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THIRTEENTH PARLIAMENT

NATIONAL ASSEMBLY

THE HANSARD

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Wednesday, 19th February 2025

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. Sergeant-at-Arms, ring the Quorum Bell. Hon. Chepkonga, where is the quorum?

(Hon. Samwel Chepkonga spoke off record)

(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, please, take the nearest seats.

(Several Hon. Members walked into the chamber)

MESSAGE

REFERRAL BY THE PRESIDENT OF THE COTTON
INDUSTRY DEVELOPMENT BILL

Hon. Speaker: Hon. Members, I have a message from the President. You may recall that in accordance with the provisions of Article 112 of the Constitution, the National Assembly considered and passed, with amendments, The Cotton Industry Development Bill (Senate Bill No.5 of 2023) on 14th August 2024. The Bill was thereafter referred back to the Senate for reconsideration. The Bill sought to, *inter alia*, provide for the production, processing, marketing and distribution of cotton in Kenya; and to establish the Cotton Industry Development Board.

Upon reconsideration, the Senate passed the National Assembly amendments to the Bill on Wednesday, 4th December 2024, thereby concluding its bicameral consideration. This paved way for presentation of the Bill to His Excellency the President for assent in accordance with the provisions of Article 112(2) of the Constitution. However, I wish to convey to the House that I have since received a Memorandum from His Excellency the President referring the Bill back to the Senate for reconsideration in accordance with the provisions of Article 115 of the Constitution.

In the Memorandum, the President has expressed reservations about the establishment of an additional regulatory entity, noting that creating such an entity as envisaged in the Bill would contribute to the proliferation of State corporations and undermine the ongoing reforms on the rationalisation of State entities.

In light of the foregoing, and noting that the Bill originated in the Senate, the House will await the conclusion of consideration of the President's Memorandum on the Cotton

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Industry Development Bill, 2023 by the Senate before considering the President's reservations. In the meantime, I direct the Clerk to circulate the Memorandum from the President to all Members to familiarise themselves with its contents.

The House is accordingly informed. Thank you.

PAPERS

Hon. Speaker: Leader of the Majority Party.

Hon. Owen Baya (Kilifi North, UDA): Hon. Speaker, I beg to lay the following Papers on the Table:

Reports of the Auditor-General and Financial Statements for the year ended 30th June 2024 and the certificates therein for the following institutions:

1. Annual Report and Financial Statements of Kibabii University for the financial year ended 30th June 2022;
2. Financial Statements of the Salaries & and Remuneration Commission Mortgage and Car loan scheme Fund for the year ended 30th June 2024;
3. Kenya Medical Laboratory Technicians and Technologists Board (KMLTTB);
4. State Department for Technical, Vocational Education and Training;
5. National Land Commission Housing Scheme Fund;
6. State Department for Co-operatives;
7. State Department for Investment Promotion;
8. Technical and Vocational Education and Training Authority;
9. Teachers Service Commission;
10. Kenya National Commission on Human Rights Car Loan and Mortgage Scheme;
11. Kenya Universities and Colleges Central Placement Service Car Loan and Mortgage Scheme;
12. Centre of Mathematics, Science and Technology Education in Africa (CEMASTEIA);
13. National Research Fund;
14. State Department for East African Community Affairs; and,
15. State Department for Trade.

Hon. Speaker, I beg to lay.

Hon. Speaker: Thank you, Hon. Owen. Next is the Chairperson of the Departmental Committee on Finance and National Planning.

Hon. Kuria Kimani (Molo, UDA): Hon. Speaker, I beg to lay the following Paper on the Table:

Report of the Departmental Committee on Finance and National Planning on its Consideration of the Insurance Professionals Bill (National Assembly Bill No.13 of 2024).

Hon. Speaker: Thank you. Next Order.

NOTICES OF MOTIONS

ADOPTION OF REPORTS ON EFFORTS TOWARDS REALISATION OF TWO-THIRDS GENDER PRINCIPLE

Hon. George Murugara (Tharaka, UDA): Hon. Speaker, I beg to give notice of the following Motion:

THAT, this House adopts the Joint Report of the National Assembly Departmental Committee on Justice and Legal Affairs and the Senate Standing Committee on Justice, Legal Affairs and Human Rights on its consideration of the report of the National Dialogue Committee (NADCO) and the report of the Multi-Sectoral Working Group on the realisation of the two-thirds gender principle, laid on the Table of the House on Thursday, 16th January 2025.

Thank you, Hon. Speaker.

Hon. Speaker: Thank you. The Chairperson of the Departmental Committee on Administration and Internal Security.

INQUIRY INTO STATE OF SECURITY IN SIX
COUNTIES DECLARED AS DISTURBED

Hon. Gabriel Tongoyo (Narok West, UDA): Hon. Speaker, I beg to give notice of the following Motion:

THAT, this House adopts the Report of the Departmental Committee on Administration and Internal Security on the inquiry into the state of security in six counties of North Rift of Baringo, Elgeyo Marakwet, Turkana, West Pokot, Samburu and Laikipia, declared as disturbed, laid on the Table of the House on Tuesday, 13th August 2024.

Hon. Speaker: Thank you. Member for Nyandarua County, Hon. Faith Gitau.

EXPANSION OF MAJOR ROADS IN THE
COUNTRY TO DUAL CARRIAGEWAYS

Hon. Faith Gitau (Nyandarua County, UDA): Hon. Speaker, I beg to give notice of the following Motion:

THAT, aware that the Kenya Roads Act, 2007 provides for the establishment of road authorities responsible for, among other functions, the management and development of roads under their respective purview and for developing and providing adequate transport infrastructure that guarantees safe and efficient movement of people, goods and services across the country and beyond; further aware that the First Schedule of the Kenya Roads Act provides for the classification of national trunk roads into classes A, B and C; recognising that the Fourth Schedule to the Constitution assigns to the national Government the function of construction and operation of national trunk roads; noting that a significant portion of highways in the national trunk road network are currently single carriageways; concerned that single carriageway roads pose multifaceted challenges including traffic congestion during peak periods which limits movement of people, goods and services across regions and increases vulnerability to road accidents; further concerned that the lack of footbridges and safe pedestrian crossing areas on these high-traffic roads has been a leading contributor to the surge in road accidents in the recent past; cognizant of the duty of the Government to provide a reliable transport system for efficient traffic management, economic development and bolstering interconnectivity among all regions in the country and beyond; now, therefore, this House resolves that the Government, through the Ministry of Roads and Transport, undertakes an expansion programme of national trunk roads with a view of upgrading all classes A, B and C roads in the country from two-way lanes to dual carriageway (one-way roads) with the necessary infrastructure that include footbridges, safe

crossing zones at regular intervals, proper drainage systems, and other requisite infrastructure for their optimal operation.

Hon. Speaker: Next is the Member for Alego Usonga, Hon. Samuel Atandi. Is he here? If not, let us have Hon. Charles Ngusya.

FORMULATION OF REWARD SCHEME FOR ACCOMPLISHMENTS
BY SPORTS PERSONS IN INTERNATIONAL COMPETITIONS

Hon. Charles Nguna (Mwingi West, WDM): Hon. Speaker, I beg to give notice of the following Motion:

THAT, aware that sports play an integral role in promoting cultural heritage, national identity, national development, the well-being of the people and sustenance of livelihoods, particularly of the youth; appreciating that Sessional Paper No.3 of 2005 provides a framework for sports development and operationalisation in the country; further appreciating that the sector plan for sports culture and arts 2018 by the Ministry of Sports, Culture and Arts mainstreamed sports development in the Third Medium Term Plan (MTP III) for 2018 to 2022, under the Kenya's vision 2030; recognising that Vision 2030 aims at capitalising on the country's international reputation as a world-class sports powerhouse whose sportsmen and women have won international accolades and recognition, especially for their prowess in athletics; concerned that despite bringing honour and national pride to the country, most of the sportsmen and women face a myriad of challenges such as lack of physiological support and social protection, hence pushing many to alarming levels of mental challenges during their career and even after retirement; noting that Sessional Paper No.3 of 2005 contemplated appointments as goodwill ambassadors and establishing contributory insurance and savings schemes among other forms of motivations; concerned of the fact that the prospect of receiving state recognition, financial grants and other pacts inspire sportsmen to push their limits in attaining their full potential as fostering a collective sense of pride in sports achievements; now therefore this House argues that the Government, through the Ministry of Youth Affairs, Creative Economy, and Sports, to develop a policy and standardise sports reward scheme for recognising the achievements made by the sports person in internationally recognised competitions through:

1. Financial rewards of Ksh6 million for setting new world records, Ksh4 million for gold medallists, Ksh3 million for silver medallists and Ksh2 million for bronze medallists.
2. Non-financial motivation including facilitation with issuance of diplomatic passports for established sportsmen and women, appointment as sports as goodwill ambassadors and conferring national honours and privileges.
3. Establishing a medical cover and post-retirement social protection scheme including establishing contributory insurance and saving schemes to support sportsmen who retire from active sporting due to injuries or age.

Hon. Speaker: Is the Member for Alego Usonga here? This matter is deferred to tomorrow.

(Notice of Motion deferred)

Next Order.

PRESENCE OF DELEGATION FROM COUNCIL TO AFRICA COLLOQUIUM OF LEGAL COUNSELS TO PARLIAMENTS

Hon. Speaker: Hon. Members, I acknowledge the presence of a delegation from the Council to the Africa Colloquium of Legal Counsels to Parliaments, sitting in the Speaker's Gallery to observe the House proceedings. The delegation comprises of five legal counsels serving in the parliaments of Libya, Sierra Leone and Eswatini. The delegation is in Kenya for a council meeting to deliberate on various policies and implementation programmes aimed at realising the effective and efficient delivery of legal services by counsels serving in parliaments in Africa.

On my behalf and that of the National Assembly, I welcome the delegation to the National Assembly and wish them well.

We also have students from the following institutions in the Speaker's Gallery:

1. Mlima Kenya Secondary School from Kieni East, Nyeri County;
2. Maasai Mara University from Narok North, Narok County;
3. Legacy Mixed Secondary School from Embakasi East, Nairobi County; and,
4. Siakago Girls' High School from Mbeere North, Embu County.

On my behalf and that of all Members of this House, we welcome those schools to the House of Parliament.

STATEMENTS

TRANSPARENCY AND ACCOUNTABILITY IN MANAGEMENT OF SPORTS, ARTS AND SOCIAL DEVELOPMENT FUND

Hon. Mumina Bonaya (Isiolo County, JP): Hon. Speaker, pursuant to the provisions of Standing Order 44(2)(c), I rise to request for a Statement from the Chairperson of the Departmental Committee on Sports and Culture regarding transparency and accountability in the management of the Sports, Arts, and Social Development Fund (SASDF).

The Constitution of Kenya empowers this House to oversee the operations of all State organs, including funds established under the Public Finance Management Act. Further, Article 229 mandates the Office of the Auditor-General to audit and report on the accounts of all national Government Funds and Authorities, including SASDF. However, there has been a public outcry regarding financial mismanagement and lack of transparency in the administration of national revenue allocated to the Sports, Arts and Social Development Fund (SASDF) and its associated entities, notably the Kenya Academy of Sports.

It is against this background that I request for a Statement from the Chairperson of the Departmental Committee on Sports and Culture on the following:

1. Criteria used by the Kenya Academy of Sports and the Sports, Arts and Social Development Fund in identifying and assessing the needs of sports development in Kenya, and the measures in place to ensure equitable distribution of funds across all regions.
2. Reasons as to why the quality of preparations, the playing fields, the sports gear, and the entire organisation of sports events do not reflect the budget allocated for their procurement, despite the seemingly large amounts of financial resources directed toward these purchases.

3. A comprehensive report detailing the breakdown of the funds allocated to the SASDF and spent on sports-related activities for the last two financial years, including the distribution across different regions in Kenya.
4. A list of all companies contracted to supply playing kits and other sports equipment, along with detailed explanation of the tendering process followed.
5. A forensic audit to be undertaken by the Office of the Auditor General on the Sports, Arts and Social Development Fund for the last two financial years, including an audit of all companies contracted to supply goods and services, and be submitted to the Departmental Committee for consideration.

I thank you, Honourable Speaker.

Hon. Speaker: Chairperson of the Departmental Committee on Sports and Culture, Hon. Daniel Wanyama.

Hon. Daniel Wanyama (Webuye West, UDA): Thank you, Hon. Speaker. Given the depth of the Statement, I request for three weeks. We are currently working on the Budget Policy Statement. We can only respond to this one in three weeks' time.

Hon. Speaker: How long?

Hon. Daniel Wanyama (Webuye West, UDA): Three weeks, Hon. Speaker.

Hon. Speaker: That is in order. Next is Hon. Karemba.

EMPLOYMENT TERMS FOR NURSES UNDER UNIVERSAL HEALTH COVERAGE PROGRAMME.

Hon. Muchangi Karemba (Runyenjes, UDA): Hon. Speaker, pursuant to the provisions of Standing Order 44(2)(c), I wish to request for a Statement from the Chairperson of the Departmental Committee on Health regarding the employment terms of nurses under the Universal Health Coverage (UHC) programme.

In June 2020, the Public Service Commission employed approximately 2,700 nurses on contractual terms to serve in hospitals and strengthen health service delivery under the Universal Health Coverage (UHC) programme. However, despite performing similar duties as their counterparts on permanent and pensionable terms, UHC nurses receive significantly lower salaries and do not receive allowances such as nursing service allowance, health risk allowance and hardship allowance. This disparity in remuneration contravenes the principle of “*equal pay for equal work*” as stipulated in Section 5(5) of the Employment Act, Cap. 226.

Hon. Speaker, on 3rd August 2021, the Public Service Commission (PSC) issued a circular committing to harmonise the terms of contract workers with the intention of transitioning them to permanent and pensionable employment. However, up to date, UHC nurses have not been absorbed into the service. Notably, their contracts lapsed in June 2023 and the Ministry of Health renewed them for a further one year. There is need to finalise the process of their absorption into permanent and pensionable terms without undue delay to ensure continued service delivery within the healthcare system.

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

1. A comprehensive report on the measures taken by the Ministry of Health to address the disparities in remuneration and allowances between UHC nurses and those on permanent and pensionable terms.
2. Update on the consultations between the Ministry of Health, the Public Service Commission and county governments regarding the conversion of the UHC contract nurses to permanent and pensionable terms.
3. Specific timelines for the absorption of UHC nurses into permanent and pensionable terms as well as details on the number of nurses already absorbed.

Hon. Speaker: Where is the Chairman of the Departmental Committee on Health? Wapi Dr Pukose? Cynthia, that is your Committee. Inform your Chair to bring the response in two weeks' time.

Hon. Cynthia Muge (Nandi County, UDA): Three weeks would be appropriate, Hon. Speaker.

Hon. Speaker: Thank you. Next Order.

BILL

Second Reading

THE EQUALISATION FUND (ADMINISTRATION) BILL (Senate Bill No.14 of 2023)

(Moved by Hon. Kuria Kimani on 18.2.2025)

(Resumption of debate interrupted on 19.2.2025 – Morning Sitting)

Hon. Speaker: Hon. Members, records show that Hon. Kimani Kuria moved the Motion. Benjamin Lang'at seconded and the Question was proposed. It is a fresh Bill. I see the first name here is Wilberforce Oundo. Oundo, just take your seat for a minute. Before you take your Floor, allow me to acknowledge High Ridge Girls Secondary School from Westlands in Nairobi. They are in the Speaker's Gallery. On your behalf and mine, we welcome the students to the House of Parliament.

(Applause)

Oundo, go on.

Hon. (Dr) Ojiambo Oundo (Funyula, ODM): Thank you Hon. Speaker, for giving me an opportunity to contribute to The Equalisation Fund (Administration) Bill (Senate Bill No.14 of 2023).

The essence of the Bill is literally to repeal the Public Finance Management (Equalisation Fund Administration) Regulations of 2021. Let me admit that I was not around when the Chair of the Committee moved the Bill. I have not had a chance to look at the Report. Obviously, everybody would want to ask why fix what is not broken. We do not seem to have been told what is wrong with the Regulations and whether failure to implement and get the work done as contemplated under the relevant provisions of the Constitution is a result of a fault in the Regulations. Nevertheless, we just see a creation of unnecessary and burdensome bureaucracy yet the Equalisation Fund was supposed to be more or less like a rapid response fund to address historical marginalisation as a result of inequitable distribution of development in the country based on Sessional Paper No.6 of 1966.

Let me state that the Bill is creating a bureaucracy. The objective of the Bill is to provide for administrative structures for the management of the Equalisation Fund; to establish an advisory board, and for connected purposes. This presupposes that there are no administrative structures yet we have the county governments with relevant structures to implement projects. We have line ministries at the national level with relevant structures to start implementing projects. We already have an established National Government Constituencies Development Fund (NG-CDF), to which authority could be delegated to undertake the projects mentioned herein. My first point of concern is that this Bill creates unnecessary bureaucracy that needs to be cured during the Committee of the whole House.

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Again, Clause 12(3) introduces an administrative baggage to the Fund. It provides for not more than 3 per cent of the approved annual allocation to the Fund to run the secretariat. Again, the secretariat is just made up of Government technocrats, civil servants and public servants. Essentially, this will amount to double payment. We could save that money to undertake other programmes.

In its ruling concerning the constitutionality of the NG-CDF, the High Court noted that the county assemblies and Parliament are not implementing agencies. Accordingly, since they do not belong to the Executive arms of the two levels of government, they cannot implement any Government programmes. However, under Clause 17(d) of this Bill, among the members who will establish the county technical committees is a representative of the relevant county assembly. The question is on the role of the county assembly in executing Executive functions. That matter needs to be addressed during the Committee of the whole House.

The Bill also contains other issues like typos. I can attribute that to the failure of the Senate to understand the structure of the national Government. We can correct those errors during the Committee of the whole House. We also need to address a fundamental issue. There was the first policy concerning the Equalisation Fund that ran into headwinds, and it was never implemented. There is the second policy that is to be implemented under the Regulations that this Bill seeks to repeal, and it has not worked. It is, therefore, important that the Commission on Revenue Allocation comes up with a third policy, in view of the extended period in the event this Bill is enacted into law, so that some pockets of marginalised areas that were left out can be included in the programme.

Busia County as a whole is a disadvantaged county yet you find not more than five wards have been included among the marginalised areas. Some areas with rainfall failure and food scarcity, like Bwiri Ward of Funyula Constituency and sections of Namboboto-Nambuku Ward, as well as Ageng'a-Nanguba Ward, have not been included. We urge the Commission on Revenue Allocation to have a fresh look as we roll out a third policy that will enable equity and fair distribution of the funds meant to bring equity to the entire country.

With those remarks, I second the Bill with the reservation that I have raised, which must be addressed during the Committee of the whole House.

Hon. Speaker: For the record, Hon. Oundo, are you seconding or supporting? The Bill had already been seconded.

Hon. (Dr) Ojiambo Oundo (Funyula, ODM): I am sorry, Hon. Speaker. I support the Bill with reservations. We will introduce amendments during the Committee of the whole House.

Hon. Speaker: Phyllis Bartoo, have you keyed in for this Bill?

Hon. Phyllis Bartoo (Moiben, UDA): Hon. Speaker, I was not to speak on this one.

Hon. Speaker: Members who have not keyed in for this Bill, log out so that I can only deal with those who want to speak on this particular Bill. John Waluke and Makali Mulu, do you want to speak to this Bill?

Hon. (Dr) Makali Mulu (Kitui Central, WDM): Yes, Hon. Speaker. Thank you very much for giving me the opportunity. I also want to support the Bill on the Equalisation Fund.

The Equalisation Fund has a limited timeframe within which to implement it. We have faced many challenges over time, some of which Hon. Oundo has mentioned. The first challenge that the Equalisation Fund faces, which we need to address as we move into the future, is underfunding. The Constitution is very clear about the percentage that should be allocated to the Equalisation Fund. However, over years, through the Budget and Appropriations Committee, after it gets proposals from the Executive, this House has always approved figures below the constitutional provision. We even go ahead to revise the allocations downwards during consideration of supplementary budgets. Over the years, we have not appropriated the requisite amounts to the Equalisation Fund. I remember last year, we

considered re-factoring the arrears into the budget if we were to calculate what should have gone to the Fund on an annual basis. Even though we wanted to cater for the arrears, it was somehow impossible because of the existing budget deficits.

We are very serious about the Equalisation Fund. The first thing we should discuss is funding it as required by the Constitution. The second issue is that even though we have allocated resources, there have been serious delays in implementation. Funds are allocated in the budget, but the year ends without any money being released to the concerned counties.

Only 14 out of 47 counties were deemed to be marginalised, which was a problem. During the second review, we increased the number of counties to over 20. At the same time, we created a board which was supposed to oversee the implementation of the Fund. The outcome is that we have made implementation of the Fund almost impossible. Another problem is that some counties only have pockets of marginalisation and, therefore, they get small amounts of money in the budget. Is it really worth it if one gets such low amounts in the budget? Implementation becomes so expensive because the figures are so low. That is another area which should be streamlined. I appreciate the Mover of the Bill because we will be helping the country by sorting out some of those issues.

I just want to remind the House that the Equalisation Fund was created to do away with marginalisation. Some areas of this country were assessed to be marginalised. On that basis, the Fund was created to help them catch up with the rest of the country, more so in terms of rural electrification, and development of the roads and health sectors. We have had the Fund for 13 years, but we are yet to implement it. Those areas will obviously remain marginalised. I urge my colleagues to do what it takes to pass this Bill, so that we can streamline the operations of the Equalisation Fund. By doing so, we will be helping the marginalised areas.

The Fund was set to run for 20 years, but it has not been implemented in the 13 years it has been in existence. I do not know whether we have some room to extend the timelines as a House. Unless we extend the timelines, it is obvious that the expected outcomes of the Equalisation Fund will never be realised.

With those many remarks, I support the Bill.

Hon. Speaker: Hon. Adow.

Hon. Yakub Adow (Bura, UPIA): Thank you very much, Hon. Speaker. I would like to contribute to the Bill on the administration of the Equalisation Fund.

Since its inception, the Equalisation Fund, which was a very noble idea, has been watered down. Even the definition of ‘marginalised areas’ has since changed from what was initially conceived as marginalised areas. This has taken away funds from the 13 counties that had initially been targeted, which had been left out of this country’s development agenda since Independence. The number of marginalised counties has now been increased to more than 30. Therefore, there is need to redefine ‘marginalised areas.’ There are areas in this country where people still do not have access to basic needs like water and infrastructure.

Another issue with the Equalisation Fund is implementation delays. As we have witnessed during the current parliamentary term, not much has taken place in terms of development projects. Leaving the management of the Equalisation Fund to the counties is like sending good money after bad money. We have seen how counties have been mismanaging development funds. The Equalisation Fund is of great importance to some communities like the one I come from in north-eastern Kenya, which has faced years of marginalisation, and where there are gaps in development. Handing the management of the Equalization Fund to the counties will be counter-productive. Another concern we have is expiry of the Equalisation Fund. The Fund is supposed to run for 20 years, from 2010 to 2030. We would like this period to be extended because the Fund has not achieved what it was designed to achieve.

In conclusion, we need to have a clearer and more inclusive criterion in identifying marginalised areas. We also need to go back to the drawing board and ensure that those counties

that were originally intended to benefit from the Equalisation Fund receive their dues. For the Equalisation Fund to truly fulfil its purpose, reforms must focus on inclusivity, efficiency, transparency and sustainability. There is need to involve the communities, target high impact projects and improve fund management. Additionally, there is need for independent administration of the Fund.

Hon. Speaker: Hon. Adow, I know you are a first timer. It is against the Standing Orders to read out written speeches as your contribution to a debate. You are supposed to be debating. You are reading a written text on your phone and that is against the Standing Orders.

(Hon. Yakub Adow spoke off record)

You were reading. I could see you.

Hon. Yakub Adow (Bura, UPIA): Thank you.

Hon. Speaker: Hon. George Gitonga Murugara.

Hon. George Murugara (Tharaka, UDA): Thank you very much, Hon. Speaker. I rise to support this Senate Bill, which seeks to establish procedures for administration of the Equalisation Fund.

The Equalisation Fund is a constitutional provision to ensure that all parts of the country are equally developed to some extent, to ensure that there is some parity in development. We know very well that some areas in this country are more developed than others. Marginalised areas have been left behind not just since Independence, but even during the colonial period. It is because of this that it became necessary to provide, through the Constitution, for development equalisation of those areas through a Fund. This Bill seeks to have the Equalisation Fund administered in a structured manner.

I come from a marginalised area in Tharaka-Nithi County. My Tharaka Constituency is highly marginalised, and I have always looked forward to benefiting from the Equalisation Fund. However, because of the unclear way in which the Fund has been administered over the years, especially when it comes to all benefits, we have seen some counties get the lion's share of these funds while other counties, through sub-locations, get minimal provisions. This cannot be termed as equalisation. It is, therefore, important that we come up with a structure on how the Fund is going to be administered, who is going to give advice on how the funds are to be distributed, and how the funds will be used across the country. Therefore, this is an important Bill. I believe the Departmental Committee on Finance and National Planning has looked at it. If there is necessity for us to amend it, we will do so.

After the preliminaries, the Bill starts with the establishment of an advisory board. I believe this is the board that will be advising on which areas are marginalised and which areas should benefit from the Equalisation Fund.

After that, we move to what happens in the counties because that is where the execution of the funds is supposed to take place. It is proposed that there will be county technical committees whose main function will be to determine which areas are marginalised in terms of water and sanitation, roads, health facilities, electricity, and other areas. This is important because when it comes to an area like Tharaka Constituency, all these parameters are applicable. We need equalisation in terms of water and sanitation. Additionally, our roads are not particularly well done. Health facilities are in a deplorable state and electricity connectivity is slightly less than 25 per cent. Therefore, we need a law like this one. I will be advocating that as soon as the advisory board and the other mechanisms are put in place, we look at these marginalised constituencies, including Tharaka, and after that, we see whether we will come to par with the rest of the country.

There is also a provision for widening up of the Fund, which is constitutional. This is after it has achieved what it has been established to achieve. I doubt whether this is going to

happen in the near future, but we look forward to having the Fund doing much more than what we have seen it do today. Sincerely speaking, there are counties in this country that are miles ahead of others, and unless we come up with a very equitable way of equalising ourselves, some areas will remain more developed while other areas, like Tharaka, will remain marginalised.

With those remarks, I support this Bill so that we can see whether we can better the application of the Equalisation Fund in the country.

Hon. Speaker: You are done? Hon. Kamket.

Hon. Kassait Kamket (Tiaty, KANU): Thank you very much Hon. Speaker for giving me this opportunity.

*(Hon. Johana Kipyegon consulted
several Members loudly)*

Hon. Speaker: Hon. Ng'eno, can you disband that Kamukunji? You are disturbing my deputy by continuously giggling behind her.

(Laughter)

Hon. Kassait Kamket (Tiaty, KANU): Hon. Speaker, I had a similar Bill before this House during the last Parliament. Let me begin by saying that this is an enabling piece of legislation. This Bill is meant to operationalise Article 204 of the Constitution on the administration of the Equalisation Fund. Currently, there are Regulations administering this Fund that were developed by the National Treasury. As the saying goes, the proof of the pudding is in the eating. Using the current Regulations made by the National Treasury, and given current experiences, the Equalisation Fund is one of the most abused funds in this republic. One of the ways in which this Fund has been abused is through double allocation by county governments and overlapping projects and programmes. You find a county government has done a road somewhere and it allocates a similar amount of money for the same road. During the Committee of the whole House, I will propose that the administration of this Fund be moved completely from the counties. I have looked at this Bill and there is no provision for removal of the administration of the Equalisation Fund from the county governments. The Bill seems to over glorify the role of county governments yet they are the culprits when it comes to abuse of this Fund.

(Applause)

I will propose that this Fund be administered independently away from the county governments for the identified marginalised areas to realise the kind of development intended or contemplated by Article 204 of the Constitution.

One of the major issues happening is the placement of county governments as procurement entities in this Fund. In this Bill, there is a continuation of county governments to act as the authorised procurement bodies. There is a problem with that arrangement. In as much as the counties are devolved units, we must understand that there is also intra-county marginalisation. It is real. This is double jeopardy for those who are marginalised in Nairobi and at the county level.

Hon. Speaker, there is the issue savings. Whenever projects are implemented, there are savings. As we speak, the savings from the Equalisation Fund are abused left, right and centre using the current Regulations. The savings are diverted to other ministries and other activities that are not even present in the marginalised areas. That is why I am proposing the management

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of this Fund be removed completely from the county governments. In any case, Article 204 of the Constitution is very clear. Article 204(2) states that the national Government shall use the Equalisation Fund only to provide basic services, including water, roads, health facilities and electricity, to marginalised areas. The Constitution does not refer to marginalised counties. It refers to marginalised areas.

Article 204(3)(b) states that the national Government may use the Equalisation Fund either directly or indirectly through conditional grants to counties in which marginalised communities exist. The first option is to use this Fund directly. However, this Bill seems to have ceded the utilisation of this Fund to the county governments, and that is where abuse and double allocation of funds begin. I propose that we amend this Bill to ensure that the role of the county governments in the utilisation of this Fund is minimised.

Hon. Speaker, I want to differ with my colleagues who have spoken about the expansion of the space of this Fund. The first marginalisation policy by the Commission on Revenue Allocation identified counties erroneously as centres of deprivation. I appreciate the second policy, which was done by the CRA because it went up to the sub-location level. In the first policy, most deserving marginalised areas, like Tiaty, were left out. However, in the second policy, which went to the sub-location level, most deserving areas like Tiaty Constituency benefited from this Fund. It suffices to say that marginalisation is not a good thing. Some of my colleagues are trying to make marginalisation a birth right. Marginalisation is not a birth right. It is a bad situation that you find yourself in because of the policies of past administrations.

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

[The Deputy Speaker (Hon. Gladys Boss) took the Chair]

Hon. Deputy Speaker, as I support this Bill, I request all the Members to embrace the second policy that went up to the sub-location level to ensure that every part of the country is touched in order to correct the low levels of development.

I beg to support.

Hon. Deputy Speaker: Hon. Members, before we continue, allow me to recognise the presence of the United Democratic Alliance (UDA) delegation from Kilifi North Constituency, Kilifi County. They are seated in the Public Gallery. I will ask Hon. Owen Baya to welcome them on behalf of the National Assembly.

Leader of the Majority Party, would you like to assist?

Hon. Kimani Ichung'wah (Kikuyu, UDA): Yes, Hon. Deputy Speaker. Thank you very much. On behalf of the Member for Kilifi North and the Deputy Leader of the Majority Party, Hon. Owen Baya, who has just stepped out to prepare for the funeral of Speaker Kingi's father in Kilifi, let me take this opportunity to welcome the UDA team from Kilifi to the National Assembly. This is where the Deputy Leader of the Majority Party and the Member for Kilifi North usually sits, right next to me, in the seat where Hon. Chikati is currently seated. He has asked me to welcome the delegation on his behalf, and on behalf of the National Assembly. The UDA is, indeed, the party of the present and the future.

Thank you, Hon. Deputy Speaker.

Hon. Deputy Speaker: Thank you, Leader of the Majority Party. I now call upon the Member for Mandera North, Hon. Bashir Abdullahi, to contribute. Give him the microphone. I think you gave him the microphone behind him. Kindly move to another microphone because yours has a problem. Move to the microphone to your left.

Hon. Major (Rtd) Abdullahi Sheikh (Mandera North, UDM): Thank you, Hon. Deputy Speaker, for giving me this opportunity to contribute to the Bill that is before the House.

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The Equalization Fund is enshrined in Article 204 of the Constitution. The framers of the Constitution, from the beginning, had in mind that all counties within the country should be equal. That is why they came up with the Equalisation Fund. The initial concept was that it would cover 14 counties but as we speak it covers 34 counties. The unfortunate part is that the amount allocated to the Fund has not increased. The percentage that is allocated to the Fund still remains the same despite the fact that it now covers 34 counties after other pockets of marginalisation have been added.

Hon. Deputy Speaker, this Bill comes in handy because it seeks to cure some of the challenges that the Equalisation Fund has faced over time. One key aspect I want to support is the issue of the sunset clause. The Equalisation Fund has a sunset clause of 20 years. We are now left with six years despite the fact that the Fund has not yet been appropriated as envisaged in the Constitution. The remaining six years will come to an end and the monies will not have been appropriated or utilised. The sunset clause needs to be extended by another 10 or 20 years to enable the Fund cover all the marginalised areas as envisaged.

Article 204 of the Constitution also talks about how this Fund is to be administered. It talks about directly or indirectly, which comes in terms of regulations. Perhaps during the Committee of the whole House, we should consider that 50 per cent be done indirectly and 50 per cent be done directly. That way, it can take care of concerns from all sectors, because we will have an advisory board which, in essence, will not be administering the Fund. The advisory board will be receiving reports from the counties on areas to be covered. If we administer 50 per cent indirectly, the boards will have work to do in terms of ensuring that the other 50 per cent is administered directly.

Hon. Deputy Speaker, the Regulations that are currently in force favour full administration at the county level. The worst part is that some of these funds are utilised for minute projects of amounts ranging from Ksh2.5 million to Ksh5 million. Those kinds of expenditures lose the essence of this kind of Fund. When the Equalisation Fund was first appropriated, the allocations to constituencies or counties ranged from Ksh50 million to Ksh100 million. However, the recent allocations for programs are shockingly between Ksh2.5 million and Ksh3.5 million. How will such allocations be impactful on the lives of the people in marginalised areas? This is because of the current Regulations. This House has the powers and privilege to change them. The Equalisation Fund Bill as it is, is quite okay and all we need to do is to ensure that the Regulations are amended to suit the realities on the ground.

Hon. Deputy Speaker, I understand it was 14 counties initially, and almost 60 per cent of the funds still cover the 14 per cent with the additional counties that has taken it to 34 per cent. The question is: Has this money been utilised? Every financial year, this House appropriates funds, but they are not utilised. We have arrears to the tune of almost Ksh13 billion lying at the National Treasury without being utilised and yet the sunset clause is just around the corner - six years from now. Will the objectives of this Fund be achieved? It will not.

We would be making several amendments in the Committee of the whole House, but by and large, I support the Bill, especially ensuring that the sunset clause for the Equalisation Fund is extended by 10 or 20 years as we fairly look at the issue of administration. Is it the board that administers 100 per cent or the counties? As it is now, it is the counties. Unfortunately, as I said before, they only use it for minute projects of about Ksh3 million or Ksh4 million, which is not something to be proud of. In the next administration of this Fund, projects of not less than Ksh50 million should be done in each constituency so that it is impactful, where people can see it and realise that equalisation is something helpful.

Otherwise, I support.

Hon. Deputy Speaker: Hon. Member for Eldas, Hon. Adan Keynan.

Hon Adan Keynan (Elda, JP): Thank you, Hon. Deputy Speaker.

Allow me to delve a bit into the history of this particular Article. During the countdown to the current Constitution, there were three contending groups. One group led by the late President Mwai Kibaki and cohort, wanted a pure presidential system. Another group led by the Hon. Raila Odinga wanted a pure parliamentary system. In between, during the discourse, there emerged another group, which said: In the midst of all this, what is there for the disadvantaged groups? That brought in the issue of devolution and the inclusion of this particular clause to address all the historical marginalisation, pursuant to the wrong implementation of the old Constitution, and also Sessional Paper No.10 of 1965, and you know the provisions.

Hon. Deputy Speaker, shockingly, even after the promulgation of the current Constitution, and because of the red tape and bureaucratic nature of the system, the operationalisation and the role of this particular Article has not been conceptualised and implemented well, and the systems created some sort of jurisdictional conflict between the Members of Parliament and the governors. So, the 20-year period is coming to an end and yet there is nothing to demonstrate on the ground. I represent one of the constituencies that ought to have benefited yet there is nothing to demonstrate on the ground that this particular Fund has benefited the people who were tailor-made for. What then is the meaning of this? Members of Parliament have been sucked into a role that is not theirs, and I really want to agree with you that the governors want to usurp the mandate of the National Assembly.

As the Members of the National Assembly, we have failed to think out of the box, and we have fallen into their trap. This trap only suits the bureaucrats and the National Treasury mandarins. We have lost it. It is not Ksh13 billion. It is over Ksh70 billion that is floating between the National Treasury, the National Assembly, and the counties. The sunset period is approaching.

What is our take? It is high time we put aside all our differences and apply the letter and the spirit of what this particular Article was intended for, and budget for all the outstanding money, send the money direct to the National Government-Constituencies Development Fund (NG-CDF) and the constituencies. This Bill should address and facilitate us so that Members of Parliament have a role to play.

Hon. Deputy Speaker, I followed what happened to the budget in the last financial year and I am told that other than what Hon. Bashir has alluded to, of having small projects here and there, Ksh2 million or Ksh3 million that have no impact, the remaining chunk of the budgetary allocation has been sucked into the county allocations, and will not help us. Through the Pastoralist Parliamentary Group (PPG) and the other groups, I am not worried because even the 34 counties or the original 13 can benefit, but this programme is not working. We cannot be lamenting as a leadership yet through this Bill, we must cure the pitfalls. We must address the challenges so that the next six years remaining in this programme can be productive. Colleagues, for those of you who have joined this House, this programme was supposed to be a life changer yet it is not working.

Hon. Deputy Speaker, you remember at the end of the Second World War, the victors and the vanquished came together and came up with something called the Marshall Plan. Marshall Plan gave birth to something called the US Agency for International Development (USAID). Unfortunately, you have heard what is happening to USAID right now. In our context, for those of us who live under this sovereign republic called Kenya, this is our Marshall Plan. The Marshall Plan of the US worked. Why is it not working? How come we are not getting our rightful share? How come every step that we take must attract court battles? It is because we are not thinking out of the box.

I want to thank the Mover of this Bill. It is timely, but I think there is a need to look at it critically so that we can address all the gaps, so that once this is passed, any would-be litigant, will not go to court and have it declared unconstitutional. These days, litigants have become, I

think, the fourth or fifth arm of the government. Anything we do, someone must go to court. A time will come when the court will reason and say that this does not fall in their jurisdiction. This is the third time I am seeing this and it is not working. Dear colleagues, it is not working! Do not worry about the 34 counties. It is not working. It is not anywhere, and the money is not being felt. The money is not going to the ground. The money has become part of the devolved functions. Can we put our differences aside, reclaim our role, direct this money where it is supposed to be, and have one project per constituency? If, for example, Eldas was supposed to get Ksh200 million, such an amount can have one critical infrastructure like a hospital, dam, water facility or an educational institution, but when you have Ksh2 million for water trucking, Ksh3 million for grading, another Ksh2 million for something else, there is no impact. The right way to approach this, and I want to ask the Mover, is that during the Second Reading, let us go back, look at it critically and consult as many legal minds as possible, so that we can seal all the loopholes.

Recently, we were invited to a meeting and interestingly, that meeting was supposed to have been presided over by His Excellency the President. Fortunately, he did not come. Had he come, we would have raised so many questions at the Kenyatta International Convention Centre (KICC). Out of over 109 Members who were invited, only four of us attended. That tells you the level of disinterest. We need to deal with this. The resources are there, yet we complain of inadequacy. Can we utilise the resources that we have, so that in the next six years, regions that have been neglected, stereotyped, and completely left out in the national development agenda, benefit?

Hon. Deputy Speaker, this morning, I participated in a programme that has been launched by His Excellency the President, called Solar Mini-Grids. Today, I can say I am the father of Parliament. I joined Parliament as one of the young legislators and I was looking forward to two things. One of them was to see a black substance; 'black substance' in the definition of those school-going children in northern Kenya, found in down Kenya. That black substance is tarmac which has now gone to our region, courtesy of devolution. The other bit, during my lifetime as a Member of Parliament, is the extension of the national grid to northern Kenya, from Nairobi and other parts that had been advantaged. It is still stuck in Garissa. We are still struggling. One of the things that the Government has done, through the Ministry of Energy and Petroleum, is affirmative action. It is working. Why is this one not working? Why is this one convoluted? Why is this one in the wrong ecosystem? Why is nobody appreciating that this was meant to address marginalisation?

Hon. Deputy Speaker, I know you are a seasoned lawyer. If you go back to the notes of the framers of the current Constitution, some of them were great minds. Although I do not agree with a number of sections of the current Constitution, if you go back to their notes, some parts are critical and reformist. They had in mind a Kenyan society where everybody gets a share of the national cake.

Recently, I considered myself a second-class citizen. I considered myself a Member of Parliament that represented second-class citizens within the confines of our boundaries. Today, courtesy of the current Constitution and actions of the current Government, that tag is gone. Our role must be seamless. Our role must be in tandem with the national Government policy. Our role should be out of lamentations.

I am the chair and patron of the Pastoralists Parliamentary Group (PPG) and I know a majority of our Members come under this organisation. In addition to the Mover, can we own this Bill and ensure it addresses all the issues once and for all, so that we do not blame anybody else, but ourselves?

I thank the Mover for the timely Bill. I promise you that all of us will be part and parcel of its next stages.

Hon. Deputy Speaker: Hon. Raso, a moment. For those who want to participate in this Bill, please press the Intervention Button. I only have the Member for Lamu East.

Hon. Ali Raso (Saku, UDA): Thank you very much, Hon. Deputy Speaker.

I also rise to add my word to what my honourable colleagues who have preceded me have talked about.

Article 204 of our Constitution is very important. In the Oxford English Dictionary, equalisation means to make two things equal. The framers of our Constitution had a very clear intent. Since Sessional Paper No.10 of 1965, it was intended that more productive parts of Kenya should grow faster. The rest were expected to catch up.

Hon. Deputy Speaker, many times you sit in front there as a distinguished lawyer. At times, I see you having interjections on issues. I agree with you when I sit back to listen. There are things that appear good on the surface but when you do an incision, you find that they are not as good as they look from the outside.

The Bill addresses only two issues on what the Equalisation Fund is all about. It is about the management of the Fund and extending the sunset clause. This is a budget-making House. We pass a Bill that allocates resources both to the national and county governments every year. A line reads “Equalisation Fund” within that allocation in the section of the national Government.

Trying to cut this Bill with a pair of scissors may not be good enough for us to say that we should cut it into pieces to get the answer to the jigsaw. The answer lies in what the President did this morning. That is what Hon. Keynan alluded to. The President commissioned the signing of contracts for solar mini-grids that will cover 72 per cent of Kenya. The 131 projects will cost the Kenyan taxpayer Ksh13 billion. These are many resources allocated at a go. Had the Equalisation Fund been addressed and used as opposed to being penny-pocketed or brought piecemeal, today, we would have flagship projects in Turkana, Marsabit, Isiolo, Mandera, Wajir, Lamu, and other places.

My concern today is that since Independence 60 years plus ago, this Government is constructing a tarmac road or a highway. Isiolo and Mandera is a distance of 800 kilometres where a population of close to two million people live. No one had seen that road as a necessity up to now. It was put aside in 1965 as it was not considered the most productive part of Kenya. They never produced tea, coffee, pyrethrum and sugar. Today, somebody in the name of William Samoei Ruto is saying that we are going to get solar and wind energy if we open up that part of the country and we will prospect for minerals. It is the frontier of development in Kenya. That is where Arid and Semi-Arid Lands (ASALs) lie. Somebody is beginning to identify.

Schedule Four clearly defines the roles of the national and county governments. The Equalisation Fund is drawn from the Consolidated Fund. It does not belong to what is allocated to the counties. Hon. Keynan said that the national Government should direct the Equalisation Fund to a hospital in Moyale and a power station in Mandera if it wants to achieve impactful projects through the Fund, so that Ksh3 million or Ksh5 million of the money is not just pilfered away, which at the end of the day, is a pinch of salt.

Initially, this Fund intended to address inequality or marginalisation in 15 counties of the ASALs. Today, they said it should address pockets of marginalisation. The pockets will be in Kiambu, Nairobi, and Murang’a. Even in Uasin Gishu, where you come from, Hon. Deputy Speaker. It misses the thread of why we have this Fund in the first place. For that reason, I support this Bill. However, we as the Pastoralists Parliamentary Group will make our voices and positions known during the Third Reading.

Finally, on the dissolution of the Regional Development Authorities (RDAs). In its wisdom, the Government saw that six RDAs, namely, the Kerio Valley Development Authority, the Ewaso Ng’iro North Development Authority, the Ewaso Ng’iro South

Development Authority, the Lake Basin Development Authority, and the Coast Development Authority, dissolve through discussions within the Cabinet. However, those of us in ASAL areas saw that the Regional Development Authorities (RDAs) were doing things which the counties were not doing. Therefore, even if we do away with RDAs, that money will revert to the Consolidated Fund instead of going to the counties. For that reason, we will indulge our colleagues in this House. Let us be magnanimous and think outside the box. For us to have one nation and one people, there must be some form of equity, so that we can move along as a people and as a country.

Hon. Deputy Speaker: Next is the Member for Lamu East, Hon. Ruweida Obo.

Mhe. Ruweida Mohammed (Lamu East, JP): Ahsante, Mhe. Naibu wa Spika, kwa kunipatia nafasi hii ya kuchangia Mswada huu. Mswada huu wa mfuko wa kusawazisha utahakikisha kuwa yale maeneo bunge yaliyokuwa chini yatainuliwa yawe sawa na mengine. Sheria hii inavyopangiwa itasaidia sana. Hapo awali, mfuko huo ulikuwa na pesa lakini hapakuwa na sheria, kwa hivyo pesa zilifujwa. Sheria hii itatusaidia ili mambo yafunguke na maeneo yetu yawe kama maeneo bunge mengine.

Usimamizi wa pesa hizo ni muhimu. Ninaweza toa mifano. Mara ya kwanza pesa zilipotoka, Eneo bunge langu lilipata Ksh120,000,000 zilizotumika kutengeneza barabara ya kokoto inayoitwa Mtangawanda-Kizingitini. Kulikuwa na kampuni inayoitwa Zarara Oil and Gas Company iliyokuja kutafuta gesi ambayo pia ilitengeneza hiyo barabara. Ni kama nusu ya barabara hiyo ilitengenezwa na Zarara Oil and Gas Company na nusu ikatengenezwa na *Equalisation Fund*. Lakini ukweli wa mambo ni kuwa pesa hizo zilifujwa. Cha kusikitisha ni kuwa kwa sababu barabara ni ya kokoto, haikufuatiwa kwa sababu wangesema kuwa mvua ilinyesha na kwa hivyo pesa zilitumika. Ningependa kutoa pendekezo kuwa pesa hizo zisitumike kujenga barabara za udongo. Zitumike kujenga barabara ya lami, hata kama ni kilomita moja, kuliko kutumika kwa njia ambazo mtu anaweza jificha nazo azimalize.

Pesa hizi ni za maskini. Watu wanasahau kuwa pesa za maskini zikiliwa, humrudia mtu. Kama pesa hizi zingetumika kwetu, tungekuwa mbele sana na tungekuwa tunatumia hizi pesa zingine kusonga mbele zaidi. Kwa mfano, watu wa Mangai walio katika Msitu wa Boni waliwekewa Ksh45,000,000 za maji. Mradi huo ungekuwa umeinua eneo hilo. Tangu tupate Uhuru, eneo hilo halijakuwa na mradi hata mmoja wa Serikali. Mradi mkubwa saa hii ni huu niliouanzisha wa kujenga shule nikisaidiwa na *Kenya Defence Forces* (KDF). Lakini ukitafuta pesa hizo Ksh45,000,000 zilizofujwa, hutajua ziko wapi wala zilifanya nini. Hazikutumika. Mpaka sasa, pesa hizo hazijulikani ziko wapi. Lakini sheria hii ikiwekwa, itatusaidia.

Tukizungumzia kuhusu pesa hizi, kila mtu anafikiria ubinafsi. Ukweli ni kuwa wale wanaoishi kule kwingine ni ndugu zenyu. Kama vile pesa zinawekwa katika miradi ya chai au kahawa, msikasirike zikiwekwa huko kwingine. Sisi hatukasiriki kwa sababu hatuna chai kwa hivyo hatuwezi lilia pesa hizo. Pesa za *marginalisation* ni za kurekebisha makosa yaliyotokea katika serikali zote zilizopita. Hiyo sio pendeleo tunafanyiwa.

Ninamshukuru Rais kwa sababu tangu aingie mamlakani miaka miwili iliyopita, amefanya zaidi ya pesa zilizowekwa. Ukihesabu faida ya pesa hizi, hazilingani na alichofanya. Kwa mfano, Rais anaweka lami kilomita 15 katika barabara ambayo pesa za *Equalisation Fund* zilifanyiwa ubadhirifu. Mbona hakusema atajenga kilomita thelathini na tano? Amesema atafanya kitu kitakachoonekana. Watu walio na miaka arubaini ama sitini waliozaliwa Lamu Mashariki ambao kutoka wazaliwe, hawajawahi kuona barabara, hata nao waione. Ninataka Wabunge wenzangu waelewe kuwa maeneo yetu ni tofauti na maeneo yao. Katika Pwani, maeneo bunge mengine ni tofauti na yetu. Kwa mfano, mtoto akizaliwa Voi anaona reli na barabara. Si lazima aende safari ili aone barabara. Mtoto anayetoka Lamu Mashariki lazima aende safari akiwa shulen ili aone barabara ya lami. Rais huyu ndiye ametambua kuwa kuna *marginalisation* na anafanya kazi.

Watu katika maeneo bunge yetu wanataka tumaini. Roho zao zilikuwa zimekata tamaa na hawakuwa na tumaini katika Kenya. Rais wetu ametupa tumaini. Watoto wetu wana tumaini kuwa barabara zitajengwa.

Leo tumetia sahihi katika mkataba wa kihistoria. Kutoka mwanzo wa dunia, kati ya vijiji vyangu ishirini na tatu, vijiji kumi na mbili pekee vina stima. Saa hii, tumetia sahihi mkataba katika vijiji vitatu, yaani, Ndau, Kiwayu na Mkokoni ili ziwekwe *mini grid za solar*. Jambo hilo limenifanya niwe *very emotional*. Karibu nilie katika mkutano huo. Watu wangu na watoto wao hawajawahi ona stima kwa miaka hii yote ilhali tumekuwa tukifanya CBC. Hii CBC inafanyika vipi kule kama hata shule hazina stima? Tukizungumzia haya, watu wengine wanaona ni kama tunapenda kulalamika. Kamati la Bunge hili lilienda kule na wakaniambia kuwa walikuwa wanaona ikiwa maeneo bunge yao yako nyuma lakini kuna maeneo bunge mengine yana shida. Ukienda kwangu, Mhe. Naibu wa Spika, utatumia ndege, mashua, gari na pikipiki. Wakati mwingine kama uko na walinzi, watakuonya kuwa kuna sehemu ambazo huwezi kuenda. Nilienda na kamati mbili na wakakatazwa kufika Mangai. Barabara ni mbovu na kuna ukosefu wa usalama.

Kwa hivyo, ninawaomba ndugu zangu kuwa tupitishie Mswada huu na marekebisho ili uweze kusaidia maeneo yetu. Ukisaidia maeneo yetu, pia utasaidia maeneo yenyu. Ukienda kule Kiangwi, kuna kituo cha polisi na hospitali. Ndugu zenyu wanafanya kazi kule. Haimaanishi kuwa ni Mbajuni pekee yake ndiye atakayepata shida. Polisi wakipelekwa sehemu kama Kiwayu wanakuwa wazimu baada ya miaka mitano kwa sababu ya hali ngumu ya maisha. Hao ni watoto wenyu. Sio watoto wa Kibajuni pekee walio huko. Kuna watu wa makabila tofauti tofauti wanaoenda huko kama madaktari au polisi. Ni lazima maeneo yale yainuke ili watu wakija kufanya kazi kule, wasiwe na shida nyingi, na waweze kufanya kazi vizuri.

Ninasisitiza tena na tena kuwa pesa za *Equalisation Fund* zikipelekwa kule, magavana walio na mifuko mikubwa ya kufanya kazi wanachukua hizo pesa chache na kuziweka katika ugatuzi ili Serikali kuu ionekane ni kama haifanyi kazi. Hizo ni pesa chache sana. Kwa mfano, nimebaki na million ishirini na nne ninazopaswa kugawanya katika eneo bunge langu lote. Kwa hivyo, sheria iwekwe, tugawane majukumu, na ijulikane kuwa kaunti inafanya nini na Serikali kuu inafanya nini ili watu wote wasaidike na kusiwe na mizozo.

Hon. Deputy Speaker: Next is the Member for Likoni, Hon. Mishi Mboko.

Mhe. Mishi Mboko (Likoni, ODM): Ahsante sana, Mhe. Naibu wa Spika. Ninaunga mkono Mswada huu.

Katika Kifungu 24(2) cha Katiba yetu, fedha hizi zitasaidia katika mambo ya kimsingi kama maji, barabara, afya na umeme. Huduma hizi zitaweza kufikishwa katika sehemu ambazo zilikuwa zimesahaulika na kuwachwa nyuma kimaendelo haswa kwa mambo ya maji, barabara, na afya.

Tukiangalia haswa, tunaona zile kaunti kumi na nne ambazo ziifaa kusaidika na hazina hii ni kama Turkana. Ni maskitiko makubwa sana jamani tukiangalia shida za miundo msingi kama barabara, ukosefu wa maji, afya na ukame kule Turkana. Sehemu ya Lamu, Mandera, Wajir, sehemu nyingine za Kwale na sehemu nyingine za Kilifi na Marsabit pia ni maskitiko makubwa. Kama Wakenya, tunakubali kulikuwa na dhuluma na kutengwa kihistoria. Hii ni kwa sababu Serikali ilikuwa ni moja, Serikali kuu peke yake. Kila kitu kilikuwa kinapangwa kule juu, na kinamalizika kule juu. Kwa hivyo, sehemu nyingi zilikuwa zinasahaulika. Tushukuru sana kwa sababu hivi sasa kuna ugatuzi na tunaona maendeleo mengine kupitia njia ya ugatuzi.

Ninaunga mkono Mswada huu kwa sababu pia unapendekeza kuongeza maisha ya hazina hii. Ilikuwa ifike mwaka wa elfu mbili na thelathini lakini sasa, itaongezwa miaka kumi mingine zaidi. Hii ni kwa sababu bado tunaona sehemu ambazo zilitengwa ama zilidhulumiwa bado hawajafikia ile shabaha kwa mambo ya maji, barabara, umeme na hata kielimu. Hazijafika sehemu kama hizo. Kwa hivyo, ningependa kusema hata miaka kumi ni

michache. Tuongeze ikue kama miaka ishirini. Miaka ishirini itakuwa miaka mizuri sana hivi sasa kwa sababu Rais William Samoei Ruto yuko imara kuhakikisha hizi fedha zitatumika kwa njia inayofaa na zitabadilisha maisha ya Mkenya, haswa yule ambaye ametengwa kwa miaka mingi.

Pia, ni lazima tuwe na muundo msingi na taratibu muafaka za kuonyesha kutakuwa na usawa, kutakuwa na uwazi kwa kusambaza fedha hizi katika zile sehemu zilizotajwa. Kusiwe ya sehemu nyingine wanapata zaidi na nyingine wanapata chache. Pia, wananchi wenyewe waweze kuhusishwa vilivyo ili waseme shida ambazo zinakwaza sana katika mipango ya maji, barabara, afya na umeme. Kwa mfano, mnaeza amua kujenga visima sehemu fulani na kumbe visima havitatosha. Pengine sehemu hiyo wanahitaji mabwawa ili bali na kutumia maji nyumbani, wayatumie pia kwa kilimo. Tunastahili kuangazia pesa hizi kwa njia inayofaa na tutoe ufisadi. Dadangu Ruweida alizungumzia barabara ya Mtangawanda iliyotengenezwa kutumia pesa nyingi, na kulikuwa na wafadhili wengine, na inaonekana pesa zingine zilipotea.

Ninamshukuru sana Rais kwa sababu juzi, Mhe. Ruweida, basi la kwanza lilibebwa na boti likafika kule Amu. Na hiyo yote ni mipango ya Rais William Samoei Ruto. Kwa hivyo, tunampatia kongole kwa jambo hilo. Tunataka Wakenya wawe sawa haswa katika mambo ya kimsingi ambayo yanatukwaza sana kama mambo ya maji. Kule Kwale na Kilifi kuna sehemu mpaka sasa kina mama wanachoka vichwa na migongo wakitembea kilomita nyingi sana kutafuta maji. Hatutaki kuona kuna kwingine katika Kenya ambapo maji iko kila mahali hata mpaka inatumika kiholela ila sehemu nyingine hakuna maji; sehemu nyingine kuna barabara zinaandikiwa mahindi, na sehemu nyingine watu hawajawahi kuona hata lami. Hawajui lami ni nini. Kuna jamii kama ya Wadorobo, jamii ya Ogiek ambazo hawajawahi kuona mambo mengi ya miundo misingi katika maisha yao.

Mhe. Naibu Spika, tungependa pia turekebishe Mswada huu ili hata mambo ya elimu yaweze kushughulikiwa na fedha hizi. Kuna sehemu hawana *national school* na hawana hata *provincial school*. Yaani wako na shule za kiwango cha wilaya peke yake na hawana zile ambazo ziko katika hali ya shule zile nzuri kama Starehe Boys, kwa mfano. Kuna sehemu hawana shule kama hizo ambazo zinaweza kutoa watoto na natija juu sana ya kielimu.

Kwa hivyo, ni lazima tuangalie mambo ya pesa hii na tuangalie nyanja nyingine ambazo hazijawekwa katika Katiba kuangaliwa na fedha hizi kama mambo ya chakula. Tumekuwa na ukame sana katika taifa letu. Sehemu za Tana River, Marsabit na sehemu zingine karne wamekuwa wakikosa chakula na wamekuwa na shida. Kina mama na watoto wanahangaika. Mifugo pia inakufa kwa sababu ya ukosefu wa maji, chakula na miundo misingi.

Tumejua kuna ile *board*. Lazima iangaliwe, ipigwe msasa na iwe ni *board* ambayo itakuwa inafanya usawa haswa iweke vigezo na mikakati vile hizi fedha zitatumika. Sintofahamu ya Serikali kuu na serikali za kaunti pia lazima imalizike kwa sababu tunajua kaunti wanapata fedha zao. Ingekuwa muafaka kama Serikali kuu ingetumia mfumo wa hazina ya maendeleo wa maeneo bunge kwa pesa zile. Mbunge anaelewa matatizo nyeti katika mambo ya maji, barabara, afya na umeme. Anaelewa sana kuliko kaunti kwa sababu pengine kaunti ni kubwa sana. Fedha hizo zikipitishwa mashinani, hali ya maisha ya wakenya itabadilika.

Mwaka huu wa elfu mbili ishirini na tano ni mwaka wa mageuzi kimaendeleo. Tukifanya *Supplementary Budget*, ni lazima tuweke pesa za kutosha kwa hazina hii kwa sababu ni kweli hatuko sawa katika sehemu zetu tunakotoka katika jamhuri ya Taifa letu la Kenya. Na hii yote ilitokana na ukabila wakati wa nyuma. Ndio maana tunaona Mhe. Rais kila saa anazungumzia ukenya ili tushikane tuwe Kenya moja na tuwe kitu kimoja. Ndio kila mkenya alipo apate maji, ana muundo wa msingi wa barabara na apate huduma kwa zahanati. Sasa hivi, maradhi ya saratani yameenea sana. Kina mama wengi wanakufa kutokana na ugonjwa saratani.

Je, sehemu ambazo zilitengwa na kusahaulika na sehemu nyingi kame, wana zahanati ambayo inaweza kuangalia saratani? Hilo ni swali lazima tujiulize. Kuna maradhi magumu mazito ambayo tuko nayo katika taifa letu la Kenya. Iwapo hatutakuwa na zahanati ambazo zina vifaa, madaktari, na madawa ya kutosha, basi wakenya wengi watapoteza maisha yao. Ndiposa tunasema, lazima tulipige jambo hili darubini. Pia tutakhimini taifa letu la Kenya, kaunti zetu arobaini na saba, maeneo bunge yetu mia mbili tisini, tujue ni sehemu gani ambazo zimetengwa, ziko nyuma na hazijapata maendeleo.

Kwa hivyo, ninaunga mkono Mswada huu. Ninawaambia Wabunge wenzangu tuangalie mikakati ya sheria na mbinu na miundo misingi za kuonyesha vile fedha hizi zitamsaidia Mkenya ili Kenya ikue moja na Wakenya wote tufurahie.

Hon. Deputy Speaker: Asante sana.

Member for Lagdera, if you indulge me, let the Member for Mogotio to go first. I know you are ahead of him. I know he has been sent to attend to some other duties by the Rt. Hon. Speaker relating to our late colleague. Let us allow him and then you will be next. Proceed, Hon. Kiborek.

Hon. Kiborek Reuben (Mogotio, UDA): Thank you, Hon. Deputy Speaker.

The Equalisation Fund is the second most important thing to happen to this country after devolution. Some parts of this country have been neglected and marginalised for far too long since Independence. Devolution gave a ray of hope to places that were previously marginalised.

After devolution, the Equalisation Fund came in handy. It enabled marginalised areas to get resources allowing them to catch up with the rest of the country. Due to urbanisation and the 1965 Policy that developed high-potential areas, the far-flung areas, which constitute over 70 per cent of the Kenya landmass, had been marginalised for far too long. These areas lacked water, electricity, good roads and hospitals, and they were surviving while the rest of the country was living large. When the Equalisation Fund was introduced, it gave hope to Kenyans from those areas, that they have been remembered and would now catch up with the rest of the country.

However, just like devolution, we must ensure that we follow it up so that it does not miss the point. We must be careful so that we do not inherit corruption or misappropriation through this Fund. Devolution has failed to attain its main goal because of misappropriation, mismanagement and corruption. As we speak, after almost 12 years or 13 years of devolution, it is rare to see projects done by counties yet a lot of money has been appropriated to them. The Equalisation Fund equally risks going the same line if we do not have proper oversight.

I support this Bill and commend the Senate for it. We must follow up with a strong oversight, whether at the county or national level, depending on where this Fund lies. Without a clear oversight, we will end up losing the achievements that this Fund could bring to the nation. As it is at the moment, you cannot tell whether it is fully in the county or the national level. This makes oversight very challenging as it is almost a 50-50 share between the national and the county governments. Is it the responsibility of a member of county assembly to oversee? Is it a Member of Parliament or a Senator? With the Equalisation Advisory Board now in place, it will be clear to follow up on the records and books of account of the Equalisation Fund, ensuring it achieves its intended purpose.

My prayer is that this Equalisation Fund should have a very lean team, just like the National Government-Constituencies Development Fund (NG-CDF), so that less than eight per cent goes to administration. The remaining 92 per cent should go to development, so that we can see tangible and fast-tracked development.

Secondly, regarding the Commission on Revenue Allocation (CRA) role in identifying areas that should benefit from the Equalisation Fund, sometimes more marginalised areas are not enlisted in the locations set to benefit from the Fund. Some under deserving areas are not

picked by CRA. As we work on this board, we should also develop a clear and fair formula through the CRA, with the help of our colleagues in the Senate. The process of selecting areas to benefit from the Equalisation Fund must be fair and beyond reproach. It must be done with proper equity or it will fail to achieve its intended purpose.

Hon. Deputy Speaker, through our colleagues in the Senate and the National Assembly, we must ensure that the formula for CRA, whether it is for the fourth or fifth policy, is fair and transparent. It should ensure that all marginalised areas are enlisted in the list of beneficiaries. As we work on this board that will manage the Fund, it is important to establish a clear path for oversight so that we can move forward effectively. It is my prayer that all areas will be covered. I come from Baringo County, and there are under-deserving areas that do not benefit from this Fund. Some areas are still deserving, yet one area receives while another one does not, despite the level of marginalisation being the same. It is something that we can work with the CRA formula and our colleagues in the Senate, so that we can make it fair and equitable to every part of this nation, especially the pastoralist areas that have been marginalised for many years.

Allow me to pay tribute to a great man who was a firm believer of this Bill. A Senator, a great man, amiable, a humble man, a kind-hearted human being, a true Christian, a believer, a son of the soil, a son of the great Baringo; Seneta William Kipkiror Cheptumo. He believed in this Bill. I discussed it with him many times, including the relationship between the National Assembly and the Senate. He was a believer that this would be a game-changer for the areas that we come from, which have been marginalised for far too long. As people who come from Baringo, we have experienced two kinds of marginalisation. One is the marginalisation by nature and previous governments. The second one is what we call post-President Daniel Moi marginalisation, where people tell you, “You come from Baringo. You do not deserve anything because you got it during Moi’s time,” as if problems are not evolving and as if every day does not bring new challenges.

The late Sen. William Kipkiror Cheptumo was a great man. We have lost a son of the soil. A good human being par excellence, a strong believer of devolution, equalisation and nationhood. He believed in a project called Kenya, just like our President William Ruto. He was an advocate of social justice and development. The late Sen. William Kipkiror Cheptumo was a good listener, a good advisor, and a counsellor to the young people. He was a mentor to many of us. When we were elected into this House, the late Hon. William Kipkiror Cheptumo took his time to advise us as a senior. He would call us, and with authority, he would remind us that he is an elder and a ranking Member. He would say everything with authority. One thing that the late Sen. Cheptumo would tell me personally is to work for the people and not mind about elections. He said that when you work for the people, they will re-elect you. When you do not work for the people, you will not be re-elected. He would remind me every other time not to worry about 2027, but focus on development because the total sum of what you do now will be judged when election time comes. He would always tell us to devote ourselves and our energy to serving our people, the nation, and to believe in this project called Kenya.

He was a nationalist and not a tribalist. He never looked down upon people despite being much older than us. He did not dismiss us because of our age. He was not an ageist. Instead, he comforted us with his wisdom and experience. He did a lot of development in Baringo during his time as a Member of Parliament for Baringo North. He did tarmac roads and many other things. When he was Senator, he served as a unifying factor in my county, Baringo. He was a person who would gather all of us, work out solutions, and create a formula to improve Baringo and make this nation a better place. So, we want to pray with the people of Baringo, the family of the late Sen. William Cheptumo, the people of Tunoiwo in Baringo North, where he was born, and the entire people of Kenya, including Senators who worked

closely with the late Sen. Cheptumo. May God comfort them during this difficult time. They have lost a great man. We have also lost a great father, brother, and senior to us.

I also take this opportunity, in the same breath, to pray with the family of the late Hon. Malulu Injendi. Hon. Malulu Injendi was a good man, a gentleman par excellence. He would always sit here. He was also equally ready to give us wisdom and to always advise us. He was very passionate about his Bill on the salaries for the village elders, which he always pushed for in this House.

I want to tell you that this Equalisation Fund is the best Fund to ever happen to this country. However, it should be followed up with serious oversight to prevent misappropriation by corrupt individuals who want to enrich themselves at the expense of this country.

May God bless Kenya. May God bless Baringo.

Hon. Deputy Speaker: Hon. Members, before we proceed, I would like to recognise the presence of El Burgon District Education Board (DEB) Secondary School from Molo Constituency, Nakuru County. I will give an opportunity to the Member for Molo Constituency, Hon. Kimani Kuria, to welcome them on our behalf. Make it brief.

Hon. Kimani Kuria (Molo, UDA): Hon. Deputy Speaker, I want to thank you very much for giving me this opportunity.

I take this chance to welcome the great students of Elburgon Secondary School to this House to observe proceedings and to tell them to work very hard when they go back home. Elburgon Secondary School, coincidentally, is where my mum went to school. It is also one of our best extra county schools in Nakuru County. They did very well and we congratulate them. I know this group will even make us prouder.

Hon. Deputy Speaker: Hon. Member for Lagdera, Hon. Abdikadir Mohamed, proceed and thank you very much for indulging your colleague.

Hon. Abdikadir Mohamed (Lagdera, ODM): Thank you, Hon. Deputy Speaker, for giving me this opportunity to contribute to the Equalisation Fund Administration Bill.

As it is now, the Equalisation Fund is administered by a regulation which was done by people who had counties in mind over devolution. The roles they give to the counties are important and nothing can move without them. Since they had counties in mind, they brought these regulations and they wanted to hand over the funds to the counties. If you look at it, 14 years after our Constitution, nothing is on the ground. Nothing has been done by the Equalisation Fund after the disbursement of Ksh70 billion. If you go to my constituency, you will not see a single toilet done through the Equalisation Fund yet the money has been utilised. Where is this money going to? Where has it gone?

I have a problem with the way marginalised areas are being defined by this Bill. It is like marginalised areas are a moving target such that today your area is marked as a marginalised area and tomorrow it is not because this has been done based on policies. The previous policies have moved the marginalised counties from 14 to the current 34. Some small pockets of areas which have been developed through the Sessional Paper No.10, are now being called marginalised and have now eaten into the fund, which was meant for areas which are marginalised. We must have parameters in place on how to define marginalised areas.

The other thing is that this money was supposed to be utilised in such a way that it could have an impact on development. Our county is not able to utilise the one for the Financial Year 2022/2023 because of the push and pull between the counties and the Members of Parliament. Many people have interests in this and so, we are not able to do anything. When we try to put these projects into one single project that will have an impact, for example, I wanted the money for Lagdera Constituency to be utilised for electricity that is taking the national grid from Garissa to Modogashe, it is not possible. Modogashe currently does not have electricity. It is done by a diesel generator. They did not agree to the proposal. We have a secretariat here at the headquarters administering this Fund, which believes that this money should be divided

into smaller parts and put into small projects of like Ksh3 or Ksh4 million which have no impact completely. They denied our proposal that we put this money into one single project that could have a big impact on the constituency. They told us to go back and divide the money into locations and sublocations. Those are things which will have no impact and after one year, they will disappear. For example, if you put up a toilet today, or if you have a small water pump, after three years, they will be worn out, but if I use that money on electricity, it will help. It is something that will be there forever.

One thing I would say is that we do not need to wait for this Bill. We need the secretariat at these headquarters to be reformed immediately because their mindset is right for the county government. They think, hear and work for the county government. They do not take proposals from other people, but only from the county government, yet we know the problem we have with the county government right now. If they cannot account for their money, why should we give them more money to go and misuse? They normally do double allocation where a project is normally done, but they will say that it has been done by a collection fund, and therefore, money is misappropriated like that.

The coming policy, I think this is the third policy, should be looked into seriously, so that this money can have an impact on development on the ground. The one currently in place is recognising locations and sublocations as pockets of development. If you look at it seriously, those developments that they want to put there do not have an impact.

With those few remarks, I support the Bill, but with amendments.

Hon. Deputy Speaker: The Member for Kitui West, Hon. Edith Nyenze.

Hon. Edith Nyenze (Kitui West, WDM): *(Inaudible)*

Hon. Deputy Speaker: I think your microphone is not working. Try another one. Please give her another microphone or move to the one on your left.

Hon. Edith Nyenze (Kitui West, WDM): Thank you, Hon. Deputy Speaker for giving me this opportunity to also contribute.

The Deputy Speaker: Is that better? Is it okay now? Move to the next microphone. Move again to your right. Is it okay now?

Hon. Edith Nyenze (Kitui West, WDM): Yes. Thank you, Hon. Deputy Speaker.

Let me take this opportunity to air my views on the Equalisation Fund, which is a function in our Constitution 2010 which provides that the national Government shall use the funds to provide basic services including water, roads, electricity, health facilities, and such services to marginalised areas. The intention is to ensure that such areas, which do not have these facilities, are improved, so that they are at par with other regions.

I also note that the Commission on Revenue Allocation (CRA) is responsible for reviewing and determining which areas are marginalised. They are the ones who come up with a formula to show how such areas are identified. These areas also include the services which I have mentioned like where the supply of water is low, where water access is not adequate, attendance in schools is not well as compared to other regions, sanitation and availability of electricity. These areas are ranked by the CRA, and then those which fall at the bottom are the ones which are supposed to be marginalised. After that, those regions are the ones who should benefit from the Equalisation Fund. Although this has been amended, I can say that this is one of the areas in our Constitution which has not been implemented.

The Commission on Revenue Allocation came up with a Bill and took it to the Senate. Marginalised areas have been identified several times. This is one of the areas in our Constitution that have not been implemented. Therefore, these regions keep lagging behind even though there is devolution. They are not at par with other regions. I have identified two locations in my constituency, namely, Yalatani and Maseki locations. When I visit, they always ask, "What happened? We were ranked as needy yet nothing has happened." That is why I say that this is one of the areas in the 2010 Constitution that have not been implemented.

Hon. Deputy Speaker, we should push the idea of having the funds implemented so that these areas can benefit because they still lag behind. It is also good to compare and see whether devolution has sorted some problems in some of the areas so that we do not have confusion. It should not be said that we do not need the Equalisation Fund since devolution came. This money is always set aside. Where does it go as people keep on being marginalised?

With that, I support.

Hon. Deputy Speaker: Thank you. The Nominated Member, Hon. Umulkher Harun. I think we are having a problem with her microphone also. Is it okay now?

Hon. Umulkher Harun (Nominated, ODM): It is okay. Thank you for the chance to contribute to the matter on the Floor.

I support the Equalisation Fund because of the myriad of challenges in regions that were earmarked for this particular programme. The regions that were earmarked for this particular Fund have been lagging behind for so long. This is a ripple effect issue. If you look at programmes like roads and healthcare, especially in the nomadic ASAL areas, we have high cases of insecurity yet the solution is very simple. Improved Explosive Devices (IEDs) cannot be planted on tarmac roads. This is part of the money that will solve such problems that we have. Disbursement is the biggest challenge. The Fund has not been implemented since.

Stretching out to more than the counties it was allocated for will not bring a solution. Proposing a budget of Ksh6 million, for example, cannot do much. These regions will benefit if we have targeted focus. Of course, marginalisation had specific counties after the Constitution was amended for a reason. There are regions that do not have resources.

I support the Report from the Committee because I think this should be the time to implement. As a nomad and a child from that region, we have had challenges year in year out. For example, certain places need dams. We have a particular case where we always have river overflows from upper counties because water has to flow down to our areas. It affects crops. Such can only be solved by having one or two dams and we will be done with that.

I support this Motion from where I sit. We are headed to development if we take care of everything that has been highlighted.

For that, I support the agenda.

Hon. Deputy Speaker: The Member de Nandi County. Hon. Cynthia Muge.

Hon. Cynthia Muge (Nandi County, UDA): Thank you, Hon. Speaker. I support this Motion. Of course, I have reservations on a few matters.

I appreciate the efforts the Senate and the Committee have put into this Bill in a bid to operationalise Article 204 of the Constitution of Kenya 2010. Going through this Bill, I appreciate the Committee because it has really tried to cure some of the inequalities inflicted on the Bill by the original drafters. I do not want to go back to the original draft. I appreciate the amendments made. We all appreciate that the Bill is supposed to give us the framework for identification, selection, and even implementation of programmes in marginalised areas so that they can be uplifted in development.

I have a problem with the Commission on Revenue Allocation in regards to the time they take to do monitoring and evaluation. The Equalisation Fund is not a birth right to anyone. In any case, no one likes to be a beneficiary of the Equalisation Fund. It is an indicator of the poverty levels in areas. I also appreciate the Constitution for putting in the kind of activities the Fund can do. The Bill has factored in health facilities, roads, water, and sanitation. It also has a very important clause that says, "And any other matter that the Commission on Revenue Allocation deems fit to put under Equalisation Fund programmes".

What surprises me here is that we have people representing county governments in the implementation, especially in advisory boards and even in committees. You will find that we have a person representing the National Government Constituencies Development Fund. We also have people representing Persons Living with Disabilities (PWDs). Even this House has

Members representing marginalised groups like women and other groups yet they are not included in the list of people who can have a say on projects undertaken by the Fund. I wonder how those other basic services will be remembered if those people are not put in this category. An office that represents marginalised groups will bring issues that touch on the marginalised people they represent when it sits in a board or committee. I have a problem with that.

Again, there is the issue of where the Fund ends. Tinderet Constituency in my county is a beneficiary of the Equalisation Fund. You will also notice that Aldai Constituency is equally marginalised if you go to the ground and look at it. There are places like Chebirir. You can spit when in Malaba and your saliva will get to Chebirir, but you have to go all the way to Kisumu to access that place. I wonder why the Commission on Revenue Allocation takes so long to do monitoring and evaluation to remove villages, locations, and sub-locations that have so far benefited from these equalisation programmes and put other people who are still marginalised? I think there is a problem with the Commission on Revenue Allocation that needs to be addressed urgently so that we have periodic and more subsequent monitoring and evaluation exercises to onboard other marginalised areas.

The marginalisation we are talking about in the provisions of Article 204 of the Constitution is majorly structural in terms of their tangibility. There are other issues that need to be looked at. There are people who come from inaccessible far-flung areas. I feel like this should be enhanced to cover those kinds of issues.

Again, I appreciate the Bill because it has extended the sunset clause that was capped at 20 years ending in a few years. Why do we support that it continues? The aspect of the monitoring and evaluation has been missing as much as the Equalisation Fund has been here. Therefore, we have not been able to equally bring on board all sub-locations and locations that are still marginalised. They need a boost in development.

I also have a problem with the identification of the projects. You will find that if there is a road that cuts through three constituencies, one constituency is listed as a beneficiary of the Equalisation Fund. When budgeting, they should consider allocation for a road starting from point A through to points B, C, D, E and F. Do they do this? You find that a road ends where the constituency boundary ends. Due to this, we are unable to end marginalisation in that community because we have not constructed the road to the desired point F. We need to have a better understanding of what the Equalisation Fund is supposed to achieve in the long run.

Lastly, I always have a problem with a statement written in every document regarding money that says, "You have to use the recent audited accounts." If we perused these documents to see the last audited accounts, we would be surprised to see the year they were officially audited. This means we are denying marginalised areas an opportunity to get more money. We can avoid a situation where a marginalised constituency is getting Ksh20 million whereas money can still be channelled to that kitty for a good project. The Equalisation Fund should sort out pertinent issues and not minor ones. Devolution was supposed to sort out both minor and major problems in the counties.

The Equalisation Fund should be critically scrutinised by the beneficiaries so that we can prioritise one or two major projects. If we allocate money to a project, we should not talk about that problem again.

I am looking forward to the Committee of the whole House on the Bill because I have some reservations. I feel that we can improve the clauses in the Bill, so that it can effectively and efficiently serve the purpose it was meant to serve from the word go.

I appreciate the work of the Committee and the Bill.

Hon. Deputy Speaker: Member for Marsabit County, Hon. Naomi Waqo.

Hon. Naomi Waqo (Marsabit County, UDA): Thank you, Hon. Deputy Speaker, for giving me an opportunity to add my voice to this very important debate on the Equalisation Fund.

This Fund was established as a result of Article 204(1) of the Constitution. It is made up of one half per cent of all the revenue collected by the national Government each year. The purpose of the Fund is to promote and enhance marginalised areas. Some areas have been marginalised for many years in terms of development, progress, and growth, especially in the northern and north-eastern parts of Kenya. Those areas have been marginalised in terms of water, road connectivity, health facilities, and electricity. The county governments can improve those areas through those funds so that they can catch up with other parts of the country.

In as much as I support this Bill, there is need for us to review the Fund and see how best it can incorporate other areas and their leaders, so that those areas can develop properly. The effects of the Fund can be seen in some areas, but not in others. We must also advocate for proper accountability and inclusivity. Those doing the work should consider both genders and people living with disabilities to ensure that all capable Kenyans participate.

In so far as we are concentrating on marginalised areas, we also want individuals in those areas to grow economically. There are businesswomen who have not had the opportunity to do any contract work. This Bill gives them that opportunity. As we look at the growth of the counties, we need to consider how the individuals in those counties can also grow. The method used to allocate money to counties should be used to allocate to the marginalised groups among the marginalised communities. We should give opportunities to those with businesses that have capacity to grow, so that they can gain experience. In time, they will graduate from one level to the other.

There is need for us in this august House to look at what is happening and do some research, so that we can determine the areas already covered, the progress made and how to improve. The functions of the secretariat are clearly indicated on Page 11 in Clause 15(2). I paid a lot of attention to the county technical committees in Part IV. Clause 16 states that the Fund shall finance programmes or projects for the provision of various basic services in areas identified as marginalised areas by the Commission on Revenue Allocation such as water and sanitation.

Hon. Deputy Speaker: One moment, Hon. Waqo. Hon. Members, those who want to contribute to this Bill should press the intervention button. Only four people have done so namely, Hon. Melly, Hon. Mboni of Kitui Rural, Hon. Bartoo and Hon. Timothy of Marakwet East. Now I can see Hon. Basil. Please, do that. You may proceed, Hon. Waqo.

Hon. Naomi Waqo (Marsabit County, UDA): Thank you, Hon. Deputy Speaker. Page 12 clearly indicates the areas that have been identified such as water and sanitation.

The whole of last week and this week, I was involved in water tracking measures at my own cost because the people of Marsabit, Moyale and Saku constituencies have water problems. Water tracking needs to be done seriously so that people can get water.

Some of our areas got roads during President Kibaki's regime. We have a road from Isiolo to Marsabit and beyond. However, there are no roads that serves the town and other places. That is why I urge the county governments to construct feeder roads and take care of them.

Some people in our areas travel for over 300 kilometres to get to health facilities. Sometimes expectant mothers suffer as they deliver on the road, and they are not taken care of hygienically. Most of them lose their lives. That is why we need this Fund. To date, there is no electricity in some parts of our country. That is why we advocate for electricity connectivity. Given the opportunity, this Fund can transform many areas that are marginalised. As I said earlier, as we think of marginalised areas, let us also think of the marginalised groups in those areas. Let us give opportunities to the youth, persons living with disability and women in those

areas to do business. Most of the time, these groups are not given special consideration. There is still need for us to review the Bill and see how best it can serve our communities and bring the transformation that we imagined.

I want to thank our President because he has a transformative agenda that has the potential to transform the entire country and revive the economy of the different counties. Not unless we are dedicated, passionate and bold enough to do things that have never been done in the past, we will not bring the anticipated transformation. I support this Bill and believe that through this Fund, marginalised areas will benefit.

Hon. Deputy Speaker: Several Hon. Members have come to me saying that they do not have their cards. Just give your names to the Clerks-at-the-Table. Next is Hon Julius Melly, Member of Tinderet.

Hon. Julius Melly (Tinderet, UDA): Thank you, Hon. Deputy Speaker.

Hon. Peter Makau (Mavoko, WDM): On a point of order, Hon. Deputy Speaker.

Hon. Deputy Speaker: What is your point of order, Member for Mavoko?

(Hon. Catherine Omanyo spoke off record.)

Hon. Catherine Omanyo we have your name, but you will wait. You are on the queue. Member for Mavoko, what is your point of order?

Hon. Peter Makau (Mavoko, WDM): Thank you, Hon. Deputy Speaker. I am seeking your guidance. Sometimes back - I am sure you were in this House - we looked at this Bill and all Members were in agreement that zoning should be done so that it carries along the Bill.

Hon. Deputy Speaker: That is not a point of order.

Hon. Peter Makau (Mavoko, WDM): That is why I am asking for your guidance. As we continue to debate this Bill, we should know if it is of benefit to the people we represent or there is need for the House to amend it, so that we debate it in an amended form.

Hon. Deputy Speaker: For the record and posterity, I think it is very important for Members to ventilate their sentiments and have them recorded in *the Hansard*, so that by the time the Bill is in the Committee of the whole House stage, there is a basis to bring amendments.

We cannot skip this and assume that Members want to catapult straight to the amendments. That will be a shortcut. So, every Member has the benefit, like you do, of knowing what was discussed in the initial stages of the Bill, in the Committee of the whole House or during public participation. This Bill is very important and long overdue. There have been discussions in the country on it dating as far back as 1965. It is not a Bill to be taken lightly. This explains why we are giving Members sufficient time to ventilate on it, so that by the time it comes to the Committee of the whole House, we will be comfortable with how it arrived to that stage.

Hon. Julius Melly (Tinderet, UDA): Thank you, Hon. Deputy Speaker. I rise to support the Bill. Equalisation Fund has been used by many developed nations to uplift areas within their countries to be at par with the rest of the country. I support this Bill because in this country, some parts are not developed. We have regions that have never seen tapped water, electricity, motorable roads and decent health facilities.

We have a number of devolved funds in this country that need a legislation of this nature for proper administration. The Equalisation Fund is supposed to cover areas that are marginalised, not necessarily in terms of aridity or lack of rain, but they are backwards in terms of levels of development. I can give several examples especially in the north-eastern region and northern parts of the Rift Valley that have low development.

I want to look at this Bill more critically especially in terms of administration. It has established and enumerated several frameworks on how this Fund will be administered. It sets

out an advisory board that will ensure that the Fund is well utilised, there is value for money and projects are well identified.

If you look at the National Government Constituencies Development Fund and the National Government Affirmative Action Fund (NGAAF), they are devolved funds. One of the challenges facing a number of these devolved funds is their administration. I want to thank the proponents of this Bill because they have identified problems that are bedevilling the Equalisation Fund so that it can uplift marginalised areas in the country.

Our Constitution says that it shall be in force for about 20 years. It is now almost 15 years since its promulgation. The administration of this Fund has delayed. This means that about seven years have lapsed without it being useful. Its remittances from the National Treasury delayed for lack of a legislative framework.

This Bill is very important. It will make sure that money is properly used, communities are involved in the identification of projects and participate in ensuring the projects are completed. Cases of Government funds being allocated to identified projects which are not done is very common in this country. That is what we call the “white elephant projects.”

During the Committee of the whole House stage, I will propose several amendments to this Bill. It is very good, but there are certain areas that need tightening, so that we are sure its administration will be accountable to the people and there will be less wastage.

The drafters of the NG-CDF Bill ensured that it has minimal administrative costs. If you look at the Equalisation Fund and county government funds, their administration costs are huge. These funds are very good and should be efficiently administered, so that they benefit the people and ensure targeted projects are usable. Let me give an example of roads that are not completed in some areas, and therefore, they do not serve their intended purpose.

[The Deputy Speaker (Hon. Gladys Boss) left the Chair]

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

I have read a number of Equalisation Fund reports and there are cases of contractors who have not completed construction of roads, bridges and other projects. As we debate this Bill, we should ensure that all its loose ends are tied up. The projects identified by the local people should be completed on time. Some areas in this country do not have health facilities like dispensaries and health centres.

A good example is some areas within my constituency which the Fund serves. We have areas where up to last year, it was unimaginable they would have health facilities. But with the availability of this Fund, a number of health facilities have been established. Also, a number of access roads, through the very serious, hilly, mountainous, rugged areas of Tinderet have been constructed as a result of the Fund. On top of this, it also caters for electricity connectivity. It is utilised with a counter fund from the Rural Electrification and Renewable Energy Corporation (REREC).

So, this Bill is very important in ensuring that the Equalisation Fund is administered prudently. It has a *lacuna* in terms of membership of the technical committee at the constituency level. It includes, the deputy county commissioner, sub-county administrator - who is a member of the county government and secretary of the NG-CDF as members. We need to include people with disability and other very important stakeholders, so that there is proper oversight of this Fund.

The Equalisation Fund shall cater for the construction of classrooms in schools and health facilities in areas that lack these facilities. Another aspect which I want to bring to the attention of the House is the issue of bank accounts. The Bill elucidates how the accounts of this Fund are going to be managed. It also identifies the signatories, when the funds are to be

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released and more importantly, how projects will be overseen by various committees. So, this Bill is very important and I urge Hon. Members to support it. We will propose amendments to strengthen and make sure it is passed.

The last area that I want to emphasise is the issue of water. As all Hon. Members know, this is one of the basic needs in our society. It is a requirement that every home in this country should have water. If we use this Fund well, it will help us to bring water to our homes and villages. In arid areas, we can drill bores using the Fund.

Thank you, Hon. Temporary Speaker. I support and ask my colleagues to support as well.

The Temporary Speaker (Hon. Peter Kaluma): Hon. Julius Melly, before you sit, what did you say about Clause 4 of the Bill?

Hon. Julius Melly (Tinderet, UDA): Thank you, Hon. Temporary Speaker. I identified an issue in Clause 4 of the Bill. It states that the Fund shall, pursuant to Article 204(1) of the Constitution, consist of one half of all revenue collected by the national Government. I will propose an amendment because this means that the Fund will have one half of the total revenue of the national Government, which is exceedingly high, so that this Fund remains within the two per cent of the revenue we collect.

The Temporary Speaker (Hon. Peter Kaluma): Thank you for highlighting. I doubt we intended the Equalisation Fund to be more than the devolved funds allocation. Next is the Member for Kitui Rural Constituency.

Hon. David Mwalika (Kitui Rural, WDM): Thank you very much, Hon. Temporary Speaker. At the outset, I support this Bill because it is very important. It seeks to provide for the administration structures for the management of the Equalisation Fund.

Through this Bill, the Equalisation Fund Advisory Board and other committees will be formed. The Fund is supposed to be used to provide basic services like water, roads, health facilities and electricity. It is a pity that up to now, some areas do not have these facilities.

One of the objectives of Sessional Paper No.10 of 1996 was to promote equal opportunities for all Kenyans. It is a pity, as we speak, 41 per cent of Kenyans do not have access to safe drinking water. Many people walk long distances to fetch water. For example, in my area, there are some places where people walk seven kilometres to the river. Going to the river and back is a whole day activity. One time, I visited some people in that area and they told me that getting children has become a problem because they wake up very early in the morning to look for water.

There are some constituencies which do not even have a single kilometre of tarmac road and the murrum roads are in dire condition. I think electricity connectivity is below 22 per cent which is very disturbing. When we went for devolution, we thought it would improve services in counties. It has also become a curse because funds are misused at the county level. It is like we devolved corruption to the county level. Therefore, the Equalisation Fund will supplement services which are provided by county governments.

One of the good proposals in this Bill is the establishment or creation of an account at Central Bank of Kenya (CBK) for the Equalisation Fund. This will reduce the control of the Fund from the National Treasury. We know most of the funds have died because of the hard hand of the National Treasury of not releasing money to them. For example, we have a problem with the NG-CDF. We are remaining with four months to the end of the financial year, but we have not received all the money. If the NG-CDF money was deposited in an account in the Central Bank of Kenya, we could draw it from there, and therefore, reduce the funding challenges.

This is a very important proposal. In the last few years, funds supposed to be disbursed to these areas were not remitted. I think they are owed over Ksh10 billion. I do not know when they are going to get that money. So, removal of the control of the Equalisation Fund from the

National Treasury is a very welcome idea. Let the people who will manage these funds work day and night to ensure that services are provided in these areas.

The formulation of the marginalisation formula should be done without interference. This is an area we need to look into. It is unfortunate that most of the commissioners in the Commission on Revenue Allocation are politicians with different interests. This is an issue that we need to address. We should ensure that only areas that deserve to get these funds benefit. Funds should not be disbursed based on personal nor partisan interests or somebody from that area is a member of the Commission. This Fund should be given to my constituency and other deserving areas like north eastern and ASAL areas.

For this formula, it is very important to use quality data. I have been championing the funding of the Kenya National Bureau of Statistics (KNBS). This is a Government agency which is entrusted with collecting, analysing, validating and disseminating official statistics. If it is not well-funded, then we will not get quality data to help us generate the formula.

With those few remarks, I support.

The Temporary Speaker (Hon. Peter Kaluma): Hon. Farah Maalim.

Hon. Farah Maalim (Dadaab, WDM): Thank you, Hon. Temporary Speaker. With a very heavy heart, I rise to contribute to this Bill. The very foundational object and spirit of having an Equalisation Fund was to correct the historical marginalisation of sections of this country.

The idea was to equalise the resource allocations that were done from 1963 to 2010, by bringing those areas where there was no Government development up to speed with the rest of the country. This does not deal with contemporary poverty pockets everywhere in the country. At the time of inception of this particular provision in the Constitution, many Kenyans voted for it because of the need to correct historical marginalisation. We only had 14 counties in mind that were basically starved of resource allocation because of, among other things, the Sessional Paper No.10 of 1965. Those counties were Tana River, Marsabit, Mandera, Taita Taveta, Kilifi, Kwale, Samburu, Isiolo, Turkana, West Pokot, Garissa, Wajir, Lamu and Narok. We have now convoluted the Fund and used the structure of the people in power to translate it to fund every pocket in the country. It has lost its meaning.

I was part of the framers of the Constitution. The idea was to bring public services like roads, hospitals, educational institutions, electricity and water to the areas that never had access for many years since Independence. Today, areas like Tseikuru, Nguni and Ukasi in Mwingi Town, where I pass through as I go home, have never seen development since Independence. When you go further into the north...

(Hon. Gideon Mulyungi spoke off record)

Who has the point of information? Yes, proceed and give me the information. Yes, I need the information. Ordinarily, you should ask me whether I want to be informed. However, the Temporary Speaker has not recognised you. Keep on shouting 'point of information' for you to be recognised. Do not worry, if you shout the Temporary Speaker will hear you. Keep on shouting 'point of information' until you get the opportunity. What is wrong with you?

(Laughter)

This reminds me of something that happened in the 1960s when there was the civil rights movement in the United States of American (USA).

Hon. Gideon Mulyungi (Mwingi Central, WDM): On a point of information, Hon. Temporary Speaker.

The Temporary Speaker (Hon. Peter Kaluma): Hon. Mulyungi, what is your point of information?

Hon. Gideon Mulyungi (Mwingi Central, WDM): Thank you, Hon. Temporary Speaker. I thank my neighbour, *Mheshimiwa* Farah for appreciating the problems we have in Mwingi. I thank him because he seems to be conversant with Mwingi Town. He is my neighbour because he passes there. I would like you to continue giving the information so that Mwingi can benefit from this Fund.

Hon. Farah Maalim (Dadaab, WDM): I am reminded of something that happened in the 1960s. Most of you are very young people including my brilliant professor next to me here. During that time, there was a civil rights movement that was meant to address slavery and its effects, serious marginalisation and the oppression black people suffered in America for a long time. But the white *crème de la crème* decided the best way to water down the movement was to include all minorities. Who were the minorities? The women, who were also fighting for their rights at that time and the gay rights activists.

So, they adulterated the genuine struggle of people who were enslaved for 500 years to ensure that they do not save the black man. This is because deep down in the core, they are still racists. Some whites pretended to be very good to these people and even brought in several other groups and branded them as minorities. Everybody became a minority including the Jews living in the USA at that time, who controlled the economy of the place. Basically, the idea was to water down the movement so that the genuine and legitimate people do not get the support they needed.

Equally, to eliminate the possibility of developing Marsabit, Isiolo, Tseikuru, Tana River and Lamu which were starved of Government resources for all the colonial period and the subsequent Kenya Independent Governments, we said pockets of poverty are everywhere and decided to spread out the Equalisation Fund. This means that I will probably get an allocation of Ksh50 or Ksh100 million for my constituency. How will this amount equalise me in terms of infrastructure? Even if it is given for 100 years, how will it bring me up to speed with the rest of the country? For a long time, this country has done research on tea, coffee and pyrethrum yet no research has been done on livestock in the marginalised areas. The people in those areas live in pre-colonial kind of conditions, which is wrong.

I would like Hon. Naomi and other Members to listen to me very well. This Bill has to be amended to capture the spirit and objectives of the framers of the Constitution of Kenya, 2010. Their intention was to bring the marginal Northern Frontier District (NFD), and other areas with 'lesser Kenyans', up to speed with the rest of the country. For example, how many years will it take me with Ksh50 million per annum in my constituency, those in Taita Taveta, Kitui, Isiolo, Marsabit and North Horr areas that have never seen Government development for the longest, to have the kind of roads in Kiambu County? How long will it take us to catch up with other places that have been well taken care of and well-endowed like Eldoret, Kitale and Kericho? It will take us forever. It completely defeats the purpose of this constitutional provision.

I went to school in 1964 when my primary school did not have a Standard Seven. We gained Independence without a Standard Seven in the North Eastern Province, except for one school in Wajir and Marsabit. Period! The expanse of the North Horr Constituency is larger than Nyanza, Western and Central provinces put together - just one constituency. In the North Eastern Province, we have 22 constituencies. Where is development in Ganze and all those places that I pass through when I travel from Garissa? Tana River, just like the rest of North Horr, Marsabit, Moyale, Mandera, and others, has never seen Government investment.

The white man came here to establish what was called extraction economy. He came to pick our wealth. There was nothing for him to extract in the areas we lived and so, he went to the highlands - hence it was called the 'White Highlands'. Those were the only areas that were

developed during that period and in the subsequent Government, largely due to the Sessional Paper No.10 of 1965. This was designed to correct both the colonial period and the post-colonial period which came with a Sessional Paper that they would not invest any money in those places.

In 1993, as a young Member of Parliament and a first-timer, I filed a Question asking how much money had been invested in development projects in the North Eastern Province over the last 30 years. At that time, we had three districts, namely, Garissa, Wajir and Mandera. The records are available, and the answer was Ksh178 million, which had been invested in almost a third of the country for 30 good years. That was amounting to a paltry sum of less than Ksh6 million per year per county. That gave us nothing, so I had to ask: “Where was that money spent”? Largely, much of it was reallocated for security measures due to insecurity in some parts. That was one way for technocrats in the Government to take money from development and put it in their own pockets. It was easier to do this because nobody would hold them accountable for security.

We had this kind of marginalisation and discrimination, starving our own people of the basic rights in their own country. Today, 39 counties are supposed to benefit from what was essentially designed for only 14 counties at a paltry sum of 0.5 per cent of the national budget. This will not equalise anything. You might as well do away with it and begin looking for a proper constitutional amendment, so that Kenyans can feel they belong to a country where everyone is equal.

I do not have a single foot of tarmac road in my constituency. Not a foot, not from this table’s end to the other end. The headquarters of my constituency is Dadaab and there is not a single foot of tarmac road. This is true for most constituencies in those marginalised areas. The only one we have, which was done many years ago, is the tarmac road from here to Garissa. That road largely passes through other counties. However, constituencies like Mwingi West have many feeder roads, including the Nguu-Nguni Road. Hon. Nguna.

(Hon. Charles Nguna spoke off record)

Order, Hon. CNN!

(Laughter)

We have two Kenyas; one where when people are going to the other side, they say they are going to Kenya. In some parts of Kenya, when you use their roads, you feel like you are in some parts of Europe or the Middle East. I have seen that - just go outside Nairobi. Do you think those people will feel the same sense of patriotism for this country?

I came to Parliament when we were sending one or two students to universities in a whole province in a year. Out of 100,000 students those days who went to our universities, only 65 of them were of the north eastern origin. A majority of them were children of civil servants who were working around here, but from north eastern schools, they were less than 15. You could go to the medical school and not see anybody. We need to unite our country. Can I have two more minutes, if you do not mind?

Thank you, Hon. Temporary Speaker. Let us look at the resource allocations that were made in all the constituencies in this country from 1965 to 2010 for serious infrastructural development purposes. Let us look at the areas that were left out and make allocations. This is called positive discrimination, so that they can also catch up with the rest of the country. It is also a form of affirmative action. I was in this country as a young man.

(Technical hitch)

I have been given three minutes.

Most of you do not know when the late Tom Mboya took students to the famous airlift in the United States. The late Jaramogi Oginga Odinga took many students to Eastern Europe. I would say the majority of them were from Luo, Nyanza and the Western provinces. Those days, they were called the Kavirondo. I do not know what Kavirondo meant, but it was the western side. Since they were not in favour with the Government, when someone came back with a PhD, they were relegated to a master's degree. If someone came back with a master's degree, they were relegated to a bachelor's degree. Those who came back from Hungary, Romania and other countries like Russia or Ukraine, which were part of Russia at that time, were relegated to a diploma.

This country has seen serious apartheid in its own history. The Equalisation Fund was one way of addressing the awful things we did to ourselves in the short period since we gained Independence. Also, the awful things that the white men did to us in the differentials. I understand that the white men came to extract the economy from here and rob us. They came to enslave us and use our forced labour to develop their own economies back home. But in an independent African country, after so much suffering, how can you come to me now with an Equalisation Fund, which is just equalisation to the extent of the title? By the way, it equalises nothing. Nothing! Absolutely nothing! We need serious and proper equalisation. This must be amended so as to indicate who the beneficiaries are in the interim. Not just leave it to the Commission on Revenue Allocation to decide who benefits today and who benefits tomorrow.

We should look at the resources that were allocated before, those areas that were starved of allocation and compare what each constituency received. We need to bring certain areas up so that they can have the same level of development. The idea was to heal the country; it was some form of truth, justice, and reconciliation. We are trying to reconcile our country and not drive us apart again, which is exactly what is happening now. Transitional justice was what we expected to achieve. We wanted all of us to forget and say, “Look, my country might have done some awful things to me, but today, I am benefiting”. I am coming up to speed, and you see tarmac roads all over north eastern and the feeder roads in Turkana, Marsabit, Moyale, Kilifi and other areas that have been starved. Pokot? The Pokots were called *Suk*. Has anybody heard of the word *Suk*?

The Temporary Speaker (Hon. Peter Kaluma): Thank you, Hon. Farah Maalim, for that informative contribution. Hon. Phylis Bartoo.

Hon. Phylis Bartoo (Moiben, UDA): Thank you, Hon. Temporary Speaker. It is interesting to listen to the ranking Member, Hon. Farah Maalim, take us down memory lane and give us a true picture of what has transpired in Kenya over the years. My county is not a beneficiary of the Equalisation Fund. I was just wondering when we will become equal. How long will it take us to be equal? We put in place institutions to take care of different parts of Kenya. We have devolution. The Constitution is very progressive as evidenced by Article 204 on the Equalisation Fund. Standing here, I think we want to create a body just like any other which will sit in Nairobi and decide who gets what despite the fact that people are already marginalised.

Case in point, the Kenya Rural Roads Authority (KeRRA) which is supposed to build roads all over rural Kenya, has not achieved much. Today, we still have places where roads are in very bad shape. The other time we accompanied the President for a development tour in Marakwet West, Elgeyo Marakwet County, and when we landed there, we could not imagine we are still in Kenya. Yet we have devolution, agencies like the Kenya Urban Roads Authority (KURA), KeRRA and other institutions which are supposed to improve the livelihoods of Kenyans. Is equalisation a reality, especially in Kenya?

I have looked at this document and the administration of the Equalisation Fund together with the people supposed to decide on the distribution of resources. What are the qualifications

for one to become part of this board? The CEO of the board has to have a master's degree in law or finance. We are dealing with people who are marginalised, yet we want to start marginalising them even from the creation of this body supposed to look into equalisation. So, we are marginalising an already marginalised people from the outset based on who sits in that board.

We also have so many people sitting in this board, and so, the implementation of this Fund will be impossible. What is the difference between this body and any other State department in Kenya with a mandate of resource distribution? For instance, the CRA will be allocating resources to these marginalised areas. Already, we have issues with this body. How I wish we could look at this Bill, clause by clause and delete some sections which are marginalising the marginalised counties.

I will bring amendments to this Bill during the Committee of the whole House. I can imagine this will be another body meant to create employment for people who will be sitting in one of the tall buildings in Nairobi to discuss about people who are marginalised and take home something. When you look at this Bill, someone may think it is another way of creating employment. It is not bad, but let us relook at it keenly, so that we do not go on record as Members of Parliament who passed such a Bill, and then 20 years later, when we look back, we ask ourselves: "What exactly did we pass?"

Hon. Timothy Kipchumba (Marakwet West, UDA): Thank you, Hon. Temporary Speaker, for giving me an opportunity to contribute to this important and progressive piece of legislation - the Equalisation Fund (Administration) Bill (Senate Bill No.14 of 2023). Looking at the latter, the spirit and the intent of this legislation raises serious fundamental legal issues. I have read Article 204 of the Constitution and asked myself three questions.

Firstly, why was this Fund created? Secondly, why did the Constitution limit the services to be provided for under this particular Fund? Thirdly, what was the mischief behind the 20-year sunset period? I believe these three questions I have posed mirror the very intention of this particular legislation.

If you look at Article 204(2) critically and I wish to read, it states:

"(2) The national Government shall use the Equalisation Fund only to provide basic services including water, roads, health services, and electricity to marginalised areas to the extent necessary to bring the quality of those services in those areas to the level generally enjoyed by the rest of the nation, so far as possible."

The word 'only' has been used in Article 204 (2), but it is not present in this particular legislation. It goes on to state that 'only to provide basic services, including water...' Even though the word 'including' has been used, prior to that, the word 'only' has been used. The fact that under the Constitution specific services were chosen, in my opinion and understanding, they were meant to address areas that had been historically marginalised in this country.

As a country, we must not leave behind other areas that have suffered historically without basic services. When you go to parts of Elgeyo Marakwet County that border Tiaty Constituency, you will be shocked that at this time, there are people who have never seen a health facility or tarmac road. They do not even know who the President of the Republic of Kenya is. They have been historically marginalised by successive regimes and certain alignments in terms of developments.

Therefore, I heavily associate myself with the sentiments of Hon. Farah Maalim that this Bill was meant to address the issues of historical injustices in this country.

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

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

We should implement the intents and spirit of this legislation so that we can bring marginalised areas at par with the rest of the country.

I went to Wajir the other day and I could not believe that I was in Kenya when I landed there. That part of the country has been marginalised for so long. My opinion is that this legislation was meant to address the injustices in that part.

The reason behind the 20-year sunset period given by the Constitution, was to address the injustices within that time so that these areas can catch up with the rest of the country. That is my opinion and interpretation of this provision of the Constitution. Another term ‘pockets of marginalisation’ come up. Nothing prevented the people of the Republic of Kenya and the drafters of the Constitution from adding the phrase ‘pockets of marginalisation’ in the Constitution. It was not meant to be there and should not be there. The Fund was meant to make marginalised areas equal to other parts of the republic.

Clause 16 has a very interesting provision that wants to expand interpretation and give more meaning not intended under the Constitution. Clause 16 says that the Fund shall finance programmes and projects for provision of certain basic services in identified areas. It has gone ahead to include services like water and sanitation, roads, and health services... Clause 16(e) says: ‘Such other basic services...’ In my opinion, that should not be there. We should stick to the provisions in Article 204 of the Constitution on the three basic services.

Expanding it to mention inclusion of sanitation is not right. I do not think marginalised people in this country would give more prominence to sanitation more than electricity or health services. The Constitution does not provide that. Article 204 of the Constitution highlights only four basic services, electricity, water, health and roads. It does not include other services expanded under this Bill.

In Clause 3(d) of the Bill, they have tried to address the sunset period of seven years to state:

“3. The purpose of this Act is to -

(d) suspend the application of Article 204(7) of the Constitution and extend pendency on the Fund.”

If you read Article 204(7), clearly it states:

(7) Parliament may enact legislation suspending the effect of Clause 6 for a further fixed period of years, subject to Clause 8.”

This is open. It does not comply with the Constitution that says extension is for a fixed period of years. I will propose amendments when the Bill comes for Second Reading so that we can determine the period of extension. We have a sunset period of 20 years under the current law. Therefore, Clause 3 should be amended to provide a fixed period.

As I rest my case, I call upon my colleagues in this House to be fair to other parts of the country. Turkana County is the size of three countries, namely, Djibouti, Burundi and Rwanda. How will Turkana County be at par with Nairobi County, Nyeri County or any other smaller county in terms of geographical size? We need to be fair to the rest of the country. Let us direct those funds where they were meant to be under Article 204 of the Constitution.

The Temporary Speaker (Hon. Farah Maalim): Hon. (Prof.) Lillian Gogo followed by Hon. Abdul Haro.

Hon. (Dr) Lillian Gogo (Rangwe, ODM): Thank you very much, Hon. Temporary Speaker. I must give you some accolades for laying it academically bare. You gave us some very useful information, especially to the younger generation who may not necessarily understand the historical issues, given that you have lived, walked and seen them. I quietly sat down, looking at you with admiration and drawing from your wisdom, knowledge and experience on this matter. I want to appreciate you.

I also want to appreciate the Committee for bringing this Bill to the Floor of the House through the Chairperson of the Departmental Committee on Finance and National Planning, who is my friend and colleague. Members have shared their ideas on the Equalisation Fund. The purpose of the Bill is to operationalise and give effect Article 204 of the Constitution by establishing a system that will make this Fund work well for Kenyans.

I do not want to go back to what you and other Members have said on the component of time that the Fund should be subjected to so that it is effective. However, I want us to carefully listen to ourselves as leaders of this country. I want each leader of this country to have a conference within themselves and look at the role they have played in the neo-inequality in this country. Members are currently busy jostling for positions on particular committees in the House and in the Senate. Even when we go for elections, the goal is always to win so that “my people” are catered for. You hear the phrases “*mtu wetu*” or “*watu wetu*”. What about the rest of Kenyans? Where do we put the rest of the country? Where did we take our patriotism as a nation to the extent that when somebody is put in a seat of responsibility, they cannot consider Kenyans from Turkana, Coast, Western, Maasai land, and Migori?

This Fund was supposed to address historical injustices. As I added while I was applauding you, we need transitional justice in this country by way of development and addressing political and socio-economic issues. We have the National Government Constituencies Development Fund that is distributed equally across the country to 290 constituencies. What does the NG-CDF do in this country? Can it not even address the very basic issues? It is in this very House that we have Members who do not even use that NG-CDF well. I stand to be guided and corrected. But these are some of the causes of economic injustices in this country. We have 290 constituencies where the money goes in equal measure. We also have devolved systems.

Hon. Stephen Mogaka (West Mugirango, JP): On a point of order, Hon. Temporary Speaker.

The Temporary Speaker (Hon. Farah Maalim): What is your point of order, Hon. Mogaka?

Hon. Stephen Mogaka (West Mugirango, JP): Hon. Temporary Speaker, is the Member on the Floor in order in intimating that it is Members of Parliament who are not utilising the NG-CDF? When we know that under the law and practice NG-CDF is managed by a board. Funds are managed by a board and the Member of Parliament has no role in that. Is she in order by saying that Members of this House do not utilise NG-CDF money?

The Temporary Speaker (Hon. Farah Maalim): Proceed, Hon. Professor.

Hon. (Dr) Lilian Gogo (Rangwe, ODM): Thank you very much, Hon. Temporary Speaker. Thank you, my brother. For your information, it is the basic role of a Member of Parliament to legislate, oversight and represent. If a Member does not oversight well, they are directly responsible for the use of the NG-CDF.

It is important for us to take basic care of all Kenyans so that we can grow as a whole. This will ensure that when we look at the development index of the whole country, it is equal. In as much as we are talking about historical injustices, it is known that in this House, there are budgeted injustices in this country.

This is a House of budget. I stand to be corrected. This House does budget and appropriation. We find one single constituency getting most of the funds meant for the development of roads. I will not shy away from mentioning this as I contribute to this matter. As leadership in the Executive, Judiciary and Legislature, we are to blame. It is high time as Kenyans we became patriotic, took our responsibilities seriously, and as leaders, took education seriously.

We have talked about water, roads and electricity. What about education of the marginalised and disadvantaged communities? What about the provision of basic healthcare to

women of this country, who still walk very many kilometres to deliver children despite the devolved healthcare system?

There are historical injustices. But apart from what was envisaged in the Constitution of Kenya 2010, development has been skewed to political loyalty to some extent. So, areas that have been considered opposition areas have not been equally developed. These are also injustices. As much as we are busy saying that we should stick to what was envisaged, I also intend to bring amendments to the effect that we need to have this particular board identify priority areas. You rightfully said that it was initially intended for 14 counties and then later, it was extended, but there are parts of Rangwe Constituency that do not have electricity to date. There are many parts of Rangwe Constituency where the road networks are not as the residents and the electorate would want. We still need to improve healthcare in my constituency. There are some schools that still require money from the Ministry of Education, other than the NG-CDF. If you allow me, this is what I am trying to say that we need to rethink our value systems as spelt out in the Constitution of Kenya, 2010. We need to rethink our religiosity. We have Christians, Muslims, Hindus, traditionalists and other religions in this country. People decide when to worship and it all ends there. Once done, they put on their evil clothes and come to perpetrate injustices to their own kin, the Kenyan citizenry.

This particular Fund was supposed to have been dispensed over a period of time. Can we have a review? What has it done so far? How much money goes into its management? A lot of money is wasted on managing some of these funds, and that is why I like the NG-CDF. It is restrictive to administration and education. When we have an amorphous fund, it becomes difficult to implement.

In conclusion, I want to state that it is a good Fund. I support it. I support the proposals by the Committee. When we get to the Committee of the whole House, I will propose my own amendments. Thank you, Hon. Temporary Speaker, for giving me this opportunity.

The Temporary Speaker (Hon. Farah Maalim): Next is Hon. Abdul Haro followed by Hon. Basil Robert. Please, give Hon. Abdul Haro the microphone.

Hon. Abdul Haro (Mandera South, UDM): Thank you, Hon. Temporary Speaker, for this opportunity. From the outset, I thank the Committee for this Equalisation Fund (Administration) Bill 2023. It is a Bill for an Act of Parliament to provide for the administrative structures for the management of the Equalisation Fund; to establish an Advisory Board; and for connected purposes.

Hon. Temporary Speaker, this Bill seeks to cure some of the challenges that have been experienced with the Equalisation Fund for the last 14 years. In fact, it has been 14 years now. The reason the Equalisation Fund has not functioned is because of the absence of some provisions, which are being introduced in this Bill. For instance, the advisory board is supposed to advise and recommend to the Cabinet Secretary on the distribution of resources for provision of basic services to marginalised areas under Article 204 of the Constitution. Additionally, the advisory board is supposed to appraise and evaluate projects, a function that was lacking in previous years.

The advisory board is also supposed to make recommendations on priority areas requiring financing, which was also lacking in the previous years. It is also supposed to establish a framework for collaboration between the two levels of government, while at the same time, trying to oversee the implementation of the project, as far as it relates to the constitutional provisions.

One of the problems of the Equalisation Fund so far is the fact that Article 204 of the Constitution has not been implemented fully as required. I do not want to belabour on the background why the drafters of the Constitution thought about the Equalisation Fund because, Hon. Temporary Speaker, in your wisdom and experience, you have elucidated very clearly

about the background from the colonial period to the successive Kenyan governments up to 2010, when we enacted the new Constitution that gave us Article 204 on Equalisation Fund.

The Fund, as it has been said by most Members, has been established under Article 204(1). The fund takes up 0.5 per cent of all revenue collected by the national Government, and it is supposed to cover four main areas, namely, water, roads, health, and electricity.

The politics of high-potential areas and low-potential areas, and Sessional Paper No.10 have been referred to by many Members. Sessional Paper No.10 envisaged a situation where if you developed high-potential areas, development would trickle down to low-potential areas. This has never happened in 61 years since Independence and that is why the Equalisation Fund came into being. We are informed that Ksh7.4 billion of the first policy has not been disbursed. The second policy has not been implemented. I am told the CRA is thinking about a third policy. I am wondering whether it makes sense to think of a third policy when we have not even reviewed the first and the second policies. This is where the challenge lies.

Hon. Temporary Speaker, I will not repeat what most of the honourable Members have said, but I will say like it has been intimated by one of the Members, that marginalisation is a very bad thing. It is not something that you would wish anybody to go through. Not any Kenyan should be subjected to any form of marginalisation in whatever manifestation it shows itself. So, when we are talking about the Equalisation Fund and the 14 counties that were defined by the drafters of the Constitution...By the way, Article 260 of the Constitution also defines which these marginalised areas are and who these marginalised communities are. So, it is very clear. So, when the drafters of the Constitution identified the 14 counties and went ahead and defined what marginalisation means, it was not in vain. Not anybody wants to be identified as a marginalised person. It is a bad tag to have, especially after 61 years of Independence. Therefore, it is my wish that through this Bill, when it comes to the Committee stage, we will carry out all the necessary amendments to make sure the Equalisation Fund comes closer to the original thinking of the drafters of the Constitution.

If there is any recommendation that one can make in terms of how to improve it, I think I will be one of the people who will have amendments, especially on the proposal of how it is supposed to be implemented. The Constitution says the Fund can be implemented either directly or indirectly through the counties. Since there is tug of war between the counties, the national Government, and other stakeholders, I agree with the proposal that was proposed earlier that 50 per cent of this Fund can be implemented directly by the board at the national level, and the other 50 per cent can be implemented indirectly through the counties, so that we can have a win-win situation. This is because the poor people in marginalised counties are not compartmentalised in the boxes that we try to put them in. They need water, electricity, health services and roads. They are not interested in this compartmentalisation and push and pull between the different levels of the Government and stakeholders.

I support the proposal.

Hon. Temporary Speaker (Hon. Farah Maalim): Yes, Hon. Kuria Kimani. He is on a point of order.

Hon. Kuria Kimani (Molo, UDA): I rise on a point of order on clarity. I do not want to distract my good colleague. However, it is not factual when he misinforms the House that Article 260 of the Constitution lists marginalised counties. Marginalised areas are determined by the Commission on Revenue Allocation. The Constitution does not provide which counties are marginalised. I thought it is better to inform the House and the Member of that fact.

Hon. Temporary Speaker (Hon. Farah Maalim): Yes. Article 260 of the Constitution is on interpretations. I do not think he said that. While contributing, he said that the intention and the spirit and the object of the framers of the Constitution at the time was to bring to speed historically marginalised counties. We only had 14 counties at the time. I must admit that

people took advantage of that provision to expand. The Constitution does not clearly indicate the counties themselves, as he put it. Anyway, continue.

Hon. Abdul Haro (Mandera South, UDM): Thank you. I was concluding. I want to conclude by putting in something on the sunset clause. When it comes to the Third Reading, it is my recommendation that I push an amendment to do away with the sunset clause.

Hon. Temporary Speaker (Hon. Farah Maalim): As a way of trying to enrich the Bill and debate about it, I would want the House to understand not only the spirit and the object, but also the word and the letter. Article 260 says marginalised groups mean a group of people who, because of laws or practices before 2010, or after the effective date, were or are disadvantaged by discrimination on one or more of the grounds in Article 27(4). Basically, it is talking about a historical phenomenon. I think I am just trying to read this Article so that it enriches the contributions Members are making.

Proceed and conclude. Hon. Basil and Hon. Kaluma will speak after you.

Hon. Abdul Haro (Mandera South, UDM): Thank you. Actually, I was concluding on the sunset clause. When it comes to the Third Reading, it is my view that we push an amendment that we entirely do away with this sunset clause because the rest of the country that the marginalised groups are being made to catch up with did not wait for 20 years to be equalised. I do not see why marginalised groups should be subjected to the sunset clause of 20 years. We can do away with it and perhaps come up with some regulations of phasing out once we believe equalisation has happened to certain parameters.

Hon. Temporary Speaker (Hon. Farah Maalim): Hon. Basil of Yatta.

Hon. Robert Basil (Yatta, WDM): Thank you for giving me the Floor to contribute to the Equalisation Fund (Administration) Bill (Senate Bill No.14 of 2023).

As you just said very well, historical injustices have caused serious disparities in this country. Since 1963, some areas have felt that they do not belong in Kenya. The simple reason is that they have been excluded from matters to do with development, contributed by negative ethnicity or tribalism, which has seriously interfered with resource distribution in this country.

Hon. Temporary Speaker, you acknowledge that our budget is never itemised. Those in positions of authority decide where to take resources. That is why some areas have been left out. Can you imagine there are areas in this country with Level 6 hospitals whereas others only have Level 4 hospitals, yet all the people in those regions pay taxes? It is very worrying. That is why I strongly support the Bill.

Allow me to underscore the importance of the Equalisation Fund. One simple reason the Bill is critical is that it reduces regional inequalities. For example, people think my Yatta Constituency is better off. Yatta is a semi-arid region. We have not had more than six kilometres of tarmac road since 1963 and yet my people pay taxes like other citizens of this country.

More importantly, we will improve basic services through the Bill. By basic services, I refer to health, education, water and other critical services which all citizens of this country deserve.

The other important reason why I support the Bill is that through the Fund, we will have some level of economic revitalisation and development in this country, where areas which have been marginalised and people who have been disadvantaged will enjoy economic boosts because of services being delivered to them. Additionally, through the Fund, we will uplift marginalised people and create some parity between the disadvantaged and those who have been enjoying benefits since 1963.

As I stated earlier, some people feel excluded. Remember the time when people used to say, “*Pwani si Kenya*”? Those in north-eastern thought they should just be left out as they do not feel part of the country. At that level, patriotism has completely faded off simply because they have been ignored. Through this Fund, we will promote national unity, stability, and

enhance some form of social cohesion where those people will feel part and parcel of this great nation we call Kenya.

We can achieve parity through the Fund by proper utilisation of resources. We must ensure there is public participation. Everyone's voice must be heard and considered when this Fund is being implemented. More importantly, we must ensure fair distribution of resources. The only way we can achieve that is by making use of empirical data. Through data, we will have targeted interventions and we will channel resources where they are needed. That has not been happening. That will be one of my amendments during the Committee of the whole House.

We also have to ensure prompt disbursement of this money. A Member earlier said that as of today, the NG-CDF has not been disbursed, yet there are only four months before the end of the financial year. Students from poor households are at home still waiting for money to go back to school and resume learning. We must ensure that we have a legal framework to mitigate challenges existing in disbursement of resources. That is something that all of us should support and advocate for. Otherwise, we will be talking of budget after budget and supplementary budget after supplementary budget, but there will be continuous protracted delays in disbursement of resources. We must deal with this once and for all, otherwise we are going to slow development. When we slow development, our country will lag behind in growth and that is not what we all want to see.

Hon. Temporary Speaker, I do not want to take long talking, but allow me to condole with the families that lost their loved ones: Hon. Injendi Malulu and Senator Cheptumo of Baringo County. I convey my deepest condolences and also those of the people of Yatta, for the loss of these great men who contributed to the building of this country. I pray to the Lord to give their families the fortitude to bear with the loss. I also convey my condolences to the family of the Kenya Primary Schools Heads Teachers Association (KEPSHA) Chairman, Johnson Nzioka, who passed on last week in a tragic road accident.

I do submit. Thanks for giving me the Floor.

The Temporary Speaker (Hon. Farah Maalim): Hon. Kaluma.

Hon. Peter Kaluma (Homa Bay Town, ODM): Thank you, Hon. Temporary Speaker. I am pleased that I am speaking after you spoke on this very important matter. Hon. Members, without repeating the words of Hon. Farah Maalim when he contributed to this Bill, let me say that this is not a Bill implementing Article 204 of the Constitution. If we are to look at it and have it passed, we must have very fundamental amendments.

I have travelled across this country and I thank the people of Homa Bay Town Constituency for electing me to be able to do so. It is in the 12th Parliament when my eyes got opened to the disparities in this country when, as a Member of the Departmental Committee on Administration and Internal Security, I was forced to travel multiple times to all the regions of the north and north-eastern. There I came face to face with the open marginalisation of the people of Kenya from before Independence to post-Independence. It is sad that it is continuing.

My first trip out of this county took me to Turkana. Flying over the land of Turkana before we landed, I asked where we were. I found a county where you cannot see a single green thing. You cannot see water in very many places other than along some river which was also dry. That time, I was travelling to Turkana for a public participation on the current Refugees Act. We met the communities and they asked us why they are not given services like refugees. Hon. Members, I was very saddened to hear Kenyans asking to be treated like refugees or to be refugees in their own country because they would be served better. The Turkana people asked us why refugees have health facilities and piped water, but they do not have. We may take it lightly, but we have had populations registering as refugees so that they can get services.

We went to Dadaab and I bear truth to what Hon. Maalim said here today. There are places in this country, Hon. Members, that this bottle of water that we have taken and left water

in it halfway or at 75 per cent, you are requested to drop it for another human being and not just a human being, but a Kenyan to quench their thirst! That is the situation in the Northern Frontier and very many places.

I went to the Constituency of Hon. Murugara, just at the border across Mwingi North. You remember after the 2007 elections when the results of Tharaka were said to have overturned Raila's win, I went to see how many Tharakas this country has. I saw a dry place, a desert, where the only thing at that time you would pick was honey. Everything was dry. Hon. Murugara, let me share with you a very sad thing I saw in Tharaka. We had gone to investigate an incident where a woman and her child had died while crossing a river using a rope. Therefore, when we talk about the Equalisation Fund...

Hon. George Murugara (Tharaka, UDA): On a point of information, Hon. Temporary Speaker.

The Temporary Speaker (Hon. Farah Maalim): Is it a point of order?

Hon. Peter Kaluma (Homa Bay Town, ODM) Is it a point of order or information?

The Temporary Speaker (Hon. Farah Maalim): Is it a point of order or information?

(Hon. George Murugara spoke off record)

Yes, proceed and give the information.

Hon. George Murugara (Tharaka, UDA): Thank you very much, Hon. Temporary Speaker.

The Temporary Speaker (Hon. Farah Maalim): Do you want to be informed?

Hon. Peter Kaluma (Homa Bay Town, ODM): Yes.

Hon. George Murugara (Tharaka, UDA): Thank you very much, Hon. Temporary Speaker.

I have listened to Hon. Kaluma trying to describe Tharaka graphically and how it looks. He may be right to the extent that the southern part, which borders Mwingi, is dry, semi-arid, and marginalised. But there is a better part towards Meru, which possibly he has not visited. That does not negate what he says. However, I confirm that it was the situation in 2008. The situation is not as bad today; it is good. Therefore, that graphic description may not apply today.

Hon. Peter Kaluma (Homa Bay Town, ODM): Hon. Temporary Speaker, a lot has changed in terms of the road network. Hon. Murugara, I am saying that to emphasise the need for this Fund in some parts of the country. Of course, the Nithi side that faces Nyeri is very green and very populated, but the southern part of Tharaka, facing Mwingi, is different.

When Hon. Murugara told me that he was going to vie, I was like, "As a prominent lawyer, do you really want to vie to be the Member of Parliament there?" He told me his soul is in the service to his people. I thank him for that. It is my prayer that the people of Tharaka Nithi lift him even higher because I know the spirit he has and the sacrifices he made to go and serve the Tharaka people.

When you are interpreting the Constitution, like Article 204, if it is literal, you go by it. Most importantly, if you look at Article 259, the rules of interpretation are prescribed. You are told you will go with the purpose, spirit, and the intent of the Constitution in the very first clause. This brings me to the contribution you are making. Why did the people of Kenya, in promulgating this Constitution, provide for an Equalisation Fund beyond devolution? Hon. Murugara will agree with me that where it is not literal, you go to historical records. The Supreme Court, the Court of Appeal, and the High Court have said so. That is the first point in interpreting marginalised areas that have not been specifically defined.

Article 260 of the Constitution defines marginalised communities and marginalised groups. You can borrow a bit from marginalised communities. It is talking about these communities which have been pushed to the periphery of the socio-economic life of the

country, either by practise or law. Once you borrow what is decipherable from the constitutional text, in terms of interpretation, you go to the records at the Bomas of Kenya on what informed the decision of the people of Kenya to make Article 204 a constitutional provision. If these matters were to be litigated later before the court, those records would speak with finality before the courts of law. Fourteen counties were selected, and I do not want to repeat them. If any counties were to come later, it must be properly justified.

The Equalisation Fund should go to the 14 counties that the people of Kenya designated as the reasons for the creation of this Fund.

(Applause)

Hon. Members, devolved funds or county funds must also be distributed among the counties in some manner. We must be serious. If we are talking about Article 204 - I do not know why you did not refer to it when you were guiding the House - it already tells us that there is need... If you may permit me to read Article 204(2), it says:

“The national Government shall use the Equalisation Fund only to provide basic services including water, roads, health facilities and electricity to marginalised areas to the extent necessary to bring the quality of those services in those areas to the level generally enjoyed by the rest of the nation, so far as possible.”

That is the emphasis. We sat here and I presided over the Committee of Supply with the permission of the substantive Hon. Speaker and I was shocked. Homa Bay Town Constituency was given Ksh6 million under the Equalisation Fund. I am not saying that it is not needy. However, what will Homa Bay Town Constituency do with Ksh6 million? It will equalise what? We do not have measures in terms of how to oversight the money. By the way, where did that money go? That is why... I am requesting you to give me just three minutes so that I speak to the amendments here.

The Temporary Speaker (Hon. Farah Maalim): You will have an additional two minutes.

Hon. Peter Kaluma (Homa Bay Town, ODM): Hon. Temporary Speaker, we have detoured from the intent and purpose of Article 204 of the Constitution on Equalisation. It is sad that this is coming from the Senate whose duty is to guard devolution at whose core is the idea of equity and equality in distribution of resources across Kenya. We have now taken meaning out of equalisation. We are taking it even to places which were not spoken to by the Kenyan people at Bomas.

This Bill, if it is not rejected to be looked at afresh, we will have to look at the definition given in it of marginalised area. For a Fund like this with the existent historical records, we cannot leave the designation of a marginalised area to the Commission on Revenue Allocation. No! We have to pick them and, as a Parliament, enact them specifically in the Bill. We cannot leave it to the vagaries of technical people to define it.

Clause 4 was spoken to. It is speaking to one half of all revenue collected. I do not know what has become of our Senate. This is very lazy drafting. The Constitution says one half per cent. So, we will have to amend and insert “per cent.” If you look at Article 204, it says one half per cent. So, the word “per cent” is deliberately left here to mean that Equalisation Fund would be bigger than the Devolved Fund. That correction needs to be made.

In terms of Clause 5, the word “only”, taking from the Constitution, must come before we specify the various services to be given. We need to remove confusion. We are talking of provision of basic services. If we just leave it this way, we will fall under Article 260 of the Constitution where the word “including” is defined to mean including but not limited to. So, we will have other services here, including sports which were not the contemplation of the people of Kenya when this Fund was being promulgated.

We are thinking of reducing the board. How do you create boards and put chief executive officers (CEOs) who are even marginalising people? Why can we not say straight that money will go to these particular counties? The criteria can then be defined. We can state in the Act the agency to distribute it, be it the national Government or county governments straight away.

As I end, my intent is that this Bill as drafted is lazy and it is poorly drawn. It has not met the intent of Article 204 of the Constitution. If we do not reject the whole Bill so that we give meaning to equalisation as intended by the people of Kenya, we need to do some strategic amendments to it.

The Temporary Speaker (Hon. Farah Maalim): Hon. Danson Mwashako, followed by Hon. Rozaah Buyu.

Hon. Danson Mwashako (Wundanyi, WDM): Asante, Mhe. Spika wa Muda. Nimesikia kwa makini sana vile wenzangu wamechangia Mswada huu ambao umetoka Seneti. Mhe. Spika wa Muda, mwanzo ningetamani sana kulieleza Bunge hili la taifa kwamba walioandika Katiba walikusudia sana kufanya Kenya iwe sawa katika maendeleo ya nchi nzima.

Wale walioketi na wakakubaliana na Wakenya wakapiga kura kwamba Katiba ipitishwe mwaka wa 2010, waliangalia sana Kipengele 204 katika Katiba yetu ya Kenya. Kinaleta wazo la kuwa na Equalisation Fund, ama mfuko wa kusawazisha. Hii ina maana kwamba Wakenya ambao walikuwa wamebaki nyuma kwa miaka mingi, ama sehemu za nchi zilizokuwa zimetengwa na *central Government*, ama Serikali ya kutoka Nairobi, ziweze kupata usawa. Hivyo, walileta Kipengele 204 katika Katiba yetu ya Kenya ili kusawazisha sehemu zilizobaki nyuma. Inatia wasiwasi sana kwamba Wakenya walipokubaliana hivyo...

Shirika la CRA ndilo lililotwikwa mamlaka ya kutengeneza ile tunaita *Marginalisation Policy*, ili *Article 204* iweze kufanyika kupitia hiyo *Marginalisation Policy*. Hii CRA iliamua na mara ya kwanza iliongozwa na yule aliyekuwa mkubwa wa Benki Kuu la Taifa, Bw. Micah Cheserem. Walikubaliana kwamba kaunti 14 za Kenya ziweze kutambulika kuwa zilibaki nyuma na ziweze kupewa pesa kupitia ile *Article 204* ya Katiba. Hii ingeziwezesha kuinuka kimaendeleo kwa mfano katika afya, barabara, maji, na stima.

Ni jambo la kutia uoga sana kwamba baada ya ile tume ya kwanza, ilipokuja tume ya pili, iliamua kwamba sehemu zilizobaki nyuma ziongezeke ziwe 34. Leo hii tunapoongea juu ya Mswada huu, tunaona maajabu. Nitakupa mfano wa Kaunti ya Taita Taveta. Ilikuwa kati ya zile 14 za mwanzo, zile Wakenya walisema zilibaki nyuma. Ingawa hivyo, CRA kwa kuwa na hekima ama kukosa hekima, wakaamua kwamba Taita Taveta iondolewe katika sehemu zile ambazo zilibaki nyuma. Kwa hivyo, tunapojadili huu Mswada leo, walitoa Taita Taveta. Nimeona wamerudisha kata ndogo mbili. Moja iko Voi na nyingine iko Taveta. Ati kata hizo ndogo ndizo zilizobaki nyuma! Wameacha kuhusisha sehemu zingine zote katika kaunti yetu ya Taita Taveta wakisema ziko sawa na zinaweza kulinganishwa na sehemu zingine.

Hili ni jambo ambalo limeleta taharuki kubwa kule Taita Taveta. Kwamba leo hii, *constituency* kama Wundanyi haina barabara za lami; tunajivunia tu kilometa moja peke yake ya lami ambayo imetengenezwa kutoka tupate uhuru mwaka wa 1963 mpaka leo. Naona katika Mswada huu Taita Taveta iko sawasawa na zile kaunti zingine za nchi. Sasa tunashangaa ni vipi watu wakae mahali wazi waseme kwamba kaunti fulani, ambayo ilitambulika kuwa imebaki nyuma, leo iko sawa?

Ndipo mimi nasema: Katika Mswada huu, kama tutakuwa tunasaidia nchi hii ya Kenya na kama kweli tunaamini kwamba nchi lazima ikue kwa pamoja, lazima tukatae *Marginalisation Policy* inayoletwa hapa na CRA. Tukikosa kuikataa, itabidi nchi yetu ya Kenya sehemu zingine zijiulize, “Je, kweli sisi ni Wakenya?” Itakuwaje? Sehemu zilizobaki nyuma, kama kule Taita Taveta, pesa tunazopewa za *Equitable Share* ni kidogo mno kwa sababu idadi ya watu ni ndogo. Miaka iliyotangulia ugatuzi, hakuna cha mno kilichofanyika

katika hiyo Kaunti. Leo hii, ukitembea katika zile Kaunti 14, na kusikiliza wale ambao wameketi hapa wakilia, utagundua kuwa ni kwa sababu tuliachwa nyuma miaka hamsini baada ya uhuru. Ugatuzi ndio kidogo unatukumboa. Kama Bunge la Taifa, lazima tuambiane ukweli. Sehemu zilizobaki nyuma tunazijua. Tusije hapa tukajifanya kwamba Kaunti ya Kiambu imebaki nyuma na inapata pesa ya *Equalisation Fund*. Mbunge wa Homabay Town, ameshangaa kwamba kwake pia kuna sehemu imetajwa kuwa imebaki nyuma. Hata watu wanashangaa. Lazima tuambiane cha msingi na ukweli kwamba zile kaunti zinazojulikana zilibaki nyuma ni kama zile za north eastern, Pwani na Turkana. Kuna kaunti ambazo hata ukiuliza *anyone in this country, they know where marginalisation has happened*.

Namaliza kwa kusema hivi: Wenzangu Wabunge, jamani *let us be honest*. Tuwe watu wa ukweli. Kama sehemu moja katika kaunti yako imejumuishwa hapa na haipo katika zile kaunti 14 za mwanzo, ukipata hizo hela, basi unazidi kuleta *marginalisation* nchini Kenya. Hili ni suala nyeti sana. Kwa hivyo, naomba wale ambao wanaunga mkono huu Mswada, wasifanye hivyo kwa sababu kaunti yao imepata kitu ilhali haiukuwa miongoni mwa zile 14. Hii ni kwa sababu ukifanya hivyo, unadhalilisha Wakenya wengine katika maeneo mengine. Unafanya Mkenya mwingine akose huduma za afya ilhali huyo wa kwako anapata maradufu kwa sababu mmekuwa mkipata hizo hela tangu zamani.

Mara nyingi, pesa za Kenya hufuata sehemu ambazo marais, mawaziri na wale mabwenyenye wanaosimamia Serikali wanatoka. Ndiyo maana Wakenya walikataa mfumo wa serikali moja na kupigia debe serikali ya ugatuzi. Kwa takriban miaka hamsini, kuanzia uhuru mpaka 2010, Kenya imekuwa ikisimamiwa na watu wachache; wale ambao wanasema ni wengi, wako na *numbers* na nguvu. Hao ndio wamekuwa wakinyanyasa nchi. Ndiyo sababu napinga huu Mswada. Nitauunga mkono wakati zile Kaunti 14 zilizokuwa mwanzoni zitakaporudishwa na kufaidi kutoka hizi pesa za *Equalisation Fund*.

Mhe. Spika wa Muda, kwa hayo mengi, nakushukuru.

The Temporary Speaker (Hon. Farah Maalim): Hon. Mwashako, you know exactly what needs to be done; move an amendment.

We will now have Hon. Rozaah Buyu. If you take a few minutes to contribute, you will give a number of Members the opportunity to also do so. Hon. Rozaah will be followed by Hon. Mulyungi. I will also recognise Hon. Mogaka and Hon. Omanyoo. Let us go in that order.

(Hon. Ruku GK spoke off record)

Of course, Hon. Ruku, you have come in, but you have to wait for your turn. You have just come in. Proceed, Hon. Rozaah. Take the shortest time possible so that your colleagues also get the opportunity.

Hon. Rozaah Buyu (Kisumu West, ODM): Hon. Temporary Speaker, I thank you for this opportunity. I will be considerate of the other Members who wish to contribute.

From the onset, I support this Bill. I served in the Interim Independent Boundaries Review Commission, also known as the Ligale Commission, as a commissioner. I traversed the whole country. With that experience, I have no choice but to support this Bill. This is because there are many parts of this country that have been left behind in terms of road network, electricity and infrastructure.

I would like to take you back to Sessional Paper No.10 of 1965, when a decision was made that the whole country cannot be developed in unison. There was an agreement that the parts of the country that had potential should be developed first. Subsequently, the proceeds from those parts of the country will go on to be used to develop the other parts of the country. That has never happened. Instead, the parts of the country that were not developed have still been left undeveloped.

You cannot believe when you hear the clamour of ‘one man, one vote, one shilling’ coming from areas that were favoured at the time of Independence. They were given the opportunity and priority to develop as other parts of the country waited to gain from those proceeds. There is no way we are going to fight for equality in this country when parts of this country have been left the way they are. We know that our Constitution has been celebrated as being very progressive because it aspires to bring up all citizens so that, even if they are not at an equal level, they are nearly as equal as possible.

For that reason, I support the Bill. However, I want to say that there is no way counties will house or domicile the Equalisation Fund. We must cap priority areas where the Fund should be used. Otherwise, the Fund runs the risk of just being lost within the rest of the funds going into counties. Therefore, it will not have done what it is intended to do.

I know there is not much time and my colleagues want to speak. I support the Bill and thank you for the opportunity.

The Temporary Speaker (Hon. Farah Maalim): Hon. Mulyungi. You will all get an opportunity, Hon. Omanyo. Then the gracious lady there, Hon. Pareyio, and Hon. Mogaka, in that order.

Hon. Gideon Mulyungi (Mwingi Central, WDM): Thank you, Hon. Temporary Speaker. In the interest of time, I will take only two minutes so that my colleagues speak. I support this Bill from the onset. It is a very important Bill. It should have come yesterday.

From my point of view, marginalisation is not only economical, but also political and geographical. When you were contributing, you explained the geographical route from Nairobi to Garissa all the way to your constituency, including how you pass through my very arid constituency. I have been hearing of this Fund for some time. I have not seen its impact in marginalised areas. They remain marginalised. I hope the Bill will come to correct that problem.

I come from Mwingi Central and represent it. It is marginalised and does not benefit from the Fund. I hope the Bill will correct this problem so that Mwingi Central benefits from better roads, water, electricity, and health facilities. My people should also enjoy the cake of Kenya.

With those few remarks, I support.

The Temporary Speaker (Hon. Farah Maalim): Member for West Mugirango, Hon. Mogaka. Hon. Omanyo will follow. You have all the time. For your information, we are going up to Nine O'clock.

Hon. Stephen Mogaka (West Mugirango, JP): Thank you so much, Hon. Temporary Speaker. I am happy if we are going to that time.

I support the Bill because I represent West Mugirango Constituency, which is among the most marginalised constituencies on earth. Why? Members of Parliament from West Mugirango are endowed with taking people-centric positions. Many times a people-centric position does not go well with the Government of the day. That is why that constituency got blacklisted when Hon. Joe Justus Morara stood up to ask the Kenyatta Government why the person who killed Tom Mboya was walking free and enjoying himself in Zambia while we had been told that he had been slaughtered.

The Temporary Speaker (Hon. Farah Maalim): Order, Hon. Mogaka. We do not slaughter people. They are hanged.

Hon. Stephen Mogaka (West Mugirango, JP): Yes. I am guided, Hon. Temporary Speaker.

(Laughter)

A person sentenced to death and allegedly hanged in Kamiti was enjoying himself in Zambia after killing Hon. Tom Mboya. When my Member of Parliament at the time raised that question, the Government of the day responded and Hon. George Justus Morara died in a suspicious road accident in Kakamega. He was followed by Hon. Tom Mong'are from the same constituency, who never completed his term and then Hon. Henry Obwocha, who stood up to President Daniel Arap Moi. Because of that position, the constituency suffered heavily. So, there is political marginalisation. As they put it, political choices have political consequences. That is why many regions in Kenya that have taken certain political positions have always been marginalised.

I support this Bill, but I will be proposing amendments because we cannot make this Fund an extension of the county governments. Article 204 of the Constitution is very clear that the national Government must use the Fund to correct historical injustices, more so, marginalisation. Therefore, if we were to cede this Fund and devolve it, we will be acting unconstitutionally.

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

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

Secondly, the composition of the board is national Government-heavy and omits the representation of the constituency. It only provides for the fund manager to appear on the committee. The Bill is oblivious of the court judgement that made the NG-CDF unconstitutional and, therefore, by extension, we will not be having fund managers, assuming that the judgement holds. Therefore, we must propose an amendment to ensure that the representation at the constituency level is not that of a civil servant through the NG-CDF Board, but a representative of the elected Member of Parliament in that constituency.

West Mugirango Constituency does not enjoy a single bitumen road. While other constituencies were given a minimum of 60 kilometres of bitumen road, West Mugirango Constituency got none. It is, therefore, curious that the Equalisation Fund has not noticed that and made a provision for compensating West Mugirango Constituency with bitumen roads. Through this Bill, which I will support and propose amendments to, I want to see electricity being distributed to marginalised areas like Bokimo, Geseneno, Nyamaiya, Nyakunguru, and other areas that are currently in the dark, including Bosamaro Ward.

Hon. Temporary Speaker, I could talk endlessly, but because I want my colleagues, particularly my neighbour, the Member for Borabu, Hon. Osero, whom your eyes have not noticed, to speak. I will stop there. I support the Bill.

The Temporary Speaker (Hon. Peter Kaluma): Did you say that the Equalisation Fund should help to construct roads in Gusii land?

Hon. Stephen Mogaka (West Mugirango, JP): Yes. I said that political choices in this country have consequences. The larger Nyanza region has historically suffered heavily for its political positions. The Gusii region, including West Mugirango Constituency, is part of that. That is why for the last 20 years, West Mugirango Constituency has had no allocation for bitumen roads. It is curious that the Equalisation Fund does not capture that level of marginalisation and provide for support in that constituency. I will bring amendments to ensure that constituencies that are clearly marginalised, like West Mugirango and the greater Nyanza region, get captured. This is where this Equalisation Fund should be expended.

Hon. Temporary Speaker, I support.

The Temporary Speaker (Hon. Peter Kaluma): Thank you Sir. I was just thinking that what has been happening to Kisii and the larger Nyanza region is due to political marginalisation and it is intended. I largely think it is due to budget distortions, which we could

deal with in the context of the role given to this House to budget. We all agree that the Budget and Appropriation Committee needs to look into the equity of how we allocate resources. I doubt it is for argument; it is for contribution only.

Hon. Stephen Mogaka (West Mugirango, JP): Hon Temporary Speaker, thank you for that highlight. Indeed, at the appropriate time, and I hope Hon. Kimani Kuria is listening, we will be pushing that we have an itemised budget. So far, we been taken for a ride where we pass balloon figures here and people go back and protect certain lines so that when they go to ministries, the ministries have nothing to do because that money is locked to certain regions, and certain roads, thereby marginalising certain regions of this country. The time for reparation is now.

Hon. Catherine Omanyoo (Busia County, ODM): Thank you, Hon. Temporary Speaker. I support the Bill firmly.

The Temporary Speaker (Hon. Peter Kaluma): The microphone did not come, but it is your chance to speak, Hon. Omanyoo.

Hon. Catherine Omanyoo (Busia County, ODM): Thank you, Hon. Temporary Speaker. I support the Bill in depth because I come from Busia County where Article 204 of the Constitution has given me a lot of hope. It defines marginalised communities as those that have been unable to fully participate in socio-economical activities. Busia is part of these marginalised areas. Every time we have heavy rains, many homes are swept away by floods in Budalangi, Busia. Families, women and children are forced to live in tents. If you are displaced in your nation by floods and another family in the eastern region faces a challenge due to drought, both equate to marginalisation.

According to Article 204 of the Constitution, we need to use the funds appropriately and target that 20 years to come, every marginalised area must have proper infrastructure. If we compare developed nations like the United Arab Emirates, and Qatar that are in deserts, what exactly did they do with funds? They improved infrastructure and created modern cities that are now tourist attraction places. They have piped clean water. Their health institutions are working. We pump in a lot of money yearly to marginalised areas but our priorities are upside down.

I get many tear-stained letters in my office from places like Changara in Angurai East, Bwiri Ward in Funyula, and Budalangi sub-county. People express how desperate they are and wonder when anybody will ever listen to their cries. We cannot write a letter for floods and drought, but we can make a few baby steps to prevent such from happening and make it better for future generations. Those who have never traversed this nation might have been in America or the United Kingdom, but they have never been to Bwiri Ward in Funyula, Angurai East in Teso North, Bwiri Ward in Funyula nor in Budalangi. When you mention the word 'marginalised', many people only think of the north eastern region. However, having been born and raised in Busia, I can tell you that there are pockets of marginalised areas in Busia County. Some people even make jokes whenever we have floods. They say, "*Serikali saidia*," and they are referring to Budalangi and other areas in Kenya that also experience heavy rains or overflows from the lake.

I support the Bill. I will ensure that when we amend and top it up, we introduce amendments that will ensure areas that have been left out are also included in the Bill, so that we grow as a nation and not have a few areas in Kenya having it all while others lack.

The Temporary Speaker (Hon. Peter Kaluma): Hon. Agnes Pareyio.

Hon. Agnes Mantaine (Narok North, JP): Thank you, Hon. Temporary Speaker, for giving me this opportunity to contribute to the Equalisation Fund (Administration) Bill. From the onset, equalisation means uplifting those communities or groups that were intentionally left behind while others get ahead of them. The Constitution clearly defines who these communities are. If you want to see them, do not go far. Just come to Narok, which I represent. As you were

contributing, I was almost crying because Narok is very close to Nairobi, and people assume that the residents there have electricity, water, and roads. We are in a pathetic condition. Recently, we went to tell His Excellency the President that we do not have electricity, and he sent people to do a survey. When they reported back to him, he allocated Ksh100 million to us because he did not think that was the situation. I thank him for that, but Ksh100 million is like a drop in the ocean. We still do not have electricity yet we keep saying that Kenya has developed. How can it develop while other people are left behind?

I, therefore, support this Bill with amendments because we need to go back and know who the beneficiaries are. They are clearly stated in the Constitution. We need to set up a board that will manage this Fund because, as we speak, this money is neither in this National Assembly nor in the Senate or the council. It seems this money will only be there for a short period before disappearing, just as it used to.

When you look at these areas that are indicated to benefit from the Equalisation Fund, it is not known who decided which sub-locations will benefit and which will not. That is why I say that I support this Bill with amendments, so that we can critically look at the issues at hand and ensure that, in future, we will not say that the Bill is not good. We need a Bill that will help the marginalised communities or groups, as you call them. It is clear that there are marginalised communities in Kenya. We must deal with that issue. The Budget and Appropriations Committee, which is responsible for appropriating funds, must also be oversighted because they are marginalising us while we watch. It is evident in how the money is being shared. We need to be serious. I urge other Members to support this Bill with amendments so that we can all enjoy this cake.

The Temporary Speaker (Hon. Peter Kaluma): Thank you, Hon. Agnes Pareiyo. Hon. Bady Bady. Hon. Bady, you will be followed by Hon. Joseph Tonui for clarity

Hon. Bady Twalib (Jomvu, ODM): Asante sana, Mhe. Spika wa Muda, kwa kunipatia fursa na mimi nichangie Mswada ambao, tukiuangalia katika Kipengee cha Katiba 204(2), sehemu inayotakikana kuangaziwa zaidi ni mambo ya maji, miundo msingi, barabara, na vilevile umeme.

Asante sana, Mhe. Farah Maalim, mzee wangu, *mentor*. Kwa hivyo, nashukuru sana, Mhe. Kaluma, kwa kusema haya, na naunga mkono kama vile Mhe. ambaye ameongea sasa hivi, lakini twahitaji tuupige msasa Mswada huu. Nikisema twahitaji tuupige msasa Mswada huu, ni kama vile wewe ulivyozungumza, Mhe. Naibu Spika wa Muda. Ulizungumza ukasema Kaunti ya Homa Bay, tukiangalia, ilipewa shilingi milioni sita peke yake, na mimi, Jomvu, Mhe. Rozaah Buyu alipokuwa kamishina kwa ile tume ya Andrew Ligale, alikuja kule na tume yake yote, wakaja wakaona Jomvu yatakikana kukatwa kutoka kwa Changamwe.

Mwaka 2013, Jomvu ikaweza kukatwa kwa sababu kulikuwa hakuna maendeleo; yakiangaliwa, maendeleo ilikuwa uongozi wakati ule ulikwenda katika sehemu ya Changamwe peke yake. Namshukuru Mhe. Rozaah Buyu baada ya 2013 kunikatia *constituency* ile pamoja na Andrew Ligale. Mwaka wa 2017 alikuja Bungeni na akaweza kuhudumu kwa vipindi viwili mpaka sasa tunafanya kazi na yeye. Kwa hivyo, hii *Equalisation Fund* yenyewe, kama vile inavyozungumziwa kwa Kiswahili, tunaweza kusema ni Mswada ambao unataka kuleta usawa. Na katika kuleta usawa, ni kwamba maana ya usawa ni kumaanisha eneo bunge lako, Mhe. Kaluma, liwe sawa na eneo bunge la Jomvu, na eneo bunge la Mhe. Farah Maalim, na eneo bunge lingine.

Hapa tunaona imesemekana ni kaunti 14 peke yake, lakini nataka kuzungumza kitu leo tofauti kabisa. Katika kaunti 14 hapa hakuna kaunti yetu ya Mombasa, na ukiangalia kaunti ya Mombasa, wengi sana wanafikra ya kuwa ni kaunti ambayo ni ya kidosi, na watu wana pesa, na kila kitu kiko sawa, na iko mjini. Leo, ukiangalia katika eneo bunge langu la Jomvu, shida kubwa sana ambayo inakumba watu wangu wa Jomvu ni mambo ya ukosefu wa maji; mpaka

ukiangalia katika sehemu ya Miroroni na sehemu zingine, utahurumia watu. Kipengee cha Katiba cha 204 (2) chasema moja ya pesa ni maswala ya maji.

Vilevile, nachukua fursa hii kutoizungumzia *constituency* peke yake. Nikiwa kiongozi wa kitaifa, nitazungumzia kaunti nzima kwa jumla. Ukienda Kisauni, shida ya maji ni hiyo hiyo, ukienda Likoni, shida ya maji ni hiyo hiyo. Ukienda sehemu nyingine, shida za maji ni hizo hizo. Kwa hivyo, Mhe. Spika wa Muda, tumemuona Mhe. Rais William Ruto alikuja 2018 akaanzisha barabara ya kuweza kuunganisha Jomvu na Rabai, ambayo ni kuunganisha Kaunti ya Mombasa na Kaunti ya Kilifi. Mpaka leo, nalia kuhusu barabara ile kuwa kuna mahali padogo paitwapo Jitoni ambapo hapajamalizika. Tukitizama, tungelilia pesa zile za *Equalisation Fund*. Rais William Ruto aliamua kututengenezea ile barabara lakini wahasika wa kutengeneza barabara hiyo wanambwaga Mhe. Rais kwa kipande kidogo cha Jitoni ambacho hawataki kumaliza kwa sababu ya mambo yao wenyewe.

Kamati ya *Petitions* ikiongozwa na Mwenyekiti wake ilikuja mpaka hapo. Walikuja mpaka pale, wakaangalia, na wakaona kweli barabara ile yatakikana kutengenezwa. Barabara hiyo yaunganisha Kilifi. Barabara ya Dongo Kundu yaanzia Jomvu yangu kwenda hadi kuunganisha Kwale. *Constituency* yangu yashikana na Kaloleni na Mvita. Kwa hivyo, tusingalie Mombasa tu kuhusu fedha hizi za *Equalisation Fund*. Likoni kwa Mhe. Mishi ni mfano. Mwisho ni Kwale ukiingia Likoni. Hizi ni sehemu ambazo zinahitaji barabara na mambo mengi sana.

Katika kawi, sehemu nyingi sana hazijafikiwa. Hakuna kawi katika Mbuyu wa Chapa ndani ya eneo bunge langu. Nenda Miroroni ambapo nimejenga mpaka shule ya *Junior Secondary School*, hakuna kawi. Twatengeneza shule za *Competency-Based Curriculum (CBC)* ambapo twatakikana kuanzisha programu za kompyuta lakini hakuna kawi. Tutazifanya na nini bila kawi? Wenzetu wamenena. Wamesema zaidi juu ya haya.

Kila kiongozi anavuta pesa hizi kwake. Unaona watu wengine na viongozi kutoka sehemu zao pia wanakuwa *victims of circumstances*. Tumeona kuwa wao pia wanafanyiwa dhuluma. Mhe. Kiborek ni mfano. Amesema kuhusu Baringo ambapo Moi alitoka. Kwa hivyo, Serikali zilizofuata zilifikiri kuwa Baringo haihitaji lolote kwa vile Moi alikuwa sehemu ya pale.

Kaunti ya Mombasa pia yafaa iingizwe katika hizi kaunti kumi na nne na ipigwe msasa. Kaunti ya Mombasa haina ukulima na hakuna madini. Ni lazima *you provide services* au ufanye kazi ndani ya Kaunti ya Mombasa ilhali kazi hakuna. Vijana hawana kazi. Vijana wazunguka tu. Vijana wakienda kwa makampuni wanaambiwa hakuna kazi tangu *Corona*. Watu wasitupake mafuta katika maswala haya. Sisi pia tunaumia. Sisi pia tunastahili kupata mkate kama wengine wanavyopata mkate ndani ya Kaunti ya Mombasa.

Nachukua fursa hii kutoa rambirambi zangu kama Mjumbe wa Jomvu. Kwa niaba yangu mimi, familia yangu, na wananchi wangu wa Jomvu, natoa rambirambi zangu kwa familia wa Seneta wa Baringo, Mhe. William Cheptumo, ambaye tulifanya naye kazi katika Bunge hili. Vilevile, natoa rambirambi zetu kwa familia ya Mhe. Malulu Injendi, Mbunge wa eneo Bunge la Malava.

Mhe. Injendi alikuwa mtu wa busara sana. Busara yake ilionekana mpaka kwenye kifua chake na akitembea. Uliona msalaba alioweka kifuani. Hakuwa kama watu wengine wakitembea. Wengine hupanua vifua wakitembea. Yeye alimuweka Mungu mbele akitoa ushauri. Mungu ailaze roho yake mahali pema peponi.

Lakini twaomba pesa hizi. Homa Bay County isipewe milioni sita kama ilivyopewa wakati ule. Uongezewe hata wewe, Mhe. Spika wa Muda. Nakutetea pia hapa. Vilevile, Mombasa tuwekwe ndani tupate pesa hizi.

Kwa haya mengi, nakushukuru. Nashukuru kurekebishwa na kuongozwa na Mhe. Farah Maalim ambaye ni mzee wangu. Asante kwa kunipa nafasi hii.

The Temporary Speaker (Hon. Peter Kaluma): Hon. Members, I am told Parliament may today sit up to even past 9.00 p.m. Therefore, there is no hurry. Think through this matter. I will remind Members that this is not an ordinary Fund. Let us not seek to address the inequities in our budgeting distortion to be cured by an Equalisation Fund. I request Members to read what the term “marginalised communities” means, particularly its definition in Article 260(d) of the Constitution. I say that for the sake of Hon. Bady, who says that the Fund should be used in Mombasa. That Article states:

“260. “marginalised community” means—

(d) pastoral persons and communities, whether they are—

(i) nomadic; or

(ii) a settled community that, because of its relative geographical isolation, has experienced only marginal participation in the integrated social and economic life of Kenya as a whole.”

I imagine that is what Hon. Farah Maalim meant in his contribution. There are parts of Kenya where if you visit from Nairobi, they ask you, “How is Kenya?” because of their geographical isolation and marginalisation. There are matters we can address through our budget. Let us agree that despite having the authority to budget, we have not been doing very well. As a Member of Parliament, I should be asking, “What about Homa Bay?” The Member for Bomachoge Borabu should be asking the same. We have budgeted for funds that have ensured that some people have attained 100 per cent electrification. On the other hand, Hon. Kaluma, who sometimes presides over the Committee of Supply, represents a constituency with less than 30 per cent electrification, and yet Homa Bay Town is called a town and is the county headquarters.

As representatives of the people, there are some issues that we can address through ensuring equity in budget. However, there are other issues for which this Fund was created, while some for which devolution was created. Let us not shift all our inadequacies to the Equalisation Fund, which is barely made up of 0.5 per cent of the revenues collected by the national Government.

Hon. Joseph Tonui, I had recognised you to speak next.

Hon. Joseph Tonui (Kuresoi South, UDA): Thank you, Hon. Temporary Speaker, for giving me this opportunity to add my voice to the Equalisation Fund (Administration) Bill. At the outset, I support the Bill with amendments. The purpose of the Fund is to equalise development in our country. I support the Bill with amendments because I also come from a constituency which is seriously marginalised in terms of electricity, roads and even hospitals. Tinet Ward in my constituency does not have a single tarmac road. People hear about tarmac roads, but some people in my constituency have not seen them. I request that we propose amendments to the Bill, so that some regions in our constituencies all over the country are also considered in this Fund because some pockets are seriously marginalised.

I want urge the committee that will be in charge of this Fund to practice transparency and accountability. Hon. Temporary Speaker...

Hon. Farah Maalim (Dadaab, WDM): On a point of information, Hon. Temporary Speaker.

The Temporary Speaker (Hon. Peter Kaluma): There is a point of information from Hon. Farah Maalim.

Hon. Joseph Tonui (Kuresoi South, UDA): I need information.

The Temporary Speaker (Hon. Peter Kaluma): Hon. Farah Maalim, give Hon. Tonui the information you have.

Hon. Farah Maalim (Dadaab, WDM): I just want to seriously emphasise what you belaboured very hard to explain to the Members of Parliament. We understand that there are serious developmental disparities in the country. The very principal object and spirit of the

Equalisation Fund was just addressing certain counties and the former Northern Frontier Districts (NFDs), and contiguous areas. You see what I mean? So, as I want us to address the issue, of course, it is not possible to involve it in this. We have to do it in a budgetary and equity structure.

Hon. Joseph Tonui (Kuresoi South, UDA): That is why I am talking about amendments. Hon. Temporary Speaker. I propose that more funds be added to the Equalisation Fund.

(Hon. Farah Maalim spoke off record)

I am from Nakuru, but we have some areas in Nakuru which are seriously marginalised. I also come from the pastoralist community. I have a community known as the Ogiek in my constituency. The Ogiek should also be considered for this Fund.

Finally, I did not get a chance to pass a word of condolences to the families of my colleagues. One, Senator Cheptumo, who was a prominent lawyer and Malulu Injendi whom we served in the same Departmental Committee on Education in the last Parliament. We have lost great people in our country. May their souls rest in peace.

The Temporary Speaker (Hon. Peter Kaluma): The Member for Borabu, Hon. Osero.

Hon. Patrick Osero (Borabu, ODM): Thank you Hon. Temporary Speaker for giving me this opportunity, albeit a bit late. Right from the outset, I support the Bill with amendments.

It is a shame that 60 years after Independence, we are talking about equality, and trying to equalise communities. This is 2025 when we see some people from some regions advertising their NG-CDF programmes on national television and saying how much they have got, and how much their constituencies are developed. This is on national television. We wonder why Hon. Mbadi or anybody else does not advertise.

Hon. Temporary Speaker, you rightly put it that something needs to be done with our budgeting. We need to overhaul our Budget and Appropriations Committee and the way we budget so that it is itemised and is focused to certain programmes and ring-fenced to avoid any interferences.

It is very disheartening when we go back home and somebody asks why certain Members have paved roads up to nursery schools and others tarmac roads up to primary schools. At such a time, we wonder what this budget was all about. So, Hon. Temporary Speaker, you rightly put it that we need to focus on our budgeting process.

Coming back to this Equalisation Fund (Administration) Bill, it is true there is historical marginalisation that has been happening, but I do not believe this is the panacea for tats. This is just a drop in the ocean. Devolution came and it should have equalised. So why is this equalisation again if devolution has not equalised? That means the devolution that came 10 or 15 years ago and has not managed to address the economic marginalisation of other communities. This is where the issue of historical injustices should come in. We should do a scientific analysis of the marginalisation over the last 60 years, and then we can appropriate fairly. But we cannot just put a blanket law that we want to equalise some areas that have been marginalised. I do not believe that can work at this particular point in time because of the historical injustices.

Secondly, we have seen the effects of devolution. Rural-urban immigration may have fallen, but money follows activities. For instance, in my constituency, Borabu, we had issues of cattle rustling with our neighbours, and we realised that there was little economic activity across. The moment we put in some economic development, cattle rustling went down. This is the same in other areas. I believe some of these issues at the Northern Frontier Districts (NFDs) were issues of the shifas of the 60s and 70s, which is why the Government shunned them. However, with the peace that we now have there, if we put this particular Fund to good cause,

I believe the migration of people coming into towns and cities will slow down, and we will have a lot of resources in those areas.

Hon. Farah Maalim (Dadaab, WDM): On a point of information, Hon. Temporary Speaker.

The Temporary Speaker (Hon. Peter Kaluma): Do you want to be informed by Hon. Farah Maalim?

Hon. Patrick Osero (Borabu, ODM): Yes, I want to be informed.

The Temporary Speaker (Hon. Peter Kaluma): Hon. Farah Maalim.

Hon. Farah Maalim (Dadaab, WDM): I am impressed with the last bit of the contribution from the Member for Borabu. He said, and I have said this before, if you do not develop those northern areas, every time there is a vagary of weather and a cycle of drought, 200,000 pastoralists lose their livelihoods. When they lose their livelihoods, they do not have factories, tea or coffee farms there. There is nothing to keep them in the region. So, what do they do? They come to the centers here. That is why you see them within the urban settings, whether it is in Kisumu or Migori.

If you ask our good friend, Hon. Junet, how they ended up in Migori, he will tell you that his father lost his livestock and they went to look for a livelihood there, some 60 or 70 years back. As he puts it, if we are going to develop those areas, then not only will we stop many people migrating to other urban centers, but we will also have Kenyans living there, taking advantage of that expansive land, and becoming productive in a way that can turn those areas into a breadbasket. That was the very idea of opening up the place with only four core functions: roads, electricity, water and health. These were national functions, outside the county. Everybody knows that counties have their roles to try and equalise, but of course, these were national functions. Unless you put in heavy Government investments into that, you will not bring that area up to par with the rest of the country.

Thank you very much. It addresses some of that urban migration from one part of the country to the other, where people are seeking livelihoods.

Hon. Patrick Osero (Borabu, ODM): Thank you, Hon. Farah. Regarding Hon. Junet, I think that was a blessing in disguise. They migrated and he eventually became a Member of Parliament.

Lastly, in the spirit of the broad-based Government, if we want to bring our people together, as the President says, togetherness cannot be achieved without equity. Let there be equity and equality.

I also did not have an opportunity to condole with the House on the passing of Hon. Malulu Injendi. This is my first term, but I remember he always adorned the rosary. He was a very soft-spoken gentleman. We say *pole* to the family. On behalf of the people of Borabu, I wish to send my sincere condolences to the family of the late Senator for Baringo County.

Hon. Temporary Speaker (Hon. Peter Kaluma): I wanted to give preference to our lady Members. Hon. Jessica, would you like to speak on this? Please do, because you have other national duties to engage in for the good of Kenyan society around this time.

Hon. Jessica Mbalu (Kibwezi East, WDM): Thank you, Hon. Temporary Speaker, for the opportunity. I stand to support the Equalisation Fund (Administration) Bill (Senate Bill No. 14 of 2023), by the Departmental Committee on Finance and National Planning.

I will support this with amendments. I wish to correct my very good friend, Member of the Speaker's Panel, who seems to think that the Equalisation Fund is solely for his own county. This is a House of debate where Members are free to debate and represent their constituencies. I am here representing Kibwezi Constituency in Makueni County and those four functions that you defined for us, and my very good friend, who I will not name to avoid interjections, mentioned the same functions like issues of water, which is the same for Kibwezi Constituency in Makueni County.

Since we are talking about counties, let me speak about my county, Makueni. We do not have water. As you defined the Equalisation Fund, it addresses places like ours. Yes, we own Mombasa Road, but we only hear lorries passing from Nairobi to Mombasa. As you said clearly, some ask us, how is Nairobi? We came to Nairobi, specifically to this House, where Hon. Farah Maalim and I represent them. When we go back, we tell them that yes, it is true that the four functions are not in our counties.

Regarding tarmac roads, if you go to Garissa, you will find tarmac roads. We only see the Nairobi-Mombasa Road. Yet inside the wards, such as Zambani, Tanga, Masongaleni, and Mtito Andei, we have no tarmac roads and these are the functions that have been defined in the Equalisation Fund. We are here to represent our people, and I am sure every Member speaks on behalf of their people in the constituencies. I am here to speak for the people of Makueni, especially on the issue of water. Women travel almost 20 minutes, sometimes up to two hours, just to bring back a 20-litre jerrycan of water. Seriously, should we not be included in the Equalisation Fund? The Equalisation Fund is not about distance. I know that travelling to Garissa or Isiolo may take several hours, but even somewhere near here like Rongai, people need these services. Kenyans in all parts of the country deserve equal services.

The reason we have the Equalisation Fund is to address historical inequalities and ensure there is equalisation. All Kenyans are equal. There is no Kenyan who deserves better services than another. So, I call upon the committees reviewing this to delve into the empirical data, to understand how we determine which counties should benefit. We could be setting ourselves up for problems by restricting ourselves to just 14 counties. This is Kenya. Some people feel differently, and that is why you are seeing Gen-Zs coming forward because they know better than us. Even as we discuss here, they know where there is water and where there are no roads. Talk about Kambu, Darajani, all the way as we promote education to Lukenya University. Somewhere down there in Kibwezi, Makueni County, we have a university, but no roads. For almost 50 kilometres, there is no tarmac road. Seriously? Are these not children of mothers? Are these not Kenyans? I call upon us on budgeting.

Hon. Farah Maalim was campaigning in my place and he knows my area very well. I even remember him asking whether that is where I come from, where there is even no grass. Camels from their place come to us and find there is totally no grass. Are we not the same? I call upon this Committee to look into it and know that the Members here are representatives of places and we know better. We need this Equalisation Fund in Kibwezi East of Makueni County. I call upon the Committee to come and witness for itself. We come to debate in this House because we have seen and identified the areas. It is not about sitting at a table or budgeting. Rather, it is because I know what I want in this. This is what I will say the 14 counties are.

With those few remarks, I call upon ourselves to be sober even as we debate. If it is not possible for us to act according to the definition of the Equalisation Fund and why we have it here, we would rather have a kamkunji with all the Members. We may form an ad-hoc committee, together with the Committee doing the job, to visit and see these areas.

Why are we here? People in our constituencies and counties elected us to speak on their behalf. Hon. Farah Maalim, I know your constituency is among the ones put here. I just like the way you are trying to explain and giving information to the Members. We all know this is a House of debate where we make laws and our voices are heard. This is where we speak on behalf of our people.

With those few remarks, I support the Equalisation Fund (Administration) Bill (Senate Bill No.14 of 2023) with amendments. We have been coming together and putting amendments

that the House should adopt, so that our people will be happy when we go back home. That way, we would have advised Kenya in general.

The Temporary Speaker (Hon. Peter Kaluma): The Member of Parliament for Mwea, do you want to speak on this? Should we go straight to Hon. Geoffrey Ruku? Hon. Gichimu Githinji will follow Hon. Geoffrey Ruku.

Hon. Ruku GK (Mbeere North, DP): I have very mixed reactions concerning this Bill because we have a country that has been in existence for quite some time now. Different administrations - colonial, Jomo Kenyatta's, Moi's, Kibaki's, Uhuru Kenyatta's, and now Hon. Ruto's - have run the country. See how some nations and constitutional democracies across the world run their affairs. Their presidents have powers to issue executive orders on what should be done with immediate effect to change things in the society.

Most Members in this House represent extremely marginalised areas. You will find a 771-square-kilometres semi-arid constituency with only 38 kilometres of road from 1963 to date. The constituency has less than 20 per cent household water connection. Household power connectivity in such a constituency, where even about four of the dams that generate power in this country are, is less than 25 per cent. The agro-ecological zone of the same constituency does not support agricultural activities in terms of maize and beans growing. Our households consume cereals on a day-to-day basis. Around five to seven planting seasons have failed consecutively.

The children of the community that I represent, who were born gifted and bright, are marginalised. They do not have opportunities like other children in the Republic of Kenya to grow in an environment in which they can utilise their full potential. We are discussing a Bill on how some of those things can be achieved in different communities of our nation. Our administration should wake up and decide that moving forward, this is how our money will be allocated and utilised in the most prudent way to ensure that those who have been marginalised for many years can access social amenities that are available in other parts of the country.

I do not think that we seriously need an Equalisation Fund law to achieve some of these things. We have the necessary institutions such as an extremely powerful Office of the President, which has been given powers by the people of the republic to prudently utilise resources. We can only amend the budget that is forwarded to this House by the Executive by a certain percentage, which is usually not more than 5 per cent. That demonstrates how powerful the Executive is. The Equalisation Fund is needed, but we also need to ask ourselves what it is that we have not done. How have we failed the people of the republic? Why should we have a semi-arid constituency of 771 square kilometres with only 38 kilometres of tarmacked roads in 2025? On the other hand, other areas have tarmacked road coverage of about 70 to 80 per cent.

In their wisdom, the framers of our Constitution included a provision in our laws for the Equalisation Fund. The people of Kenya promulgated the Constitution in agreement. It has now been over 10 years since we promulgated our Constitution. One of the things that we were supposed to do immediately as a House was to ensure the Fund could be utilised. However, it has taken us ages to actualise it. It is shameful. We are letting down the people we represent. The Constitution was promulgated in 2010. It is now over 10 years, a decade later. The Constitution made provision for the Equalisation Fund, but we are failing our people in many aspects. It is very important that we up our game as a House and as leadership.

Finally, we have many funds at the moment like the Women Development Fund, Youth Fund, Consistency Development Fund, and many more. We have several funds that have been enacted through our laws. We are now coming up with another fund that we are giving a very nice name of the "Equalisation Fund."

An Hon. Member: It has been there.

Hon Ruku GK (Mbeere North, DP): Yes, it has been there. We are now coming up with its administration aspects. Even if it has been there, I have not seen anything the Fund has done in the last 10 years. We talked about equalisation money before we went for recess and a dispute arose because we could not agree. So, even if this Fund has been there, we are coming up with administration rules and regulations on how it will be managed. We have other funds that have also been there. Recently, the Cabinet came up with a number of funds which should be merged and others done away with because they have failed Kenyans. We should make sure that as we come up with the administration bit of the Equalisation Fund, it does not go down as another fund that failed Kenyans.

Sometimes I am disappointed with how we run the affairs of this nation. However, a day will come when we will get it right. I know the President of the nation is doing all he can to get it right. Even if...

The Temporary Speaker (Hon. Peter Kaluma): Give Hon. Ruku one minute.

Hon Ruku GK (Mbeere North, DP): Thank you, Hon. Temporary Speaker. Let us start seeing executive orders that will ensure that the communities that have been marginalised over the years have water, electricity connectivity and proper roads. We cannot wait until the Bill is enacted to achieve some of these things. The administration can help in achieving that. Let us see that being implemented.

The Temporary Speaker (Hon. Peter Kaluma): Hon. Gichimu Githinji.

(Several Members rose their hands.)

It is now time for Hon. Githinji.

Hon. Gichimu Githinji (Gichugu, UDA): Thank you, Hon. Temporary Speaker for giving me the opportunity. Parliament has lost Members who would probably be participating in such a debate. Unfortunately, God has found it fit to promote them. I hereby take this opportunity to eulogise Hon. Malulu Injendi. My sincere condolences go to his family. Let me also eulogise Hon. Cheptumo, the Senator for Baringo. I also pass my sincere condolences to the families. May God give them strength to withstand the loss of their loved ones, who we also loved as Members of Parliament.

Back to the debate, I generally support the passage of the law in tandem with Article 204 of the Constitution on the Equalisation Fund. But as I associate myself, and I was impressed with your contribution, Hon. Temporary Speaker, while on this other side, this is a law that requires a lot of input and panel beating to give effect to Article 204 of the Constitution.

The historical debate that was also given by Hon. Maalim Farah was also an eye-opener to this Parliament for people who could not understand how it came to be.

(Hon. Bady Twalib spoke off record)

The Temporary Speaker (Hon. Peter Kaluma): Hon. Gichimu Githinji, I have not recognised Hon. Bady Twalib so you continue with your contribution.

Hon. Gichimu Githinji (Gichugu, UDA): Hon. Temporary Speaker, I am continuing and I wonder under which Standing Order he wants to rise on. A lot of research needs to be done before this Bill comes into law. As Hon. Bady Twalib, Member for Jomvu Constituency said, there are other communities that are also marginalised. We have a definition of a marginalised community. There are two definitions here. I am missing the benefit of a definition of a marginalised area in the Constitution. But there are two definitions of a marginalised community and a marginalised group. But in this case, I will go by the marginalised community. Because a marginalised group is the one that has also referred to Article 27(4) that

talks about a person who has been discriminated on other aspects. When it is a marginalised group, it is like a plural of a person. So, I will go by the provision of services under the Equalisation Fund to marginalised communities in this case. That implies that a marginalised community is the one that lives in a marginalised area. Article 204 of the Constitution talks about a marginalised area and an area is a community that lives there. So, if we look at the definition...

The Temporary Speaker (Hon. Peter Kaluma): Hon. Farah Maalim, you should be listening to Hon. Gichimu Githinji. This is a top lawyer and the distinction he is making is very critical. Remember funds are given to the people. So, in as much as we are talking about a marginalised area, you do not give funds to areas, you give to the people. So, he is saying you need to listen to him draw the distinction between marginalised group and marginalised community. Why the fund in terms of the definition of marginalised area should borrow from marginalised community. Proceed, because this is important for all Members.

Hon. Gichimu Githinji (Gichugu, UDA): Yes, I said I elect, in the spirit of the letter of the Constitution that a marginalised community lives in a marginalised area. So, I would leave the definition of a marginalised group to the discriminations under Article 27(4) of the Constitution, which are the other non-discriminations about sex, race and those kinds of things. So, in this case, the Equalisation Fund is supposed to apply to a marginalised community. When we narrow down to the marginalised community, we should not limit ourselves to the pastoralists. On this definition, I support Hon. Twalib. This is because there are four meanings of a community. The definition of a marginalised community under Article 260(a) states that: “(a) a community that, because of its relatively small population, or for any other reason has been unable to fully participate in the integrated social and economic life of Kenya as a whole.”

My emphasis is on ‘any other reason’. Therefore, if there is any other reason that makes a certain community not to have that economic integration, it falls within a marginalised community and area. That is why extensive research needs to be done by the Commission of Revenue Allocation, across the country. If there is a certain community in this country that lacks electricity, water, roads - we need to define ‘roads’ so as to understand the kind of roads we are talking about; any road or tarmac roads, and health facilities - that community or area is marginalised. This is according to my construction of the definition of marginalised community, under Article 260(a). Additionally, this marginalised community should not be limited to counties. We might have a county with a small section of...

The Temporary Speaker (Hon. Peter Kaluma): Hon. Gichimu Githinji, we would like to hear more from you on this interpretation, because you are a top lawyer, one of the best in this country.

Hon. Gichimu Githinji (Gichugu, UDA): Thank you, Hon. Temporary Speaker, for that compliment.

The Temporary Speaker (Hon. Peter Kaluma): I request you to read the whole of Article 260(a) to (d) and use the *ejusdem generis* means of interpretation, looking at the kind of communities that come under the genres mentioned here. Further, tell us the kind of communities that could be included here. So I am giving you time, and even add you more. Read the whole definition, and then using the *ejusdem generis*, guide the House on the communities that would be targeted by the Equalisation Fund.

Hon. Gichimu Githinji (Gichugu, UDA): We may approach the definitions in different angles.

The Temporary Speaker (Hon. Peter Kaluma): You have already read Article 260(a). Kindly help the House with the reading of (b), (c), and (d). If you read all of them, there is a thread running through the communities being spoken to, which would be useful to the House

as we engage in this. I have stopped the watch for you to help the House with that interpretation, as a top lawyer. I know Hon. Kirima will also speak after you.

Hon. Gichimu Githinji (Gichugu, UDA): Thank you, Hon. Temporary Speaker. I am persuaded to follow your guidance. The definition of marginalised community encompasses that of (b), (c) and (d) because after (a), there is no ‘or’, therefore, it has covered all of them. But if there is an area in a certain county that does not cover the entire county, we need to define that particular community. So, we should not talk about counties, but communities. Further, we should probably isolate and indicate the counties they fall under. To ensure that we do not limit ourselves to the 14 counties, we should look at the communities, irrespective of the counties. They might not even be the 14 counties that have been indicated. As I finalise, four of my minutes have been eaten up by the kind of discussion...

The Temporary Speaker (Hon. Peter Kaluma): The useful intervention to benefit from your legal knowledge.

Hon. Farah Maalim (Dadaab, WDM): On a point of order, Hon. Temporary Speaker.

The Temporary Speaker (Hon. Peter Kaluma): Hon. Farah, in as much as you are saying point of order, you would agree with Hon. Gichimu that if you were to talk about Tharaka Nithi County and send Equalisation Fund to be managed by the county, that money would go to the Nithi side, which may not be marginalised. That money would rightly be targeting the southern part of Tharaka, but not the Nithi side. Nithi is very green on the side towards Nyeri.

Hon. Gichimu Githinji (Gichugu, UDA): Thank you, Hon. Temporary Speaker. A lot of research needs to be done on this so that we can identify the communities that fall under the definition in the Constitution.

We also need to exclude the representation of the Senate in the management, as it is not possible to oversee and manage at the same time. There is a proposal in the Bill to have a representative from the county. We also need to be gender-sensitive when appointing a body to manage such resources. That has not been captured in the Bill.

Finally, the Commission on Revenue Allocation cannot be left out of this game. Under Articles 204 and 216 of the Constitution, they have been tied that there must be consultation. There must be consultations with the CRA, which has also been mandated under Article 216(4), to come up with a criterion to identify these communities. That is the body that needs to do very serious research and come up with these communities, so that we can list them in the Bill.

I beg to support generally, but also with myriads of amendments at the appropriate time.

The Temporary Speaker (Hon. Peter Kaluma): Thank you for the constitutional interpretation skills you have applied to Articles 204 and 260. I now want to give the chance to another great lawyer, Hon. Moses Kirima, who will be followed by a non-lawyer, Hon. Paul Biego.

Hon. Moses Kirima (Central Imenti, UDA): Thank you, Hon. Temporary Speaker, for the opportunity to contribute to this important Bill. As much as my learned friend, Hon. Gichimu, has tried to interpret the Constitution as per Article 204, there are some things which I find lacking. There is a distinction between marginalised areas and marginalised communities. Marginalised areas are those that are far-flung and lack access to basic necessities as prescribed in Article 204. They are far-flung areas from the centre of Government or the centre of development.

On the other hand, marginalised communities could refer to the 14 counties as prescribed in Article 204. For instance, the Somali Community, the Meru Community or any other prescribed community in a particular area. Within that community, there could be an area that is marginalised due to its geographical location or certain conditions, compared to other areas in the same community that are geographically favourable.

Let us take a place like Tharaka-Nithi which is not included in these counties which are referred to as marginalised. You will find that one section of Tharaka-Nithi County or a section of Meru County is in a favourable geographical location in all aspects. But when you go to another section of the county, you find that it is equivalent to Tana River, Narok, Kilifi or any other place. Since my constituency neighbours that area, a whole division like the one referred to as Kiagu, is so marginalised to an extent that a child is born, goes to a school with no teachers because no teacher would like to go to a place which does not attract hardship allowance. The child grows without seeing electricity or water unless he travels for 20 kilometres to fetch water and that child will only manage to see electricity when he goes to Form One and definitely, that will be very far from that area. You find that yes, it is Meru County and the people who are living in that area are Merus, but within that community, there is a section which is purely marginalised.

So, I am praying that when it comes to the people that will establish the areas referred to as marginalised, they should not just strictly stick to the counties which are mentioned here. They should go beyond what is described here and look at those areas which are really marginalised. As you may get an opportunity to fly over the northern part of Meru which neighbours Samburu, Isiolo, Garissa and the rest, because we neighbour Garissa in one way or the other and Isiolo, you find that there are places which have never seen a road of any nature. Not a tarmac or a murram road or any kind of development at all, but there are structures there and the people living there are pastoralists who move from one place to another, and it is not included here among the communities which require this kind of Equalisation Fund.

What I am trying to say is that by the time Article 204 was inserted in our Constitution, that time in one way or the other has been overtaken by events and as we speak, it is somehow discriminatory to areas which are so much affected by the lack of budget allocation for development. In our debate, as I would pray for an amendment of the same when it moves forward in this House, there are things to be considered. When we are talking of the Equalisation Fund, we should be talking of affirmative action of the areas which lack the basic necessities like water, electricity, roads, health facilities and the rest because we are just living in assumptions. There are some counties which we live in assumption that they are the best, but when you go down to those counties, you find that there are some sections and some constituencies which have been purely abandoned.

Let us take an example of Meru. If you come to Meru and you happen to travel from Nairobi to Meru Town, you may assume that Meru is so much developed. But if you go down to some constituencies like Central Imenti, which has been squeezed between two giant constituencies, you will find that things are so terrible to an extent that if it comes to equalisation, there are areas which require the funds.

(Hon. Farah Maalim spoke off record)

My colleague Farah Maalim would like to inform me. However, Garissa, Wajir and Isiolo have more tarmacked roads, electricity connectivity and development than my area. We are all Kenyans.

I agree with Article 204 as it is, but we will need some amendments to suit the present situation. You remember that the Constitution established in 2010 was done in a hurry due to the then urgency and situation. We wanted to do away with the older one. We were not sober because of the urgency and interference that was coming from all quarters. Fourteen years later, it is high time we looked at the Constitution to see what is good for Kenya and not discriminating any Kenyan. After 14 years, some marginalised areas are far ahead of the then advanced areas. Such were denied funds because they were categorised as advanced. This has taken a turn. It is vice versa.

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Before I conclude, let me take this opportunity to send my condolences to the families of our colleagues who recently passed on. Hon. Cheptumo was our colleague here last term. We also had Hon. Malulu Injendi, who always sat behind me. It is unfortunate that we have lost them. I will not say that it is God's will. Some deaths do not necessarily come from God. As a Christian, I know of the Book of Job where Satan tried to test Job. Satan told God that he wanted to take all of Job's property to see if he would denounce Him. God agreed on condition that Satan would not touch Job's life. As Christians, we should not say that every death comes from God. This is not the case. Some deaths come from Satan. I believe Satan has taken our colleagues. We should condemn him through prayer and the Bible.

The Temporary Speaker (Hon. Peter Kaluma): Hon. Paul Biego.

Hon. Paul Biego (Chesumei, UDA): Thank you for giving me this opportunity to add my voice to the Bill. Before I do that, let me also take this opportunity to join my colleagues in mourning our colleagues, Hon. Cheptumo, who is the Senator of Baringo, and our very own Hon. Injendi. May Hon. Injendi's soul rest in peace. He was a very close Member to me. Today being Wednesday, you know that you and I really missed him in church. Members, we have mass every 7.30 a.m. on Wednesdays. We really missed him. May their souls rest in peace.

I want to use this opportunity to support the Bill even after lawyers have talked and tried to intimidate us. They are speaking as if they are in court. I am one of the Members of the Departmental Committee on Finance and National Planning.

At the onset, I rise to support the Bill in totality. It seeks to provide administrative structures to manage the Equalisation Fund established in Article 204 of the Constitution. It establishes the Equalisation Fund Advisory Board. The Bill also seeks to apply structures and responsibilities of bodies or officials tasked with administering the Fund. I believe this legislative amendment will help make the Equalisation Fund more visible. I have heard many of my colleagues say that they have not seen or appreciated the Equalisation Fund, but if it is not allocated to your county, you might know very little about it. It is currently allocated to only 14 counties. We need to discuss the amendments that we should propose so that the money that is allocated under the Equalisation Fund is well utilised.

The Bill will help to provide basic services including water, roads, health facilities and electricity to marginalised areas to ensure that those regions can access the same services enjoyed by other areas or counties that are not marginalised.

The Bill also seeks to provide for sources of funds. As you were making your presentation, you mentioned the typographical error, which needs to be corrected. The amendments are correcting it by including the term "one-half per cent of all the revenue collected by the national Government". I support the Bill in totality.

The Bill also requires a representative nominated by the Senate to sit in the County Technical Committee. That has been amended and replaced by three members from organisations working with the counties. That would be better than having a representative from the Senate. I also support that amendment. The composition of the three people whom the Committee has proposed is good because there will be a representative of people living with disabilities (PLWDs) unlike what was previously in the Bill, which had no representation from that group.

The Temporary Speaker (Hon. Peter Kaluma): Member for Mwea, what is out of order?

QUORUM

Hon. Mary Maingi (Mwea, UDA): Thank you, Hon. Temporary Speaker. I rise pursuant to Standing Order 35. This is a very important Bill and most Members would like to

contribute to it, including myself. I am concerned about the issue of quorum. Could you, please, guide us on quorum, Hon. Temporary Speaker?

The Temporary Speaker (Hon. Peter Kaluma): The Quorum Bell to be rung for 10 minutes as per the Standing Orders.

(The Quorum Bell was rung)

ADJOURNMENT

The Temporary Speaker (Hon. Peter Kaluma): Hon. Members, the time being 8.32 p.m., this House stands adjourned until Thursday, 20th February 2025, at 2.30 p.m.

The House rose at 8.32 p.m.

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