more local people. All the money they make would be left in this country to grow our economy. I thank the Chair and the Committee on Finance and National Planning for bringing this Bill.

I beg to second.

The Temporary Speaker (Hon. Farah Maalim): Hon. Esther Passaris, are you still interested to contribute because you are at the top of the requests list?

Hon. Esther Passaris (Nairobi City County, ODM): Thank you, Hon. Temporary Speaker, for giving me the opportunity to contribute. I wanted to speak to the Public Finance Management (Amendment) Bill which has been concluded. I commend the Chairperson of the Departmental Committee on Finance and National Planning. If we want to deal with corruption, it is important to streamline how we procure. This means we need the right legislation in place. With the kind of corruption we have and the existing pending bills, it is obvious that there is a problem and gap in the law.

I commend both Leader of the Majority Party and the Departmental Committee on Finance and National Planning for looking at a holistic view on how the Government manages its expenses. It is really sad to note that today we cannot tell, from one government to the next one, how much we owe Kenyans out there. It is such a shame that pending bills continue to grow. Kenyans are languishing in poverty. They borrow money but they are unable to sustain their businesses because we are not paying them in due time. When I look at both of them in totality, they are tied because it starts with procurement and then it goes to payments. If all procurements, supplies and invoices will be captured in real time, then this hanky-panky that happens in all our government offices— where you have to cough something before you are paid— will come to an end. The systems will stop a payment for somebody today who has induced so that he gets paid, and ensure that the one who is justified is paid.

This will also be crucial for us to know our exposure, in terms of our domestic debt. We know our foreign debt, but our local debt is in millions. Once these Bills are passed and streamlined, I believe we will have prudent procurement processes. I know that they will be fought. I really pray that if they will be fought, the Departmental Committee on Finance and National Planning which normally does its work thoroughly, will defend them. We need systems that work. We need to make sure that procurement protects the local investor. We need to make sure that persons with disability are protected. We have said that 30 per cent of procurement should go to women. We need to make sure that we have a holistic way of looking at all the processes so that everyone in the procurement is covered. We do not want anyone exploiting persons with disability, the youth and women. We want everyone to have their fair quota.

When these systems are put in place, they will enable most of these young budding entrepreneurs to get government funding through financial institutions because the government Local Purchase Order (LPO) will have some value. Today, a number of banks are not willing to finance government procurements because there is no set system of payment. They have seen so many pending bills. The business people do not have money, but they have been financed by financial institutions. It has a ripple effect that can make our economy grind to a halt. When we have these stringent laws and payment policies in place, we will ensure that nobody who has supplied to the Government has a delay in getting the money. Nobody who has LPO from the county governments or National government will have a delay in getting the money. We need to protect Kenyans who are doing business with the Government.

I stand to support the amendments. I thank the Committee and the Leader of Majority Party for coming up with them so that we can strengthen our financial management laws. Thank you.

The Temporary Speaker (Hon. Farah Maalim): Hon. Melly, Member for Tinderet.

Hon. Julius Melly (Tinderet, UDA): Thank you, Hon. Temporary Speaker. I want to thank the Chairman of the Departmental Committee on Finance and National Planning for bringing this important Bill. It will go a long way in promoting national development, transparency, competitiveness and more importantly, allow local contractors to really thrive.

As the Leader of the Majority Party said, local contractors whose economic muscle is a bit lower than international contractors are muzzled every time international contractors are awarded contracts. So, this Bill is very important. Clause 4 of the Bill seeks to amend Section 9 of the Act so as to ensure that the authority monitors and evaluates technology, knowledge, and skills transfer programmes.

Every time an entity is building a road, airport or any infrastructure in this country, the State Department of Vocational and Technical Training is supposed to liaise with the contractor so that the skilled men, local artisans, and engineers can appropriately fit in the contractual framework of foreign contractor. This will ensure that any foreign contractor or investor taps local skills, therefore, providing employment to the young men of this nation.

Clause 5 of the Bill seeks to amend Section 10 of the Act in order to include a representative of the Law Society of Kenya (LSK) as a member of the board. Many cases arise when the local procurement procedures are not adhered to. Having a representative of LSK in the board will be good for oversight. Clause 8 of the Bill seeks to repeal Section 40 of the Act in order to enable investigations to proceed despite the fact that issues...

Clause 25 of the Bill seeks to amend Section 175 of the Act in order to align the provisions of the Act to the Court of Appeal (Organisation and Administration) Act. Many court cases take too long before ruling is done. This will reduce litigation against contractual activities because it costs the country a lot of money. Court cases cause delay of construction work and loss of money. At times, contractors leave their property on site and this attracts interest.

Regarding local contractors, this Bill will ensure that any contract less than Ksh1 billion will be awarded to local contractors so that they are not competed out of the market by international contractors. As we speak, the Bill recognises that local contractors can bid up to Ksh500 million. Due to competition from international contractors, they have given leg room to bid for tenders up to Ksh1 billion so as to promote local business.

The issue of e-procurement is very important in our country. It will promote transparency and ensure every public procurement is on the portal. The procedures will be transparent all the way from bidding to the award level. This will give contractors confidence in Government procurement procedures because at the moment it is low. The contractors who bid always think that a certain company is being favoured by the awarding institution.

This Bill also seeks to amend the Public Procurement and Asset Disposal Act to prescribe the threshold of procurement to be awarded to local firms. As the Leader of the Majority Party said, when the Nairobi Expressway was being constructed, the donors gave very stringent requirements; that the contract should be awarded to a company from their country. Certain skilled men come also from that particular country and by so doing, it will kill the morale, spirit, and the ability of Kenyans that we have good engineers who can design and even work on these projects better than the foreign workers.

Lastly, the Bill also seeks to amend Section 50 of the Act in order to provide for the offences with regard to contract administration. At times, some local Kenyans, for example, can be induced by foreigners to register companies on their behalf. That they will look local, but in extent it is foreign-owned. This Bill seeks to punish such kind of individuals who will want to aid or assist undue foreign ownership, but locally they register in the name of their local names or local individuals. This Bill actually seeks to ensure that if a foreigner is registering, they should always try and partner with local contractors.

With those many remarks, I support and ask the House to support this Bill for the good of our country, and for the good of the business of the nation. Thank you.

The Temporary Speaker (Hon. Farah Maalim): Hon. Gathoni Wamuchomba.

Hon. Gathoni Wamuchomba (Githunguri, UDA): I rise to support this wonderful Bill.

By the grace of God, I was here in the last Parliament, and I know the zeal and the desire Hon. Kuria Kimani had to have for this Bill materialise into law. Unfortunately, it did not happen, so we have an opportunity to make him proud as a Member of Parliament because he is a brilliant young lawmaker, other than just being the Chairman of the Departmental Committee on Finance and National Planning. He has heard the cries of many young entrepreneurs of this country who have been locked out of various lucrative businesses and ventures, especially when it comes to Government procurement.

This is a wonderful Bill. How I wish that Members of this House support it so that we can give the opportunities to the young innovators of this country who have massive ideas, but have not had an opportunity to attract the Government's procurement eyes.

The other day I participated in a forum where coffee farmers and coffee processors were in the room, and were looking for opportunities to have an advantage to sell their value-added coffee to the Government of Kenya. It is unfortunate that many farmers doing value addition in this country do not have space in the Government's procurement processes. It is unfortunate that in any Government's office you go to today, they procure coffee that is manufactured and packed outside this country, and which benefits the people who are not the primary producers of coffee. In the spirit of creating jobs and accommodating as many jobless people as possible in this country, we must be intentional about procuring products that are value-added in Kenya. Because we do not have that technology transfer, this is a very good Bill. It gives us ideas of how to ensure that the technology used in Germany to package our coffee can be brought here. In so doing, we will employ many young people who are knowledgeable and skilled enough, but do not have capital. The idea of technology transfer can convince every Member of this House to support this Bill.

Can we ask ourselves why even a tea bag that we consume in Parliament is most likely not packaged in Kenya? Why? We grow tea. The toothpaste that we use every morning, a commodity that almost all 52 million Kenyans use, is not packaged in Kenya. Can we ask ourselves why a toothpick or a matchbox, items that we all use, are not packaged in Kenya? We grow trees. What technology is needed to make a toothpick, for heaven's sake? It is because we believe that products that are manufactured and packaged elsewhere are better than what we produce. That calls for a paradigm shift. We must start believing in ourselves. This Bill will allow new innovators in our country to partner with foreign investors and integrate their knowledge and experiences, which is a welcome idea.

I look forward to a day when a Government procurement process will accommodate 70 per cent of locally value-added farmers' produce. I recently saw a communication from the Office of the Controller of Budget, if I am not wrong. I may need to be corrected. It was a memo that stated that for us to cut Government expenditure, we need to stop consuming tea and coffee in offices. When we say that we will stop consuming coffee and tea in offices, what are we telling our farmers? We are telling them that we are not interested in consuming their coffee and tea. Anybody who is in the business of value addition will have no market. Sometimes you need to engage in consultations before writing some of those memos. You are telling people not to consume tea and coffee in offices because there are Government measures to reduce expenditure, but you are still buying water, which is more expensive than a cup of tea. You are still serving water in exported bottles. We hardly manufacture those bottles locally. What are we telling our farmers?

This Bill by Hon. Kimani Kuria, the young lawmaker from Molo, is wonderful and we must support it for the sake of our young people. For the sake of the farmers who want to add value to honey and supply it locally, and those who want to add value to milk, yoghurt, cheese, and coffee, we must support this Bill.

I proudly support the Bill and congratulate the Member for his wonderful input.

(Applause)

The Temporary Speaker (Hon. Farah Maalim): Hon. Mayaka Irene.

Hon. Irene Mayaka (Nominated, ODM): Hon. Temporary Speaker, I rise to support this Bill. We are a country that rarely celebrates our people. Hon. Wamuchomba reminded me of a young man called Richard Turere who, in 2013, was honoured at the TED Conference because he discovered the lion light that enabled him to chase away lions from humans and cows without interfering with the environment.

This particular young man was discovered and celebrated outside our country before we even celebrated him. So, Bills like this one enable us to protect our own local resources. Kenyans often speak about 'Buy Kenya, Build Kenya', but we do not have laws in place to protect it.

The first clause that I really like in this Bill is Clause 14, which seeks to amend Section 9. I like this clause because it speaks about technology. We cannot protect our knowledge and skills without technology because we are rapidly moving into a space where technology is a very important aspect. Therefore, if it were up to me, I would ensure that each and every law in this country includes a component for protecting the technology space. But unfortunately, we do not have enough time for that.

Clause 9 which amends Section 14 states that debarment of international agencies recognised by Kenya shall be considered to have been debarred in Kenya as well. This is very familiar because it speaks to a recent issue in the news about the Adani Group being banned in another country while we were in the process of onboarding them in Kenya until the President cancelled their contract, which was very magnanimous of him. This clause seeks to protect against such scenarios so that foreign investors who have been debarred in another country are not allowed to operate in our country.

Clause 11 which amends Section 53 states that any procurement of less than Ksh1 billion shall be awarded to a local firm. This is very progressive because many local firms have been affected by past laws that saw them competing with foreign companies. It further goes on to say that any foreign firm must enter into a joint venture procurement with a local firm for no less than 30 per cent. This reminds me of the Worldcoin inquiry. One of the issues we were grappling with was that this particular foreign organisation had procured the services of Kenyan organisations, but they were still the ones that were fully benefiting from it. We did not have laws in place to protect the spaces of local investors and so, this is another very good clause.

Clause 14 which seeks to amend Section 83(2) of the Act, speaks about due diligence and the evaluation committee of any procurement that has been done. It speaks about visiting the contractor's offices, inspecting of plant, equipment and completed works. In most cases, people do not go out of their way to ensure that they have done a proper inspection of jobs before payment is made. This will ensure that before you are paid for a job you have been contracted to do, there must be field site visits and proper documentation before that payment is made.

Clause 15 which seeks to amend Section 86 prohibits citizen contractors who become successful tenderers from subcontracting to foreign companies unless the knowledge, skills, goods, and services are not available in the country. On this particular one, I will probably bring an amendment because, in my opinion, it should also apply the other way around. It should not be just one way. In cases where a foreign company has been given a contract and they need to subcontract another foreign company for some skills and knowledge, they should not be allowed to do that. This amendment only works one way; it does not focus on the foreign company that has been awarded a contract beyond Ksh1 billion, which seeks to look for services from elsewhere.

Hon. Temporary Speaker, I will conclude here so as to allow other Members to speak. I can go on and on about all refreshing clauses in this Bill. For me, once passed to become law, I want to emphasise that this Bill does not just become paperwork put in stores and not implemented. I urge us to make sure that it is implemented fully and that it actually works for local manufacturers and firms.

Having said that, I support and submit. Thank you.

The Temporary Speaker (Hon. Farah Maalim): Member for Nandi Hills.

Hon. Bernard Kitur (Nandi Hills, UDA): Thank you very much.

I support the Bill brought by the Departmental Committee on Finance and National Planning, having been previously sponsored by the Chairman of the Committee who is Hon. Kimani Kuria. I feel the Bill is extremely progressive. The Bill is of its own kind. It will have a great impact on the business people of this nation.

In line with the recent State of the Nation Address, the President mentioned that he wants procurement systems to go online. Part of the proposals in the Public Procurement and Asset Disposal (Amendment) Bill are so progressive and wide. Their impact will be for the benefit of Kenyans, particularly business people and the manufacturing community of locally available products. The Bill is wide.

I will just pick a few clauses. Clause 3(4) ensures that procurement contracts subjected to international provisions adhere to local procurement laws. In overview, that domesticates most procurements or institutions that want tenders to favour them because they are from foreign jurisdictions.

Secondly, Clause 4 and a couple others talk about the monitoring and evaluation of technology and knowledge skill transfers. They tend to say that tenders that include transfer of knowledge must have annual reports. This is good. It will provide a mechanism to know some of the benefits we can get through procurement processes made. There will be a list or something that shows the benefits that came to the country from a procurement process or service ordered from abroad since we did not have the local knowledge but we now have. This is a very good one.

Clause 5 also captured my attention. There is an expansion of the Public Procurement Regulatory Authority (PPRA). There was an inclusion of the Law Society of Kenya. I also noticed there is the representation of the Institute of Certified Public Accountants of Kenya and Kenya Institute of Supplies Management (KISM). This continues to widen and bring in a diverse knowledge and persons from every quarter of our nation. The entire place widens.

Clause 6 seeks to amend Section 33. It has really captured my attention. For procurement in a particular county, precedence goes to manufacturers or products manufactured in the county. This is incredible. If there is anything that we can celebrate, it is this Bill. In fact, one of the sections I will capture also mentions that we should give bidding preference and jobs to businessmen in a particular county.

Section 44 captures what I mentioned—the aspect of technology, knowledge and skills transfer from foreign firms as we continue to prioritise locally produced products. I think the Bill has asserted that as much.

Clause 11 that amends Section 53 is the most radical. It is on penalties awarded to persons that register firms on behalf of foreign firms to profit from procurement that falls within the prescribed thresholds. Of course, it talks about that. We raised the threshold from Ksh500 million to Ksh1 billion for the local contractors. In my view, I feel that the sponsor of the Bill needs to tighten it even more. The Ksh5 million for me is low. Let it be made very tough. We could even do Ksh10 million so that it becomes a deterrence. Everybody must follow this law because it is going to empower us as a nation. For anything above Ksh1 billion, 30 per cent of the extra services, one must demonstrate what the locals are getting.

Hon. Temporary Speaker, Clause 15 of the Bill seeks to amend Section 86. A foreign company is not supposed to be contracted unless the knowledge, skills, goods and services it offers are not available in the country. This is very radical because it will then force anybody who wins a tender to source locally if you are not able to get those people with the skill or those who have the knowledge for that specific item that has been procured. Section 135 that is Clause 17 still calls to buttress the issue of the inclusion of the part of the tender document on the transfer of skills and technology plan. It seeks to buttress that this is going to be cemented to the future. Everybody who is procuring the services must look for the locally available skills. This being put in the documents is very critical.

Clause 20 of the Bill seeks to put in place safety guards for those whose payments are overdue. This brings in the aspect of pending bills. We need to support and reduce the number of people who supply goods and services but are not paid. They suffer because they may have taken loans or subcontracted other entities and they are not able to then pay. This creates a ripple effect within the economy. Creating these safety guards and bringing this conversation into this Act then continues to buttress what we have been talking about on the issue of the pending bills in our country.

Section 155 continues to tighten the very aspect of providing a report to prove unavailability of local skilled and unskilled labour. This is where one has been awarded a contract to supply something and it is not available. The accounting officer is demanded to provide a report. I do not know what else we can celebrate than this very firm clause which makes me really support it.

Section 157 is one that also captured my attention where foreign contractors, in order to increase the amount of citizen contractors and to prohibit sub-contracting of local procurement contracts to foreign contractors, when one wins a tender, they do not need to sub-contract a foreign contractor. It also captures the mandatory procurement of 40 per cent of goods and services and just an overview of the same.

Basically, this Bill is timely and we support it. It is going to be radical and will empower Kenyans. I encourage Kenyans to be manufacturers and providers of locally produced goods and services. The opportunity has been handed over to us. This is a progressive Government. I want to, one more time, appreciate one of our mentors. For sure, he has been our mentor for most of us young Parliamentarians, Hon. Kimani Kuria. You have been a great person to us. Every time we come to you so that you can share with us a few tips here and there to be great persons in this Parliament.

Thank you very much, I support.

The Temporary Speaker (Hon. Peter Kaluma): Hon. Kitur, that mentorship has been great. I have never listened to you enlighten the House the way you have done today. Congratulations.

Hon. Robert Mbui.

Hon. Robert Mbui (Kathiani, WDM): Thank you, Hon. Temporary Speaker, for this opportunity. I rise to also support this Bill. Such Bills are very important. In fact, this is really what is meant to cure corruption. If procurement of goods and services is done in the right manner, then we can get rid of all issues of corruption. The cost of Government services will come down if we identify the right people to do business.

The proposal to ensure that local contractors are supported is extremely important. The proposal that international investors should not be allowed to bid for a tender worth Ksh1 billion is very good. It will give an opportunity to local contractors to get projects. But, we also have to be very careful. That in itself is also an avenue and we might end up creating another level of corruption. In the registration of businesses, people can strike deals for foreigners to have a local company. Kenya is well known for a lot of cowboy contractors. A company may be registered in the name of local Kenyans, but the investment comes from outside. I do not

know how we are going to cure that. I agree with my colleagues who said punishment should be spelt out in this Bill. That punishment has to be severe so that we do not have a situation where someone lends out their name because they cannot raise money. You have seen international investors being indicted in the United States of America for corruption, and we were just about to award some of them major projects in the energy, transport, and health sectors. We have to be very careful with how we tackle such situations. Let us make sure there is no corruption within that system.

Transparency and accountability processes in procurement must also be fast-tracked by the National Treasury. How is it possible that the same company can win tenders across Government? Some of these things are not a coincidence. It is obvious that somebody somewhere must have engaged in corruption. Some of the companies that get jobs all over face bribery charges. Bribery is the biggest form of corruption. We have to be very, very careful.

I have been wondering why there are delays in paying contractors throughout the history of this country. It must come to an end. It is strange how projects procured under NG-CDF, which is a very meagre fund, never have pending bills. People are contracted all the time to build classrooms, police stations, chiefs' camps, but there is never ever a situation where people are up in arms claiming they have not been paid yet they have worked. It is simply because the procurement is done in such a way that people are only given jobs when money is available. The problem of pending bills need to be cured. There are contractors who have not been paid by the national and county governments for tens of years.

When the first Governor of Machakos County came into office, contractors built something called the People's Park in Machakos. The person who fenced the park was never paid. Some people even committed suicide. Patrol cars were bought and somebody was contracted to install communication equipment in them. That person was never paid yet that was a Government project. Making sure there are no delays in payment is a critical thing that must be sorted out once and for all. The delay in payment is what makes the cost of Government business expensive. If you are going to invest your money in Government and it takes years for you to be paid, then the interest on the money should be factored into the cost. That is why, if you compare the cost of a personal project with what the Government would pay for the same project, the difference is like night and day, or heaven and hell. This is a step in the right direction and when the House approves this, it is going to help the country move forward.

With those few remarks, I support.

The Temporary Speaker (Hon. Peter Kaluma): Hon. Beatrice Adagala, Member of Parliament for Vihiga County.

Hon. Adagala Beatrice (Vihiga County, ANC): Thank you, Hon. Temporary Speaker. I can see the dynasty is trying to distract me yet he has had his time to speak. Protect me from this dynasty.

I am in support of this Bill. It has come at the right time. I congratulate the Chairman, Hon. Kuria Kimani, and the Members of the Committee for the exemplary work they have done. I am very happy they have elaborated so much on the issue of contractors. Indeed, contractors have suffered in this country. I am very sure the provisions in this Bill will cure all the mess that has been happening both in the national and county governments whereby our contractors are suffering. Most of them get contracts through dubious means. They have to do very funny things like giving bribes. This Bill has come up to cure those ills. Contractors, both in national and county governments, will have a proper way of doing things and also be paid early enough. We have had cases in the county governments where most contractors have not been paid for long and they end up being miserable, frustrated, stressed up, and even some die because of not being paid.

Therefore, this Bill has come at the right time. Payments will be made on time so that contractors can enjoy. It will cure the issue of foreign contractors getting big tenders thus

making all our money go to other areas, leaving our country poor and our people jobless. When all this is curtailed using this Bill, I know job opportunities are going to be there for our youth who are jobless. Our local contractors are going to be empowered if they will be given the jobs.

Hon. Temporary Speaker, I am still emphasizing the issue of delayed payments. I am very happy this Bill has measures that will cure that so that once somebody does some work, he or she is paid in good time.

When such procurements are being done, women, youth, and People With Disabilities (PWDs) should be given priority to encourage them to live a dignified life. I know this Bill has cured that particular problem.

Hon. Temporary Speaker, I am very happy with Clause 20, which provides for safeguards for contractors whose payments are overdue. If this is going to be worked on, I am sure we shall safeguard the lives of our contractors and they will be able to meet their bills. They will feed their families, pay rent and other things.

Hon. Temporary Speaker, the punishment has to be very severe for those who are going to register companies for foreigners. They masquerade as locals, yet they are foreigners. That cannot happen in other countries. I am very happy because this Bill will cure that problem. The fine should be prohibitive to ensure that people do not do that on behalf of foreigners. It means a lot of our cash is taken out and stashed in other countries which makes our economy go down. If this Bill is passed and works very well, we shall safeguard our economy. Our people will have money in their pockets. There will be circulation of money within ourselves. Life will be good. Our people will survive very well.

This Bill has been worked on so very well. I cannot go clause by clause because it is here. I support it because it will cure a lot of injustice that happens. Before one gets a tender, they must part with money or other things. It has been very difficult for women, PWDs and youths to get these huge tenders. I support this Bill knowing very well that women, youth, and PWDs are being catered for.

I thank the Chairman of the Committee, Hon. Kuria Kimani. He is a youth who has worked with the Members of this Committee. I am sure they had it rough, day and night, discussing and perusing papers. They have come up with one of the best Bills in this Republic.

Therefore, Hon. Temporary Speaker, I support this Bill.

The Temporary Speaker (Hon. Peter Kaluma): Hon. Dorothy Ikiara.

Hon. Dorothy Muthoni (Nominated, UDA): Thank you, Hon. Temporary Speaker. I wish to start by saying this is a very progressive Bill.

At the outset, the Public Procurement and Asset Disposal (Amendment) Bill resonates very well with BETA because it touches on the economic livelihood of the citizens right from the grassroots to the main contractors. For a long time, as a country, we have contended with foreigners coming to our country to the extent of almost doing every job when they take up contracts. This is very evident because when foreigners are given contracts, they normally carry machinery. They come with engineers and people whom we can contract locally. This Bill is very exciting because it will assist in evolving and growing our economy.

I am very excited about empowering local contractors. It is evident that Clause 2 of the Bill and the related clauses are very specific on the threshold and the amount of money that will be reserved for the local contractors. I am happy because in the wisdom of the Committee, any contract below Ksh1 billion will exclusively be for local contractors. This is very exciting because they have always been left out. Local contracts were restricted to Ksh500 million. My only worry is how we will tame corruption so that a contractor does not bid using more than 10 companies with the aim of getting the biggest chunk of the money.

As we pronounce ourselves on corruption, we must think of how to curb it. This is because many contractors are corrupt. When it comes to bidding tenders, corruption happens and the lowest bidders are left out. If a foreign contractor is awarded a tender of over Ksh1

billion, then he must partner with a local contractor. This is very exciting because our people will get jobs. The reason why this is resonating very well with BETA is because our young men and women will be awarded tenders. This approach is consistent with the principle of comparative advantage and will ensure we build our country.

Domestic revenue and circulation of money in our villages will be enormous. Everyone will have money in their pockets. I am happy about the transfer of technology. When the Indians came to Kenya to build the railway line, they left remnants of the work they did. A few Africans who were very keen learnt something from them. Most times, foreign investors do not want to transfer knowledge to the local people. They only suppress and give them light jobs. Technology advancement and skills transfer is captured in this Bill. So, in future some of the works done by foreigners will be done by local contractors. Foreign contractors will be a thing of the past.

I am very happy with Clause 4 and Clause 10. Leveraging on foreign contractors to build local capacity will help our country to grow. This Bill also talks about transparency and accountability. The drafters of the Bill and Committee knew what is ailing our country. If transparency and accountability can be achieved in every area of our procurement system, then this country will progress.

As I conclude, I wish to state the terms and conditions for those who break this law. A contractor who has a contract of Ksh1 billion getting a reprieve of Ksh5 million, that is so lenient. You are a senior counsel and you know that, Hon. Temporary Speaker. I want to associate myself with those who have said that we increase the amount of fine to something reasonable that will make people adhere to the laws. That way, this Bill will not be paper but a document that will lead this country to greater prosperity.

I, therefore, would wish to thank Hon. Kimani Kuria...

Hon. Kuria Kimani (Molo, UDA): Point of information, Hon. Temporary Speaker.

The Temporary Speaker (Hon. Peter Kaluma): Hon. Dorothy Ikiara, do you want to be informed by Hon. Kimani?

Hon. Dorothy Muthoni (Nominated, UDA): Yes.

Hon. Kuria Kimani (Molo, UDA): Hon. Temporary Speaker, I have heard the concerns of Members. It is important that I offer some information and clarification. The monthly fine referred to in subsection (1)(a)(ii) shall be determined as follows—

1. The mandatory fine shall be equal to two times the amount of the benefit or loss described in subsection (1) (a) and (ii);
2. if the conduct that constituted the offence resulted in both a benefit and loss described in subsection (1) (a) (ii), the mandatory fine shall be equal to two times the sum of the amount of benefit, and the amount of the loss.

It means that in addition to the fine, there is the penalty incurred of paying two times more the amount of the benefit that someone may have benefited, or two times more the loss that the public would have incurred. If it is a benefit and loss, then you would add the benefit and double it.

Thank you, Hon. Temporary Speaker.

Hon. Dorothy Muthoni (Nominated, UDA): Thank you, Hon. Temporary Speaker.

I stand informed. This is a very brilliant brain. This is why we always say, in reproduction, that you must give birth to someone better than you. Hon. Kimani Kuria, I acknowledge that you are better than me.

The Temporary Speaker (Hon. Peter Kaluma): How is that?

Hon. Dorothy Muthoni (Nominated, UDA): In the African context, he is my son.

The Temporary Speaker (Hon. Peter Kaluma): I asked because I thought you could have taught him given your background.

Hon. Dorothy Muthoni (Nominated, UDA): He is my son in the African context.

As I conclude, I wish to thank the proposer and drafters of this Bill, Hon. Kimani Kuria, and the Committee. This is progressive. It is the kind of Bill that we require in this House so that this country can move forward.

Thank you, Hon. Temporary Speaker.

The Temporary Speaker (Hon. Peter Kaluma): Hon. Farah Maalim, because of your ranking in the House, you can have the Floor.

Hon. Farah Maalim (Daadab, WDM): Hon. Temporary Speaker, I also want to join my colleagues and other Members of Parliament in commending this young financial wizard we have here, the Member of Parliament for Molo, Hon. Kimani Kuria. You have done a good job, and we are proud of you. We will be looking forward to much more than that.

There are two things that I wanted to bring to the attention of the Chairman of the Departmental Committee on Finance and National Planning. Under our current practice, Hon. Kimani, you can register a local company regardless of whether you are a Kenyan or a foreigner. You can also do so as an investor from outside for the short period you are here. This is where you justify your money by buying small properties or anything else you would want to do. You will be allowed to register a company. Also, you may just stay with a residence permit, even as a pensioner, then you go ahead and register a company. That company will be a local company; it is not a foreign company. A foreign company is a presumption that the Articles of Association and everything else is in a foreign country. It is a multinational business. So, that is a window that you need to look at very closely.

The other bit which I had mentioned to you when I was on the Chair, you clarified it. However, I think we need to look at it a bit more closely. The issue is on fully funded donor projects. In 100 per cent donor-funded projects they usually want you to do its procurement process in their own places. They would prefer their own companies to take advantage of it because they want to take some money back home. When they give you free money, that will be it.

Let me tell you one thing. Traditionally, folks in Treasury and many other Government offices – I do not know whether we are going to change that situation now – do not have any interest in the fully funded donor projects. When you are given a 100 per cent grant, they will have very little role in it. When it is a loan, they will like it because they will do the procurement themselves. That essentially is one of the ways that corruption has flourished here. If the money is a loan, we will pay ourselves. Our own officers will do the contracting and through that they can make their own small commissions. When it is a 100 per cent grant, there is very little enthusiasm in Treasury because the Treasury will have very little role in it. So, we have to look at that closely.

I have been around much longer than most of you. I can remember when we had the Kenyanisation, Africanisation, and indigenisation of the economy and a lot of things that happened then. It was very easy those days to find in Bishara Street and many other places businesses like Kaluma Enterprises or Kaluma Limited. However, Kaluma had a little role in it and there was a small amount of stipend that he could be given every month. People were doing a lot of things like coffee roasting and coffee trading.

The Transport Licensing Board (TLB) those days had restrictions on the extent you could allow non-Kenyans to get involved in business. There was effort to try and protect that for Kenyans, but there were people who always found a way to beat it. Trucks were bought by somebody else and buses were owned by a foreigner. Because the foreigners were using a local's licence, they paid the locals something little for it. So, probably things are not going to be as bad as it was in those days, but I really want to encourage it.

I want to borrow a leaf from the South Korean model of business. When we got independence, the South Koreans were poorer than us. As a matter of fact, the President of South Korea at the time was called Park Chung-hee. He was an Army General. He wanted to

go around the world to see development first hand. However, he did not have a million dollars to facilitate his movement with his entourage. So, he came to our President Jomo Kenyatta and borrowed the one million dollars. Kenya loaned him one million dollars to go around the world, which he did. When he went back afterwards, the first thing he did, for purposes of technology transfer, was to seek technical scholarships from top universities in the world like Caltech, MIT, UCLA. He did not bother so much with liberal arts and humanities; he went for technology. So, about 3,000 of them were sent out of the country on scholarships; some to do their first degree, others their second degree and others even went beyond that. They again went to do apprenticeship in Ford Motors. You know what I mean. There was CMC too. What was it called? The American one?

(An hon. Member spoke off the record)

Yes, it was called CMC. They went to those big companies and industries as apprentices and interns and came out with skills after staying there for a couple of years. When they went back home, they began setting up big industries. The Koreans started small, but quickly went up the ladder to now becoming one of the few countries that can build the biggest ships with a Deadweight Tonnage (DWT) of up to 500,000, or a 6 by 400,000 carrying capacity. Those are big ships.

Those countries also used their military. I was in Egypt the other day where the military built one million houses in a year. They built around 1.13 million houses in a year. That is not how we are currently doing it in Kenya where we have asked the military to start transacting business by taking over the Kenya Meat Commission (KMC). That makes them corrupt. The Egyptian military gets materials from the Government and works. They do not purchase or procure anything. All that is done centrally and at the cheapest prices. That is good and I agree with it.

We cannot practise protectionism or isolationism where we refuse to get involved in certain matters, if we are to grow our economy. Engaging in business in a number of western countries is very difficult today. It is tough if you are a Kenyan or a South African. Those western countries do not allow anyone to break into their markets. There is a lot of protectionism. Because we are behind in technology and many other things, we have to do much more than just protect our contractors. I urge Hon. Kimani, the brilliant young whiz kid, to broaden the scope of the Bill. Maybe at the Committee of the whole House stage, he can make powerful amendments, so that we have a proper economic blueprint.

I want us to go out of our way. When I was pursuing my post-graduate studies, I once had an opportunity to study one module in one of the prestigious universities in South Korea. They only had two things when they got their independence. The first one was sea weeds. The second one was not such a good thing. It was what they called comfort girls, who used to work as maids in Japan and send money back home. Today, their economy is probably 30 or 40 times greater than ours yet their population and landmass are similar to ours, if not less. So, I commend Hon. Kimani, but at the same time we have to think outside the box. We do not want to take baby steps; we want to take elephant steps.

I support the Bill.

The Temporary Speaker (Hon. Peter Kaluma): Hon. Timothy Toroitich, who will be followed by Hon. Makilap, then Hon. Sabina Chege.

Hon. Timothy Kipchumba (Marakwet West, Independent): Thank you, Hon. Temporary Speaker, for giving me an opportunity to contribute to this very progressive piece of legislation. I agree with the sentiments of Hon. Kitur who said that Hon. Kimani Kuria has been very instrumental in mentoring the first timers in this House. This is a very progressive piece of legislation. It is meant to curb corruption in our country. Procurement is meant to help

young entrepreneurs, so that they can invest and get something small. Unfortunately, for a long period of time, this system has been used by a few individuals to benefit themselves rather than achieving the intended goals set out when the parent legislation of 2015 was passed by this House.

What is more interesting about this Bill is that it comes at the backdrop of the recent speech by the President, particularly in admonishing the National Treasury for failing to implement the e-procurement system for the last 10 years. As I said yesterday, the intention of this Bill is to fight corruption, and this House has an obligation to assist the President of this Republic in this fight. How do we do it? We must be able to check the Executive without fear of intimidation. The only way we can do that is through robust oversight. The President is working hard to transform this country, but as a House we must check certain offices in the Executive so that we can assist him in fighting corruption.

We may pass this law, but someone else may circumvent the implementation of this particular piece of legislation. Therefore, we need to assist the President as a House, and not just to sing along, but to ask certain hard questions as we perform the sacrosanct oversight role of this House.

Clause 10 of the Bill seeks to empower local manufacturers by ensuring that locally produced products or services are prioritised in the procurement and asset disposal process. This is meant to empower local manufacturers and will create employment. When we prioritize local manufacturers, it will lead to the growth of our local manufacturing industry, and that is how we will create employment in this country.

On the issue of empowering local contractors, the proposed law clearly states that any foreign firm shall be eligible for procurement contracts exceeding Ksh1 billion. However, for contracts below Kshs1 billion, only local contractors are eligible. Even foreign contractors must enter into a joint venture with local contractors or firms for not less than 30 per cent. That is meant to empower local contractors.

Another issue we have in this country is misrepresentation by local or foreign firms. I thank the Mover of the Bill for clearly stating that a foreigner who registers a company by misrepresenting themselves as a Kenyan shall be liable to a fine not exceeding Ksh5 million. This is where I will propose an amendment. In any case, these foreigners are multibillion entities and, therefore, the fine of Ksh5 million is insufficient. A company is a legal entity. In fact, they should be blacklisted. That is my proposal. The fine is insufficient and they will simply run local companies out of town.

Furthermore, Clause 12 proposes that local firms shall be eligible for 30 per cent of what has been bid for. It further states that a procuring entity must set out specific goods, works, and services to be undertaken by a local firm under joint venture procurement. So, despite the not less than 30 per cent allocation, it is clear that specific goods and works will be procured or undertaken by local firms, which will assist our local manufacturers.

There is also an important amendment under Clause 13. There is a problem with the clarification. A contractor will tend to insert a new document while seeking clarification under Section 81 of the parent Act because there is no law prohibiting it. Now there is an amendment by Hon. Kimani Kuria. It says a clarification shall not change the terms, the tender, or add any new document or information. That is very important because contractors use mischief. They sneak in new documents once those doing evaluation inform them that they did not provide certain documents. This is a very progressive piece of amendment. It ensures no new documentation will be introduced.

Subcontracting to local firms is very progressive because foreign contractors subcontract to other foreign contractors. This is progressive so that local contractors are empowered. Of course, it will create employment and empower people.

The law has not been very clear on what happens upon completion of awarded tenders. Normally, it has not been clear what happens to a person awarded a tender but declines to execute works. The newly introduced provision pursuant to this amendment deals with that. It says very clearly that the accounting officer may issue the letter and notification of award to the next lowest evaluated tenderer where a successful tenderer declines the contract.

I will be proposing an amendment to make it mandatory. The clause may be subject to abuse if we have a discretion of the word “may”. The next lowest evaluated tender shall be awarded the tender on mandatory terms if someone who won tender declines to sign or to take up. If we leave the discretion of the word “may”, it may be abused by saying it is conditional. We should seal this. I will propose an amendment so that we have the word “shall” placed thereunder so that it is not subject amendment. I can see my friend Hon. Kimani Kuria applauding.

As I finalise, there was a very interesting provision under Section 175 on appeal. Where aggrieved persons appeal, the previous Section 175 said that the High Court would determine the judicial review application within 45 days after such an application. That was tied in the hands of the court. The new proposed amendment says that the High Court shall determine judicial review applications in accordance with the Civil Procedure Rules. We have given room to the Civil Procedure Act to guide the procedure of judicial review. This amendment expunges the time limit of 45 days.

The Temporary Speaker (Hon. Peter Kaluma): Hon. Timothy, your time will be held. I will add you time because you note that the matters you are talking to as a lawyer are very serious. Hon. Kimani Kuria is taking them seriously.

This is a matter of procurement or asset disposal. I think there was a good reason we were telling judicial review courts, which are application-based courts, to seek leave. Leave may operate as a stay or not. Then, they would go to substantive motions and determination. Because of the expediency with which we want judicial review applications to be dealt with, the law as it is limits hearing and determination time to 45 days. That is so that whatever the reason you are procuring can move forward.

In that context, how do you support the removal of that and leaving it open to court? Without the time limitations we put for determination of things like election petitions, you know judicial review actions can stay in courts for eternity. With the progressive debate you are making, I was thinking you were going to reject that amendment.

Hon. Timothy Kipchumba (Marakwet West, Independent): For judicial reviews, you know that one must first seek leave. Anything more than 45 days may create some level of injustice to the other party if that other party makes counter applications. The matter, if not disposed of within the 45 days provided under current legislation, may occasion injustice to the other party. For example, if one appeals to the Court of Appeal and the law is cast on stone that the matter must be prosecuted within 45 days, an injustice may be occasioned to the other parties. I understand your position that we should have limited the matter just like we have done to the election petitions, but this is a matter of judicial review. There may be many review matters that the courts may not be able to handle within the prescribed period of 45 days. On matters to do with elections, it is only a single presidential election that is handled within 14 days. For this one, there may be very many applications that may not be adequately handled within that period of time.

This also applies to the appeal from the High Court. Under Clause 175, it says that for a person aggrieved by the decision of the High Court, 14 days period has been granted. We are aware that under the Court of Appeal, we have the Court of Appeal (Organisation and Administration) Act, which deals with the issue of time.

Finally, we have a very important amendment under Clause 26(b), about people who supply substandard goods. That has now been criminalised. It says that a person who certifies

or delivers substandard goods or works that are incomplete, non-existent, or whose quality is below the specifications contained in the contract commits an offence. For the first time, we have created an offence for those who certify.

For those of us under NG-CDF, what you call labour-based, those who are in charge receive or certify substandard items. Therefore, initially there was no criminal liability that was levelled against them. We have now created a criminal liability under this law. I stand to support.

The Temporary Speaker (Hon. Peter Kaluma): Thank you, Hon. Timothy Kipchumba, for those enlightening submissions. Hon. Kimani Kuria, you should be preparing to reply. As you do so, I want you to look at Clause 11(a) and (b) that Hon. Timothy Kipchumba has spoken to. More so 11(b). How would it matter that you are fining a foreign company or a local person who has engaged in a foreign business by this kind of collusion in a tender for over a billion shillings and the fine is not exceeding Ksh3 million? Would it matter to anybody? The person can do the tender and pay Ksh3 million from it, and it continues. Think about it in your reply. What can the Committee do to meet your intent in this Bill, for which you are being applauded?

The Temporary Speaker (Hon. Peter Kaluma): Hon. Makilap.

Hon. Joseph Makilap (Baringo North, UDA): Thank you Hon. Temporary Speaker for giving me this opportunity. First and foremost, being a member of the Departmental Committee on Finance and National Planning, where Hon. Francis Kuria Kimani is my Chairman, I want to sincerely thank him because it must go on record that this Bill is an original amendment Bill sponsored by Hon. Kimani Kuria as a Member of Parliament for Molo Constituency. We convinced him to surrender it to become a Committee amendment Bill. I laud Hon. Kimani Kuria, and thank the people of Molo Constituency for giving him an opportunity to come to this Parliament. This kind of amendment Bill is transformative and in line with BETA. I am part of the team that worked on this Report. In the Committee of Supply, Members will help us to add value to it, for instance, what Hon. Timothy from Marakwet West and many of us said. That is value addition so that we make amendments that will stand the test of time.

This Bill is an economic transformation. It will transform the economy of this country and have a trickle-down effect on the resources in circulation. I was in my constituency and one of my voters asked me, "*Mheshimiwa*, why is it that some institutions are making progress and parastatals that have for some time made losses are doing better yet there is no money in circulation for disposable income?" This Bill will be the law that will take money to the grassroots. People are saying there is resurgence of economic growth, but they do not feel it on the ground. This is one of the many Bills that will trickle down resources to the grassroots.

Raising the amount of contracts reserved for local contractors from Ksh500 million to Ksh1 billion will give opportunity to Kenyans with the ability to do business in this country. We should have a clause saying Kenyans can go for or partner with foreign companies to undertake projects worth more than Ksh1 billion. Hon. Kuria Kimani's amendments are a game changer for money to trickle to the ground. I will give you a scenario. Foreign companies like Chinese ones have taken a lot of business in this country. Most foreign companies come with their employees, equipment, and building materials. The revenue we collect from *mama mboga*, PAYE, VAT, and excise duty pay foreign contractors. Hon. Kimani Kuria is our Chairman and we have spent sleepless nights trying to see how the country can raise about Ksh200 billion. When we eventually collect the money and pay foreign contractors, all that belongs to Kenya goes outside the country. The foreign companies and their countries then have enough resources. They then ask us if we want some loan. They give us very expensive loans and untenable conditions. If they give us a loan, the contractor must come from their country. Materials must come from their country and they must be tax-free. Whereas we tax

Kenyans to raise revenue, foreign companies want everything from their country to be tax-free. In the long run, money that should have been in circulation in this country goes out.

This matter is serious and it is the reason why when we collect revenue, the money does not trickle down to the people. For example, you award a certain foreigner a contract to construct something, he goes ahead to import cement, nails, iron sheets and even skilled workers into the country. What will happen again? Scrupulous businessmen in our country will import many goods into the country, in the name of that foreign contractor, while dumping our locally manufactured ones. That is the misery that this country has undergone for many years. So, this Bill will sort out that particular mess in such a way that if I have a company and I am paid money by the Government of Kenya, that money will be banked in Kenyan commercial banks and trickle down to the grassroots. This is because I will pay workers in that company, including the watchman in the village thus enhancing money circulation in Kenya. Therefore, this is the game changer that we require.

Secondly, foreign companies who secure contracts exceeding Ksh1 billion must cede ground for local content. What can be found in Kenya should be bought here. Why should they import cement yet we have factories that produce the same here in Kenya? The same applies to nails where there is no need to import them since they are locally manufactured here. Let them buy what is in Kenya first until it is exhausted then they can import. Additionally, those imported goods must be taxed. We need to create industrialists. Manu Chandaria is an industrialist, born and raised in Kenya. He has turned around the manufacturing industry. We need more industrialists from Baringo North, Homabay and Molo constituencies. We need Kenyan people to build Kenya. That is the most important aspect that this Bill is putting across. We need to partner with Kenyans. In some of these countries, like in the United Arab Emirates (UAE), if you want to go and do business there, you have to partner with a local person to own about 51 per cent shares yet he does not do anything. He does not even produce the resources. You work like a donkey but you will share the dividends. This is a very serious matter. As a country, through these amendments that have been brought through our Hon. Chairman here and the Departmental Committee on Finance and National Planning, we will spur economic growth of our country. This is a transformative Bill.

Hon. Temporary Speaker, kindly add me one minute.

Skills transfer is important because we learn from one another. I came to this 13th Parliament and joined the Departmental Committee on Finance and National Planning. This young man, my Chairman, has transferred a lot of knowledge to me in the committee and beyond. Today, I am very knowledgeable on matters finance. I am an expert in mathematics while he is an expert in accounts. Today I have a lot of knowledge in accounts thorough my brother here who is a Certified Public Accountant in Kenya (CPA-K). We have a lot of knowledge and we need to transfer the same skills. Our people must work in foreign countries.

The Temporary Speaker (Hon. Peter Kaluma): Hon. Makilap, you have ended it at a very good note, you cannot say more. Hon. Sabina Chege.

Hon. Sabina Chege (Nominated, JP): Thank you, Hon. Temporary Speaker. At the outset, I congratulate my brother, Hon. Kimani, and the entire team in the Departmental Committee on Finance and National Planning. This Bill should have come yesterday. I know the people who spoke before spoke a lot about it. It looks at the local contractors and gives them preference in contracts of up to Ksh1 billion.

Number two, it speaks on how when you are doing foreign joint ventures, a minimum of 30 per cent goes to local contractors. This is commendable. The issue of promoting local manufacturers using local products is very important.

Clause 3 of the Bill ensures that foreign procurement contracts that have not been subjected to provisions of international procurement guidelines or laws will adhere to the procurement laws in Kenya. This is important. The people at the National Treasury should

listen to this. We contract foreigners a lot of times. If there is a dispute, we can only settle it out of this country. You are sent to London, Malaysia or any other country, but not under this law. It is important that foreign contractors accept that they are getting Kenyan money. If a dispute arises, then it should be handled in Kenyan courts which are qualified. We trust them.

Clause 8 of the Bill is about investigations that are allowed to be done, even if the matter is under review Board. This is very important so that we do not gag any investigation that is necessary.

Clause 10 of the Bill speaks on tasking an accounting officer to ensure that locally produced products or services are prioritised. It also ensures that technology, knowledge, and skills transfer plans from foreign firms are prioritised in the procurement and asset disposal process. This is very important. We have a very fantastic Thika Super Highway and Standard Gauge Railway (SGR) which were constructed by the Chinese. It is important that this is not only on paper, but also these firms should showcase how they train and transfer technology or knowledge. When we build another expressway, we will have that expertise. We might no longer need foreigners, unless we consult them on very few issues. I trust that this Government will have Nairobi-Nakuru-Eldoret or Kisumu Expressway. Giving local firms a chance to participate in all contracts that are less than Ksh1 billion is very commendable. It is important for them to be advertised well. I am very sure even with more than Ksh1 billion, we have local firms that can do it.

I want to mention something which is in Clause 20 of the Bill. It seeks to insert a new Section 139A to provide for safeguards for contractors whose payments are overdue. We have contractors who have depression. Some of them have died without getting payments. I know the Leader of the Majority Party wants us to move faster, but this is very important. Government and procurement officers should only give contracts when money is available. One of the reasons you find a kilometre of a tarmac road in Kenya is more expensive than in our brothers' countries, in East African Community (EAC), is because our local contractors go to banks to take loans yet the Government takes so much time to pay them. By the time they are doing it, you have already incurred another expense. If payment is prompt or done on time, we should look at how much a certain project costs, use minimal amount of money, and then pay it on time.

On the other hand, we must also have a fine for the briefcase or fake contractors. They are awarded a contract, but they cannot handle it. Sometimes a contractor is given a chance to work, but he does not deliver. There are some fines that have been recommended. Whoever asks for a job should manage it. We should also avoid some contracts. The Chairman of the Departmental Committee on Finance and National Planning should look at how long Mitihani House took to be completed. It took between 28 and 30 years. A project that is supposed to cost a certain amount of money costs 10 or 20 times more. We know that some contractors liaise with procurement officers to intentionally delay payment. They raise certificates making the Government to pay interest. We need to call out such contractors so that they can deliver on time.

Clause 24 is ensuring sustainable promotion of local industries. We have skilled welders who are very good at their job. I want to single out the housing project currently being done and recommend to the Kenya Kwanza Government to use local masonries, welders and painters. This will ensure our skilled labourers get jobs. I want to encourage our young people that technical skills are paying. I was sharing with a contractor doing a housing project in Murang'a and he told me that he is facing a challenge of getting welders.

I want to urge the youth of this country, with a lot of respect, that instead of waiting for politicians to incite them about the mountain, they should look for employment opportunities which this Government is offering. There is a housing project at a place called Makenji in Kandara Constituency. They should ask for a job there. I understand the lowest they pay per

day is Ksh780 to Ksh800 and for skilled persons Ksh1,500 to Ksh2,000. It is important that our young people focus on what is available instead of listening to politicians who have acquired wealth and their children are going to school. They use the weekend funerals and church services to incite them instead of giving them hope and promising a better tomorrow.

As I finish, Clause 27 seeks to amend Section 177 of the Act. I want to applaud the Chairperson for including the penalties. Clause 27 states:

“(a) the mandatory fine shall be equal to two times the amount of benefit or loss described in subsection (1)(a)(ii);

(b) if the conduct that constituted the offense resulted in both benefit and loss described in subsection 1(a)(ii), the mandatory fine shall be equal to two times the sum of the amount of the benefit and the amount of the loss”.

This Bill is timely and I urge all Hon. Members to support it. I know Hon. Kimani went through several challenges and he is a good example to our young people. That, once you practise patience and persistence you can go far. I know after passing the Finance Bill, 2024 he went through a very challenging time, but he did not give up or behave like a coward. He went ahead to come up with very nice Bills which will benefit not only the young people, but Kenyans at large. So, congratulations Chairperson.

Thank you, Hon. Temporary Speaker. I submit.

The Temporary Speaker (Hon. Peter Kaluma): Hon. Julius Rutto will have five minutes then the Mover will reply.

Hon. Julius Rutto (Kesses, UDA): Thank you very much, Hon. Temporary Speaker for the opportunity you have accorded me. First of all, I want to start by appreciating my brother, the Chairperson of the Departmental Committee of Finance and National Planning. I can confirm that the leadership he demonstrates in the Committee has resulted in the Bill before this House. You will agree with me that it has gone through a rigorous process under his leadership.

As I support this Bill, I want to touch on issues affecting Kenyans. This administration believes it is possible to build Kenya using the BETA. The issue of expanding the local contracts from Ksh500 million to Ksh1 billion goes without saying that we have a resilient country. Kenyans are very aggressive but lack opportunities. They have been willing to compete even on projects and contracts that go beyond Ksh1 billion, but since they have not secured them, they have been facing unnecessary competition from foreigners. These are the same foreigners who come in the context of giving us skills, but in real sense they are only coming to make money and go back. They come along with their own technical skills and equipment. Most of them end up executing the projects here and when they go back, they carry everything. They only leave the projects to us which we do not know how to maintain, thereafter. For this particular purpose, we need to support this amendment so that we support our young Kenyans who have been trained. Our institutions produce the best technically skilled people but they have no place to practise their technical skills, to showcase their knowledge, and build capacity. This amendment is able to give us an opportunity to build our capacity and compete nationally. Who knows? In future, we might even compete internationally.

Hon. Temporary Speaker, the second issue that I applaud in this amendment is the focus on delayed payments. You will agree with me that what is hurting our nation is the issue of pending bills. If you want to ask yourself the cause of these pending bills, it will all draw back to delayed procurement process, lack of transparency, procurement that is not even in line with the best practices and the budget-making process. Someone thinks of what to procure and proceed without even having committed resources to it, therefore, landing us into the situation we are in. This amendment will sort out the issue of pending bills both in the national Government and the devolved governments. It will facilitate the growth of our economy. We all know that the Government factor plays a critical role in ensuring that our economy grows.

We need to understand the formula of a macro economy; that the Government Spending Factor (Factor G) in that particular formula, plays a crucial role in facilitating the movement of funds from the coffers of the national Government, the taxes that the people have paid, and moves to the people of Kenya.

The other issue Hon. Temporary Speaker that I would wish to weigh in, is the aspect of introduction of penalties on those who participate in unscrupulous and crude ways of doing work. There are those who participate in the procurement process, including the accounting officer who in this case is a procuring entity. These penalties serve as discipline and I want to believe that going forward, we will have a procurement process that is free from corruption, free from influence, free from influencing an opportunity for people who are aligned in a specific way. All Kenyans will have a transparent manner in which they can participate in procurement processes, and restore confidence in our economy.

Hon. Temporary Speaker, time is not on my side but, lastly, I want to appreciate that even as we look at this amendment, there is the aspect of transfer of technology and the aspect of building our economy. We are suffering with the issues of foreign exchange reserves. With this particular amendment, we will enable Kenyans to spend their local currency here as they build our nation as opposed to using foreign money, and in the long-run we end up losing our currency.

Thank you, Hon. Temporary Speaker.

The Hon. Temporary Speaker (Hon. Peter Kaluma): Mover, you do not need to use the 10 minutes to reply. Can you make your reply as brief as possible so that we can move to the next business?

Hon. Kuria Kimani (Molo, UDA): Thank you, Hon. Temporary Speaker.

From the outset, I would like to thank all my colleagues who have really enriched the debate on this particular Bill. I would also like to thank you, Hon. Temporary Speaker, for your kind words, and I do not take that for granted. I thank you because you have really enriched this discussion.

One of the matters that has been raised is the issue of a foreigner registering a company in Kenya, and whether it would qualify to be a local company. Although the Companies' Act would require a local sort of sponsor in registration, one of the things that the Committee will be asking this House to approve is the change of the term 'local contractor' to 'citizen contractor'.

Hon. Temporary Speaker, the issue of fines is a matter that we would wish to address during the Committee of the whole House. Another question has been raised about whether this Bill provides for due diligence by these officers before an order has been done. One of the matters that I deliberately addressed is specifically provided for in Clause 14, which amends Section 83(2) of the parent Act to now state:

“(2) The conduct of due diligence under subsection (1) includes but is not limited to obtaining confidential references from persons with whom the tenderer has had prior engagement, visiting the contractor's offices, inspecting of the plant, equipment and completed works, in addition to confirming the validity of documents presented.”

We recently had the infamous fertiliser scandal. In that particular transaction, the suppliers of the fertiliser were businesspeople, but the fertiliser came from a local manufacturer. If due diligence had been done by an accounting officer to verify whether the supplier had the capacity to supply the fertiliser to the Government, we would have reduced the costs for the procuring entity. That happens many times. Trade is not a problem, but it is very important to give an opportunity to the person who has put in the hard work of setting up a plant to manufacture goods. However, tenders are awarded to those who have political

connections. Usually, they take goods from the local contractors and then inflate the prices, thereby disadvantaging the local manufacturers.

We have noted down all the views by Members. I urge the House Business Committee (HBC) to prioritise this business so that Members who have amendments can submit them for inclusion during the Committee of the whole House, so that we can have a refined piece of legislation, which will change the way procurement is done in this country. It will also address the matter of budgeted corruption, and help us to create jobs, grow our businesses and our manufacturing industry. We should buy Kenya and build Kenya.

With that, I beg to reply.

The Temporary Speaker (Hon. Peter Kaluma): The putting of the Question on the Bill will be done at a future date for the convenience of the House.

(Putting of the Question deferred)

Next Order.

Second Reading

THE UNCLAIMED FINANCIAL ASSETS (AMENDMENT) BILL
(National Assembly Bill No.15 of 2024)

Hon. Kimani Ichung'wah (Kikuyu, UDA): Hon. Temporary Speaker, I beg to move that the Unclaimed Financial Assets (Amendment) Bill (National Assembly Bill No.15 of 2024) be now read a Second Time.

Hon. Temporary Speaker, this is a very short Bill with only about four clauses. In principle, there are just about three clauses which are amending Sections 8, 28 and 45 of the Act. The principal objective of the Bill is to allow a claimant of an unclaimed financial asset the opportunity to designate a third party to pursue a claim that is being held by the Unclaimed Financial Assets Authority.

After its establishment, the Unclaimed Financial Assets Authority was charged with the responsibility of putting together all unclaimed financial assets, including M-Pesa balances left on the phones of deceased persons, and money left in bank accounts. It is not in the interest of either the authority or the financial institutions, including insurance companies that are holding policies for deceased persons, to keep those assets.

At times, the designated claimant is probably not even in town or in a position to pursue that unclaimed financial asset. For instance, the designated claimant may be a parent of the deceased person and lives far off in the rural areas, but has a son who is a lawyer in the city. That son in the city cannot even pursue that claim on behalf of the parent because he is not designated to do so. Hence, we want to open it up in such a way that the parent, who is the designated claimant, can designate the son who is a lawyer to pursue that unclaimed asset.

It is never in the interest of the institutions that hold those unclaimed financial assets to keep those assets, neither is it in the interest of the Unclaimed Financial Assets Authority to refuse to pay out those claims to claimants. Every other institution, especially those in the financial sector, is keen on holding financial assets. You can imagine the case of an insurance company that is supposed to pay out a policy worth tens of millions, but they know the claimant is not in a position to claim. They will never disclose that information to either the Unclaimed Financial Assets Authority (UFAA) or any other designated person who would be claiming that amount. Concurrently, the UFAA knows that part of their income comes from the interest generated from the money they invest. And this money, of course, does not belong to them. It belongs to the claimants, the people who have left this money behind. Therefore, it is not in their interest to go out looking for people. I know some argue that UFAA has had a campaign

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on national television telling people that they can now claim their unclaimed financial assets. If you look at those media adverts, that is all there is. There is never a deliberate effort to get claimants to claim their unclaimed financial assets.

This Bill is opening this up and allowing claimants to designate a third person to pursue the claim on their behalf, such as lawyers, accountants, or the children of elderly parents who are claimants to UFAA. They can now designate their children in cities or urban areas who can pursue these claims. And basically, that is what this Bill is doing. Whether you look at Sections 28 or 45, it is just inserting the words ‘or such other person as a claimant may designate.’

There is no opportunity for anybody to come from the blues and claim an unclaimed financial asset that does not belong to them or they have no claim to, because the Act is being amended to say, ‘as a claimant may designate.’ If I am the claimant to my late brother’s unclaimed financial assets and I am not in a position to pursue that claim, I can designate my good friend Dr Oundo or my daughter Mumbi to follow it on my behalf.

Therefore, this being a very small Bill, I urge us to support it. I beg to move and request Hon. Timothy to second.

The Temporary Speaker (Hon. Peter Kaluma): Hon. Timothy Toroitich.

Hon. Timothy Kipchumba (Marakwet West, Independent): Thank you, Hon. Temporary Speaker. I rise to second the Unclaimed Financial Assets (Amendment) Bill.

If you look at the law as it is and the interpretation of the courts, you will note that they have given it a very strict interpretation. This has necessitated this particular amendment. Designation means it can be either through testate or intestate succession, through a will or succession generally before our courts. So, when someone has designated a certain unclaimed property, and it is subjected to a court of law, the court, under succession law, may allow the person to claim that particular asset.

For me, it is a progressive legislation, but should only be limited to lawful designations and nominations, whether through a will in cases of a testate succession, or where there is no will in intestate succession, and the courts lawfully designate a person to claim under this particular piece of legislation.

Hon. Temporary Speaker, I rise to second.

(Question proposed)

The Temporary Speaker (Hon. Peter Kaluma): Hon. Kimani Kuria.

Hon. Kuria Kimani (Molo, UDA): Thank you, Hon. Temporary Speaker. This is one of the Bills that were sponsored by the Leader of the Majority Party and referred to the Departmental Committee on Finance and National Planning.

In as well as we appreciate the need to have people designate others to get their unclaimed assets, one of the matters that we are grappling with as a committee is the risk that is put on those unclaimed assets. These unclaimed assets are financial and, therefore, there would be insurance compensations, money in bank accounts, balances in M-PESA accounts etc. And the reason why they would be in the Unclaimed Assets Authority in the first place, is because the owners of these funds may not be aware that that money exists.

For example, you probably opened a bank account many years ago when you were younger and forgot about it, or lost a phone that had an M-PESA balance in it. And therefore, the fact that you do not use that number anymore, money owned by you could still be in that M-PESA account. If we allow someone to designate someone else to be paid that money on their behalf, we could have some unscrupulous people going around looking for unclaimed monies in the fund and claiming that they have been authorised to access it on one’s behalf. Consider that the real beneficiaries of those funds may not even be aware.

The spirit is however very good. This is because we have a lot of monies in billions of shillings that are lying in the unclaimed assets and that the authority is using to trade in bonds, treasury bills and other transactions of the banks. How then do we achieve the difference?

If you look at the Unclaimed Assets Act, it necessitates all financial institutions to first of all use all means necessary to try and find the beneficial owners of those assets. It also prohibits them from keeping that money or those balances after a stipulated amount of time, but to transfer those assets into the Unclaimed Assets Authority. We need to look at the penalties prescribed in the law for failure to do that. If we have these financial institutions remit all the unclaimed financial assets to the authority and put it to task, in order to use all means necessary to find the beneficial owners of these assets, then this matter will not arise.

We are however concerned as a committee, that if this is left as it is, we could have people claiming to be designated to access these funds. And remember, the real beneficial owners of these assets do not know that they own them and therefore depend on the fund.

With that, I beg to support.

The Temporary Speaker (Hon. Peter Kaluma): Hon. John Gitonga.

Hon. Gitonga Mukunji (Manyatta, UDA): Thank you, Hon. Temporary Speaker. I rise to contribute to this Bill. I reject and oppose the proposal of getting a third party to enjoy goods from the unclaimed financial assets. As per the records, we have over Ksh62 billion worth of assets in cash and shares in the unclaimed assets category.

These are unclaimed assets. An unclaimed asset is one that has not gotten somebody to claim it. It is not very clear to me as to how a third party can be able to say that he was given mandate. And by whose authority can we claim that somebody has been given mandate to take these assets? With such an amount, interests will come in and unscrupulous people will try to lay hands on assets that are not their own and that they are not given a chance to claim.

This House will set a bad precedent by allowing third parties to claim unclaimed assets. Even the vetting and knowing clearly that these assets were designated to a third party would be something that requires a lot of effort. The Bill itself does not provide for that.

So, I oppose this, and recommend my colleagues to also oppose it.

The Temporary Speaker (Hon. Peter Kaluma): Hon. Julius Rutto will suffer the fate of doing under five minutes.

Hon. Julius Rutto (Kesses, UDA): Thank you, Hon. Temporary Speaker. I will use one minute. I rise to reject this amendment.

When this particular amendment was brought to our committee, we engaged stakeholders including the acting CEO of the Unclaimed Assets Authority. To our surprise, they were not even aware how this amendment was brought to the Parliament. Up to now we are yet to know the reason and justification for someone who has been identified through all those processes to benefit from unclaimed assets to transfer again to another person. We never got the justification.

I reject this particular amendment. We rejected it as a Departmental Committee on Finance and National Planning.

The Temporary Speaker (Hon. Peter Kaluma): Hon. Julius Rutto, what happens where a person has no known close relative?

Hon. Julius Rutto (Kesses, UDA): By then, the beneficiary designate has already been found.

The Temporary Speaker (Hon. Peter Kaluma): No problem. It was not for you to answer. There is no interest. The Mover can reply. You may donate some time.

Hon. Kimani Ichung'wah (Kikuyu, UDA): Hon. Temporary Speaker, I cannot donate time to somebody who walks into the House at 8.30 p.m. and he has not been there from 2.30 p.m. Every Member including the Member for Gatanga knows the House sits at 2.30 p.m. He should have been here then. I will not donate.

Hon. Temporary Speaker, I beg to reply.

(Putting of the Question deferred)

The Temporary Speaker (Hon. Peter Kaluma): Next Order.

COMMITTEE OF THE WHOLE HOUSE

(Order for Committee read)

[The Temporary Speaker (Hon. Peter Kaluma) left the Chair]

IN THE COMMITTEE

[The Temporary Chairman (Hon. Peter Kaluma) in the Chair]

THE ETHICS AND ANTI-CORRUPTION COMMISSION (AMENDMENT) BILL (National Assembly Bill No.11 of 2024)

The Temporary Chairman (Hon. Peter Kaluma): We are in the Committee of the whole House, Order No.16. We will start with the Ethics and Anti-Corruption Commission (Amendment) Bill (National Assembly Bill No.11 of 2024).

Clause 2

The Temporary Chairman (Hon. Peter Kaluma): There was an amendment by Hon. Caroli Omondi and Hon. Shakeel Shabbir. All are not moved. They are dropped.

(Proposed amendments by Hon. Caroli Omondi and Hon. Shakeel Shabbir dropped)

(Clause 2 agreed to)

Clause 3

The Temporary Chairman (Hon. Peter Kaluma): The Leader of the Majority Party.

Hon. Kimani Ichung'wah (Kikuyu, UDA): Hon. Temporary Chairman, I beg to move:

THAT, the Bill be amended by deleting Clause 3 and substituting therefor the following new Clause-

Saving and transitional provisions.

3. Despite the provisions of section 2 of this Act, a person serving as a chairperson of the Ethics and Anti-Corruption Commission on the date this Act comes into force shall continue to serve in that position for their unexpired term of office.

Basically, this is just rewording clause 3 as it is in the Bill.

The Temporary Chairman (Hon. Peter Kaluma): The hon. Speaker had made a communication that if the amendment proposed by the leader of the Majority Party is carried, all the other proposed amendments to this clause will stand dead.

(Question of the amendment proposed)

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

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

(Clause 3 as amended agreed to)

(Title agreed to)

(Clause 1 agreed to)

The Temporary Chairman (Hon. Peter Kaluma): Mover.

Hon. Kimani Ichung'wah (Kikuyu, UDA): Hon. Temporary Chairman, I beg to move that the Committee do report to the House its consideration of the Ethics and Anti-Corruption Commission (Amendment) Bill (National Assembly Bill No. 11 of 2024) and its approval thereof with amendments.

(Question proposed)

(Question put and agreed)

The Temporary Chairman (Hon. Peter Kaluma): The next Bill.

THE KENYA ROADS BOARD (AMENDMENT) BILL
(NATIONAL ASSEMBLY BILL NO. 18 OF 2024)

(Clauses 3 and 4 agreed to)

(Clause 2 agreed to)

(Title agreed to)

(Clause 1 agreed to)

The Temporary Chairman (Hon. Peter Kaluma): Mover.

Hon. Kimani Ichung'wah (Kikuyu, UDA): Hon. Temporary Chairman, I beg to move that the Committee do report to the House its consideration of the Kenya Roads Board (Amendment) Bill (National Assembly Bill No. 18 of 2024) and its approval thereof with amendments.

(Question proposed)

(Question put and agreed to)

The Temporary Chairman (Hon. Peter Kaluma): The next Bill is the Kenya Revenue Authority (Amendment) (No. 2) Bill (National Assembly Bill No. 35 of 2024)

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THE KENYA REVENUE AUTHORITY (AMENDMENT) (NO. 2) BILL
(National Assembly Bill No. 35 of 2024)

(Clause 2 agreed to)

Clause 3

The Temporary Chairman (Hon. Peter Kaluma): Hon. Members, I am informed there is an amendment by the Leader of Majority Party.

Hon. Kimani Ichung'wah (Kikuyu, UDA): Hon. Temporary Speaker, having consulted with the Chair of the Departmental Committee on Finance and National Planning, I wish to withdraw my amendment in favour of his amendment. It caters for what I wanted and in a better version.

The Temporary Chairman (Hon. Peter Kaluma): Do you want to go on record withdrawing?

Hon. Kimani Ichung'wah (Kikuyu, UDA): Yes, I withdraw my amendment to allow the Chair of the Committee to move his amendment.

*(Proposed amendment by
Hon. Kimani Ichung'wah dropped)*

The Temporary Chairman (Hon. Peter Kaluma): Chair of the Committee, move your amendment.

Hon. Kuria Kimani (Molo, UDA): Thank you Leader of the Majority Party for your magnanimity. I beg to move:

THAT, Clause 3 of the Bill be amended by deleting paragraph (b) and substituting therefor the following new paragraph—

(b) by inserting the following subsection immediately after subsection

(1)—

(1a) The Commissioner-General shall appoint Deputy Commissioner subject to approval of the Board.

I beg to move, Hon. Temporary Chairman.

(Question of the amendment proposed)

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

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

(Clause 3 as amended agreed to)

(Clause 4 agreed to)

(Title agreed to)

(Clause 1 agreed to)

The Temporary Chairman (Hon. Peter Kaluma): Mover.

Hon. Kimani Ichung'wah (Kikuyu, UDA): Hon. Temporary Chairman, I beg to move that the House reports its consideration of the Kenya Revenue Authority (Amendment) (No.2) Bill (National Assembly Bill No. 35 of 2024) and its approval thereof with amendments.

(Question proposed)

(Question put and agreed to)

(The House resumed)

IN THE HOUSE

[The Temporary Speaker (Hon. Peter Kaluma) in the Chair]

MOTIONS

CONSIDERATION OF REPORT ON THE KENYA REVENUE AUTHORITY (AMENDMENT)(NO.2) BILL

The Temporary Chairman (Hon. Peter Kaluma): Chairman.

Hon. Gabriel Tongoyo (Narok West, UDA): Hon. Temporary Speaker, I beg to report that the Committee of the whole House has considered the Kenya Revenue Authority (Amendment) (No.2) Bill (National Assembly Bill No. 35 of 2024) and approved the same with amendments.

The Temporary Chairman (Hon. Peter Kaluma): The Mover to move agreement with the Report.

Hon. Kimani Ichung'wah (Kikuyu, UDA): Hon. Temporary Speaker, I beg to move that the House do agree with the Committee in the said Report. I also request Hon. Kimani Kuria to second the Motion for agreement with the report of the Committee of the whole House.

Hon. Kuria Kimani (Molo, UDA): Hon. Temporary Speaker, I beg to second.

(Question proposed)

The Temporary Chairman (Hon. Peter Kaluma): Chairman, go to the Kenya Roads Board (Amendment) Bill.

CONSIDERATION OF REPORT ON THE KENYA ROADS BOARD (AMENDMENT) BILL

Hon. Gabriel Tongoyo (Narok West, UDA): Hon. Temporary Speaker, I beg to report that the Committee of the whole House has considered the Kenya Roads Board (Amendment) Bill (National Assembly Bill No. 18 of 2024) and its approval thereof.

The Temporary Chairman (Hon. Peter Kaluma): The Mover to move agreement with the Report.

Hon. Kimani Ichung'wah (Kikuyu, UDA): Hon. Temporary Speaker, I beg to move that the House do agree with the Committee in the said report. I also request Hon. Oundo to second the Motion for agreement with the Report of the Committee of the whole House.

The Temporary Speaker (Hon. Peter Kaluma): Hon. Oundo.

Hon. (Dr) Ojiambo Oundo (Funyula, ODM): I second the agreement of the Report of the Committee of the whole House.

Thank you, Hon. Temporary Speaker.

(Question proposed)

(Putting of the Question deferred)

CONSIDERATION OF REPORT ON THE
ETHICS AND ANTI-CORRUPTION COMMISSION (AMENDMENT) BILL

The Temporary Speaker (Hon. Peter Kaluma): Hon. Chairperson.

Hon. Gabriel Tongoyo (Narok West, UDA): Hon. Temporary Speaker, I beg to report that the Committee of the whole House has considered the Ethics and Anti-Corruption Commission (Amendment) Bill (National Assembly Bill No.11 of 2024) and approved the same with amendments.

Hon. Kimani Ichung'wah (Kikuyu, UDA): Hon. Temporary Speaker, I beg to move that this House do agree with the Report of the Committee of the whole House on its consideration of the Ethics and Anti-Corruption Commission (Amendment) Bill (National Assembly Bill No. 11 of 2024). I also request Hon. Sabina Chege to second the Motion.

The Temporary Speaker (Hon. Peter Kaluma): Hon. Sabina Chege.

Hon. Sabina Chege (Nominated, JP): Hon. Temporary Speaker, I second.

The Temporary Speaker (Hon. Peter Kaluma): Thank you, Hon. Sabina Chege.

(Question proposed)

For the convenience of the House, the other matters relevant to these Bills will be addressed in future.

(Putting of the Question deferred)

Next Order.

BILL

Second Reading

THE LAND CONTROL BILL
(National Assembly Bill No. 39 of 2023)

(Moved by Hon. (Dr) Ojiambo Oundo on 18.10.2024- Afternoon Sitting)

(Resumption of debate interrupted on 6.11.2024- Afternoon Sitting)

The Temporary Speaker (Hon. Peter Kaluma): Hon. John Gitonga, do you want to speak to this Bill? Hon. Sabina Chege.

Hon. Kimani Ichung'wah (Kikuyu, UDA): On a point of order, Hon. Temporary Speaker.

The Temporary Speaker (Hon. Peter Kaluma): Yes, Leader of the Majority Party.

Hon. Kimani Ichung'wah (Kikuyu, UDA): Hon. Temporary Speaker, with your indulgence, I know this should have come at the beginning of the debate on this Bill. Kindly allow us to contribute for at least three to five minutes maximum to allow Hon. Oundo time to reply, considering the time factor.

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The Temporary Speaker (Hon. Peter Kaluma): Hon. Sabina Chege, proceed.

Hon. Sabina Chege (Nominated, JP): Thank you, Hon. Temporary Speaker. I stand to support this Bill by Hon. Oundo. It proposes the establishment of a Land Control Committee in each constituency to replace the current Land Control Board. Hon. Oundo has proposed that the Land Control Committee will come from the local people who are very conversant with the traditions, customs and way of life of the community in that area. This will enable each proposed transaction to be reviewed soberly within the set-up of the community, especially the proposal on transactional and utilisation of agricultural land, which is well known and can be managed by the local community.

The Bill further proposes the establishment of Land Control Appeals Committees which will handle any appeals emanating from the Land Control Committee.

I support the Bill. Thank you, Hon. Temporary Speaker.

The Temporary Speaker (Hon. Peter Kaluma): Is that Hon. Julius Rutto? Hon. Timothy Toroitich, Leader of the Majority Party takes precedence.

Hon. Timothy Kipchumba (Marakwet West, Independent): Hon. Temporary Speaker, I will take a minute.

The Temporary Speaker (Hon. Peter Kaluma): Order, Hon. Timothy Toroitich. Take your seat. You need all the time to prepare. Leader of the Majority Party takes precedence over you.

Leader of the Majority Party, proceed.

Hon. Kimani Ichung'wah (Kikuyu, UDA): Thank you, Hon. Temporary Speaker. In just a minute as I had requested in the interest of time, I support this Bill. I thank Hon. Oundo because the Land Control Boards are centres of corruption in all our sub-counties and county headquarters. The Deputy County Commissioners (DCC) and Sub-County Administrators or National Government Administration Officers (NGAO) have a very huge leeway in the appointment of the members of Land Control Boards.

As Hon. Sabina Chege said, we find situations across the country where agricultural land is transferred without due regard to restrictions. In the areas where we come from land has been subdivided. It started with 50 by 100 to 40 by 80 and now it is 30 by 66. All this is happening under the purview of the land control boards.

I want to support the proposals in the Bill that the Land Control Committees should work very well to stem out the culture of corruption at the land control boards. They should appoint the local people who understand the area. This is because I have seen Deputy County Commissioners (DCCs) appointing people who have conflict of interest to the land control boards. We have very many surveyors and land brokers who sit in those land control boards. I know under the current regulations the constituency offices nominate two people, but the improved version proposed by Hon. Wilberforce Oundo is much better. Therefore, I support.

The Temporary Speaker (Hon. Peter Kaluma): Hon. Timothy Toroitich you may proceed.

Hon. Timothy Kipchumba (Marakwet West, Independent): Thank you, Hon. Temporary Speaker. I want to thank Hon. Wilberforce Oundo for this very progressive Bill. Lawyers in this country will celebrate. If you look at the Land Control Act passed in 1967 it has many piecemeal amendments. This is progressive because it is aligning the Bill with the Constitution, the Land Registration Act, the Environment and Land Court Act of 2011, the National Land Commission Act and other legislations.

This Bill will regulate consents on matters to do with subdivision and transfer of land. In my opinion, this will bring sanity to the land regime in this country. I want to say two things. One, if you look at Clause 9 a function of the board is to resolve any dispute over general boundaries within their jurisdiction. This is now very clear under the law. Two, the board should settle any land dispute referred to it by willing parties, pursuant to Articles 60(1)(g) and

159(2)(c) of the Constitution, where the court encourages alternative means of dispute resolution. This Bill is progressive. I support in totality. Thank you.

The Temporary Speaker (Hon. Peter Kaluma): Hon. John Gitonga.

Hon. Gitonga Mukunji (Manyatta, UDA): Thank you, Hon. Temporary Speaker. I rise to congratulate our friend, Hon. Wilberforce Oundo for this Bill. I also want to commend the Leader of the Majority Party for pushing a Private Member's Bill to a level where it sees the light of day. In Kenya, the issue of land is very pertinent. We deal with land control boards in our areas and I want to agree with the Hon. Members who have said that this has been a bed of corruption. The so-called special board sittings are always constituted in the night to transfer land. This has made many people especially very old grandfathers and grandmothers to lose their land.

This Bill is welcome because it is aligning the land control boards in our areas to the representatives of the people in the constituency. This will give a Member of Parliament mandate to ensure that people do not lose their land. I read in the newspaper that somebody had used affordable housing land to borrow money from a bank. I thought this was an issue of the special board sittings where land is transferred without someone's knowledge. This needs to be checked into. I support this Bill. There is also a big issue with the remuneration of these board members. The monies that are supposed to get to them, do not. We have many complaints. This Bill should be used to ensure that we affirm our support and get them to continue working.

I support. Thank you.

The Temporary Speaker (Hon. Peter Kaluma): The Chairman of the Departmental Committee on Administration and Internal Affairs, Hon. Gabriel Tongoyo.

Hon. Gabriel Tongoyo (Narok West, UDA): Thank you so much, Hon. Speaker.

Thank you for giving me this opportunity to contribute to this very progressive and important Bill. From the outset, I congratulate my brother, Hon. (Dr) Oundo, for coming up with this Bill. As it has been said by many speakers, the issues of land in this country are very emotive. The word, "land" means different things to different communities.

Currently, the Land Control Boards are dysfunctional. They have been a root cause of corruption and insecurity in this country because they are so much riddled with corruption. The amendment as proposed by the Member will go a long way to try and streamline such issues, especially in communities where illiteracy is high.

Members of the board have what they call, "Special sittings." This is where they transact business and give consent at night and even on weekends. This Bill should be able to help the country secure food security, as it also aims to streamline the issue of zoning so that agricultural land remains for the main purpose. I consider this a very progressive Bill, and we should support it as a House and country.

I support.

The Temporary Speaker (Hon. Peter Kaluma): Hon. Makilap.

Hon. Joseph Makilap (Baringo North, UDA): Hon. Temporary Speaker, I thank Dr. Oundo for this Bill.

(Technical hitch)

The Member has struggled to bring up this particular Bill for seven years. I thank the broad-based administration which has the Leader of the Majority Party who supports this Bill. Prof. Oundo, this is the way forward. I am very sure if we were in our old state of Kenya-Kwanza alone, this Bill would not have seen the light. Thank God for the presence of the broad-based Government where Members of Kenya-Kwanza are able to appreciate a brilliant idea from a man who has been on the other side of the political divide.

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We are here to support it because it has decentralised the power of decision-making to the grassroots, the sub-county. We want to make it not only a constituency but a sub-county because nowadays, one constituency may have three or four sub-counties. Land is an emotive issue in Kenya that people subdivide other people's land even at night. People who have the financial muscle can summon the Land Control Board and do their thing. This is the game-changer in protecting private and public land throughout the Republic of Kenya. Leader of the Majority Party, thank you for supporting this particular matter.

The Temporary Speaker (Hon. Peter Kaluma): Hon. Julius Rutto.

Hon. Julius Rutto (Kesses, UDA): Thank you so much, Hon. Temporary Speaker.

(Loud consultations)

My friend, Hon. Wakili, wants to contribute. I just want to support my brother, Hon. Oundo for now, reasoning like a Kenyan. Land issues in Kenya are more of community than administrative. For all the land issues that are pending in courts, you will agree with me that if the locals were given an opportunity to address those issues, the courts would have easier work. The Environment and Land Court Climate Justice Conference is currently ongoing in Eldoret City. What is coming out clearly is the issue of land management. The discussion by the delegates is that if there was adequate community participation, those matters would be addressed on time to allow land use for the benefit and development of our country.

I support the Bill. Thank you, Hon. Temporary Speaker.

The Temporary Speaker (Hon. Peter Kaluma): Lastly, Senior Counsel Wakili Muriu.

Hon. Wakili Edward Muriu (Gatanga, UDA): Thank you, Hon. Temporary Speaker, for giving me this opportunity.

The Temporary Speaker (Hon. Peter Kaluma): Try to contribute in under two minutes because of time.

Hon. Wakili Edward Muriu (Gatanga, UDA): Yes, Hon. Temporary Speaker. I will be very brief. I support this Bill by Hon. Oundo. I just want to say two things. The purpose of legislation is to create certainty in our laws whereby people can plan ahead, especially on matters of land. Land is the most emotive issue in our country and the only asset that most Kenyans think about. It encompasses all the other assets that belong to Kenyans. Therefore, the moment we create certainty in terms of land control, we will build wealth for our people.

Secondly, absolute power corrupts absolutely. There are instances whereby Deputy County Commissioners convene their own committees to control land and make decisions. They hold special sittings to deprive people of their land.

Finally, this law will work best in a situation where land control and land use laws are also aligned. For example, previous coffee-growing areas have now turned into residential areas. As a result, land regulation in that area now becomes commercial because it is no longer agricultural land, but residential. Therefore, there is a bit of conflict in terms of the land use. As we address this Bill, I hope that we will harmonise the agricultural land use laws and the commercial laws.

Thank you, Hon. Temporary Speaker.

Hon. Gabriel Tongoyo (Narok West, UDA): On a point of order, Hon. Temporary Speaker.

The Temporary Speaker (Hon. Peter Kaluma): What is out of order, Hon. Gabriel Tongoyo?

Hon. Gabriel Tongoyo (Narok West, UDA): Hon. Temporary Speaker, it is not really a point of order. I rose up earlier and supported the Bill. I hope we will have an opportunity to amend the Bill because there is a part in the Bill...

(Technical hitch)

(Hon. (Dr) Ojiambo Oundo spoke off the record)

The Temporary Speaker (Hon. Peter Kaluma): He is on a point of order.

Hon. Gabriel Tongoyo (Narok West, UDA): Hon. Oundo proposed that the board members should have a bachelor's degree, and we should appreciate that. We all agree that the Bill is very progressive and we support it in totality. But on the issue of the qualifications of those...

The Temporary Speaker (Hon. Peter Kaluma): Is it a point of order or a point of information to Hon. Oundo?

Hon. Gabriel Tongoyo (Narok West, UDA): It is a point of information, but we will have an opportunity to discuss that issue and perhaps amend it during the Committee of the whole House. We should appreciate that a majority of Kenyans are illiterate, especially those who live on huge chunks of land like where I come from and in North Eastern Kenya. So, stipulating that board members should be degree holders will make those land control boards a preserve of *wakoras* and crooks in Nairobi City.

The Temporary Speaker (Hon. Peter Kaluma): I get you, Hon. Tongoyo, but I can neither place your contribution as a point of order nor a point of information. The Mover to reply in less than one minute.

Hon. (Dr) Ojiambo Oundo (Funyula, ODM): Thank you, Hon. Temporary Speaker. I thank my colleagues for contributing to this Bill. I thank the Departmental Committee on Lands for carrying out public participation in respect of this Bill. I also thank the Speaker of the National Assembly for occasionally intervening to ensure that we get to this level. It will be progressive and will help solve many of the pending court cases about land. It will also streamline the management of agricultural land and sort out all the maladies we have experienced in this particular line.

The determination of the matter will be more or less in an open court, with advance notice given that a matter is coming up, so that any objections or issues to be raised can be raised in advance.

We have done away with the issue of special boards. Therefore, you can be sure that your land is safe because everything will be done in broad daylight.

Regarding what my colleagues have raised, we can address them at the Committee of the whole House, as we always do. It will be a give-and-take process, and we shall explain.

With those few remarks, I beg to reply.

The Temporary Speaker (Hon. Peter Kaluma): We have had a very busy day as Members of the National Assembly this afternoon. I believe we have gone through the Second Reading and other businesses in a very good way. I thank all the Members for that.

Let us be upstanding.

ADJOURNMENT

The Temporary Speaker (Hon. Peter Kaluma): Hon. Members, the time being 9.01 p.m., this House stands adjourned until Thursday, 28th November 2024, at 9.30 a.m.

The House rose at 9.01 p.m.

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