

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Thursday, 30<sup>th</sup> November 2017

The House met at 2.30 p.m.

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

### PRAYERS

### PAPERS LAID

**Hon. A.B. Duale:** Hon. Speaker, I beg to lay the following Papers on the Table of the House, today, Thursday, November 30, 2017:

The List of Nominees to five National Government Constituencies Development Fund (NG-CDF) Committees from the National Government Constituencies Development Fund Board.

The Centre for Advocacy against Alcohol and Drug Abuse (CAADA) Observation Report on the repeat presidential election in Kenya, October, 2017.

The Annual Report and Financial Statement of the University of Eldoret for the year ended 30<sup>th</sup> June 2016.

The Reports of the Auditor-General on the financial statements in respect of the following institutions for the year ended 30<sup>th</sup> June 2017 and the certificates therein:

- (a) The Central Bank of Kenya (CBK); and
- (b) East African Portland Cement Company Limited.

The Reports of the Auditor-General on the financial statements in respect of the following institutions for the year ended 30<sup>th</sup> June 2016 and the certificates therein:

- (a) Kenyatta International Convention Centre (KICC); and
- (b) Kenya Broadcasting Corporation (KBC)

The Reports of the Auditor-General on the financial statements in respect of the following constituencies for the year ended 30<sup>th</sup> June 2016, and the certificates therein:

- (a) Makueni Constituency;
- (b) Kitui West Constituency;
- (c) Kitui Rural Constituency;
- (d) Kitui South Constituency;
- (e) Kitui Central Constituency;
- (f) Turkana Central Constituency;
- (g) Endebess Constituency;
- (h) Kapseret Constituency;
- (i) Turkana West Constituency;
- (j) Manyatta Constituency;

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- (k) Kapenguria Constituency;
- (l) Kilifi North Constituency; and
- (m) Soy Constituency.

The Report of the Auditor-General on the financial statements of the Uwezo Fund Oversight Board for the year ended 30<sup>th</sup> June 2015, and the certificate therein.

## STATEMENT

### BUSINESS FOR THE WEEK COMMENCING 5<sup>TH</sup> DECEMBER TO 7<sup>TH</sup> DECEMBER

**Hon. A.B. Duale:** Hon. Speaker, pursuant to Standing Order No.44(2)(a) on behalf of the House Business Committee, I rise to give the following statement:

The House Business Committee (HBC) met on Wednesday this week to give priority to the business of the House. The HBC has prioritised the following business for consideration next week. On Tuesday the House is scheduled to consider:

- (1) The appointment of Members to the Committee on Selection;
- (2) The appointment of Members to the Committee on Appointments; and
- (3) The appointment of Members to the Procedure and House Rules Committee.

After the appointments have been approved by the House, it is envisaged that we will consider the Report of the Committee on Selection on the proposal for appointments of Members to various Committees.

The House will also receive - and it is important - and consider the Report of the Procedure and House Rules Committee on the proposed amendments to the Standing Orders relating to the membership of various Committees. In this Report, we expect that every Member of the august House will serve in two Committees – one Departmental and one Select.

In the same week, we will also continue with the Second Reading of the following Bills: The Public Trustee (Amendment) Bill, 2017 and the Copyright (Amendment) Bill, 2017, should we not conclude them today.

For the purpose of correcting the House records, may I inform the House that I have since withdrawn the Energy Bill (National Assembly Bill No.41 of 2017) and the Petroleum (Exploration, Development and Production) Bill (National Assembly Bill No.40 of 2017), pursuant to Standing Order No.140. This is to allow for the republication and presentation of those Bills afresh to the House.

May I also bring to the attention of the House that in accordance with the calendar of the House and Standing Order No.27 (1), it is expected that the House may either go on long recess next week on Friday or alter the calendar of the House to extend its session of this year, should there be any urgent business from the Executive, though this is a matter to be discussed by the HBC that you chair and we shall give the way forward.

I now wish to lay this statement on behalf of the House Business Committee on the Table of the House.

## MOTIONS

## DESIGNATING SERVICE LANES FOR EMERGENCY VEHICLES

**Hon. Speaker:** Order Members. Debate on this Motion was concluded yesterday and what remained was for the Question to be put, which I hereby do.

*(Question of the Motion as amended put and agreed to)*

*Resolved accordingly:*

THAT, aware that the capacity of highways and urban roads in the country is increasingly unable to cope with ever-increasing vehicle traffic, particularly in cities and urban centres resulting into traffic congestion and snarl-ups; noting that these traffic congestions have resulted into serious inconveniences and wastage to motorists, heavy economic losses in terms of work hours and fuel consumption in traffic jams; concerned that these roads and highways lack dedicated lanes for use by emergency vehicles such as police, ambulances and fire engines and other such vehicles in emergency situations; cognizant of the fact that lack of dedicated lanes have many times led to loss of lives when emergency vehicles are not able to get smooth passage due to traffic congestion, this House urges the Ministry of Transport and Infrastructure through the Kenya Urban Roads Authority, Kenya Rural Roads Authority and the Kenya National Highways Authority to provide for service lanes in future road design plans and designate service lanes for emergency vehicles along the urban roads and highways throughout the country.

APPROVAL OF NOMINEES TO VARIOUS CONSTITUENCY COMMITTEES  
OF NATIONAL GOVERNMENT CONSTITUENCY DEVELOPMENT FUND

**Hon. A. B. Duale:** Hon. Speaker, I beg to move the following Motion:

THAT, pursuant to the provisions of Section 43 (4)...

**Hon. Speaker:** Just a second, Leader of the Majority Party. I see that there is an intervention from Hon. Shamalla. You placed your card in the intervention slot.

**Hon. (Ms.) Jennifer Shamalla:** Hon. Speaker, I beg your pardon. I do not have an intervention.

**Hon. Speaker:** Proceed, Leader of the Majority Party.

**Hon. A. B. Duale:** Hon. Speaker, I beg to move the following Motion:

THAT, pursuant to the provisions of Section 43(4) of the National Government Constituency Development Fund (NG-CDF) Act, 2015 and paragraph 5 (9 & 10) of the National Government Constituency Development Fund Regulations, 2016, this House approves the list of nominees for appointment to the following twenty two (22) Constituency Committees of the National Government Constituency Development Fund, laid on the Table of the House on Wednesday, November 29, 2017 and Thursday, November 30, 2017:

**1. BALAMBALA CONSTITUENCY**

(i) Abdi Shale Bulle	Male Youth Representative
(ii) Bishar Abdi Hussein	Male Adult Representative
(iii) Habiba Mohamed Daud	Female Youth Representative
(iv) Ubah Hassan Yunis	Female Adult Representative
(v) Ismail Said Maalim	Representative of Persons Living with Disability
(vi) Katra Dagane Gedi	Nominee of the Constituency Office (Male)
(vii) Adan Hussein Durow	Nominee of the Constituency Office (Female)

**2. EMBAKASI NORTH CONSTITUENCY**

(i) Joseph Maina Mwihaki	Male Youth Representative
(ii) Richard Mwangi Chuchu	Male Adult Representative
(iii) Agnes Njeri Muthoni	Female Youth Representative
(iv) Florence Nyambura Njeri	Female Adult Representative
(v) Eros Kamau Mukami	Representative of Persons Living with Disability
(vi) Peter Kinyua Kimemia	Nominee of the Constituency Office (Male)
(vii) Elmina Atamba Mwimali	Nominee of the Constituency Office (Female)

**3. EMUHAYA CONSTITUENCY**

*(Additional names to those approved by the House on Wednesday, 8<sup>th</sup> November 2017)*

(i) Charles Gedion Oyalo	Nominee of the Constituency Office (Male)
(ii) Roseline Akiso Ochonya	Nominee of the Constituency Office (Female)

**4. HAMISI CONSTITUENCY**

(i) Brian Kedode Mwangi	Male Youth Representative
(ii) Stephen Ganira Ngiliman	Male Adult Representative
(iii) Laura Mikhala Mujesia	Female Youth Representative
(iv) Mary Jemaiyo Mbiti	Female Adult Representative
(v) Japheth Bulimo Musitikho	Representative of Persons Living with Disability
(vi) Robert Serete	Nominee of the Constituency Office (Male)
(vii) Edda Mideva Lujesi	Nominee of the Constituency Office (Female)

## 5. HOMABAY TOWN CONSTITUENCY

(i) Owala Isaiah Nyadiero	Male Youth Representative
(ii) Hannington Oluoch Owuor	Male Adult Representative
(iii) Monicah Akinyi Nyadiero	Female Youth Representative
(iv) Pamela Adhiambo Andele	Female Adult Representative
(v) Charles Otieno Ogola	Representative of Persons Living with Disability
(vi) Joseph Obuya Ogolla	Nominee of the Constituency Office (Male)
(vii) Conslate Anyango Ngonga	Nominee of the Constituency Office (Female)

## 6. KITUTU CHACHE NORTH CONSTITUENCY

(i) Evan Nyameino Riechi	Male Youth Representative
(ii) Samwel Onyiego Ondieki	Male Adult Representative
(iii) Mary Kwamboka Onkoba	Female Youth Representative
(iv) Jane Nyamota Gesembe	Female Adult Representative
(v) Andrew Mokaya Mwebi	Representative of Persons Living with Disability
(vi) Charles Nyangari	Nominee of the Constituency Office (Male)
(vii) Zainabu Mokeira Manono	Nominee of the Constituency Office (Female)

## 7. NYAKACH CONSTITUENCY

(i) Justus Ochieng Odhoch	Male Youth Representative
(ii) Joel Onono Mckodongo	Male Adult Representative
(iii) Leah Brigitte Akoth Aringo	Female Youth Representative
(iv) Atieno Susan Otieno	Female Adult Representative
(v) Nashon Ogada Osenya	Representative of Persons Living with Disability
(vi) Henry Okoth Odingo	Nominee of the Constituency Office (Male)
(vii) Hellen E Were	Nominee of the Constituency Office (Female)

## 8. SABOTI CONSTITUENCY

(i) Vincent Khamati Mukabwa	Male Youth Representative
(ii) Benard Chepas	Male Adult Representative
(iii) Mouryne Atieno Obote	Female Youth Representative
(iv) Catherine Naliaka Chemiati	Female Adult Representative
(v) Irene Nafula Barasa	Representative of Persons Living with Disability
(vi) Willy Kibet	Nominee of the Constituency Office (Male)
(vii) Margaret Sesi	Nominee of the Constituency Office (Female)

## 9. WAJIR NORTH CONSTITUENCY

*(Additional name to those approved by the House on Wednesday, 8<sup>th</sup> November 2017)*

Rukia Abdullahi Ahmed                      Nominee of the Constituency Office (Female)

## 10. LAGDERA CONSTITUENCY

(i) Omar Abdi Yarrow                      Male Youth Representative  
(ii) Aden Mohamed Ahmed                Male Adult Representative  
(iii) Maryan Abdi Iman                    Female Youth Representative  
(iv) Sondus Ali Samow                    Female Adult Representative  
(v) Ahmed Hassan Aden                   Representative of Persons Living with Disability  
(vi) Weli Nur Korone                      Nominee of the Constituency Office (Male)  
(vii) Fatuma Siyat Aden                    Nominee of the Constituency Office (Female)

## 11. ISIOLO SOUTH CONSTITUENCY

(i) Mohamed Mandera                      Male Youth Representative  
(ii) Abdullahi Hallo Huka                 Male Adult Representative  
(iii) Halima Ali Guyo                      Female Youth Representative  
(iv) Dahabo Abdikadir Daud              Female Adult Representative  
(v) Hussein Godana Golicha               Representative of Persons Living with Disability  
(vi) Abdullahi Hassan Roba                Nominee of the Constituency Office (Male)  
(vii) Karu Diba Boru                        Nominee of the Constituency Office (Female)

## 12. MSAMBWENI CONSTITUENCY

(i) Salim Mohammed Kirinzo              Male Youth Representative  
(ii) Muhsin Abdallah Kitwana             Male Adult Representative  
(iii) Rose Kamene Matheka                Female Youth Representative  
(iv) Mwanaisha Rashid Halfani            Female Adult Representative  
(v) Thabiti Mchambi Mohamed            Representative of Persons Living with Disability  
(vi) Shee Omari Mwangwayu              Nominee of the Constituency Office (Male)  
(vii) Sita Hamisi Mwangogo                Nominee of the Constituency Office (Female)

## 13. MWINGI NORTH CONSTITUENCY

(i) Joseph Mwendwa Ngalu                Male Youth Representative  
(ii) Stephen Mwendwa Kimwele            Male Adult Representative  
(iii) Christine Syombua Musyoka           Female Youth Representative  
(iv) Peninah Munanie Musyoka            Female Adult Representative  
(v) Kyalo Kavisi                            Representative of Persons Living with Disability  
(vi) Musyoka Makasa Kathuru              Nominee of the Constituency Office (Male)

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(vii) Beth Muthili Mwamuti Nominee of the Constituency Office (Female)

#### 14. RANGWE CONSTITUENCY

(i) Otieno Alosi Jared Male Youth Representative  
(ii) Dan Oluoch Oginga Male Adult Representative  
(iii) Mercy Adhiambo Okombo Female Youth Representative  
(iv) Carolyn Atieno Otieno Female Adult Representative  
(v) Sammy Ochieng Ogola Nominee of the Constituency Office (Male)  
(vi) Jackline Atieno Mwombo Nominee of the Constituency Office (Female)

#### 15. STAREHE CONSTITUENCY

(i) Philip Wanjala Makanda Male Youth Representative  
(ii) George Mwenda Kirera Male Adult Representative  
(iii) Hildah Wanjiru Wairimu Female Youth Representative  
(iv) Esther Mumbi Kimani Female Adult Representative  
(v) Nicodemus Malombe Makau Representative of Persons Living with Disability  
(vi) Gideon Njagu Thairu Nominee of the Constituency Office (Male)  
(vii) Mary Wanjiku Kiarie Nominee of the Constituency Office (Female)

#### 16. UGENYA CONSTITUENCY

(i) Gerald Owino Odhiambo Male Youth Representative  
(ii) Adundo Oyenga Jofred Male Adult Representative  
(iii) Rose Achieng Oduor Female Youth Representative  
(iv) Keaty Adhiambo Ogunyo Female Adult Representative  
(v) Maurice Owino Okumu Representative of Persons Living with Disability  
(vi) Carolus Oduor Ayugi Nominee of the Constituency Office (Male)  
(vii) Millicent Akinyi Omondi Nominee of the Constituency Office (Female)

#### 17. LUANDA CONSTITUENCY

(i) Meshack Otieno Male Youth Representative  
(ii) Samuel Omukala Mbatia Male Adult Representative  
(iii) Jescah Ongachi Khelwa Female Youth Representative  
(iv) Ruth Minayo Owuor Female Adult Representative  
(v) Wilfred Omuyoyi Osiolo Representative of Persons Living with Disability  
(vi) Arthur Holland Ombima Ogonjis Nominee of the Constituency Office (Male)  
(vii) Sophie Beatrice Omole Nominee of the Constituency Office (Female)

**18. BUDALANGI CONSTITUENCY**

(i) Jacktone Usiku Onyango	Male Youth Representative
(ii) John Alfred Omumi	Male Adult Representative
(iii) Morine Chimwany	Female Youth Representative
(iv) Marsela Nabudi Odende	Female Adult Representative
(v) Mary Akhoyi Ajiambo	Representative of Persons Living with Disability
(vi) Alfred Wesonga Siduwa	Nominee of the Constituency Office (Male)
(vii) Susan Kadogo Okello	Nominee of the Constituency Office (Female)

**19. KASARANI CONSTITUENCY**

(i) Francis Gitura Wokabi	Male Youth Representative
(ii) Joel Kiprop Kosgei	Male Adult Representative
(iii) Zahiya Jacob Haji	Female Youth Representative
(iv) Mercy Njoki Mwangi	Female Adult Representative
(v) Shem Maina Mwangi	Representative of Persons Living with Disability
(vi) Joseph Machang'a Kamau	Nominee of the Constituency Office (Male)
(vii) Virginiah Wairimu Irungu	Nominee of the Constituency Office (Female)

**20. KISUMU CENTRAL CONSTITUENCY**

(i) Calvins Omondi Okumu	Male Youth Representative
(ii) Samson Nyawanda Oketch	Male Adult Representative
(iii) Hilda Ruth Anyango	Female Youth Representative
(iv) Anita Nyagaya Ogutu	Female Adult Representative
(v) Maxwell Owuor Mito	Nominee of the Constituency Office (Male)
(vi) Rosemary Mbeka Otieno	Nominee of the Constituency Office (Female)

**21. MUHORONI CONSTITUENCY**

(i) Nelson Mandela Opole	Male Youth Representative
(ii) Benard Austine Ogutu Del	Male Adult Representative
(iii) Hildah Atieno Olanga	Female Youth Representative
(iv) Nancy Iminza Kayere	Female Adult Representative
(v) Hamida Ismail Ahmed	Representative of Persons Living with Disability
(vi) Paul Oloo Aluoch	Nominee of the Constituency Office (Male)
(vii) Wilfrida Adhiambo Olaly	Nominee of the Constituency Office (Female)

**21. RUARAKA CONSTITUENCY**

(i) Joanes Ochieng Olunya	Male Youth Representative
(ii) Charles Agar Owino	Male Adult Representative
(iii) Esther Kaluki Mulwa	Female Youth Representative
(iv) Kerine Beryll Anyango Midamba	Female Adult Representative



(v) Kennedy Odhiambo Ayuka	Representative of Persons Living with Disability
(vi) Peter Odhiambo Akuma	Nominee of the Constituency Office (Male)
(vii) Ann Achieng Opondo	Nominee of the Constituency Office (Female)

These are the 22 constituencies that were left out when the House was dealing with the other many constituencies for approval. They need to be gazetted by the NG-CDF Board and the Cabinet Secretary, who will provide the way forward for the constituencies to receive their allocations in order to fulfil the mandate of those committees.

On the same note, I have just spoken to the Office of the Attorney-General and I am sure that either today or tomorrow, the ones that we approved last time before we went on recess will be gazetted so that Members can now access the resources meant for their constituents. I am sure the Cabinet Secretary for Devolution and Planning who oversees the Board will make sure that this is done on Friday and next week, Henry Rotich, the current Cabinet Secretary for the National Treasury can release those funds. This is just to approve those Committees.

I will ask my colleague, the Chief Whip of the Majority Party, Hon. Washiali, to second.

**Hon. Washiali:** Thank you, Hon. Speaker. As I second, I have been looking at the lists availed. When we changed this Act of the national Government, we had the oversight Committees which seem to have been forgotten completely on this list of members of the NG-CDF. I was just wondering how we will handle this because a committee on its own, without oversight committees - which we were meant to chair as Members of Parliament - will not be able to do enough. Therefore, as I second, I just want to insist that, while approving these committees which will eventually be gazetted by the AG, we also need to move very fast and make sure that the oversight teams that are chaired by the Members of Parliament are also gazetted so that we can have a complete NG-CDF Committee.

I beg to second.

**Hon. Speaker:** Member for Mvita, why do you not just walk across there? The lady seems to be exciting you. The lady walking out, you are in the National Assembly.

*(Laughter)*

*(Question proposed)*

For avoidance of doubt without reading the names of the members nominated into those Committees, I want to name the constituencies: Balambala, Embakasi North, Emuhaya, Hamisi, Homa Bay Town, Kitutu Chache North, Nyakach, Saboti, Wajir North, Lagdera, Isiolo South, Msambweni, Mwingi North, Rangwe, Starehe, Ugenya, Luanda, Budalangi, Kasarani, Kisumu Central, Muhoroni and Ruaraka.

Member for Kajiado North, do you want to say something?

**Hon. Manje:** Thank you, Hon. Speaker. As I support this list, I got concerned when I saw the last page on the 22<sup>nd</sup> constituency, namely, Ruaraka Constituency. According to our Constitution, one is supposed to consider regional balance. However, if you check that constituency you will ask yourself whether it is a constituency in Nairobi or in a different place. This is just a concern.

**Hon. Speaker:** Where is the Member for Ruaraka Constituency? I can hear him laughing. Hon. T.J Kajwang', is it your constituency? The Member for Kajiado North wonders if this is a constituency in Nairobi, I am sure it must be.

**Hon. Kajwang':** Thank you, Hon. Speaker. The problem is that Members from the great rural sides of this country may not be aware of the cosmopolitan nature of Nairobi. Ruraka is well constituted and it is very cosmopolitan. I know the Member is looking at the names and profiling them with their ethnic backgrounds, but you can see there are great names like Esther Kaluki Mulwa. I know he is missing Njeri and Mwangi but that is just how life is. When Ruaraka decides to resist, they resist in a big way. Thank you Hon. Speaker.

**Hon. Speaker:** Hon. Lessonet.

**Hon. Lessonet:** Thank you Hon. Speaker for this opportunity to support the Motion on the Approval of Nominees to the Various Constituencies. As I do that, I just want to make reference to a ruling by the Court of Appeal a week or so in terms of the Constituencies Development Fund Act. Probably you have not informed Members that I used to be the Chair, let them be aware now. In that ruling, the CDF Act 2013/ 2014 was declared unconstitutional by the High Court. We made an appeal to the Court of Appeal of the CDF Act 2013 and went ahead to do a new Act, now the National Government Constituencies Development Fund (NG-CDF) Act 2015. The ruling by the court of Appeal is in respect of the CDF Act 2013. We now got favourable ruling except for two clauses that the court found unconstitutional, one being 24(3)(c) which is in respect of how to appoint the eight committee members. In the former act, it was the Member of Parliament who was doing it. The court found out that to be unconstitutional. The other one is Clause 24(3)(f) where the MP was an *ex officio* Member of that Committee. Other than those two clauses together with 37(1)(a) concerning county projects committee, the entire Act is now alive.

We now have two Acts of Parliament to do with CDF. Soon, once this House constitutes the relevant committee, it will be the first assignment to tell us which Act we are using. Is it the NG-CDF Act 2015 or the CDF Act 2013 which the Court of Appeal has given us? So basically, that is the import of that ruling and I want to assure Members that the various articles which were in the media should be ignored because they wrote so much for so little which went on in the Court of Appeal.

Hon. Speaker, other than that I support this process of appointing Constituency Committee Members. With those remarks, I thank you.

**Hon. Speaker:** Hon. Lessonet, what the incoming committee should begin considering is harmonising that ruling, particularly sections 24 and 37, just to bring them in tandem with the new NG-CDF Act, because that has not been challenged. They are not radically different, but of course to the extent the ruling makes reference to county projects and the role of the MP, those are the areas that the new committee should look into to harmonise and that can happen within an amendment to the NG-CDF Act, so that it carries everything which the Court of Appeal upheld.

Indeed, that is a legitimate concern. The incoming committee should look into that so that Members can proceed with their projects without expecting that some so called "Public spirited individuals" will again find idleness of time to keep chasing Members. Many of them have not even read the Act to understand that, indeed, as the Hon. Washiali pointed out, the Member is

not the one chairing but the perception seems to be lingering that the Members are the ones who Chair the NG-CDF committees. It is a matter that needs to be followed.

I wonder if all these Members who have put interventions desire to contribute to this or it is a question of the early bird catching the worm. Let us hear Hon. John Olago Aluoch.

**Hon. Aluoch:** Thank you Hon. Speaker. In moving this Motion I was expecting the Hon. Leader of the Majority Party to address the false media reports on the court case. However, Hon. Lessonet has done well to explain to the House. If you were listening to radio stations and reading newspapers, the reports on that court case were based on misconceptions and ignorance. I think reporters and media staff who deal with court cases should have some element of law so that they understand. The Hon. Leader of the Majority Party should tell the country that NG-CDF is here to stay unlike what the media reported. It is important to understand that the CDF Act 2013 was repealed. It does not exist anymore. What we have is the NG-CDF Act. In view of the court ruling, all that the House needs to do is very simple; Amend the law to align it with the court ruling and the NG-CDF continues. So, the country needs to understand that NG-CDF is here to stay and the role of the MP whether Senators and Governors like it or not will remain in that Act. Thank you.

**Hon. Speaker:** Let us have the Member for Marakwet East.

**Hon. Bowen:** Thank you, Hon. Speaker. I support this Motion. I ask the Hon. Leader of the Majority Party to ask the NG-CDF Board to gazette the officers for the other constituencies which have been approved by this House. We have already received some messages from the Kenya Rural Roads Authority (KeRRA) that we need to constitute the KeRRA Boards and it forms parts of the NG-CDF. So, I support.

**Hon. Speaker:** So, you are receiving reports about what?

**Hon. Bowen:** That those NG-CDF Committee Members from constituencies which we had approved in this House must have their names gazetted so that work begins.

**Hon. Speaker:** That is what the Hon. Leader of the Majority Party said. It shall be done tomorrow. Let us have the Member for Seme.

**Hon. (Dr.) Nyikal:** Thank you, Hon. Speaker for giving me this opportunity to comment on this.

**Hon. Speaker:** You have assumed a different sitting position. I think the Member for Ruaraka has taken your usual position.

**The Member for Seme (Hon. (Dr.) James Wambura Nyikal):** We are still settling, so we will know our places soon. Since this is my first time to address the 12<sup>th</sup> Parliament. I must first of all express my appreciation to the people of Seme for re-electing me with not as much effort as the first time. This must mean that I did something good in the 11<sup>th</sup> Parliament. I am really grateful that they appreciated my work.

**Hon. Speaker:** Perhaps even within the National Government Constituencies Development Fund (NG-CDF) framework.

**The Member for Seme (Hon. (Dr.) James Wambura Nyikal):** Exactly, you have literary taken words out of my mouth. I think there is need to fast track the NG-CDF processes and harmonise all its aspects. We hear they have a court case, an oversight committee and representatives of the Board who are appointed by us. Even the names of the nominees we are passing today have not been aligned to the extent that when they are gazetted, it is not clear

whether the NG-CDF will start working effectively as it should. Therefore, these issues need to be relooked.

The names of the nominees to various constituency committees of NG-CDF which we passed a few weeks ago have not been gazetted. There is also a considerable delay of releasing funds not only for the Financial Year 2017/2018 but also for 2016/2017. The faster this is done, the better. Comments have been made and I agree with both Hon. Olago and Hon. Lessonet that the court ruling was referring to the old Constituencies Development Fund (CDF) which has been repealed and therefore has no consequences except for a few areas. In fact, I discussed this with the Chief Executive Officer (CEO) of NG-CDF.

The ruling has given us more opportunity. When we go for harmonisation as has been indicated we should take advantage of this and relook at the NG-CDF Act. The activists are spirited public figures as you have said and they have presented many court suits relating to NG-CDF. This is not helping much because what they are doing is driving a spirit of adversarial relationship between the county governments and the national Government. This in my mind is absolutely unnecessary. The CDF Act, 2015 put a very clear separation between the Member of Parliament and the CDF Committee. The approval of names of nominees to various constituency committees was not being done before. The CDF had a panel which sat in the absence of the MP to appoint two people to represent him in the Board and that panel would pick two committee members. Once the committee members were picked they would choose their own officials. The involvement of MPs which we are doing is driving unnecessary competition between the national Government and county governments. These are two governments which are serving the same people.

Article 189 and Schedule Six of the Constitution have clearly indicated the relationship between the national Government and the county governments. We can use this to solve the issues of NG-CDF, instead of going to court over and over, which is not necessary. The impact of NG-CDF is clear for everybody to see. It is one of the Government institutions with the lowest overhead expenditure, compared to parastatals and ministries. Shilling by shilling NG-CDF is doing a commendable job in this country. There is need to fast track so that when the Committee is in place it relooks into both old and new Acts and the court ruling which will give us a more robust Act to use. Thank you.

**Hon. Speaker:** The Member for Kimilili.

**Hon. Didmus Mutua:** Thank you, Hon. Speaker. I also rise to support this Motion. While I appreciate the comments by the Leader of the Majority Party that the Attorney General is going to gazette those names tomorrow, it is regrettable that he is sleeping on the names which were passed here very many weeks ago. He should know that his duty is to serve Kenyans in a more efficient manner. We also pass Bills here and they take time to be implemented, just as Kenyans who are waiting to inherit their wealth go through very long bureaucracies at the AG's Office.

We should not inconvenience Kenyans because immediately the names were passed people started applying for services. Most of the new MPs did not even have NG-CDF staff to process the very long list of bursary applicants. The AG should be warned that any delay from his office affects millions of Kenyans who are looking for services in the NG-CDF offices. We need to move with speed as a House and whatever we approve, other Government Departments must act with seriousness. Otherwise, we will be doing a zero sum game. Thank you, very much.

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**Hon. Speaker:** Member for Igembe Central.

**Hon. Kubai Iringo:** Thank you, Hon. Speaker for giving me this opportunity to contribute to this Motion which I support. This exercise is long overdue and the faster we do it the better because most of our old projects are yet to be completed and others have stalled. As we are almost going for our long break we need this money urgently so that we can complete our projects. Therefore, I urge that as we approve this Motion and have the names gazetted as the Leader of the Majority Party has said, the National Treasury and the NG-CDF Board should move fast and release the funds so that, at least some projects in the constituencies can be completed.

Since the NG-CDF money started flowing into our constituencies the electorate look up to our offices to help them. Whenever we go to our offices without this money, it becomes very difficult to serve the community. Different communities forward their projects which they want to be undertaken. Therefore, once we have this money the MPs will be kept busy and at least people will see they are working for them.

Hon. Speaker, I support. Thank you.

**Hon. Speaker:** The Member for Turkana Central.

**Hon. Nakara:** Thank you, Hon. Speaker. The first thing which delighted me about the court ruling is the recognition by the court that NG-CDF is doing a good job in this country. That alone taught Kenyans that despite the activism all over, NG-CDF is doing a good job. The role of MPs in this fund is totally zero because we only play an oversight role just like one of our legislative duties here in this Parliament.

As much as activists and other Non-Governmental Organisations (NGOs) oppose this fund, the work it has done all over Kenya is good. It has equalised development in this country and we want to appreciate the work it has done, especially in rural areas. It has improved the living standards of people in terms of education bursaries and opening up small shopping centres for the local man. It has also given women contracts and this has empowered our people. The noise which we hear outside there that NG-CDF is not doing very well is meant to interrupt and distract its work. Another thing that we need to raise is about committees that have to be selected. We need to quicken the process because very soon we are going for a long recess. It will be very boring to be in the constituency without going around seeing the projects of NG-CDF. So we challenge the Leader of the Majority Party to make sure that the funds are there so that when we go for the long recess, we have the development projects going on.

With those few remarks, I support the Motion.

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

**Hon. Murugara:** Thank you, Hon. Speaker. I rise to support the Motion. As we said last time, it is very important that we constitute these committees without much ado because the funding from the National Treasury is long overdue and it is high time Members of Parliament went to do their mandate. It is high time the Board is allocated money by the National Treasury because the last time we made enquiries we were told the money had not left the National Treasury and it had not gone to the Board. Therefore, as we pass this Motion today, it is my humble prayer to the National Treasury that money should be allocated to the Board and the Board should be able to allocate money to the various constituencies.

I, therefore, support.

**Hon. Speaker:** Next is the Member for Ugunja.

**Hon. Wandayi:** Thank you, Hon. Speaker. Let me add my voice to this debate. From the outset, I support the Motion. It cannot be gainsaid. In fact, NG-CDF is the pioneer devolved fund in this country. It is also not in doubt that NG-CDF has had much bigger impact in terms of development than, perhaps, most of our county governments.

There are two issues I want to speak to. One is the assurance by Hon. Duale that the names of the various committees will be gazetted tomorrow or so by the Attorney-General's Office. That is good enough. However, given the bureaucracy we have in Government, my apprehension is that we may end up going for Christmas and starting the New Year without these funds actually being in the accounts of the various constituency committees. From experience, once the AG gazettes or causes these names to be gazetted, the National Treasury will take its sweet time to release the funds to the NG-CDF Board, which will also take time to release these funds to the constituency accounts. After that, you will also have some time waiting for the Authority to Incur Expenditure (AIEs) to be released. My view would have been that if there is anything that should make this House not to go on recess is the matter of the disbursement of the NG-CDF.

Hon, Speaker, you need to inform Hon. Duale that I have never resisted development. What I resist is bad governance and autocracy. This House must put its foot down and demand that these monies be disbursed not only by the National Treasury but also by the NG-CDF Board before it can even imagine going on recess. If we do not do so, I caution my new colleagues that you will be in trouble come January when everybody will be on your doorsteps looking for bursaries.

The second thing I want to speak to is the matter that was raised by my good friend and neighbour, Hon. Washiali. The purpose of the Constituency Oversight Committees has now been negated. It was a great oversight on the part of the NG-CDF Committee under Hon. Lessonet to have failed to put in place a mechanism to facilitate these Committees to enable them to function properly. An oversight Committee cannot play its oversight role without facilitation. These Committees actually exist at the mercy of the MPs. I am sorry to say so. They do not even have money to move from one point to another. So, one of the things that the new NG-CDF Committee should undertake as a matter of urgency is to ensure that there is a proper mechanism for facilitation of the Constituency Oversight Committees to enable the NG-CDF to function properly. By so doing, they would be helping the Office of the Auditor-General in making their work much easier because most of the work that office does is as a result of, perhaps, lack of proper oversight at the constituency level.

With those very many remarks, I support this Motion and pray that these monies are released as quickly as possible. Thank you, Hon. Speaker.

**Hon. Speaker:** Let us have the Member for South Imenti.

**Hon. Murungi:** Thank you, Hon. Speaker, for this opportunity to give my sentiments on this Motion. At the outset, I support this Motion. I hope this is the last batch of the constituencies which were left behind. I hope now that all the constituencies have given out their list, gazettelement will be done as the Leader of the Majority Party has promised. Something that is key that this House should do is to constitute the House Committees. The leadership of this House from the two sides should move with speed, put any differences aside if there are any - which I am not aware of- and come up with Committees of this House. This is because we are four months down the line. We are going on recess up to February and we have no Committees.

As a legislator earning a salary, I really feel that I have not done anything for the people who elected me simply because the Committees are not in place. We cannot do anything. However, today I was happy to see the Whip of the Majority Party, Hon. Washiali and the Whip of the Minority Party, Hon. Junet walking together from an office. So, I can see now there is some light at the end of the tunnel. I can see some white smoke might come up very soon so that this House can move on.

Besides the 2017/2018 NG-CDF appropriation which we are waiting for, the NG-CDF Board still has arrears for 2016/2017 Financial Year and in many constituencies, the staff who worked there before August are actually in four to five months arrears. They have been dismissed with arrears which have not been paid. As my colleagues have put it clearly, I blame the National Treasury. It is really failing Kenyans. I think this time round, things should not move as usual. I was happy to hear the President's Speech during the swearing-in ceremony putting to task all civil servants. This is because these people are really failing Kenyans. From this year, as a House we should put our foot down from both sides of the political divide so that we can put the Executive to task because we must deliver service to our people. Now we are going to January. Actually, it is very hard even now to sit in your House at the constituency. I do not know about the other Members. This is because people are coming for bursaries. Tomorrow is 1<sup>st</sup> December and many students will be going to Form One, Form Two and Form Three in January and these people need bursaries. Even if we gazette these members, it will be very impractical to get money disbursed from the National Treasury to the Board and from the Board to the constituencies.

I think the Leader of the Majority Party should really push this. I trust your leadership and we know you can push the National Treasury mandarins to release this money as fast as possible to get to the constituencies. I support the Motion.

**Hon. Speaker:** I had seen a request as you can see where the microphone is. The Leader of the Minority Party has not quite familiarised himself with Article 108 of the Constitution. When you make a request, all your other subjects must relax because you take precedence.

*(Laughter)*

Many of them are winking at me. They are wondering why I have given you the opportunity to contribute. It is because I have seen a request from the Leader of the Minority Party. You take precedence over all of them. When you make your request, please remain around. Proceed, Hon. John Mbadi.

**Hon. Ng'ongo:** Thank you very much, Hon. Speaker, for the honour that is bestowed to my position in the Standing Orders. I want to thank my colleagues from the Minority side who showed confidence in me to lead them as the Leader of the Minority Party. I do not take it for granted.

I want to make my contribution on this Motion on approval of nominees to various constituency committees of the National Government Constituencies Development Fund (NG-CDF). I want to first start by thanking the selection committees of these constituencies which came up with these names, so that we can have for all the constituencies. I know the committees of a number of constituencies were approved. They are over 170. We have additional ones now. Before going to the details of these appointments, I want to talk about the NG-CDF and its

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impact on the development of this country. It is also my pleasure to recognise it because I was worried at one point that the Constituencies Development Fund (CDF) as we used to know it, was almost dying when this matter was still in court. I thank God that the court saw sense that the objective of the NG-CDF is still relevant because we still have national Government functions which are being performed even with devolution. Devolution has just devolved some functions but it has left some at the national level. It is still very relevant to have specific approach and targeted funding of those national Government functions like education, security among others. The court ruled that this concept of CDF is not unconstitutional, but we needed to make amendments to streamline it with the Constitution. I agree with the Judiciary completely.

Looking at the transformation that CDF has brought to the grassroots development in this country, no one in his or her right senses would dispute that it has made positive contribution. Those of us who are keen to remember the pre-CDF period and post CDF period, even if you do not like the fund, will agree that it has made a contribution in this country. I also know that there are a number of instances and areas where this fund has been misappropriated just like any other fund in this country. We want the institutions like the Office of the Auditor-General and Ethics and Anti-Corruption Commission (EACC) to ensure that funds that are appropriated by this House and voted to implement specific programmes at the grassroots level reach the grassroots. The problem is not with the NG-CDF as it is but it is with county funds. We want to see the billions of shillings that are devolved to the counties. I hope that we will devolve more funds to the counties to spur economic growth. As we do that, we want to ask the management of these funds at the grassroots level and the county level to be alive to the fact that these funds are allocated to help spur economic growth but not to lie in the pockets of a few individuals who are privileged to be in a position to access them.

The reason why at times we fight so hard to have national Government leadership is because of this perception that when you get it, you will access resources that probably you would otherwise not access, if your party or your candidate of choice is not in power. We should not only devolve at the county level but also the national Government funds and the national Government functions. If we devolve them properly with resources following these programmes so that every region feels properly catered for that resources are being received at the counties and constituencies regardless of who is in power, then the focus will shift from asking a person from your place or party to be the president. We will now be more objective. We will bake a bigger cake for this country. We will not be talking about sharing of the cake but baking of a bigger cake. We will now be more objective even in our decisions, so that we avoid this unnecessary antagonism.

Let us not think of devolving NG-CDF in terms of percentages. Let us objectively calculate the functions that NG-CDF is supposed to implement in our constituencies. If it is education, how much do we want to allocate for primary schools to improve the infrastructure? How much do we want to allocate to secondary schools to improve the infrastructure? How much do we want to put for our security? How much do we want to put for the specific functions that we want the NG-CDF to help us implement? Once we get the amount, we can then budget and allocate that amount to the NG-CDF to be shared to those constituencies. Putting arbitrary amounts at times sounds very fussy, but by the end of the day, it is all about implementation and service delivery to our people.



I hope no one will take offence with this. Sometimes you ask yourself whether leaders utilise NG-CDF properly. When you watch news, you see some children still sitting under trees. In this era of NG-CDF, some children are still doing exams in mud walled classrooms. That is a shame as leaders from that area. I am being very careful. I am not saying Member of Parliament because as a matter of fact NG-CDF is not supposed be administered and managed by the Members of Parliament, as it is today. Therefore, we are speaking to the committees in those constituencies to get their priorities right. There is this obsession with starting many secondary schools. Why should you start a secondary school in an area where children are still learning under a tree? Why do you want to buy buses? I see this craziness of NG-CDF buying buses everywhere. You are buying buses to give to students who are sitting on stones. That is misplaced priority.

In a nutshell, I am saying and pleading to those committees. I am not pleading to my colleagues here. You are no longer in charge of NG-CDF. Even the courts affirmed the same. If you try to touch NG-CDF, you will be in trouble. You will be jailed. You are no longer in charge of NG-CDF. Those committees which are in charge of NG-CDF should make sure that they prioritise the needs of those areas properly. As Members of Parliament, I still insist that the law we passed which gave us the powers to oversee the CDF must be implemented. I say so because one of the reasons why NG-CDF has succeeded more than any other fund is because these politicians are accountable. Even if you joke, after five years, you will be voted out. We have seen people, and I will not name them, who had issues with managing NG-CDF when it was in our hands in their constituencies. They are not here. Majority of them served for one term, and they were voted out. If you want to follow suit, then sit there and relax.

The National Government Constituencies Development Fund's legal framework has taken it away from you. Perception of the members of the public is still that you are still in charge. Therefore, you need to oversee the use of this money properly. If we are to oversee the usage of this money, the oversight committee we created has to work. I do not know how it died. I thought we had formed a Committee that could oversee the Fund. Whoever is going to be the chair, I hope Hon. Lessonet will not be the Chair again, let him or her be active to make the monitoring of the Fund vibrant.

Hon. Speaker, if there is any money that needs to be properly ring-fenced, it is NG-CDF. I do not want to conclude by mentioning the Senate and its oversight role on county funds. This time round, I plead with our brothers and sisters in the Senate to take their work more seriously. If it is lack of funds that make senators not to perform the function of overseeing, Hon. Speaker, as the Chairman of Parliamentary Service Commission, and we as a House, during the budget-making process, need to provide some money to the Senate to use in its oversight role on our counties. What is happening in counties is a shame. We cannot let it go on the way it is. We cannot have a simple clerk who earns less than Kshs200,000 in a county building hotels in two or three years. By the way, they are very poor. Most of them did not go to school to learn business. They even build hotels in their rural homes where there are no customers. You find someone putting up a hotel that should be built in Mombasa, Naivasha or Nairobi for domestic tourists. Someone puts up a huge hotel in his home like Waondo, in Suba North Constituency.

*(Laughter)*

I am not saying that my brother here has put up one. That is an example I have given. How on earth would you have a clerk working eight hours in an office, not doing any business that can be seen putting up a huge hotel and constructing huge houses for three wives? Immediately they got these jobs, they married two more wives and have concubines. They also have a fleet of motor vehicles. When you observe them, you cannot help but ask whether they are serious or not. That is why most of these governors, if you noticed, struggled to win their second term. They would have gone for a third term but fortunately we had set their terms as a maximum of two. I pray that they do not do more damage in their second term because they are not going to seek re-election, maybe God will protect us. But before God comes in, the Auditor-General and the Ethics and Anti-Corruption Commission (EACC) should save us from this wanton theft of public funds.

Finally, the national Government... I do not talk much because I cannot talk to a Government that is not clearly in place. But it will be in place.

*(Loud consultations)*

Even those who believe that the President was sworn still know there is no Cabinet. It will be put in place soon. So, those of us who do not expect a Cabinet know that there is no President who has been sworn in. In fact, we soon expect another serious swearing in to take place. Thank you very much.

**Hon. Speaker:** The Leader of the Minority Party has not been in the Chamber. This was like a maiden speech. So, it was fair that he touches his pet subject which he concluded. He is entitled to his views. There is nothing wrong with that.

Member for Tetu.

**Hon. James Mwangi:** Thank you, Hon. Speaker. I rise to support this Motion on the approval of the various ....

**Hon. Speaker:** Raise your voice just like you do in a public rally. Somebody who has campaigned in a constituency should be loud enough to be heard in the Chamber.

**Hon. James Mwangi:** I rise to support this Motion on approval of nominees to various constituency committees on NG-CDF. Following the previous approval of names of committees, it has taken some time for them to be gazetted. It is now three months since we were elected to our offices. People in our constituencies are asking what we are doing. Their expectations are very high. They expect that by now there should be NG-CDF officials to manage the various projects. Some are pending and some are in progress.

First, there is need to harmonise the various provisions in the Act especially following the ruling by the Court of Appeal. There have been two rulings. The first one declared some provisions in the NG-CDF Act as unconstitutional and the recent ruling by the Court of Appeal made it clear that Members of Parliament have no role to play especially with the NG-CDF. We need to come up with clear rules and provisions that cannot be challenged in the courts.

We have three arms of Government: the Legislature, the Judiciary and the Executive. Each arm of Government should play its role without interfering with the other. We have seen situations where this House passes some laws, but another arm of Government declares them unconstitutional, null and void.

I support the approval of the nominees. I expect by tomorrow all the names should be gazetted so that we move on to the next level of initiating projects as we promised our citizens who are our electorate.

I support.

**Hon. Speaker:** Member for Saboti.

**The Member for Saboti** (Hon. Caleb Amisi Luyai): Thank you Hon. Speaker for giving me this time. I am informed by my colleague that this is called maiden speech. Do I go ahead and proceed?

**Hon. Speaker:** Proceed. You are not to be interrupted.

**The Member for Saboti** (Hon. Caleb Amisi Luyai): For how many hours?

*(Laughter)*

**Hon. Speaker:** You have not even read the Standing Order? What have you been doing for three months? You have only 10 minutes, Member for Saboti,

**The Member for Saboti** (Hon. Caleb Amisi Luyai): Thank you, Hon. Speaker I rise first to support the Motion. But before I do that I would like to make maiden speech as you have allowed me.

I thank the people of Saboti for electing me as a Member of Parliament. For the sake of my colleagues here, my name is Caleb Amisi Luyai representing the people of Saboti Constituency, in Trans Nzoia County. You realise that I am fairly young. I really thank the people of Saboti for having faith in me at my young age. I am turning 30 next month. I may be one of the youngest people here.

Thank you for the applause. I am a man of few words. I believe in actions so I may not speak much. I will circulate my speech to the rest of the Members of Parliament. The full speech will be availed to you. I am a man of action. I realise this is a House of words. I do not want to go into speeches; I will be making my speeches in the course of the rest of the sittings. I do not want to bore our Members here because of speeches that are written down by secretaries. I want to go straight to the Motion.

I have a problem particularly with this the National Government Constituencies Development Fund Act. I represent a rural constituency. When you talk of a *mheshimiwa*, that is a Member of Parliament. That is what the people understand. This idea of county government is still a new concept to them. In fact, when you question about development in your area, they will not talk about the governor, they will talk about *mheshimiwa*, and "*mheshimiwa*" in our language means a Member of Parliament. That is what they are used to. Going forward, when we will be making the Budget, I will request the allocation of the NG-CDF to be increased. In fact, my predecessor went home because of NG-CDF. He is my good friend. A good person, a gentleman but he had to go home because the functions of the NG-CDF were limited. For example, when you promise so many people boreholes and bridges that are dilapidated and you realise NG-CDF is confined to some functions and others are confined to the county government, you will not fulfil those promises. You realise some of our governors are misusing and misappropriating funds. A governor can afford to steal a generator but if an MP tries to steal even a pen, he will be discovered. The focus is on a Member of Parliament. Going forward, we are either given more

NG-CDF allocation or we devolve further the county funds to the NG-CDF accounts so that we have enough funds to give our people.

Most of us are here because we were doing projects on the ground before we came. The constituents expect us to continue with the high profile projects we have been doing. The NG-CDF cannot come in; it is not enough.

Thank you for that long speech.

**Hon. Speaker:** You have not even taken five minutes. You will need to improve.

*(Laughter)*

Member for Lari. Do you also want hours?

**Hon. Jonah Mwangi:** No. I have made my speech before. So, I just wanted to stand and support the Motion. Thank you for giving this chance. I am concerned because of this gazette. It is taking too long considering that my constituency has only one road. All the other roads are maintained by the Kenya Rural Roads Authority (KeRRA). I cannot even constitute KeRRA Committee, the four Members are supposed to come from the NG-CDF Committee which is gazetted.

While I am waiting for gazette, the rain is doing havoc on my roads and the people in my constituency are saying I am not doing anything. I am starting to find a lot of war in the first month of my tenure. So, I am supporting this because we need this thing gazetted as soon as possible because it is putting a lot of pressure on us. We also need to put people in place of work. We had a lot of people campaigning for us. We need them to start seeing what we are doing.

I rise to support. Thank you.

**Hon. Speaker:** Member for Matungulu.

**Hon. Mule:** Thank you, Hon. Speaker, for giving me this opportunity to contribute to this Motion. I do not know who will change my microphone, it is small but I will try my best to come down.

At the outset, I support this Motion. I am a bit perturbed when I hear Members saying that we do not have a role in NG-CDF. My friends, if you want to go home in 2022, joke with NG-CDF. We must be in charge and give direction on what will happen in our constituencies. You cannot be a Member of Parliament and sit down there and assume a committee will do that work.

**Hon. A.B. Duale:** On a point of order, Hon. Speaker.

**Hon. Speaker:** What is your point of order, Leader of the Majority Party?

**Hon. A.B. Duale:** Hon. Speaker, the law has not given us a role in NG-CDF. Hon. Member for Matungulu is misleading the public and the House that we must be in charge of NG-CDF. I do not know about him, at least I am not in charge of NG-CDF of Garissa Township. I am supposed to play oversight role.

**Hon. Mule:** Hon. Speaker, I doubt the Leader of the Majority Party was listening to me. My point is very clear: Our role is oversight. Oversight includes even at NG-CDF level because NG-CDF is money coming from the national Government. The law is very clear. The rules and the laws of Members of Parliament are three: Oversight, legislation and representation, unless the Leader of the Majority Party does not understand what I am talking about.

As a Member of Parliament, you must provide oversight within your constituency to enable prudent use of money within that constituency. It is most important to know that if there is a devolved function which is working and the common *mwananchi* is appreciating, it is the NG-CDF. One thing we need to do as Members of Parliament is to find a way of increasing that allocation. This is the money you can oversee and it is going directly to the electorate. We have been given a room here by the courts to harmonise the 2013 and the 2015 Acts. I will be proposing amendments to increase the allocation of NG-CDF to make sure that we are able to reach every corner of our constituency without thinking of governors and the national Government. The NG-CDF is the only fund which recognises that low income Kenyan who cannot take their kids to school. Funds are limited. Members of Parliament, you cannot cater for all the families in your constituency. We must increase the allocation to this fund. We are complaining here that governors are misappropriating funds at the county government, yet we know very well that we can increase the money for NG-CDF in this House and create a proper oversight for the same money to benefit Kenyans.

As we support this Motion, I urge the NG-CDF Board and the National Treasury to release the arrears of the NG-CDF for 2016/2017 and make arrangements to ensure that we have this money even before we go on recess. I support Hon. Wandayi. For Members of Parliament who are new, by January, every parent will be in your doorstep. The only saviour we have is to have NG-CDF money to give these parents money for bursaries to take their kids back to college. It is important we realised our role as oversight but it should not be misunderstood by Kenyans that we do not have any role on how to deal and give direction in our constituencies. We have been elected by Kenyans to give direction in those constituencies. If you have been elected by over 60 per cent, Kenyans down there expect you to give direction.

It is high time this House rose above board and made sure that NG-CDF is strengthened. The allocation must be increased and we do oversight without fear or favour of anybody in our constituencies. I support.

**Hon. Speaker:** Member for Central Imenti.

**Hon. Kirima:** Hon. Speaker, I wake up to support the Motion on the ground that the National Government Constituencies Development Fund is very important money which comes to the *mwananchi*.

The money allocated to the NG-CDF in the constituencies, especially the money I have been seeing in my constituency is not adequate at all. The money which comes to the constituencies is so low, taking into account what is taking place in the county governments and what is being done by the members of county assemblies and, even the governor. It is good if this money can be doubled. When this money is doubled, it is going to equalise all Kenyans and we will not hear of some places or counties saying they are being marginalised. As we speak, the problem we are facing in this country – what we hear from Kasarani to Jacaranda and many other places when there are meetings, we usually hear some people saying they are being marginalised and developments are not taking place in their constituencies. But, if we are going to have this money doubled in the constituencies, I am very sure, even the places where we see students learning under trees, especially in these arid areas, more so a place called Tiaty because this is what is coming on television now and then, we are going to have classes. I am not saying the current Member for Tiaty is not working but, there was a previous one. We have been seeing students and teachers being taught under trees.

As I support this Motion, it is my humble prayer that the Speaker gives the new Members opportunity to speak in the Chamber. We came together with Members who are more senior than me in this House, but they get more opportunity to speak. We place our cards together, but they are considered. We had a meeting which we were supposed to attend but they attended after speaking here. So, I remained behind to get opportunity. This is my second time to speak since I came to this House yet I have been attending it on daily basis and placing my card awaiting to catch your eye. I am praying that we be considered more so that we can be familiar with what takes place here. The moment we are just left out, it may take a lot of time for one to familiarise himself with what takes place in this House.

That notwithstanding, as it was said by a certain Member and I saw that it was not taken seriously, the release of 2016/2017 NG-CDF money is very important because those people in the offices now are working without getting a pay. They have refused to move from the offices because they have not been paid. So, as we constitute these new Committees and wait for them to be gazetted, we have that problem. They are there because they have not been paid.

I am praying for the Speaker's attention. It is very important if I can be listened to.

*(Laughter)*

What we are saying is that...

**Hon. Speaker:** Hon. Member, I will give you more time. Do not worry. But, allow me to make an announcement. When we were in the last sitting, before we adjourned for three weeks, I did indicate that Members who will not be coming with their cards will not get a chance to contribute. So, please do not come to plead with me to allow you to speak if you forgot your card; even if you just forgot, not lost. Please, do not waste your time coming to plead with the Chair to allow you to speak. There are several of you who have placed requests. Those are the ones I am able to see. Although the Member is complaining, he may not know people come and, immediately they sit here, they put in their requests.

So, please proceed.

**Hon. Kirima:** Thank you, Hon. Speaker. I understand and I am very happy for the correction.

What I am trying to say is that, as we speak in this House today, the people who were in the offices from some constituencies before last election are still working in those offices because they have not been paid their dues for 2016/2017 Financial Year. They cannot move from those offices because they do not know how they will get their money. We have tried to enquire and it has been said that the NG-CDF does not incur debt. They have said they are going to move from those offices the moment they are paid their money. They cannot be paid with nothing. We are praying that the last release of NG-CDF be made so that we can clear with them and they give us a chance, at least, to have new staff and support staff in those offices.

I hereby support this Motion because I believe it is good for the public and everybody else in Kenya.

Thank you, Hon. Speaker.

**Hon. Speaker:** Member for Kitutu Chache... is it North or South? You can contribute from there.

**The Member for Kitutu Chache South** (Hon. Richard Momoima Onyonka): Thank you, Hon. Speaker. First of all, I want to say that it is an honour for you to allow me to interrupt normal procedure in the House for the simple reason that I have not been given my card. That was simply because I was sworn in yesterday. I also wanted to say that I am actually quite happy to be in this House once again, for the third time. I have just been here for 15 years. I hope it will be the last I am going to be in this House.

The Motion that has been introduced here, for me, is a very interesting Motion. One, I support it. I have listened to the contributions of my friends and I want to make a few points so that some of them can understand where it is. I am the only MP in this House who had a case in court for nine years because of the CDF. The argument at that time was that I had misused public money. But, I want to inform my friend who is shouting from the other side that I won the case and somebody is going to pay me handsomely. I did not pilfer the money and I did not misuse the moeny. It was a political case. So, I am informing my colleagues in this House that you must understand that NG-CDF is a political Fund. Even when the law says that you are not involved, you will be held responsible when the Fund is misused.

Two, I wanted to tell my colleagues in this House that I am actually in this House because of the NG-CDF. Kitutu Chache South Constituency is one of the best NG-CDF-utilising constituencies in Kenya. I am actually number two in Nyanza. If you see the projects we have done, you will be proud of them. The voters of Kitutu Chache South Constituency voted for me overwhelmingly because of that development history. I would like to persuade my colleagues in this House that, as *Mheshimiwa* Mbadi stated here, if you misuse that money or if you have anything to do with its misuse or the public gets an impression that you have had anything to do with the misuse of that money, you will not come back to this House. The reason is that the public is very sensitive. The NG-CDF is amongst the best Funds in this country. History will be very kind to former President Kibaki as the person who introduced this Fund; with the other colleagues who were in this Parliament. It is a Fund that has done Kenyans proud.

The problem that many of my colleagues may not understand is that the Fund has issues with procurement. You have to be very careful to follow procurement rules and regulations. On occasions, we have had to substep some of those regulations to implement.

You are aware procurement rules and regulations have certain issues which up to now are quite substantive. Once you elect and the public selects the committee members and the committee members are able to work diligently with you, the public will always reward you because of your oversight role and the work you do and they will appreciate.

I also heard my colleague Mr. Mbadi, the Leader of Minority say that he does not understand why people buy buses. The truth is, once I was done with most of my secondary schools, I had to buy about 21 buses for my schools. The teachers are very happy about it. The next thing I want to do is, now I am moving to my primary schools and I intend to make sure that all the 42 primary schools I have will have mini buses. For us who come from the rural areas our students and children need to travel to Nairobi, Mombasa and other places so that they are exposed as Kenyans, so that the environment they are in is not necessarily where they were condemned to stay permanently. I can tell you that when these buses were bought, some of my schools did very well in their performance. In other words, there was motivation and the teachers and students were very happy about it.

The Members that are going to be appointed to these committees are very important. Once they start handling money and there is no accountability, there will be problems. Money can be misappropriated and this might involve inviting agencies such as Criminal Investigation Department (CID) or efficiency monitoring unit and this will consume a lot of time in investigation.

I also want to reiterate what some of my colleagues have said, that there is nothing that has benefited our people better than the amount of money allocated for bursaries. Some of our parents are poor and bursaries have come in handy for the students to go to colleges and get higher education. I wanted to mention that even when the National Government Constituencies Development Fund has had challenges, legal or otherwise, it is a fund that Members of this House must secure and protect jealously. If you look at what happened when the Constitution was being drafted, there is devolution, county government, ward, but they forgot about the constituency. The NG-CDF fills that gap. The public does not know what governors and members of the county assembly (MCAs) do, but they know what the Member of the National Assembly does. They hold you responsible for NG-CDF. I would therefore like to ask all of you to make sure that you guard these funds jealously. Even when we leave this House, NG-CDF should remain here so that it can act as a gap between the national Government and the county government.

Finally, I would like to say that I want to congratulate Hon. Duale for his position as Leader of the Majority Party. I also want to congratulate many of the Members of the Jubilee side who have won their seats. I hope we will be having very intelligent and reasonable discussions in this House so that we can change the destiny of our country to ensure that we improve the lives of our people. I hope that we will move in as a people who are intelligent and reasonable about our politics and development agenda so that we can then move our country forward. Thank you, Hon. Speaker.

**Hon. Maore:** On a point of order, Hon. Speaker.

**Hon. Speaker:** Hon. Member for Igembe North, what is your point of order?

**Hon. Maore:** Hon. Speaker, if you look at the old debate and discourse about the NG-CDF, there is no Member especially those who have been here before, who is keen to mention about the audit department in the NG-CDF Office. We need to work out a process where those details are taken to the Auditor-General, or those auditors are disbanded and removed from working anywhere in Parliament. What has been happening is any member of the public who has been complaining about the NG-CDF... I will give you an example. About Kshs12 million was spent in my constituency on transformers. When the auditors came to check what was going on when a member of the public complained, they asked how much their cut was if we had spent Kshs 12million. The issue has been the department of audit. If there are Members who have benefitted from it, they may defend them. But in my opinion, it is a very bad department and should be disbanded and investigated.

**Hon. Speaker:** Member for Navakholo

**Hon. Wangwe:** Thank you, Hon. Speaker. Given that Hon. Maoka Maore is elderly enough, I thought that there was a strong point of order from his side.

Hon. Speaker, allow me to proceed and support the Motion as it is with regard to the 22 constituencies and the Members. Let it be done immediately. We need not take time the way ours which were cited earlier on have taken before they were gazetted. So, I urge the Leader of



the Majority Party to move with speed and ensure that this small number is gazetted as soon as possible. I have been impressed by the manner in which both the Leader of Minority Party and the Members of the other side have responded to this. This has shown one major issue, that is affecting our course. We must align ourselves with the 2015 NG-CDF Act and the 2013 CDF Act. I want to challenge the other side; this can only be done through the NG-CDF Committee. Once the Committee is constituted, we are able to address what is affecting the whole flow of the fund.

I direct my concern to the Chief Whips of both the Minority and Majority side. Let them give us the Committees where we are going to address this issue. The other thing that I have to raise concerning NG-CDF is the ability to disburse funds. The 2016/2017 disbursement of funds is not complete among the 290 constituencies. I urge the NG-CDF Board and the Treasury to make sure that they disburse the funds on time. We are late, we are now discussing issues of 2017/2018, yet funds for 2016/2017 have not been disbursed. The challenge which we have is we are going to accumulate funds from one year to the other and the ability to consume them is going to be a challenge among various constituencies. I want to urge that the Treasury together with the Board move with speed to make sure that they disburse funds on time.

We have another issue which we also need to address through the NG-CDF Committee - management and administration of the fund. I agree with what the Chief Whip said, that we need to have the issue of the oversight committee. This oversight committee is the only place where a Member of Parliament comes in. Once it is in place, I believe we will be able to contain and control the funds, although not handling them on day-to-day basis. An honourable Member said that Hon. Lessonet who was the chair during the entire time of the 11<sup>th</sup> Parliament should have seen that problem and handled it for us.

The other issue is what other speakers have said. What is it that we are emphasizing on with regard to NG-CDF? One might wonder, how comes an honourable Member comes from a region which is dominated by political activism? I come from a region where most of the proponents are NASA. I managed to come to this House through Jubilee Party strongly because of my ability to handle NG-CDF. Had I not handled it well, I would not have seen the door of this House for the second time. I want to thank those who supported me and Members who were there last time. This time I will be strong enough. I will be strong enough to oversee from within so that we are able to catch up with what is supposed to be done for the Members.

There are various projects. One speaker has said that we are not entitled to participate in county projects and they would want us to cooperate. I would want to urge my colleagues to respect devolution. We want to respect devolution. Let county functions remain county functions. We do national Government functions. We will do it better and we would want to prove that on the comparative scale, what we have been able to achieve with NG-CDF can now be compared with what the county governments have been able to achieve, on the same scale. Therefore, it is a good comparison to give us chance to show that we are able to work with the little that we have.

With that, Hon. Speaker, I support.

**Hon. Speaker:** I can see a number of proposed interventions, but before I give anyone a chance, let me recognise pupils from Matinyani Salvation Army Primary School in Matungulu Constituency, Machakos County, who are in the Public Gallery to observe the proceedings.

The Member for Alego-Usonga.

**Hon. Atandi:** Thank you, Hon. Speaker, for giving me this opportunity. At the outset, I would like to say that I support this Motion. I would like to say that CDF so far is one of the most impactful devolution items this country has seen. And I think this is the reason why it has so many enemies. We have the civil society, the Executive, the county governments, most of which are against the administration of NG-CDF. I think the reason why this is happening is because of serious accolades that NG-CDF projects have continued to receive in comparison to those projects that are being done by our counties across the country. You find that a project that is undertaken by NG-CDF will be more received by *wananchi* than those that are being done by our county governments.

It is upon Parliament to protect NG-CDF by all means because we have many enemies.

Secondly, I have seen that NG-CDF allocation across the constituencies is uniform. I would like to say this with a lot of humility to my colleagues, who probably represent constituencies that are much smaller than others: I find this unfair. For instance, my constituency, Alego-Usonga, has six wards and 110,000 voters. If you compare it with, say, Garissa Township Constituency, which I am told is quite small, it is not in order for this Parliament to continue allocating resources equally across constituencies, knowing very well that some constituencies are bigger and others are smaller, in terms of geography and also in terms of population.

**Hon. Speaker:** There is an intervention from Hon. Gladys Shollei.

**Hon. (Ms.) Shollei:** Thank you, Hon. Speaker. I rise under Standing Order 95. As much as I support this Motion and agree with the sentiments of my colleagues, I humbly request that, since it is your discretion, we now call the Mover to reply.

Thank you, Hon. Speaker.

**Hon. Speaker:** Point noted. The Member for Alego-Usonga.

**Hon. Atandi:** Thank you, Hon. Speaker. Lastly, I would like to address the question of delay in the gazettelement of the already passed committees. In my view, the delay in gazettelement of members of committees that have been passed in this House is strategic and by design because this Government is broke. The Government is trying to delay the process of effecting NG-CDF so that they can collect resources to give to constituencies, because once these names are gazetted, it will be upon the Government to move with speed and release the funds. We know very well that this Government spent humongous resources in buying weak and cheap politicians during these campaigns. A lot of resources were used in this process. Therefore, this Government needs to wake up and realise that this NG-CDF issue is very serious and they must gazette the names as soon as possible so that this country can move forward.

Hon. Speaker, thank you so much.

**Hon. Speaker:** Order Members. Hon. Gladys Shollei stood in her place and claimed that the Speaker calls upon the Mover to reply. I must put the Question. Those of you who were in the last Parliament know that when I rise to put the Question, you must either be seated or you freeze. So you cannot come and stand in front of me, including the Majority Whip.

The point raised by Hon. Gladys Shollei was that the Mover be called upon to reply. It is upon me to put the Question.

*(Question, that the Mover be now called  
upon to reply, put and agreed to)*

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Mover.

**Hon. A.B. Duale:** Hon. Speaker, you have heard the lone voice of Hon. Koyi. He has a very rich history, for those of you who do not know him.

I beg to reply. I am happy that my colleagues in the Opposition are back in the House. As I listen to them, from Hon. Mbadi to the last speaker, the Member for Alego-Usonga, they are talking of government, government, government. So they have come to the realisation that there is a government. They have also come to the realisation that that government is led by a president, and that president is none other than Uhuru Muigai Kenyatta. And I want to assure them, on behalf of Uhuru Kenyatta and his Government, that we will treat and devolve resources to counties and to NG-CDF, but make sure when money goes to your constituencies, you do not resist. That as you resist in Nairobi, then your constituency will not receive the funds.

As I said, the AG will tomorrow publish the *Gazette* notice and then the CS for the National Treasury will make sure that as per the instructions of the President that resources will be given to all devolved systems under the national Government.

Finally, even this afternoon, I have tabled about 15 constituencies whose accounts have been audited by the Auditor-General. I really want to ask colleagues, when you hear your constituency's audited report has been tabled, go to Table Office, get a copy and go through it, because a time will come when your fund manager and the NG-CDF Board will appear before the Special Funds Committee to answer questions. So it is good you pick a copy and liaise with your Fund's Manager so that all the necessary documents are provided before the actual appearance before that committee. It makes you work very tidy. It cleans your constituency. If you are a new Member of Parliament, you will see what your predecessor did. Also talk to the people and tell them the audited accounts were not done during your time. If you are an old Member then you can see if funds were misappropriated.

Hon. Speaker, with those many remarks, I beg to reply.

*(Question put and agreed to)*

**Hon. Speaker:** Sorry, it looks like there is an intervention from the Hon. Member for Lugari. What is it?

**Hon. Angatia:** On a point of order. Thank you, Hon. Speaker. I rise under Standing Order No.20 of the Third Edition to seek your indulgence through your leadership on how you can protect the implementation of this Standing Order.

Hon. Speaker, under Standing Order No.20, in terms of the leadership of Minority Party and the Deputy Minority Party, Section (2) states that any existing coalition agreement entered into pursuant to the Political Parties Act must be respected and secondly, that there is need for gender balance.

Hon. Speaker, pursuant to Standing Order 20(2), the Minority Party or the coalition parties in the National Assembly shall in electing a Member of the National Assembly to be the Leader of Minority Party or the Deputy Minority Party take into account the existence of the coalition agreement; and as National Supper Alliance (NASA) we have a coalition agreement.

Hon. Speaker, the coalition agreement was formed when NASA was formed in January 2017 and it consisted of the following parties: Orange Democratic Party (ODM), Wiper Democratic Party (WDP), Forum for Restoration of Democracy-Kenya (FORD-Kenya) and

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Amani National Congress (ANC) where I belong. And today, I have been elected the Parliamentary Committee Chairman of ANC, National Rainbow Coalition (NARC), Progressive Party of Kenya (PPK), Muungano Party and Chama Cha Uzalendo (CCU).

Hon. Speaker, ANC has 14 Members of National Assembly and their interests have been totally disregarded. We have zero representation of the party leadership in this House. This is a blatant violation of the provision of Standing Order No.20 (2). This is shameful.

Hon. Speaker, the Constitution of this country provides for gender balance. However, the list that was read here does not even recognise gender balance. We are seeking your indulgence to protect this House and us from the Standing Orders because this is a House of rules.

Hon. Speaker, as you are aware, we are politely seeking your clarification on the options available within the Standing Orders on how the leadership of this House intends to implement the provisions of Standing No.20 to ensure that all Members from NASA Coalition are considered in leadership position and the Constitution is respected.

Lastly, as a member of ANC which is of a fairer gender, we are just asking you as the Speaker, to kindly protect the institution of Parliament and the Standing Orders by ensuring that the list that was brought in yesterday is thrown out because it does not meet the requirements of Standing Order No. 20. Secondly, it totally violates the Constitution. Kindly intervene and give us direction.

Thank you, Hon. Speaker.

*(Loud consultation)*

**Hon. Speaker:** The Leader of the Majority Party, do you want to contribute to this?

**Hon. A.B. Duale:** Hon. Speaker, we do not want the Chamber, your good office and Chair to be turned into a family feud. We do not want this House...They have resisted outside and demonstrated. Now that we are happy, the NASA brigade is back in the House. They have brought their resistance within themselves to the Chamber. Hon. Speaker, as you give direction, I do not see where you come in. There is no role for the Speaker there.

Hon. Speaker, Hon. Savula can only be protected by his party leader who is a core principal within NASA. We cannot solve the problem of Musalia Mudavadi in the Chamber neither are we ready to solve the problem of Kalonzo Musyoka and Moses Wetangula from their problems with *Baba*. Now that a Government has been formed, and an Opposition is taking shape, I really indulge Hon. Savula to call a Parliamentary group meeting of ANC and in an honest way, reconsider that marriage. If a marriage is not working, you divorce.

*(Loud consultation)*

Hon. Speaker, we do not want to be part of a divorce case that in the beginning we were not part of. We were not part of that marriage and neither were we invited to the ceremony where this marriage was being cemented. As people who believe in God, if there is a problem among the four family members, I think they are all grown up. ANC is a grown up. It has 14 Members in the House while *Baba* has 71 of... They can agree to a formation. If you are not comfortable in the Minority Party, we the Majority Party are ready to accommodate you. We will give you a chance to be Committee Members. Come and form a coalition with us. We will even give you a

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share in Government. You might even become Permanent Secretary (PS), ambassador or get a ministerial position which you cannot get there. So, Hon. Savula, please take the message to Hon. Musalia Mudavadi. You have willing partners; people who want to build Kenya, who want to bridge communities, regions and tribes and all this is found in Jubilee Party. So, if they have suffocated you, and you are unable to breathe, there is a place where there is plenty of oxygen and food. In Jubilee Party there is tolerance and accommodation. It is the only place where a pastoralist like me can lead. It is the only place where you see the face of any community. So, run away from ethnic capture. What we see in NASA is ethnic capture. It is ideological capture. So, we want to come back. Please, Hon. Speaker, I really urge and put my word that the matter you are told to address is a matter which is outside the role and function of the Speaker. As the Speaker, you can as well give unsolicited advice as a leader. You can give the advice to Hon. Savula on how to survive in the next five years under the ethnic capture of a political party.

I want to thank Hon. Junnet and Hon. Mbadi because they earned their positions because of their capacity of hard work, defence of *Baba* and the coalition. They did not earn out of nothing.

**Hon. Speaker:** Well, you have made references to many formations and marriages which were consummated somewhere. I do not know whether it is in a mosque, church, forest or in Jeevanjee Gardens. All these are places where you can consummate marriages. Since this matter is recurring having arisen yesterday, I will give you a considered position of the Chair which is to reflect on the traditions that have been there in the past in this House, whenever there were these kind of issues. I do not know whether there is need for us to really debate this. I will just deal with our own traditions and the rules of the House. And as you know, the rules are anchored in the Constitution and that is why Article 124 says that each House of Parliament shall be at liberty to propagate its own rules for guidance of its own proceedings and processes, both in plenary and committees. Therefore, we will be guided accordingly. Unfortunately, I want to leave the Chair because I have other functions that I must attend to. Hon. Nyikal, you want to deal with the issue of marriages again? We do not want to deal with marriages. You are also talking about suffocating. This is a bit difficult. This Chamber is well ventilated. You cannot suffocate here. Can I give you one minute?

**Hon. (Dr.) Nyikal:** Thank you Hon. Speaker. I said that as I talk in this House for the first time today, I am aware that there is the feeling that perhaps we are starting to work. In the past, I did not find it very easy to agree with Hon. Duale. However, today I want to agree with him that it may not be in order to bring this matter into this discussion. Having said such an honourable thing, he went on to take full advantage of the situation. There is no Member here who is not wise enough to know that as much as you say that you should not bring it here, you go on to take advantage of the situation and offer solace where perhaps there is none. That maybe in order politically, but we should know that as we sit here, the state of this nation is not as tranquil as we probably think. There is need to be very cautious when dealing with such issues. We have just come from an election where the Independent Electoral and Boundaries Commission (IEBC) failed tragically as an independent institution. We went through an election that has left the nation so tragically and painfully divided. That election has brought an outcome that cannot bring tranquillity because a large part of the nation does not believe that the leadership in place is legitimate even though it is deemed to be legal.

**Hon. Speaker:** Hon. Nyikal, you are now introducing another dimension. The same election you are talking about brought you here. You want me to adjudicate on the issue of the credibility of the IEBC?

**Hon. (Dr.) Nyikal:** Hon. Speaker, I am coming to the same point you have raised. It is therefore important that we deal with the institutions and agree with you that we will look at all the institutions in place. I will also call for calm. I do not think this matter has left the confines of the coalition such that it is unable to deal with it. I think the coalition is perfectly able to deal with it. Therefore, I partly agree with Hon. Duale on that small aspect but I agree with you that we leave this matter with the coalition to deal with it.

**Hon. Speaker:** I would wish that you sort it out that way but remember three weeks ago you gave me an indication that you wanted to go and resolve your matter. I was brought a communication that showed you had resolved the matter. My responsibility, after receiving the communication, was to read it out to the House. Now the Member is raising it on a point of order, alleging violations of Standing Order 20. Therefore, I will look at the matter raised by Hon. Savula and give a communication.

**Hon. Ekomwa:** On a point of order.

**Hon. Speaker:** For the time being, we will move to the Next Order. Hon Lomenen, we cannot deal with this matter. What is your point of order?

**Hon. Ekomwa:** Thank you Hon. Speaker. Before we move to the next order, I request my fellow MPs seated here that we stop the misuse of Standing Order No. 95. There are MPs who are three-month-old in this House, but who have never got opportunity to speak yet their constituents are waiting to hear them talk. We have some MPs, like the Leader of the Majority Party, who has the privilege of speaking on every matter that comes up in the House although he is an MP of a specific constituency, like any other Member seated here, despite being Leader of the Majority Party. Therefore, let us respect the MPs who have not yet spoken in this House. If a Motion is supposed to take two hours, let it be given that time so that others Members can also have opportunity to contribute. Just because some Members have spoken and expressed their views, we should not disregard others.

Finally, because I have been given an opportunity---

**Hon. Speaker:** No, do not take advantage of the opportunity you have been given to raise the point of order. You just rose up and that is sufficient.

**Hon. Ekomwa:** Thank you, Hon. Speaker. If “Resist” does not work, “Assist” can work. If they have requested for assistance, let us assist them because they are in turmoil.

**Hon. Speaker:** Hon. Lomenen, the issue about how we manage time here is very critical. If you do your own calculations, you will appreciate that when the House sits between 2.30 p.m. and 7.00 p.m., even if nothing else is to be done in the preliminary stages, including prayers, if every Member were to speak for only 10 minutes, only 27 Members would speak. That is assuming there are no interruptions and every one of them speaks for only 10 minutes.

Therefore, it becomes necessary, in the interests of the House, to have a Member who has not spoken rise to claim that everybody speaking is repeating themselves or there is nobody who is opposing a particular business or Motion. It is only fair, in the interest of better management of time, that certain debates be curtailed or be brought to an end in order to proceed with all the other business that is there.

While I appreciate that 27 out of 349 Members in a day is a very small number, we are also lacking in the sense that there are those Members who wait for several hours only to speak for less than five minutes when they eventually get the opportunity. We have those of you who speak for two minutes and conclude by saying “With those many remarks, I support”. That is how we gain time. We are happy that some of you cannot speak for 10 minutes. You find the period of 10 minutes too long, which is good for other Members.

There are others who choose not to speak. Even though Hon. Lomenen is sympathetic to them, there are some Members who do not want to speak. They come here and walk out. Therefore, you cannot eat your cake and have it. You cannot claim that because you have come today, you want to have all the time to speak. Sometimes, we have to balance and I want to assure this House that all the Members of the panel know there is need to balance. Sometimes, some of you come here and place your cards such that you find Members from one county following each other and it will be unfair that they are the only ones addressing this House. So, there is need for us to also have some flexibility to balance Members from different counties. Today has been a very unfortunate day because all the ladies came after the men had placed their requests. Our machine is only able to display the first 10 names. So when I scroll down to numbers 30 and 40, I see the ladies names appearing. Sometimes, I have to exercise discretion and consider whether I should give a chance to those who came in at 3.30 p.m. or 3.40 p.m. when there are others who placed their cards between 2.30 p.m. and 3.00 p.m. These are things we have to balance.

I know the time the Member for Mwingi Central came in. His size is such that I cannot miss to see him. I saw him come in but unfortunately, his card is not among the first few today, but it is still within the system. So maybe, in the next business he will get a chance to contribute. Do not ever imagine that you are being ignored. There are Members like the Member for Makueni, who luckily is not present today. He is usually the first to place his card and does not usually know the business being debated. I have heard some Members say that even though their cards are inserted they do not want to speak on a particular business. This is because Members want to make sure that their cards are inserted because that is the only way to catch the Speaker’s eye, using the machine.

Nevertheless, we have to balance. I know there is the NASA Coalition which is made up of about four major parties and other small parties such as Chama cha Uzalendo (CCU), Muungano Development Movement Party and others. I see Members from these small parties and they are entitled to speak because they are in a coalition and cannot be ignored. When the Member for Seme speaks, I should look for somebody from Kilifi because I know he is from Kisumu County. The Member for Kanduyi is seated next to him and once he speaks, the other Members from Bungoma County may wait a little longer before they get a chance to speak. We have to do that kind of balancing because every one of you here represents people and interests. Therefore, we must keep balance at all times.

I think we can proceed with the Business appearing as No.10. The Leader of the Majority Party.

**BILLS***Second Reading*

## THE PUBLIC TRUSTEE (AMENDMENT) BILL

**Hon. A.B. Duale:** Hon. Speaker, I beg to move that the Public Trustee (Amendment) Bill (National Assembly Bill No. 32 of 2017) be read a Second time.

The main objective of this Bill is to amend the Public Trustee Act, Cap. 168 and the reason is to align it with the Constitution of Kenya as a priority. Also, to enhance good governance, expand the scope of the functions of the Public Trustee and finally to reduce the time taken to administer the estates of the deceased persons, which is very important. Public Trustee is a very important Amendment Bill. There are many Kenyans who go through a lot of difficulties when it comes to administration of the estates left by deceased persons.

I will do a highlight of this Bill. Clause 3 of this Bill proposes to amend the principal Act by inserting a new sub-section 2A, which will introduce the objects of the Act and this includes the establishment of a Public Trustee Investment Board for purposes of investment. These huge resources within this department must have an element of a Trustee Investment Board for investment of those resources. Clause 4 repeals section 3 of the principal Act which I have said is the Public Trustee Act, Cap. 168. This Bill is an amendment to the current principal Act that is in existence. The reason why we are repealing is that it excludes the jurisdiction of the Public Trustee of a property that is owned communally. Yet, the Public Trustee should be administering the estate of the deceased person who has an interest in land or assets. The section we are repealing was dealing with a community so that this law now deals only with the deceased person's interests in land or assets which are owned communally.

If Members do not have the Bill, they can get it from the Table Office. Clause 5 is to amend section 5 of the principal Act. It substitutes the word "Minister" with the words "the Attorney General" since he is the appointing authority for the Office of the Public Trustee. The principal Act currently refers to the Minister. We are amending it and interchanging "Minister" with "Attorney General" because he is the one who is given the powers as the appointing authority for Office of the Public Trustee.

Clause 6 of this Bill is huge because it proposes to amend the principal Act by inserting new sections 5A, 5B, 5C, 5D, 5E, 5F and 5G as new sub-sections. The Act does not have the provisions for the appointment, tenure of office and the functions of the Public Trustee. Each of these sections is coming with specific roles; some will deal with appointments, tenure of office and others with functions of the Public Trustee. For example, Section 5A which we are introducing seeks to cure the gap by providing for the qualification criteria for a trustee as a body corporate entity. If you look at Section 5B which we are introducing, it deals with the establishment of the Public Trustee as a body that can be sued and which has liabilities.

Section 5C seeks to provide for the criteria of appointment of the Public Trustee. Section 5D deals with the appointment of the Public Trustee as a public guardian of those resources for adults who are incapable of making decisions by virtue of age, infirmity or any other justifiable reasons which are deemed by a court of law. Section 5G provides for the administration of the payments of compensation under the Work Injury Benefits Act, Pensions Act, Civil Servants



Group Accident Insurance Scheme and any other payments arising from compensation as a result of an accident. It is good for Members to relook into the new subsections 5A, 5B, 5C, 5D, 5E, 5F and 5G which we are introducing in Clause 6.

Clause 8 proposes to amend the principal Act by inserting a new sub-section which dispenses with the requirements for the consent for various categories of persons whose property is to be administered by a Public Trustee.

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

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

Clause 10 proposes to amend Section 11 of the principal Act. What does it do? It deals with the function of enhancing the capacity of the Public Trustee to decide on disputes in relation to summary administrative matters. So, he gets certain powers in as far as making a decision when it comes to dispute in relation to summary administrative matters is concerned.

Clause 11 of the Bill proposes to amend Section 12 of the Act in order to reduce the time taken for the advertisement of claims from two months to one month and dispense with the requirement of advertisement of matters proceeding to court. Even in the last Parliament, if you look at a number of the laws that this House was making, we must deal with the time factor, particularly when it comes to the low cadre of our society, that is, people whose resources are managed by other people. So, we have reduced from two months to one month. It also provides for keeping of funds in an unclaimed assets account where the Public Trustee is unable to distribute the funds or what his role is in as far as concluding the administration of any trust is concerned.

Clause 14 of the Bill enhances the functions and duties of the Public Trustee.

Clause 15 deals with an amendment to Section 21 of the Principal Act in order to redefine the description of persons who are of unsound mind or who are lunatics and who must be paid. So, you see this Bill is dealing with even Kenyans who fall within this Public Trustee and who cannot make decisions because, maybe, they are of unsound mind or are lunatics. So, the law even protects that category of Kenyans. That is why this amendment to this principal Act is important and I really thank the Government of Kenya for seeing it wise to bring this Bill as a Government. It has passed through the Cabinet.

Clause 16 of the Bill proposes to amend Section 25 of the principal Act. This is to empower the Public Trustee to compel the production of documents. There are situations where people do not want to cooperate. There are situations where in fulfilling his functions, certain institutions or individuals do not want to give documents for him to administer those resources. So, Clause 16 is amending Section 25 and it gives him powers to compel, of course, also within Article 35 of the Constitution on access to information.

Clause 18 of the Bill proposes to amend the principal Act by inserting two new subsections immediately after Section 27. Section 28 which is being inserted will deal with applications of unclaimed assets from applying to the Public Trustee and Section 29 empowers the Public Trustee to apply alternative dispute resolution mechanisms in dealing with compliance with the constitution.

We are moving this amendment to harmonise the old law with the current constitutional dispensation. Secondly, we are creating and enhancing good governance structure on how the Public Trustee should be run. Thirdly, it has a function to expand the scope of the functions of the Public Trustee. Finally, it reduces the time taken to administer the extent of the deceit. So, it is as clear as night is from day and I am sure Members will look at this Bill with a keen eye.

Just to advise my colleagues and the new Members, it is good that when you see a Bill in the Order Paper seeking to amend an existing Act of Parliament, you go to the Table Office and get copies of the Bill and principal Act so that you see what the Bill is amending. That way, it becomes easier for one to understand. When we come to the Committee of the whole House, this is the proposition from Government. If you can enrich this Bill, as a Member of Parliament, we will be very happy both in terms of debate during the Second Reading, and during Committee of the whole House. We expect Members to bring their own amendments in making sure that this Bill becomes better than what the drafters, or the Government, intended.

With those many remarks, I beg to move and ask the great Member of Tharaka Constituency to second.

**The Temporary Deputy Speaker** (Hon. Mariru): Let us have the Member for Tharaka.

**Hon. Murugara:** Thank you, Hon. Temporary Deputy Speaker. I rise to second this Bill which essentially is a Bill to amend the Public Trustee Act Cap. 168 of the Laws of Kenya. The Act deals with trusts. Where there is no personal representative to act for a person, we have to find an officer of the Government to represent that person and that person of the Government is in the name of a corporate body known as the Public Trustee. I remember during my days in the university law school we used to hate trusts. We learnt about the Public Trustee. I never thought I would ever find it anywhere in life and, therefore, we never paid much attention. It is important for Members of Parliament to understand what this law is all about because it tries to solve one of the problems you will face in your constituency. The first thing you are going to face is somebody telling you to take him to the Public Trustee and if you do not know who the Public Trustee is, you may actually not help that person. Therefore, it is important to know that there is such an office which acts for Kenyans who have assets in the public or private sector but they do not have any persons to represent them when they pass away.

The Leader of the Majority Party has explained the sections that are to be amended. It is important to lay emphasis on the fact that there is going to be an investment body for the monies that are collected by the Public Trustee. That way, the fear of the money getting lost is allayed. However, there are many instances when the Office of the Public Trustee has money that is not claimed. This is why the Act makes it very specific that the provisions of the Unclaimed Financial Assets Act do not apply here because that law governs what is in banks and financial institutions. In this particular instance, what happens to money that is in the coffers of the Public Trustee and that money is actually not claimed. It will be invested for a given period of time. After that, the money goes back to the Consolidated Fund and it is appropriated. The Government appropriates the money, and that money will possibly be part of the NG-CDF that we are going to get.

It is also very important to note that the qualification of persons to sit in that investment board is really professional qualification. It is not going to be people who cannot handle trustee money. It is people who are supposed to be taking care of public money like any other public

officer. The Act being amended is an old colonial law. It is among those Acts that were passed during the colonial times.

Hon. Temporary Deputy Speaker, as it is today, I do not think that the founders of our nation had a lot of interest in what was going on then because they could hardly understand it. I hope we can deal with such an Act in a better manner today than it was at that particular time. The Office of the Public Trustee was created under the Minister for Justice and Constitutional Affairs. That is why even today the old Act makes reference to a Minister. After promulgating the Constitution 2010, those titles ceased to be. The Office of the Public Trustee, as it has always been, falls under the Office of the Hon. Attorney-General. This is why we are saying the reference to the Minister should be deleted, and we make reference to the Hon. Attorney-General.

When the Members are requested to assist anyone with a problem with the Public Trustee, that office is at Sheria House. That is where you go. You will be guided accordingly, and possibly your constituents will be satisfied.

Finally, tied to this Act which is Chapter 168 of the Constitution is Chapter 160 of the Law of Succession Act. This is the law that governs the problems we are faced with in our constituencies, including my own constituency, Tharaka, where hundreds of people, especially widows are waiting for me to assist them to get letters of administration. Their husbands died and they had pieces of land which they cannot deal with until they get letters of administration. My plea to this honourable House is that once the Departmental Committee on Justice and Legal Affairs is established, we must move with speed to find a solution to how citizens in the rural areas who are widows can be assisted expeditiously to get letters of administration to enable them deal with estates of their deceased husbands. In most cases under African systems, it is the men who have title deeds of property. It is the husbands who work. When they die, the widows are left with no avenue of getting assistance. When you recommend a poor lady to go to the advocates, she is charged Kshs100,000 or Kshs150,000 to protect an estate whose value is not more than Kshs100,000. In essence, it means this lady borrows Kshs100,000 to pay a lawyer, and once she gets the letters of administration, she sells the piece of land, pays back the debt and she becomes destitute. So, it is my humble prayer to that Committee that we look at the Law of Succession Act in such a way that we amend it to make it exceedingly easy for anybody, especially a widow who has lost a husband to go to court and get those letters of administration at minimum costs with great speed, so that her life can go back to normal despite having lost the husband.

With those remarks, I beg to second. I support the amendment to this old law because it will bring the law in line with the Constitution. Eventually, the Act will be in consonance with modern day lives.

Thank you, Hon. Temporary Deputy Speaker.

*(Question proposed)*

**The Temporary Deputy Speaker** (Hon. Mariru): Hon. Kiai Githiaka.

**Hon. Kiai:** Thank you, Hon. Temporary Deputy Speaker. I stand to support the Bill. I once worked as a Public Trustee in the Department of Public Trustee and the Attorney-General's Office. I know the importance of the amendments that have been fronted in this House today. It

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is very important that we align the Act to the changing legal dynamics in the sense that the Act in question was conceived way back before Independence. The environment is changing. This means that the Act has been left behind. We need to bring it at par with the changing legal dynamics. When I looked at the intended amendments, I realised that it expands the nature of the trustees to include body corporates. There before, only human beings could handle this. The inclusion of a body corporate means that we are expanding the scope and making sure that even body corporates can also handle this. These body corporates are capable of being sued or sue on behalf of the deceased estate.

I have also seen that the amendments intend to capture the missing persons. What are we talking about? We are saying that if a person has been missing for so long and his whereabouts is not known, we can include his property under the Public Trustee to ensure that the beneficiaries of his estate do not suffer.

I also want to note that the intended amendments want to make sure that the time dimension is also captured. When I was a Public Trustee, cases could go on forever. The beneficiaries would suffer in poverty because the cases were never ending on time. The timetable given upon which property will be distributed ensures that the beneficiaries enjoy the property of the deceased.

Finally, I also want to note that there before the Act never captured the inclusion of people of unsound mind. Much as the intention of the old Act was to handle the property of a deceased person, it has expanded to include people of unsound mind. They are not capable of handling their own affairs. The Public Trustee comes in to handle their property to ensure that their beneficiaries are not swindled their property by other people. It ensures that the property vests very fast to the intended beneficiaries.

With those few remarks, I support the Bill. Thank you, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. Mariru): Hon. Mwadime Andrew, Member for Mwatate.

**The Member for Mwatate** (Hon. Andrew Mwadime): Thank you, Hon. Temporary Deputy Speaker, for giving me this opportunity to contribute. I stand to support the Public Trustee (Amendment) Bill, though I have not read it in details. I have been thinking about it because this Act was made long time ago during colonial times. It is good to align it with our Constitution.

As the Member for Mwatate, I have had several cases related to the Public Trustee. As the Leader of the Majority Party was putting it, enhancing the mandate of the Public Trustee will be very good to the unfortunate Kenyans, so that they can get what is theirs in good time.

Since the 12<sup>th</sup> Parliament started, some of us have been settling here and there. We did not have an opportunity to talk. It is good for me to thank the people of Mwatate Constituency, Taita Taveta County for re-electing me for the second time as their Member of Parliament. That shows that, at least, they trust me. I did what was good for them and that is why they re-elected me.

Public trustees are all over the country. I am sure there are many cases and some are unfortunate who do not know where to go. I am sure that when these proposed amendments are made the public relations department concerned with them should visit the entire country and talk about it so that all Kenyans know the existence of the department. Clear timelines should be made so that the less fortunate can know the exact time they can get their property.

Hon. Temporary Deputy Speaker, thank you for giving me this opportunity. I have not read this Bill, but I will read it and see if I can propose some amendments, if at all they will be required. Thank you very much for recognising me.

**The Temporary Deputy Speaker** (Hon. Mariru): Let us have Hon. Shamalla Jenifer.

**Hon. (Ms.) Shamalla Jennifer:** Thank you Hon. Temporary Deputy Speaker. I rise to support the amendments to the Public Trustee Bill of 2017.

I have noted that Clause 17 of the principal Act is amended by inserting the following new sections immediately after Section 27 –

“The Unclaimed Financial Assets Act shall not apply to the Public Trustee.”

I wish to propose that when this Bill goes to the Departmental Committee on Justice and Legal Affairs there be a mutual cooperation between the Public Trustee and the body that deals with Unclaimed Financial Assets Act. It is important to identify if for any reason some of the assets that were to be managed under the Public Trustee Act may be with the body that deals with unclaimed financial assets.

**The Temporary Deputy Speaker** (Hon. Mariru): Hon. Mutemi, Member for Mwingi Central.

**Hon. Mulyungi:** Thank you Hon. Temporary Deputy Speaker. I rise to support this Bill. Before I do so, because I love life and I feel hurt when we lose lives, allow me to take this opportunity to send a message of condolences to the families who have lost their loved ones during the electioneering period, especially during the demonstrations of NASA. We must appreciate life irrespective of which part of the political divide we come from. I urge the Government to be humane sometimes and uphold the Constitution. When people demonstrate, every person, even those who have not gone to school, know that the Constitution allows them to assemble freely and to demonstrate freely. I urge the Government to respect that so that it can also be respected by all Kenyans. I needed to say that before I come back to the Bill.

This Bill is very important to Kenyans because we keep losing lives every day and properties are left with nobody to take care of them. I support this Bill especially Clause 16 which compels the trustee to produce any document that he has and he can obtain it without any hustle.

Similarly, allow me to commend those who propose to amend the Act because it now makes it very easy for people to administer properties of the deceased. I faced this problem when I bought land from somebody and before the transaction was completed, the person who was selling the land to me passed on. I found myself in many problems because I had paid some money and I did not know what to do next. I feel this Bill has come at the right time to save some of those difficult situations by making it easy to administer properties.

The separation of public properties from private properties makes it very easy. When dealing with private property one will know where to go and which section of the Act to look at. And it has also been made easy when one is dealing with public property. This Bill has made that separation to make it very easy. The timing on how to execute all this has been made ease.

I support this Bill. Thank you.

**The Temporary Deputy Speaker** (Hon. Mariru): Let us have Hon. Rindikiri, Member for Buuri.

**Hon. Rindikiri:** Thank you Hon. Temporary Deputy Speaker. I would like to support this Bill as it is and with the few amendments many Members have spoken about. The

commitment of the Jubilee Government, despite the fact that our opponents have not realised that there is a Government in power, is to make it easier for citizens to enjoy the benefits of good governance. The Bill before us caters for the disadvantaged, the low income and high income earners and puts them at a level where their businesses are managed even when they have passed on because they are guaranteed that whatever they have left behind will be enjoyed by those they have left without having many legal issues and expenses.

I have been a victim of what the Hon. Member who has spoken has mentioned. I am still going through the same issue. If this Bill was in force, it would have made it easy for me to solve that problem. We have many people in my rural area who are poor and with few properties. When they pass on unscrupulous people in society or even some institutions scramble for their land. When we will have a Public Trustee in place, it means that even the small people in the villages are protected and their transactions can go on smoothly.

Many citizens have fallen victims to very rich people. Many citizens with land, money in the bank or small businesses and are registered with Public Trustee, immediately something like this happens, there is a place where they can go and have their cases handled properly. We cannot sit back and not pass this Bill. I personally thank the drafters, the proposers and my very good friend from Tharaka who seconded. I had to be very keen on what he is saying. We totally agree this is one Bill that is going to cater for the interests of our people at the constituency. Personally, I am sure my constituents are going to benefit from this because I came here in order to protect the interests of everybody calling himself Member of Buuri community.

I beg to support this and say that Jubilee Government fears us and recognises God as the sovereign giver of life. No matter what the hon. Member from the Opposition says, we at Jubilee are also sensitive of people who have died. We need to ask ourselves why these people died, who caused their death and how the kid in the balcony was killed without any police officer on site. There are so many questions that remain unanswered by those who are handling demonstrations. Giving opportunities for gangs to do what they have done and then we come to Parliament and say we are faithful is not right. The Jubilee Government respects the life of everybody and it will never give any opportunity for anybody to die. Our opponents have more explanations to give as to what and why a small boy at the balcony was shot by people who are not police. Let us be sensitive to all of us.

Thank you. I support this Bill.

**The Temporary Deputy Speaker** (Hon. Mariru): Let us have your neighbour. Hon. Oda, Member for Isiolo North. I hope I got the name correctly.

**Hon. Hulufu:** Thank you, Hon. Temporary Deputy Speaker. I stand to support the amendment to this Act - a very old Act. When I got the proposed amendment from the Table Room, I made a point of referring to the old Act which is reported to have commenced on 29<sup>th</sup> May 1925. What we are amending is a colonial law which for one reason or another, successive independent governments did not care to look at. They did not look at what was not good and needed to be repealed by various Houses which were there before the 12<sup>th</sup> Parliament.

There are valorous provisions of the proposed amendments which I want to speak to. The principal Act talked about Minister appointing any fit and proper person as a public trustee. Of course when it is that vague, anybody can be appointed. Therefore the insertion of the new section makes the qualification for whoever should be appointed as a public trustee to be very

clear. It has to be somebody with 15 years of experience, some legal background and so on and so forth. In the hands of such a person, those funds which are meant for people who are not able to manage what is left behind by people who died without leaving behind a will or people who have just gone missing, as it is very common these days, will be safe.

Another very important aspect of this amendment which has really impressed me is provision for Public Trustee Investment Board. It is not just a matter of managing what is there but it also creates provision for that Board to invest in viable business enterprises and grow the Fund for the benefit of the beneficiaries stipulated in the Act.

For me and especially the constituency I represent and many others, we have people who go missing these days. We are unable to determine what we should do with the wills that they leave behind especially from the time we started having this issue of terrorism and some people being picked and they go missing. We have so many families which are suffering. There are properties which are left behind. The old law does not provide for how the estate should be administered. I am glad that the Government has noted this and has made provision for missing persons and the properties that they leave behind to be administered by Public Trustee.

Another very interesting aspect of the proposed amendment is replacing the terms which were used in the old Act. Terms like "lunatic". In this age, it should not be used to refer to any human being. We need to be sensitive to people who are mentally challenged. I appreciate that part. I stand to support this amendment.

Thank you.

**The Temporary Deputy Speaker** (Hon. Mariru): Let us have Hon. Mawathe Musili, Member for Embakasi South.

**The Member for Embakasi South** (Hon. Julius Musili Mawathe): Thank you, Hon. Temporary Deputy Speaker. I rise to support the amendment. This being my maiden speech, I will request for indulgence on point and fact that I will share with you. First, I want to thank the people of Embakasi South for having elected me and having faith and confidence in me. I intend to and I will make sure that I serve them in these five years very diligently. Today, I do not stand here with a smiling face because the young boy that you are referring to who was murdered on Tuesday happens to come from my constituency in Pipeline Ward. The young boy no wonder how we might want to trivialise it, was innocently playing at the balcony together with two other boys. He was shot and bullet went in through one side of the head and came out through the other side of the head, a young boy by the name Geoffrey Mutinda. When the bullet came out through the other side of the head, it hit and lodged in the thigh of a pregnant lady who was bending washing her clothes. That is the point of brutality that we have got into as a country.

Will we do something to correct the situation? I do not think anybody has a licence or authority to just go around firing bullets at will. I do not think that boy young as he was had done anything to warrant what befell him. Both parents are unemployed. Now they do not know left from right. Scuffles ensued after that. Obviously, it was between the officers because they saw who did it only that they were on a motorbike and they took off. When the officers attempted to come and retrieve the body, the crowd was still angry and agitated. We managed to get the boy out of that place with the assistance of one very able Officer Commanding Police Division (OCPD) of Embakasi, brother Mang'ira, at about 4.40 a.m. I think we need to do something drastically and very soon otherwise we are drifting in the wrong direction.

Embakasi South is made up of, among other places, and I will specifically talk about two or three areas, the Pipeline Ward, Imara Ward, Mukuru kwa Reuben Ward, Mukuru kwa Njenga Ward and Quarry Ward. We talk about the Equalisation Fund (EF) or the need to get people to the same level. Embakasi South is a constituency in the City of Nairobi but it is worse of than other constituencies in the rural areas or the so called ‘marginalised areas’. With more than 300,000 residents and 151,000 registered voters, Embakasi South has only one Government high school; Embakasi Girls High School. Embakasi South has only one county primary school; Mukuru kwa Njenga Primary School. I do not know what transpired in the last five years. I do not know what you mean when you talk about being marginalised, set aside or left behind. Something needs to be done about this so called Equalisation Fund. That is so that something is done about some of the constituencies that are so far left behind in development or, ignored.

Embakasi South does not have roads. It has only one road that is tarmacked – the Catherine Ndereba Road. It is nothing but muddy roads everywhere else. We have a road that is now named “Matopeni Superhighway”. During the campaigns, to demonstrate how bad the situation was, one of my campaigners, as we were attempting to cross the street or the road from one side to the other, stepped inside and told me: “Please Sir, wait. Let us see how deep it is.” When he stepped inside, the water and the mud went into his gumboot. As he was pulling his leg, the gumboot was left there because he was stuck. So, when you talk about marginalised or ignored constituencies, there are some here that need to be handled. Yes, I promise to work as hard as I can to do what needs to be done. But, there is need to really increase the NG-CDF. We had a county government in the last four-and-a-half years and not a single road was done by it. As we talk things like the NG-CDF and such, we might want to consider such.

I want to echo what one of my colleagues has said here earlier. It was about property potentially increasing. That is because, when your constituents see you, they see the Government. For anything that is wrong, it is the *Mheshimiwa*. It is the Member of Parliament (MP) who is supposed to fix it. When it rains, houses of the people of Quarry, because it is on the lower end by the river bed, are waterlogged. We do not have any toilets in Mukuru kwa Njenga, in the entire ward. I think we have only two toilets in Mukuru kwa Reuben yet you talk about trying to prevent cholera and such. How can you do it? We force our people to go into the restrooms mostly at night, behind their houses. This is in the City of Nairobi; supposedly the City in the Sun.

As we discuss and talk about how to improve and work on the amendments on the Public Trustee Bill, there are many other things that we need to work on.

One other thorny issue that was mentioned earlier on is that the Speaker needs to look into the issue as it was alluded to. It is the issue of sharing and the list that was forwarded to him from this side of the aisle; on the leadership of the House. There being four partners, there is need for something to be done so that everybody feels represented. Everybody here was elected by a good portion or, the majority or, a good number of his constituents.

I thank you for the time, Hon. Speaker. I support the amendments. I did not mention my name since I am still green. My name is Musili Mawathe, Member of Parliament for Embakasi South Constituency.

**The Temporary Deputy Speaker** (Hon. Mariru): Very well. That was the Hon. Member’s maiden speech. He could not be interrupted. But, on the issue that you mentioned



about the positions within NASA, I think the Speaker mentioned that he is going to give guidance from the Chair. We leave it at that.

Hon. Mutunga Kanyuithia, Member for Tigania West.

**Hon. Mutunga:** Thank you for the opportunity to contribute to this amendment, Hon. Temporary Deputy Speaker.

I find the amendment quite in order in terms of its contents and context. There are certain provisions I may need to specifically mention within the amendment itself that may need the scrutiny of the House. I am looking at the composition or the establishment of the investment board. It is a good idea. It is good to have the investment board for purposes of managing public funds and public investments. But, it is better we fully separate the management of the assets from the body doing the business; from the body doing the investments of the assets versus the people who own the assets. If we are able to separate that, I think we will have clear delineation of responsibilities. That will be useful. This separation ensures lack of or removal of biases in the execution of the mandates. If there is no clear separation, the mandate will be cumbersome; there will not be the desired or due clarity in execution of mandate.

In terms of all the other amendments, the insertions, the deletions or rather the repeals and the amendments that are proposed within this Bill, I support them.

**The Temporary Deputy Speaker** (Hon. Mariru): Yes, let us have Hon. Oyula Maero, Member for Butula.

**Hon. Oyula:** Thank you for giving me this opportunity to give my comments on the amendments to the Public Trustee Bill. Kenyans have suffered for a long time basing their claims and so forth on the old Act which, as we have been told, has been on since 1925. This Act left a lot of things hanging for the Kenyans. I want to commend and thank those who have come up with these amendments. I believe these are going to ease the sufferings Kenyans have been going through.

In my constituency, we have a lot of claims from the Public Trustee but because of the old stringent rules, many people who ought to have benefitted from the trustee's funds have missed out. One of the best proposals that has come out is the investment of the funds. This investment will ensure that the young people left behind will get whatever is due to them with interest. I hope that payments of these investments should be made to the beneficiaries together with interest that will have accrued from the investments.

I strongly support the conversion of immovable properties to cash. For example, land. You will find that in some areas, we have very small pieces of land and people will tend to fight over them. If that is converted into cash, I am sure distribution will be proper. There has also been a problem in identifying the beneficiaries. Some cases have taken as many as 10 years and over. I hope that the Act will recognise that the beneficiaries need to be identified early enough and compensation is timely. I would also like to suggest that payments to the beneficiaries should be brought closer to the people. You have seen people travelling all the way from Busia to come to the Public Trustee in Nairobi. That is very expensive for the bereaved. I hope that when the Bill will move to the Committee stage, some of these cases particularly the payment of the compensation or benefits should be made closer to the beneficiaries.

With those few remarks, I beg to support this Amendment Bill.

**The Temporary Deputy Speaker** (Hon. Mariru): Let me give this opportunity to a Member who has been very patient in queue. Hon. Ngugi Nduati, Member for Gatanga.

**The Member for Gatanga** (Hon. Joseph Ngugi Nduati): Thank you very much, Hon. Temporary Deputy Speaker for giving me this chance. Since I am making my maiden speech, I would like to start by introducing myself to Members. Before I speak to the Bill, I would like to thank the people of Gatanga for electing me. I assure them that I will serve them well and bring all the necessary development to the constituency.

The other thing I want to talk about is water. We have a lot of water which we pump from Gatanga to Nairobi, yet we do not have adequate water in Gatanga. This is an issue I am going to deal with since we now have a new project in the constituency which is going to bring more water to Nairobi. As residents of Gatanga we feel that we need a fair share of that water. Currently we only get 30 per cent of the water which is pumped from Gatanga. As Kenyans, when resources are coming from a particular place, we need to be mindful of where we are getting that resource from and mind the welfare of the people who are preserving that resource so that they can also feel that they have a fair share of it.

The other thing I wanted to talk about is about NASA coalition. They have talked about demonstrations and the killings of Kenyans. I want to ask colleagues from the Minority side, since we have elected a legal Government, it is the right time you stopped those demonstrations and agree to work with the Government in place. We will support you. We have talked about NG-CDF and as Jubilee Government; we are going to provide you with enough funds to take care of your constituencies. We do not need to see more Kenyans dying.

I want to support this Bill. It has provided timelines on which matters will be tackled and addressed matters to do with production of documents which was not happening before. The other thing it has addressed is the alternative dispute resolution mechanism. We have seen some matters taking a long time to be dealt with when they get to courts. I would like to commend the Government for bringing this Bill and for agreeing that alternative dispute resolutions will be used to solve matters when it comes to Public Trustee.

In conclusion, I want to say that I support the Bill fully.

**The Temporary Deputy Speaker** (Hon. Mariru): Hon. Gaal Bashane, Member for Tarbaj.

**Hon. Gaal:** Thank you, Hon. Temporary Deputy Speaker for giving me this opportunity to contribute. At the outset, I rise to support the Bill. I had the opportunity to interact with the Public Trustee in 2008, when I was following up on a family Member who had a problem. It took me two years to conclude that issue and I was coming to Nairobi every month, considering where I come from. If the money I used on transport would have been subtracted from the beneficiaries, the money would be over. Fortunately, I was the one taking care of my transport. I met a young lady who said her grandmother was following on the issue of administration for 20 years and she passed away before she got what she wanted. She took over the matter and has taken another three years and to that date she had not managed to get the letter of administration. It is very sad that it used to take long to get a letter of administration and conclude the issues. This Bill has done well and it has given a timeframe to conclude the whole matter.

Sometime back I read in the media that around Kshs 4billion was lying without being invested. Now that an investment body has been formed, it will be of benefit to the beneficiaries. This is a good idea.

The other issue that I have picked is the issue of unclaimed money which will be taken to the Consolidated Fund after 15 years. This money will assist everybody. This is a wonderful

idea. I was not able to read everything but some issues I will mention later, but if I realise that they were not captured I will introduce them at the Committee stage. If these funds will be put to a single trust fund, that will be a wonderful idea. I will support my colleague who spoke on the issue of separating the investments bodies and the tracing of the heirs. They should be different bodies.

Lastly, the unclaimed money should first be advertised because the beneficiaries might be there and nobody knows that there is unclaimed money somewhere. I therefore suggest that it is advertised maybe in the local dailies or local vernacular stations.

I beg to support the amendment.

**The Temporary Deputy Speaker** (Hon. Mariru): Member for Igembe Central.

**Hon. Kubai Iringo:** Thank you, Hon. Speaker, for giving me this opportunity to contribute to this Bill. The original Act is quite old. It was enacted in the colonial days. To some degree, it had become almost outdated. Again, some of the sections which were put there were punitive; others were difficult to achieve. That is why we have ended up with so many problems in the Public Trustee offices, especially in the administration of the estates of deceased Kenyans whose beloved ones left behind struggle day in, day out, and some of them pass on before they get to benefit from the estates left by their loved ones.

If you go to our land registries, you will find that they are littered with many title deeds which belong to deceased persons. And the survivors of these deceased persons, most of them are old widows who are illiterate and they cannot access those title deeds because they do not have letters of administration, letters of grant or instruments to make them heirs of those property.

If you go to our banks - I having been a banker for some years - you will find that there is a lot of money lying in what they call unclaimed balances or dormant accounts, because the next of kin of the deceased cannot access them. This has been so because the process of transferring property of a deceased person to the inheritors or heirs is so cumbersome and clumsy. Therefore, you find that people despair not to go for this money and start looking for other ways of livelihood, knowing very well that there is some money lying in a bank or there is a property which cannot be mortgaged to get the family out of an illness or any other calamity.

I support the Bill because it removes most of these hurdles. At the end of the day, even these monies in banks will be collected and put in a consolidated account from where it can be invested. Once the bona fide owners of this money come forward, at least they can receive the original amount plus the interest accrued because the amount will have been invested to generate some funds for the beneficiaries.

When this Bill comes before the Committee of the whole House, I intend to bring amendments to give timelines and the value of the properties involved. If a certain period has expired and succession has not been done and maybe the property in question is valued at less than the fee which one is supposed to pay, like my brother the Member for Tharaka has said, for you to get inheritance of a one-acre piece of land in Meru, which might only be worth Kshs200,000, and the lawyer will ask for a similar amount, why do you go for it? You better leave it. So we need a clause so that the Government can subsidise the fees. We have thousands of widows who require their title deeds which are lying in registries. In Maua, for example, we have thousands of them.

I have got a list of more than 3,000 widows and they do not have ways of accessing the title deeds. We should get a way of having a fund which can take care of succession costs so that these people can be given their title deeds. I even went to see the CS for Lands on this very issue. I am happy this Bill is coming now, because it is opening a window through which we can try and follow that issue further for the benefit of these widows.

When we talk of succession, it is a very painful issue, because most bread earners are the ones who die. Once they die, instead of the dependants benefiting from their sweat, they end up suffering to get this money. If we cannot praise the deceased's good work when we are alive, then we are also condemning ourselves to the same. Therefore, the Public Trustees should be vetted. They should be people of integrity. They should be people who are ready to serve the less fortunate of this society. They should be people who are experienced and who have been vetted properly to see to it that they can be entrusted with public funds. The board members should also be vetted and be seen to be people with integrity.

Finally, I would propose that these Public Trustee offices, given the limitation of the amount that should be administered, they should be devolved to the counties so that we do not keep trekking all the way across the corners of Kenya coming to Nairobi to follow a case, which will never end. My colleague from north eastern has already said how we travel up and down. If the account of a deceased has Kshs200,000 and you come to Nairobi maybe 30 times all the way from Meru or Mandera or Mombasa or Kilifi or elsewhere you will have used all that money in the process.

The Bill is timely. It brings down the draconian laws of the *wazungu*. Let us move with the present currents. I pray and hope that once we make these amendments, the Government will move swiftly to solve the problems: to remove all these title deeds from our registries and to get that money held in banks and other places to their rightful owners or invested correctly for the future benefit of their original heirs.

I support, Hon. Temporary Deputy Speaker.

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

**Hon. Koyi:** Thank you very much, Hon. Temporary Deputy Speaker, for giving me a chance to contribute to this amendment to the Public Trustee Act. Many speakers, my colleagues, have talked about the same. This country is governed by laws, the Constitution and rules. It is the highest time now as a Parliament to come in to save our people, because it is long overdue. Many people have died before getting their dues. Even the trustees who are put there also live long, follow the process and finally die.

As Parliament, first I think we need to come in fully because we have ignored this, or maybe we were not interested. It is the highest time we follow this because it is for the benefit of our people. Why am I saying this? We have the Ministry for Labour which deals with this. It is only because of the change in the Constitution that may affect this Bill.

It is now time for us to call the Principal Secretary for Labour. Earlier on, before the new Constitution, Ministers used to appear on the Floor of the House to answer a question like this and gave answers as to why they always delayed to pay this money to the owners. However, the Ministry is not dead. It is there. We can call the Minister concerned through the Departmental Committee on Labour and Social Welfare to come and tell us their plans on how they will hasten the payments to the people. Also, the issue of people coming all the way from Bungoma to

Nairobi to chase their money is not fair yet the country is the same. There are labour offices everywhere in this country. So, we need to come up with laws to enable us summon these people to ensure they hurry up or move quickly to pay trustees before they die. It is of no help if your money is somewhere and you keep chasing it for 20 years like what *Mheshimiwa* said here that you might even die before you get it. Somebody else who might be your granddaughter or son follows and they still get nothing. There are a lot of billions that are being held in banks that have not been given to the families or trustees of those people who left their money.

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

**The Temporary Deputy Speaker** (Hon. Mariru): Let us now have Hon. Tonui Kiprotich Member for Bomet Central.

**The Member for Bomet Central** (Hon. Ronald Kiprotich Tonui): Thank you, Hon. Temporary Deputy Speaker for this opportunity to also make my contribution on this very important Amendment Bill.

As I start my second term in this House, maybe, I should take a minute to thank the great people of Bomet Central for voting me back to this House to serve them again. They did that overwhelmingly with about 86 per cent of the total votes and so I am very grateful. I believe they appreciated the work I did here and on the ground for them to vote me in again. I respect those votes and will ensure that I serve them both within this House and on the ground to ensure that various services are made available as we perform in the area of development which we pledged to do.

Back to this Bill, I want to support it because it is very important. This is because we need to ensure that the funds of the deceased or missing are transferred to their families so that their beneficiaries do not suffer. So, in addressing the many gaps which are there in the current Public Trustee Bill is very important so that everything becomes smooth and can be handled well. Currently, the offices of Public Trustee are only in Nairobi and the former provincial headquarters. It now needs to be devolved to the county level owing to the current realities that we now have the county governments which are closer to the people on the ground. We also need these offices of Public Trustee to be there so that it becomes convenient for our people to be served at the nearest points possible.

I am happy that in this Bill, the issue of investment of those funds which remain idle in the offices of the Public Trustee have been provided for so that they need to be invested so that if the beneficiaries become available, they do not simply get the original amount of funds only but also get something on top of it. So, this idea of capturing investment in this Bill is a positive move and needs to be supported by all so that losses are minimised for the beneficiaries.

The issue of the people who are to be appointed to the Office of the Public Trustee having a legal background is very important because it has a lot of legal dimensions. I believe they should even have additional qualifications. They should not simply be having a legal background but also integrity and a practising licence from the Law Society of Kenya (LSK) and any other relevant bodies for them to perform in these offices. They need to be cleared of integrity and any other legal requirements.

I am happy that this Bill also addresses the issue of missing persons. We have had several people who have been missing for very many years. I know of one who had been missing for more than 10 years and the family could not access his properties, pensions, gratuity and the like. They suffered for more than 10 years before it was actually discovered that he was already

deceased. It has now been captured that after six years, a missing person should be declared missing and his or her properties can now be transferred to the beneficiaries so that members of the family do not suffer that much. At least we need to minimise that.

On the issue of the board membership, I am happy that the board members are not going to overstay in service. If people overstay, I believe they will learn a lot about the system and might resort to looting and cases of integrity arising. So, appointing them for three years is okay. And if they have indeed performed, their terms can be renewed. It is acceptable. They should never overstay as board members of the Office of the Public Trustee.

The issue of staggering the appointment of board members is a welcome part of this Bill so that there is no vacuum in the board at any given time. There is also the issue of institutional memory which can also be there when we have some people continuing to serve as others exit from the board.

The issue of board allowances is also provided for in this Bill. It says that the Attorney-General will be deciding on their allowances. I believe this needs to be improved to ensure that The Salaries and Remuneration Commission (SRC) is also involved in approving what the AG has decided so that we have harmonised allowances in the various institutions of Government. If there is no harmonisation of these allowances, then I believe it will be unfair. We need to have them harmonised and they can only be harmonised if SRC is involved. The Public Trustee Board will be receiving funds to administer from various sources like pensions and such. I believe the Pensions Department needs to pull up its socks so that it can forward those funds to the Public Trustee to administer them. There is too much delay currently at the Pensions Department. It can even take as long as five years for some families to get their pensions or for their money to be transferred to the Office of the Public Trustee. This needs to be improved so that the beneficiaries get their money faster.

With those few remarks, I wish to support this Bill.

**The Temporary Deputy Speaker** (Hon. Mariru): Hon. Wambilianga Nanjala, Member for Bungoma. The Floor is yours.

**The Woman Representative for Bungoma County** (Hon. (Ms.) Catherine Nanjala Wambilianga): Thank you, Hon. Temporary Deputy Speaker for giving me this opportunity to speak in this House and more so, to give my maiden speech. I have patiently waited and finally, I have caught your eye. Thank you. Before I support the Bill, I want to begin by thanking the people of Bungoma for unanimously giving me this opportunity to serve as their Woman Representative. I do not take that for granted. I know I will do my best when it comes to delivering the service to them.

I wish to support the Public Trustee (Amendment) Bill. It is an amendment to the Bill that has been there for some time and has been in existence for over decades. This is a Bill that looks into the compensation of funds to the people who deserve it, the beneficiaries of the departed loved ones. Women suffer most in this context. Where I come from, the succession law has never served the women respectfully. It has taken years and decades for anything to be passed until it gets to the right hands. Bearing in mind that there is the polygamous aspect in the background, whenever somebody passes on and the people in question go to claim whatever is supposed to be given to them, it has never come by on time. I believe this Bill has come at the right time. Whatever amendments will fix this problem will be factored in to enable beneficiaries of deceased persons get the funds on time.

Most importantly, I also wish to comment on the introduction of the investment body which is going to improve on the fund. At least it will get value by the time it gets to the beneficiaries. It will make some strides and get some value. Equal rights to all with such a Bill in place will be acceptable. The 12<sup>th</sup> Parliament will go down in history as the Parliament that assisted all Kenyans equally.

Finally, I join the rest of Kenyans in sending my messages of condolences to those who lost their lives during the election period, especially during times of demonstration where a couple of people lost their lives. Unfortunately, the victims included a small boy whom one Member has been talking about. It is, indeed, sad that our country has to go through that. At this point in time, the country is still hurting but we believe that there is going to be dialogue and people will heal. Those from the Jubilee and NASA coalitions should get an opportunity to reconcile. In the wake of moving forward, we need development. Back where we are elected from, everybody is looking upon us to deliver and not just to engage in the hullabaloo that we keep engaging in.

With those few remarks, I support this Bill.

**The Temporary Deputy Speaker** (Hon. Mariru): Very well, shall we have Hon. Abour, Member for Rongo.

**The Member for Rongo** (Hon. Paul Odalo Mak' Ojuando Abuor): Thank you, Hon. Temporary Deputy Speaker. I support this Bill. This being my maiden speech, I thank the people of Rongo Constituency who overwhelmingly voted me into office because of the trust they have in me. When I was doing campaigns, I had the opportunity to go through the constituency. I had the opportunity to see the challenges that my people have, and the kind of livelihoods they have. As I pledged during the campaign period, I would like to give an undertaking to my constituents that I will live to my pledges and ensure that during my five-year period I contribute to improving their livelihoods and their welfare.

Back to the Bill, I support it specifically because it tends to reduce the time taken to administer the estate of the deceased. I have seen cases where widows and orphans suffer not because they do not have property or money they can use but just because they do not know where the money is, or there is nobody to administer that property on their behalf so that they can get out of problems. I support the Bill also because of the amendment on Section 25, which will compel production of documents. We have seen many cases where a person who was in the process of buying property passes on. When that happens, the person who was selling that property might want to hide it from his beneficiaries. I am happy that the amendment in Section 25 will compel production of documents to assist in the administration of the estate.

I am also happy about the insertion of Section 29 that will give an opportunity for alternative dispute resolution. Personally, I have experience on matters which are in court that are referred back for arbitration which is cheaper, faster, convenient and very easy for people to understand, even laymen like us. So, this is a very good amendment to this Bill which has been there since 1925. Therefore, I believe once this Bill goes through it will assist widows and orphans of this country.

With those few remarks, I support the Bill.

**The Temporary Deputy Speaker** (Hon. Mariru): Very well. Hon. Members, from the screen here the four Members who are still in the queue have spoken and therefore, they cannot

speak twice on this specific issue. I guess they are also registering interest to speak to the next business and that is fair enough. For that reason, I call upon the Mover to reply, Hon. Washiali.

**Hon. Washiali:** Thank you, Hon. Temporary Deputy Speaker. The Leader of the Majority Party is the Mover and my boss and given that I am his Whip, I have the obligation of replying.

First of all, I have taken note of the comments which Members have raised here. I am sure they will be very useful when we get to the Third Reading, and this will improve this Amendment Bill to suit the intended purpose. I therefore, beg to reply.

Thank you, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. Mariru): Hon. Members, I will defer putting of the Question to a subsequent time.

*(Putting of the Question deferred)*

Next Order!

*Second Bill*

#### THE COPYRIGHT (AMENDMENT) BILL

**The Temporary Deputy Speaker** (Hon. Mariru): Hon. Washiali.

**Hon. Washiali:** Hon. Temporary Deputy Speaker, I beg to move that the Copyright (Amendment) Bill (National Assembly Bill No.33 of 2017) be now read a Second Time.

This Bill seeks to amend the Copyright Act of 2001 to align the provisions of the Act with the Constitution, domesticate the Marrakesh Treaty to facilitate access to published works of persons who are blind, visually impaired or otherwise print- disabled, to provide for the liability of internet service providers in cases of online piracy and to enhance oversight over the collective administration of copyright. Article 40(5) of the Constitution obliges the State to support, promote and protect the intellectual property rights of the people of Kenya while Article 69(1)(c) and (e) mandates the State to protect and enhance the intellectual property of communities. Moreover, Article 11 empowers the State to promote all forms of national and cultural expression through literature, arts, communication, information, mass media, publications, libraries and other cultural heritage. These obligations are being realised in various ways including through the use of copyright which contributes to the socio-economic development as it is a source of royalties and related payments to creators, publishers and distributors of published works.

The copyright based industry is yet to realise its full potential. Copyright owners lose millions of shillings due to infringement, piracy, counterfeiting and mismanagement of rights. This Bill intends to address these challenges being faced by copyright owners and it is divided into 29 clauses.

Clause 1 of the Bill sets out the short title of the proposed amendments.

Clause 1 of the Bill sets out the Short Title of the proposed amendment Act. Clause 2 proposes to amend Section 2 of the Copyright Act by incorporating new provisions for domestication of the Marrakesh Treaty, internet service providers' liability and the resale of royalty rights. Clause 3 of the Bill amends Section 5 of the Act to clarify the mandate of the

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Kenya Copyright Board, while Clause 4 amends Section 6 by recognising the offices established under the Constitution, namely; the offices of the Principal Secretary and the Inspector-General of Police.

Clause 5 amends Section 11 of the Act to provide for the appointment of an Executive Director of the Kenya Copyright Board and sets out the qualifications necessary for a person to be appointed to that office. Clause 6 of the Bill proposes to amend Section 19 of the Act to recognise the constitutional office of the Auditor-General. Clauses 7 and 8 of the Bill seek to amend the Act to provide for clarity.

Clause 9 proposes to introduce a New Section 22A into the Act to provide for voluntary registration of copyrights by the owners, authors, assignees or exclusive licensees and for the Board to keep records of such persons in a publicly available register subject to such terms as the Board may determine.

Clause 10 of the Bill proposes to repeal Section 26 of the Act and replace it with a new clause that expands and clarifies the extent of fair dealing in respect of copyright materials in literal, musical, artistic and audio-visual works. Clause 11 proposes to insert New Sections 26A to 26B to make provisions for artist resale rights for visual artists.

Clause 12 of the Bill intends to amend Section 28 of the Act to clarify and facilitate the operationalisation of a blank tape fee in respect of the copyright in sound recordings.

Clause 13 of the Bill proposes to repeal Section 29 of the Act and substitute it with a New Clause 29 that rephrases the nature of copyright in broadcast for clarity. Clause 14 of the Bill proposes to amend Section 30 of the Bill as a consequential amendment.

Clause 15 of the Bill proposes to amend the Act by inserting a new Section 30B in relation to the collection and repayment of royalties.

Clause 16 intends to amend Section 33 to make provision for assignments and their validity under the Act while Clause 17 amends Section 33A for clarity.

Clause 18 of the Bill intends to amend Section 35 to address the rights of performers by introducing new wording in order to facilitate the collection of a blank levy fee as well as assignments and licences, in order to facilitate the compulsory licence provision. It also intends to provide for infringement by clarifying the right due.

Clause 19 intends to amend the Act by introducing a new Sections 35A, 35B and 35C on the protection of Internet Service Providers (ISP) by providing for ISP liability, safe harbour take-down notices and the resultant offences.

Clause 20 of the Bill proposes to amend Section 36 by introducing a new subsection dealing with the destruction of any material seized on the order of a court after the conviction of a person under the Act.

Clause 21 of the Bill intends to amend Section 38 of the Act by creating new offences and providing for the objective criteria that the court shall rely on when sentencing a person who has been convicted of offences under the Act.

Clause 22 of the Bill proposes to amend the Act by inserting a new Section 38A which shall provide for the copyright offences committed by corporate bodies.

Clauses 24, 25 and 26 of the Bill intend to provide for the collective administration of copyright by introducing provisions on the title of the organisation reflecting the current system or position. Those proposed amendments also address corporate governance, requirements of

collective organisations and oversight roles for the collective organisations represented on the Kenya Copyright Board (KCB).

Clause 27 of the Bill proposes to amend Section 48 of the Act by inserting new provisions relating to the Copyright Tribunal, its composition and the disqualification of specified persons from being members of the Tribunal.

Clause 28 of the Bill - which is the second last amendment - amends Section 49 to insert new provisions clarifying the level of reciprocal obligations for the copyright protection.

Finally, Clause 29 of the Bill proposes to amend the Act by inserting a Second Schedule to the Act which shall provide clarity on the extent of fair dealing under the provisions of Section 26 of the Act.

This Bill does not limit rights or fundamental freedoms nor does it delegate any legislative power. It does not also directly affect the functions or powers of the county governments set out in the Fourth Schedule in the Constitution. The enactment of this Bill shall not occasion the expenditure of public funds therefore it is not a money Bill.

With those few remarks, I am sure we are still within time to request Hon. Iringo of Igembe Central to second this amendment Bill.

**The Temporary Deputy Speaker** (Hon. Mariru): Hon. Kubai Iringo, Member for Igembe Central.

**Hon. Kubai Iringo:** Thank you, Hon. Temporary Deputy Speaker, for giving me this opportunity to contribute. I rise to second this Bill which has already been tabled by my brother and Majority Chief Whip, Hon. Washiali. I congratulate him for articulating the provisions and amendments in this Bill, as it had been proposed by the Government and approved to be brought into this Parliament. This is not a new Bill like the one we have just concluded this evening. It is also an amendment Bill which is amending an old Act which has been there for long. Therefore, it is just a clean-up of the same. It is trying to clear the grey areas and introduce new clauses which will assist to administer this particular Act.

The Copyright (Amendment) Bill is quite hardy because we have had so many artists, producers and people with intellectual rights which have been infringed in one way or the other. Sometimes some of these bright Kenyans put off their businesses or careers because of the infiltration and piracy of their works. This Bill has the new clauses which have been already inserted which will at least curtail, if not completely stop, this menace of infringement of people's elites.

I also support the Bill because there will be a Board which will be sitting, vetting and licensing those people who need to be incorporated in this Act. Therefore, with that Board in place, before anybody does anything which is envisaged in this Act it should go to the Board. Moreso, for the Board to be sure that its membership is kept abreast and they know who is on it, there will be a fee which will be paid. There is also a clause where you will need to be licensed. You will have a certificate which is renewable every year, so that at least you will be known that you are a member of the society or that particular group. If at all you fail to pay the set fee, then you will be fined. I find that one in order so as to maintain sanity in the industry.

The penalties have been increased to some degree. Some of them are punitive. Therefore, once somebody thinks of trying to copy or infringe on other people's works, he will think twice because there is a fine of Kshs400,000 or imprisonment of 10 years which is quite a number of

years. Therefore, I find it a deterrent to the extent that many people will think twice before they do it.

There were times when cases were decided under this Act. The offender is charged and convicted but the exhibit is left with the police or with other people and the same infringement continues. This Act has come up with a clause which says that once somebody has been convicted of an offence in this Act, the materials used as exhibits or were confiscated should be destroyed so stop continuation of same rot.

There should be loyalty space. If somebody accepts his or her works to be used by other people, he or she is given that leeway by the Act. In the process, he will charge royalties which will be quantified. Once you pay, you will be a bona fide user of those works. That one is clearly put here. If you need to use an artist's work, you do not have to pirate it. You need to go to him or her or the institution and get it and agree on a fee to be paid. Once you get it, you will have a right to expand or amend it because you would have been licensed. The Act is clear on that, therefore, it is good.

These many clauses are good for the industry. They will tame the overzealous people out there who ruin others' businesses because they are not ready to do anything on their own. More so the law will be good for the magistrate courts because it will give be a reference with clearly spelt out penalties and procedures to be followed when dealing with these matters.

I support the Bill and second it.

*(Question proposed)*

**The Temporary Deputy Speaker** (Hon. Mariru): Hon. Hulufu, Member for Isiolo North.

**Hon. Hulufu:** Thank you Hon. Temporary Deputy Speaker. I stand to support the Bill. Most of the proposed amendments are meant to align the Acts with provisions of various legislation for example, the Basic Education Act. The old Act made reference to the earlier Education Act. As Kenyans, it is important for us to appreciate that there is a lot of creativity particularly amongst our youth. At the same time, we do not see them benefitting from their creativity particularly those who are in creative arts. Part of the reason why that is happening is because there are many infringements on their rights. I am sure most of these proposed amendments are going to address the limitations of the law in protecting the rights of creative Kenyans.

I make reference to the new insertion 46B which talks about collective management organisation. We know at times when you allow creative Kenyans to form organisations for collective bargaining they can be taken advantage of. Upcoming artists do not have the ability to organise themselves and bargain collectively. So, unscrupulous businesspeople can pretend to be part of them and take advantage of them.

One aspect I would like to speak to and which has impressed me is the provision that the board is going to look critically at the collective management organisations in what they do, how they operate and occasionally look at their work to check if they are following the law as provided. There is a provision to take action against the directors if they do not follow the law. Therefore, I stand here as a Member who represents a constituency where creativity is not

nurtured and which at times because of lack of laws like the amendments proposed under this Bill, do not benefit from their creativity.

I support the proposed amendments to the Bill. Thank you very much.

**The Temporary Deputy Speaker** (Hon. Mariru): Any Member who wishes to speak must log into the system. The Member for Mandera South, you got it right.

Let us have the Member for Mandera South, Ali Haji.

**Hon. Ali Adan:** Thank you, Hon. Temporary Deputy Speaker. First of all, I would like to state from the outset that I am in support of this amendment. The amendment seeks to align the old Bill of 2001 to a new constitutional dispensation. This Bill also takes care of persons with disabilities and persons with special needs. That is one of the reasons why I stand here today to support this amendment.

The amendment, as has already been stated, also safeguards against piracy through internet. In this digital era, what we need is a firm legislation that inhibits unscrupulous people who get to access and misuse the property rights of artists. I am also particularly impressed with the amendment because it also seeks to protect the intellectual property rights and safeguards against misuse and abuse, for example, in the fields of literature, music and arts. Copyright owners lose millions of dollars each year to piracy.

One of the things that I am also equally impressed in this amendment is that it seeks to protect the copyright owners and those who rightfully worked so hard to come up with the labels, products and the brands that are unique so that they are able to reap the benefits of their hard work. So, this amendment Bill equally takes care of these artists in terms of not losing millions of shillings to unscrupulous fellows. Other provisions which have been amended that seek to incorporate new provisions in the internet and Internet Protocol (IP) use are also welcome. Clause 3 amends Section 5 which equally is something that we should be proud of. These amendments, as have been presented today, are timely. As you are aware, our renowned artists like *Mzee Ojwang'* lived in abject poverty because of copyright infringement of these artists. They were not able to reap maximum benefits from their works while they lived in this world. Many Kenyans have fallen victim to international exploitations and our popular brands such as *Kikoi* are copyrighted in UK. We can protect words like "*Safari*" but they are often used elsewhere in the world.

This Bill also seeks to update terminologies from the old order such as "Permanent Secretary" to "Principal Secretary". We have Minister now being called Cabinet Secretary. We have Auditor-General now called the Office of the Auditor-General. We have the Commissioner of Police now in the new Constitution referred to as the Inspector-General. Therefore, many other clauses in this amendment Bill insert new sections. Others are basically for operationalisation of the fees, licences and others repeal the sections of the Act that seek to improve the Bill further.

With these few remarks, I would like to support this amendment of the Bill. Thank you.

**The Temporary Deputy Speaker** (Hon. Mariru): Hon. Wamuchomba Gathoni, Member for Kiambu.

**Hon. (Ms.) Wamuchomba:** Thank you, Hon. Temporary Deputy Speaker for giving me this opportunity. I really wanted to give my input into this debate in realisation that I have been serving in the media industry for more than 20 years and having interacted with many artists from the field of music, film, programmes for broadcast and even Information, Education and

Communication (IEC) material, I feel that I have a responsibility to give my input into this Amendment Bill, more so, to support the amendments that are in this Bill.

First of all, it is good for us to come to terms that most of those people we call creative in Kenya for the last 30 or so years, have been subject to a lot of infringement when it comes to the revenues that are supposed to be dedicated to their work, basically because there has not been a good and clear framework on how to protect their royalties, their creative ideas, and how to assist them in catalysing design development, packaging and rebroadcast and airing of their materials, including distribution. Therefore, I am very excited to read the Bill and to identify a few amendments that have been introduced in the Bill that will bring soberness and will uphold the rights of the creative category of people in the society.

I am more excited because I know that piracy has been a vice that has truly driven many artists home. These artists have been driven home under depression, bankruptcy and many other vices that make productive Kenyans not to give their best. I am particularly concerned because we have had so many artists. When I say artists, I mean producers of music and the owners of rights of music. They have suffered infringement because there is a lot of piracy happening in our neighbouring countries and more specifically in Tanzania. We have a lot of music produced legally here in Kenya but reproduction and redistribution of their art work is done by other people who reap from the same material but they do not work for it.

I am therefore very excited to note that the Bill has given clear guidelines and a framework on how to protect artists from the piracy in the industry. I am also very excited because the Bill seeks to promote fair dealing. We have had a lot of tussles; we have seen a lot of demonstrations in our City of Nairobi, where artists have been demonstrating that there are certain categories of corporate clients who have not been honouring their pledges in terms of what is supposed to be paid to them. So, the aspect of promotion of fair dealing in the media and education industry when it comes to production and control of such materials serves as guiding principle of operations in that sector.

I am also very excited about the resale rights that have been defined in the Bill. What has been provided in the Amendment Bill has actually defined what is supposed to be done for resale and what is to be done when it is not for resale. The aspect of streamlining payments of royalties is a factor that will greatly benefit our actors, creative artists, performers, artists and designers. This streamlining is going to guide on who is supposed to be paid what and for what period. This has been defined very well in the amendments.

I also want to note that finally and at last, the word “copyright”, has been defined properly. Other than copyrights, other related rights have also been considered. Having served in the media industry for quite some time, I would want to bring to your realisation that there are many other rights that are supposed to be protected when such category of people are being protected, when it comes to the originality of works. There are broadcast rights, transmission rights, distribution rights, labelling rights, beneficiary rights, royalty rights and reprographic rights. I am excited because all these rights have been touched in the amendments. Therefore, this Bill is going to give us a guiding framework on how this sector is going to operate.

As I conclude, I want to note that the Bill not only focuses on the mass media industry, broadcasting and transmission, it also touches on our education sector, bearing in mind that we are moving from the traditional arena to the digital age, and issues of reprographic rights have

been ably tackled. Therefore, even as we move to the digital age in our education sector, the Bill shall guide us properly.

With those many remarks, I seek to support the Bill. Thank you very much, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. Mariru): Let us have Hon. Gitonga, Member for Tharaka.

**Hon. Murugara:** Thank you, Hon. Temporary Deputy Speaker. I rise to support the amendment Bill, which essentially seeks to amend the Copyrights Act, 2001, which Act had repealed the previous Copyrights Act which was possibly a dead-letter law. The reason I say so, it is during the existence of that Copyrights Act when there was lots and lots of piracy in the country and when Kenya possibly lost most of its intellectual property.

This amendment is meant to ensure that the new innovations, which are part of intellectual property, are actually catered for and those rights are protected from pirates, both in the country and out of the country. There is a raft of amendments proposed, which I fully subscribe to and agree with. I wish to point out that in addition to protecting discoveries, what our citizens have invented, we have also to go to other rights which are derived from the mind, like music; we have also to take care of talents, like in arts; and all other properties that are bestowed in somebody because you have a gift from God.

The proposed amendments establish the board that will deal with intellectual property and copyrights. It also establishes what would happen if there are infringements. I do agree that is a criminal offence and the culprits would have to be punished. The punishment should be relatively high because somebody has invented something through his own mind and somebody else wants to acquire it cheaply and pass it off as his own work. It is that act of passing off which this Bill tries to cure so that whatever it is that is property of the mind is protected from such pirates or passers-off.

It is important to note that even here in Kenya, as we have been told, we have lost several innovations to outsiders. *Kikoi*, as mentioned, is one of them; the *kiondo*, which is a very popular basket with the Bantu communities was actually patented in Japan and therefore whatever it is we want to do with our *chondo*, *kiondo* or whatever they are called in our vernacular, we are not able to do it because it is the property of Japan and Japan protects that right in a very fervent manner.

It is a high time we looked at our young talents. In the constituencies, we have young people who are artists, play games and are entertainers. They were all over during our campaigns. Some of them composed very nice music that propelled some Members of Parliament to this House. If they were all here, we would be debating as to whether we remunerated them or we just sucked their blood, only took their music yet it propelled us to this House and that was the end of the chapter. As Members of Parliament, we had an obligation to remunerate these artists. We have a right to protect them and help them down there. It is an obligation so that they can also develop into better citizens through their talents.

We also have the other example of the Music Society of Kenya which tries to protect our musicians. However, it does not go very far despite the fact that it has a tribunal like the one that is being proposed here. However, everybody wants to go to radio stations, television and so on. There are also pirates who have pirated music which these musicians have come up with and who try to pass it off as their own product. In essence, my support to this Bill is due to the fact

that; one, the Copy Right Act is one of the indigenous laws. We made it ourselves to protect our own rights. Two, we have reviewed an old Act which was not very useful to replace it with a newer Act of 2001. Finally, we have come to realisation that even the 2001 Act is not sufficient for our purposes. We must always be alive to the fact that intellectual property like all the other technology information and otherwise is changing. So, constantly, as the august House of Kenya, we would be called upon to look at the laws that govern our technology and intellectual property. There should be no complaints that I am the one who invented this and was taken away by somebody else which result in tussles and counter tussles.

I support this Bill very much and urge the House to be on the lookout so that from time to time we keep this law in tandem with the new developments that are happening in technology.

I, therefore, beg to support.

**The Temporary Deputy Speaker** (Hon. Mariru): Hon. Bashane, Member for Tarbaj, the Floor is yours.

**Hon. Gaal:** Thank you very much for giving me this opportunity again. I stand to support this amendment which comes in handy. It was amended in tandem with the 2010 Constitution which is a good idea.

The second point is that it gives protection to artists and musicians from big corporations and people who do not have the opportunity to defend their copy rights. This amendment gives them an opportunity to be protected. I have in mind the ringtones which people compose from our traditional point of view. I can recall that lady who used to say “*Serikali saidia*” a ringtone which was widely used by Safaricom. I wonder whether that ringtone is taking care of her by the virtue that her rights are being given to her.

I am also happy that the provision of a tribunal is provided in the amendment with an able advocate with seven years of experience. That will give the advocate knowledge on how to protect people whose copyrights have been misused. I am also happy the exclusive rights will not affect where these rights will be used for education, where this information is collected literally for musical works and where this is used for teaching purposes. It is acknowledged. I stand to support the amendment.

Thank you very much.

**The Temporary Deputy Speaker** (Hon. Mariru): Very well, Hon. Members, the Member for Tarbaj, it is good you ended because it is actually time for the House to arise.

### ADJOURNMENT

Hon. Members, the time being 7.00 p.m. this House stands adjourned until Tuesday 5<sup>th</sup> December 2017 at 2.30 p.m.

The House rose at 7.00 p.m.