

NATIONAL ASSEMBLY

OFFICIAL REPORT

Tuesday, 17th April 2018

The House met at 2.30 p.m.

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

PRAYERS

COMMUNICATION FROM THE CHAIR

DELEGATION FROM TURKISH GRAND NATIONAL ASSEMBLY

Hon. Speaker: Hon. Members, I wish to introduce to you a delegation of Members from the Turkish Grand National Assembly. The delegation seated at the Speakers Row is drawn from Members of the Kenya-Turkish Friendship Group and its secretariat. It comprises the following:

1. Hon. Zekeriya Aslan, Former MP - Leader of delegation
2. Hon. Suay Alpay - Deputy Minister for Defence
3. Hon. Adem Tatli, MP - Member
4. Hon. Fehmi Kupcu, MP - Member
5. Hon. Bayram Ozcelik, MP - Member
6. Hon. Mustafa Acikgoz, MP - Member
7. Hon. Nihat Oztuk, MP - Member
8. Hon. Tamer Dagli, MP - Member
9. Hon. Abdurahman Oz, MP - Member
10. Hon. Durmus Ali Salikaya, MP - Member
11. Hon. Saffet Sancakli, MP - Member
12. Hon. Mehmet Akif Yilmaz, MP - Member
13. Hon. Abdullah Agrili, MP - Member
14. Hon. Okyay Canak, MP - Member
15. Hon. Ibrahim Hilil Yildiz, MP - Member
16. Hon. Saadettin Aydin - Former Member
17. Hon. Fatih Ozturk - Former Member
18. Hon. Osman Oren - Former Member
19. Mr. Didem Hasturk - Protocol Officer
20. Mr. Cem Sultan Aktas - Protocol Officer
21. Mr. Kazim Kirci - Manager of the Football Team
22. Ms. Sahin Susam - Physical Therapist

Hon. Members, the delegation has been in the country since 16th April 2018 to meet and interact with their counterparts as well as play a friendly football match at the Parklands Sport Club, which happened this morning. On behalf of the House and my own behalf, I wish to welcome them to the National Assembly and wish them fruitful engagements during their stay in the country

I thank you.

DELEGATION FROM BUNGOMA COUNTY ASSEMBLY

Hon. Speaker: Hon. Members, I wish to introduce to you a delegation of the Committee of Powers and Privileges from Bungoma County Assembly. The delegation, seated in the Speaker's Gallery, comprises the following Members and staff of the County Assembly:

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| (1) Hon. Emmanuel Situma, MCA | Speaker/Chairperson; |
| (2) Hon. Sophie Marumbu, MCA | Member/Vice Chairperson; |
| (3) Hon. Grace Sundukwa, MCA | Member; |
| (4) Hon. Winny Nyambok, MCA | Member; |
| (5) Hon. Jack Kawa, MCA | Member; |
| (6) Hon. Christine Ngelech, MCA | Member; |
| (7) Hon. Beatrice Wekesa, MCA | Member; |
| (8) Hon. Joram Wanjala, MCA | Member; |
| (9) Hon. Eunice Kirui, MCA | Member; |
| (10) Mr. John Mosongo | Clerk, County Assembly; |
| (11) Mr. Francis Simiyu Tome | Principal Clerk Assistant; |
| (12) Ms. Josylyn Situma | First Clerk Assistant; |
| (13) Mr. Levis Wakhungu | Researcher; |
| (14) Mr. Calistus Ndieyira | Assistant Serjeant-at-Arms; and, |
| (15) Mr. Dennis Mululu | Office Attendant. |

The delegation is on a three-day benchmarking visit of the National Assembly to learn and share experiences on the mandate and working of the Committee of Powers and Privileges. On my own behalf and that of the House, I wish to welcome them to the National Assembly and wish them fruitful engagements.

I will allow Members who are at the door to quickly make their way in. Hon. Members, I took my seat to allow you to make your way in.

DEMISE OF HON. KENNETH STANLEY NJINDO MATIBA

Hon. Members, as I am sure all of you are aware, the evening of Sunday, 15th April 2018, was a sad day for the nation following the demise of Hon. Kenneth Stanley Njindo Matiba, who passed away while undergoing treatment at the Karen Hospital in Nairobi. The late Matiba was born on 1st June 1932 in Kahuhia, Murang'a County. He held a Diploma in Education and a Bachelor's degree in History, Geography and Sociology from Makerere University College. The late Matiba had an illustrious career in the public service having served in different Ministries in various capacities spanning over three decades.

The late Matiba was a person of many firsts. To begin with, he became one of the senior-most civil servants at the age of 31, when he was appointed as the first indigenous African Permanent Secretary for Education in May, 1963. He was also the first black Chief Executive Officer (CEO) of the East African Breweries Limited (EABL) and the first African to head the Kenya Football Federation (KFF). Reflecting his real element on matters of principle, Hon. Matiba was the first minister to break the political taboo of the time by resigning from the Cabinet during the term of the 6th Parliament in 1989 to join the Back Bench.

The late Matiba was a charismatic patriot who dedicated the prime years of his life to the service of the nation with a steadfast devotion to its values and the public good. Indeed, Kenyans

will always remember him as a brave leader and hero who selflessly fought for the re-introduction of multiparty system, thus ushering the country into unprecedented spheres of democracy. He served for 18 years as Member of Parliament for Mbiri Constituency - later renamed Kiharu - in Murang'a District. He also served in the Cabinet from 1983 to 1989, in the ministries of culture and social services, health and later transport and public works, prior to his resignation to push for multiparty politics and constitutional reforms.

He will always be remembered for strenuous but successful agitation for constitutional reforms and political party democracy in Kenya, which dominated the nation in the 1990s. He formed the Forum for the Restoration of Democracy-Asili (FORD-Asili), which initially operated as FORD-Muthithi before the then new and convoluted registration of political parties. He was to later contest for the presidency of Kenya in the 1992 General Elections through the party, coming second to former President Daniel Arap Moi of KANU. His party managed 31 seats in the National Assembly. In the House, the late Matiba endeavoured to serve society with great zeal, grappling to improve the welfare of society and relentlessly contesting to ensure a just government of the people. Indeed, as Nigerians would say, when the renowned nationalist and reformist Chief Obafemi Awololo passed on in 1987, to us Kenyans, I dare say Kenneth Stanley Njindo Matiba was the best president Kenya never had.

Besides his political career, the late Matiba was also an astute businessman having served as the Chairman of Panafric Hotel, Outward Bound Company of East Africa, Vice-Chairman of the Industrial and Commercial Development Corporation (ICDC), founder of the Kenya National Trading Corporation, Director of Kenya Properties Limited and Managing Director of Kenya Breweries Limited, among others.

Hon. Matiba is survived by his wife Edith and three children. On behalf of the Parliamentary Service Commission (PSC), Members of the National Assembly and indeed on my own behalf, I wish to convey our sincere condolences to his family, friends, the people of Murang'a County and Kenyans at large for this great loss. In honour of the selfless service rendered to the nation by the late Kenneth Matiba, I request that we all stand and observe a moment of silence.

(The House observed a moment of silence)

May his soul rest in eternal peace.

Is there an intervention by Hon. Opiyo Wandayi?

Hon. Wandayi: Hon. Speaker, I thought you would give us an opportunity to pay tribute to the fallen hero. Can I do so?

Hon. Speaker: Proceed.

Hon. Wandayi: Thank you, Hon. Speaker. I wish to join you and the rest of Kenyans to express my condolences to the family, friends and relatives of the fallen hero, Hon. Kenneth Stanley Njindo Matiba.

As you have rightly pointed out, Hon. Matiba is the best president that this country never had. I say this with a lot of confidence because I recall those days vividly when the clamour for multiparty democracy was at its apex. It only required people of courage and commitment such as the great Hon. Matiba for the then ruling party to be challenged. Hon. Kenneth Matiba stuck his neck out in the defence of the common person by taking the bull by the horns. Many of us who were young then remember that it was never easy for the then dictatorial regime to be tackled in the manner Hon. Kenneth Matiba did, with his colleagues. I know that the country is

in a mourning state. However, as we do so, we must ask ourselves whether those who are responsible for the tribulations that Hon. Kenneth Matiba underwent have found it fit to repent their sins. As we mourn Hon. Kenneth Matiba, it is not lost on us that the people who are directly responsible for the fate that befell Hon. Kenneth Matiba are still alive. Indeed, it is widely acknowledged that if Hon. Kenneth Matiba was not detained and denied medical attention by the then dictatorial regime, he would be alive today. As we mourn Hon. Kenneth Matiba, as a country, we must reflect and soul-search the befitting tributes we can pay to this fallen hero and his other colleagues who have gone before him.

Hon. Speaker, without further ado, I say *pole* to the family and pray that his soul rests in eternal peace.

Thank you.

Hon. Speaker: Leader of the Majority Party.

Hon. A.B. Duale: Thank you, Hon. Speaker. I want to join you and send my condolences on my own behalf, that of my constituency and the people of Kenya to the family, friends and relatives of one of the leaders of this country who stood very firm and played a very big role in the attainment of reforms and the new Constitution in our country, the late Hon. Stanley Matiba.

It is very unfortunate that somebody's positive contribution is always said after he dies. I am sure some of us were in school then. We did not participate in the reform agenda of the 1990s because we did not have the capacity to do so. I am sure those of us who served in the 10th Parliament, 11th Parliament and the early part of the 12th Parliament before Sunday had certain legislative powers to remember Hon. Stanley Matiba when he was alive. It is not in order, particularly in the Islamic faith, to talk about the deceased. I want to tell Hon. Wandayi that after the handshake between President Uhuru and Hon. Raila Odinga, it meant that we forgive each other, forget the past and forge ahead. I want to ask the people of Kenya not to use the death of Hon. Stanley Matiba to give fodder to some people to revive the politics of yester-years. We need to give Hon. Stanley Matiba a decent State burial. That is what his family requires from the nation and leaders across the political divide. Even when I am gone, please do not discuss my past. Do not come to Garissa and discuss my past because you will not help me. Hon. Wandayi has said that some people must repent. This is not the forum and the place to do so. You will repent to the creator when you die and appear before Him on the day of judgement. You will have an opportunity to ask for repentance. If you repent in full glare of television cameras in this House, we are the wrong forum. We cannot forgive you. We do not have the capacity and jurisdiction to forgive.

I watched a story about Hon. Stanley Matiba on Kenya Television Network (KTN) last night. I listened to Dr. Dan Gikonyo, who is a man I respect a lot. Hon. Kenneth Matiba's death is related to the stroke which he got when he was in detention at Kamiti Maximum Prison. If there are people who must repent, it is the Government doctors who were manning that facility. They must repent to the Almighty God. You saw Hon. Charles Rubia on television last night. If you did not do anything for Hon. Kenneth Matiba, Hon. Charles Rubia is alive. So, can we do something for Hon. Charles Rubia? This House can do something. Can we appropriate the amount of money which the courts gave to Hon. Kenneth Matiba? It was Kshs1.5 billion. Can we walk the talk in this House and put that money in the Supplementary Estimate II that is before this House?

(Applause)

The Departmental Committee on Justice and Legal Affairs should call the Attorney-General and ask him to pay that money. Hon. Kenneth Matiba lost his political career as well as the business he built when he was very young and healthy. The matter of his compensation is before this House. It is a budgetary matter. I want the Chair of the Budget and Appropriations Committee, and other relevant committees, to see whether that amount can be factored in the Supplementary Estimates II. That is one of the steps we can take to celebrate the life of Hon. Kenneth Matiba.

With those many remarks, I ask the political class not to turn the burial of Hon. Kenneth Matiba into a political contest. I know there are people who love burials. That should be a day to give him a decent burial. The family should not allow politicians to hijack that day. They are buying suits and preparing for that day. Hon. Kenneth Matiba must be given a decent State burial. I pray to God that He gives comfort to his family, the great people of Murang'a and the people of Kenya.

Thank you, Hon. Deputy Speaker.

Hon. Speaker: Leader of the Minority Party.

Hon. Ng'ongo: Thank you, Hon. Speaker. On my behalf, on behalf of the National Super Alliance Coalition (NASA), and on behalf of the Orange Democratic Movement (ODM) Party, the people of Suba South Constituency and my own family, I want to also join other Kenyans who have sent messages of condolences and sympathies to the family, friends, and relatives of the late Hon. Kenneth Stanley Njindo Matiba. I also want to point out that many of us were young when Matiba went through the tribulations. I remember I was in Form Three when he resigned, but when he fought hard in 1990 to 1991 and was detained, and in 1992 when he ran for the presidency, I was old enough. I was in the university and in our small ways, we contributed thinking that we would have a change of leadership in the country. Unfortunately, today we are addressing the issue of the late Njindo Matiba as one who never became the president of this country.

I agree with the Leader of the Majority Party that as we mourn the late Matiba, we need not politicise it, need not heighten tension and we need not hype emotions because we are sure that the family is grieving at the moment. Those who are close to Matiba are seriously grieved.

The Leader of the Majority Party has said that the spirit of the handshake should move us forward. I agree entirely but before we forgive, there is supposed to be truth and justice. The House and the Leader of the Majority Party have an opportunity to have the Truth, Justice and Reconciliation Commission (TJRC) Report that is gathering dust in the shelves debated. I am sure Kenneth Matiba would be at peace today if we address the issue as a matter of truth, justice and reconciliation so that those people who wronged him come before him or before the TJRC or whatever body we set up to ask for forgiveness and we would have forgiven them. But without a formal structure there are very many Kenyans who have been wronged and are hurting. The Leader of the Majority Party has just mentioned Charles Rubia. We have many who were incarcerated. There are people who have lost their health although they still look like they are alive. It is high time we brought this matter to national debate. Those who committed crimes against others would find a forum to ask and beg for forgiveness. I am sure Kenyans are very good people and will forgive those who have wronged us. Those who were young and cannot even appreciate what Matiba went through, need to be reminded that, at that time, to gather that kind of courage and say that you wanted multiparty politics in this country was rare. We must congratulate and thank Matiba for it.

Before I sit down, I want to mention that I have heard Kenyans saying that as a country we have disappointed Kenneth Matiba. I disagree with them on one aspect. The greatest

disappointment that Kenneth Matiba has gone with to the grave is the fact that the democratic space he fought for is limited and that TV stations can still be switched off in this country. I am sure that, that is a very serious disappointment to him. That he died when journalists can be harassed, humiliated and even tortured the way they were at the airport in this age and era, I am sure Matiba must have died a very disappointed person. The fact that he died at a time when court orders are still being disobeyed at will even with the Constitution that we fought so hard for in place, to me that is the greatest disappointment. As people who have been left behind, if we want the spirit of Kenneth Matiba to be at peace, then we must address issues of democracy and the rule of law in this country. Let us not remain a primitive state the way sometimes we exhibit ourselves. Sometimes some people's behaviour makes me describe them as obnoxious. We behave in an archaic manner. How on earth in this generation would you switch off TV stations? How on earth can you harass journalists in the full glare of the international media? How on earth would you refuse to appear in court when the courts have said you should do so? To me, that is the challenge, as leaders, we need to take going forward rather than unnecessary political issues on who is supposed to lead and when.

To conclude, there are people who are making the leadership of this country a crisis for us when it is not. It is your personal ambition. Do not make it a crisis for us. It is not a crisis for T.J. to be president of this country. It will never be a crisis. This country will always be led. It can be led by you or it can be led by Mbadi or it can be led by someone else. There are people making leadership of this country a crisis for us. The crisis that we have before us is to democratise this country, the crisis we have is economic progress and the crisis we have is how to improve living standards of the people of Kenya.

Thank you, Hon. Speaker. I condole with other Kenyans.

Hon. Speaker: Member for Kandara. You have become very migratory.

Hon. (Ms.) Wahome: Thank you, Hon. Speaker. On behalf of myself, my family, the people of Kandara and the people of Murang'a, I join you in passing my condolences to the Matiba's widow, Edith Matiba, the family and friends of the Matiba family. We managed as a team from Murang'a to visit the Matiba family yesterday and I can confirm that the family is standing strong. It is not a secret that Hon. Matiba suffered serious illness when he was detained without trial. It is also clear to all of us that Mr. Matiba was a politician. It is quite right and in order, I know there is a lot of pain for the people of Murang'a because they loved Matiba. He meant a lot not only to his family, the people of Murang'a, but also to Kenyans. To speak about issues relating to his illness is important so that we can remind ourselves that what happened to him should not happen to another Kenyan.

Mr. Matiba has not died in vain. Some of the freedom we are enjoying in the Constitution could not have been attained without the struggle of many Kenyans, some of whom are still alive. Somebody has mentioned Mr. Charles Rubia. He comes from my constituency. We have people like Bildad Kaggia whose families have not been looked after. The struggle has no relation with the lifestyles they are leading. There are many families that require and demand that if we are speaking as Kenyans and appreciate the struggle they put up, we should revisit those families and see whether they need Government support. His Excellency the President has sent his condolences. Previously, he has even taken it upon himself, and it is right to do so, to even apologise for some mess that the country has gone through. It is proper if the family received an apology from the Government.

The compensation issue is still pending and the judgement was not attained easily. There was a very long period. Matiba's lawyer even asked us to intervene, but I am happy the

Judiciary, though fairly late, passed a judgement. I agree with the Leader of the Majority Party that the relevant Departmental Committee should expedite that payment not just for Mr. Matiba but for many other people who went through the struggle, not for themselves but for this country. Therefore, we must see to it that those judgements are enforced. If we cannot do that, then we will have no moral authority to even speak.

Julius Malema said some very difficult things. Those questions could be relevant for us as a country during the burial of Mr. Matiba. That is not politicising the death of Mr. Matiba who has died as a result of illnesses that we know. We have even heard from his doctors that he did not get timely treatment because he was incarcerated. Even for that single issue, an apology is demanded. I speak so as a representative of the people of Kandara. The leadership in Murang'a and the people of Murang'a have spoken a lot through the social media. What I am speaking is what the people are speaking. I join all the others who have given condolences. May his soul rest in eternal peace.

Thank you.

Hon. Speaker: Hon. Members, it looks like every Member speaking is taking so long. I may not allow too many of you to speak, especially having heard the leadership of both sides speak. Let me hear the Member for Tongaren.

Hon. (Dr.) Simiyu: Thank you, Hon. Speaker, for giving me this chance to also pass my individual condolences and on behalf of the people of Tongaren and the people of Bungoma County to the family of the late Kenneth Matiba. It is true to say that Kenneth Matiba has paid the ultimate price in trying to ensure there is democratisation of this country. He has not just paid with his life, he has also paid with his wealth in the sense that he went out of the norm. Being a fairly wealthy Kenyan, he got out of his comfort zone to risk life and limb to ensure that this country gets on the democratic path. It is not very easy. Many wealthy people would rather just complain about things and not do anything. In fact, they would rather just bury heads in the sand, but not Kenneth Matiba. This was a man who was even a sportsman. Therefore, he was a very fit person. That he got a stroke is very questionable. In fact, many of us at that time thought that perhaps that stroke was induced.

We still have not learnt our lessons up to date. Recently, we saw Miguna Miguna removed from the airport under some drugging. That is dangerous. Those are the sort of things that lead to this kind of unexplained strokes. So, this country has not learnt a lesson yet. I agree with the Member for Kandara. What Julius Malema said, it applies in this case. I would disagree with those who say that we should not politicise. Those are just the plain truths. We need to face them as a country because we have had this problem. When there is a problem, we try to say forget and move on instead of solving the problem. We do not want a similar thing to ever happen again to a citizen of this country.

As we mourn Mr. Matiba, we should realise that as Kenyans, we owe this country more than the country owes us. Matiba has paid the ultimate price. Many of us want to stay in our comfort zones. We do not want to point out mistakes when they occur because we feel that somebody should do it on our behalf yet eventually the laws affect all of us. The fight for multiparty democracy was led by Matiba, Rubia, Jaramogi Oginga Odinga and Masinde Muliro, guarded by the young tucks then; James Orengo, Paul Muite and others. They were able to risk everything that eventually led to the then President, who was a strong man, accepting that we should have multiparty democracy in this country. It is very telling. We need to soul-search as a nation. When we lose Mr. Matiba at this time, what is our democratic space like? Is it widening or shrinking? When we talk about the dictatorship that Matiba fought against and then you hear

somebody else talking about benevolent dictatorship, are we not losing the game? Those are the things that people like Matiba fought against. For us to keep his memory clear in our minds, we should ensure that there is democracy. We should not be ruled by an individual who then goes ahead to destroy the Opposition the way they try to destroy Kenneth Matiba. It is good that despite all they did to him, God gave him many years to live so that he can be a reminder to all of us who are in politics that we need to contribute positively to our country and not negatively.

I pass my condolences and pray that God rests his soul in eternal peace.

Hon. Speaker: Among the very last ones, a Member who served with Hon. Matiba in the Seventh Parliament, the Member for Igembe North.

Hon. Maore: Thank you, Hon. Speaker, for giving me the opportunity to convey my condolences to the family and the people of Murang'a as well as Kenyans in general. Those days when that happened, I had an experience of the force of who Matiba was on 19th July 1992. It is the day I was returning from the USA to come and contest the December elections that year. I was not able to reach home the same day. We slept somewhere near Embu because the State that time never wanted Matiba to go beyond Rupingazi River. The entire traffic was blocked. You could neither go forward nor backward. There was nothing to do. As we convey our condolences, we want to celebrate and mourn the passing on of Matiba. He was a great man together with the people he led – Paul Muite, Masinde Muliro, George Anyona and others. It was not a fashionable thing to fight for multiparty democracy at that time. Section 2A was repealed a few months earlier but those who repealed it were not sure whether they wanted to repeal it. So, they were trying to go back to the old ways in very many ways.

I join those who are saying that we move forward but, in the same spirit, we have to revisit the words of the MP for Kandara that, in the process of mourning, there are many comedians who will show up there to be seen yet they never shared the spirit of Matiba and the liberation struggle. After we had been sworn-in as Members of the Seventh Parliament, during the State Opening of Parliament, he led the entire team of 31 Members to storm out of this Chamber because he could not stand the presence of his persecutors and tormentors in this Assembly. When he started the issue of technical appearances, it had never been done before. I saw some NASA people, early last year, attempting to copy it although they were signing for allowances. Hon. Matiba never signed for those things.

(Laughter)

So, he had a spirit that should inspire us all for generations. Let us not ask what Kenya can do for us but what we can do for Kenya. Hon. Matiba did the best.

Let his soul rest in eternal peace. Thank you.

Hon. Speaker: Very well. Hon. Members, we move on and close that aspect. Before we move on to the next Order, allow me to recognise the presence, in the Public Gallery, of pupils from Sotit Primary School in Konoin Constituency, Bomet County.

Next Order.

MESSAGE

STATE OF THE NATION ADDRESS

Hon. Speaker: Hon. Members, Standing Order No. 42(1) relating to Messages from the President provides that the Speaker shall read to the House any message from the President delivered to the Speaker for communication to the House.

In this regard, therefore, I wish to inform the House that I have received a Message from His Excellency the President dated 10th April 2018 regarding the State of the Nation Address to Parliament pursuant to Article 132(1)(b) and Article 132(1)(c)(i) and (iii). The said Article 132 states:

The President shall—

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

(c) once every year—

(i) report, in an address to the nation, on all the measures taken and the progress achieved in the realisation of the national values, referred to in Article 10;

(iii) submit a report for debate to the National Assembly on the progress made in fulfilling the international obligations of the Republic.

Hon. Members, pursuant to Standing Order No. 22(2) of the National Assembly Standing Orders, I wish to inform the House that a Special Sitting of Parliament will take place on Wednesday, 2nd May 2018, at 2.30 p.m. in the National Assembly Chambers.

I am aware that the Offices of the Clerks of the Houses of Parliament have since commenced preparations for the day. Official invitations will soon be sent out to all Members in the usual manner.

I thank you, Hon. Members.

Next Order.

PAPERS LAID

Hon. Speaker: The Leader of the Majority Party.

Hon. A.B. Duale: Hon. Speaker, I beg to lay the following Papers on the Table of the House:

The Reports of the Auditor General on the Financial Statements in respect of the following institutions for the year ended 30th June 2017, and the certificates therein:

(a) The Salaries and Remuneration Commission;

(b) The Local Authorities Provident Fund;

(c) The Kenya Energy Sector Environment and Social Responsibility Programme Fund;

(d) The Railway Development Levy Fund Holding Account;

(e) The Contingencies Fund;

(f) The State Officers and Public Officers Car Loan Scheme Fund;

(g) The Nyayo Tea Zones Development Corporation;

(h) Kipchabo Tea Factory Limited;

(i) The National Commission for Science, Technology and Innovation;

(j) The Competition Authority of Kenya; and

(k) The Office of the Director of Public Prosecutions.

Hon. Speaker: The Chairperson, the Departmental Committee on Environment and Natural Resources.

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

The Report of the Departmental Committee on Environment and Natural Resources on the Budget implementation for the First and Second Quarter for the Financial Year 2017/2018 for the following institutions:

- (a) The State Department for Environment;
- (b) The State Department for Natural Resources;
- (c) The State Department for Water Services; and
- (d) The Ministry of Mining.

Thank you, Hon. Speaker.

Hon. Speaker: The Chairperson, the Departmental Committee on Lands.

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

The Report of the Departmental Committee on Lands on its consideration of the Physical Planning Bill, 2017.

Thank you, Hon. Speaker.

Hon. Speaker: Hon. Murugara, on behalf of the Chair of the Committee on Delegated Legislation.

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

The Report on the National Transport and Safety Authority: Operation of Commercial Vehicles Regulations, 2018.

Hon. Speaker: Very well. Next Order.

NOTICES OF MOTIONS

EXPANSION OF SCHOOL FEEDING PROGRAMME TO ALL PUBLIC PRIMARY SCHOOLS

Hon. Speaker: The Hon. Vincent Mogaka, Member for West Mugirango. Is that correct? You are just fumbling with the gadget.

Hon. Mogaka: Thank you, Hon. Speaker. I beg to give notice of the following Motion:

THAT, aware that Article 53(1)(c) of the Constitution of Kenya guarantees every child the right to....

Hon. Speaker: Order, Members.

Hon. Members, it is only fair that you, sometimes, stay for just slightly longer. You sometimes conclude debate on various Bills and Motions in one week or one day. Then the next day, one of the businesses to be transacted will be putting the Question. We cannot put the Question against the provisions of Article 121 of the Constitution, if we do not have at least 50 of you. There are some Members who have a problem sitting in the Chamber even for 30 minutes. This is just an appeal. You cannot just come, sign in there, sit, take a bottle of water like I have seen a number of you do and the next thing is you are trotting out. Did you come here just to take water?

Hon. Mogaka, proceed.

Hon. Mogaka: I beg to give notice of the following Motion:

THAT, aware that Article 53(1)(c) of the Constitution of Kenya guarantees every child the right to basic nutrition, shelter and health; cognizant of the fact that primary school aged children are at a stage where a child requires nutritional meals for a healthy mental, physical development and growth; aware

that school feeding programmes have been implemented in Kenya since the 1980s with varying degrees of success and with heavy reliance on foreign aid and management; noting that the Kenyan Government introduced the home grown school feeding programme in the year 2009 hence a more sustainable and nationally integrated programme by the national Government funded school meals programme through a multi-sectoral cooperation; appreciating that the school feeding programmes have played an integral part in realising the country's goal of universal primary education through incentivising enrolment and retention of children; further noting that the school feeding programme has targeted food inequality in the most vulnerable areas of the Republic of Kenya including school districts in the Arid and Semi-Arid Areas and the informal urban slums of large cities like Nairobi and Mombasa, this House urges the Government of Kenya to expand the primary school feeding programme to all public primary schools in the country.

ADOPTION OF REPORT ON NTSA OPERATION OF COMMERCIAL VEHICLES REGULATIONS

Hon. Murugara: Thank you, Hon. Speaker. I beg to give notice of the following Motion:

THAT this House adopts the Report of the Committee on Delegated Legislation, on its consideration of the National Transport and Safety Authority (NTSA), Operation of the Commercial Vehicles Regulations, 2018, laid on the Table of the House on Tuesday, April 17th 2018, pursuant to the provisions of Section 18 of the Statutory Instruments Act 2013 and the Standing Order 210(4)(b), annuls in its entirety the said Regulations.

Thank you, Hon. Speaker.

Hon. Speaker: Very well. Next Order!

BILL

Second Reading

THE PETROLEUM (EXPLORATION, DEVELOPMENT AND PRODUCTION) BILL

(Hon. A.B. Duale on 12.4.2018)

(Debate on the Bill concluded on 12.4.2018)

Hon. Speaker: Order Members, the debate on this Motion was concluded last Thursday and I confirm that the House is quorate. What remains is for me to put the Question.

(Question put and agreed to)

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

Hon. Members, you tempted me to imagine that we had already okayed the Bill.
Next Order!

MOTION

REPORT ON THE VETTING OF THE NOMINEE AS MEMBER OF THE JUDICIAL SERVICE COMMISSION

Hon. Cheptumo: Hon. Speaker, pursuant to the provisions of Standing Order No. 48, I beg to move the following Motion:

THAT, this House adopts the Report of the Departmental Committee on Justice and Legal Affairs on the Vetting of the nominee for appointment as a Member of the Judicial Service Commission (JSC), laid on the Table of the House on Thursday, 12th April 2018, and in furtherance to the provisions of Article 171(2)(c) as read together with Article 250(2)(b) of the Constitution. This House resolves as follows:

(i) THAT, taking cognisance that the *ex parte* conservatory High Court orders of 27th March 2018 prohibited the National Assembly from vetting Hon. Justice Mohamed Abdullahi Warsame for appointment as a Member of the Judicial Service Commission, and prohibited the House from exercising the vetting and approval requirements under Article 250(2)(b) of the Constitution pending the outcome of the court case;

(ii) THAT, recognising that the *ex parte* conservatory High Court order of 27th March 2018 also prohibited the House from exercising the vetting and approval requirements set out in Sections 3, 6, 7 and 8 of the Public Appointments (Parliamentary Approval) Act 2011, within the time period established by Section 8 and 13 of the said law;

NOW THEREFORE, the National Assembly having been prohibited from confirming the suitability of Hon. Justice Mohamed Abdullahi Warsame for appointment as member of the Judicial Service Commission, as contemplated under Article 250(2)(b) of the Constitution within the period set out in law, is unable to approve his appointment as a member of Judicial Service Commission.

Pursuant to the provisions of Article 171(2)(c) and Article 250(2)(b) of the Constitution, read together with Sections 3 and 5 of the Public Appointments (Parliamentary Approval) Act of 2011, His Excellency the President vide a letter dated 13th March 2018, forwarded to you Hon. Speaker, a notification of nominations containing the name of Hon. Warsame as a nominee for appointment as a Member of JSC. On 20th March, 2018, you conveyed the message from the President. According to Standing Order No. 42(1), the nominee thereafter was committed to the Departmental Committee on Justice and Legal Affairs for vetting. Section 8 of the Public Appointments (Parliamentary Approval) Act gave the Committee a timeline of fourteen days to vet the nominee and report back to this House. As required under Article 118 of the Constitution and Section 6(9) of the Public Appointments (Parliamentary Approval) Act 2011, which requires mandatory public participation, the Clerk through an advertisement in the dailies invited the public to submit memoranda by way of statements of oath contesting suitability of the nominee to be appointed as a member of the JSC. The fourteen days' timeline within which the Committee was to table the Report was to expire when this House was on short recess. In this regard, the Committee sought and obtained the extension of time from the House by a further 14 days, thereby setting the new deadline to submit the Report to the House on 17th April 2018.

The Committee in their sitting on 28th March decided and scheduled to vet the nominee on 11th of April at 10.00 am. However, after the meeting, the Committee was advised by the Clerk to suspend the vetting of the nominee pursuant to a court order served on the same date, prohibiting the National Assembly from vetting the nominee. It is important for the House to know that the suit we are referring to is Petition No. 106 of 2018 filed in the Constitutional and Human Rights Division of the High Court filed by the Law Society of Kenya (LSK) against the Attorney General and others.

The vetting of the nominee stopped on the following grounds and I wish to state as follows:

The nomination of Justice Mohamed Abdullahi Warsame by the President and subsequently subjecting him to vetting by the National Assembly is *ultra vires* to the Constitution and the law. It is in violation of Article 171(2) and Section 15(2) of the Judicial Service Commission Act. In view of those orders of the court, the Committee could not:

(a) Comply with Section 6(3) and (4) of the Public Appointments (Parliamentary Approval) Act and Standing Order 45(3), which requires the Clerk of the National Assembly and the Committee to notify the nominee and the public the date, time and venue for holding the approval hearings; and,

(b) Review and consider information received from the Ethics and Anti-Corruption Commission (EACC), Kenya Revenue Authority (KRA), Directorate of Criminal Investigation (DCI), Higher Education Loans Board (HELB) and Registrar of Political Parties with regard to the nominee's status on integrity, tax compliance, criminal record, educational loan repayment and political party affiliations. We, therefore, could not proceed with the vetting of the nominee on 11th April 2018.

The Committee also made observations on the case that was filed. The first observation was that the National Assembly was on 28th March 2018 duly served with a court order suspending the notice inviting the public to submit representation to the National Assembly concerning the vetting of Hon. Warsame. The second observation was that of prohibiting the National Assembly from vetting the first interested party – that is Warsame – for appointment as a member of JSC and prohibiting him from appearing before the National Assembly for vetting. The National Assembly had obeyed the court order and instructed its litigation department to defend the suit. Finally, the inter partes hearing of the application for conservatory orders in the matter is scheduled for hearing on the 3rd May 2018.

Taking into account the orders issued by the court, and not having been able to undertake the vetting process, the Committee makes the following recommendations:

(a) That, in light of the *ex parte* conservatory High Court orders prohibiting the National Assembly from vetting Hon. Justice Warsame for appointment as a member of the JSC, the Committee is not in a position to vet him and submit a report to the House on his suitability or otherwise as required by section 8(1) of the Public Appointments (Parliamentary Approval) Act, 2011 pending the outcome of the court case.

(b) That, further in light of the court order, the House is not in a position to pronounce itself on the approval or otherwise on the nomination of Hon. Justice Warsame for appointment as a member of the JSC as contemplated under Article 250(2)(b) of the Constitution of Kenya.

With those, Hon. Speaker, I want to appeal to my colleagues that we approve the Report as presented by the Committee – that, we are unable to approve the nomination of Justice Warsame for the reasons I have outlined in this report. It is important that this House took the liberty to obey the court order that was served upon it. As a House that believes in the rule of

law, a House of procedure, a House of rules, a House of records, we were not able, because of those reasons, to approve the nomination of Justice Warsame. I want to call upon my colleagues to approve this Report as presented by the Committee.

It is my duty to request my Vice-Chair, Hon. Wahome, to second the Motion.

Hon. Speaker: Sorry, who is seconding the Motion? Hon. Wahome?

Hon. (Ms.) Wahome: Yes. Thank you, Hon. Speaker. As I rise to second the Report presented to the House by the Chairman of the Departmental Committee on Justice and Legal Affairs, the observations that he has made and the reasons that he has given, I want to confirm that we deliberated at length on the observations that the Chairman has listed. We were at pains to arrive at that decision. May I add that this particular vetting would have presented the Committee and the House with an opportunity to examine the law as it is to address the state of the Judiciary. However, because this House has previously pronounced itself in respect of a situation where it has been served with a court order, it will always want to abide by the court order and observe the rule of law. We must lead in observance of the rule of law. There is danger in the House of Parliament being stopped midstream in the exercise of its processes in terms of parliamentary work. Vetting is one of those.

Hon. Speaker, I second the Motion by the Chairman.

(Question proposed)

Hon. Speaker: Hon. Members, before we commence debate on the Report, I have received and approved a proposed amendment, which I think for cleanliness, we need to hear first. It is the Motion by Hon. John Munene Wambugu, Member for Kirinyaga Central.

Hon. John Wambugu: Thank you, Hon. Speaker. I beg to move the following amendment to the Report before the House:

THAT, the Motion for adoption of the report of the Departmental Committee on Justice and Legal Affairs on the vetting of the nominee for appointment as a member of the JSC be amended by inserting the following words at the end thereof—

Subject to the deletion of Recommendation No. (iii) on page 19 of the Report.

The recommendation I am seeking to be deleted reads as follows:

“That, the matter for vetting of Justice Mohamed Abdullahi Warsame be deemed to be *sub judice* pursuant to the provisions of Standing Order 89 pending the outcome of the court case.”

Hon. Speaker, Standing Order 89 implies that the matters *sub judice* or sacred shall be determined by the Hon. Speaker and not the House. It is my view that, that recommendation was not properly included and ought not to have been included because my reading of Standing Order 89 is of the effect that, that is within your power.

Further, the recommendation is self-defeating in that the Committee cannot be seeking that the House resolves that the matter of the vetting of Justice Warsame be deemed *sub judice* because it means that the House should not make any reference to the matter and yet the House is required to make a decision on the Report of the Committee.

With those few remarks, I move to amend. Thank you.

Hon. Speaker: So, who is seconding your amendment? Hon. Maore?

Hon. Maore: Hon. Speaker, I wish to second this amendment. However, my view is emphasised on the issue of citing *sub judice* as the reason. If you recall the many rulings by the

Speakers all over the Commonwealth, it is not appropriate to injunct Parliament. It is not appropriate when a matter is pending before the House, you go to court and say Parliament has no power and the court entertains that story. So, we are safe by deleting this amendment and not entertaining a contest between the Judiciary and the Legislature at this point. So, I want to second by saying that anybody who believes in the Judiciary that a sitting judge cannot be vetted by Parliament, they should go and do something about the provisions of Article 250 (2) (a) and (b) whereby it states:

“identified and recommended for appointment in a manner prescribed by national legislation; approved by the National Assembly.”

If it is somebody meant to be in a commission, the procedure before it goes to the President is the approval by the National Assembly. For that reason, I support this amendment. I invite my colleagues to stop anybody in future from entertaining the story of injuncting Parliament by saying the matter is *sub judice* and you cannot deliberate on it and yet, it was in Parliament before it went to court. Therefore, for that reason, I want to invite your input. What do we do in the face of this Report that is talking about *sub judice* apart from amending it and deleting that part?

Thank you, Hon. Speaker.

Hon. Speaker: Did you second? I thought you were doing your third term and yet, you have not even come to terms with the procedure by now. You should just go back to the village. You are shouting point of order. I am inquiring from Hon. Maore whether he is seconding the proposed amendment.

Hon. Maore: Yes Hon. Speaker. I second the proposed amendment.

Hon. Speaker: Take your seat and stop shaking hands. You are all sick about shaking hands.

(Hon. (Ms.) Passaris shook hands with other Members)

Member for Nairobi, please take your seat also. This shaking of hands is too much.

(Question, that the words to be inserted be inserted, proposed)

Hon. (Ms.) Odhiambo-Mabona: On a point of order, Hon. Speaker.

Hon. Speaker: I have just proposed a Question and there cannot be anything that is out of order. You must be out of order yourself and you are not going to be entertained as if you are in a shouting match here. I have just proposed a Question. So, if you want to contribute, put your request. Let there be a request.

(Hon. (Ms.) Odhiambo-Mabona interjected)

Get out! You are not supposed to be in here without a card. Go out! You have no business here if you have no card, unless you just want to come and sign in and be heard shouting from your seat. Get out! Hon. Millie Odhiambo, if you want to address the Hon. Chairman...

(Hon. (Ms.) Odhiambo-Mabona interjected)

Hon. Millie Odhiambo! Order! Hon. Millie Odhiambo, I order you out of the Chamber. Serjeant-at-Arms, make sure that she is out of the House for the balance of the day.

(Hon. (Ms.) Odhiambo-Mabona withdrew from the Chamber)

Hon. Members, if you want to contribute, you know how to do it. This is kindergarten stuff. Let us have Hon. Maanzo.

Hon. Maanzo: Thank you, Hon. Speaker for giving me an opportunity to contribute to this very important Motion. I support the amendment by Hon. Wambugu, my classmate at the University of Nairobi (UoN). It will not be proper for this House... Once proceedings have commenced in the House, then there cannot be other proceedings and it cannot be *sub judice*, unless it is a comment on a matter which is already pending in the House. In fact, the suit by the Law Society of Kenya (LSK) which I respect and I am a member was *sub judice* to the House. In fact, I believe upon its determination, that suits will be dismissed. Some of the lawyers in this House are going to join the lawyers of Parliament to work with them. Already, whether that suit is entertained or not, Justice Hon. Warsame is already a nominee of the President and it is within the law for the President to bring a nominee to this House because that nominee is going to a commission.

So, Hon. Speaker, I support this amendment because should we let it go the way it is with the Recommendation No. (iii), it means this House has undermined itself to have this sort of Report with the House agreeing to compromise its own regulations.

So, I support Hon. Wambugu's amendment and thank you for the opportunity. I urge Members to support this amendment so that we can delete No. (iii) which is offensive and against ourselves, the rules and law.

Thank you, Hon. Speaker.

Hon. Speaker: I assume that everybody who has placed their cards wants to contribute to the amendment? But you have no card?

(An Hon. Member interjected)

Where? Put it on the intervention. Let us have Hon. John Mbadi.

Hon. Ng'ongo: Thank you, Hon. Speaker. I would like to say the following in opposing this amendment.

One, I remember when the matter of *sub judice* was raised and I think it was the Member of Parliament for Mathare who raised it with the Hon. Speaker, you were very clear when I made a contribution to this point that you are referring this matter to the Committee, which was supposed to look at it in details. There were a lot of complex and legal issues around it. I remember you told us to read Article 171 together with Articles 248 and 250 just to understand and appreciate how this matter should be dealt with.

Hon. Speaker, going into the details of whether it was proper for this House to vet Justice Warsame or not, if we allow this House to start debating that, then we are in direct conflict with what is going on in court.

Therefore, I just want to persuade this House that this matter is already seized in court. They are at a better position because constitutionally they are mandated to interpret the law. We make laws but it is their duty to interpret them. Since the matter is before court, I think it will be

appropriate to allow the court to deal with it. If they say the case filed is weak, fine, it will come back to this House and we will deal with it at that time.

I do not think Hon. Dan Maanzo has the capacity to make that determination. I respect him as a lawyer, but I find him a bit condescending to his fellow lawyers who have filed this matter in court when he says that according to him, he has already made a determination that this matter will be thrown out. That is why I think the Committee was right by making this recommendation that at this point the matter could be *sub judice*. You can just see it already playing by the contribution from my colleague, Hon. Dan Maanzo. The Mover was very careful and I listened to him keenly. I realised that he did not want to canvass his amendment properly because he knew he was going to cross the red line.

We have a problem in this House concerning this matter. Even debating the substantive Motion will be a problem for us. How far are we supposed to go, in terms of discussing the merits and demerits of whether we should vet or not vet an appointee or someone who has already been elected by judges? That to me is very tricky. Therefore, I want to plead with this House that this amendment is not good and is not helping the court, let us go by the findings of the Committee. They took a lot of time looking into this matter and came to a conclusion with the recommendation on page 19 of the Report, that the matter is *sub judice*. I think they were informed and I would like to hear the Chair of the Committee responding or contributing to his amendment.

Today, the Leader of the Majority Party is too loud. Hon. Speaker, please save me from him so that I can be heard properly on the other side. I want the Chair of the Committee to hear me. I am addressing him, since it is his Committee that came up with this conclusion. I think it is important and proper for him to make a contribution. But, if you ask me, my position is that as House we need to reject this amendment and go back to the main Motion. Hon. Speaker, you need to guide us on how far we can go in debating this matter because it is a thin line. We cannot debate it without interfering with the case filed in court. I oppose.

Hon. Speaker: Hon. Members, I want the Chair of the Committee to comment on the issues raised by Hon. John Mbadi among other things. I think this proposed amendment seeks to cure and allow this House to debate the Report. Remember, whenever, conservatory orders are made and served upon Committees there is a requirement for them to make a progress Report on how far they have gone. Hon. Cheptumo perhaps can comment.

Hon. Cheptumo: Thank you, Hon. Speaker. I want to agree with you. I am sure my good friend, Hon. Mbadi, was keenly listening to me when I moved the Motion. From the level of inviting the public to give their memoranda up to the time as a Committee we invited the nominee to appear before us, a court order was served.

We could not go through the full process of vetting the nominee because of that court order. The particular Recommendation No.(iii) in the Report is actually prohibiting this House from commenting on our Report. We were unable to vet the nominee and we did not approve his nomination for appointment as Member of the Judicial Service Commission. It is good to distinguish these two issues. The debate on the Report can only proceed if we delete Recommendation No.(iii), as truly mentioned by Hon. Munene, who is also a Member of this Committee. Hon. Speaker, on the decision as to whether a matter is *sub judice* or not, you have made rulings in this House because this is a House of procedures and records. You are the only one who can give direction on this matter.

Hon. Mbadi, I think we need to distinguish the two issues. We are requesting Members to agree with the Committee that we were unable to vet the nominee. Therefore, we did not approve

him as required under the notification from the appointing authorities. I think that is the gist. So, you are right by saying that, removal or deletion of Recommendation No. (iii) is to facilitate this House to pronounce itself on its inability through a Committee to vet the nominee. Ultimately, we have reported back to the House after being unable to vet the nominee and made a Report which is before us now. I clarify our position.

Hon. Speaker: Let us hear the Leader of the Majority Party.

Hon. A.B. Duale: Thank you, Hon. Speaker. I support this amendment. When this Report was tabled on Thursday, I had a problem with Recommendation No. (iii). The Chair is a lawyer, so he is talking with legal mind. I want to speak in a layman's language. Recommendation No. (iii) in its form without an amendment curtails this House from discussing this Report. It is as simple as that. With this recommendation then the matter is *sub judice*. So, this House cannot discuss this Report. That is why this is a progress Report for those who understand the Standing Orders. A Committee can bring a progress a final Report. It is like going to Nakuru and on your way near Mai Mahiu, the road is blocked, and then you have to come back and report.

In fact, if the Committee did not bring this amendment, I was ready to file it after I read the Report. For us to discuss the progress Report, in as far as where they have reached Recommendation No. (iii) ought to have been done away with. That is why I support it. The House works through the Constitution, relevant laws, Standing Orders and precedents. Therefore, we are setting a precedent. I think Recommendation Nos. (i) and (ii) are in place. The Committee says that the matter given to us through a message by the President cannot proceed because of the rule of *sub judice*.

That is why Hon. Mbadi should not just say that these are the people who interpret the law. No, Hon. Speaker! The three arms of Government must work in a complementary form. I want to jog his memory. The bone of contention in this matter is between Article 171 of the Constitution under the subtitle "Establishment of the Judicial Service Commission" and the application of Article 250(2)(b) read together with Article 248. Those are the three articles that have brought these complications. However, Parliament is a House of rules. In the 10th Parliament, which my good friend the Leader of the Minority Party served with me, the House vetted the predecessor of Hon. Judge Warsame as the representative of the Court of Appeal, the retired Justice Riaga Omollo. I remember in the 10th Parliament, the Departmental Committee on Justice and Legal Affairs chaired then by the Member for Budalangi and current Chief Administrative Secretary (CAS) for Foreign Affairs, Hon. Ababu Namwamba, vetted Hon. Justice Riaga Omolo as the representative of the Court of Appeal. It also vetted senior counsel Ahmednasir Abdullahi and lawyer Florence Mwangangi representing the Law Society of Kenya (LSK) among many others. Of course, there was somebody by the name Gatere representing the Public Service Commission (PSC). There was also Christine Mango, former MP for one of the constituencies in Busia, representing the non-lawyers.

So, the fact we need to come to terms with is: the 10th Parliament vetted the LSK and other judicial officers sitting in JSC. In the 11th Parliament, the representatives of all those bodies were not vetted. In fact, I had to ask Hon. Chepkong'a, the predecessor of Hon. Cheptumo, what had happened. This is because Tom Ojienda was not vetted by the 11th Parliament. LSK's representative, Deche, was not vetted. Judge Mohamed Warsame was also not vetted by the 11th Parliament. This is a very complex legal issue. This House works through a system whereby there is recruitment and then approval by the National Assembly – It is in Article 250(2)(b) of the Constitution. Thereafter, appointment follows. Even the other three public nominees we

vetted here cannot be sworn in because they have been indicted. I am talking about the nominee who was to represent the PSC and two others who were to represent non-lawyers.

So, this Committee, procedurally, is saying that you sent us on a trip just like our colleagues wanted to go to Canaan and Canaan became invisible. So, they ended up in Harambee House. The destination was not reached. So, this Committee is under obligation because it was given 14 days, which I think were extended. So, it cannot carry this hot potato. It had to bring it back to the House and say: "From where we sit, we cannot move." So, what you do, in my honest opinion, is to return this hot potato to the sender. Am I right? Yes, because it is a very complex issue. Hon. Mbadi was away. How come this process was like this in the 10th Parliament then in the 11th Parliament it was a different thing and then in the 12th Parliament we are back to another quagmire? I think it is very good food for thought. The whole problem is Articles 171, 250(2) (b) and 248 of the Constitution. If you read those three articles together, there are many interpretations that different people can make. Hon. Mbadi will interpret this way. Hon. Maanzo will do the same.

Hon. Mbadi, you are an accountant. When you qualify numbers, we do not doubt you. So, you have no moral ground to doubt Hon. Maanzo. He went to a Kenyan university. He is a very respectable lawyer. You and I might one day hire him to represent us. You have to be very careful. Hon. Maanzo can give you *pro bono* services. So, I think this amendment is in place. It is in order. Let us all support it and the progressive report of the Committee because it could not make a decision. I am sure, one way or the other, an interpretation will be done. In fact, that is why the Supreme Court is in place; to do opinions. I think they need to do an opinion on these three articles and then give us the way forward.

As the Legislature, in respecting this, we want to have a good working relationship with the other arms of Government – the Executive and the Judiciary. In their own way, they serve the people of Kenya. So, they have a role to play. I am sure if we complement each other as the Judiciary, the Legislature and the Executive and we create a very good working relationship, the ultimate winners are the people of Kenya. Hon. Judge Warsame is a very good friend of mine. I need to declare that. He is a very good friend of mine, but he happened to be a victim of a lacuna in those three provisions of the Constitution and I am sure he has capacity and intellect. That is why his colleagues in the court of Appeal have shown confidence for the second time in voting him. I am sure as time goes by, we will find a way out.

Hon. Speaker, some of us respect the Chairman of the Committee and I really want to ask colleagues that once you come to the Chamber you must have some decorum. We must respect the Standing Orders and the Speaker. It is not good for Members to misbehave. We want to learn. Hon. Mbadi, please, consult with some of your Members. Tell them not to misbehave. I will do the same with Jubilee. This is because we are the ones to lead people and show them how to behave in the House. That is why we are leaders. I am sure in your next meeting, you will talk to Hon. Millie Odhiambo. Tell her to, please, come with her card. It is a requirement to come to the Chamber with your card, but if you forget to carry it with you, all you do is to humbly ask the Speaker in a very good way: "I am sorry I forgot my card. Can I make a point of order?" This is Hon. Millie Odhiambo's third term. That behaviour is not good even for our newcomers. Learn from some of us. Do not learn from others because...

Hon. Speaker, I beg to support and agree with the Committee that this deletion is important for the House. It protects and secures the House. It does not set a precedent for us to, in the future, gag ourselves.

Hon. Speaker: Hon. Members, you know this is an amendment before we can move to the Report. If we take the route that now I see many contributors taking, you will now go to the substantive Motion.

Hon. Members, remember the Motion merely seeks to delete Recommendation No. (iii) which makes reference to the matter of *sub judice*, but allows the House to debate the Motion. I wish that many of the Members here had cared to read some judgement delivered by the Supreme Court on 15th December, 2017 on the need for courts to exercise great caution in issuing injunctions against other institutions and arms of Government. This is especially when they are handling processes which are time-bound, either by statute or the Constitution. The Supreme Court really expounded on the need for the lower courts, the High Court and the Court of Appeal to exercise caution and restraint in issuing injunctions or stopping processes which are statutory-bound or time-bound, because you then cripple other arms or institutions.

Nevertheless, so that we can deal with the main Motion, we should not take time on the proposed amendments. Let me put the Question so that you can make a decision, one way or another then we go back to the main Motion.

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

(Question of the Motion as amended proposed)

Hon. Members, we will now go back to the main Report of the Committee as amended without Recommendation No.(iii).

I see the Member for Seme.

Hon. (Dr.) Nyikal: Hon. Speaker, thank you for giving me the opportunity. I initially wanted to support this Motion but I will oppose it in its amended form. I do not understand why we want to delete Recommendation No.(iii) while Recommendation No. (i) also talks about what has transpired in court. I would like to hear this because I seek your guidance. Recommendation No.(i) reads that they cannot proceed because of what is in court. Recommendation No.(ii) states the same thing. The only difference is that Recommendation No.(iii) uses the word "*sub judice*". Recommendation No. (iii) starts by stating: "Subject to Standing Order No.89...". My understanding would then be that if we are removing it because of the word "*sub judice*", we must expunge or say something about Standing Order No.89. Recommendation No.(iii) is based on Standing Order No.89.

Hon. Speaker: There is currently no Recommendation No. (iii). This is the problem. Hon. Nyikal, with respect, I will give you more time. Once the House has resolved a matter one way or another, by a vote - in this particular case, by deleting a recommendation - we go back to debating the Motion as amended. When you refer me to Recommendation No. (iii), which has been deleted, you are referring me to something which is happening...

Hon. (Dr.) Nyikal: Hon. Speaker, I know we can delete on paper and in the HANSARD.

Hon. Speaker: Hon. Nyikal, once it has been deleted, applying your mind to it is being superfluous because it is of no use.

Hon. (Dr.) Nyikal: Hon. Speaker, I will come to your office to be guided on this.

Hon. Speaker: You will get the guidance.

Hon. (Dr.) Nyikal: I will do that but as of now, I would have liked you to guide us on the value of Standing Order No.89 in the circumstance of what we have just done. I now oppose this Motion.

Hon. Speaker: Hon. Nyikal, if you read the entire Standing Order No.89, what does the last paragraph say about what the Speaker might do?

Hon. (Dr.) Nyikal: Hon. Speaker, I was hoping that you would make the decision on the basis of Standing Order No. 89 (5). My mind, which has refused to comprehend this Motion that we have now amended, would have been at peace that the Speaker has used Standing Order No.89 (5). I will leave it at that.

Hon. Speaker: When the House has made a decision...

Hon. (Dr.) Nyikal: I will take your guidance, Hon. Speaker, but I think you have heard my sentiments.

Hon. Speaker: When the House has made a decision, even the Speaker's powers thereunder are spent. The House has already made a decision.

Hon. (Dr.) Nyikal: I take your guidance but you have heard my sentiment.

Hon. Speaker: Hon. Nyikal only wanted to talk about Recommendation No. (iii). Let us have Hon. ole Sankok.

Hon. ole Sankok: Thank you very much, Hon. Speaker for giving me this opportunity. For sure, there are three arms of Government. They are independent but interdependent. When one arm of government becomes so independent that it feels superior to other arms of Government, it sets a very bad precedent. That is why, as a House, we need to put our foot down - as per the precedent that was set earlier - and make sure that we abide by the laws, especially Article 250 (2)(b) of our Constitution. I commend the Committee for coming up with a very good Report that will set precedent in future that despite the fact that the three arms of Government are independent, they are also interdependent.

According to our Constitution, any appointee of the President must be vetted and the report forwarded to the President. That is what this House must do. Therefore, I support this Motion. I echo the sentiments of the Leader of the Majority Party that we need to observe some level of discipline, especially our seniors who have been here before us. As "monos" in this House, we look up to them to guide us. Engaging in a shouting match with the Speaker is setting a very bad example for our new Members. Shouting at the Speaker is totally disrespectful.

I support the Motion.

Hon. Speaker: Hon. Rindikiri, do you support this Report?

Hon. Rindikiri: Thank you, Hon. Speaker. Just like my colleagues have said, this is an independent arm of Government. There is a continuous attempt by the Judiciary not to accept the independence of Parliament because some of the decisions which we make do not please them. The Committee followed the procedures which are laid down. A nominee or any other person did not come forward to say that he would not come for vetting for certain reasons. They kept mum and somebody proceeded to the High Court and filed an injunction. For how long will we work with this kind of thing?

I recognise and respect the High Court and the Judiciary in entirety. However, the procedures that govern the good order of doing business have not been followed in this case. We miss a section of the way we do business. This Committee followed the procedure which has been set. Therefore, having exhausted all the mechanisms, they came up with their Report, which I support. It is very unfortunate that the Judiciary seems to take control of almost everything. I see Hon. Kajwang' there. I know that he is part of the Law Society of Kenya. He is a very senior

person I have respected for many years. They need to stand with this House because this is where they spend most of their time. They will be much more remembered for being here than out there. I ask the legal fraternity in this House to take the first step of defending the independence of Parliament. By so doing, we will restore our responsibilities very carefully and strategically.

Lawyers are very intelligent people. They take LSK and manoeuvre their own ways. I am not a lawyer. Therefore, I will not contribute so much. I am talking about the deletion of that item. The proposed Report is good for the sake of order because we cannot kill ourselves. I support the Committee's Report.

Thank you, Hon. Speaker.

Hon. Speaker: Leader of the Minority Party wants to contribute to the Motion.

Hon. Ng'ongo: Thank you, Hon. Speaker. I am contributing to the main Motion.

We are expected to approve these two recommendations this afternoon. The Report has two recommendations. The first one is in light of the conservatory orders. The High Court prohibits the National Assembly from vetting Justice Warsame for appointment as a member of the Judicial Service Commission. The Committee is not in a position to vet him and submit a report. Generally, the Committee is telling us to approve that they were unable to vet Justice Warsame. I do not have a problem with that. This is something we can support. I said very clearly that it will be very difficult for us to go into the details and substance of whether we should vet Justice Warsame or not.

My colleagues have talked about the independence of this House. I am one of the people who are very passionate about protecting the independence and integrity of this House. At the same time, the Constitution was drafted in a way to separate powers. One House should not use its powers to override the rights of other Kenyans. Every Kenyan is at liberty to go to court or to petition Parliament. We have been petitioned a number of times on functions of other arms of Government. There is nothing wrong with a Kenyan petitioning the courts on the legality or constitutionality of an action that is about to be performed. It is important that we allow the Judiciary to deal with this matter. When I say that the Judiciary is at a better position to interpret the law, I do not mean that Parliament has no capacity to interpret the law. I am very much aware that our Speaker is one of the most qualified and competent legal minds in this country. In fact, the Leader of the Majority Party was referring me to Hon. Dan Maanzo. He has left but I do need his services. I have enough people who are likely to represent me. I have the Speaker here, who is my friend, and Hon. T.J. Kajwang'. I do not think I can go to Hon. Dan Maanzo. I have enough representation.

(Laughter)

The Executive has the responsibility of applying the law. Parliament makes laws. Implementation is left to the Executive. The Judiciary interprets the law. We must admit that the matter of whether we should vet people who have been elected by various bodies to the JSC is a weighty matter. Opinion is divided. In fact, we were even sharing with a friend of mine here. According to Article 171 of the Constitution, there are other members of the JSC. There is the Chief Justice, a Supreme Court Judge elected by the Judges of the Supreme Court, and the Court of Appeal Judge we are dealing with today. There is also a High Court Judge and one magistrate. All these are elected. As we speak, there are individuals who are in office, and they are members of the JSC. If we insist that all these people must be vetted, then we are saying that the JSC as constituted currently is illegal because all the other people who sit in that Commission were not

vetted by Parliament. Some were vetted during the 10th Parliament. The representatives who came later were not vetted. Are we saying that by vetting Justice Warsame, we will also call upon the people sitting in that Commission, who were elected by the Supreme Court Judges, the High Court Judges, the Magistrate Courts, and the two advocates comprising of one man and one woman? All these people are sitting in that Commission illegally. That is what we will be saying by making a decision this afternoon or any other day to vet Justice Warsame.

Many have argued about Articles 171, 248 and 250 of the Constitution. There are people who believe that Article 250 of the Constitution does apply to the JSC. If you allow me, let me refer to the Article quickly. There is a requirement that has been read out here in Article 250(2). It says-

“The chairperson and each member of a commission, and the holder of an independent office, shall be –

(a) identified and recommended for appointment in a manner prescribed by national legislation;

(b) approved by the National Assembly; and,

(c) appointed by the President.”

That applies only where the Constitution does not provide otherwise. The Constitution has provided otherwise under Article 171 of the Constitution on how to appoint members of the JSC. There are people who hold that opinion. There are others who also feel that, that opinion is not correct.

Hon. Speaker, Hon. T.J. Kajwang’ was consulting with you when I was saying that, according to Article 171 of the Constitution, there are other members of the JSC. Many of them were elected by the Supreme Court Judges, High Court Judges and Magistrates Courts. There were also those who were elected by the LSK. These people were not vetted by Parliament but they sit in the JSC. Therefore, if we subject Justice Warsame to vetting, we should either recall their appointment to the JSC and vet them so that they go through the normal process or we declare the JSC, as currently constituted, illegal and unconstitutional.

Hon. Speaker, this is a very weighty matter. Sometimes these things get mixed up or jumbled up that you may not even know what you are dealing with. I am trying to bring the House back to what the Committee is asking us to do. What it is asking us to do is something we can support. The Committee has looked into a number of cases in front of us. We have been injuncted and, therefore, can we proceed and meet the deadline, if we were to vet Justice Warsame? No, we cannot. Therefore, the Committee is saying that having looked at all those matters they are not able to vet this member of the JSC. Let us leave the matter to the courts to deal with it. If they will determine that the vetting of Justice Warsame has to be done by the House, we will then proceed from there. The issue of time lapse will not matter because we are aware that the matter is in court. If the court will determine that Parliament should not vet, it will be a precedent-setting. The 10th Parliament did what had to be done and in the 11th Parliament, we did it differently but now this one will be a precedent-setting unless someone appeals and it goes to the highest court on the land. Going forward any appointment through election or any nomination through election by any commission will have to come through parliamentary process.

I also would like Members to look at Article 248 of the Constitution which lists all the commissions including the JSC and compare it with Article 250 which we have made reference to. Article 250(2)(b) talks about approval by the National Assembly and therefore we have no choice because the JSC falls under Article 248. That same Article says that each commission

shall consist of at least three, but not more than nine members. The JSC has more than nine members. So, to me, it is clear that that provision would not be applicable to the JSC because the Constitution provides otherwise. Therefore, those of us with a contrary view that even on the matter of approval the Constitution provides otherwise should be listened to. That is a matter I leave to the courts to determine, unlike my friend Hon. Maanzo, who I disagreed with. He had already formed a serious opinion. I caution him to be very careful and not assume the role of the judges. That is why we are required by the Standing Orders that we should not debate matters that are in the courts.

Hon. Speaker, I agree with you that this is a matter we needed to canvass. In fact, I agree with you further that our Standing Orders allow the Speaker, that even if it is a matter that is *sub judice*, to guide the House by allowing us to comment, but when you see we are leaving the rein you can bring us back. That is why it was very important to have a lawyer in your seat. Sometimes, I see people attempting to elect a non-lawyer. We need to respect professions but also understand that there is capacity. I can do very well as a speaker but with advice of a counsel or a legal team. But, will I be referring to a legal team every time I am on the Speaker's Chair? That will be costly to this country. There are certain decisions, and I have seen you make them. I am not just praising you to make you feel good. I am just saying the truth. A lot of times I have seen you make decisions on your feet that require a legal mind.

I conclude by urging my colleagues that we can support this Motion in its form, even after amending it. I want to give some kind of peace to the MP for Seme that, even with this amendment, I think that the Motion is not bad. That is the way I see it and I ask my colleagues to look at it that way. Otherwise, I will not forget to say that the Committee also gave us too much headache for nothing. The Committee made the recommendation which we deleted. Why did they make that recommendation when they knew it was going to tie this House and not give the House space to debate and then asked one of their Members to bring an amendment? That was wasting Parliament's time. This is something they should have done at the Committee when adopting the Report. They would have left out Recommendation No. (iii) so that we do not have the MP for Kirinyaga Central to have exchanges with us. Thank God, it has made me know and understand who the MP of Kirinyaga Central is. I have known him as a person and I have also known that he is a lawyer.

Thank you, Hon. Speaker. I support.

Hon. Speaker: I know the Member for Ruaraka has an intervention. But, of course, I agree with Hon. John Mbadi on what is provided for in Articles 248 and 250 of the Constitution about the number of commissions and their composition. Our Commission, the Parliamentary Service Commission (PSC) has 10 Members. The JSC has 11 members and the very famous Salaries and Remuneration Commission (SRC) has 14 members. In fact, members to that commission from other organisations like the accountants and others are also elected by those bodies. Very soon, I am sure; you will be dealing with them here.

Therefore, I appreciate the fact that the law appears to be fluid that the interpretations are as varied, as the former Member for Gem who said that the interpretations are as many as there are lawyers. But of course, ultimately we are all powered by what is provided for in Article 165 of the Constitution, that the High Court is given the mandate to interpret. But the same Constitution enjoins every State and public officer in implementing this Constitution by interpreting it. Just read it again. It says that all of you including, Hon. John Mbadi, are capable of interpreting it because you are a State officer. It says that you should interpret it. But the final interpretation is made by the courts.

The 11th Parliament was unable to.... If you recall there was a Motion by Hon. Peter Kaluma seeking to amend Article 165 of the Constitution to remove matters whose consideration was reserved by the institution of the Legislature, both at national and county levels from being taken to the Judiciary. It went through this House but, of course, it died as usual in the other place even though they are the ones who have been inundated by those injunctions. They still allow to be injunctioned continuously. What Hon. Kaluma had in mind then was quite innovative and made a lot of sense. As Parliament, you will do your process and once you are through with it, anybody can take your decision to the courts. Let the courts make anything they will out of your decision because that is their function. But when you are in that process, you should not be stopped from doing it because as you have just rightly said, we have spent a lot of man hours both at the Committee and the House levels reason being that there has been a conservatory order.

It is for that reason that the Supreme Court pronounced itself on 15th December, last year on the desire for courts to be cautious when dealing with stopping other arms of Government from performing functions that are time bound either by statute or by the Constitution. It is a matter that we are waiting to see how the Judiciary deals with it because the Supreme Court has already said so. It looks like the High Court does not listen to the Supreme Court. So, even as we say that there are others who are not respecting... I wonder because the decision by the Supreme Court on 15th December, last year should be binding to the lower courts – the High Court included, but it has chosen not to be bound by it.

Notwithstanding that decision by the Supreme Court, the High Court says, “do not deal with it.” We wonder what the position of the decision by the Supreme Court is, with regard to this kind of matter. It means that the High Court has decided that it is not bound by the decisions of the Supreme Court. There is anarchy or near-anarchy in the Judiciary where the decisions of highest court on the land are not binding to the lower courts. That is what it is.

Hon. John Mbadi almost finalised this matter. Hon. Kajwang? what was it that you wanted to say?

Hon. Kajwang?: Hon. Speaker, I have listened to your address with a lot of anxiety. I have also listened to Members debate both the amendment and the Motion. I have also had an occasion to read the entire report the way it is. It would seem to me that we have put a lot of legislative energy to discuss something which Judiciary seems to have a knack and time for. We needed now to separate what is legislative business and what belongs to other people so that they can put as much time as they have in what they do.

I rise under Standing Order 95(1). I think we have talked about this Motion sufficiently. In fact, looking at the Motion, I ask myself: So what do we do? So, what? No.1 says we are recognising that there is a conservatory order; No. 2 says that this thing is still in the process of the court. That seems to be the fact. So, even as we are adopting it, the Chairman of the Committee could have wanted the Motion to be noted by the House. There is no positive or substantive action we are going to express ourselves either to annul or sustain what is going on. So, we will just go around and we may waste a lot of emotions and even words that may not be here or there. I suggest that we note that certain things have happened and we let the process of law to take its course and we go on with the legislative business of this House.

I am asking kindly if the Mover could be called upon to reply and then we dispose of this matter in the shortest time possible.

Thank you.

Hon. Speaker: Just looking at the Members' faces, I want to tell whether or not there is concurrence with what Hon. T.J. Kajwang' has just said. Even the references we are making to Articles 171, 248, 250... In fact, I am likely to even tell you to look at Article 230 on the composition and establishment of the Salaries and Remuneration Commission. I am also likely to tell you to look at Article 127 on the establishment of the Parliamentary Service Commission. So, what? We will all be asking ourselves to look at various Articles, but this is not what the recommendation is telling us. So, you are looking at those Articles for no reason because the recommendation is just telling us this: We were not able to do it because we recognise there was a conservatory order by the High Court.

Hon. Members, is it fair for me to put the Question for the Mover to be called upon to reply?

Hon. Members: Yes!

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

Hon. Cheptumo: Thank you, Hon. Speaker. I will take a very short time. Let me start by appreciating Hon. T.J. because if we went through the whole process of vetting the nominee and we tabled our Report, then this House would have had the chance and the benefit to look at all the issues. I recall the last time you gave directions, as said by Hon. Mbadi, you told this Committee to be very exhaustive and comprehensively look at the various Articles of the Constitution. That was the direction we wanted to take. That could have been part of our Report, but we were stopped, as I said earlier, with the court order.

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

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

I thank my colleagues. It confirms to me that we want this country to move with all the institutions of governance doing their respective duties. I thank all the Members, especially for allowing the deletion of Recommendation No. (iii) so that they could contribute to the main Motion.

It was a good moment to hear Members' opinions. Even the Leader of the Majority Party was able to raise issues, which to us, elected Members of this House and lawyers are critical. The courts will take time to interpret for us. We will comply as the court makes a decision on this very weighty issue. I thank Members.

I beg to reply.

The Temporary Deputy Speaker (Hon. Omulele): Hon. Members, for obvious reasons, we will not call that Motion to Question.

(Putting of the Question deferred)

Next Order.

COMMITTEE OF THE WHOLE HOUSE

THE KENYA ROADS BILL

The Temporary Deputy Speaker (Hon. Omulele): We shall defer this Order because there are some proposed amendments that came in quite late in the day and we were not able to list them.

*(Consideration of the Bill at the Committee
of the Whole House deferred)*

Next Order.

BILLS

Second Reading

THE PUBLIC PRIVATE PARTNERSHIPS (AMENDMENT) BILL

Hon. A.B. Duale: **Hon.** Temporary Deputy Speaker, I beg to move that the Public Private Partnerships (Amendment) Bill, 2017, be now read a Second Time.

This is a very short Bill. The object of this Bill is to amend the Public Private Partnerships Act of 2013 in order to recognise the role of county governments as distinct contracting authorities and what they can do with regard to public-private sector partnership projects.

In order to achieve this, the Bill makes a provision for the guidelines to be made by the Cabinet Secretary in order to facilitate the manner in which county governments may deal with the public-private partnership arrangements.

Hon. Temporary Deputy Speaker, amending the Public Private Partnerships Act of 2013 in order to fully entrench the principles of a devolved government in undertaking public-private partnership projects in the counties is very important. It gives powers to our counties, governors and county assemblies to directly, without breaking any law, engage investors, other development partners, donors, even the national Government and the private sector in totality in order to undertake the concept of public-private partnership projects in our counties.

That is the basis of this Bill. It is a small Bill. I am happy the Departmental Committee on Finance and National Planning tabled their report last week. It is based on public participation. I am sure the Vice-Chair of the Committee and Member for Roysambu, Hon. Waihenya, will second this Bill giving the aspect and views of the stakeholders as provided for in law and the Standing Orders.

I just want to highlight the salient features of this Bill. Clause 3 proposes to amend the Public Private Partnerships Act, 2013 in order to provide clarity on the type of contracts the Act shall apply to. It is not open ended. It specifies in Clause 3 which contracts apply when this law comes to effect upon assent. These can even be contracts for design. If you want to design a road, the county governments can enter into an agreement with a private a private sector entity. It can be to provide the technical expertise to design. They can enter into contracts for financing, construction, operation, equipping, management or maintenance of a project for the provision of

public service. We need to industrialise our counties. This can be achieved through sourcing of private equity. This law provides that the county governments have opportunity, when this law comes to effect, to build roads, factories and any other project in the interest of her people. Fishing vessels can be bought at the lake region; they can build abattoirs in the north; they can invest in the local resources found within their counties to do a project, either at the design, financing, construction, operation or equipping level.

Clause 4 proposes to exempt the application of the Public Procurement and Asset Disposal Act to contract under this Act. There are good exceptions where the law gives special preference.

Clause 7 of the Bill proposes to provide clarity on how county public-private partnership projects will be included into the bigger public-private partnership priority list. As is now the case, when the national Government engages other governments and donors in key projects which are in the priority list of the delegation led by the President or any other officer in the Government, what misses out is the priority list from the counties. There is no consultation done at the county level. Clause 7 provides clarity on how the county public-private partnership projects will be included in the public-private partnership priority list of the national Government.

Clause 11 of the Bill proposes to amend the current principal Act of 2013 by providing procedures to be followed by contracting authorities when tenders are cancelled before execution of a project agreement. In a situation where a tender flops and a tender is cancelled, there are precautionary measures that contracting authorities must follow in order to safeguard the interest of the county as a government, the interest of the national Government and, of course, the interest of the contracting authorities or of the private sector.

Clause 13 of the Bill proposes to simplify approval processes for public-private partnership projects at both levels of Government by reducing the number of actions necessary to be undertaken by the contractors. That clause deals with how to reduce bureaucracy. For example, when Garissa County, Nairobi County or Embu County want to borrow from the Exim Bank of China, the Exim Bank of India or the Exim Bank of the United States of America, there are a lot of bottlenecks and bureaucracies in the current law. Clause 13 is reducing those bottlenecks. It makes it easier. Now, it takes 18 to 24 months to access funding from the Bank of China, the Exim Bank of India or any other bank. How can we reduce that period to six months or one year?

Clause 16 of the Bill proposes to amend the current principal Act of 2013 in order to increase the number of members for the Public-Private Partnership Petition Committee in order to provide sufficient number of members in the Committee with varying knowledge. So, it is increasing the numbers because we now have the county governments and professionals on board under this law. It also removes institutional conflict of interest. This will enhance the role and standing of petition committees as an independent respectable professional arbiter of public-private procurement disputes. The Standing Petition Committee on public-private partnership is being created as an independent body which will have the respect to provide advice and be a good respectable arbiter when a dispute arises between the public and the private sector.

That is the end. I have said it is a small Bill but it has remained here in the House for some time. I beg to move. The sections in the principal Act which are being amended are provided in pages 2112, 2113 and 2114 of the Bill.

With those many remarks, I beg to move and ask the Vice Chair of the Departmental Committee on Finance and National Planning, Hon. Waihenya Ndirangu to second.

The Temporary Deputy Speaker (Hon. Omulele): Hon. Waihenya.

Hon. Ndirangu: Thank you, Hon. Temporary Deputy Speaker.

At the outset, I want to thank the Leader of the Majority Party for presenting this Bill. Our Committee has found time to go through this Bill which was published on 29th December 2017 and was read the First Time on 14th February 2018. The Bill was later committed to the Departmental Committee on Finance and National Planning, which I represent.

This Bill seeks to amend an existing Act that is the Public Private Partnerships Act of 2013. It is intended to recognise county governments as distinct contracting authorities for public private projects and to achieve this, the Bill seeks to make provisions, guidelines and empowers the Cabinet Secretary in the National Treasury to facilitate the manner in which the county governments may deal with Public Private Partnership arrangements.

In the process of coming up with the Bill, we invited comments by placing adverts in the newspapers. Three critical stakeholders appeared before us in our meetings in Mombasa. They included the Council of Governors, the Institute for Social Accountability (TISA) and the National Treasury who made their memoranda and made presentations to us which we discussed and agreed together. The Public Private Partnership Act of 2013 required a further review, and that is why we are working on these amendments.

Among the issues the stakeholders wanted to discuss were, public participation, access to information and disclosure of requirements for PPP arrangements because there was no provision for public input in PPP and provision for access to information was insufficient. This is against the provisions of Article 35 of the Constitution which provides for transparency and accuracy of information to the public as values in the public service.

Public participation should be included in the parent Act specifically in the development and finalisation of project priority list at the national Government and at the county Government level to be financed through PPP.

This amendment Bill provides the legal framework for governments to engage each other; county to county, national Government to county government, county government to bilateral donors or such other parties to work together to create products and services for our people. There are many areas that the county governments can work within the PPP, for example, energy, agriculture development, garbage collection, development of sport facilities, such as athletic stadiums, tree planting and afforestation and environment. It is true that there are many entities out there who would wish to partner with our county governments to develop markets, housing projects, bus parks, *Jua Kali* sheds and factories. The legal framework that will be created by this amendment Bill will help the national Government and the county government to deliver on the Big Four Agenda which include housing, food security, manufacturing and health.

It is important to note that most of these functions are devolve and therefore the county governments will be guided by the rules that will be made by the National Treasury. It was therefore important to anchor these arrangements within the law. In coming up with these amendments, we sought to shield the Government from liabilities incurred which might be used by third parties to defraud the Government. These provisions protect the Government from liabilities and contingencies from private entities which have been used in the past to fleece the Government and siphon public monies.

There are very many projects that have been undertaken in this country through public private initiatives. Some of the examples include Kenyatta University hostels which cater for over 10,000 students and Masinde Muliro University of Science and Technology (MMUST)

which has also followed that style of public private partnerships. I want to assure Members that the views and the memoranda presented to our committee have been taken into consideration and at a later stage, in response to those memoranda, we will be making relevant amendments so that this law can be in line and develop the county government to work with other enterprises. Government entities and private entities develop, produce and deliver services to the public.

With those few remarks, I beg to second.

(Question proposed)

The Temporary Deputy Speaker (Hon. Omulele): I see interest from Hon. Gakuya, Member for Kasarani. She is not in the House. We shall then have Hon. Rasso Ali, Member for Saku. He is not also in the House. Interesting!

Hon. ole Sankok.

Hon. ole Sankok: Thank you, Hon. Temporary Deputy Speaker. I want to seek your indulgence to allow me take a minute to send my heartfelt condolences to the family of the late Matiba on my own behalf and on behalf of my family and six million Kenyans living with disabilities. We wish the family of the late Matiba God's solace in this very difficult time. We also want to send our condolences to the people of Kiharu and the entire country because Hon. Matiba was a great leader. Heroes get remembered, but legends never die. May his soul rest in eternal peace.

On the Bill before us, it is important to have PPP in our county government. Since these are devolved units that are semi-autonomous and have their own government, they will ensure that development reaches the furthest corner of this country. But as we enter into these PPPs as well as allowing the county governments to be able to borrow, as you know at the moment our country has a very big debt that we are struggling to repay, I want to register my reservation. Let us not come up with another avenue of massive corruption and massive borrowing that will put our country into debts that the future generation may not be able to pay. I want to ask the Committee to come up with legislative frameworks that seal corruption loopholes, especially those of benchmarking, travelling to every country of the world to go and seek for donors or in search of partners. We may incur massive foreign travel expenses.

We have witnessed in the past when MCAs and county government officers could go and benchmark in Israel to see how Jesus was born yet when they come back they do not come up with any tangible thing that touches the lives of the poor residents of that particular county. So, I ask the Committee to come up with ways in which these partnerships will be geared towards tangibles: infrastructure support that will be directly implemented by the lenders. If it is borrowing from a bank or from another country or from the national Government, then it should be borrowing of infrastructure. The investor or whoever will give the money should himself or herself implement the project. If we borrow in terms of cash, we may never see where this cash will disappear to. We will come up with other massive corruption loopholes.

I would also like to advise the Committee to avoid PPP or borrowing towards creating awareness and sensitisation—things that we cannot see or enumerate. When they create public awareness on certain issues, they are sponsored or supported with huge sums of money. But when you try to audit the number of people who attended the seminar, where the seminar took place, you will be told it took place in a hotel of a relative of a governor or a relative of a County Executive Committee (CEC) Member or a relative of the majority leader in that county assembly. A lot of money has been paid. We really want to make sure that this PPP or borrowing

by the county governments should be strictly for tangibles, things that the residents of that particular county can say, “Yes, we have a debt that our children will pay, but we are enjoying the services of the SGR or of a particular road or university that was built in that particular county.”

When we put a very heavy burden on our future generations and there is nothing that they will be seeing, that they will be paying for, I will share my reservations. Let us not create a very big loophole which will only burden our society. We have seen that what we devolved mostly was corruption. Yes, the money went there but with massive corruption. Corruption in the country multiplied. What the citizens were seeing was only corruption in the national Government. If you go to the county governments and audit them, I can assure you with the amounts that they have received so far and without anything tangible for future generations, it will be very difficult to see anything tangible. So, I support this very innovative way of developing every corner of this country but with those reservations.

Thank you very much, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Omulele): We shall have Hon. Oduor Ombaka, Member for Siaya.

Hon. (Ms.) Ombaka: Thank you, Hon. Temporary Deputy Speaker, for giving me this opportunity. This is a very good Bill because it is a guideline that helps us understand how counties can work with donors and investors. It is a good relationship because counties are still very young; they are only five years old since they were established. And they do not have much for development. Challenges are still very many. They do not have enough resources. They do not have skilled manpower. So, partnership makes a very good strategy for counties to develop. It means that when you work with the private sector, they will bring in knowledge that they have had over time. They will bring in resources that they have used before and knowledge to impact the counties.

We are aware that anything that is private, even private hospitals that we see today we tend to compare them with government hospitals. And we see that private hospitals are more preferred to the government ones because they are better run, there is efficiency, they have skilled manpower. Even though they may be expensive, they have set standards. That is why it is very encouraging that when counties are going to work with private partners, then one begins to imagine that there is some hope in that the counties will be better run because the private sector will come with their experiences, skills and standards and values for development. Even if they take up agriculture or sports or come up with infrastructure as the areas in which they work, there will be some discipline at the county level because they are working with the private sector, the private sector that is well known to set standards.

I am so happy about this. There is hope for the counties. A lot of them have given us no hope at all. There is a lot of corruption at the county level and nothing has happened for the last five years. So much money is sent there but we do not see the input or the benefits of what they have done. It now looks like, with this Bill, a lot of things will happen at the county level. There is definitely going to be hope and people will look forward to working with the counties because standards will be set. Whatever they set to do with the private sector will be better done.

Lastly, because I do not want to say so much, we know the benefit of working as a team is also teambuilding. You are working with other people that are not necessarily part and parcel of the Government. It brings strength in pushing an agenda. If it is about building stadiums or anything to do with roads, then you can be sure that more efforts will be put because they are two teams working together as friends and therefore development will grow. It is not just in Kenya

where PPP is taking place. It is all over the world. It is the new approach that is being used. Even highly developed countries work with the private sector. They engage them. They work as a team. One does not see the other as a stranger. They are part of working together as a nation. The private sector has done a lot for any country, including Kenya. That is why I believe that the counties will be better run.

Hon Temporary Deputy Speaker, this is a very good guideline where there will be no suspicion of who wants to exploit the other. People will work together as a team because the regulations are put in place for both sides to follow without any fear.

With that, I support this amendment. Thank you.

The Temporary Deputy Speaker (Hon. Omulele): Very well spoken. Let us have Hon. Mariru Kariuki, the Member for Laikipia West.

Hon. Mariru: Thank you, Hon. Temporary Deputy Speaker for that opportunity. I support this extremely important Bill. I have listened to the Leader of the Majority Party as well as the Vice Chair, my good friend, who has seconded the Bill. Essentially, what the Bill does, in my considered view, is to loop in county governments which the mother law had left out.

Obviously, we must appreciate, as Members, the House, and the country that we do not have enough resources to fund all the public services that we need. There is not enough money to do roads, water and other public services. We must also appreciate on the other hand that the private sector has not enough money but has some money that they could spare to work with the Government and support public service activities for a profit. If you go to the western world such as the USA and the UK, the private sector in a very purposeful way is invited to partner with the government to engage, support and invest in the government. So, the public private partnerships are very important. On one side, the Government wants to provide service and on the other, the private sector wants to put their money into those services for a profit.

This morning I attended a conference on water in Nanyuki, Laikipia County, where the county government and the national Government brought possible investors in the area of water which I found to be very innovative way of thinking. How would private sector players engage and support county governments in the area of water? One of the areas we focused on is how the private sector would identify projects that would make economic sense and in a medium-term or a short-term arrangement, support the county government to provide water to the Laikipia people.

Hon. Temporary Deputy Speaker, why the private sector is shy from engaging in this PPP arrangement especially within the counties is because there has not been a very solid and comprehensive legal infrastructure and framework to define how the private sector comes in. The Public Private Partnerships (Amendment) Bill does exactly that. It provides the framework, the ecosystem, stability and assurance to the private sector that if they provided and supported the Government at the county level to provide services, they would make profit and their money would be secure.

The projects that would be included into the priority list under the PPPs and the county level is not for either a governor, CEC or member of the county assembly (MCA) to just think that this is the project we would like to have under the PPP arrangement.

This law defines how the projects will be done and how you will decide that project "A" can fall under PPP and not project "B". This law has given parameters in determining and making a decision on the matter. It is a technical issue. It is a legal regulatory, institutional, commercial, financial and economic issue. So, it is not just a governor to stand, CEC, Member of Parliament or CS to say from the top of his or her head that, that project will fall under PPP in

the county. Rather, it is a very comprehensive process of defining and determining which projects would fall under this framework and that is very important.

We must also say, in a very expressive way, that the CS responsible must not use this law to fizzle out opportunities for county governments to benefit under this framework. The Constitution allows borrowing by counties not only at the national Government, but also from the market. When I was working with the county government, I realised some of the regulations that had been done that would otherwise allow counties to borrow money were so stringent that in a sense, you are giving the right on one hand and taking it with the left. So, we must be very clear. This PPP framework and the role the CS is given, he or she must not use that opportunity to give the right of counties to benefit from this framework but on the other hand take it away.

The committee and, indeed, all of us must extremely be careful. If this framework is there and this law allows those priority projects to be taken through a Cabinet memorandum to the Cabinet, the CS responsible must be told and must understand that the spirit of this law is to facilitate and not for them to fizzle and squeeze that opportunity. Counties must start benefitting from it.

His Excellency the President does a lot of international engagements. Right now, he is in the UK meeting the Queen and the Prime Minister. There will be certain positive benefits from that visit. If what they are calling the prioritisation list of counties were done and the President in his international engagement has those lists, he is able to tell, for example, that in Laikipia, the Bill that I can sign that relates to Laikipia directly concerns water. The county government has itemised projects that have a possible area of PPP, so that when the President is signing a deal on a certain county, he is guided by the prioritisation projects done under the PPP framework from the county level, up to the CS and the Cabinet.

The counties are doing a very innovative thing. They are coming together in realisation that should a county remain alone, it is not going to exploit her potential. Is it his or her? I do not know why they refer to them as her or his.

The Temporary Deputy Speaker (Hon. Omulele): Did you need assistance on the gender of the counties?

Hon. Mariru: I have never understood why they refer to them as her or him. Let us call it "it." The counties are coming together in blocs. Those from western Kenya are coming together as a bloc. There is a *Jumuia ya Pwani* for the counties in Coast. Those in Central Kenya are coming together. This law gives momentum to those blocs. If the blocs in western Kenya would like to have PPP as a bloc, they are going to benefit from this law, so that when they are negotiating possibly for an international concession under PPP, this law will come in very handy.

As I conclude, this law is extremely important and it must be used to help counties further the economic interest of our people across this country.

I support.

The Temporary Deputy Speaker (Hon. Omulele): Very well spoken, Hon. Mariru. For guidance on gender, if it was up to me, I would nominate women because they are supposed to give life. Having said that, I give this opportunity to Hon. Mogaka Kemosi, Member for West Mugarango. Is he in the House? He is not. Very well, we shall now have Hon. Nanok Epuyo.

Hon. Nanok: Thank you, Hon. Temporary Deputy Speaker for giving me this opportunity to speak on this very important amendment Bill. From the outset, I rise to support it as a Member of the Departmental Committee on Finance and National Planning which dealt with it. We spent quite a bit of time engaging with stakeholders. I concur with the various

amendments which are likely to be brought during the Third Reading by the Committee, based on the views given by the various stakeholders who appeared before us.

I think it is already a foregone conclusion that this Bill is basically recognising the need to have the county governments participate in this new procurement method in our country. The PPP method of procuring is expanding development funding for our country. This is already in place in the national Government and now county governments will be brought on board. I want to explain a bit, that PPP is about raising private funds for projects which are beneficial to the people of Kenya. Counties are particularly going to make use of this new method to implement important projects in their regions.

Speaking about benefits, it behooves and I agree with my colleagues who have already spoken, that this should not be an avenue for corruption or creating mega scandals at the county level. The counties which are going to get into PPP programmes should implement projects which will benefit their people. This will translate to the benefit of the whole country when the impact of the projects is seen. They will improve the living standards of our people and provide essential services like roads and stadia's in various counties. By removing the PPP committee in the old Bill, this new Bill has reduced the bureaucratic requirements that were there in the original Act of 2013. The PPP committee was the one approving projects then. Now, it is not there according to this amendment Bill. Instead, there is a PPP unit, which basically is a technical unit in the structure of the PPP projects which will give advice to both the national Government and county governments in terms of identifying projects under the PPP arrangement. This will help in terms of fastening the actualisation and implementation of the identified projects.

In this amendment Bill, the CS incharge is required to make regulations for the implementation and execution of this Bill. All this is captured in Clause 13 of the Bill, which talks about various issues including the county government. Clause 13(54A)(5) states:

“5 A county government shall implement a public private partnership project if the project-

- (a) provides value for money;
- (b) is determined to be affordable; and,
- (c) ensures appropriate risks are transferred to the private party.”

This amendment Bill is helping us to relook at how PPPs are going to be actualised at the county level. The CS I mentioned about will provide regulations for the better implementation of the PPP arrangements by the county governments. This means that it will not be a walk in the park. They will follow certain regulations so as to participate effectively. The projects will be identified by the county governments with the idea that they will be beneficial to the common *mwananchi*.

While receiving the stakeholders who participated in this Bill, what came out very clearly was the requirement that PPP arrangements should not be private engagements between the Government and private developers. They should be done in a public manner. So, public participation by law is supposed to be undertaken at the county level. This role by the county assemblies is paramount and important. When these projects are identified by the Executive, they could easily be compromised by individual or secretariat interests and they will not benefit the public.

Those who presented themselves before the Committee felt that it should be ingrained in the regulations that, when projects are identified at the county level, the county government must undertake public participation in order to identify priorities relevant to the people. Public participation should not be limited to the counties only but should be a requirement at the

national level. If you look at some of the projects undertaken through the PPP projects at the national level, they have a semblance of public participation. However, if you ask Kenyans whether they were really involved in some of these projects, there is uncertainty.

Parliament should relook at the aspect of public participation in the area of projects identification. As I wind up my submissions, the PPPs arrangements should be scrutinised very carefully so that they do not balloon our public debt. Already, in this country, the public is worried that we may be totaling dangerous levels in terms of public debt. Whereas PPPs arrangements may not be directly increasing our public debt, they have the potential to do so.

When these arrangements are entered into, they will require guarantees by the national Government. The Committee looked at this amendment, but I think we needed to ensure that the national Government is cushioned in the commitments that will be brought in by new PPP arrangements, especially committed from the county level.

I beg to support. Thank you.

The Temporary Deputy Speaker (Hon. Omulele): I have enjoyed your contributions and I think it is true that we need, as a Parliament, to define what public participation is, so that it becomes useful because it is the major underpinning of our Constitution that most of the things we need to do need public participation even though we do not have proper legislation on public participation to define what it is. Good contribution!

I will now give this opportunity to Hon. (Prof.) Oduol Adhiambo.

Hon. (Prof.) Oduol: Thank you, Hon. Temporary Deputy Speaker. I also rise to support this extremely important amendment mainly because as we look at the question of PPP, we are really looking, in terms of our country Kenya, at how we have come to be much more focused about clear performance definitions. We would want to have a performance-based contract and that we would want to very clearly be alive to the manner in which the private sector will supply services to the public service over time in a way that is defined.

As I support the Bill, I am also alive to the key question that has just been raised with regard to the manner in which to determine which projects are considered of priority. The way this is captured at the county level, it would not necessarily be left to a few at the county, be it those in leadership at the county assembly or those in the Executive or at the national level.

When we talk about public participation, most times we do not have clarity when it comes to implementation. We need to ensure that the public gets information and that it is adequately informed. There are a number of cases where we hurriedly get a few people to participate - this is even done by the county assemblies - and then we get content that the public has participated. Most of the time, when dealing with serious issues like the budget or other priority areas, information is never sufficiently available.

When we look at the PPP Act of 2013 that clearly requires further review, we can then appreciate the commendable way in which the amendments have sought to provide us with the legislation. There would be need for us to look at public participation, especially at the county level. We need to think of how to allow equality of women and men, including those who are in leadership positions, say, in the county assemblies and in the CECs. Indeed, women and girls would be beneficiaries of projects that would be determined. I raise this issue because looking at the way we currently engage at the county level and even at the national level, in terms of implementing projects, we do not have a clear framework of good practices. If we did, then we would recognise the fact that our institutions are incapable of giving equal room and equal space for the contribution of those who are involved on account of gender.

Therefore, as I support this amendment, I would want us to recognise some of the challenges that have led, not only to these high debts, but to large incidences of corruption and, indeed, to a lot of wastage that does not allow us to address issues that are of immediate importance. I think the key issue has been how, in keeping with our Constitution, to understand that equality is one way of giving equal opportunity and rights. We also need to ensure that when we are talking about public participation, or when we are talking about PPP, we are aware that our society tends to see that from a male perspective.

I would like to conclude by saying that if we were to take audits of the number of projects that have been undertaken in the various counties and seek to align or match those with what would have been seen to be the urgent concerns of a number of those who are in the populace by gender, we might find that the projects that are considered to be of high value thus provide value for money, or projects that would be seen to be celebrated because they lead to greater levels of industrialisation, they would also come with some very heavy burdens. Wherever we would go, we would find that family values are broken. We would find that there are very many cases of school dropouts. We would find that there are very many situations in which the majority would have preferred that there would be water or health or other such considerations.

This is an extremely important amendment that will now give clear legal and practical guidance to the counties. I would urge that we continue implementing the requirement of public participation and that we always wear a gender lens and not to see our public as the same. We should remember that there would be needs that are varied on gender, age, locality, or a particular county.

Thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Omulele): We shall have Hon. Mabonga, Member for Bumula.

Hon. Mabonga: Thank you, Hon. Temporary Deputy Speaker. I also rise to support this amendment. Just before I do that, allow me to take a minute to also send condolences, on my own behalf and on behalf of the people of Bumula, to the family of our hero, Kenneth Stanley Njindo Matiba, who passed on. His death reminds us that, indeed, democracy is painful. He is a man who put his life forward to ensure that we enjoy the democratic space that some of us enjoy today. Having won my seat as an independent Member of Parliament, I am sure it was part of the contribution of this great man whom Kenya is mourning today. So, I send my condolences to the family and to the entire nation.

I wish to support this Motion. Every time, Hon. Members stand up to condemn governors and their teams for having not utilised money sufficiently. Every time, we make the mistake of comparing a five-year government with a 50-year Government. In my assessment, people in the villages are feeling things that county governments have done. For the five years county governments have been around, we can really appreciate them. If they had this kind of opportunity, they could have had an avenue to discuss with private organisations, which are doing well.

The Temporary Deputy Speaker (Hon. Omulele): The Member for Bumula, I do not intend to disrupt you. Hon. Wetangula, I notice your discomfiture and interest in this matter. You will have the next opportunity after the Member for Bumula.

Hon. Mabonga: Thank you, Hon. Temporary Deputy Speaker, for that. Counties are doing well. So far, in less than five years, they have done some work that you can see. In everything we do, the kind of relationship that we have matters.

I have looked at the Bill and it has raised a good issue which is that from time to time, the CS will set up regulations that will guide this kind of engagement. If we have this kind of engagement in place with the national Government or the unit set apart to regularise this kind of partnership, we will definitely feel the development at the grassroots. I suggest that with the constraint of resources that we have in the public sector, we need to come up with a formula that the private sector be given an opportunity to step in terms of what they can offer county governments. When the private sector comes up with a specific project, they always have a timeframe on how long it would take. They have the expertise to implement the same. Given an opportunity with proper regulations, we are sure that this kind of partnership will generate some kind of growth at the grassroots.

I rise to support this amendment Bill without reservations. We should support it so that our people at the grassroots benefit from this kind of arrangement.

The Temporary Deputy Speaker (Hon. Omulele): Let us have the Member for Westlands.

Hon. Wetangula: Thank you, Hon. Temporary Deputy Speaker, for giving me a chance to contribute to this amendment Bill. This Bill should have come much earlier because our county governments have been struggling with very minimal resources and could not perform properly. The erstwhile local governments had public private partnerships arrangements and they tapped into it and used it effectively. County governments can do better with this.

One of the things that I have noticed in this Bill is the inclusion of Clause 3A, which exempts this arrangement from the Public Procurement and Asset Disposal Act, 2015. This is the right thing to do because when we engage in a partnership with other sectors, you do not subject them to bureaucratic arrangements which cause delay, create hurdles and make the process much slower. This exemption will give it an incentive so that those who want to engage with county governments or the national Government will do so without worries of going through many other stages.

We have spoken extensively about public participation. This is a grey area that we need to address. I sit on the Committee on Delegated Legislation where we deal with regulations from the Government. Most of the time, one of the thresholds is about public participation. But you find that the way they do it is not really public participation because there is something that people circumvent. They just try to do things, make reports and try to justify in a boardroom that they engaged in public participation, but the people on the ground have no idea. We have seen this in most developments even within our constituencies. They say that there was public participation and you as a leader - the representative of the people - was never informed or invited for the meeting. You do not know where they engaged in such an arrangement. In this public-private partnership, county governments will conduct a feasibility study before they engage in a project so that they satisfy themselves that the project will benefit the people at the grassroots.

Two areas where we really need this partnership is in health and education. Those areas are pertinent for any country to develop. We need to invest and look for partners who can help us develop this sector. For any country to develop anywhere in the world, those two sectors, namely, education and health, are very important. When those two functions, the nation will function and people will work, be healthy and informed.

This Bill will bring a lot of fresh air into the county governments. We will make county governments more functional because most of them have been relying on the national Government to provide for them but now they can have a free hand to engage and look for

partners from within and without. This is something that we need to support. I support this Bill as the Member of Parliament for Westlands.

In conclusion, let me also send my condolences to the family of the late Hon. Kenneth Matiba, who passed on. You know the role Kenneth Matiba played in this country. At one time, he was the Chairman of the Kenya Football Federation (KFF). He was an entrepreneur. The only person I can compare him to is Raila Amolo Odinga because they both enjoyed a near-fanatical support. They had people who supported them and who could even die for them. Those are the only two individuals that I have seen in this country that have such a kind of following. People will stop doing anything just to support those two.

Kenneth Matiba is one of our heroes. He fought for democracy and multipartism in this country. He was one of the pioneers alongside Jaramogi Odinga, Masinde Muliro and Martin Shikuku of the struggle for democracy. We must celebrate our heroes and he is one of them. I wish to send my condolences on my own behalf and on behalf of the people of Westlands to the family of Hon. Kenneth Njindo Matiba.

The Temporary Deputy Speaker (Hon. Omulele): I will give this opportunity to Hon. Lekumontare Jackson, Member for Samburu East.

Hon. Lekumontare: Thank you, Hon. Temporary Deputy Speaker. I want to contribute to this very important Bill. There are so many challenges in the counties. Even at the national Government, we never have enough resources to engage in the development that we wish to. With this Bill, county governments will do what they were not able to do. County governments make strategic plans which they never fulfil because they do not have enough resources.

Every county government wants development for its people. This Bill will make it smooth for county governments to implement their programmes. The development agenda is very important to us. This Bill is very clear on procurement. If county governments are unable to procure, this Bill will open a window in the sense that the Authority which will be established will give advice on what to do. There are so many private partners who would like to work with the national Government and county governments.

It is very important for us, as Members of Parliament, to support this Bill. I met private donors who wanted to partner with my constituency at one time. However, we do not have a law that allows us to work with them and get what they have. This is a very good Bill. It will help the counties to work properly. Just like what other Members have said, public participation is very important. According to what we see in county governments, public participation is not conducted in the right way. They present something to the people. If there are any corrections to be made, they amend them if they want. If they do not want to amend, they take it back and go to a different location. So, the people will approve what they had initially. Public participation is very important. It will allow the common man to get what he wants. This is a very good Bill. It will help to develop our areas.

Thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Omulele): Hon. (Dr.) Nyikal.

Hon. (Dr.) Nyikal: Thank you, Hon. Temporary Deputy Speaker, for giving me this opportunity to contribute. I stand to support the Public Private Partnerships (Amendment) Bill. I do so because this Bill recognises that devolution is a continuous process. There are many laws that we need to look at, so that the devolution process can continue. Various counties can work in harmony with the national Government. It recognises the distinctness of the counties while at the same time appreciating that it has to be interdependent with the national Government, whose

role is to give policy and guidelines. That is exactly what this Bill is doing in the particular area of public private partnerships.

This Bill provides guidelines and gives power to the counties. For example, Clause 2 of the Bill states that when you define a contracting authority, you have to define it not only at the national level, but also at the county level. It goes on to say that we will have an Authority and the areas that the counties can have partnerships with the private sector. It looks at all the areas that will be important for the counties' financing, construction, operation, equipping and services like health facilities and schools. To that extent, this Bill is harmonising what should happen between the national Government and county governments.

Clause 4 of the Bill gives exemptions. In Clause 4(3A), the Public Procurement and Asset Disposal Act will give the exemptions. That releases the counties so that they can get into these partnerships. They can procure with the private partners. That is extremely important.

Clause 7 of the Bill has units where projects can be listed. There is a unit that supports county governments. As a Member said, when such units and projects are listed, when the national Government is undertaking the search for support in other countries and partners, they realise that the counties have needs which are known and can be addressed. It gives the counties the power to be involved and recognised in international relations. If the national Government gets into a partnership with an international organisation, the counties have the possibility of being involved because it is clear that the units are there and the projects are named and known county by county. The national Government at any time when seeking support internationally has in mind the various parts of the country that may need it. That is extremely important. It makes it easy for county governments to deal with, on their own, donor partners and international organisations at the county government and the national Government level. That will go a long way in helping county governments. The county governments have these approvals. It is clear in the law. Therefore, it makes the process simple and quick. It reduces bureaucracy and delays which are there.

If a county government wants to get into an international arrangement, the bureaucratic process is long. That delays what county governments can do. This is a good way forward. We have to look at other areas, but not just in public private partnerships. We have to look at other laws and recognise that as much as the national Government gives guidelines, counties must be recognised and given the leeway to link with the national Government but be free to make their decisions. Some Members fear that when you give this freedom, you give free hand to corruption. Structures do not create corruption. It is people who engage in corruption. We cannot be afraid of creating free structures that will liberate our systems to serve our people. We need to look at corruption and deal with it. Like I had said before, you cannot say that you will stop keeping chicken because there are chicken thieves in the village. You deal with the chicken thieves but keep the chicken. That is something we should not fear.

As I conclude, let me take this opportunity to pass my condolences and those of my constituents to the family of our hero, Hon. Kenneth Matiba. The country needs people like Kenneth Matiba who will give everything including their own lives for what they believe is correct for the public and the people of Kenya. There are not many of us like him. Losing him is a great loss to the country. But we ask God to keep his soul in eternal peace.

With that, Hon. Temporary Deputy Speaker, I support.

The Temporary Deputy Speaker (Hon. Omulele): Dr. Nyikal, you have spoken very well. It is true that we need more people like the late Matiba and not the reckless types we have

in politics today where people equate recklessness with heroism. The late Matiba was a true hero.

We shall now have Dr. Wamalwa Kibunguchy followed by Hon. Tong'i, while the Mover will be preparing to reply. We shall proceed in that order.

Hon. (Dr.) Kibunguchy: Thank you, Hon. Temporary Deputy Speaker. I also take a minute to pass my condolences, those of my family and those of my constituents of Likuyani, to the family and friends of the late Matiba. I have always said and I was telling some people over the weekend just after we got the news that I can think of three people who would have made great presidents in this country. One of them would have been Tom Mboya, the second one would have been J.M. Kariuki and the third one is Hon. Matiba. He was an icon. Everybody has said he was a hero and the country has lost a great son. May his soul rest in eternal peace.

As far as my contribution is concerned, I start by saying that I support this amendment Bill because of several reasons. One of the reasons is that I am one of the people who were extremely excited when we created counties in this country. I thought the counties would do two great things. One of them was that they would look critically at what their natural resources are or what can be exploited in their areas and in the process, create jobs and wealth for the people of those counties. Five years and eight months down the line, that has not been possible. Therefore, if there is another way of us relooking at it, it would help. The two biggest problems in the country are unemployed youths and poverty. We keep on talking about the GDP improving, but it does not trickle down to the common man and woman in the rural areas and urban slums. So, if there is a way or a procurement process that will create these two things, I would support it wholeheartedly.

I support it, but I know there is danger ahead. One of the dangers ahead is that I do not know how county governments will manage to pay their part of the bargain in PPP where each partner contributes something. The donors might give you their money and you might have to give something. Of course, they will tax people to recover their money.

What has happened over the years is that gradually, the local revenues counties governments raise are going down year in, year out. Counties are not raising anything near what the old county councils used to raise. I read a paper that said that they are raising 15 per cent of what used to be raised then. How are we going to shoulder our part of the bargain of the PPP? That is the question we need to answer.

Again, when we got devolution, the drafters of the Constitution, in their wisdom, gave most of the functions to the counties, which are close to the people. They gave them agriculture and food, which are very close to the people. They were given the function of water which is again very close to the people. Water is life. They gave them the function of health and others. Again, I was excited then and I said that it was a good thing because it would be a government that is close to the people and will understand them. But what has happened over the years? Most county governments have created another centre. Money is devolved from Nairobi to the county headquarters and it tends to be concentrated at the headquarters. It does not percolate down. There are many examples we can give. People from counties can give many examples. It appears that even the county executive is not very close to the very core needs of the people in terms of the functions they are meant to do. That is a story for another day.

As we go forward, I would like to urge all of us who think well for the country and that devolution must work, to find a way where the money that is concentrated at the county headquarters finds its way down. We can only do that if we put in place a law so that we have yet another one step of devolution down. As we probably go to a referendum to look at the

Constitution, that is one aspect that we need to examine. We have gone through it and we feel that all the procurement and tenders are at the county headquarters. People do not feel their governments as much as they ought to. In fact, and I think you will agree with me, people on the ground tend to feel the National Government Constituencies Development Fund (NG-CDF) more than the county governments yet these are governments that get billions of shillings from the national Government.

Coming back to the Bill, it is excellent. We have seen examples where PPPs have worked very well. I am a Member of the Departmental Committee on Finance and National Planning and our Vice Chair mentioned the hostels at Kenyatta University. We know that we have wind power generation in Turkana. It has been hampered somewhere. Those are some of the questions we need to ask as we dissect the Bill. We would like to know why some of the programmes that are beneficial to the country get bottlenecks along the way.

There are areas, especially urban centres or towns that are being choked by garbage. Nairobi, Mombasa and Nakuru and even my town, Kakamega, are some of them yet we have experts who tell us that garbage can be turned into electricity or fertiliser. Now that this law will come into place, these are areas that will benefit the people.

Finally, let me say something on the issue of natural resources and what is natural. Every county has something to boast about. This PPP will allow us to tap into that and exploit the natural resources that are in our respective counties. For example, in Kakamega County, there is the Kakamega Forest, which is the only tropical forest in the country and River Nzoia, which we can exploit. I support, but with certain reservations.

Thank you.

The Temporary Deputy Speaker (Hon. Omulele): Very well. Hon. Tong’i.

Hon. Tong’i: Thank you, Hon. Temporary Deputy Speaker for the opportunity to support this Bill. This is a move in the right direction considering the challenges we have had as a country. We know we cannot have all the money that we need to do the development that our people need. Therefore, there is need for us to have this kind of an arrangement where private institutions can partner with us to make a difference and to make our people live more decent lives.

However, from experience, if we do not manage it well, the PPP will also be another cash cow. Experience has shown that the leadership can easily take advantage of this and convert it into a cash cow to the detriment of the people we are meant to serve. I speak this from a background of information that I have. There are very few success stories in the PPPs that we have had so far. Most examples that we have were initiated with the idea of stealing money - for lack of a better way to put it - from the public.

There will be need for us to have a stronger assessment and impact on this arrangement. We need to have oversight of county governments and the national Government to ensure that whatever PPP has is what is needed by the public and will enhance the quality of their lives. Take an example of Kisii where we naturally grow bananas. You get the county government has priorities which are different from what the public expect. I am sure most people have been to Kisii. The biggest challenge we have in that part of the world is land. Getting a piece of land is such a very expensive exercise in Kisii. We only have one forest and the county government, for lack of a better way to put it, have their priorities wrong. They are putting up a sugar factory yet we have many examples in the country where sugar factories are closing down not because they want to, but because they cannot have enough supply of sugarcane.

In Kisii County, where more than 1,000 people live in a square kilometre, where are we going to get land to grow sugarcane to supply to the factory in order to sustain and make it profitable? I would have imagined that the natural inclination of the county government would have been to get private companies that are willing to partner with us to start a banana factory in Kisii. That would help us because it is our natural market. Even on the fences, we grow bananas. In fact, they grow naturally with minimal effort. That would have been a priority, but because of vested interests, our county government gets its priorities wrong. I hope the passage of this Bill will bring changes which will enhance the quality of our people's lives.

We have challenges in the country and one of them is that our people have not been educated. The Bible says that "my people are perishing for lack of knowledge". My people are perishing for lack of information. When people do not have information, they are bound to make wrong decisions. That is why we are calling on county governments to be strengthened by oversight through enhanced legislation to ensure that we are getting value for money.

Hon. Temporary Deputy Speaker, we have had only one Coca Cola Company in Kisii. The Big Agenda Four of the President is to ensure that we have industries all over the country. The Coca Cola Company was the only factory we had in Kisii, both Kisii County and Nyamira County, but it has been closed down due to vested interest. Now, sodas are being supplied to the consumers in Kisii from as far as 400 kilometres away. It beats logic for anyone to ask or start to imagine that it will make any business sense to supply Coke in Kisii from 400 kilometres away whereas we had a factory in Kisii which was profitable. Experience has it that it has been profitable until they mismanaged it deliberately to ensure it justifies their case of moving it elsewhere. This factory was creating employment opportunity for our people. It was creating business opportunity. Farmers were able to supply their goods. All of us were happy because of that input, namely, the workers, landlords and tenants. Landlords were getting tenants. It is a painful experience. That is why I am saying that PPP left on its own is a disaster. We must tame bad investors because they are coming with the single mind of making abnormal profits notwithstanding the number of people they are going to step on.

Finally, as I wind up, I also want to take this opportunity on my own behalf and on behalf of the people of Nyaribari Chache, to share with my colleagues the pain of losing one such hero as Kenneth Matiba. He was one hero that all of us cherished. It pains me that we are mourning, whining and saying all that when he has died. This is a man who suffered. We all saw him suffer and we had the capacity to change his life. He was a major investor in this country, but we killed him politically. We killed his business for political expedience, but we are mourning him today. Like the Member was saying, we are waiting for the signal from Matiba to tell us how to deal with these pretenders who are mourning and telling us Matiba was a hero yet they did nothing to change his life to make him the better person he should have been. The democracy that we are enjoying in this country today majorly emanates from sacrifices of people like Matiba and many others that have had to sacrifice their health. They sacrificed their business empires. They sacrificed their ambition and family for the good of this country. He was such a great man who served this country diligently. No wonder he had such a kind of following. There are only three people who have had that kind of following in this country. Another one is Hon. Raila Odinga. It all clearly explains the sacrifices these people have made for this country. The other people who may have such kind of following for the sacrifices they have made might not have been to the level of Matiba in sacrificing his health, businesses and family comfort, but they have nevertheless made sacrifices. Mzee Nyachae, during his hey days in FORD- People had such a following in Kisii. He at one point literally got all elective seats in Kisii; 100 per cent. That has

never happened in the history of Kisii. It was not just by accident. Mzee Nyachae, in his wisdom, invested and gave back to the community. There are many forms of sacrifices. You can sacrifice at political podiums. You can also sacrifice at personal level by passing knowledge. The biggest contribution that we can all make to mankind is to inspire people to do their best. Mzee Nyachae sacrificed that. He was selfless. He also helped us to appreciate outside Kisii and make a living. You do not have to stay at home. Those are the kind of inspirations we are looking for from our leaders. There are many others. President Uhuru has sacrificed in his ways. Many other leaders have sacrificed. Hon. Ruto has sacrificed. He was a chicken seller and today, he is the Deputy President of this country. He has inspired people at the lowest level to know that it is possible to rise to the highest level possible if you work hard and be disciplined in whatever you do.

With those many remarks, I support the Public Private Partnerships (Amendment) Bill.

I want to take this opportunity once again to pass my heartfelt condolences to the family of Matiba and the country of Kenya.

Thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Omulele): Very well, Hon. Tong'i, it just teaches you that those many remarks you have made about the late Hon. Matiba meant that we should live and let live. Disagreeing with one does not mean that they become your enemy. We can all share this space and live.

We shall now have the Mover to reply.

Hon. (Ms.) Mbarire: Thank you, Hon. Temporary Deputy Speaker. From the outset, I want to thank all the Members that have made their contributions to this important Bill. Clearly, the numbers in the Chamber were not many, but it is important to note that every single Member that has been sitting this afternoon has had a chance to contribute, support and most importantly, show the importance that this Bill plays in the growth of county governments.

There is no doubt in our minds that over the years, we saw the Government as the only key player in ensuring that public infrastructure and services are provided. Over time, it became very clear to Governments that they could not shoulder this burden alone and the demands for services, infrastructure, growth and development became even higher as we moved along. It is no wonder the Government found it fit to begin to embrace PPP as the way to go, so that they can shoulder this burden with the private sector. Obviously, public coffers are not without limit. As such, the Government passed the Public Partnership Act in 2013.

It is interesting to note that around 2017, the World Bank did a study of PPP in Kenya and they said that Kenya has one of the most robust PPP framework. They felt that we were moving into the right direction. It is obviously timely that we are now moving this from the national Government to the county governments because we have seen it as an agent for growth. The next phase for growth of this nation is in county governments. If you look at the four pillars that the President talked about, one of them is manufacturing and job creation. This will definitely be hinged around county governments. We are already seeing some good success stories in parts of this country. We are seeing what Governor Kivutha Kibwana in Makeni is doing. They are now producing their own milk. This is a big challenge for those of us that have come from counties that pride themselves as being the largest producers of milk yet we have not even started producing milk in our own counties. We sell raw milk. We are seeing value addition as the way to go. When we see such success stories that include fruit processing firms that can add value and make more money, it is truly the way to go.

Knowing that county governments may not have enough money to do all these projects, then, it is important that we are coming up with a Bill that is seeking to make it easier for county

governments to engage with the private sector. We are trying to come up with a legal framework that will guide them on the how to do it and encourage more investors, not just in national projects, but also at the county level, so that we can create jobs and empower people at the grassroots.

As I listened to the various contributions that were made, there is no doubt that support for this Bill has been there the whole afternoon. Many see the need to do this, but there were cautions that were thrown that we do not make this another tap for corruption at the county level and there will be need for certain measures.

Clause 6 of this Bill says that the CS may make regulations for the better implementation of PPP arrangements by county governments, including projects that may be undertaken by county governments, so that we are not leaving all projects open to PPP. So, there will be regulation of the kind of projects that will be there. I heard one person saying that we do not want PPPs that aim at providing simple services that we are able to provide. We should look more in terms of infrastructural development. There is also the contingent of liabilities that may be approved for such projects. Obviously, we must have a threshold of the liabilities that we can take up and the risks we are ready to take up.

Paragraph (c) is on the management of PPP procurement processes by county governments. I am happy a unit has been created that will act as an oversight for these processes by all the county governments and the negotiation of project terms by county governments, so that we are also not ending up, as Hon. Sankok said, with a situation where money has been spent and we have to pay for it, but we cannot see what was done with the money. We want to see real value for money. We want to see real development.

I want to thank all the Members who have contributed. I believe that as we move towards the next phase of growth in this country, the county becomes a focal point of growth and development. We cannot ignore the role of county governments. We are only asking for more accountability at that level. We want to see people get value for money and that governors do not go on a spree of getting everything into PPP, but that there is some control, checks and balances to make sure we do what is right.

With those few remarks, Hon. Temporary Deputy Speaker, I beg to reply and thank all the Members who have contributed. Thank you.

The Temporary Deputy Speaker (Hon. Omulele): We will defer the next step in this to another session. I direct that we move to the next business on the Order Paper.

Second Reading

THE KENYA COAST GUARD SERVICE BILL

The Temporary Deputy Speaker (Hon. Omulele): Hon. Mbarire.

Hon. (Ms.) Mbarire: Hon. Temporary Deputy Speaker, I just want to beg that we step down this particular business until the next available allocated time.

The Temporary Deputy Speaker (Hon. Omulele): I direct that the business listed as Order No.12 be deferred to another session.

(Bill deferred)

ADJOURNMENT

The Temporary Deputy Speaker (Hon. Omulele): Hon. Members, the time being 6.49 p.m., this House stands adjourned until Wednesday, 18th April 2018, at 9.30 a.m.

The House rose at 6.49 p.m.