

NATIONAL ASSEMBLY

OFFICIAL REPORT

Thursday, 25th February, 2016

The House met at 2.30 p.m.

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

PRAYERS

MESSAGE

APPOINTMENT OF SEN. BILLOW KERROW TO PAP

Hon. Speaker: Hon. Members, I have this Message being No.001 of 2016 from the Senate. Standing Order No.41 relating to Messages requires the Speaker to report to the House any messages received from the Senate. In this regard, I wish to report that I have received a message from the Senate regarding the approval by the Senate, of Sen. Billow Kerrow, MP, as a Member of the Pan-African Parliament to replace Sen. Kipchumba Murkomen, MP.

The Message states in part, and I quote, “That, whereas Article 5 of the Protocol to the Treaty Establishing the African Economic Community relating to the Pan-African Parliament provides for the election, tenure and vacancies of Members of the Pan-African Parliament; the Senate on Thursday, 18th February 2016, debated and adopted a Motion on the approval of Sen. Billow Kerrow as a Member of the Pan-African Parliament to replace Sen. Kipchumba Murkomen.” The Senate now seeks the concurrence of the National Assembly on this resolution.

Hon. Members, Standing Order No.41(6) states:-

“(6) When the Speaker reports a message from the Senate under paragraphs (4) or (5), the message shall be deemed to have been laid before the House and the Speaker may either -

- (a) direct that the message be dealt with forthwith; or
- (b) appoint a day for the consideration of the message; or
- (c) refer the message to the relevant Committee of the House for consideration.”

Hon. Members, I am aware that the Pan-African Parliament will be having meetings from next week which require participation of the Parliament of Kenya. To this end, I have directed that this matter be dealt with forthwith pursuant to the provisions of Standing Order No.41(6)(a) aforesaid. Consequently, the matter has been listed as Order No.12 in today’s Order Paper.

Thank you.

PETITION

DELAYED RE-CONSTRUCTION OF KATHIANI-KANGUNDO BRIDGE

Hon. Speaker: Hon. Robert Mbui.

Hon. Mbui: Thank you, Hon. Speaker. I, the undersigned, on behalf of concerned residents of Kathiani Constituency, draw the attention of the House to the following:-

THAT, construction and maintenance of an elaborate road network, including bridges is an essential catalyst for economic development and investment in any region.

THAT, Thwake Bridge, a key bridge that links Kathiani and Kangundo regions was swept away by *El-Nino* rains which pounded various parts of the country in 2015.

THAT, economic activities in Kathiani and Kangundo regions have been disrupted since businessmen and residents have been compelled to incur higher costs of transport via longer alternative routes to access markets, places of work, schools and other services that sustain their socio-economic livelihood.

THAT, on 4th December 2015, engineers from the Kenya Rural Roads Authority (KeRRA) inspected the bridge and undertook to restore it within seven days.

THAT, despite the fact that the Government had set aside funds to mitigate any disasters caused by *El-Nino* rains, almost three months later, the bridge which qualifies to benefit from such funding, is yet to be re-built.

THAT, the economic well-being and social interactions of the residents has been experiencing adverse disruption since the bridge was swept away.

THAT, almost three months down the line efforts to have KeRRA re-construct the bridge as promised have been met with futility and frustration.

THAT, the matter in respect of which this Petition is made is not pending before any court of law or constitutional body.

Therefore, your humble Petitioners pray that the National Assembly, through the Departmental Committee on Transport, Public Works and Housing:

- (i) investigates reasons for the inordinate delay by KeRRA to rebuild the Kathiani-Kangundo Bridge, yet emergency funds had been set aside to mitigate *El-Nino*-related disasters such as destruction of roads and bridges by rains; and,
- (ii) recommends immediate re-construction of the bridge with a view of restoring economic activities and interactions between the two regions back to normalcy.

And your Petitioners will ever pray.

Thank you, Hon. Speaker.

Hon. Speaker: Hon. Members, the Petition stands committed to the Departmental Committee on Transport, Public Works and Housing, as requested. As you know, I may allow comments, observations or clarifications. Is that the desire of Hon. Patrick Makau?

Hon. King'ola: Thank you, Hon. Speaker. I stand on a point of order. The front benches are reserved for Chairpersons of Standing Committees. We expelled Hon. Munuve from the Wiper Democratic Party. Is he in order to sit on the seat designated and reserved for the Chairperson of the Departmental Committee on Finance, Planning and Trade?

(Laughter)

Hon. Speaker: Hon. Members, I had expected Hon. Patrick Makau to comment on, seek clarification or make observations on the Petition presented by his neighbour, Robert Mbui. But now that he has chosen to deal with other issues, there is absolutely no crime committed by the

Member for Mwingi North, Hon. John Munuve, in sitting where he has. You can find out from those Members who have been there in the past. Members from the back bench, when such references existed, would from time to time, depending on what business they wanted to transact, sit with the Members of the Front Bench and canvass on issues. It looks like Hon. John Munuve has occupied the empty seat reserved for the Chairperson of the Departmental Committee on Finance, Planning and Trade. He is seated next to Hon. Rachel Nyamai, a Member of Parliament from the same county. He might be canvassing some business with the Chairperson of the Departmental Committee on Health.

(Laughter)

When the Chairperson of the Departmental Committee on Finance, Planning and Trade comes, Hon. Munuve will give room to the person for whom it is reserved.

Next Order.

PAPERS LAID

Hon. A.B. Duale: Sorry, Hon. Speaker. I was consulting with the Leader of the Minority Party.

Hon. Speaker, I beg to lay the following Papers on the Table:-

Reports of the Auditor-General on the Financial Statements in respect of the following institutions for the year ended 30th June 2014, and the certificates therein:-

- (i) Local Authorities Provident Fund
- (ii) Constituencies Development Fund – Budalangi Constituency
- (iii) Constituencies Development Fund - Taita Taveta Constituency
- (iv) Lake Basin Development Authority.

Report of the Auditor-General on the Financial Statements of Bunyala Irrigation Scheme for the period ended 31st December, 2014 and the certificate therein.

Reports of the Auditor-General on the Financial Statements in respect of the following institutions for the year ended 30th June 2013, and the certificates therein:-

- (i) Kenya Institute of Curriculum Development;
- (ii) Northern Water Services Board
- (iii) Kibabii University College
- (iv) Energy Regulatory Commission.

Annual Report and Financial Statements of the Postal Corporation of Kenya for the year ended 30th June 2014, and the certificate therein.

Hon. Speaker: The Chairperson of the Departmental Committee on Health, Hon. Rachel Nyamai, next to whom is seated Hon. John Munuve.

Hon. (Ms.) R.K. Nyamai: Hon. Speaker, I beg to lay the following Papers on the Table:-

Report of the Departmental Committee on Health on its consideration of the Petition by the Kenya National Union of Nurses on the Health Bill, 2015.

NOTICE OF MOTION

Hon. Speaker: The person intending to give notice of Motion is Hon. William Cheptumo. The Member does not seem to be aware that he should be giving notice because he would not be conversing with the Clerk-at-the-Table. I am sure you are aware that your Motion was balloted. It has to do with cattle rustling. Can you table it next week then?

Hon. Cheptumo: No, I can do it now.

Hon. Speaker: Very well.

DECLARATION OF CATTLE RUSTLING A NATIONAL DISASTER

Hon. Cheptumo: Hon. Speaker, I beg to give notice of the following Motion:-

THAT, aware that cattle rustling is a major menace and security threat in the South and North Rift regions and other regions in the country; noting that cattle rustling leaves behind destruction of property and loss of lives; deeply concerned that the menace has since left irreparable and negative socio-economic impact which include but are not limited to increased number of widows, widowers, orphaned children, poverty, displacement of people leading to the emergence of internally displaced persons, disruption of educational programmes and other economic activities owing to the destruction and/or closure of educational, health and other institutions; deeply concerned that the people living in the affected regions have been denied the enjoyment of their socio-economic and political rights as guaranteed to them under the Bill of Rights as enshrined in Chapter Four of the Constitution; this House urges that the national Government declares cattle rustling a national disaster and establishes a special fund to be used in mitigating the losses suffered, and in compensating all victims of cattle rustling and resettle all internally displaced persons across the country.

STATEMENTS

BUSINESS FOR THE WEEKS COMMENCING 1ST TO 3RD MARCH, 2015

Hon. A.B. Duale: Hon. Speaker, pursuant to Standing Order No. 44(2)(a), on behalf of the House Business Committee, I rise to give the following Statement regarding the business appearing before the House the week beginning Tuesday, 1st March 2016.

The House Business Committee met on Tuesday this week at the rise of the House to prioritise the business of the House. It resolved to give priority to Bills with constitutional timelines as well as Committee reports and motions awaiting debate. On this note, we anticipate to make a resolution through a Procedural Motion to hold sittings on Thursday mornings, so that we can clear off the backlog of these Bills and reports.

Hon. Speaker, priority will be given to the following Bills should they not be concluded this afternoon:-

- (i) The Community Land Bill (National Assembly Bill No. 45 of 2015).
- (ii) The Land Laws (Amendment) Bill (National Assembly Bill No.55 of 2015).
- (iii) The Energy Bill (National Assembly Bill No.50 of 2015).
- (iv) The Judiciary Fund Bill (National Assembly Bill No.3 of 2016).

- (v) The Kenya Roads Bill (National Assembly No.27 of 2015) and,
- (vi) The Public Finance Management (Amendment) Bill (National Assembly Bill No.4 of 2015).

Hon. Speaker, on the questions before the Committee, the following Cabinet Secretaries are scheduled to appear before the Committee on Tuesday, 1st March 2016:

(i) The Cabinet Secretary for Foreign Affairs and International Trade at 10.00 a.m. before the Departmental Committee on Defence and Foreign Relations to answer questions from the following Members:-

Hon. Joseph Gitari, Hon. Irshadali Sumra, Hon. Christopher Nakuleu, Hon. (Dr.) Robert Pukose and Hon. (Ms.) Nyamunga.

I have confirmed that the Cabinet Secretary for Foreign Affairs and International Trade will be available on Tuesday.

(ii) The Cabinet Secretary for Water and Irrigation at 10.00 a.m. before the Departmental Committee on Environment and Natural Resources to answer questions from the following Members:- Hon. Christopher Nakuleu, Hon. Joseph Lekuton and Hon. Akujah Protus.

The Cabinet Secretary has also confirmed his availability on Tuesday.

(iii) The Cabinet Secretary for Labour and East African Affairs at 10.00 a.m. before the Departmental Committee on Finance, Planning and Trade to answer questions from the following Members:- Hon. (Rtd.) (Maj) Marcus Muluvi, Hon. James Mwangi Gakuya and Hon. Francis Mwangangi.

Hon. Speaker, the House Business Committee will reconvene on Tuesday, 1st March 2016 at the rise of the House to consider Business for the rest of the week. I now wish to lay the Statement on the Table of the House.

(Hon. A.B. Duale laid the document on the Table)

Hon. Speaker: Next Order!

MOTIONS

CONSIDERATION OF PRESIDENT'S RESERVATIONS TO THE NATIONAL EMPLOYMENT AUTHORITY BILL

THAT, the House do agree with the Report of the Committee of the whole House on consideration of the President's Reservations to the National Employment Authority Bill (National Assembly Bill No.8 of 2015)

Hon. Speaker: Hon. Members, the debate on this Motion was concluded, what remains is for the Question to be put. I hereby proceed to put the Question.

(Question put and agreed to)

CONSIDERATION OF PRESIDENT'S RESERVATIONS TO THE SMALL CLAIMS COURT BILL

Hon. Speaker: Hon. Members, once again you concluded debate on this Motion in the Committee of the whole House. What remains is for the Question to be put. I, therefore, proceed to put the Question.

(Question put and agreed to)

BILLS

Third Reading

THE BASIC EDUCATION (AMENDMENT) BILL

Hon. Speaker: Hon. Members, what remains in this Bill is for me to put the Question.

(Question put and agreed to)

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

Hon. Speaker: Next Order.

Third Reading

THE ENGINEERING TECHNOLOGISTS AND TECHNICIANS BILL

Hon. Speaker: Hon. Members, you went up to a particular stage and in terms of Standing Order No.139---

Hon. (Ms.) Ng'etich: Hon. Speaker, the Chairman was the one who moved the amendments. So we seek clarification on who is to move the Third Reading.

Hon. Speaker: Is the Bill bearing your name as the Mover?

Hon. (Ms.) Ng'etich: Yes, Hon. Speaker.

Hon. Speaker: You are the Mover and not the Chairman of the Committee. This is the Engineering Technologists and Technicians Bill. We have finished with the Basic Education (Amendment) Bill. You were not able to proceed beyond where the Mover could be called upon to move that the Bill be read a Third Time. It is a very simple procedure. The Mover was not called upon to reply because it happened just about the time the House was rising.

Hon. (Ms.) Ng'etich: Hon. Speaker, I beg to move that the Engineering Technologists and Technicians Bill (National Assembly Bill No. 7 of 2016) be now read the Third Time. I would like to request my colleague here to second.

Hon. Speaker: Who is your colleague there? The HANSARD has no way of taking photographs.

Hon. (Ms.) Ng'etich: Hon. Lodepe Nakara.

Hon. Speaker: The Member for Turkana Central?

Hon. Nakara: Yes, Hon. Speaker. I second.

(Hon. Simba and Hon. Maanzo stood up in their places)

Hon. Speaker: Hon. Simba Arati and Hon. Maanzo, freeze.

(Question proposed)

(Question put and agreed to)

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

Hon. Speaker: Before we go to the business of that Order, I wish to announce that we are reorganising business. I am sure it is in the interest of all Members, those that care to know, that the House sits from 2.30 p.m. to 6.30 p.m., so that business appearing as Order No.14 will be considered before the business appearing as Order No.13. What is No.13 becomes No.14, which is the Committee of the whole House, and what is No.14 becomes No.13. I am sure those of you in possession of the Order Paper, and with sufficient interest in Order No.14, will understand why it is necessary to consider that business, so that a Question on it may be put to be either carried or defeated. So, it is in the interest of all Members now to sit around for a short while.

Hon. Members, before we go to the next business, allow me to recognise students from the following institutions, who are both in the Speaker's Gallery and the Public Gallery:- Gatoto Primary School, Nairobi County, Embakasi South Constituency; pupils from Thika Road Primary School, Nairobi County, Roysambu Constituency; Kangutha Primary School, Kitui County, Mwingi Central Constituency; Riara Springs Primary School, Nairobi County and students from Maseno University, Kisumu County, Kisumu West Constituency.

(Hon. S.S Ahmed waved to the students)

Hon. Shakeel, there is a method by which you acknowledge the presence. You are not in a public rally to begin waving at students. We will now proceed with the business appearing as Order No.12 after which we will go to business appearing as Order No.14 as earlier directed.

MOTIONS

APPOINTMENT OF SEN. BILLOW KERROW TO PAN AFRICAN PARLIAMENT

Hon. A.B. Duale: Thank you, Hon. Speaker. I beg to move the following Motion:-

THAT, pursuant to the provisions of Article 5 of the Protocol to the Treaty Establishing the African Economic Community relating to Pan African Parliament and Standing Order No.41(6)(a), this House concurs with the Senate and approves the appointment of Sen. Billow Kerrow, as a Member of the Pan African Parliament to replace Sen. Kipchumba Murkomen, who was elevated to the position of the Deputy Majority Leader.

I beg to move that the provision of this Article is so important that this House has sent three Members and the Senate sends two. One of the Members and their coalition agreed to

replace Sen. Murkomen with Sen. Billow, I am told Pan African Session is starting on Thursday next week. It is a small procedural matter which we can dispose of, so that Sen. Billow Kerrow can go and join our colleagues.

If you give me your ear, there is a matter I want to raise here. These five Members often go to South Africa and they get a lot of difficulties in getting visas. I am sure, through your office, if you write to the Ministry of Foreign Affairs, I will ask that these five Members be accorded diplomatic passports, so that it gives them an easy way of going to perform their parliamentary duties. I am sure we have men and women who when they stand in that Parliament, Kenya is counted. Members like Hon. (Ms.) Shebesh, Hon. (Ms.) Millie Odhiambo, Hon. Billow Kerrow, Hon. Zakayo Cheruiyot and Hon. Janet Ongera. That is a serious team that can represent our Parliament at the Pan African Parliament. So, I ask Hon. Jakoyo Midiwo to second.

Hon. Midiwo: Thank you, Hon. Speaker. I rise to second and support. I want to agree with the Leader of the Majority Party that there is no reason for Members of Parliament in Kenya to have problems when they are in South Africa. We give these people very cordial treatment.

At the weekend, a South African beat up a Kenyan policewoman; a pilot whose credentials are even being questioned. We want to plead. When Tanzanians go to South Africa, they do not even require visas and we are from East Africa. South Africa seems to have a bone to pick with Kenyans. For us to keep supporting this African Union (AU) to be headquartered in South Africa, they must give us respect. Even ordinary Kenyans are suffering in South Africa. This House has a duty to voice the suffering of its people in the hands of foreigners to the extent that some pilot beats up a Kenyan in public.

I saw the charges against that pilot and I want to suggest to the prosecuting authorities to charge that gentleman, if he is a gentleman, with racism and battering a woman. He needs to be charged with a lot of charges because that is what they do to us in their country. I know what they do to our people and I have no mercy for that kind of a thing.

Hon. Billow Kerrow is a man of quality. I have always wondered why the Senate needed to go there, but we must support the name of Billow Kerrow because he adds to the good image of this country. He is in Jubilee where there is very little good to say, but he is among the few we can take and put the image.

Lastly, because he is replacing Hon. Kipchumba Murkomen who is in the limelight today, it cannot go without me saying something. I met Hon. Kipchumba Murkomen.

Hon. Speaker: First of all, Hon. Midiwo, let us avoid breaching the rule on *sub judice* and the rule of discussing other Hon. Members without putting in a substantive Motion. This is a substantive Motion on Hon. Billow Kerrow.

Hon. Midiwo: Hon. Speaker, I know better. I have been here as long as generally you have been or maybe you have been here a bit longer. Because Hon. Kipchumba's name is in this Motion, these are the people of discussion. I will never bring in the case of Duale, Kipchumba Murkomen and National Youth Service (NYS). I will not. I am the leader of CORD in the absence of Nyenze.

For a long time, we have been treated as being unfair to the Government by the country and Waiguru as a saint and a witness who is just a whistle-blower. The people who are saying it are the two gentlemen. The person whose name is here, without me mentioning the rest, is Sen. Kipchumba Murkomen. Imagine all those things were happening when he was in South Africa, now---

(Laughter)

Hon. (Ms.) Shebesh: On a point of order, Hon. Speaker.

Hon. Speaker: Yes, Hon. Shebesh.

Hon. (Ms.) Shebesh: Thank you, Hon. Speaker. I rise on a point of order to question whether Hon. Midiwo's contribution is really relevant. We are talking about approval of a Senator to PAP. What is in front of us is not discussion about affidavits or any other political stories that Hon. Midiwo may be interested in. Is it in order?

Hon. Midiwo: Hon. Speaker, if I have offended my friend, in the last Parliament, I was her Chief Whip and she spent all the five years in South Africa. So, she has not learnt these procedures.

(Laughter)

Sen. Kipchumba is relevant because he is in the substantive Motion. That is why I have not called the other one who is sitting across me. I am not mentioning names. Sen. Kipchumba is my friend. On Monday, I met him in the corridors of Parliament. I asked him: "My brother, is it not time you just apologised to Raila Odinga? Please just apologise. It does not make you a lesser man". The following day, the bombshell was dropped. I cannot debate the bombshell because it is *sub judice*. Now that he is back here, I support him in his new position. He must behave himself because Kenyans are tired of corruption. This Government cannot be salvaged. Something has gone wrong even with the defenders. That right side of the Speaker has over 200 Members of Parliament. They are hardly 50 because they are busy in Government offices intimidating civil servants.

(Laughter)

Look at my side, Hon. Speaker. I second this Motion. Thank you.

Hon. Speaker: Order, Hon. Members! Hon. Midiwo was seconding the Motion.

(Question proposed)

Hon. Members: Put the Question.

Hon. Speaker: Hon. Members, for some of you who may not have been here or who do not listen, I just said a while ago that we are reorganising business because the business coming next is more substantive, given your function under Article 95 (1) of the Constitution. In any event, you are at liberty to vote one way or the other, whichever way. Happily, I have no vote.

(Question put and agreed to)

Hon. Members, even as we move to the next Order, let me also make this announcement to the House, which I believe Hon. Rachael Shebesh or Hon. Z. K. Cheruiyot could have confirmed. For purposes of being facilitated to attend sessions or sittings of PAP, Members of PAP are issued with a passport for PAP. That is a fact. The issue raised by Hon. Midiwo relating

to how Kenyans are being treated by other nationalities is still a matter that this House can legitimately ventilate on. I thank you.

Next Order!

MOTION

APPOINTMENT OF MEMBERS TO THE COMMITTEE ON NATIONAL GOVERNMENT CONSTITUENCY DEVELOPMENT FUND

Hon. Speaker: Hon. Katoo.

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

THAT, pursuant to the provisions of Section 50 of the National Government Constituencies Development Fund Act, 2015 and Standing Order 173, this House approves the appointment of the following Members to the National Government Constituency Development Fund Committee:-

1. The Hon. Moses Lessonet, MP.
2. The Esther Gathogo, MP.
3. The Hon. Maina Kamanda, MP.
4. The Hon. Raphael Letimalo, MP.
5. The Hon. Joseph Nakara, MP.
6. The Hon. Mohammed Haji, MP.
7. The Hon. Yusuf Chanzu, MP.
8. The Hon. Abass Mohammed, MP.
9. The Hon. Benson Mbai Itwiku, MP.
10. The Hon. Silas Tiren, MP.
11. The Hon. David Wafula, MP.
12. The Hon. Elijah Mosomi Moindi, MP.
13. The Hon. (Eng.) Nicholas Gumbo, MP.
14. The Hon. Ogolla Gideon Ochanda, MP.
15. The Hon. Kyengo Katatha Mawea, MP.
16. The Hon. Kamoti Mwamkale, MP.
17. The Hon. Abdikadir Ore, MP.
18. The Hon. Joseph Obiero Ndiege, MP.
19. The Hon. George Peter Kaluma Opondo, MP.

I want to quickly bring to the attention of Hon. Members that this new National Government Constituencies Development Fund Act became operational on Friday 19th February 2016. Several changes have to be made because of the new Act. One, the name of the 'Parliamentary Select Committee on the Constituencies Development Fund' (CDF) has changed because even the title of the Fund has changed from 'CDF' to 'National Government Constituencies Development Fund'. The term of the old Committee came to an end on Thursday last week. That also has an implication on our CDF committees on the ground. They ceased to be operational beginning Friday last week.

In fact, a circular has been circulated from the Chief Executive Officer (CEO) of the Board which says that it is only the officer administering the Fund, namely, the Fund Manager, who is now in office as far as those committees are concerned. New committees have to be put in

place in accordance with Section 25 of the new Act. Most importantly, I want Members to know that even the transaction of business at the constituency level is not possible now. The staff who are supposed to be paid salaries by tomorrow will not be paid. I think we did not take a lot of interest when we were passing this Act. Section 12(2) says that at least three signatories shall be required for every cheque or instrument for actual payment or withdrawal of funds from a constituency account. It further provides that the signing instructions shall be such that there shall be, at least, one signature of an officer seconded by the Board and, at least, two signatures of two members of the constituency committee.

The Committee is not there at the moment. This means that cheques will not be signed and the staff are supposed to be paid their salaries tomorrow. The appointment of the new CDF committees is spelt out in Section 24. It says that some of those to be appointed to the CDF committee are two men, two women and a person living with disability, in accordance with the regulations that are going to be proposed by the Board.

Hon. Speaker, the catch is about the regulations. Section 50 of the Act is on the establishment of the National Assembly Select Committee. This is the Committee which I am proposing at the moment. One of their functions in Section 5(d) is to consider and report to the National Assembly, with recommendations, names of persons required to be approved by the National Assembly under this Act. Some of those to be approved are those of our constituency development committees, in accordance with Section 57.

Section 57(3)(a) says that without prejudice to the generality of the sub section, the Board may make regulations prescribing the manner of selection of and qualification of members of the constituency development committees. Those regulations and names must be approved by this House before they are gazetted by the Board. Therefore, the House Business Committee during its sitting on Tuesday this week, in its own wisdom, decided that it is good that we do not go for this weekend without approving the names of the membership of this National Assembly Committee.

We will then give them a deadline of Tuesday next week to table the regulations that prescribe the formation of the CDF constituency committees, so that we fast-track them, they be gazetted and we let the operations to go on, especially the remuneration of staff.

In conclusion, I just want Members to be aware of two sections of the Act. One of the other responsibilities of the Committee that I am proposing is to oversee the implementation of this Act and in this respect, propose amendments to this Act. I have about two amendments. It is good for Members to hear what Section 24 says. It is on the nature of projects to be funded under the new National Government CDF. Section 24 (a) says that a project under this Act shall only be in respect of works and services falling within the functions of the national Government under the Constitution.

This means we are not going to use CDF to fund projects that are under devolved government. Section 25 (a) says that any funding under this Act shall be for a complete project or a defined phase of a project. This is the important thing I want us to know. Some of the projects are done in phases. I am sure there are projects that we proposed in the ongoing financial year which are under the devolved functions like construction of health facilities and undertaking of water projects. We proposed to do these projects in phases. That means we were proposing to have funding to complete such projects during the next financial year.

As we go to the next financial year, with the new Act, we are not allowed to do projects that have been devolved. Therefore, those in this Committee need to look into that aspect.

Sub-section 28 is on deadline for submissions of proposals from the constituencies. It says that the list of the proposed constituency projects shall be submitted to the Board before the end of the month of February each year. The Budget is read in June. We do not yet know the allocation for each constituency. Therefore, it may be difficult to submit proposals by February.

As I move this, I wish to urge Members that, as the Speaker said in his Communication, we should remain behind a little bit longer, so that we can get the numbers to make a decision with regard to this Motion before we go for the weekend. Then we can task the Committee to bring this regulation as early as Tuesday next week.

Hon. Speaker, I beg to move and request the Member for Makueni, my good neighbour, Hon. Daniel Maanzo, to second.

Hon. Maanzo: Thank you, Hon. Speaker, for giving me an opportunity to contribute. I rise to second this very important Motion.

The new National Government CDF Act, 2015 is very important in that it brings back the former CDF Act into life. Therefore, the Committee is extremely important. Because of the deadline stipulated in the Act, it will be very important for this House to pass these names, so that we can have the implementation of the new Act on course. There are very many projects which were being handled by the CDF, which are now in the new Act. They need to have quick action. One of the extremely urgent matters that need to be addressed is payment of employees under the old CDF, who are now to be taken care of under the new Act. It is now towards the end of the month.

Another very important thing is the committees, which have a process. The new Act provides that these committees have to be appointed in consultation with the stakeholders, who are the electorate. There is going to be election again, so that the new team can be appointed. It is one of the methods. There could be many methods of consulting with the stakeholders. It is very important that this Act is implemented by the proposed Committee urgently, so that the activities of this very important Fund can go on in the constituencies. The constituency is one of the units of devolution. The CDF has been very effective in serving people. In fact, you can see as many CDF projects as possible in all the constituencies. Kenyans are really waiting for this team to get into action to complete some of the projects.

Under Section 25, there is provision for transition, so that projects started under the old CDF that fall under the devolved functions can be completed. The National Government CDF will mainly deal with national Government projects within the constituencies. This means there will be inclusion of projects like construction of chiefs' offices under the national Government security agenda. It is extremely important that the Member of Parliament becomes even more relevant in making sure that the people of Kenya are served in a nice way though his role remains oversight.

There is also a new committee which will oversee the constituencies while another one will be implementing. All of them cannot come into force without these names being passed by this House. So, I urge Members of this House to look at this Act very carefully again, so that we can implement it with ease once this team comes to force.

I beg to second.

Hon. Members: On a point of order!

Hon. Speaker: Hon. Members, before you go to your points of order or the next step, may I also recognise students from Sioyi Secondary School from Kapenguria Constituency, West Pokot.

(Applause)

(Question proposed)

Hon. Millie Odhiambo, you do not have to shout from where you sit. Just put on your intervention button as you have done. What is your point of order?

Hon. (Ms.) Odhiambo-Mabona: On a point of order, Hon. Speaker. I rise under Standing Order No.173 (2) which states that:-

“The Committee on Selection shall give consideration to the need for gender balance and shall, so far as may be practicable, ensure that no more than two-thirds of Members of a Committee of the Assembly, including a Committee established through a resolution of the House, shall be of the same gender”.

I want to read that together with Article 27(8) of the Constitution which states that:-

“In addition to the measures contemplated in Clause (6), the State shall take legislative and other measures to implement the principle that not more than two-thirds of the members of elective or appointive bodies shall be of the same gender.”

My concern is that this Committee as constituted is unconstitutional. I know that there is an argument that the entire House in itself does not constitute one-third in terms of gender. However, in terms of realising or working towards that realisation, we must be alive to the proportionality of the female gender in this House.

If you are talking about proportionality, I do not think one woman out of 19 men represents proportionality. I want to speak as the Chairperson of 16 women who fought out with men and were elected yet we are being treated in this House as second class citizens. We will move from fighting on the ground to fight on this Floor. This is because it is a consistent war. We have made this provision in the Constitution and every time we have to come here and beg. We have shown men that we can fight and defeat them. Why are you using your numbers to intimidate us?

I want to tell the proposed Chairman of this Committee that this is unconstitutional. I know they are rigging themselves in. He will not use the issue of time when it comes to issues of women and representation. Other times you tell us to fight it out with men. We fought it out and that is why I am here as the Member of Parliament for Mbita. You do not have to put Hon. Millie Odhiambo in that Committee. There are 15 other women who are capable and even if you left the 15, there are 47 others who represent counties. There are five others who have been nominated.

So, it is not that we have a dearth of women in this House. So, I request that you rule that this matter should not be debated because it is unconstitutional. Let it be brought back on Tuesday. Our constituents will not die. They will wait until Tuesday, so that we can respect the women of this country.

I know that when it is an issue of interest to Hon. Jakoyo, he stands very strongly. He has stood very strongly and fought against the man who beat women. May I see him standing now to defend Hon. Millie Odhiambo of Mbita, 16 women and the others?

Finally, I want to indicate for your information that not only am I a victim of gender wars, but I am also a victim of inefficiency in Africa. I am a Member of PAP, but I have not attended the last two sessions because the machine that makes diplomatic passports has broken

down for the last one year in Ethiopia and South Africa cannot process my visa on time. Then I come here to deal with another gender issue again? Please, Hon. Speaker, can you rule that this matter is unconstitutional?

Thank you.

(Applause)

Hon. Speaker: Hon. Midiwo wants to rise on a point of order. The point raised by Hon. Millie Odhiambo is that the Committee on Selection shall ensure as far as is practically possible. The responsibility is not of the Speaker. It is on the Committee on Selection.

Hon. Midiwo: On a point of order, Hon. Speaker. I hope your ruling does not veer from the good English words of the Standing Orders you have quoted. It is true that my sister Hon. Millie Odhiambo fought men and she is here. If we were not in the public eye or on the HANSARD, I would have told you what she did to win, because she won, but she had to do very strange things.

(Laughter)

So, I am supporting her. However, we cannot keep misunderstanding the one-third rule and not confront it. This issue had even gone to court and even the issue of the Cabinet not being properly constituted in the Government. I know what is bothering Hon. Millie. If you take, for example, Hon. Naicca here, he is in one Committee. Hon. Millie is in the Departmental Committee of Agriculture, Livestock and Cooperatives, a Member of PAP and all these things. We cannot do reverse marginalisation. Nothing in this Committee is new. This is the old Committee. We, as the leadership, agreed for purposes of expediting continuity to keep the old Committee. She never raised this issue three years ago. This is not meant to marginalise anybody.

Let me appeal to Members, even for purposes of debate, that there are people sitting across this country whose salaries are tied to this Committee today because of the regulations. So, we want to plead with you, even before tea, let us finish this thing, so that regulations are done and this country moves forward.

If you look at what is happening across the counties, there is so much corruption. Nothing is working except the CDF. This Parliament cannot go behind and go over trivial issues. I have had occasion to look at the socio-economic audit draft report and it says that this one-third gender rule must be relooked at. That is what Kenyans are saying.

I was in the US three weeks ago and I was looking at the story of Nancy Pelosi and she is not of affirmative action. Even the 47 ladies who are sitting here with us and the controversy going around in the country should be looked into. An ordinary Member, including my colleague here who is a Deputy Whip, does not enjoy the privileges they are enjoying. That is not affirmative action. Affirmative action does not mean two vehicles per woman. It does not mean extra money per woman. It means bringing everybody together. Kenyans must confront this.

I heard a lawyer reasoning on radio the other day. He said that all the money that we are misdirecting, what if we created special schools for the girl-child and give them equal opportunity as the boy-child like they do in India. What we are experimenting with will fail and will not work. When you see all these Government of Kenya vehicles---I have never entered my

CDF vehicle. Our parking lot is full of GK vehicles. If that is not abuse of office, I ask you to disapprove me. It cannot happen under your watch. I know it is not you who did it, but the person who did it is now in public eye, one Anne Waiguru. She cannot get away with it.

You cannot take public funds and buy vehicles for Members of Parliament. That is what is going on. This issue requires debate, but let us keep this debate to the CDF. This issue must even go to a referendum. We must ask Kenyans whether they want uniforms and school fees for a girl going to Alliance or Lwak Girls High School or two vehicles for a woman Member of Parliament. We must ask simple questions now that Kenya is calling for change. This is an issue I wish to raise substantively next week.

I plead with my sister, Hon. Millie, that for the sake of the hundreds of Kenyans who work in the CDF system, please, let us pass the membership of the Committee and deal with the issues at hand. I hear you my sister, Hon. Millie, we shall take care of you in future.

I thank you.

Hon. Speaker: Hon. Katoo!

Hon. Katoo: Thank you, Hon. Speaker. In relation to the point of order raised by Hon. Millie Odhiambo, she has correctly put it that Standing Order No.173 talks of “as much as appropriate”. However, it is good to note that these are the same Members who have been in this Committee since March 2013; the beginning of this Parliament. We have not changed anybody. The Committee has just been having one lady. The fact is that there is no single Committee in this House that has one-third representation of women the reason being that the total proportion of women Members in the House is 20 per cent. A Member should belong to only two committees, namely, a departmental committee and one other committee. If you were to put a third of them in every committee, one woman Member will end up being in five committees.

(Loud consultations)

We have tried to apply that Standing Order as much as it may be practical. Additionally, we have what is called county women social fund. I am sure they will not include a constituency Member of Parliament. It is the same case for the CDF. It will be good to have the constituency Members of the National Assembly being in the CDF Committee. That will reduce the number from 20 per cent to the 16-member committee that Hon. Millie is chairing. It was even a challenge to have one woman because all the Members of Parliament are in more than one Committee.

The CORD Coalition was not able to get one woman Member. The only woman Member is the Vice-Chair of the Committee, the Member for Ruiru, who is from the Jubilee Coalition. It is not that the CORD Coalition did not want to put women in the Committee. Lady Members in the CORD Coalition are in more than two committees. If you remove one from one committee to the CDF Committee, the other committee will have zero women Member.

Hon. Speaker, it is not possible.

Hon. Speaker: One thing is, as far as maybe practical. It is fair to listen to the logic Hon. Katoo is advancing. There is a rule that you should not be in more than two committees. So, there is a risk of one being in so many committees. This will bring in the issues Hon. Midiwo was raising.

(Hon. (Ms.) Tobiko consulted loudly)

The Members who do not seem to understand the rules of the House are the ones you want to put in which committee? Hon. Peris Tobiko is sitting there relaxing. Hon. Tobiko, is it fair that you are just relaxed and speaking like you are looking after a herd of stuff?

(Laughter)

Hon. Wamalwa, what is your point of order?

Hon. Wakhungu: Hon. Speaker, I want to explain to my good friend, Hon. Millie, that when this list was being prepared, it was being done proportionately. Since the Jubilee side had more numbers, they were to bring in 12 Members and we, from CORD, brought in seven Members. Statistics do not lie. We can have narratives, but it is also good to look at the numbers. We have 19 Members in the CDF Committee. We have 290 constituencies. The elected women Members who won in the constituencies are 16. If you use simple mathematics, 16 out of 290 multiply by 10 will be equal to one position. It was worked out proportionately. That is why we had one Member of Parliament from Ruiru. It is because of the numbers. As you had clearly put it, it was as practical as possible. We did it in a proportionate manner. Hon. Millie Odhiambo, with all due respect, should understand that it was because of the numbers.

I am requesting Hon. Members that we pass this with speed because time is flying. Let us support and pass this list. As I speak, so many projects have stalled. Some Form One students are waiting for school fees, which they have not received. I humbly request that we pass this list, so that the Committee can start working.

Hon. Speaker, please put the Question.

Hon. Speaker: Hon. Peris Tobiko!

Hon. (Ms.) Tobiko: Hon. Speaker, I support my sister, Hon. Millie, on this one. We need more representation of constituency women Members in this Committee, so that when they discuss issues that are related to constituencies, we can also contribute because our constituencies are equally affected. If the CORD Coalition was not women-friendly and was not able to produce enough constituency women Members, the Jubilee side would be more than ready to give more women to take up those positions. We cannot have one woman even if it is on affirmative action basis. We need, at least, two or three more women in that Committee.

Hon. Speaker: Hon. Members, it is not fair for those of you who are on that list to advance some position. People will start saying that some interests have been declared and all manner of things. This is not the Motion before the House.

Let us hear the words of Hon. Dalmas Otieno.

Hon. Anyango: Thank you, Hon. Speaker. I honestly find this embarrassing. Even if you brought the statistical argument by Hon. Wamalwa that elected women are 20 per cent and that 16 out of the number should get only one Member, honestly, Parliament should provide leadership in the implementation of the Constitution.

(Applause)

If we were to define “as far as practicable” we should have 20 per cent women in each committee in the 11th Parliament. We have shown that we have women in this House who are capable of shouldering heavy workload more than some men. So, in order to implement the

gender principle, it is possible to stretch the membership to a minimum of 20 per cent of women in each committee, even if some of them will belong to three committees. This particular Committee does not have a very heavy workload. There is the urgency and the fact that we already ignored the gender principle when we established this Committee. However, the Leader of the Majority Party and the Whip should undertake, before the House, that based on the urgency we will pass this membership but they will go and negotiate with the members of the Committee to create, at least, 20 per cent room for women Members. Hon. Kaluma has already agreed, if it is done procedurally later on, to relinquish his position to allow for the creation of that space, so that Parliament is seen to be serious in the implementation of the Constitution. This is more so on the gender principle. We should not continue to ignore it as if all the effort we have made in educating our women and training them in leadership is for nothing. So, gentlemen, stop being selfish, behave and help develop the country.

(Applause)

Hon. Speaker: Hon. Members, I do not think this is a matter that we need to spend a lot of time on save to point out that you must also appreciate the number of committees that the House has. Even as you talk about the percentages, it must have a bearing on the number of committees and the sharing of slots. In the committee of 19 members, CORD has seven members and the other coalition has 12 members. That must be something that the coalitions have worked on. Again, this ball is in the court of the leadership of the two coalitions. That is why Standing Order No.173 does not place that responsibility on the Speaker. I am not in a position to rule anything unconstitutional because our own Standing Orders say “as far as may be practical”. It is for the Committee on Selection and the leadership of the coalitions to sit and agree on the gender representation, including, if need be, reducing whatever gender is overrepresented. I hope Members will not complain that they have been de-whipped as appears to be now the latest way of dealing with people who voice their concerns. I hope that this will not affect Hon. Millie Odhiambo because she is raising a legitimate point under Article 27(8) of the Constitution.

Remember that, proceeding from Article 27(8) of the Constitution, this House is required to ensure adherence to the principle under Article 81(b) of the Constitution that the electoral system shall ensure that no more than two-thirds of either gender is represented in any of the elective positions. When you vote here on this list, you are doing an election. So, it is the electoral system which you must think about. Is it possible to ensure that not more than two-thirds of either gender is represented in all elective positions in a fast-past-the-post electoral system? I do not know. Your guess could be as good as mine.

Hon. Members, borrowing from the wisdom of Hon. Dalmas Otieno, the leadership of the coalitions should undertake – and I am happy Hon. Chris Wamalwa and Hon. Naomi Shaban are here – to go and consult. But for the purposes and reasons that Hon. Dalmas and the other contributors have explained, you need to make a decision on this Committee.

(Question put and agreed to)

(Loud consultations)

Order, Members! The Committee of the whole House, as they say in some ordinary language, is where the rubber meets the tarmac. It is at this stage of law-making that you separate the wheat from the chaff; you know who understands what is happening in the House. It is at this stage that the quality of the law that you make is determined.

Let us move on to the next Order.

COMMITTEE OF THE WHOLE HOUSE

(Order for Committee read)

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

IN THE COMMITTEE

[The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh) took the Chair]

SENATE AMENDMENTS TO THE CLIMATE CHANGE BILL

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Members, we have postponed the Committee of the whole House on the Legal Aid Bill, because Members have requested so that they can bring more amendments. They will be debated in the next sitting of the House. We had completed the Committee of the whole House on the Senate Amendments to the Climate Change Bill. We are at the point of the Mover reporting.

Let us have the Chair of the Departmental Committee on Environment and Natural Resources, Hon. Amina Abdalla.

Hon. (Ms.) Abdalla: Hon. Temporary Deputy Chairlady, I beg to move that the Committee doth report to the House its consideration of the Senate Amendments to the Climate Change Bill (National Assembly Bill No.01 of 2014) and its approval thereof with amendments.

(Question proposed)

(Question put and agreed to)

(The House resumed)

[The Temporary Deputy Speaker (Hon. Kajwang') in the Chair]

REPORT

SENATE AMENDMENTS TO THE CLIMATE CHANGE BILL

Hon. (Ms.) Shebesh: Hon. Temporary Deputy Speaker, I beg to report that a Committee of the whole House has considered the Senate Amendments to the Climate Change Bill (National Assembly Bill No.01 of 2014) and has approved the same with amendments.

The Temporary Deputy Speaker (Hon. Kajwang'): Who is the Mover?

Hon. (Ms.) Abdalla: Hon. Deputy Speaker, I beg to move that the House doth agree with the Committee in the said Report.

I request Hon. Chachu Ganya, to second the Motion for agreement with the Report of the Committee of the whole House.

The Temporary Deputy Speaker (Hon. Kajwang’): Is the Member for North Horr in the Chamber? Is he sitting in an unlikely place?

Hon. Ganya: Hon. Temporary Deputy Speaker, for sure I am on my side of the coalition. I was consulting my Chair here. I really want to second and commend in a special way, Hon. Ottichilo our colleague who started the journey of this Bill in the 10th Parliament, but the President did not assent to it. He started again in the 11th Parliament, and finally, it has been passed. I really want to commend him. He is out of the country on official business.

Willingly, I second.

(Question proposed)

The Temporary Deputy Speaker (Hon. Kajwang’): Hon. Members, these are Senate Amendments. I will allow one or two observations at this stage. Valedictory remarks, for seasoned members, because we are not going to Third Reading on a Bill such as this. May, I see those who want to say one or two comments by way of pressing your intervention button and we will take them as they come.

The Member for South Imenti, this should be very short and direct comments.

Hon. Murungi: Thank you, Hon. Temporary Deputy Speaker. Today, I am a happy Kenyan because we have come along way with this Bill as a Committee. I want to note and inform Hon. Members that Kenya, as a country, is almost getting the Climate Change Bill. In Africa, there is no other country, which has come this far on issues of climate change.

Therefore, I want to thank, Hon. Ottichilo, the Committee and all the Hon. Members of this House who have really supported this Bill to this level. Issues of climate change are very touchy to the whole world. Now that we have come up with so many agreements including the last one in Conference of Parties (COP) 21, this law will help this country deal with matters of climate change.

Thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Kajwang’): Let us now have the Member for Kibra.

Hon. Okoth: Thank you, Hon. Temporary Deputy Speaker, I am happy that we, as a Parliament and country, moved ahead to pass the Climate Change Bill. I thank Hon. Ottichilo for his consistency and determination and the Departmental Committee that has helped us get here.

As the Member representing Kibra, I also think about the great risks that our country faces. One of the great risks we face even as we think about climate change, new energy sources, green economies and things like those, is the high rate of unemployment in this country. We must make sure that even as we address issues of climate change, we think about matters of our economic growth and how we will use all possible energy sources in this country, whether clean energy, wind power and solar.

If necessary, even when we discover oil and petroleum and others like coal, those are energy sources that are now considered dirty in the age of climate change. In fact, those are the energy sources that helped countries in Europe and the West to modernize their economies. They

helped countries like China to rise out of poverty. Africans must not blindly follow the fashion of this climate change debate without looking at our national interests, which would make sure that we grow our economies and create jobs for very many young people in this country who do not have a source of livelihood. We must move soberly while we protect the planet and also take care of the interest of our nation. We should make sure that our economy is growing at a pace in which our young people have jobs and opportunities otherwise we will be in trouble for other reasons.

I beg to support. Thank you.

The Temporary Deputy Speaker (Hon. Kajwang’): The Member for Kiminini, you will be the last one on this.

Hon. Wakhungu: Thank you, Hon. Temporary Deputy Speaker. I want to thank those who supported this and particularly the Chair of the Committee, Hon. Amina Abdalla. She has been in the frontline in terms of leadership of that Committee. I also thank the Senate for the support because they brought some amendments which added value though we had others which were not very good, for instance, the issue of not involving the civil society. Through the wisdom of this House, we managed to bring another amendment to reject that so that they could be involved. This is while looking at the Sustainable Development Goals (SDGs) No.16, talking about peace, justice and strong institutions. I want to support and congratulate them for the work well done.

Thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Kajwang’): I, therefore, order that this Bill be printed as quickly as possible for the next sitting, for purposes of taking vote.

(Putting of the Question deferred)

Let us move on to the next Order.

MOTION

REPORT ON TERM OF TRANSITION AUTHORITY

Hon. Baiya: Thank you, Hon. Temporary Deputy Speaker, for giving me this opportunity to move this Motion.

I beg to move the following Motion:-

THAT, this House notes the Report of the Constitutional Implementation Oversight Committee on Consideration of Extension of the Term of the Transition Authority, laid on the Table of the House on Thursday, 18th February, 2016.

Hon. Temporary Deputy Speaker, the Transition Authority (TA), as Members may be aware, was established under Section 4 of the Transition to Devolved Government Act. The main role of the TA under Section 7(1) of that Act is to facilitate and co-ordinate the transition to the devolved system of government. Section 7(2) of the said Act also outlines the functions of the Authority which are, among others, facilitating co-ordination and transition of the devolved system of government as provided for under Section 15 of the Sixth Schedule to the Constitution.

The TA also facilitates the analysis as well as phase transfer of the functions provided under the Fourth Schedule of the Constitution to the national Government and county

governments. It also determines the resource requirement for each of the functions. Other functions of the TA are clearly established under Section 7(2) of that Act.

The process of implementing the Constitution is still ongoing. However, the transition period of the TA is coming to an end on 4th March, 2016. Its constitutional term of three years is coming to an end on 4th March, 2016. A critical question arises; can the life of the Authority be extended beyond 5th March, 2016? This forms the basis of this Report. For the Committee to make an evidence-based assessment of the need to extend the term of the TA and to make appropriate recommendations to this House, the Committee undertook the process of assessment and held meetings with, among others, the TA itself, the Cabinet Secretary for Devolution and Planning and the Inter-Governmental Relations Committee. They all appeared before the Committee and gave their opinion on whether an extension is permissible or not, in light of the provisions of the law and the requirement of the management of the transition process.

The Committee also made an analysis of the provisions of the Constitution, the Transition to Devolved Government Act and the Inter-Governmental Relations Act, with a view to determine whether the law would permit extension of the life of the Authority. The meeting with the TA took place on 29th February, 2015. The TA reported to the Committee on its accomplishments in terms of its function and mandate conferred on it by the law. Among its accomplishments was unbundling of functions in accordance with Part 2 of the Fourth Schedule and some of the functions in Part 1 of the Fourth Schedule, as per the Constitution of Kenya, 2010. The TA unbundled functions of parastatals in sectors such as agriculture, livestock, fisheries, sports, culture and arts, regional development authorities, water service boards, water regulatory institutions and other bodies in the sector.

In terms of its mandate, it also accomplished the phased transfer of functions to the county governments through various legal notices. These were Legal Notice No.15 of February, 2013; Legal Notices Nos.137 to 183 of 9th August, 2013; Legal Notice No.33 of March 17th 2014 and Legal Notice No.24 of 22nd January, 2016.

The TA developed a framework for functional analysis and transfer of functions. It also developed a framework for analysis and performance of concurrent functions, which process is incomplete but is ongoing. They also successfully undertook historical costing for the performance of the devolved functions before initial transfer. They also ascertained the cost of the performance of transferred functions identified for the 2013/2014 Financial Year. They also undertook realistic costing of functions of five sectors. These were functions related to agriculture, fisheries, livestock, environment, water and natural resources, health, transport and infrastructure and foreign affairs. The report confirms that they did that.

They also successfully developed and facilitated the framework for handing over or taking over of the assets and liabilities of the defunct local authorities by the county government, from the national Government to the county government. They also developed a mechanism and criteria for transfer of public assets and liabilities during the transition period and shared it with all the stakeholders including the Senate. They also facilitated the transfer and sharing of equipment, which were held under the Mechanical and Transport Fund (MTF) to county governments.

They also developed guidelines for the transfer of agricultural training centres and agricultural mechanisation stations to county government. Also accomplished was collected data on assets and liabilities of the defunct local authorities and shared with all the county governments after they assumed office. They also undertook nationwide physical verification of

assets and liabilities of 175 defunct local authorities, conducted, prepared and audited inventory. They also issued advisories and publicised the moratorium on the transfer of assets and liabilities for their effective control during the transition period. They also developed guidelines and granted approvals for the disposal of obsolete public assets.

The TA also issued guidelines for the transition of staff to the counties and prepared a report on establishment of county staff pension scheme through an inter-agency technical committee to facilitate transfer of services. They also facilitated limited deployment and transfer of staff. They prepared and proposed a County Government Retirement Scheme Bill, 2015, which is in the process of enactment. They also audited and prepared a report on staff of defunct local government authorities and staff performing devolved functions. They had done this by December, 2013.

The Report gave numbers in terms of gender, age, educational qualifications and ethnicity. The outcome of that assessment was shared with the national Government as well as the county governments. They also developed a national capacity building framework which was adopted by the Devolution Sector Working Group. They also facilitated the establishment of county governments and capacity building in various areas including pay roll management, legislative drafting and planning among others.

With regard to the function of advice on the effective and efficient rationalisation and deployment of human resource to either of the two levels of Government, the TA has achieved in coordination of the Capacity Assessment and Rationalisation of the Public Service (CARPS) Programme through the inter-agency framework aimed at recommending measures for rationalisation and deployment of staff and workload analysis. The CARPS Report was finalised and was awaiting approval by the summit and thereafter, its implementation. They had also facilitated the preparation of the scheme of service for the staff working under county governments.

The TA had also undertaken a survey on status of public records in 47 counties and reports prepared and shared with the county governments. The mechanism for closure and transfer of public records is ongoing.

With regard to assessment and classification of urban areas as per Section 54 of the Urban Areas and Cities Act, the TA reported to us that they had collected data on this, as per the First Schedule of the Act from all the urban areas in collaboration with the former Ministry of Planning. They had analysed it. Under the standards set by the law, no urban area qualified to be a city, municipality or town except the three which had been saved under the Act. They had, therefore, drafted an amendment to the Urban Areas and Cities Act, which was forwarded to the Cabinet Secretary, Ministry of Land, Housing and Urban Development and is waiting processing by Parliament.

Hon. Temporary Deputy Speaker, with regard to ensuring that civic education and devolution is commenced and coordinated, the TA had established a coordination mechanism for civic education delivery. There was minimal sensitisation of the public and public officers on devolution through media, public fora and other available events. They had also developed curriculum and training manual finalised and submitted to the Ministry of Devolution and Planning for publishing, launching and rolling out. There was also a database for active civic educators in all counties.

Hon. Temporary Deputy Speaker, according to the TA, the following are outstanding or pending works: They are audit and transfer of assets and liabilities, facilitation of implementation

of CARPS programme with regard to deployment and rationalisation of staff, finalisation of the mechanism for closure and transfer of public records and information, facilitation of implementation of the County Pension Scheme, facilitation of transfer of services and bundling and transfer of functions of State corporations, realistic costing function of the remaining other 13 ministries or sectors and departments, facilitation and development of public participation and civic education frameworks, publishing and disseminating civic education materials, curriculum training, manual verification, validation and audit of all existing assets and liabilities. Those were some of the pending functions.

Hon. Temporary Deputy Speaker, the TA also complained about inadequate funding, unavailability and slow response from the ministries with regard to the information they needed to undertake their functions. In some cases, they experienced challenges of duplication and overlapping mandates between themselves and the Ministry of Devolution and Planning. Equally, there was political interference especially during the clamour for transfer of functions. There was a challenge of capacity and numerous litigation and judicial proceedings.

Hon. Temporary Deputy Speaker, following this consultative process, we met the Cabinet Secretary for Devolution and Planning on 6th February, 2016 to discuss possible options available to us upon the expiry of the term of the Authority. The Cabinet Secretary stated the following to the Committee:

With regard to auditing of public assets and liabilities of the *de facto* core authorities, the Cabinet Secretary informed the meeting that the TA had compiled a comprehensive list of assets and liabilities and what remained was the verification, validation and transfer which could be carried out by the Office of the Auditor-General and other relevant State agencies.

With regard to analysis and transfer of pending functions as per the Fourth Schedule of the Constitution, there was a National and County Government Coordinating Summit held on 10th and 11th February, 2016 at Sagana State Lodge. The TA confirmed to the Summit that it had transferred all the functions and none was pending. The remaining functions had been transferred under the *Special Gazette* of 22nd January, 2016.

Concerning establishment of the County Pension Scheme to safeguard staff benefits and facilitate transfer of services, the Cabinet Secretary informed the Committee that the draft County Pension Scheme Bill was being reviewed by the major stakeholders and that the Intergovernmental Relations Technical Committee would follow up on the issue.

Hon. Temporary Deputy Speaker, concerning the assessment and classification of urban areas and cities, the Cabinet Secretary's position was that amendment to the Urban Areas and Cities Act, 2011, and regulation under the Act had been drafted and was before Parliament.

With regard to rationalisation and deployment of staff, he informed the meeting that the matter was comprehensively under the CARPS Programme and that the TA had given their input on the Report of the CARPS which was later adopted by the Summit in February, 2016.

With regard to the implementation of civic education curriculum on devolution, the Cabinet Secretary informed the meeting that they hold the view that civic education is a continuous activity and not a transitional issue to be handled by the TA.

With regard to facilitation of the closure of public records and information, the Cabinet Secretary was of the view that personal records kept by the national Government had been successfully transferred to the county governments, and in any case, this was the mandate of the Government ministries supervised by the Ministry of Public Service and Youth Affairs, the Public Service Commission and the Intergovernmental Relations Technical Committee

As to the creation of capacity for national and county government, the Cabinet Secretary was of the view that capacity building was the function of the national Government and not the county governments or the TA.

On the establishment of the status of ongoing reform process, projects and programme, the Cabinet Secretary was of the view that this is not a function of the TA.

Hon. Temporary Deputy Speaker, the Cabinet Secretary proposed the following recommendations:-

- (i) The Intergovernmental Relations Technical Committee as well the TA had agreed to work together to ensure a seamless handover to the technical committee in a meeting held on 13th January, 2016, that seven out of 16 members of the TA are in any case Principal Secretaries and as such, the expertise and institutional memory of the TA will be retained and available to the national Government hence guaranteeing continuity. That most of the technical staff of the TA had been there on their own secondment from the national Government and would therefore, be available if required by the technical committee.
- (ii) The Cabinet Secretary was proposing the setting up of an independent audit committee to objectively assess and evaluate the work of the TA with a view to ascertain the magnitude of the pending work and the timeframe it would require to finalise.

Hon. Temporary Deputy Speaker, the Committee also inquired from the Cabinet Secretary the constitutionality of the extension but he left it to the National Assembly. The Committee finally met with the Chairperson of the Intergovernmental Technical Committee who informed it that according to his understanding, Section 15(1) of the Sixth Schedule of the Constitution does not allow for the extension of the TA beyond three years.

The framers of the Constitution did not envisage that the TA would serve beyond three years. As such, Parliament should not extend the three years. The technical committee is well enabled to take up the functions of the TA since it has been set up. Once the TA is dissolved, the technical committee would take over and it did not foresee any challenges in that process. The technical committee is also independent as its Members are competitively recruited and appointed by the summit. Unlike the TA which has seven Principal Secretaries, the Committee has only one Principal Secretary as a Member. As such, it is autonomous and independent. The question of determining whether or not to extend the term of the TA is to be determined by the Senate and the National Assembly.

With regard to the legal question whether the time of the TA could be extended, we looked at Section 15 of the Sixth Schedule of the Constitution as read with Section 7 of the Act. Section 15(1) of the Schedule is quite categorical that transfer of functions should not be over a period of more than three years from the date of the first election of the county assemblies. From the national Government to county governments, the functions are assigned to them under Article 195. The principal role of the TA and Section 7(1) of the Act is to facilitate and coordinate the transition to the devolved system of Government.

In view of the foregoing, the Committee observed that Sections 7 and 37 as read with Section 15(1) of the Sixth Schedule of the Constitution illustrate that the term of the Authority cannot be extended beyond three years from the date of the first election of county assemblies without amendment of the Constitution. It is, however, important to note that upon the dissolution of the TA, there will be no lacuna. Indeed, Section 12(b) of the Intergovernmental

Relations Act provides that the Intergovernmental Relations Technical Committee shall take over the residual functions of the transition entity established under the law relating to the transition to devolved government after dissolution of such entity.

In this regard, once the TA is dissolved, the Intergovernmental Relations Technical Committee shall take over its residual functions. It is, therefore, the view of the CIOC that the term of the TA should not be extended and its residual function should be taken up by the Intergovernmental Relations Technical Committee upon expiry of its term.

On behalf of the Committee, it is my pleasant duty and privilege to present this Report to the House for consideration and approval. Having heard the submission of the Cabinet Secretary for Planning and Devolution and the Chairperson of the Intergovernmental Relations Technical Committee weighing in these submissions against the views of consultative forum and guided by the law, the Committee resolved to have a meeting on 18th February to determine the issues. During that meeting, the Committee agreed that outstanding activities of TA which are residual in nature could be taken up by the Intergovernmental Relations Committee. The Committee observed that the Cabinet Secretary had addressed all these activities and the TA had cleared with most of the core responsibilities.

The final recommendation of the Committee is that in view of the provision of the Constitution, the provision of the Transition to Devolved Government Act and the Intergovernmental Relations Act, the life of the TA should not be extended beyond 5th March, 2016. Subsequently, the outstanding work left by the TA should be taken over by the Intergovernmental Relations Technical Committee on 6th March, 2016 in accordance with the provisions of the Intergovernmental Relations Act.

I beg to move. I ask the Member for Othaya, who is a Member of this Committee, to second.

The Temporary Deputy Speaker (Hon. Kajwang'): The Member for Othaya, can you press your intervention button?

Hon. (Ms.) Munene: Thank you, Hon. Temporary Deputy Speaker. I rise to second the Motion. There is no need to extend their time because counties are doing their job. Even if you extend their term, I do not think they are going to do much. That is the reason why our Committee and the Cabinet Secretary for Planning and Devolution agreed not to give them more time. We will see the way forward after passing this Motion.

I beg to second. Thank you.

(Question proposed)

The Temporary Deputy Speaker (Hon. Kajwang'): Hon. Members, if you look at how this Motion is worded, you will find that it says that this House "notes." So, the Assembly is merely to note. I am sure that you have gone through the Report which has been deliberated extensively by the Chairman of the Committee. So, yours is to note, meaning that it is a debate which should not take very long.

The question which he has raised is whether the National Assembly is competent to increase the term of Office of the TA without the amendment of the Constitution. In fact, that is the bigger issue. The rest of them are relational issues; whether we have an obligation or even the power to do it because the Constitution, under Section 15 of the Sixth Schedule, has expressed itself very well.

Two, Section 37(1) of the Transition to Devolved Government Act which we passed says that it has to do those things which it must do within three years consistent with the Constitution after which both the legislation itself lapses and the people who are doing it also fold up except for a few staff who can hand over what has been created under Section 12(b) of the Intergovernmental Act which gives the Intergovernmental Technical Committee power to take over the functions of the Authority. I have explained that just to break down what the Chairman has said in a summary form to guide the debate this afternoon.

I can see the Member for Garissa Township is the first one on this but I do not see him in the Chamber. So, I will consider that he, not being around, his contribution will be spent. Yes, the Member for Kilome. I do not see the Member for Kilome in Chamber. Again, desiring to speak but not in the Chamber. The Member for Kiminini, you spoke on something. What were you speaking on? Did I recognise you recently? Was that a different debate?

Hon. Wakhungu: Yes, that was a different debate, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Kajwang'): Can I get that clearly?

Hon. Wakhungu: That was on the issue of the Constituencies Development Fund (CDF) Committee. The one we have just reconstituted. It was on the issue of gender balance, where we talked about the proportion in terms of the numbers. It was an earlier Motion.

The Temporary Deputy Speaker (Hon. Kajwang'): That is fine. Continue.

Hon. Wakhungu: Thank you, Hon. Temporary Deputy Speaker. I have listened very carefully to my friend, Hon. Baiya, the Chair of the CIOC moving the Motion. I have also read the Report and some of the critical issues he has brought up are true. However, there are also other critical issues that we must examine and determine what we will do. For instance, in line with Section 15 of the Sixth Schedule of the Constitution, it is true that one of the critical functions of the TA was the transfer of functions, but it is not limited to that alone. If you go further, you will find that one other critical function of the TA was to audit and transfer assets and liabilities.

I sit in the Public Investments Committee and Athi Water and Services Board officials appeared before us today. We had audit queries from the Auditor-General. There was a variance in its asset register to the tune of between Kshs2 billion and Kshs3 billion. When we asked them, they told us that that is not their work and that they are waiting for the TA to go and do the validation. We agree that the circumstances under which the TA has been working has been challenging. We have had teething problems and issues to do with the governors, senators and county assembly interests. The problem is on the critical function of audit of assets and liabilities and their transfer. I have had a chance to discuss this with my friend, Hon. Baiya, and he agreed with me that it is a challenge and that we have to see how to go about it.

Right now, we are aware that Senator Wako, the former Attorney-General has brought a Bill in the Senate to amend the Constitution to extend the term of the TA. I also agree because I have had a chance with other colleagues to put the limitation of the three years. The question is: What are we going to do with these assets that we have neither audited nor transferred? We are likely to lose a lot of billions. These are public funds. What are we going to do? As we sit here, we must look for a friendly manner and an objective way of reasoning and say how we are going to trace these assets in terms of auditing, verification and transfer.

I have listened to Hon. Baiya and also attended a workshop with him in Mombasa. One of the challenges that the TA said they were facing that made them not to complete the audit and transfer of assets was the challenge of budget. It is true. We understand that the Government is

going through problems in terms of cash flow. We have very many functions stalling where monies have not been enough. If at all this was a critical issue that made the TA not to have enough funds for purposes of auditing and transfer of these assets, what should we do so that we do not lose these billions?

My friend, Hon. Baiya, whom I respect very much has indicated that the issue of the new Intergovernmental Relations Technical Committee is going to do residual functions. Another critical function of the TA was the issue of unbundling of the functions of parastatals. There are critical parastatals but if you look at their core functions, you will find that they are performing functions which have already been devolved to the counties. Examples are the Kenya Rural Roads Authority (KeRRA), the Kenya Urban Roads Authority (KURA), the Rural Electrification Authority (REA) and many others. If you come to the issues of water, you will find that we have the Water Services Board and the National Water Conservation Authority. These are national parastatals and yet water provision is a devolved function. We assume that the TA has the expertise to help in the transfer. I agree with what you said that we are noting, but as the National Assembly, we must put our heads together and see how we are going to ensure that there is a safe transfer and audit so that we do not lose these billions. The only people who have the expertise and trust to do this function is none other than the TA.

In production, there is something called “the learning curve”. At times you learn on the work. They know the challenges and the problems we have been facing. As such, if they are given an opportunity to finish this function, they know where problems are. We have also had a chance to talk to the Cabinet Secretary in charge of Devolution and Planning. One of the things he said is that it is the responsibility of the National Assembly to extend the term of the TA.

Before I continue, I want to bring to the attention of the House a matter which was in court. One of the critical functions of the county governments is to licence casinos and betting control. You are aware of this matter which was in court. It was actually ruled by Justice Lenaola. In his ruling, he said that this matter should be referred back to the TA for purposes of mediating.

The Temporary Deputy Speaker (Hon. Kajwang'): Which case are you referring to?

Hon. Wakhungu: There was a case in court on the casinos and betting control. It was ruled by Justice Lenaola.

The Temporary Deputy Speaker (Hon. Kajwang'): Do you have the ruling with you?

Hon. Wakhungu: With time I can give you that.

The Temporary Deputy Speaker (Hon. Kajwang'): Are you able to table it at the next opportunity so that we peruse it?

Hon. Wakhungu: Yes, I will table that, Hon. Temporary Deputy Speaker. In his ruling, he said that this matter should be referred to the TA. So, if the TA, which the matter has been referred to ceases to exist, who is going to do this? Hon. Temporary Deputy Speaker, we need your guidance as far as this is concerned. However, the most important thing which Kenyans are concerned about is the risk analysis or opportunity cost. How sure are we that Kenyans are not going to lose the billions in the many assets that have not been audited or transferred? The issue is not just succession of TA alone. We want to see how we are going to safeguard these billions that are going to be lost. As much as we are noting, let us look at the issue of what Senator Wako is doing in terms of an amendment to the Constitution. We have also heard different arguments in terms of whether we can amend the Act instead of going to the Constitution so that we safeguard the interest of the TA. If that is allowed, why not do it? We should extend the term for

one or two years and prioritise these critical functions of the audit and the transfer of assets and liabilities to the counties. I thank you, Hon. Temporary Deputy Speaker. I request Hon. Members to listen to me.

In that context, I oppose this Report.

The Temporary Deputy Speaker (Hon. Kajwang'): I am impressed by your debate, the Member for Kiminini. Is it, therefore, your case that you are expressing lack of confidence on the technical committee under Section 12(b) to take over the residual functions of the transition entity established under the law relating to transition to devolved government after dissolution of such entity? Can I hear you on that if you do not mind?

Hon. Wakhungu: On that particular function, Hon. Temporary Deputy Speaker, I gave an example of the learning curve. This is something new. They do not have the history and heritage. My assumption is that the TA has people who have the expertise. They have been facing many teething problems as they have been doing this. As far as the issue of transition is concerned, we have had many challenges because the critical stakeholders have been antagonistic of each other. Having gone through this and because of the antagonistic nature and the conflict of interest of the stakeholders, we have heard the pronouncement by the Council of Governors and the National Assembly. An example is the classification of roads. This has been a very critical issue. Some of the road projects that are supposed to have been done by the CDF have not been finalised especially where the TA had to come in for classification. That is why we also had a court case and the court ruled. As we speak, even the CDF road projects have been suspended. So, the new Committee that is coming has lack of expertise and they do not have that experience, just as in the learning curve. This is the only worry we have. That is why we are saying that the TA should continue. Let us allocate them more money in the budget allocations. We have more confidence in them as opposed to this new agency which is going to be under the Ministry of Devolution and Planning. The ministry does not have a devolution policy. How is this agency going to work? It is under the Ministry of Devolution and Planning and yet there is no devolution policy to provide the framework. That is why we are looking at these issues. We have doubts in our minds. In the long run, we might lose billions of shillings and assets when transferring and auditing.

Thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Kajwang'): You have made a case. The Member for Garissa, are you in the Chamber? The Member wants to contribute but she is not in the Chamber. We will drop her request.

Proceed, the Member for Nambale.

Hon. Bunyasi: Thank you, Hon. Temporary Deputy Speaker. I sit in the CIOC. The Member for Kiminini is making very persuasive arguments about the unfinished work. On the other hand, let us remember that the transitions are always a problem. We had similar arguments with the Commission for the Implementation of the Constitution (CIC). There is always something more that needs to be done whenever the life of a commission ends. Termination seems to be always painful. We should focus on how to provide capacity to the successor institution that will partially take over those functions. That is the Intergovernmental Relations Technical Committee. We should take it as a national priority, as articulated by the Member for Kiminini.

What needs to be done is provision of services, for example, in respect of audit, inventory and transfer of assets – which has been clearly explained by the Committee. That is

needed so that it does not fall between the cracks. However, who does it? We should move in line with the constitutional provisions and allow the TA to exit. There has been a bit of time. I understand that the devolution process has so far been messy. It was not always very orderly. Some things have moved at speed that was not anticipated while others have not. The TA may have been all over the place trying to get all these things tied up.

It is time we took necessary step, even if it might appear painful, and let the TA hand over. We should monitor how the successor institution will get this done. Clearly, nobody wants to see their effort lost. Remember that it has been almost five years and three years from the election time. It is almost five years from the time the Constitution, 2010 came into force. People have stolen vehicles and machinery. However, records do not lie. The long arm of the law will catch up with them. We will recover the stolen assets and ensure that appropriate punishment is met out to the culprits. For the neediness of the implementation of this Constitution, we should let this time bound institution lapse, as we did with the CIC. We will then task the successor institutions to complete the job.

Issues will always rise but on this one, I vowed with my Committee. I support the recommendation of the Committee that we should let the time lapse. As a matter of fact, only next week is remaining. As a nation, we need to worry about how the successor institutions will carry out the mandate. We should not allow them to sleep.

We have a new Cabinet Secretary in the Ministry of Devolution and Planning. Devolution is another mammoth institution sucking up a lot of money. It has a very huge mandate. I wish Hon. Kiunjuri good luck. I hope that he will give us a better grasp of things. We need less public relations and more substance. If that happens, things like the ones we are concerned about will begin to get tackled.

With those few remarks, I support.

The Temporary Deputy Speaker (Hon. Kajwang'): The Member for Nambale, just before you resume your seat, the Member for Kiminini has made a very passionate appeal. His point of discussion was that there should be a coordinated way of the learning curve and people who have been used to the work and the expertise. I want to invite your comment because you are a Member of the Committee.

Section 37(3) of the Transition to Devolved Government Act says that during the period specified in sub-section (1), which is the three-year period, the TA shall ensure that its affairs are wound up in an orderly manner, and in particular shall ensure that the aspects of its work that will be of value to other institutions are preserved, documented and transferred to relevant institutions. Further, the sub-section requires that TA's files and records be preserved and transferred to the national and county summit. If I may just invite your comment, would it be the proposition of the Legislature that it was conceived that the TA by now should have created institutions on how to transfer properly even if it means training of human resource or whatever resources they need, like experts, and how there can be a smooth transfer of that function to the Intergovernmental Technical Committee that the law has provided for? I need your comments please.

Hon. Bunyasi: Thank you, Hon. Temporary Deputy Speaker. That reference is very apt. Fortunately, the TA has worked mostly with contract staff. They have guided this work with appropriate terms of reference and supervision. It is not as if we have a body of people sitting there who do not know where to go. The successor institutions can use the same consulting group. I am sure that there will be a slide because it takes time to hand over. Even in the next

race, at the time of handing over the baton, the speed goes down a bit but you will eventually pick up speed and proceed to conclusion. The Committee is aware of that situation.

We discussed this matter and agreed. The critical thing is that there are enough people who are concerned with continuity of the services and functions that are not going to be under the same house. They do not need to be under the same house. They were carrying out very broad functions. There were negotiations between the national Government and the county governance, but people split in different directions. Their job was difficult but it has since been settled reasonably. Those functions can be moved to the various line institutions. I have a fair amount of confidence that even though there will be some slippage, the process will eventually pick speed.

The Temporary Deputy Speaker (Hon. Kajwang'): The Member for Githunguri is requesting to give some information. Do you need information, the Member for Nambale?

Hon. Bunyasi: Yes, Hon. Temporary Deputy Speaker.

Hon. Baiya: Hon. Temporary Deputy Speaker, this is just to reiterate what we said about the process of transition. We said that the Report is quite clear that the TA technical people had been seconded from the national Government. They are still available and their expertise is still available for use by the summit, if need be. There is already a meeting and an arrangement is being made between the two institutions. They are in a workshop so that they can identify who will be used where. The Chairperson of the Intergovernmental Technical Committee was a member of the TA. So, the fear being expressed here is clearly nonexistent.

With regard to audit, it is also good just to allay some of these fears. There has already been audit of all the assets. There has also been physical verification. What is only remaining as far as the TA is concerned is valuation with a view to give value to those assets. We have it on record from the Cabinet Secretary and both levels that the Auditor-General is already seized of the inventory. He will be doing the normal audit for the national Government and the county governments.

The Temporary Deputy Speaker (Hon. Kajwang'): All right. Hon. Member for Nambale, wind up. Let him have the microphone.

Hon. Bunyasi: Thank you, Hon. Temporary Deputy Speaker and the Chairman of the Committee. In addition to the hired consulting staff is the secondary staff. What made the TA an organisation was the fact that there were coordinating services and management by the TA. The key thing in the transition is that there should be some coordination from the Intergovernmental Relations Technical Committee to see this through.

These are issues that can string on. The issue of sharing of power and services between the national Government and the county government is continuous. There are elements of it that are time bound but the truth is that some will be with us for a long time.

A service similar to what the TA has been doing is an arbiter who is not leaning on either side but who sees best practice and recommends actions. We hope that the successor institution will recognise the dynamic role of this function and provide those services.

Thank you.

The Temporary Deputy Speaker (Hon. Kajwang'): Thank you very much. Let us have the Member for Teso South Constituency.

Hon. (Ms.) Otucho: Thank you, Hon. Temporary Deputy Speaker for this opportunity. Devolution is the most important thing that ever happened to this country. There are areas in this

country that appreciate devolution because they have received services that they would never have received if there was no devolution.

I am persuaded to oppose this Report. I believe that we should give the TA more time. One reason, as already alluded to by Hon. Chris, is that the Ministry of Devolution and Planning is yet to finalise the Devolution Policy. We know that this is a very critical pillar in managing the implementation of devolution. It is needless to say that the involvement and active participation of the TA is still very important and would greatly enrich the process.

As a country, we are approaching an election year which is next year, 2017. I do not think it will be fair for us to have a lacuna in the devolution transition process because in the absence of the TA--- I know that we have the Intergovernmental Relations Authority that is supposed to take over. However, we must note that this body is required to operate the technical arm of both the county governments and the national Government, coordinating the summit and the Council of Governors (CoG). We are also aware that the CoG has its own secretariat that needs to be entrenched in the law that they would like to take over these functions as an arbitrator as it was done by the TA. If the Intergovernmental Relations Authority is competent enough and has capacity, I do not think the governors would like to have their own secretariat entrenched in this process. I believe that we still need the TA. The responsibility of TA as per Section 15 already alluded to goes beyond the transfer of functions.

We also know that these functions were transferred almost immediately. Therefore, there are a number of challenges that have risen as a result of that. Given the institutional memory and expertise that we already know that the TA would provide in this process, it would be important that we have it so that all the assets of county governments are audited and transferred and all title deeds are processed. As it stands now, that process has not yet been concluded. If we move on to the next elections before this processes have been concluded, this Government stands to lose a lot of property and assets.

Thank you Hon. Temporary Deputy Speaker. I oppose.

The Temporary Deputy Speaker (Hon. Kajwang'): Let us have the Member for Njoro.

Hon. J.K. Ng'ang'a: Thank you, Hon. Temporary Deputy Speaker. I support this Motion. When this Authority was formed, it had a purpose and it was given a timeframe. Its terms and mandate were well stipulated. When it was formed, it started its mandate. They have been doing their work until it reached a point when they felt that there was a need. They had not completed their work. They requested for extension of time so that they could complete whatever they had been assigned to do. The Government granted the extension. During that extension period, they were supposed to burn the midnight oil and ensure that the remaining work which had not been completed was finalised.

I support this Report. Either those people were not committed to the task they were entrusted to by Kenyans or they felt that they needed more time to earn their salaries. Therefore, I agree with the Report that the rest of the work which is pending as stated in the Report be taken over by the IGRTC.

I believe that we have qualified and competent people in the Government to carry over the remaining work so that as they embark on it, we do not overburden the already overburdened Government Budget. We have other more important issues which we are supposed to be dealing with and the Government is supposed to fund such as security and education. These are very important to this nation.

So, I agree with this Report and request that we rest it there. Let the IGRTC take over the role that is remaining. This is so that we do not overburden the Government by adding extra budgets and yet there are other areas in the Government that need more funding.

Thank you. I support.

The Temporary Deputy Speaker (Hon. Kajwang’): All right. Let us have the Member for Dadaab.

Hon. M.D. Duale: Thank you, Hon. Temporary Deputy Speaker, for giving me an opportunity to contribute to this Report.

At the outset, I oppose this Report, although I am a Member of the Constitutional Implementation Oversight Committee (CIOC). My reasons are as follows:-

The Transition Authority was to facilitate the transfer of functions. That process has not been completed because there are many loose ends. The process of devolution faced a lot of challenges from the outset because it was a new system. Even though those challenges still remain, this House has the powers to extend the term of TA. The interaction between TA and Intergovernmental Relations Technical Committee has also been minimal. In my opinion, I do not think that the Intergovernmental Relations Technical Committee will be able to take over entirely the functions that were being undertaken by TA. In my opinion, due to the fact that we are getting closer to an election year, we are not asking for an indefinite extension, but there is need for this House to consider TA’s extension. Therefore, I oppose this Report because of those reasons and urge my colleagues to support. The county governments have not been very cooperative. Most of the things that were done were against their wishes and I believe if TA is not there, many things will go wrong. We are going to lose the gains that we had made in the period that the TA has been there.

I oppose this Report.

The Temporary Deputy Speaker (Hon. Kajwang’): Thank you. Member for Garissa Town says that he has reflected on the constitutionality of this Motion and is able to give us a new reflection. I think you will give new vigour to the new debate. Can you now let us see the other side of it?

Hon. A.B. Duale: Hon. Temporary Deputy Speaker, I have done soul-searching. I have looked at the document that has been prepared by the Kenya Law Reform Commission (KLRC), I have looked at the Constitution and I have consulted with the Chair of CIOC. Without fear of any contradiction, I support the Report of the Committee that the TA, at the clock of the hour midnight on 4th March, 2016, should fold up and go home. I say so because that extension requires a constitutional amendment. In the reading of the Sixth Schedule, Section 15(1) says:-

“Parliament shall, by legislation, make provisions for the phased transfer, over a period of not more than three years from the date of the first election of county assemblies, from national Government to the county government of the functions as assigned to them under Article 183, 184, 185 and 186.”

The confusion was the extension we gave to the Judges and Magistrates Vetting Board. If you look at Article 23 of the Sixth Schedule, you will realize that it gives powers of extension to the Judges and Magistrates Vetting Board. That is why as soon as I leave here, I am going to talk to Joash Dache, the Secretary and the Chief Executive Officer of KLRC. That is because he has misled me through a document that he has sent me. The extension we gave to the Judges and Magistrates Vetting Board, we drew that mandate from Section 23 of the Sixth Schedule and,

with your permission, I want to read it. This is in reference to vetting of Judges and Magistrates Board. It says:-

“Within one year after the effective date, Parliament shall enact legislation which shall operate despite Article 160, 167 and 168, establishing mechanisms and procedures for vetting, within a timeframe to be determined in the legislation.”

That is missing in the Sixth Schedule, Section (15) of the legislation.

So, my good friend Dache has misled me, my good friend Hon. Wamalwa and many others. Sixth Schedule Section 15(1) says:-

“Parliament shall, by legislation, make provision for the phased transfer, over a period of not more than three years from the date of the first election of county assemblies, from the national Government to county governments, of the functions assigned to them under Article 185.”

The term can even be extended, but it is not provided for in Section 15 of the Sixth Schedule. That then brings to the conclusion that the TA, under Mr. Wamwangi, has no choice but to follow in the footsteps of their colleagues in the Commission for the Implementation of the Constitution (CIC) of Charles Nyachae. So, on 4th March, 2016 at midnight, they should pack their bags and give that job to the relevant Intergovernmental Relations Technical Committee. We will go back to the Intergovernmental Relations Act which provides for Intergovernmental Relations Technical Committee and many others.

When this House is given the function of legislation - and you were with us in Mombasa-- Last year, we were given a timeline to a number of legislations. When you are given a job and you are told you have a contract of three years and it is upon you to do that contract within three years, you do not anticipate that you will sleep on the job and then you are given an extension. I am happy that the Senate has also agreed that an extension is not feasible. In fact, for some of us who are coming from counties where transfer of assets has not been done, where we are not even happy with our governors and where there is chaos, we wanted an extension. But it cannot take place because the Constitution does not provide for that. The only option for us is to amend the Sixth Schedule, Section 15(1). If we do that and tomorrow we publish a Bill, that Bill has to mature within 90 days. By then our very good friends Mr. Wamwangi and the TA on the clock of the hour midnight 4th of March, 2016, the Constitution itself would have sent them home.

As a House, we need to agree that we support this Motion of Hon. Baiya and allow all the other organs that were created through the statutes to take over. There are a number of them. There is the Intergovernmental Relations Technical Committee, the summit, the Council of Governors (CoG) and many others. There is no vacuum. All of us are Kenyans and the counties and the assets belong to us. I am sure if we agree with our governors and the national Government, there will be a smooth transfer. I support and I want to go on record that the legal opinion given to me this afternoon by KLRC is very disappointing.

With your permission, I want to table it, so that it can be part of the record of the House.

The Temporary Deputy Speaker (Hon. Kajwang’): Really?

Hon. A.B. Duale: Yes, Hon. Temporary Deputy Speaker, I want to table it. If you allow me, I will read the first one:-

“(1) The proposal to amend the Transition to Devolved Government Act, 2012 does not seek an amendment to the Constitution. It merely seeks additional time through amendment to the Transition to Devolved Government Act, 2012,

which is a statute to enable the Transition Authority fully execute its Sixth Schedule mandate.

(2) The closest parallel to this proposal are the recent amendments to the Vetting of Judges and Magistrates Act, 2010 (itself based on Section 23 of the Sixth Schedule to the Constitution) in which the tenure or life of the Vetting Board has been extended at least twice by Parliament, since the appointment of the members of the Board.”

That is where he goes wrong. He is talking about Section 23 of the Sixth Schedule to the Constitution, but the Transition Authority (TA) draws its mandate from Section 15 of the Sixth Schedule to the Constitution, which is totally different. I want to table this document so that next time you, as a member of the Departmental Committee on Justice and Legal Affairs, get an opportunity to meet Mr. Joash Dache, the Chief Executive Officer of the Kenya Law Reform Commission, you will tell him that one day he misled Parliament and, more so, the Leader of the Majority Party.

I beg to support the Motion and table the document.

(Hon. A.B. Duale laid the document on the Table)

The Temporary Deputy Speaker (Hon. Kajwang'): I will take time to peruse the document as to the authenticity and signature of the person that is expressed to have prepared it. Leader of the Majority Party, thank you for giving guidance to this debate. The issue is that under Section 23 of the Transitional and Consequential Provisions, the Constitution gave the Legislature the freedom to draw a timetable for the Judges and Magistrates Vetting Board. In other words, the Legislature could put a timeframe and extend it so long as the extension was once. This does not seem to be the case with Section 15 of the Sixth Schedule to the Constitution on TA. So, the two issues are like apples and oranges.

The Member for Ndhiwa.

Hon. Oyugi: Thank you, Hon. Temporary Deputy Speaker. I would like to start from where you have stopped. First, I would like to oppose the Report and the reason---

The Temporary Deputy Speaker (Hon. Kajwang'): Member for Bondo, I can see you making happy faces, but you will be the next speaker according to the request list.

Hon. Ogolla: *(Inaudible)*

The Temporary Deputy Speaker (Hon. Kajwang'): You can just walk across the Bar and source that information.

Hon. Ogolla: *(Inaudible)*

The Temporary Deputy Speaker (Hon. Kajwang'): Can I just peruse the document he has brought before I can pronounce myself on it?

Member for Ndhiwa, proceed.

Hon. Oyugi: Thank you, Hon. Temporary Deputy Speaker. I hope you will give me an extra minute to cater for my time which the Member for Bondo has “eaten” into. First of all, I would like to be on record as opposing the Report. I would like to draw your attention to Section 15(1) and (2)(a) of the Transitional and Consequential Provisions that Hon. Duale has just read. If you permit me, let me read word for word what it says:-

“(1) Parliament shall, by legislation, make provision for the phased transfer, over a period of not more than three years from the date of the first

election of county assemblies, from the national Government to county governments of the functions assigned to them under Article 185.”

“(2) The legislation referred to in subsection (1) shall—

(a) provide for the way in which the national Government shall—

(i) facilitate the devolution of power;

(ii) assist county governments in building their capacity to govern effectively and provide the services for which they are responsible; and,

(iii) support county governments.”

This particular section does not, in any way whatsoever, speak to how long TA ought to be in office. The section only says that the legislation shall give power to that Authority or whatever you create. It does not in any sense create a definite term for the TA. It only says that there ought to be transfer of powers to devolved governments in three years in a phased manner. In fact, I am happy with Hon. Duale for raising the legal opinion from KLRC because those two things can actually be juxtaposed. The spirit of Section 23 of the Sixth Schedule to the Constitution gives Parliament a chance to make a law within one year. It is not saying that the term of the Judges and Magistrates Vetting Board will be one year. So, Section 15 of the Transitional and Consequential Provisions of the Constitution does not fix the term of the TA.

However, even if you were to interpret Section 15 to say that the term of the TA ought to be three years by dint of constitutional provisions, let us appreciate something: The Senate that is supposed to be guarding devolution has spoken to this matter. My very good friend, Hon. Amos Wako, in his wisdom, has proposed a constitutional amendment, simply because he imagines that in the absence of TA, in the manner that devolution is crafted, we will be throwing devolution into an abyss. The TA ought to be an arbiter between the county governments and the national Government.

I know Members have canvassed and they have spoken strongly to the extent that, maybe, the TA is not doing its job. Maybe, that is true. But on the other side, one thing that we know for a fact is that some of the problems TA is experiencing are not of their making. For all lovers of devolution, if the interpretation of Section 15 of the Transitional and Consequential Provisions of the Constitution in the Sixth Schedule means that the TA ought to be wound up, there are two ways we can go about it. One, explore the constitutional amendment that Hon. Amos Wako is proposing. But that one is going to be in the next six months, by which time that Authority ought to have wound up.

Hon. Temporary Deputy Speaker, you and I being very good students of law know for a fact that this House is supposed to make laws; and that one of the reasons you make law is to respond to conflicting issues. We know that in the absence of TA or of an Authority that oversees the devolution process, the spirit of devolution is going to come to a cropper. The Chair of the Constitutional Implementation Oversight Committee has properly spoken to the fact that there is going to be created an intergovernmental committee, but that particular committee, in all honesty, is full of vested interests. We know those people who do not want devolution. To say that you want the work of TA to be handled by an intergovernmental committee is not fair to the spirit of devolution.

You know there have been interests. For example, the county governors having requested that county government functions be devolved in a manner that Section 15 of the Sixth Schedule

to the Constitution did not anticipate. Section 15(2)(c) of the Transitional and Consequential Provisions of the Constitution says:-

“The legislation mentioned to in subsection (1) shall permit the asymmetrical devolution of powers to ensure that functions are devolved promptly to counties that have the capacity to perform them but that no county is given functions it cannot perform.”

That is the reason for creating TA. If at all the first interpretation is true, that you are saying by dint of the Constitution the term of TA has lapsed, can we, as a House that makes law, then leave devolution issues to go in the manner that they were anticipated? I am happy that the KLRC is saying that the term of TA is not fixed by that section of the Constitution. So, the best way for us to proceed is to see how best we can use the TA as it is. We cannot be in transition forever. Can we then have a devolution oversight authority made out of this law so that, at least, the functions, devolution and the conflicts are addressed? The reason why we had TA, in my understanding, is that it ought to have been an arbiter between the national Government, the county governments and the various vested interests in devolution. We know for a fact that those vested interests still exist. So, if TA, which is the arbiter exits, what are we doing? We are simply saying that everyone is on their own and the spoils can go either way. If we proceeded that way, it would be very dangerous for devolution. We would have killed something that was very important.

Hon. Temporary Deputy Speaker, I beg that you find that an interpretation of Section 15(1) of the Transitional and Consequential Provisions of the Constitution does not mean that the TA has a term limit that is set by the Constitution. However, even if you were to find that, that is the position that they have a three-year term limit – although that is not the reading of this particular section – then can we as a House that makes law see a way in which we can have an oversight authority that looks at devolution with the knowledge the TA has, so that we have TA transit itself into a body that oversees devolution?

I know it is not possible and proper to call anything else TA and again, you cannot be in transition forever. For a fact, we need an arbiter for devolution; someone who will be sitting in the summit of Governors and the Presidency, and one who takes care of devolution interests. With those particular interests and my understanding and interpretation, I would like to oppose this particular Report. Unless, the Committee, for example, amends it in a manner that shows how the functions of the TA are going to be carried out by another body and not by an Intergovernmental agency in a manner that they propose.

Hon. Temporary Deputy Speaker, I do oppose the Report. Thank you.

The Temporary Deputy Speaker (Hon. Kajwang’): Chair of CIOC, can I have your attention? Order! Can I have some order there? Member for Ndhiwa has raised a very interesting analysis of the Constitution. I am here as the presiding officer trying to understand what all of you are saying without bias, with all the neutrality and impartiality I can find and trying to read the Constitution in every new way that every member brings it.

This makes a very interesting debate that I need you to carefully follow as you will be making a response at some point. Please read with me the Sixth Schedule Section 15. Perhaps, you may need to pick a Constitution so that you can see the syntax and wording. It is on page 198 if you have this long type of Constitution. It says:-

“15(1) Parliament shall, by legislation, make provision for the phased transfer, over a period of not more than three years from the date of the first

election of county assemblies, from the national Government to county governments of the functions assigned to them under Article 185.”

His argument seems to be - although he did not put it in those terms - the defining verb “makes provision”; whether the three years should refer to the period by which Parliament should make that legislation, or the period through which the TA should last. When you look at the way in which the commas behave, they are definitive of what Parliament is supposed to do. His argument is “make provision for the phased transfer,” the verb which is active is therefore “make provision” over a period of not more than three years.

As I was listening to him, I choose to look at the Fifth Schedule on page 191 and the Constitution has expressed itself on what needs to be done on devolution. In Chapter 11 - Devolved Government, the last one is legislation to effect Chapter 11 (Article 200 and Sixth Schedule, Section 15).” He is tying it to that section in his view that Parliament has 18 months within which to make that legislation. Member for Ndhiwa, you also need to look at that schedule which allows Parliament to make legislation to implement the Constitution which says that it should be within 18 months. Then, of course, there is Article 200 which is about transfer of authority and so on.

There are two issues here, one by the Member of Ndhiwa, and the Constitution itself says “18 months.” Does that contradict your three year theory which arises in your reading of Section 15? Most importantly, Chair, when you get the opportunity, can you then reconcile your constitutional understanding on those issues. Those are the issues that you have raised, before we go to those others of whether the Intergovernment Authority has powers or capacity. We might need to understand that. I do not want to engage you in a debate. You may want to reflect on that properly. I want to invite Member for Bondo.

Lastly, if that is true, there is also another issue of whether there is need to amend the Transfer of Authority Act. What we have before the Assembly is a Motion. We need a Bill to amend that Act, to extend the period that we are talking about.

Member for Bondo, what do you have to say?

Hon. Ogolla: There are two things, Hon. Temporary Deputy Speaker. One is that I was trying to raise a point of order. I want to bring this for purpose of record, in terms of the very strong opinion that the Leader of Majority Party was bringing around legal opinion.

In my view, I think a legal opinion needs to be treated as an opinion in the sense that one has taken time, as a legal mind, to go through whatever it is in law and has placed what he or she thinks is the position of things. The Leader of Majority Party was faulting it and he wants the Chief Executive Director of the Kenya Law Reform Commission to be reprimanded or stuff like that, which I think was not right.

The Temporary Deputy Speaker (Hon. Kajwang’): Well, as you know, I have not ruled on that issue. I take it to be pronouncement from Members on your feet, which you are entitled to do. Until I have looked at that Report to see whether the person who is expected to sign it has done so or if it is genuine it can be tabled, I cannot comment.

Please proceed.

Hon. Ogolla: That is fine. The next thing is my contribution in terms of the Motion that is in front of us. Definitely, in my view, there are two things which have not happened very well in this country.

One, issues to do with intergovernmental arrangements and two, issues of asset transfers. These are two things which have not happened very well in terms of experience in this country.

We have had a chequered history where assets have been identified, valuations done and where they end, has been problematic in the country. We have had situations where we have lost out. We have seen divestiture and privatisation programmes in this country, many of them have not happened in a positive manner. If we are to go through a process of valuation now, some of the assets that TA was supposed to look after are now being pushed over to an intergovernmental agency.

The other thing is the whole issue of how intergovernmental arrangements work. Many times, they are not reposted in any particular department and their resolutions and undertakings in terms of what they are supposed to do, end up hanging and, by the end of it, nobody takes responsibility. As the debate goes on over the issue of TA, I really want to behove the Chair of CIOC that we need to get a replacement. The TA term might end either constitutional or otherwise. The main things that are still outstanding are touching on assets. This is something that should not be very easily allowed to be done the way it is being done in this country.

I want to believe and say that TA has not worked very well. It has really worked dismally in terms of what it was supposed to do over the period of time. We have seen either covertly or overtly, that they have problems and challenges. That aside, there are certain things they were supposed to do that they have not done very well. We have seen their powers usurped in the beginning of the first year, where the Presidency clearly declared the staggered transfer of functions. All the counties ended up with massive functions that they were not ready for. There was no capacity support.

The Constitution clearly provides that the national Government was supposed to extend capacity support to all the counties before the functions were transferred. The authority that was responsible was the Transition Authority. In the beginning, instead of looking at this in terms of capacity support, the TA ended up either seconding or allowing transfer of staff from various departments to the county governments. One instance was the transfer of District Commissioners and secretaries to those county governments. This ended up messing the county governments. The county government started on a wrong foot because of the TA. To date, many county governments are struggling with massive functions that had they been staggered, would not have resulted in the situation we are currently witnessing.

We have struggled with issues of health and education. County governments are not very clear on whether to employ teachers trained in Early Childhood Education (ECD). An ECD trained teacher is not necessarily one for baby-class or nursery. They are qualified to teach up to Standard Three. Looking at that in relation to what is currently happening in schools, ECD arrangements are done by the county governments where they recruit teachers and pay them without considering any standards. This is supposed to be done by the Teachers Service Commission (TSC).

The mix up in the counties is largely related to the functions of TA. They have not fulfilled their functions very well. Looking at it in terms of where we are going and what remains to be done, I am not convinced that the arrangement the Committee is suggesting can adequately cater for what remains to be done. The arrangement that would work is to re-assign those functions to an independent agency that can carry on with the independent work of TA. That would require that we go through the long process of amending the Constitution since the tenure of TA has ended.

There is a lot of work to be done; a lot of it touching on the assets. We have a bad history in the handling of public assets. We have a very bad history of intergovernmental arrangements.

The Committee needs to recommend coming up with legislation to deal with this, as the Constitution suggests. It is up to Parliament to come up with legislation that is supposed to make sure that the outstanding work that TA was supposed to do is done.

In view of that, I do not support the Report as it is. We need to have a proper body in place of TA, if it has to go.

The Temporary Deputy Speaker (Hon. Kajwang'): Let us have the Hon. Member for Baringo South.

Hon. (Ms.) Kipchoim: Thank you, Hon. Temporary Deputy Speaker for the opportunity that you have given to me. I also want to add my voice to the Motion that is before us this afternoon.

The function of the TA was to fully interpret the Constitution and determine the functions that would be fully transferred to the county government *vis-a-vis* the functions that would remain with the national Government. Looking at the functions of the TA, there are a lot of functions that the national Government shares with the county government such as education. Water, health and agriculture functions have been transferred to the county governments. We have had a lot of teething problems. For the last three years, counties have not been able to absorb those functions fully. Our nurses and doctors are still crying because their salary increase demands are not being met. They do not even receive their salaries at the end of the month as the Constitution requires. Counties have not been able to support the staff that they have.

With regard to education, it was partially transferred to the county governments. We are always stepping on one another's toes when it comes to those functions.

Looking at our roads, the Departmental Committee on Transport, Public Works and Housing had not completed considering the issue of roads. We have not completed considering the Bill by the Departmental Committee on Transport, Public Works and Housing that was pending before this House. A list of roads for construction was gazetted and assigned to the counties even before the Members of the County Assembly (MCAs) and Members of Parliament were aware that there was a list of roads that had been gazetted. We do not even know which list of roads was gazetted and assigned to the counties and which one remained in our constituencies. Some constituencies do not even have roads that fall under the authority of the national Government because of the status of the roads.

I support the Committee for having done all this work. The TA cannot exist forever. There was a time-frame for its existence, which we should follow as stipulated. Even after the three years are over, consultations are still going to take place. The secretariat that is going to remain in office will offer the support and assist our counties. It will be the link between the counties and the national Government in seeing that our counties have grown as stipulated.

With regard to the teething problems that the counties have had for the last three years, from 4th March 2016 next week, our counties will grow and become solid as they will now know what to do. The civil servants that have been employed in those counties will take charge of their work because they have sufficient training from the institutional memory that they must have amassed for those three years. Going forward, our counties will come up with fully established systems.

I support the Motion.

The Temporary Deputy Speaker (Hon. Kajwang'): Let us have the Nominated Member, Oburu Odinga.

Hon. (Dr.) Oginga: Thank you, Hon. Temporary Deputy Speaker, for giving me this opportunity. I rise to oppose this Report because of history. The struggle to create a devolved system of government was a very long one. There were people in the system who opposed the creation of the devolved systems of government. This so-called Intergovernmental Relations Technical Committee was created in the dying hours of the last Parliament. There were no parliamentarians in the House. They were busy in their constituencies. It is the Intergovernmental Relations Technical Committee which tried to reverse some of the fundamental issues on devolution which were in the Constitution. They even tried to re-introduce the Provincial Administration through the back door. We cannot hand over the very important work for which the TA was created by the Constitution of this country. Parliament must find a way of ensuring that the systems which created the Ministry of Devolution and Planning, which almost became some kind of demi-god to suppress the work of the TA, are reversed.

Hon. Temporary Deputy Speaker, they made sure that the Transition Authority was not working. They were trying to take over some of the functions of TA.

Hon. Temporary Deputy Speaker, I sit in the Departmental Committee on Finance, Planning and Trade, which is supposed to give money to TA to function. We were given a lot of hard work trying to give them money to function. Some of the pending functions were not because of inefficiency, but because some people are opposed to devolution. They are the ones who deliberately dumped functions which were supposed to be transferred gradually to the counties because they do not have the capacity. Capacity was supposed to be built by the TA. The TA would not build that capacity because they were not given capacity to do it. They were incapacitated to perform those functions. It is because of that, that the TA has not fulfilled the functions they were supposed to fulfill.

We now have a change in the Ministry of Devolution and Planning. I hope my friend, Hon. Kiunjuri, will do a better job than what was previously done to incapacitate TA. He should make sure that the extension we will give to that Authority will be effectively used within the shortest time possible, so that they can wind up, particularly the function of transferring assets to those authorities. This is something which cannot be done by the Intergovernmental Relations Technical Committee because it is biased because it is an arm of the system. It cannot arbitrate between the central Government and the county governments because it is biased. The law is more or less the central Government law and it has nothing much to do with the Intergovernmental Relations Technical Committee, if you read it carefully.

Hon. Temporary Deputy Speaker, I do not want to go further than that, but I would also like to mention about the legal opinion of the Kenya Law Reform Commission, the Office that the Leader of the Majority Party in the National Assembly is condemning. That legal opinion must be taken very seriously. I even tend to agree with him on the arguments he created and the legal arguments which Hon. Neto was creating. This is a political issue as much as it is a legal issue. We must look at the two aspects.

I hope this Parliament, in its wisdom, will consider all the facts surrounding TA, and give it a bit of time to conclude some of the important functions that they have started.

With those few remarks, I beg to oppose this Report.

The Temporary Deputy Speaker (Hon. Kajwang'): The Member for Wajir.

Hon. (Ms.) F.I. Ali: Thank you, Hon. Temporary Deputy Speaker. I stand to oppose the Report of the Committee.

Hon. Temporary Deputy Speaker, we were in a meeting in Whitesands Hotel in Mombasa, when the TA members presented to us their report on the work remaining and how much they have covered. They presented a very compelling report to seek an extension of their mandate. According to the Report they provided, they indicated that with the tight schedule and challenges experienced in getting the necessary funds or allocations from the national Government, they have covered 60 per cent of the work and they are remaining with 40 per cent. During the meeting, and I know you were present; the Chairperson of the Constitutional Implementation Oversight Committee was in agreement with the extension of TA's term. But I am surprised that he is today opposing the extension of TA's mandate for two years. I do not know whether he got some instructions from anyone but, with all due respect to the Chairman, Hon. Baiya, I remember he was in agreement.

The TA raised a very crucial point on why they are seeking their mandate to be extended. They said that they have done an inventory of the assets and liabilities. What is remaining is crucial; the audit of the asset and liability of public utilities and property.

The relationship between the TA and the public is very clear. It provides regular update to the citizens of this country on what is remaining, what they have achieved, what is pending and the challenges they are experiencing. If the TA is not given extension, the opportunity of public information will be lost. The institution that the functions will be handed over to will be the Intergovernmental Relations Technical Committee, which is an exclusive club of governors and the Executive. The public will not have quality information and a true reflection of what is happening with regard to devolution, what is supposed to be devolved and what is remaining.

I support the extension of the TA's mandate for two years. We all agreed in the meeting at Whitesands Hotel, Mombasa on one major reason. This country has a history and we are in a crisis of corruption. We cannot contain it and we have to declare corruption a disaster in this country. If the TA is not provided with an adequate extension, it is likely that the assets and liabilities will not be audited. We will not know who grabbed public and Government land. It will be business as usual between the governors and the Executive. We are a worried country and we will not have transparency if the TA's mandate is handed over to the Intergovernmental Relations Technical Committee.

If this House finds it necessary and important to extend the TA's mandate for two years, there will be a smooth hand-over of the comprehensive work that has been done to the new Government after the 2017 General Elections. If we do not extend the TA's mandate, the opportunity to handover comprehensive and exhaustive functions and mandate of the national and the county governments will be lost. The public will be short-changed. I want to plead with the House to extend the TA's term for two more years for them to provide a comprehensive report and audit of all the necessary assets and liabilities of this nation. This is a huge nation that requires an independent institution that is largely and specifically focusing on the work of devolved functions and fast-tracking the remaining part of the work of TA.

If we do not extend the TA's term, we will be very unfair and failing to take care of the interests of this country. With the kind of environment and the Government that we have now, which is swimming in corruption and is unable to contain it, we will not help Kenyans. We will be helping the people who are not handling our resources and finances well.

Hon. Temporary Deputy Speaker, I oppose the Report of the Committee.

The Temporary Deputy Speaker (Hon. Kajwang'): Thank you. Members, I had promised that I would pronounce myself on the document which, in the course of debate, the

Leader of the Majority Party sought to table before the Assembly. I have perused the document. Whereas Standing Order No.91 places the responsibility of a Member as to the accuracy of the facts which he places before the Assembly to the satisfaction of the Speaker, the question at hand is not whether the matter has been substantiated or whether the document may be tabled in the formation that it has been rendered.

Other than the fact that the document contains opinions from whoever he said to have authored the document, I see that the document as presented by the Leader of the Majority Party is a copy of an original. Whereas I do not doubt the veracity of the Leader of the Majority Party or think that he could have picked a document from the shelves, mine is to know whether the document is genuine and whether it has been signed properly by the person who is said to have signed it. So, because I find that it is a copy, I rule that we will not accept it on the Table. It is so ruled.

Hon. Wamunyinyi: On a point of order, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Kajwang'): Member for Kanduyi, what is the issue? Are you on a point of order? Can you put your intervention button so that you are able to contribute again?

Hon. Wamunyinyi: I am on a point of order, Hon. Temporary Deputy Speaker. I have looked at the Report and I also followed the contribution particularly by the Chairman of the Committee and Leader of the Majority Party. Looking at this Report, the reference which is made to Section 15(1) of the Sixth Schedule of the Constitution, in that same paragraph, suggests that the period of three years cannot be extended.

The Temporary Deputy Speaker (Hon. Kajwang'): What is the point of order?

Hon. Wamunyinyi: Hon. Temporary Deputy Speaker, I am building the point of order.

The Temporary Deputy Speaker (Hon. Kajwang'): Well, I am waiting.

Hon. Wamunyinyi: You need to understand the point of order.

The Temporary Deputy Speaker (Hon. Kajwang'): You may proceed.

Hon. Wamunyinyi: I have also looked at the Constitution. This Report suggests that you cannot extend the period beyond three years from the date of the first election of the county assemblies without amending the Constitution. The Constitution is also very clear. If you read Section 15 that is referred to---

The Temporary Deputy Speaker (Hon. Kajwang'): Member for Kanduyi, I am not being very impatient, but I am---

Hon. Wamunyinyi: I am just concluding now. I think this Report is misleading as the---

The Temporary Deputy Speaker (Hon. Kajwang'): Just let me say this: I do not want to cut you short, but I also do not want you to take the chance which you could have rose in your place to contribute instead of a point of order. There are Members who are ahead of you, but I chose you because you had a point of order.

Hon. Wamunyinyi: Hon. Temporary Deputy Speaker, let me just now conclude and then you can rule on my point of order.

The Temporary Deputy Speaker (Hon. Kajwang'): You may have come a little late. It has been an issue which has been bothering these Members. That has been the point of contribution. Why do you not allow the Member for Gichugu to make a contribution---

Hon. Wamunyinyi: Let me just conclude the point of order so that you can rule because this is very important.

The Temporary Deputy Speaker (Hon. Kajwang'): You are a ranking Member and that is why I am very patient with you.

Hon. Wamunyinyi: This Report is making reference to what is not applicable. The Constitution is very clear. It talks of the period of transfer of function. It does not talk about---

The Temporary Deputy Speaker (Hon. Kajwang'): I do not depart from you in any way except I think that your point is a point of contribution. Let me allow the Member for Gichugu to contribute. I am going to come to you.

Hon. Wamunyinyi: My point of order, Hon. Temporary Deputy Speaker, is this: Is it in order for this Report to be accepted and yet, it is misleading the House? That is my point of order. You need to understand why I am trying to build it so that you can get it. Is it in order for this Report to be accepted in the manner it is?

The Temporary Deputy Speaker (Hon. Kajwang'): Thank you. That will be easy for me to dispose of. I will reserve my comments as to whether it is in order that the Report is misleading the House basically because it has been the concern of every Member who has spoken on this issue since morning. However, just after the Member for Gichugu, I will give a chance to the Member for Kanduyi in a little while to ventilate that point a little deeper so that he can come to the heart of the issue. Let me start with you, Member for Gichugu. As soon as you are through, Member for Kanduyi will delve into the issues before the Assembly.

Hon. Barua: Thank you, Hon. Temporary Deputy Speaker, for giving me this opportunity to contribute to this Motion. At the outset, I oppose this Report. Like previous speakers have said, this Report is misleading. The issue of three years applies to the transfer of functions from the national Government to the county governments. It does not really directly refer to the life or the extension of the life of the Transition Authority. This is the first Government which was elected and works under the new Constitution. We cannot be unjust to ignore the difficulties that we have gone through as a nation, including financing and setting up of institutions, and we just criminalise those institutions for not completing their work. This is not the first institution to ask for extension of time, so that it can finish its prescribed activities. As I stand here, this House is one of the institutions of this country that has asked for an extension of time to finish up its work and it was granted.

The other issue of concern to me and many Members is on the transfer of the services of the TA to the Intergovernmental Relations Technical Committee. That can actually put this county into disarray. The best environment for the Intergovernmental Relations Technical Committee to function is a situation whereby the roles and responsibilities of the national Government and those of the county governments are clearly spelt out. In the absence of that, if we actually kill TA, we shall be killing the only neutral arbiter who can come in, in case of any dispute. That is why I oppose this Report.

It will also be unfortunate for this House and for Hon. Members to contribute to this Motion and just simply say that those people must wind up. It is not as easy as that. It is also unfair to invoke names of individuals. I believe that institutions are bigger than individuals. So, the bare mention of somebody like Kinuthia Wamwangi, who is the Chairman of TA---

The Temporary Deputy Speaker (Hon. Kajwang'): As far as I am aware, nobody has mentioned that name. You are the first one to mention it.

Hon. Barua: Hon. Temporary Deputy Speaker, it was named by the Leader of the Majority Party. I was watching him from my television and I heard it.

The Temporary Deputy Speaker (Hon. Kajwang'): I did not hear him mention a name, except he referred to the Chair, which is an office rather than an individual.

Hon. Barua: Hon. Temporary Deputy Speaker, I would like to withdraw that. Then we can check the HANSARD later on because I heard such a thing.

As an honourable House, let us not make decisions based on perceptions or certain individuals or institutions. If we have to move on, there are issues that need to be addressed like the assets and liabilities which are yet to be verified in the entire country. This may pose a danger. If those liabilities and assets are not verified and you end the term of the Transition Authority, we may create a situation where we will have conflicts between the national Government and county governments. That can take us even further backwards than we intend to move. If disputes arise, they cannot be effectively addressed by the Intergovernmental Relations Technical Committee, which one of the previous speakers has described as an exclusive club of governors and leaders of the national Government. We need public participation in this decision-making process. TA is one of the best institutions at the moment that can be used to ensure that public participation is addressed.

Human resource issues are still outstanding. At the moment, there are some members of staff who were seconded from national Government to county governments. In the event that we just end the term of TA, we might see a situation whereby some employees in the county governments are being chased and sent back to the national Governments and this can create some conflict. That issue is yet to be resolved. It is a very important issue because we have to ensure that every Kenyan is given an equal opportunity to work and serve without any harassment.

There are functions which are implemented by both the national Government and county governments. That issue needs to be clearly spelt out. At the moment, because of our work as Members of Parliament in the constituencies and especially when using our Constituencies Development Fund (CDF), we are at times coming into conflict with county authorities. That is because some of the issues have not been clarified and finalised. We need TA to help us finalise that and put this country in the forward track movement.

Hon. Temporary Deputy Speaker, I would like to end my contribution there. I would like to say that I oppose this Motion. I want to state in my own opinion and submission that this issue of dissolving or not extending the term of TA is an attempt that is going to be dangerous for this nation. It is an experiment which we cannot afford. We cannot afford to have a situation where we have 47 counties and each one of them, individually or collectively, is in conflict with the national Government. Killing of TA may spell doom to the devolution issue. Devolution could be killed because of lack of clear responsibilities.

With those few remarks, I call upon Members of this House to reflect and think of a suitable period of time to which we can extend the term of that authority, so that they can complete the 40 per cent of work that is remaining.

I hereby oppose this Report.

The Temporary Deputy Speaker (Hon. Kajwang'): Thank you very much. Member for Kanduyi, this is now your opportunity to debate.

Hon. Wamunyinyi: Thank you very much, Hon. Temporary Deputy Speaker, for giving me the chance to contribute to this Motion on the Report of the term of the Transition Authority. I also strongly believe that mine was a valid point of order, although I am not challenging your ruling. I thought it was important that you consider that fact.

I will go straight to the point. This country is evolving. We are moving from the previous governance system to the new system. We are still in the process of transition. This must be understood by everyone because we have not completed transition. It is not over yet. We have re-looked at the issue of management of health services in our counties, and it is a big problem. Hospitals are not being run properly and doctors are not being paid. We do not have drugs in hospitals and X-ray machines are dead; name all the problems in our health sector. Even the management of health sector is a big problem. We cannot say that we have transferred the function of health when we are still asking the national Government to look at how best to work with the counties to ensure that the people of Kenya are not subjected to suffering unnecessarily.

It is for this reason that we must look at the Early Childhood Education which is not being managed properly. They are spending Kshs2 million to build one classroom when in our Constituencies Development Fund (CDF), we spend Ksh400,000. It is a total mess. In the management of Early Childhood Education, there are a number of other functions, including roads that need to be harmonized. As we speak, there is a Bill on Kenya Roads. There is the harmonization process by ministries concerned to see that the construction of roads and maintenance in terms of who is supposed to play which roles is clear.

So, there should not be any presentation from anyone that you cannot extend the period. There is nowhere in the Constitution that it is said that you cannot extend the period of the term of the Transition Authority. I want to draw your attention to Article 15 which I was referring to earlier in my point of order. Section 15 (1) of the Sixth Schedule to the Constitution provides as follows:-

“Parliament shall, by legislation, make provision for the phased transfer, over a period of not more than three years from the date of the first election of county assemblies, from the national Government to county governments of the functions assigned to them under Article 185.”

It is talking about the transfer. Further, Section 37 of the Act sets the term of the Authority, that it shall stand dissolved three years after the first general election under the Constitution or upon the full transition to the county governments, whichever is earlier.

Section 37 (1) is an Act of Parliament which can easily be amended. If you read further on how it is framed --- I am not a lawyer, but I can understand this. It says:-

“--- full transition to the county governments, whichever comes earlier.”

The question is: Have we fully transferred the functions? Anybody can answer that. Even a kindergarten child can say we have not fully transferred the functions. Therefore, we need to amend that Act so that we can extend the term of the Transition Authority to ensure that it oversees the remaining transition period to conclusion.

This is not something that we want to politicize. I do not think the Chairman of the Committee wants to have this matter politicized, unless he also wants to be part of the clique that is reaping public money from this country. We witnessed that some of the people who have been contributing here have been mentioned in the Waiguru matter. Some of the people who have contributed here are major culprits of the National Youth Service (NYS) scandal. They do not have the moral authority to speak on some of these issues.

I would like all of us to tackle this issue with the soberness it requires. This is so that we can look at the points that we need and propose amendments on the Act to extend the life of the Transition Authority. This is where I want us to focus. But there are issues that I think are

important that, as Parliament, we must be alive to and which we must address. The way the county governments are running is not good.

Members were expected to work with governors on an integrated basis, particularly on projects. We have Constituencies Development Fund (CDF) projects, Ward Fund projects, national Government projects and county government projects. There is nowhere those projects have been harmonized. There is nowhere party leaders have sat together to say: "This is an integrated plan for our areas." This is part of the transition. We have failed in this area and we should not pretend that we are making progress when we are not. I oppose this Report and I urge Members to join all those that are saying that we need to extend the term of Transition Authority in order to conclude the unfinished business. I hope Members will come out next week when it is brought back so that we can also introduce amendments to the Act so that the TA's term can be extended.

I oppose.

The Temporary Deputy Speaker (Hon. Kajwang'): Before you sit down, you are a veteran Member of the Assembly and so, I can prick your mind on some of these things. Assuming that there was unanimity that there is no express provision in the Constitution not to extend the life of the Authority, how would it be possible to extend the life of the Authority without bringing a Bill to amend Section 37 of the Intergovernmental Relations Act.

Hon. Wamunyinyi: But that is exactly what I said. I mentioned the need to amend Section 37. The same has been proposed by the Commission.

(Hon. J.K. Bett raised his hand)

The Temporary Deputy Speaker (Hon. Kajwang'): All right. This must be the representative of the great people of Kesses, somewhere in Uasin Gishu County. Next time, do not leave your card in Kesses, bring it in the Assembly because we need it here. I am not sure whether I am able to give you the microphone from there. Will you step back to the row, so that I can see if I am able to give you a microphone? I am sure I am able to do something. Member for Kiharu also wants to have a bite at the cherry. Can you take a few minutes, as I hear what Hon. Kimaru is saying?

Hon. Kimaru: Thank you, Hon. Temporary Deputy Speaker. I want to take this opportunity to thank you for giving me this opportunity to add my voice to this Report. I disagree with the recommendation of the Report. We need to extend the lifespan of the TA by bringing in the correct legislation. You realize that the TA in itself is the lifeline for devolution. The Authority gives breath to devolution. If we do away with TA, it is as good as saying that the process of midwifing devolution is dead. We have heard that the Intergovernmental Relations Technical Committee is comprised of people with vested interests. We have liked the way TA has operated in the past, despite time and resource constraint. I believe that the new Cabinet Secretary for Devolution, Hon. Kiunjuri, will facilitate them. Through the parliamentary budget cycle, we should provide enough funds so that the TA can perform its functions.

As it has been mentioned in Section 15 of the Sixth Schedule to the Constitution, the three-year period does not define the timeframe for TA but rather, it explains the time within which transfer of functions from the national Government to the county governments should occur. The other function that TA should have been able to prosecute is with regard to oversight. It should have been able to oversee funding and human resource that was being transferred to the

counties. We have realised that there has been a lot of misuse of funds. I am not saying that TA should have been the auditor, but they need to have overseen the process so that the prices of goods and services being procured by the county governments are within the market range. Remember the case of wheelbarrows being bought at Kshs109,000 instead of the prevailing market prices of between Kshs5,000 and Kshs6,000.

We need to extend the term of TA by enacting the necessary legislation and give it an additional three years so that it can midwife the process of devolution.

With that, I oppose the recommendations and ask that we extend the life of TA.

The Temporary Deputy Speaker (Hon. Kajwang'): Member for Kiharu.

Hon. Kang'ata: Thank you, Hon. Temporary Deputy Speaker. I rise to support the recommendation of the Committee. I believe, from a legal point of view, the plain reading of that section of the Constitution is very clear. That section vests jurisdiction of transfer of functions on this entity called TA. It is true, and I agree that, that section does not expressly bar an extension of term. But if you were to argue from that point of view, we shall be raising a dangerous precedent. Even the Constitution does not say in express terms that the President shall not, for instance, be a President for six or seven years. It only says the President shall serve for five years. This means that if you were to argue that you need an express provision in the Constitution to bar any time beyond five years, then the same applies to several other time limits that have been set by the Constitution, which may include the term of office of a parliamentarian. So, the Constitution is very clear. If the Constitution says three years, it is three years. Beyond that, you have to amend the Constitution.

Therefore, from where I sit, even assuming that I am wrong, the current law will lapse in March 2016. This means that unless you are coming up with a new entity, TA will not be there. As at March 2016, we shall not have a new law. We shall now be creating a new body which is not founded on any law. That will not be legally possible. We cannot extend the term of TA, even assuming we have that power to extend, beyond March because of time constraints.

I still insist that a term that is set by the Constitution lapses after the set period. Otherwise, we shall be opening up what is called a legal Pandora's Box. A president or a member of parliament may say that he or she is not barred expressly from serving more than five years. Let us agree that TA has died, from a legal point of view. We may have moral reasons which may support an extension of its term, but it is too bad from a legal point of view. We cannot do much.

I also feel that Authority is like the Vetting of Judges and Magistrates Board; those entities which have been procrastinating with a view of getting money from various entities. Within three years, TA ought to have finished its job. We should not support people who have some vested interests for their continued existence in office. Let us allow the new body to take over the mandate of TA. I am sure that body is competent. In any event, it is provided for under the law. We shall see what happens thereafter.

Finally, when you look at the Report that has been given by the TA, it is not sufficient. They ought to have given us a time matrix on what we are supposed to do within the set time. The kind of Report they have given us is not sufficient. With that, I support the Report. We should support the TA to die.

Thank you.

The Temporary Deputy Speaker (Hon. Kajwang'): Thank you very much. We should have this debate going on, so that as many Members as possible are able to express themselves on this issue.

ADJOURNMENT

The Temporary Deputy Speaker (Hon. Kajwang'): Order, Hon. Members. The time being 6.30 p.m., this House stands adjourned until Tuesday, 1st March 2016 at 2.30 p.m. It is so ordered.

The House rose at 6.30 p.m.