

NATIONAL ASSEMBLY

OFFICIAL REPORT

Thursday, 19th November, 2015

The House met at 2.30 p.m.

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

PRAYERS

Hon. Speaker: Order! I will issue the Communication before going to Order No.8.

PAPERS LAID

Hon. Katoo: Hon. Speaker, I beg to lay the following Papers on the Table of the House today Thursday, 19th November 2015.

The World Trade Organisation Agreement on Trade Facilitation and the Explanatory Memorandum.

The National Treasury Quarterly Economic and Budgetary Review (QEBR) for the First Quarter, Financial Year 2015/2016, for the period ending 30th September, 2015.

The Annual Reports and Financial Statements of Moi University for the year ended 30th June, 2011, 30th June, 2012 and 30th June, 2013.

The Report of the Auditor-General on the Financial Statements of the Constituencies Development Fund for Emurua Dikirr Constituency for the year ended 30th June, 2014, and the certificate of the Auditor-General therein.

The Report of the Auditor-General on the Financial Statements of Kenya Seed Company Limited and its subsidiaries for the year ended 30th June, 2014 and the certificate of the Auditor-General therein.

The Report of the Auditor-General on the Financial Statements of Masinde Muliro University of Science and Technology for the year ended 30th June, 2014 and the certificate of the Auditor-General therein.

The Report of the Auditor-General on the Financial Statements of Maasai Mara University for the year ended 30th June, 2014 and the certificate of the Auditor-General therein.

The Report of the Auditor-General on the Financial Statements of Moi University for the year ended 30th June, 2014 and the certificate of the Auditor-General therein.

The Report of the Auditor-General on the Financial Statements of Laikipia University of Science and Technology for the year ended 30th June, 2014 and the certificate of the Auditor-General therein.

The Report of the Auditor-General on the Financial Statements of Pwani University for the year ended 30th June, 2014 and the certificate of the Auditor-General therein.

The Report of the Auditor-General on the Financial Statements of Dedan Kimathi University of Science and Technology for the year ended 30th June, 2014, and the certificate of the Auditor-General therein.

The Report of the Auditor-General on the Financial Statements of Murang'a University of Science and Technology for the year ended 30th June, 2014, and the certificate of the Auditor-General therein.

The Report of the Auditor-General on the Financial Statements of Pharmacy and Poisons Board for the year ended 30th June, 2014 and the certificate of the Auditor-General therein.

The Report of the Auditor-General on the Financial Statements of Chemelil Sugar Company for the year ended 30th June, 2014 and the certificate of the Auditor-General therein.

The Report of the Auditor-General on the Financial Statements of the Kenya Marine and Fisheries Research Institute for the year ended 30th June, 2014 and the certificate of the Auditor-General therein.

Hon. Speaker: Very well, the World Trade Organization Agreement on Trade Facilitation and Explanatory Memorandum Report is referred to the Departmental Committee on Finance, Planning and Trade for its consideration, while the National Treasury Quarterly Economic and Budgetary Review (QEBR) for the First Quarter, Financial Year 2015/2016 period ending 30th September, 2015 is referred to the Budget and Appropriations Committee for its consideration.

I wish to also point out that the Members of the Budget and Appropriations Committee, being the largest Committee, should be giving us their reports on their consideration of the Quarterly Reports by the Controller of Budget, even if other Committees do not consider those Reports. We want to get a report from the Budget and Appropriations Committee. Those reports are very important as they explain how the funds that Parliament appropriates have been expended for the respective quarters they relate to.

Hon. Chachu Ganya, it is indicated that you are the one to Table the Report of your Committee.

Hon. Ganya: Hon. Speaker, I beg to lay the following Paper on the Table of the House today, Thursday, 19th November 2015.

(Hon. Mati passed in front of the Speaker)

Hon. Speaker: What is this Member doing? No! You cannot do that. It is against our Standing Orders. You can only pass here when you are swearing in. Go back!

(Laughter)

The Member is from Mwingi North. That is against our Standing Orders, Hon. Munuve. You can only walk here when you are swearing in. So, do not repeat it. You want to be sworn in again?

(Laughter)

(Hon. Mati walked back to his seat)

He wants to be sworn in again? Very well! Hon. Chachu.

Hon. Ganya: Hon. Speaker, I beg to lay the following Paper on the Table of the House, today Thursday, 19th November, 2015.

The Reports of the Departmental Committee on Transport, Public Works and Housing on:-

- (i) The inquiry into the procurement of the Apron Buses by the Kenya Airports Authority.
- (ii) The consideration of the Public Petition by Parents and Stakeholders of Matangini Primary School on the impending relocation of the school to sub-standard temporary structures.

Hon. Speaker: Next Order!

NOTICE OF MOTION

Hon. Speaker: Yes, Hon. Chachu.

ADOPTION OF REPORT ON INQUIRY INTO PROCUREMENT OF APRON BUSES BY KAA

Hon. Ganya: Hon. Speaker, I beg to give Notice of the following Motion:-

THAT, this House adopts the Report of the Departmental Committee on Transport, Public Works and Housing on the inquiry into the procurement of the apron buses by the Kenya Airports Authority, laid on the Table of the House on Thursday, 19th November 2015.

STATEMENTS

BUSINESS FOR THE WEEK COMMENCING 20TH TO 22ND NOVEMBER, 2015

Hon. Speaker: Hon. Katoo.

Hon. Katoo: Thank you, Hon. Speaker. Pursuant to Standing Order No. 44(2)(a), on behalf of the House Business Committee (HBC), I rise to give the following Statement regarding the business appearing before the House the week beginning Tuesday, 24th November 2015.

The HBC met on Tuesday this week, at the rise of the House, to prioritize the business of the House. On Tuesday next week, the House will prioritise debate on the Second Reading of the following Bills:-

The National Government Constituencies Development Fund Bill, 2015, the Natural Resources (Classes of Transactions Subject to Ratification Bill (National Assembly Bill No.54 of 2015), the Physical Planning Bill, 2015 and the Forest Conservation and Management Bill, 2015, should they not have been concluded this week and the adoption of the two Sessional Papers.

Hon. Speaker, the HBC has also prioritised the Senate Bills and, therefore, we expect them to be debated next week.

The following Cabinet Secretaries are scheduled to appear before Committees on Tuesday, 24th November 2015 as follows:-

(1) The Cabinet Secretary for Transport and Infrastructure at 10.00 a.m. before the Departmental Committee on Transport, Public Works and Housing to answer questions from Hon. Mary Mbugua, MP, Hon. Moses Lessonet, MP and Hon. Irshadali Sumra, MP.

(2) The Cabinet Secretary for Education, Science and Technology at 10.00 a.m. before the Departmental Committee on Education, Research and Technology to answer questions from Hon. Moses Lessonet, MP, Hon. Shukra Hussein Gure, MP and Hon. Alice Muthoni Wahome, MP.

(3) The Cabinet Secretary for Interior and Coordination of National Government at 10.00 a.m. before the Departmental Committee on Administration and National Security to answer questions from Hon. (Dr.) Wilberforce Otichilo, MP, Hon. Janet Nangabo, MP, Hon. John Walukhe Koyi, MP and Hon. Joseph Manje, MP.

Hon. Speaker, the following Cabinet Secretaries are scheduled to appear before the Committees on Tuesday, 1st December 2015, that is next Tuesday but one. They are:-

(1) The Cabinet Secretary for Agriculture, Livestock and Fisheries at 10.00 a.m. before the Departmental Committee on Agriculture, Livestock and Fisheries to answer questions from Hon. James Mwangi Gakuya, MP, Hon. Dan Kazungu, MP, Hon. Agostinho Neto, MP and Hon. Abass Sheikh Mohamed, MP.

(2) The Cabinet Secretary for Health at 10.00 a.m. before the Departmental Committee on Health to answer questions from Hon. Dan Kazungu, MP, Hon. Cecily Mbarire, MP, Hon. Irungu Kang'ata, MP and Hon. James Mwangi Gakuya, MP.

(3) The Cabinet Secretary for Lands, Housing and Urban Development will appear on 1st December, 2015, before the Committee on Lands to answer questions from Hon. David Wafula, MP, Hon. Kinoti Gatobu, MP, Hon. Dan Kazungu, MP and Hon. Francis Waweru Nderitu, MP.

Hon. Speaker, as you are aware, His Holiness Pope Francis will be visiting Kenya from next week, which is a historical moment that we are all looking forward to. In this regard, Hon. Members, we may be breaking during this important Papal visit to our country on Wednesday, 25th and Thursday 26th November, 2015, subject to further communication from the Speaker on Tuesday, next week.

Finally, I wish to report that the HBC will reconvene on Tuesday, 24th November 2015 at the rise of the House to consider business for the week starting 1st December, 2015.

I now wish to lay the Statement on the Table of the House.

(Hon. Katoo laid the document on the Table)

Hon. Speaker: Very well, indeed. The Majority Whip may have to move a Motion on Tuesday, 24th November, 2015, to exclude the House from sittings on Wednesday 25th and Thursday 26th November, 2015, for the purpose of allowing Members to go and welcome Pope Francis, who will be visiting the country. In keeping with our procedure, a Procedural Motion has to be moved, so that the House can express itself properly for purposes of that adjournment, so that the House will then meet on 1st December 2015, if the House so resolves.

I hope the House will agree to resolve so.

Hon. Gumbo: On a point of order, Hon. Speaker.

Hon. Speaker: Hon. Gumbo, is it with regard to that or can I make this Communication? In fact, this Communication relates to your Committee.

Hon. (Eng.) Gumbo: On a point of order, Hon. Speaker. I wish to thank the Majority Whip now acting as the Leader of Majority Party for that Statement. I just want to draw the attention of the House to a matter which, in my view, touches on the work of this House.

If you recall about three or four months ago, we passed the amendment to the Ethics and Anti-Corruption Act which was, in effect, to bring into effect Article 79 of the Constitution. If you look at Article 250 of the Constitution, it says that each commission shall consist of, at least, three, but not more than nine commissioners. I am aware that the advertisement for commissioners for the EACC were done sometimes back and there is a feeling that the continued absence of commissioners of the EACC is slowing down the war on corruption in the country. I was just requesting the Leader of Majority Party if he could let us know the progress on this matter and when the House may be seized of the matter of approving those commissioners.

Thank you, Hon. Speaker.

Hon. Speaker: I do not think the Majority Whip, may, from his feet, have any information on that. It is a good point. The Majority Whip or the Leader of Majority Party, as the case may be, will take up the matter and inform the House of what processes, if any, are being undertaken and how far we have reached. In any event, the names of those who are likely to be selected will still pass through this House. It is an important point.

COMMUNICATION FROM THE CHAIR

MODALITIES OF ENGAGING THE CHIEF JUSTICE IN THE NATIONAL ASSEMBLY AND ITS COMMITTEES

Hon. Speaker: Hon. Members, this Communication relates to modalities of engaging the Chief Justice of the Republic of Kenya in the National Assembly and its Committees.

Hon. Members, You will recall that on Thursday, 12th November 2015, at the commencement of consideration of the Motion to adopt the Report of the Public Accounts Committee on the Special Audit Report of the Judicial Service Commission (JSC) and the Judiciary of May, 2014, the Leader of Majority Party rose on a point of order and drew the attention of the House to contents of a letter from the Chief Justice dated 27th October 2015.

The said letter, which was addressed to the Speaker, was copied to the Leader of the Majority Party, the Leader of the Minority Party, the Chairperson of the Public Accounts Committee (PAC), the Chairperson of the Departmental Committee on Justice and Legal Affairs, the Chairperson of the Budget and Appropriations Committee and the Clerk of the National Assembly, among other persons. Other Members, including the Chairperson of PAC, the Hon. Nicholas Gumbo, the Hon. John Mbadi, the Hon. Olago Aluoch, the Hon. Priscilla Nyokabi, the Hon. Peter Kaluma, the Hon. Dalmas Otieno and the Hon. David Ochieng, among others, also contributed and offered their views on the matter.

Hon. Members, from the issues raised by Members and the contents of the letter, I have deduced the following issues are requiring of my determination:-

(i) Whether a Committee of this House or, indeed, the House, can require the attendance, in person, of the holder of the office of the Chairperson of the Judicial Service Commission, (JSC) and, if so, what capacity does that portend to his other offices that he holds?

(ii) Whether PAC can re-open the Report on the JSC and the Judiciary that has already been tabled in the House as requested by the Chief Justice of the Republic of Kenya in his letter of October 27, 2015, given the additional information now available; and,

(iii) Whether the two arms of Government, that is, the Judiciary and Parliament, should develop a more structured way through which to engage in matters of accountability.

Hon. Members, on the first issue of whether the Chairperson of JSC is expected to appear before a Select Committee of the House when required to do so, it is imperative to first be conscious of the other constitutional offices represented by the holder of that office. The Chief Justice (CJ) of the Republic of Kenya holds three key offices. He is the Head of the Judiciary as provided for in Article 161(2)(a) of the Constitution, the President of the Supreme Court of Kenya as provided for in Article 163(1)(a) and that he is also the Chairperson of JSC as provided for in Article 171(2)(a).

Indeed, there are various jurisdictions that operate under a similar model to the one we have in our country. For example, in addition to heading both the Judiciary and the highest Courts, the CJ also chairs the equivalent of a Judicial Service Commission in the Philippines, Nigeria, Pakistan, South Africa, Malaysia, Ghana and Sri Lanka. In the United States of America and India, the CJ is also in charge of administration and supervisory responsibilities of the Judiciary.

In jurisdictions such as Australia, Japan, New Zealand, the United Kingdom and Canada, administrative and managerial functions are not within the purview of the CJ. For instance, whereas the Lord Chief Justice of England and Wales is the Head of the Judiciary and President of the Courts of England and Wales, he is not in charge of administrative and supervisory matters, which are undertaken by the Judicial Appointments Commission. On his part, the CJ of Canada chairs the Canadian Judicial Council but has no role in routine administration of the Judiciary, as this is a task vested on the Commissioner for Federal Judicial Affairs who reports directly to the Minister of Justice.

Hon. Members, this particular issue would have been a lot easier to address if we were operating in a system similar to the United Kingdom or Canada, where the CJ does not also oversee the administration of the Judiciary. However, that is not the case. Different jurisdictions have diverse ways of engaging the CJ, particularly in cases where he or she heads the body responsible for recommending persons for appointment as judges, reviewing conditions of service for judges and judicial officers, among other administrative functions. For example, Section 5 of the United Kingdom's Constitutional Reform Act of 2005 provides that, and I quote:-

“The Chief Justice of any part of the United Kingdom may lay before Parliament written representations on matters that appear to him to be matters of importance relating to the judiciary, or otherwise to the administration of justice, in that part of the United Kingdom.”

Arising from this, the Lord President of the Court of Session, who is the equivalent of the CJ in Scotland, laid before the United Kingdom Parliament in January 2012 written representations regarding the Scotland Bill 2012. Likewise, the Lord Chief Justice of England and Wales appears annually before the Committee of the House of Commons to give evidence on issues of constitutional importance and on a regular basis before the Justice Committee of the House of Commons. As a matter of fact, on Tuesday 26th October, 2010, the Rt. Hon. Lord Judge, Chief Justice of England and Wales and Rt. Hon. Lord Justice Goldring, Senior Presiding

Judge of England and Wales, appeared as witnesses before the British House of Commons Justice Committee on their administrative, disciplinary and budgeting responsibilities in the Judiciary.

Hon. Members, in determining whether or not the CJ of the Republic of Kenya should appear before a Select Committee of the National Assembly when required to do so, I wish to refer the House to Article 125 of the Constitution on Powers to Call for Evidence, which states, and I quote:-

“ (1) Either House of Parliament, and any of its committees, has power to summon any person to appear before it for the purpose of giving evidence or providing information.

(2) For the purposes of Clause (1), a House of Parliament and any of its committees have the same powers as the High Court—

(a) to enforce the attendance of witnesses and examine them on oath, affirmation or otherwise;

(b) to compel the production of documents; and,

(c) to issue a commission or request to examine witnesses abroad.”

In addition, Section 14 of the National Assembly (Powers and Privileges) Act, Cap. 6, on power to order attendance of witnesses provide, and I quote:-

“ (1) The Assembly or any standing committee thereof may, subject to the provisions of Sections 18 and 20, order any person to attend before it and to give evidence or to produce any paper, book, record or document in the possession or under the control of that person.”

I can allow Members who are coming in to do so. Please, take your seats.

(Several Hon. Members walked into the Chamber)

(Several Hon. Members shook hands)

May I assume that those who are shaking hands do not want to take seats! Is that Hon. Raymond Moi?

(A mobile telephone rung)

Order Members! You cannot have your mobile telephones on. The Hon. Member who is putting his telephone off--- Who is this? Is it the Member for Kuria? Hon. Members, put your mobile telephones on silent mode so that we do not--- We can proceed.

(An Hon. Member stood on the Aisle)

You can take a seat there. You will go to the other places later on. You can take that one. It is empty. I continue.

Hon. Members, from the foregoing, it is clear that any witness invited by or summoned to the National Assembly or its Committees is obliged and expected to attend and appear before the Assembly or its Committees without fail. The Constitution is explicit on this.

The JSC, just like any other Commission, as provided for in Article 248(2) of the Constitution of Kenya, remains accountable to the accountability institutions as set out in the Constitution and other legislation, including and not limited to the National Assembly.

It is for that reason that the Judicial Service Commission's accounts are always audited by the Auditor-General, whose reports are then forwarded to the National Assembly for consideration. One of the key roles of the National Assembly, as stated in Article 95 (4)(c) and 5(b) of the Constitution, is to exercise oversight over national revenue and its expenditure, and oversight of state organs.

According to *Mason's Manual of Legislative Procedure, 2010 Edition*, under the Chapter on Investigations by Legislative bodies, sub-section 6 says that the Legislature has power to investigate any subject where there is a legitimate use that the legislature can make of the information sought and an ulterior purpose in the investigation or an improper use of the information cannot be imputed. The manual further states, in sub-section 10:-

“An investigation into the management of the various institutions of the state and the departments of the state government is at all times a legitimate function of the legislature.”

In our case, expenditure is reviewed through the Public Accounts Committee (PAC) and the Public Investments Committee (PIC), whereas operational matters are reviewed through Departmental Committees. While it is important to recognize the position of the Chief Justice as the Head of Judiciary, it is imperative too to note that the bearer of the Office of Chairperson of the Judicial Service Commission (JSC) is expected to appear before this House or its Committees, when he or she is invited to do so.

Pursuant to Article 226 (3) of the Constitution, the accounts of all Government and State organs are audited by the Auditor-General. Once laid in the House, PAC calls the Accounting Officers to respond to audit queries as contained therein. The law has clearly prescribed who the accounting officers are for State organs. If, however, in the course of investigation, evidence is adduced to the fact that certain holders of public offices have either directed, approved or acted in a manner contrary to law or lawful instructions, then such public officers shall be personally liable for such actions and investigative Committees will have power to summon and examine such persons without let. This is a power that is inherent and reposed in the Legislature and exists as an indispensable incident as stipulated in Article 125 of the Constitution. It is upon state organs, particularly the Commissions, to clearly draw a line between what is policy and day-to-day administrative matters. It would help if they largely restrain themselves to policy direction and leave execution of those policies to the relevant bodies and/or officers working in those State organs.

Hon. Members, on the second issue of determination on whether PAC can re-open the Report on the Judicial Service Commission and the Judiciary as requested by the Chief Justice, it is prudent to consider the submissions by the Chairperson and Members of the said Committee that they tried in vain to have the Chairperson of the Judicial Service Commission meet the Committee. In addition, the Committee has submitted that the Chairperson of JSC was given ample time within which to present additional supporting documents on the matters that were under inquiry. Moreover, the additional information by the Chairperson of the JSC was submitted on 27th October 2015, 16 weeks after the Report was laid in the House by the Committee. You all know too well that the laying of a Committee Report in the House signifies

the conclusion of the work of the Committee in the particular task. The remainder is for the House to debate the Report and make what it may make of it.

Hon. Members, on the notion that contents of the said Report have been overtaken by events, it is critical to note that in the typical production of reports of an audit nature, there is always the possibility that the situation would have changed by the time the report is concluded. You know too well that this happens severally in reports of PIC and PAC and less frequently in cases of inquiries that are carried out by Departmental Committees. Changes in circumstances or situations do not necessarily invalidate the findings of a Committee. It is also possible that such changes may have been attributed to the commencement of the parliamentary investigations themselves. How many times have persons been asked to temporarily vacate offices, dismissed from office or even arraigned in court in the middle of parliamentary investigations or after the report is laid in the House? As a matter of fact, new information coming after the Report has been laid is useful in two ways:-

(i) it may present an opportunity to the Committee or, indeed, any Member in possession of the information, to move to the House to amend the Report to reflect the new or additional information; and,

(ii) such additional information may assist the particular Committee and the Committee on Implementation to report the present position of the matter in question at a later time.

Coincidentally, PAC and PIC are also expected to follow up on the implementation progress of their reports by way of the Annual Treasury Memorandum on the Implementation Status of the Committee's Recommendations as adopted by the House. This ensures that the audit reservations do not keep recurring. Should the matters recur in the subsequent audit report of the Auditor-General, this also presents another opportunity for the Committee to address the matter in its current status, including any additional information that may have been submitted after the initial Report was tabled.

Hon. Members, this leads me to the third and final issue for determination concerning modalities of engaging the Chief Justice in his various capacities. Members who have served in this August House for at least two terms may recall an arrangement utilized by the two watchdog committees, namely PAC and PIC; in resolving various audit issues a few years ago. At the end of every year, the two Committees would, after taking evidence, but before compilation of reports, pick out the salient policy issues that were recurring in audit reports and separately discuss them with key State and public officers in a sitting referred to as the "Meeting of the Big Five". The "Big Five" in this case included the then Controller and Auditor General, the Attorney General, the Head of Public Service, the Permanent Secretary in charge of the Treasury and the Directorate of Personnel Management. The meeting would avail opportunity for discussion, at policy level, of recurring audit concerns, with the objective of ensuring that such matters were comprehensively addressed and policy framework for mitigation and deterrent measures would also be explored.

Hon. Members, in light of Standing Order 1(2), which provided that in matters not provided for, the Speaker shall largely rely on forms, precedents, customs, procedures and traditions of this House, I wish to borrow a leaf from this old parliamentary practice and from the wise counsel proffered by the Member for Rongo Constituency, Hon. Dalmas Otieno. In this regard, the two watchdog Committees, namely PAC and PIC; should consider setting up meetings of what would now be referred to as the "Big Six" to handle matters of policy nature at the end of their annual audit inquiries. The Membership of the "Big Six" should ideally be

composed of the Chief Justice in his capacity as the Chief Justice and Head of the Judiciary, the Auditor-General, the Attorney-General, and the Cabinet Secretary for National Treasury, the Controller of Budget and the Chairperson of the Budget and Appropriations Committee. The Speaker of the National Assembly as the Chairperson of the Parliamentary Service Commission may be in attendance. Such a meeting will be chaired by the Chairperson of PAC or Chairperson of PIC as the case may be, and should address, at policy level, ways of dealing with recurring audit queries and cross-cutting issues in the three arms of the Government.

Further, in the event that the Chief Justice appears before a Committee of this House in his capacity as the Chief Justice, the respective Chairperson will chair such meeting as is the practice in the House of Commons. Only in very exceptional circumstances would the Speaker, who is also the Chair of all Committees of the House, chair such a meeting.

Hon. Members, in conclusion, I wish to state as follows:-

One, that any witness invited by or summoned to the National Assembly or its Committees is obliged to appear before the Assembly or its Committees without fail. This includes the Chairperson of the Judicial Service Commission (JSC) or the holder of that office in that capacity or personal capacity. Should the Chief Justice (CJ) be required to appear before a Committee of this House in his capacity as the CJ, the respective Chairperson will chair such a meeting.

Two, that the Report of the Public Accounts Committee (PAC) on the Special Audit Report of the JSC and the Judiciary of May, 2014, slated for debate in the House, will not be re-opened for re-consideration by the Committee.

However, in light of any additional information, the Committee or, indeed, any Member is at liberty to propose any amendment(s) in accordance with Standing Order No.54 after the Question of the Motion has been proposed.

Three, that in keeping with our parliamentary practice, should the particular audit reservations or queries recur in subsequent audit reports of the Auditor-General on JSC, PAC is obliged to take into account any new information, when making its subsequent report to the House.

Finally, that PAC and PIC should consider setting up meetings of the “Big Six” as proposed to handle matters of a policy nature at the end of their annual audit inquiries, with a view to considering policy measures aimed at addressing the salient cross-cutting audit reservations and matters that require policy direction in the three arms of Government.

The House is accordingly informed. I thank you.

(Applause)

Hon. Speaker: Next Order! Hon. Members, before we move to the next Order, let me make an announcement. There has been a request by the Chairperson of Constituencies Development Fund Committee (CDFC), Hon. Lessonet, that debate on the business appearing as No.10 is taken out of the Order Paper to give the Committee sufficient time to consider the views from the public. That business will be in the Order Paper on Tuesday 24th November, 2011.

Before we go to the business shown in Order No.8, I see an intervention from Hon. Patrick Makau. What is your issue?

Hon. King’ola: Thank you, Hon. Speaker for giving me this chance. I rise under Standing Order No.220 on Petitions and Inquiries by the Standing Committees of this House.

Sometimes this year on 30th of June, I presented a Petition by the people of Mavoko, aware that land issues is a thorny matter and very sensitive. The Petitioners came to this House pursuant to Standing Order No. 223(f) and (g) and Standing Order No. 227. Through your authority, the Petition was okayed. I would like to thank the Departmental Committee on Lands of this august House for handling the Petition as requested by the Petitioners.

I represent a constituency that is cosmopolitan, but the two ancestral inhabitants of that constituency are the Maasais and the Kambas. When the Maa Community came to this Chamber clad in their *shukas*, they had a time of their lives taking selfies in remembrance of this Petition. They were hopeful and optimistic that this House is going to handle the Petition with speed and the care that they wanted. It pains me during this time of *El Nino* rains that the Petitioners are living in cotton and *mabati* houses and are still requesting that this House speeds the Petition.

I consider the Standing Committees of this House as having powers similar to that of the High Court. In your ruling, I would wish to request that you rule on persons, State officers and Government agencies that might interfere or subvert the running and the role of this House. It has been seen that some people are out to rubbish the proceedings of this House. Today, I would want you to rule. In fact, if it is a State officer, he/she should be charged with perjury, defamation and libel because we cannot be working in vain.

Sometimes last week on 13th November, I saw in the media a State officer in the name of the Machakos Governor calling those petitioners whose plight is in this House, land grabbers and invaders. Today, I am here playing three roles, representation, oversight and legislation. When somebody calls the people I represent land grabbers and invaders, it is not me he is calling. He is calling those people. If there is an agency that has any information--- Standing Order No.223(f)(g) stipulates that the Committee undertakes the due process and diligence of finding whether there is any court case or any other matter outstanding anywhere before the whole process begins.

As I stand here, we need to reclaim the image of this House and the working of the Committees. When the public comes to this House petitioning, particularly on land matters, their lives depend on this House. I congratulate the Departmental Committee on Lands. They took their time, visited the said land and included the National Land Commission (NLC) Chairman. We were at a place called Sheep and Goat in Kitengela. Later, I took the Chairman of NLC to the Portland land. Historical injustices were addressed.

The Petitioners claimed that ever since East African Portland Cement Company (EACC) was established in 1956, they have never built a primary school, a dispensary or anything that benefits the community. It is when the community felt that now that they have finished mining--- In fact, the Managing Director (MD) categorically stated that out of 13,000 hectares, they have mined 7,600 acres and they have no other business on that land. Then, that particular land whose LR No is 8784/1 was sold to one Kimani Wanyoike, Mulandi and Ian Anderson. On the 1/4 that the petitioners are occupying, they said that since they have been suffering from the dust of EACC and have chest and coughing problems and EAPC has never done any of the above, they are praying for the NLC and the Departmental Committee of Lands through this Petition---

Hon. Speaker: Now you are debating.

Hon. King'ola: Hon. Speaker, it pains me so much to see those people being rained on. Their prayer number two is that the land has never been used for the stated purposes after they had mined. They are even saying that they are the original and communal owners of that land.

They have even gone ahead and stated that the land was compulsorily acquired from the right owners who are the Petitioners. As I stand here---

Hon. Speaker: Has the Committee presented its report or what is the issue?

Hon. King'ola: The reason why I am standing here is for you to reprimand the persons going to the media and calling the petitioners land grabbers. I am requesting you to rule whether a State officer or a Government agency should call other agencies to come and investigate a matter that is being handled by a Committee of this august House.

If those prayers are answered, we shall have done justice to our people. I hope the public in general will start looking at this House from a different angle.

I thank you, Hon. Speaker.

Hon. Speaker: Perhaps, what requires to be done is for the Committee, if it is within the time frame, to present its report to the House. When debating the report, perhaps, some of those issues which you appear quite passionate about, and you are very right to be passionate, can be debated and other Members can also contribute.

Hon. Speaker: When was the Petition presented?

Hon. King'ola: 30th June 2015.

Hon. Speaker: Is the Chairperson of the Committee here? The Vice-Chairperson, Hon. Sakuda, can you tell us why you are not addressing this matter or have you become the squatters?

(Laughter)

Are you the ones being referred to as land grabbers?

Hon. ole Sakuda: Thank you very much, Hon. Speaker. I wish to inform this House that yesterday in the afternoon, the Chair of the Departmental Committee on Lands, Hon. Alex Mwiru, made a report to this House. One of the pending issues that we need to conclude is the Petition that Hon. Makau has just mentioned. That is because the Cabinet Secretary (CS) for Environment and Natural Resources has not been able to appear before the Committee after more than eight invitations. You directed that she should be summoned. So, as soon as we receive her evidence, the report will be ready and we will table it. So, I encourage my brother not to pre-empt debate before the report is brought before this House.

Hon. Speaker: Hon. Makau, you say that you went with the Committee to the site. I may not want to rule on what people are saying in the newspapers because I do not superintend over newspapers, what they say or who appears before them. However, it is safe to say that, indeed, and as you have rightly pointed out, Standing Order No. 223(f) is clear. Other institutions and State organs should also take heed of the fact that since the Petition is already before this House, they should hold their horses. The State officer whom you mentioned may even be required to appear before the Committee. Even those other bodies he may be running to may be required to appear before the Committee, in keeping with the ruling I have just given a while ago. The Committee has power to summon anybody. So, they should not run around from one State organ to another when they know that the matter is already before the House. They should give the Committee of this House enough time to complete the investigations.

Indeed, I am happy that Hon. Sakuda has reminded us that, that is one of the issues that the Chairperson has reported as having been stalled by non-appearance by the CS for Environment and Natural Resources. The Clerk is directed to issue summons to that CS. No

more letters of invitation should be sent to her. If a CS cannot appear before a Committee after three invitations, there is no need to invite them again. Let summons be issued compelling attendance, failure to which the appropriate consequences prescribed would follow. The matter should be addressed to finality so that Hon. Makau can rest about this matter.

Instead of having any more debate on the matter, let those bodies hold their horses because they may very well find themselves being invited or summoned to appear before the Committee of the House. The House is already seized of the matter. Those bodies cannot purport to be doing something else when the House is dealing with the matter. They should wait for the House to finalise its consideration. If they want to go and dance in the streets of Mavoko, they can go and dance. In the meantime, let them give Parliament the chance to look at this matter. There should be uniformity. They know that the matter is already here so they should not be going around making all manner of unnecessary insinuations about what the Committee is doing. The matter is already under investigations. So, Hon. Makau, you are right that those other institutions should wait for the House to finalise its consideration of that Petition.

Hon. Sakuda, if you could undertake to deal with the matter with the necessary speed, we can move on.

BILLS

Second Readings

THE TAX PROCEDURES BILL

(Hon. A.B. Duale on 17.11.2015)

(Resumption of Debate interrupted on 18.11.2015)

Hon. Members, debate was concluded on the business appearing as Order No.8 and the Mover responded. What remains is for the Question to be put, which I proceed to do.

(Question put and agreed to)

Hon. Speaker: Hon. Members, before we move to the next Order, allow me to recognise students and teachers from the following institutions who are seated in the Public Gallery:-

(i) Students and teachers from Gatimu Primary School, Kigumo Constituency, Murang'a County;

(ii) Students and teachers from Katutuni Primary School, Yatta Constituency, Machakos County; and,

(iii) Students and teachers from Poiwek Primary School, Ainamoi Constituency, Kericho County.

They are all welcome to observe proceedings in the National Assembly.

(Applause)

There are also worshippers, who include a choir from St. Joshua and Priscilla Catholic Parish, Sirende, from Kiminini Constituency.

Next Order.

THE GOVERNMENT PROCEEDINGS (AMENDMENT) BILL

Hon. Speaker: The Vice-Chairperson of the Departmental Committee on Justice and Legal Affairs, Hon. Nyokabi.

Hon. (Ms.) Kanyua: Hon. Speaker. I beg to move:-

THAT, the Government Proceedings (Amendment) Bill (Senate Bill No.10 of 2014) be now read a Second Time.

The Bill seeks to amend Section 21 of the Government Proceedings Act by inserting a new sub-section 5 which reads as follows:-

“This Section shall, with necessary modifications, apply to any civil proceedings by or against a county government or in any proceedings in connection with any arbitration in which a county government is a party”.

By seeking to amend Section 21, the Bill was introduced in the Senate by Hon. Mutula Kilonzo Jnr, the Senator for Makueni County, who, in his Memorandum avers that this Bill seeks to amend Section 21 of CAP 40, the Government Proceedings Act, so as to extend application to county governments in Section 21 of the Act that makes specific provisions on the manner in which court orders against Government are to be satisfied and in so doing, protects the interests of the Governments. By this amendment of Section 21, the interests of county governments will be similarly protected like those of the national Government.

The Justice and Legal Affairs did, in accordance with the procedures of this the House, receive the Bill after it was passed in the Senate. The Bill was read in the National Assembly for the First Time on 11th December 2014 and committed to the Justice and Legal Affairs Committee in accordance with the Standing Orders.

In terms of public participation, the Committee did not find it necessary to conduct any further public participation because this was already done by the Senate during the consideration of the Bill. There was no reason for the Justice and Legal Affairs Committee to conduct further public participation, noting that the entire Bill is a single amendment to Section 21.

In the Sitting of the Committee on 18th June 2015 at Protection House, the Committee considered and adopted its Report of the Bill dated 24th March 2015. The Report was proposed by Hon. T. J. Kajwang’ and seconded by myself. There were no dissenting voices to the adoption of that Report.

Turning quickly to the implications of this amendment, the Bill proposes to amend Section 21 of the Government Proceedings Act. If you look at the protection accorded to the national Government in execution, it would be necessary that the same protection is accorded to county governments. Indeed, this is one of the laws in which the Senate is properly in its place to introduce, so as to protect our county governments.

Under the current Section 21 of the Government Proceedings Act Cap. 40, one cannot attach or execute Government property for the satisfaction of a court order. This is very important for Members of Parliament to follow. If you get a court order against the Government, you cannot attach Government property. There are good reasons for it. Government property is taxpayers’ property. Government property cannot be used for the purposes of satisfying a court

order. The rationale is that that property is crucial for the delivery of common services to the people.

In the event of successful litigation, one is allowed to execute and sell off such property with a natural person or a company. But in the event of Government, there is a mechanism provided for in the current Section 21 which allows, first, for the debt to be verified and any payment to be properly budgeted for. Otherwise, Government departments would never be able to transact business. If we look at the levels of corruption that we have, this is one area that has stood protected and guarded against corruption. If you get a court order against the Government under the current Section 21, there is an avenue for satisfaction of court orders by the Government prescribing a different procedure for any civil proceedings against Government.

A person who is granted an order against the Government, a Government department or an officer of Government, has, first, to apply for a certificate from the court containing the particulars of that order. Where the order obtained against Government requires the payment of money by way of damages or cost, the amount is to be clearly stated on the certificate issued by court. This is in order to enable the responsible Accounting Officer of the Government department to pay only the amount certified by court.

The Section provides for this different procedure requiring the certification of orders against Government and precludes persons from executing against Government property to ensure that:-

(a) Public funds through which such orders are satisfied are not wasted through payment of debts that have not been verified;

(b) Accounting Officers have adequate time to carry out any remedial action required, including the payment of any money required to be paid by the court order, and most importantly; and,

(c) The operations of Government do not grind to a halt as a result of the debts that can properly be managed and budgeted for.

The way Government pays for its court orders is through the Budget process and not through execution. It is this protection afforded to the national Government that Senator Mutula Kilonzo Jnr., is asking the National Assembly, in his Bill, to extend to county governments. This is clearly understandable by the Committee. The Departmental Committee on Justice and Legal Affairs agrees wholly that the proposal contained in this Bill is welcome and timely.

The Committee has been considering changes to the Government Proceedings Act to be introduced by Hon. Olago Aluoch. That matter is still under discussion with the Attorney-General. As it is, the Committee recommends to this House that the Bill by Senator Mutula Kilonzo Jnr. that is being introduced to this the House and being moved for Second Reading, be adopted by the House and that the protection availed to the national Government is extended to county governments.

It would be very sad to see, for example, attachment of an ambulance, a vehicle or equipment belonging to a county government for settlement of debts. We would wish to caution our county governments not to enter into debts without the necessary legal framework. As we caution the county governments not to enter into debts without the necessary legal framework, we also would wish to extend protection against execution of properties belonging to county governments.

We move the House to agree with the Justice and Legal Affairs Committee that, indeed, the Government Proceedings (Amendments) Bill as passed by the Senate, be passed in the same manner by this National Assembly.

I call Hon. Munuve, who sits in the Justice and Legal Affairs Committee and who today, has had occasion to represent me at the Supreme Court's Open Day with the Chief Justice because I am now standing in for the Chairman, to again stand in for the Vice-Chair and to second this Bill.

Thank you, Hon. Speaker. I beg to move.

Hon. Mati: Thank you, Hon. Speaker. I wish to second this important Bill on one basis. County governments are new and one does not know what could happen. Everybody is experimenting. We have had a lot of corruption and other matters happening at the county level. Out of malice, some people can make demands to county governments, so that they can appropriate some of the county properties. So, I support this Bill. I must say that today, I have had a lot of privileges representing the Committee at one of the highest levels of the arms of the Government. The only problem is that, at one time, I was called Priscilla Nyokabi and I had to correct those people.

Having said that, we need to be conscious and move very fast to rein in the county governments. The county governments have lost a lot of public property. Unless the central Government acts and the laws are tightened to such an extent that people are held accountable at the county level, we may create monsters at the county level. This is timely. It is good that we have such a law. If we do not have it, what happened at the onset of the county governments in 2013 could happen again where many county councils had their properties looted before the county governments were promulgated. I strongly support this Bill emanating from the Senate and I urge this House and other arms of Government, including the Attorney-General, to develop mechanisms that will make it impossible for public property to be abused at the county level.

With those few remarks, I beg to second. Thank you very much.

(Hon. (Ms.) Abdalla stood on the gangway)

Hon. Speaker: Hon. Amina Abdalla, it is business.

(Question proposed)

Let us have Hon. Maanzo.

Hon. Maanzo: Thank you, Hon. Speaker for giving me this opportunity to support this very important Bill. I wish to state that as an advocate, I have had an opportunity to practise in this area. In fact, Government property could not be sold. I want thank Hon. Nyokabi, the Committee and my Senator, Hon. Mutula Kilonzo Junior, for being very thoughtful of the county governments and now updating the law to be in line with the new Constitution. The county Governments are also governments and have to be protected under the law which did not exist up to now, unless we pass this Bill. Up to now, county property can be attached and somebody can sell it if there happens to be a debt. Therefore, the procedure of verification of a county debt is very important. However, sometimes, under these proceedings, you may find that the process has been followed as has been explained by the Chairperson of the Committee. Still, the Accounting Officer does not want to pay---

Hon. Speaker: Sorry Hon. Sakwa Bunyasi. You have pressed an intervention.

Hon. Bunyasi: Sorry, I was expecting to participate in the discussion.

Hon. Maanzo: Thank you, Hon. Speaker. What happens where the Accounting Officer, after verification and budget, still does not want to pay? Ordinarily, the law has a mechanism where you can move contempt proceedings against such an officer and they can be locked up and the rest of the consequences in law may follow that particular officer for disobedience of the court. Ordinarily, the practise is this: By the time you move proceedings for contempt after all the processes have been done, most officers will pay.

Therefore, this goes against the famous thinking that the Government never pays debts. Government can actually pay debts because there is a mechanism. This is a very good law. I support it and I urge Members of Parliament to support it so that we can protect the property in the counties. That is because devolution now is a reality under the new Constitution.

I thank you for giving me this opportunity.

Hon. Speaker: Hon. Millie Odhiambo. Are you hiding or you are being hidden?

Hon. (Ms.) Odhiambo-Mabona: Hon. Speaker, that is my uncle who is vying for the chairmanship of the Orange Democratic Movement (ODM) party in Homa Bay County and he has my full 100 per cent support.

Having said that, I thank you for giving me this opportunity to support this Bill. In doing so, I want to say that I worked at the Office of the Attorney-General as a State Counsel for three years. Anybody who has worked there knows that this is a primary legal document that you use for civil proceedings for Government agencies. Based on my experience, it is important that the same privileges that are accorded the national Government be accorded the county governments. That is because the challenge that you would face is that county governments will be exposed. The Constitution identifies them as very distinct entities from the national Government. Then that means that with the challenges that they are facing in terms of cash flows, you will have all manner of people going to court and being given orders to execute and attach the property of the county governments. This might compromise development.

However, I would want to just thank the Vice-Chairperson of the Departmental Committee on Justice and Legal Affairs for indicating that they are trying to look at comprehensive amendments to the Government Proceedings Act because we must also make sure that there is a balance. One of the imbalances I saw is that, sometimes, we over-protect the Government. As much as it is good that we give a level of protection, we must also look at instances where the Government itself is not meeting its obligation to the citizenry and, hence, all the many hitches from giving notices to getting orders from the courts in order to execute any court orders. There must be some level of balance. This is because anybody who has ever sued the Government of Kenya, knows that it is a journey that would take almost ten years. If it is a private citizen, it might take you, maybe, three years. But for the Government, it is frustrating and most people give up.

I would also want to urge the Committee that as they are doing this review, they look into some peculiar instances that I have come across. While executing my mandate as the Member for Parliament for Mbita, I found a court order to sell one of the primary schools in Kasigunga Ward called Lusare. Through the Constituencies Development Fund (CDF), we had to pay Kshs2 million to rescue the school. Since then, another person has gone and attached part of the school purporting that it belongs to a private individual. There must be a way that the Government does its business in a more cohesive manner where we do not have half of the schools missing titles.

I am very happy that just this week, I issued title deeds to residents of Mbita Constituency in collaboration with the Ministry of Lands, Housing and Urban Development. Part of the title deeds we were giving were also for schools. I would want to encourage this Ministry to hasten and ensure that all the schools have title deeds and not only schools in my constituency. It seems now to be becoming fashionable because we even got another notice to sell a hospital. I do not understand. I am trying to figure out the circumstances under which those kinds of things have been happening.

I support.

Hon. Speaker: Hon. Naomi Shaban.

Hon. (Ms.) (Dr.) Shaban: Thank you, Hon. Speaker. I also stand to add my voice to this amendment of the Government Proceedings Bill of 2014. I want to congratulate Senator Mutula Kilonzo Junior for bringing this amendment. The Senators are now doing what they ought to do, which is dealing with the issues concerning counties and, more so, on an issue like this one, which is very important to Kenyans. We have seen very many Kenyans running around claiming pending debts that they were not paid for services that they rendered. The interesting thing is that some of these people can easily move to court and be granted some payments. They can also rush there to attach properties which are government owned.

Once this gray area in the county governments is covered, it will really help in making sure that county government properties are safe. County government and national Government properties are actually owned by Kenyans. They are not individual properties, but public owned properties which should be kept safe.

What Sen. Mutula Kilonzo Junior has done will go a long way in clearing any issue that somebody had or even thought of dealing with county government properties. Nobody will dare deal with this.

In the past, we saw a Kenyan moving to the National Cereals and Produce Board (NCPB) and actually having the audacity to auction and carry property belonging to the NCPB. The NCPB is a property of Kenyans. I can see Hon. Chrisantus Wamalwa smiling because he is thinking of his dear brother and his bad behaviour in terms of going for property which is owned by Kenyans.

This Bill will now put to rest issues like those ones, as far as county governments are concerned. That does not give governors a reason not to pay people who have rendered some services to county governments. They should own up. People who have done serious business and rendered some service to them should be paid in time. The policy of government is you do not give work if there is no money. If the funds were allocated to a particular project, then people should be paid in time so that they can meet their financial obligations.

Hon. Speaker, I beg to support.

Hon. Speaker: Yes, Hon. Chrisantus, the Member for Kiminini.

Hon. Wakhungu: Thank you, Hon. Speaker. I rise to support this Bill. The Constitution is very clear that the core business of the Senate has to do with the matters relating to counties. I congratulate Sen. Mutula Kilonzo Junior for this Bill.

The question is: Why has it taken too for this Bill to come to the Floor of the House? If I heard the Mover, Hon. Nyokabi, right she indicated that it came to this House in 2014. We are talking about two years down the line.

I wish Hon. Munuve was not interfering with the Speaker, especially when I am touching on that matter. The issue here is this Bill came to this House almost two years ago. It has come

right now. The question is: Why has it taken that long? We know very well that this Bill is very important. Maybe in our Standing Orders we need to give a provision that, in case of any Bill coming from either House, we should know the stipulated time, just the same way Communication from the other House is given priority. Again, if I heard the Mover right, she said that the Bill was initiated by Sen. Mutula Kilonzo. I do not know whether it was the late Sen. Mutula Kilonzo or Sen. Mutula Kilonzo Junior. That distinction is important. Hon. Nyokabi should have put it in place

There are many teething problems when it comes to issues at the county level. Of course, the counties need to be supported and protected, just the same way it happens in the national Government. If you look at the Public Finance Management (PFM) Act, you will find that you are supposed to spend the money that you budgeted for. We do not want to pass this Bill and encourage the county governments to start incurring debts, knowing very well that they cannot be auctioned. We have a lot of teething problems as far as running the county government is concerned. We are getting worried as 2017 approaches. We have some governors who are not assured of being re-elected. They are likely to incur excessive debts and leave the burden to the incoming governors. It is important that as we pass this Bill, we must put a provision in place so that the current governors spend the money that is budgeted for.

In Trans Nzoia County, when it comes to roads, people who were in procurement were giving out Local Purchase Orders (LPOs) fraudulently when the governor was sleeping. You will find a road has been done by about three companies that need to be paid. If we go to court, we are going to lengthen the process and yet these are young entrepreneurs. They are going to face these problems because of the issues that are happening in the counties. The counties must be protected and defended. Of course, we cannot allow things like ambulances, fire extinguishers or bulldozers to be auctioned. We do not expect that to happen because once we do that, public service will be hindered and the provision of services will not be there.

These things should be done in an orderly manner and to satisfaction because a lot of corruption has been devolved to the counties. We want the Ethics and Anti-Corruption Commission (EACC) to move with speed so that such vices can be minimised. We heard of the scandal that happened in Bungoma County about the wheelbarrows. It is a pity. Nobody has been arrested up to now because of the infamous wheelbarrow scandal. As we try to protect the county governments, there must be mechanisms in place that are going to help.

We encourage the Senate to continue bringing such laws. This is the first law I have seen from the Senate that is touching on their core mandate. We encourage other Senators to borrow a leaf from Sen. Mutula Kilonzo Junior so that they can continue legislating on issues that are a reality to the counties and continue protecting and defending the counties.

I do not want to say much because this is a simple amendment Bill. It is straight forward and has nothing much.

I stop there and say that I support.

Thank you.

Hon. Speaker: Yes, Hon. Yusuf Chanzu.

Hon. Chanzu: Thank you, Hon. Speaker. I rise to support this amendment because we must be prepared all the time. We only had one national Government but the new Constitution brought in place additional 47 county governments. Therefore, in total we are dealing with 48 governments. All these governments have obligations to the people that they are supposed to serve, both at the county and national levels. For that reason, we must have laws in place which

can protect the interest of the residents in those counties. This is the reason why it is very important that we have this amendment in place.

I congratulate Sen. Mutula Kilonzo Junior for doing that. Article 96 of the Constitution, which, in my view, most Senators do not seem to read, gives them the roles they are supposed to play, both in protecting the county governments and ensuring that they function. In fact, they left that role in the beginning and spent most of the time battling with the National Assembly, over supremacy. That is the reason why things went out of hand.

When contributing to this debate, Hon. Wamalwa talked about reckless spending and corruption. We need to be very careful about that. We read in the Report by the Controller of Budget the other day that, there are a number of counties which have already overcommitted themselves. I will give an example of my county, Vihiga, which has a debt of over Kshs200 million. Right now contractors are running up and down looking for money they worked for which the county government is not able to pay. County governments are not business making entities. Therefore, even if they are supposed to borrow, they should borrow or spend this in advance with a lot of caution. This is because they are not going to be making profit in order to be able to pay debts. You can imagine a county government in debt of over Kshs2 billion. Vihiga County, for example, when they get about Kshs3.7 billion from the Government, all this amount goes into repayment of debt. Therefore, service delivery will be a problem. It is something that needs to be done with a lot of maturity.

The assumption is that people who will be serving these counties are those that are level headed, patriotic and people who do not have their own interests before everybody else. So, the most important thing is for us to deal with corruption and payments to be done on time. The national government is supposed to guarantee the borrowing from banks.

However, if they borrow huge amounts of money at the rates being offered by banks when it comes to repaying, a lot of money will go into payment of interest. There will be a crisis because no services will be delivered. So, it is important that caution is taken. It is good that the Vice-Chairman of the Committee said while moving that it is important to allow for preparedness, verification of debts and budgeting for debts.

In 2003, there was the issue of pending bills which had been accumulated by the national Government. There were some people who were paid money for no work done because some of them were being done in a hurry because of the changes that were taking place. We do not want that to happen. So with the law in place, it would be possible for early preparation so that when payments are being made, they are made for correct items supplied or work done.

With those few remarks, I beg to support.

Hon. Speaker: Let us have Hon. Ferdinand Wanyonyi.

Hon. F. K. Wanyonyi: Thank you, Hon. Speaker. This is a very straight forward amendment. At the same time I am a worried person. The concept of county governments is very new. I have heard of cases where because counties do not get money on time, they are now forced to borrow money from commercial banks. It is true because money from the Central Government delays. Because the county governments have to meet recurrent expenses, they are forced to borrow from these banks.

These are things that the Jubilee Government should understand. There is a problem out there. Therefore, some counties are borrowing money from commercial banks at very high interest rates. At the end of it all, we have a county government getting into a contract with a contractor and it is unable to pay.

That is something we have to be very careful about. I support the amendment but as a word of caution, the money to the county governments should be disbursed as soon as possible. This is November and even the Constituencies Development fund (CDF) money which affects all of us, has not been disbursed. I received Kshs10 million out of Kshs139 million.

Similarly, county governments are having problems. I know for sure that, if there is attachment of some properties, the operation of the counties will come to a halt. However, we should disburse money on time.

In supporting this Bill, I know that the Government debts are normally paid in bills. As moved by the Mover of this amendment, we know that pending bills are paid depending on the budget for that particular year. Therefore, to cushion the county governments this Act must be amended so that if by any chance there are monies to be paid, that can be done the following year. So, I support this because I know that in my county as mentioned by Hon. Chris, we had cases where county governments were giving out contracts to their cronies. You will find that four people are awarded the same contract to construct a road. I have had this in my constituency and it is something that needs to be corrected.

At the same time, the Local Purchase Orders (LPOs) are given out on the basis of who knows who. So, we have to take care of this. On public procurement, I support the amendment that operations of a county government should not be brought to halt. Arbitration should not be done in such a way that properties are attached.

Lastly, if this is allowed, we will have cases where there is abuse of procurement procedures that we are now witnessing in very many companies. I have seen about five parastatal officials being taken to court. We should guard against this. However, I urge the Central Government to release money to county governments on time. This is so, so that county governments do not get into the habit of borrowing money from commercial banks and thereby inconveniencing the contractors.

I support.

Hon. Speaker: Let us have Hon. Alois Lentoimaga.

Hon. Lentoimaga: Thank you, Hon. Speaker for allowing me to contribute on this Bill which I support. I sincerely thank Hon. Sen. Mutula for bringing this Bill. County governments are new. Apart from being new, most of the staff are also new and inexperienced. Due to high expectations, they can enter into businesses that can be questionable. Our citizens have high expectations and county governments are supposed to deliver. So, one can easily incur huge debts trying to satisfy those expectations. This Bill will go a long way in ensuring that county governments live within their means and use procedures that will ensure that what they borrow or spend is within their means.

As an experienced officer in the Civil Service, the major training that we used to get was never to commit the Government and never to use money that was not there. It was a crime to commit a Government. So even county government should ensure that they do not go beyond what they have. They should ensure that they spend what they have. This will ensure that there is no problem when suppliers and contractors ask for their payments.

About four years ago the Teachers Service commission (TSC) had a problem with creditors. Some of them threatened to auction the current building at Upper Hill and even to cease vehicles which had parastatal number plates. The Government quickly decided to register those vehicles under the Government of Kenya (GoK) to avoid being ceased by the creditors.

In my view, county governments have many assets including vehicles. It is important to have them bearing GoK number plates so that in the event of any liability, they can be protected from seizure.

Hon. Speaker, county governments have inherited many assets from the defunct county and municipal councils. This Bill should also address the issue of how we protect those assets because they belong to Kenyans. The citizens are supposed to benefit from those assets. Some of those assets such as land are not registered. This should also be guarded to ensure that they are not disposed of through illegal means. We need to transfer what has been happening at the national Government to the county governments to ensure that properties are protected and procedures used when anything is done to ensure we live within the means of what the counties have.

With those few remarks, I second.

Hon. Speaker: You are not seconding. You are supporting.

Yes, Hon. Sakwa Bunyasi.

Hon. Bunyasi: Thank you, Hon. Speaker. I wish to comment on this issue. First and foremost, I support the proposed amendment in the Bill before us that county governments should get sufficient protection to make decisions that are helpful for promoting development in the respective counties. That is paramount. The only discussion can be on the details.

First, I step back by saying that expenditures of public sector, even in most capitalist countries are extremely crucial in fostering development across the sectors in whatever they want to do. In so doing, it does not always match with the flow of public resources. So, there is a mismatch and the public sector has to rely highly on the banking sector or some public private partnerships. In so doing so, they could expose themselves to debt that could be recovered may be by the holders of the debt. Knowing that it is extremely important, we must do everything possible to facilitate county governments to access debt even if it is outside the public domain.

I am also fully aware that in doing so, we may get to a point where there is an element of expenditure arrogance from the government that they use resources and are unable to pay because they cannot get reimbursement from the Central Government or tax revenues. By doing this they hobble the capacity of the private sector to function. So, as much as I realise that the economy is promoted strongly through public expenditure, at the same time, we must make sure that, that it is not in a way that hobbles private capacity to provide those services.

For example, there is a level at which people tend to the issue of pending bills. If you owe somebody money, you ought to pay it. It happens also that if you owe somebody significant sums of money and you cannot pay it back, then the enterprise cannot function. So, the ability of that enterprise to provide the services that it is providing is reduced substantially. We see that under soft and polite terms like pending bills in Government departments. Otherwise, the heading for those bills should be bills which are hobbling the private sector from functioning. Some of these bills have been incurred year in year out. Some must be too high and you wonder whether they were genuine in the first place.

So, it is my humble submission that as much as we should protect county governments in a way analogous to how the national Government is protected, we have to keep in mind that the participation of the private sector is crucial. So, that protection is not a favour. It needs to be done. Thirdly, we must hold our managers of the economy more accountable. Bills ought to be settled when they are due to be settled. They should not be pushed on to next year.

We are aware of bills that are even part of the usual tactical manoeuvres and are settled towards the end of June. Some of the bills have been incurred well ahead of that deadline, but are not paid. If you listen to the arguments of those who should pay and those who should be paid, you get a sense that sometimes the delays are tactical. They are delays that are intended to induce the person who receives the money to be a bit more creative in how they look this money. Those creative ways are normally not outlined in the law. So, timeliness and discipline on how debts are settled would reduce pending bills. Secondly, they reduce the downstream effects that can include judicial processes to recover the money.

I support the amendment to provide the cover that is needed, but I hope that due diligence will be taken against risks that are embedded in that decision.

Thank you.

Hon. Speaker: Yes, Hon. Richard Makenga.

Hon. Makenga: Thank you, Hon. Speaker for giving me this opportunity to contribute. I would also like to add my voice by supporting the Government Proceedings (Amendment) Bill. I want to take this opportunity to thank Senator Mutula for bringing this amendment.

County governments are very vulnerable. They are new and may not know that they can be exposed to some litigation. It is important that counties and their properties are protected. This Bill is very timely. Some governments have inherited properties from the former county and municipal councils. In Makueni County, some properties have not been handed over to the county government. This Bill is coming at a time when these properties must be protected. They should not be exposed to either seizure or court procedures. It is important to caution the county governments not to expose themselves to litigation particularly on procurement issues. It is important for them to adhere to procurement procedures in order to avoid court cases.

Therefore, this Bill is very timely and I support it.

Hon. Speaker: Finally, let us have Hon. Ayub Savula.

Hon. Angatia: Thank you, Hon. Speaker for giving me this opportunity to contribute to this important amendment Bill. First and foremost, the Bill is good as it seeks to protect our county governments, just like the national Government has been protected against pending bills, litigation and auctioning of properties.

However, my caution is that governors in this country have taken over the procurement process. They have developed a mechanism whereby they manage the procurement process from the beginning, namely, the advertisement stage up to the award level. They do not give room for procurement rules and procedures to govern the process. That is how counties have accumulated many bills.

For instance, Vihiga County has accumulated Kshs2.1 billion while Bungoma County has accumulated Kshs1.8 billion. Where were the governors when these bills were being accumulated? Why were the procurement committees awarding tenders when there was no money in their Budgets? The county government through the governors must allow the Public Procurement and Disposal Act to be used properly. This is because the money in their counties does not belong to the governors but to the people they are governing in their counties. This is what the governor should be told. Governors have gone ahead to misuse their powers and secure overdrafts. An overdraft is a loan. The law states that county governments can only borrow after two years in existence and by approval from the National Treasury. Before even two years expired, a county government was operating on an overdraft.

Trans Nzoia County has paid salaries using an overdraft, and there is evidence to that effect. Who granted that permission? Therefore, as we shield these county governments' properties from auctioneers, we also need to warn these governors that they should operate within the parameters of the law.

In the Kajiado County Government, the Governor has gone ahead and issued instructions to the Lands Registry not to transfer land to outsiders. Which law are they using? As much as we make laws here to assist the governors to be efficient in their operations, they should also respect the same laws. Governors should not become small gods in the villages.

For example, in Lugari Constituency, a Governor held a meeting at midnight, with a full siren on while people were asleep. That is really misuse of funds. The bills accumulate and they end up not paying contractors, and yet they are misusing county funds. In some cases, they have used their chiefs of staff to withdraw Ksh800,000 every Friday to cater for their weekend expenditure. Which law do they use? As we shield these governors, they must know that we are here and we will use the same law, whether they are in office or out of office in retirement to jail them. So, they must follow the same law.

I support the amendment Bill.

Thank you, Hon. Speaker.

Hon. Speaker: There being no any other contributor, I call upon the Mover to reply.
Hon. Nyokabi, the Floor is yours.

Hon. (Ms.) Nyokabi: Thank you, Hon. Speaker. I want to thank the Members for their support to this Bill and for the contributions that they have made.

Hon. Speaker, it is, indeed, good as members have agreed to protect Government properties and Government Funds, both at the national and county levels. We will be urging - as we have been asking the Attorney-General - that funds be budgeted for to cover judgment debtors. A kitty should be established in all the line ministries, upon ascertainment and certification of judgment debtors to pay judgment debtors. We are not saying that Government cannot pay the judgment debtors but we are saying that you cannot attach and take possession of Government properties in the manner in which we do for private persons or private companies.

Hon. Speaker, the House is very happy with Sen. Mutula Kilonzo Junior for moving the Bill at the Senate level. We thank the Departmental Committee on Justice and Legal Affairs for processing it. We regret that it took a bit of time but matters will improve in future. The enthusiasm and happiness with which the Members of the National Assembly have received this law should be noted today. That appreciation is because this is squarely within the functions of the Senate.

We urge our Senate to stop being in denial on their functions and mandate. They should embrace their functions as outlined under Chapter IV. They should address the many legal gaps that exist in the county governments and stop competing for functions and mandate that belong to the National Assembly. Instead they should embrace what is really within their domain; to pass laws within their domain and with that this House has no contestation or problem. This House is happy to support the Senate in its functions and supporting county governments. The problem arises when they try to pass laws that have been passed by this House or try to change things that the National Assembly has passed.

In this particular case, we do not even need a Mediation Committee or any further process. This Bill has been approved and accepted by the National Assembly as it is. We urge

the House Business Committee to bring back this Bill so that the Third Reading can proceed quickly and we make sure that this Bill becomes law as soon as possible.

The message by Hon. Members to county governments on overdrafts and borrowing needs to be captured clearly. The National Assembly is not giving a license to county government to borrow money or take overdrafts. What we are doing is to protect Government resources by asking our governors to act in accordance with the law in matters funds. The Assembly will be looking at the Appropriations-in-Aid because our governors continue to collect revenue in the counties which they do not account for nor submit to the national kitty. There should be laws and modalities on how that revenue should be spent by county governments.

The House agrees today that it is, indeed, important that execution of proceedings in the county governments be conducted in the same way as it is done at the National Assembly.

On a personally note, I am very happy that I have had a good day. In the morning we had the Access to the Information Bill, which was well supported by the House.

In the afternoon, we had this Bill from the Senate and we are truly happy on a good day's job well done.

Hon. Speaker, I beg to reply on the issues that have been raised by Hon. Members.

Hon. Speaker: Hon. Members, that concludes debate on the Government Proceedings and (Amendment) Bill, Senate Bill No.10 of 2014.

For obvious reasons, the Question will be put on Tuesday, 24th November. Hon. Leader of the Minority Party appreciates why we cannot put it.

As indicated earlier on, the Chairperson of the Constituencies Development Fund Committee (CDF), Hon. Lessonet, indicated that they were concluding some aspects of public participation on the CDF Bill, National Assembly Bill, No.59 of 2015 and requests that it be listed for debate on Tuesday 24th November.

I acceded to that request and, therefore, it is taken out of the Order Paper. I have further been requested by the Chairperson of the Departmental Committee on Environment and Natural Resource, even though this Bill is supposed to be moved by the Leader of the Majority Party--- The Committee has not concluded consideration of that Bill which is one of the Bills that will implement the Constitution. But nevertheless, we must give the committees and all the stake holders sufficient time to input into the Bill.

Therefore, the request to take it out of the Order Paper has also been granted.

That therefore, brings me to the business appearing as Order No.12.

THE NATIONAL GOVERNMENT CONSTITUENCIES
DEVELOPMENT FUND BILL

(Bill deferred)

THE NATURAL RESOURCES (CLASSES OF
TRANSACTIONS SUBJECT TO RATIFICATION) BILL

(Bill deferred)

THE PHYSICAL PLANNING BILL

Hon. Speaker: Hon. Katoo, the Floor is yours.

Hon. Katoo: Thank you, Hon. Speaker. I beg to move that The Physical Planning Bill, 2015, be now read a Second Time.

I wish to begin by introducing the concept of physical planning to set the context for the Bill because this is a very important Bill as most of it concerns land issues.

The physical planning function entails provision of spatial frameworks for the arrangement and organization of the social economic activities on land both at the national, regional, county levels and even at the very local level in the villages. Therefore, it is important that we achieve the optimal and sustainable development for the wellbeing of the society.

Hon. Speaker, the Physical Planning Bill tries to explain what the state should carry out for the good of the community. It takes a holistic view of development of an area. As a practice and function, the Bill brings together the concept of land use and spatial planning. It includes urban regional planning, town planning, rural planning, urban design, transportation planning as well as general land use planning.

It is also worth noting that the Constitution uses various terms. For instance, under Article 66, the Constitution talks about regulation of land use and property, while under Article 67(2)(h), the Constitution talks about land use planning. Under Article 68(b), the Constitution talks of sectoral land use laws. Under the Fourth Schedule, Section 21(1) deals with division of functions between the two levels of government. It also talks about land planning. Under Part II, Clause 21 talks about county planning and development. Several usages have been given as definition for land use planning. All these terms refer to various aspects of general function of physical planning.

Article 66 of the Constitution outlines the purpose for which regulation of use of any land and property is carried out by the State. It includes interest of defence, public safety, public order, public morality, public health or even land use as a generality. All these are attributes of physical planning. Therefore, land use planning is one of them.

I want to talk about the Physical Planning Bill, 2015 as it has been drafted to comply with the provisions of Articles 60, 66(1), 67(2)(h), 68(b) and the Fourth Schedule of the Constitution. Principally, the Bill seeks to revise the Physical Planning Act, Cap 286, to bring it into accord with the Constitution with regard to several Articles as I have talked about. They are the Article on Land policy, the principles as provided for under Article 60, the regulation of land use as per Article 66(1), entrenchment of the National Land Commission (NLC) as an oversight and monitoring authority over land use planning as per Article 67(2)(h) and the Revision of the Physical Planning Act, Cap 286 as the principle legislation.

Towards the end, I will explain the Physical Planning Act, which is being repealed by the new Bill. This is the current principle law with respect to physical planning matters as required by Article 68(b) of the Constitution.

Finally, the Articles of the Constitution we are trying to conform to in this Bill assign the physical planning function to the national and county governments as provided for under the Fourth Schedule of the Constitution.

The Bill proposes to establish various necessary institutional structures both at the national and county levels to carry out the physical planning function better. Members should refer to Clause 5 of the Bill, which establishes the national physical planning consultative forum. Under Clause 9 of the Bill, a county consultative forum is established. Article 75 of the Bill establishes a national physical planning liaison committee. Members should be able to see the

proposed county physical planning liaison committee under Clause 78 of the Bill. The functions of the respective institutional structures are also well defined. Every structure formed at the national level has an equivalent at the county level.

The Bill further makes extensive provisions for the preparation of various types of physical development plans and their implementation. It also approves development plans, development control decisions and resolution of disputes arising out of decision made by planning authorities on matters relating to planning and preparation and approval of development application. The issue of approval of development plans is very contentious because it is always a source of corruption. We have seen buildings collapse all over the country because some of the development plans were not approved but somebody might have pocketed some money to allow the owner of the building to carry on with the construction. The Bill tries to streamline that aspect.

As I earlier said, the Bill seeks to repeal the Physical Planning Act, Cap 286, which is the existing planning law in the country. That Act provided for the preparation and implementation of the physical development plans I have talked about for connected purposes such as administration and establishment of the physical planning liaison committee.

I want to bring this to the attention of Hon. Members so that they can understand the kind of development plans proposed in this Bill. Members should refer to Clause 19 of the Bill, which talks about the National Physical Development Plans.

Clause 28 of the Bill talks about establishment of a regional joint physical development committee. Under Clause 38 of the Bill, there is established county development physical development plan. Finally, under Clause 46 of the Bill, we have local physical development plans. The issue of land starts from the national level up to the local level. Therefore, there are development plans which need to be approved by the respective authorities.

Hon. Speaker, the Physical Planning Act, Cap 286, is an old Act that was enacted in 1996. Prior to its enactment, the planning practice was governed by various statutes, including the Town Planning Act, Cap 134; the Land Planning Act, Cap 303; the Local Government Act, Cap 265; the Government Land Act, Cap 280 and the Survey Act, Cap 299. This piece of legislation seeks to entrench the functions of the NLC, as an oversight and monitoring authority over land use planning, as per Article 67(2)(h) of the Constitution. We have seen very unnecessary tussle between the NLC and the Ministry of Lands, Housing and Urban Development over their functions. This Bill seeks to streamline such issues and give the NLC the oversight and monitoring authority over land use planning, and specifically on issues to do with public land.

I want to confirm to the House that this Bill conforms with the devolved governance systems. I might say towards that end that this Bill concerns counties and, therefore, it is required to be passed by the two Houses of Parliament. It is also important to note that the proposals in this Bill conform with the devolved governance structure. It respects the role of the county governments in planning and development control as outlined under Section 8 of Part II of the Fourth Schedule. Those functions of land that have been devolved according to the Constitution as enumerated in the Fourth Schedule have been reserved for the county governments.

Hon. Speaker, the Bill ensures that the county executive committee members are responsible for formulating county and urban development policies as well as enforce planning standards and development control. We need to uphold standards, development control and standards for quality assurance. It is good that those institutional bodies that are tasked with

overseeing standards and quality are brought to the picture to ensure that we have a uniform, standard and control in these development plans. That has been well articulated under Clause 18.

Hon. Members can see the responsibility of the county executive committee members. Some of their responsibilities will be to formulate county and urban physical development policies, standards and guidelines with respect and accord to national policies and standards of physical planning. Therefore, the Ministry responsible for land matters will, as matter of policy, give the standards that must be met by all physical development plans. The county executive committee responsible for land matters will be required to adhere to those standards.

Secondly, the function of that county executive committee is to supervise the implementation of county and urban physical development plans, standards and guidelines as well.

Thirdly, they will have the function of enforcing the physical planning standards and development control.

Again, on the county, there will be county and local physical development plans that will be prepared and approved by the county government. It is very important to note that it will not be the national Government to approve the development plans of any county. The counties will come up with their own development plans as long as they conform with the standard set by the national Government. They will be approved at the county level.

There will also be the county physical liaison committee which will hear and determine appeals on disputes relating to physical planning. Therefore, any misunderstanding or grievance that will arise from the development--- I understand at times private and public land acquisition may be required. When there are disputes over that, before you go to the Judiciary to seek redress, you are given an opportunity to appear before the county planning liaison committees to hear and determine those appeals on disputes. If the complainant is still not satisfied, the appeals will be launched in the Environment and Land Court which is a constitutional court. You will not even go to that court because there are also national physical planning liaison committees. But if you are aggrieved at the county level and the county physical planning liaison committee has not satisfied your demands, you do not need to go to the national physical planning committee. You will just go to the Environmental and Land Court.

I understand very well that this is a very important Bill. Many Members would like to contribute but that is the background. Hon Members now understand what it means. I wish to invite Members of the National Assembly to debate, consider where necessary and make recommendations on the appropriateness of the Physical Planning Bill, 2015 in respect to the institutions that are established, the types and the processes of the plans, preparation and implementation, development, control and enforcement processes, dispute resolution mechanisms and procedures for appointment to those who will be members to those institutional organs that are being proposed here.

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

*[The Deputy Speaker
(Hon. (Dr.) Laboso) took the Chair]*

There is also need for Members to look at the contents of the plans and matters to be dealt with in the plans as contained under the schedules.

Hon. Deputy Speaker, I beg to move and with your permission, allow the Member for Ndaragwa, Hon. Francis Nderitu to second.

Hon. Nderitu: Thank you, Hon. Deputy Speaker. I would like to thank the Whip of the Majority Party for moving this very important Bill, The Physical Planning Bill, 2015. I know very well that as a member of the Departmental Committee on Lands, we have been sitting down to look at ways on how to enrich this Bill. This is a Bill that has come with many challenges. When we went through it, we realised that there are other Bills that concern land like the Community Land Bill and the Land Use Bill which we are supposed to develop. There are very many other Bills that are attached to this Bill. There are very many Members who felt that this Bill should have come after the other Bills have been discussed. But towards that, I know very well that if the content of this Bill is properly integrated with the other Bills that will be brought, we will reduce the tension we have been having like in the Land Use Planning Bill.

The old title of the Bill was “The Physical Planning Bill”. When we went for discussions, it was very difficult to agree on the title because the letter and spirit of the Constitution talks about land use planning. So, we are yet to agree on the finality of that but we will have to change so that the same alters and reflects the need of the Constitution.

As the Constitution properly puts it, planning is a tool of development and it has to be used properly. The Constitution rightly puts it under Article 66 (1):-

“The State may regulate the use of any land, or any interest in or right over the land, in the interest of defence, public safety, public order, public morality, public health, or land use planning.”

When we tried to interrogate this Bill, we realised that it has many development issues ranging from the national issues of development, regional to local development issues. The issue of planning is very vital. It is very important that this Bill aligns all the needs of development in these Bills rather than the way the Bills were previously done when they were in various other Bills of the old Constitution.

It is, therefore, important for us to note the various strengths and weaknesses of the Bill some of which I am sure at a later date we will amend so that we align it properly. If you look at Clause 4, you will find that on the principles and norms, the Bill’s aim was to set out specific principles that would inform and guide the physical planning process from the spatial stage to development control and even give indication on how such principles will be applied. The Constitution talks about the principle of connectivity, sustainable land management use, polluter pay principle, the current provider of generics and may not assist in interpretation of the law.

As we debate the Bill, we will have to capture all the principles that are envisaged in the Constitution to know how we will align it to the needs of the national Government, the local government and lower to the local plans. We are talking mainly of the national and county plans. However, there is an omission. We should also look at the regional plans. The plans done at the national level and the county level should be integrated.

As the Mover rightly pointed out, the NLC had come in handy as the oversight and coordination body of Government. At certain intervals, they are supposed to bring the regional plans to Parliament for Members to analyse them and see their content and depth.

The Bill has clearly pointed out the various functions of the different bodies. It has elaborated the work of the Cabinet Secretary, the work of the NLC and the work of the county

governments. The county governments have been complaining that there are certain functions that we have taken away from them. We tried to harmonise this Bill with the Constitution so that whatever mandate the NLC has in the Constitution is also enshrined in this Bill. Clause 13 talks about the functions of the NLC relative to the powers of the Cabinet Secretary. We tried to balance the two so that even though the issue of land is devolved to the county level, there are other myriad uses of the plans that will require involvement at the national level. Therefore, this integration will be very important.

We also talked about the County Director of Planning. When we sought intervention during the public participation, there are some people who felt that we do not need the county planning offices. Looking at our Constitution and the need to cap some useful planning issues at the national level, the Director of Physical Planning at the national level becomes very important.

There are various types of plans that are entrenched in the Constitution. As the Bill puts it under Clause 5(1), there is established the National Physical Planning Consultative Forum that will deal with planning at the national level. It includes the people who will make up this National Planning Consultative Forum. They include the Cabinet Secretary, a representative of the Council of Governors, the Chairperson of the NLC, one County Executive Member from each county being a member responsible for physical planning, environment and infrastructure; the Cabinet Secretary responsible for matters related to economic planning and a host of others as it is clearly shown under Clause (5)(2). This is a very good strategy because it will encompass all the people who play a role in the planning sector.

In Clause 6, the Bill clearly states the functions of the National Physical Planning Consultative Forum and who should perform those functions. I side with the Bill, although there are a few amendments that have been proposed to us. We will be able to capture those at the right time.

Clause 22, on the content of the National Physical Development Plan include the issue of economic conservation and a strategy of ensuring sustainable utilisation of space and natural resources. The principle of connectivity comes in again. We are sure that the few amendments that we have catered for will capture that lightly.

I want to highlight a few other clauses that we thought needed to be looked at so that the complaints that we received from most of the people who presented their views can be harmonised as we move forward. Clause 30(2) was on Regional Physical Development Plan. This purpose should extend to specific physical planning concepts, including connectivity and peculiar circumstances referred to above. All other amendments that we have carried forward will capture that.

Clause 58 is on the application for development permission. The Bill gives explicit ways on how to do approvals, the application process, the penalties and the way to proceed if there is an anomaly between the time you apply and when you get the approval. This is a good Bill.

I beg to second.

(Question proposed)

Hon. Deputy Speaker: Hon. George Ogalo, you were supposed to second the Bill. I do not know whether the arrangement has changed.

Hon. Ogalo: Thank you, Hon. Deputy Speaker for giving me the opportunity to contribute to this Bill.

This is a very important constitutional Bill. It is a Bill anticipated by Article 66(1) of the Constitution and this House is obligated to enact it. This Bill creates a clear forum in which physical planning in Kenya can be carried out. It creates functions and powers of institutions that will be important in carrying out physical planning activity. It specifies which development plans need to be prepared and at which level of Government and which ones are supposed to be created by the county government, the national Government and a group of counties together with the national Government.

It specifies the national physical development plan, which is supposed to be an integration of all county development plans, obeying the principles of land as set out under Article 60 of the Constitution. It talks about the regional physical development plans, which could be resource-based or basin-based development plans. I would imagine something like the Lake Basin Regional Development Plan. It talks about county physical development plans for each county and special area plans which could be done by individual county governments or by a regional body covering many counties. I would imagine that when you are planning for a project like the LAPSET, you would not have one county being in charge of it. It is a special area that is going to cover very many counties. Therefore, this requires that the national Government teams up with the various counties in carrying out the planning.

Hon. Deputy Speaker, development control is uplifted from the Physical Planning Act of 1996, to be used by county governments to control development and ensure that the development carried out in those counties conform with the planning policies of those counties. The Bill also provides for how those plans and development controls are enforced. Having said that, I sit in the Departmental Committee on Lands and I would like to respond to a few of the issues I have heard raised about the three land laws that are before Parliament as we speak.

First of all, I want to say how public participation occurred. This Bill was prepared with the input of various stakeholders and members of the public. Having interrogated the various stakeholders who appeared before our Committee, I can assure this House that there were proper consultations with over 12 institutions involved in either teaching, planning or the practice of planning. The institutions that were involved in drafting this Bill included the Institute of Surveyors of Kenya, Kenya Institute of Planners and the universities that teach planning. Their input has been included in the Bill.

The county government was also involved in the drafting of this Bill and I can assure you that two meetings, one on 1st July, 2014 and another one, on 24th June, 2014, at the Kenya School of Government involved both the Council of Governors and the County Executive Committees in charge of lands in the counties.

I would also like to point out that this Bill does not reduce or limit the functions of the National Land Commission (NLC). The Bill provides that the NLC shall oversee planning at both the county and national level.

Article 67(2)(h) gives the NLC power to oversee the land use planning across the country. This Bill has not limited that. In fact, each and every CEC member in charge of lands in every county has a duty to submit the progress made in terms of land planning to the NLC annually. The NLC, pursuant to Article 252 of the Constitution, also has a duty to ensure that Parliament receives a progress report on the issue of land use planning in Kenya.

This Bill relates well with the existing legislation. I would like to indicate that, indeed, this Bill provides for a way of actualising the county planning function as outlined under Section

103 of the County Government Act, 2012. The Bill is responsive to the physical planning as per Article 191(3) of the Constitution and Section 20(1)(i) of the Urban Areas and Cities Act.

There are concerns over the process of approving development plans at the county level. There are people who feel that the county assemblies should be approving plans. They hinge that debate on Article 185(4) of the Constitution. If at the national level the National Assembly does not approve physical development plans by national Government, why would it be necessary for the county assemblies at the county to approve physical development plans at the county level? In my opinion, which I think should be considered opinion, there is separation of powers. The function of approving development plans should be an Executive function within the county. Subjecting each and every development plan to the approval of the county assemblies would render the county assemblies unable to carry out any other function.

I also want to speak to the function under Schedule Four of the Constitution being a devolved one. I would like to urge Members to consider this. If counties are going to do physical planning, who is going to develop a policy upon which that physical planning is going to take place? After the counties have prepared their plans, who is going to integrate those county plans to create a national plan? Even though surveying and planning is devolved under Schedule Four of the Constitution, it is a considered opinion that a function of the national level should be retained to coordinate those planning activities at the counties as well as integrate development plans into a national physical development plan. That function must be done by somebody. There are those who imagine that this should be the work of the NLC. I would like to read out Article 67(2)(h) which gives the function of the NLC as far as planning is concerned. It says:-

“The functions of NLC are to monitor and have oversight responsibilities over land use planning throughout the country.”

I beg to question. If one is to monitor and oversee land use planning throughout the country, how can you be the same person then doing it? Who will oversee you?

The way the Bill has proposed the entities and institutions that are supposed to carry out planning gives the NLC an organ that they can monitor and oversee and get reports from.

With those remarks, I would like to invite Members to go through this Bill and not to be scared or imagine that there is anybody who is doing a very bad thing to Kenyans by proposing this Bill. It is a reasonable Bill, and as a member of the Departmental Committee on Lands we are going through it clause by clause. We are also inviting Members to pay close attention. If you feel there are things that we need to amend in this Bill before we pass it, propose them so that we can pass a good Bill for Kenyans.

Thank you, Hon. Deputy Speaker.

Hon. Deputy Speaker: Okay. Let us have Hon. Sakuda who is presenting the Report from the Committee.

Hon. ole Sakuda: Thank you very much, Hon. Deputy Speaker. On behalf of the Departmental Committee on Lands and pursuant to the provisions of Standing Order No.127(4), I wish to present to the House the Report of the Committee on its consideration of the Physical Planning Bill, 2015. The Bill was committed to the Committee on 19th of August, 2015 and it is on this basis that the Committee makes this Report pursuant to Standing Order No.127. It is also important to note that the Committee tabled this Report on 14th October, 2015.

I do not wish to point out the need for the consideration of the Bill because Hon. Katoo has dealt with it. He has also highlighted the key provisions of the Bill from Part I all the way to Part VI.

I wish to report to this House that when the Committee was seized of the Bill, it went ahead and invited the public by placing an advertisement in the *Daily Nation* and *The Standard* newspapers on Thursday, 3rd September, 2015 pursuant to Article 18 of the Constitution and Standing Order No.127(3). The Committee received various memoranda and held a stakeholders conference in Mombasa between 15th and 20th September, 2015. The views are captured and contained in the body of the Report.

I want to highlight some of the stakeholders that were present during the retreat. We had the Ministry of Lands, Housing and Urban Development, the Ministry of Agriculture, Livestock and Fisheries, the National Land Commission (NLC), the Commission for the Implementation of the Constitution (CIC), the Kenya National Commission on Human Rights (KNCHR), the Transition Authority, the Council of County Governors (CoG), representatives of the county land management boards, Land Development and Governance Institute, Reconcile, the Kenya Land Alliance (KLA), lawyers in private practice, the Kenya Private Sector Alliance (KEPSA), Katiba Institute, World Wildlife Fund, Act Change Transform (ACT), Ogiek People's Development Programme, the Institution of Surveyors of Kenya, Economic and Social Rights Centre-Haki Jamii, the National Environmental Management Authority (NEMA), Kenyatta University (Njoro Campus), the Kenya Institute of Planners, the Kenya Forest Service (KFS), the Law Society of Kenya (LSK) and the Kenya Forest Research Institute (KEFRI).

As far as the adoption of the Report is concerned, 16 members adopted the Report. We had no minority or dissenting report.

I do not want to go into the background of the information because it has already been highlighted. We have the input of all those stakeholders. For now, I wish to go straight to the observations of the Committee for Members to know some of the highlights that were presented by different stakeholders.

Hon. Deputy Speaker: Just for the record, Hon. Sakuda, you are speaking as the Vice-Chairperson of the Committee and presenting the Committee Report. So, you have a maximum of 30 minutes. However, try to summarise because other issues have already been raised. Maybe you can give us the observations and recommendations of the Committee.

Hon. ole Sakuda: Thank you, Hon. Deputy Speaker, for your guidance. I will be very brief. I will not read the input by the stakeholders that I have mentioned.

The Committee's observations are that:

1. The Bill revises sectoral land use laws in line with Article 68(b) of the Constitution.
2. There was comprehensive public participation, as Hon. Oner has mentioned, and stakeholder engagement in the development of the Physical Planning Bill.
3. There were varied views on the title of the Bill from various stakeholders. Some were of the view that the title of the Bill should be restricted to the terms used in the Constitution, while others argued that the title of the Bill should be broader and should be Land Use Planning Bill, Spatial Planning Bill or be retained as Physical Planning Bill.
4. In the definition section, there is need to define the terms "spatial planning", "land use planning" and "physical planning" so as to avoid any uncertainties as regards these terms.
5. In the qualifications for appointment as the national director of planning, there is need to improve on the requirements necessary for the candidate.

6. Physical planning is a shared function between the national Government and the county governments. Policy formulation, national and regional plan preparation are functions of the national Government, while plan preparation and approval at the county level is a function of the county government.
7. The stakeholders were of the view that certain sections of the Bill contradict some sections in existing Acts. Part III of the Bill, which provides for the types of physical development plans, contradicts Sections 36–42 of the Urban Areas and Cities Act, 2012 and Sections 108–111 of the County Governments Act, 2012. However, the Committee noted that it is only the names of the plans that are at variance. Therefore, the names of the plans should be in tandem with the titles in existing laws to avoid confusion.
8. Some stakeholders quoted Articles of the Constitution that were not relevant to physical planning. The reference to Article 185(4) of the Constitution was not applicable. The Article provides that the county assembly may receive and approve plans and policies for the management and exploitation of the county's resources and the development and management of infrastructure and institutions. This Article, therefore, does not deal with physical plans. The development plan is a tool of the Executive and the county assembly should, therefore, not necessarily approve the development plans in the same manner as the National Assembly does not approve the national development plans.
9. Pursuant to Article 67(2)(h) of the Constitution, the function of the NLC is to monitor and have oversight responsibilities over land use planning throughout the country and not to carry out the actual plan preparations.
10. There were concerns that the national physical planning consultative forum is bloated. The Committee observed that the forum is necessary and not bloated given that every county executive committee member from each of the 47 counties will be a member of the consultative forum in addition to other representatives in the forum.
11. On the issue of status reports on implementation of national physical development plans, the section should be modified to empower the NLC to consolidate the reports into a single national report and forward it to the National Assembly and the Senate, as part of the oversight in land use planning.

The Committee's recommendation is that having listened to the stakeholders and from its own analysis, the Committee will be proposing amendments for introduction into the Bill during the Committee of the whole House Stage.

For the information of the House, this evening the Committee will be retreating at the Bomas Hotel and their work will be looking at some of the proposed amendments that will be introduced during the Committee of the whole House Stage.

With those remarks, I urge Members to critically look at this Bill and how it can help the county and the two levels of government in terms of how land is used all the way to the local villages.

I thank you, Hon. Deputy Speaker.

Hon. Deputy Speaker: Hon. Naomi Shaban.

Hon. (Dr.) Shaban: Thank you, Hon. Deputy Speaker. I also stand to support the Physical Planning Bill, 2015. This is one of the Bills which should have come immediately we

passed the new Constitution so that as the county governments came into place, they should have found this law in place.

As we go around Kenya, we see that most of our areas are not properly planned. Because they were not properly planned, we see all these problems of town planning where towns are mushrooming everywhere. Apart from mushrooming everywhere, the towns are not planned at all and you find some semblance of slums coming up in the name of trading centres.

When the City of Nairobi was being planned in the 60s at post-Independence, people did not think of the kind of population that we have right now. They did not think about the kind of development which has come up in Nairobi. As a matter of urgency, so many things need to be done. It is going to be a very costly affair to correct the mistakes and even buildings which have come up in areas where they should not be. The menace of floods and the problems of climate change we are faced with are because of a city which was not properly planned.

As a matter of urgency, so many things need to be done. It is going to be a very costly affair to correct the mistakes which are there, and even correct the issue of buildings which have come up in areas where they should not have come up. We can see even the menace of floods and we are facing all these problems of climate change. This is because of a city which was not properly planned.

Hon. Deputy Speaker, we travel all over the world and we have seen very well planned cities. Kenya should have had these laws in place. I know there are quite a number of Acts which were governing town planning, but people were not thinking of population and the kind of development boom that we have had in our country. In the process, we have a big problem which we need to solve.

In this Bill, there is some harmonisation of how the national Government is going to work with county governments. Planning has been put squarely in the hands of county governments, because they are the ones who are right at the grassroots. They should be spearheading development plans and physical planning of all the areas.

When we travel to other countries, we see satellite cities. I know that this is one of the issues that has been talked about in the Vision 2030 and it is being implemented although at a very slow pace. I believe that, that requires to be carried on board, so that we shall not only realise the Vision 2030 and not only be in the Mid-Term Plan, but it shall be for the good and the future of this country and for posterity.

Every day, we hear about disasters. Buildings are coming down because proper plans have not been approved, and even when they were approved, some shortcuts were taken. I know we have had quite a number of laws in the past, but with this law in place, we should be able to deal with the issue of having properly planned construction of buildings which have been approved. People should meet the standards.

It is not enough for us to just have the development plans in place. It has to go hand in hand with departments in the counties and departments at the national level to make sure that standards are being maintained and followed. Basically, our main problem, even in terms of buildings which are not well constructed and areas which are not well taken care of is because of lack of follow up. The teams which are supposed to be working on this have slept on their job. They are not following these plans.

The preservation of heritage sites has been mentioned in this Bill. Buildings which have been there from the colonial times up to the post-Independence should have been kept and maintained under the Museums and National Heritage departments as heritage sites. When

people rushed to be allocated sites, they would bring down very important buildings and put up some high rise buildings, or whatever kind of building, making us lose our heritage sites to the new developments. This law will protect those areas, so that we can have the heritage sites.

As we travel to other countries, we visit their heritage sites yet we have destroyed most of our heritage sites in Kenya. Once this becomes law, we should make sure that it is implemented not only in its letter, but also its spirit. As we move on, Kenya will have better planned landmass areas, buildings and more so, all the departments will work together in harmony to make sure that we realise this goal of better physical planning.

Physical planning is not only about planning plots and putting roads and other infrastructure in place, but it carries with it the environmental aspect.

It is not enough to say that we are going to do physical planning without including the issue of the environment and planting trees. This should be tied somewhere with other laws like the National Environmental Management Authority (NEMA) laws, so that we can have not only the environmental impact assessments, but also for people to be forced to plant trees in Kenya, so that we can have a green coverage of our country to enable us to deal with issues of climate change and make our cities, towns and rural areas as beautiful as they should be.

With those few remarks, I beg to support.

Hon. (Ms.) Odhiambo-Mabona: Thank you, Hon. Deputy Speaker for giving me this opportunity. As a very strong supporter of devolution, I am very reluctant to support this Bill. This is because the greatest malady in Kenya in terms of development is the issue of physical planning. If you look at the way the Bill is formulated, it is very weak in terms of the linkage between the county governments and the national Government and their respective roles in physical planning.

Having said that, I will support the Bill reluctantly and I hope that I will find time in the midst of my busy schedule to push some amendments. Sometimes I get very sceptical, as a Member of Parliament. I agree largely with a lot of what Hon. Naomi Shaban has said, but I want to depart a little from what she has said about the fact that this law will give us an opportunity to plan.

Our poor planning is not a factor of lack of laws. It is just a factor of impunity in this country. We are used to a culture of disobeying laws and even the Constitution that we passed, we do not obey it. So, what this country needs very urgently is to develop a culture of constitutionalism where we respect the Constitution, the laws that we pass and follow the letter, the law and the spirit of the Constitution and the laws that are made under it.

Sometimes, I feel that what I should bring is a law called “the commonsense Bill of Kenya, 2015”, because what this country needs is common sense. We pass so many laws, but having passed those laws, we discard them. We have absolutely no regard to the implementation of these laws. This is an extremely beautiful country and we are playing with it. For those of us who have travelled a lot, you never appreciate what you have until you compare it with other countries. We have a country that has potential for being a first class country in the world. But if you look at the way this country is growing, it is an embarrassment.

I have spoken to this issue before and I want to repeat that when we visited Botswana and we were walking around and being told the excellent things that are going on there, embarrassingly, they told us that they copied from Kenya in the 60s. What became of Kenya in the 70s, 80s and 90s? We are regressing while others are picking from us and moving forward. Look at Rwanda and Namibia, for instance. Very simple things. That is why I am saying that we

need to come up with a commonsense Bill; all these things that we have written here are purely commonsense things for those of us who are travelled.

If you look at Namibia, some things are simple; just by separating estates by colours you have aesthetics. When we went to Botswana, in one of the places the ground was prepared very nicely. So we wondered what was going on there. They said they were just about to put up buildings. We asked what they were for. They told us it was for a road, a line for electricity, water, and a sewer. What about Kenya? You build and then you look for the road in between houses. That is why I am saying we need to come up with a Bill on common sense; there are laws but we just do not give them due regard once they are passed.

The other thing that I find very worrisome is the way we have classified our economy. We are a very small economy but we want to classify ourselves higher maybe for purposes of public relations. When I drive from my House to Parliament, I notice we are a country that is powered by Small and Medium Enterprises (SMEs). If you look at every roadside that you pass whether it is in town or outside, there are people hawking, selling second-hand clothes and they want to sell them in every available space. If you allow them here in Parliament, they would be hawking clothes outside here, which is a good thing because that is our economy. But why do we not plan in a manner that takes into account what Kenya is? Every day you see *askaris* chasing people around. Where do you expect them to go? That is what this country is. The majority of Kenyans are in the category of SMEs, yet we want them to go and occupy big shops. We are planning for big shops instead of small kiosks.

What I would encourage - and that is why I want a stronger link between the county governments and the national Government - is that we must plan in a manner that takes into account that we have people trading in SMEs. In terms of our own culture, Kenyans like buying on the roadside, yet we are building very huge markets that nobody goes to. Why do we not build small kiosks by the roadsides which are smart, so that even when you pass you are not looking like you are passing through a slum? In that way we would be facilitating people all over. Even in big cities in Italy and other countries, they allow people to hawk but in an organised manner. In some places, it is by building very nice kiosks. But because of our culture also, if you look at outside Nairobi Hospital, when the City Council decided to put up very good structures for Kenyans, we must always make sure we add another polythene paper behind it.

So, it is still the culture that I am talking about but we must take this country seriously if we want to compete with Rwanda and Botswana. The place of pride that we have always held as a country is lost. It is not that it is getting lost. I hear people saying it is getting lost. We have lost to Rwanda and Botswana. If we continue this way and with the focussed President that I have seen in Tanzania, we will lose to it. From the way I am seeing our neighbour Uganda, we are encouraged that we have at least one that is doing worse than us.

Some of the issues that need to be included here is population growth. It is not included in this Bill but we must factor in population growth. Most of our small cities and towns are growing pretty fast but our planning systems are not moving equally fast. If I give you the example of my own small town in Mbita called "Mbita Point", it has a huge population but what is there? Last week I was talking to the local Minister for Planning, Madam Beatrice, and I was telling her Mbita looks like some chaotic town. It reminds me of a rough drawing of an amoeba, if you see the way it is growing.

Mbita is just an example. All our towns are growing in that way. We must arrest the way these towns are growing. I remember one of the committees said they visited Victoria Falls

which is a small town. If you look at it, it is picturesque yet Zimbabwe is having one of the greatest challenges in this world, but compare Victoria Falls with Kisumu. There is absolutely no comparison. It is done so amazingly well. We have a young President and a young Deputy. I was hoping that even though we were complaining that the elections were rigged, they would prove us wrong by bringing in new ways of thinking and a new culture of development. I am sorry. I am totally disappointed that youthfulness has not added much value in terms of development. I know Naomi Shaban is complaining but, I am basically stating the truth. There is no evidence of youthfulness in terms of development.

I can see the time is up. I would want to speak about environment in terms of the issues that we have talked about. We are pulling down trees and buildings cannot even accommodate--- Look at Kileleshwa, Lavington and areas in those environs. Now they are facing water crisis and power blackouts all the time. Why? Because we are not planning even though there are laws. We are not planning because of the issue of corruption. So long as you can give a little at City Hall, you are sorted out. I will reluctantly support with amendments.

Thank you.

Hon. Deputy Speaker: Hon. Joseph Kiuna.

Hon. J.K. Ng'ang'a: Thank you, Hon. Deputy Speaker. I also want to support this Bill. As I do so, I have some reservations but I am supporting it in the sense that we shall define various boundaries and specific areas where we shall have specific developments and infrastructure. I hope from the outset we shall set aside public land, community land and private land. For public land, we should demarcate very clearly the boundaries of our forests, national parks and settlement areas.

Why am I saying this? If these things are not looked into--- We have seen many people who are purporting to be developers encroaching on Government land in full collaboration with the relevant Ministries and Departments. They have been given the titles or the go-ahead to develop this land. It is very disappointing. You find that we have enacted many laws to regulate the development of various infrastructure, be it industrial, building and construction but you find that these laws have not been acted upon. They have not been used at all. The officers in charge to enforce these laws are well paid, but when it comes to implementing or executing the work they are paid for, they just close their eyes. No wonder if you go to any part of the country, especially the urban areas, you will find mushrooming slums, shopping centres and some skyrocketing buildings designed and built in some areas where they are not supposed to be constructed. Since the owners collaborated with those who are in charge to execute and protect those areas, they went ahead and built magnificent buildings, only to come and discover later on that that pieces of land were meant for some future development.

Very good examples are areas that are reserved for our airlines at Jomo Kenyatta International Airport (JKIA) and Wilson Airport. We have seen very big buildings being demolished by the Kenya Airports Authority (KPA), which gave them consent to build. Are we trying to build our economy or to kill it? That is why I said that I support this Bill with some reservations.

As we move ahead, we need to sit down and think about where we went wrong. I have heard many people saying that Kenya was very different in the 1960s. I have a feeling that the Kenya of 1960s we are talking about was not managed by the white man, but was planned by the white man. When the black man came, I do not know what happened. All those who were in the

government were well educated but they forgot everything and became gullible. They had a disease of grabbing everything they found on their way. That is where we went wrong.

Now we have realised our mistake. We can try to get riches but all the riches we gain will not take us anywhere. It is high time we repented and said:

“I better take the little I am paid than accept that small token I am being given so that I can allow an un-roadworthy vehicle or a vehicle transporting drugs to pass a road block.”

We should not take those small bribes we are given. What I am saying is that we must look again at those officers who are entrusted with implementation and make them enforce the law. Be it police officer or officers in charge of planning, they must change our culture.

Wherever we go, we hear people complaining about corruption. Surely, for how long will Kenya mourn this disease called corruption? It is high time all serious leaders woke up and condemned corruption.

With those few remarks, I support the Bill with reservations.

Thank you, Hon. Deputy Speaker.

Hon. Deputy Speaker: Hon. Isaac Mwaura.

Hon. Mwaura: Thank you, Hon. Deputy Speaker. I rise to support this Bill. As parliamentarians and Kenyans, we need to imagine a better Kenya that is well planned, devoid of corruption, clean, safe and healthy. We should imagine a better Kenya that looks like those places we go to as Members of Parliament to benchmark, and we wonder whether we can have such countries.

I remember we had a conversation sometime back. When people watch movies made in other countries, they ask: Was this place actually created like that? This is because it looks very different. They think things just happened. That is where we are in this country. Sometimes we as leaders forget that we have the responsibility of ensuring that we take our country to where we would want it to be. This is because we should lead from the front. Maybe because we are confronted by challenges which look enormous, we feel like we cannot actually make a difference.

Our role in history is to ensure that we make that little step going forward and the rest can be done by those who will come after us in terms of building it up. When you look at our development plans, we write them very well. They are excellent but more often than not, they are never implemented because of corruption.

We have forgotten our sense of patriotism. Our patriotism has been reduced to fit in our tribal cocoons. It has been reduced not to go not to our country, but even to individuals. The only development that seems to matter is personal accumulation of wealth, which is primitive. This is very worrying because it has created a very big gap between the haves and the have-nots.

Going forward, our country is reeling from debt and so many other vices, because of the selfishness of leaders and people who wield influence in Government. Also, when you look at how our cities and towns are developing, it is very evident that they are actually products of corruption.

Yesterday night, I was driving somewhere and I was shocked because that neighbourhood was supposed to be for low cost housing. It is next to a middle income estate. However, when you go there, you actually find that it is a slum in nature. Many unplanned apartments are coming up there, and they make a lot of money for the owners. The roads are dirty and narrow. They are untarmacked or not paved. It is really horrible. Of course, there are

also those other shanty structures of Kenyans who are trying to eke out a living despite the challenges of the economy.

County governments have engineers and planners who give approvals for such buildings without even visiting the site. They just collect money at the office. More often than not, they overcharge you, if you want your development plans to be done very quickly. Therefore, people are constructing houses for the sake of constructing. Kenyans seem to only be concerned about the room they get into. Outside the rooms, the buildings are not very appealing. That contributes to the aerial view of the place.

If you go to places like Githurai or Kahawa Wendani, you will find places looking like slums. The other day I was in Umoja; I used to live there when I was young. Again, it is supposed to be a low middle income estate, but it is now like a slum. There are no roads and water is everywhere. Right now with the *El Nino* rains, people's houses are flooded. I am receiving calls of people who want to be rescued from floods in their own houses. If you look at a town like Narok, it is supposed to be submerged. Thika Road is an example of a development plan that was not very well conceived in terms of the. Just two days ago people almost slept on the road because of the flooding. There was chaos.

In Ngara, there is a big road leading to a very narrow entry into the city. You wonder what kind of planning is going on because we waste a lot of man hours on these roads.

Therefore, physical planning is paramount. In fact, the word "development" over and above social development, is largely seen as the planning of land use and the construction of various built environments. Yet that is something that has become very elusive to our country. In fact nobody cares.

If you look at this Bill, it speaks very well in terms of the organisation, the structure of how we will be looking at physical planning. It provides for bodies like the National Physical Planning Consultative Forum. I do not know why it should be a consultative forum and not a council. It goes ahead to provide for a National Director of Physical Planning, and of course various plans.

However, I would also want to see the inclusion of the National Construction Authority as part of these bodies, because construction is key. In fact, real estate in this country is booming, but more often than not, approvals---

I know, for example, there is a penalty that is provided for in Clause 57, where, if you did not get an approval, it means that you can pay between 5 to 10 per cent of the value of the land. That is okay but when you also impose a very big fine like that one, you are encouraging corruption. If, for example, your land is worth kshs5 or 10 million, it means you can pay up to Kshs500,000 or even Kshs1million. People will not be willing to pay that kind of money; they will just be bribing individuals. So, as we are looking at the provisions of this law we need to ensure that there is proper development rather than entrenching corruption. This is the case with the traffic Act; we thought by amending it we were putting sanity on our roads; now police have gone ahead to ask people to pay hefty fines, so that they do not go to courts.

The other issue that Clause 56 seeks to speak to is county governments having powers to make determinations with regard to the subdivision of land. But there is one thing that the county governments need to do. This is the issue of zoning. We need to speak to the issue of low and high density population areas. This is because low density areas are now becoming threatened, and so people are moving further away from town. Places such as Kileleshwa and Lavington are being replaced by flats instead of town houses and single dwellings. That is something we need

to speak to. We can have proper development of our country; as long as that is not attained, we will just have slums everywhere.

My time is up, but I want to say that we also need to ensure that development plans speak to Vision 2030. We have the County Integrated Development Plan (CIDP) at the county level and also issues of people with disabilities. The greatest disabling issue is the built environment where persons with disabilities are not able to access buildings and roads that are conducive.

Hon. Deputy Speaker: Let us have Hon. Yusuf Hassan.

Hon. Abdi: Thank you, Hon. Deputy Speaker for giving me the opportunity to contribute to this discussion. I support the Physical Planning Bill. It is timely that we have a Bill that brings some kind of order in the chaos that we have in our neighborhoods, cities and towns. Physical planning is acritical and an important factor in human settlement and habitation. Well organised and proper planning of human settlements leads to good villages, towns and cities. It leads to a better and healthier life for its citizens.

In the colonial times, it was very clear that we had all our settlements in our country with well physical planning and construction undertaken as a matter of rules. I can tell you that today we have the opposite. We have chaotic poorly planned and developed habitats all over our country. I have lived in many cities in the world and I can say without fear of contradiction that Kenya has one of the ugliest buildings and towns in the world. Sometimes you wonder what kind of planning is involved in having some of the structures that I see in our beautiful country. This is an incredibly beautiful country physically. It is one of the best countries in the world in terms of scenery.

Whole towns and cities have become dysfunctional, unhealthy and painful to live in, including our capital city. Many modern neighborhoods that I remember when I was growing up here in Nairobi have deteriorated and turned into glorified slums. A good example is the neighborhood in my constituency California. When California was built, it was one of the most beautifully planned urban centers, colorful with all the facilities and well laid down plans. Today, it is more like a glorified slum. There are no gardens, parks and recreational facilities in our cities any more. Every space is built up. So, there is some crisis as far as planning and development is concerned as far as our urban centers are concerned. What we need is livable neighborhoods. We need towns and cities that are beautifully planned and well laid out, that we can all be proud of and can live in very happily. I think another Kenya is possible. It is only possible if the rules that are laid down here very clearly are implemented and enforced by the authorities.

I cannot help with the fact that a lot of people here have added---

Hon. Deputy Speaker: Hon. Mwaura, you have had your chance. Please allow Hon. Hassan to have his.

Hon. Abdi: I cannot leave out the fact that has been raised by a number of Hon. Members and that is the element of corruption in our country. It is impossible to have all these beautiful Bills and have the most fantastic Constitution in the world. Is it possible to live to the expectations of our Constitution and the Bills that we are passing in this House, if we are not able to control corruption and bring order and discipline in our bureaucracy? This is the fundamental aspect that this Bill must have; it must have the teeth and the power to be able to take action against those who are not able to follow its instruction provisions.

It will be good if that element is enforced in a number of the clauses in it to make sure that not only does it lay the ground for better planning, society and urban centers, but can also

punish those who are not able to follow it and reverse decisions that may be contrary to what our Physical Planning Bill demands in urban settlements.

With those remarks, I believe that this Bill will create some sanity in our physical planning and we will have a better Kenya as a result of it.

I support. Thank you so much.

Hon. Deputy Speaker: Let us have Hon. Njogu Barua.

Hon. Barua: Thank you, Hon. Deputy Speaker for this opportunity to contribute to this Physical Planning Bill of 2015. From the outset I would like to say that I support the Bill, although I also support the sentiments of previous speakers who suggested that there are some various amendments that should be brought up at the Committee Stage for this Bill to be fully representative of our intentions.

I would like to comment on what Hon. Sakuda, the Vice-Chair of the Committee, said about the title of the Bill. I think that the title of the Bill is appropriate; the most important aspect which we must capture in this is the planning aspect rather than the land aspect.

Hon. Deputy Speaker, physical planning determines whether you are going to have order or disorder. This is a very important Bill, which is applicable to all the sectors of our economy. Physical planning, just like environmental planning, is a multidisciplinary activity. It is not something that can be done by one profession. So, this Bill should be enriched further by giving a serious input from participation of other professionals like environmentalists.

As a Member of the Departmental Committee on Environment and Natural Resources in this House, I would suggest that our Committee should go through this Bill and make the relevant additions to strengthen the Bill in as far as environmental considerations are concerned.

Previous speakers have talked about urban planning. The emphasis has been on urban planning. The aspect of physical planning is two pronged. It talks about urban planning and it also refers to what happens in the rural areas. I am happy to note that this Bill also gives the county governments the mandate to give the nation guidance and direction on how to plan our land resources. As it stands now, especially in the central part of Kenya and the surrounding, there is a threat in the waiting which is going to erupt very soon. This is because our sluggish economy, which has been an issue for the 30 to 40 years, most people have been depending on land. So, you will find a situation where a parent has two acres of land and he has six children. When they grow old, the only thing they can give to their children is land. So, a two acre piece of land is subdivided into six as inheritance. Basically, we are increasing the density of population in those areas and the threat to those eco-systems is going to be severe.

Time has come for us to look at the issue courageously and consider the aspect of urbanisation as a way of life. That brings the issues of once you give urbanisation a major emphasis, then the urban centres must be properly planned to accommodate the new immigrants from rural to urban areas.

When you subdivide those pieces of land into small unsustainable units, you are also compromising food security. Those pieces of land will be hardly enough for housing leave alone farming. So, it means that food production will go down and the environment will be much more degraded. So, I would like the Committee to look at those aspects and see how we can have a win-win situation where we do not compromise our environment, agricultural production and we improve our livelihood.

Clause 55 of this Bill talks about development control. It provides that the county government has been given several aspects, namely (a) to (f). One of them is to have control on

buildings and proper and orderly development of an area. On that aspect, if you move from the City Centre towards Kamulu and Lukenya, you cannot call those areas low or high density areas. People are just buying plots and putting up units without any consideration for planning. So, Nairobi City is becoming an expansive slum. If those areas were properly planned and de-zoning done, they would accommodate more Kenyans and stop the excessive expansion of the City to the rural agricultural areas.

The other issue which is considered in the Bill is the issue of open spaces, parks, urban forests and green belts. This has been overlooked over time, and to many Kenyans any open space is to be grabbed. History talks for itself because Uhuru Park and Jeevjee Gardens were on the verge of being grabbed at one time. I am not sure even the old Kenya Bus Station still is still a bus station. Maybe it has been grabbed. We must have an affirmative action to ensure that we have enough and adequate open spaces in towns and our estates, so that we can give breathing space and places for recreation of our children.

The other thing that I would like to talk about is the City of Nairobi in terms of the Nairobi River all the way from Westlands downwards. This country has laws on riparian areas. There are three or four laws that I know of. People are constructing on top of streams in Nairobi. So, the real meaning of riparian areas has gone. So, time has come for us to reclaim those areas, so that we can have our wetland eco-systems.

On the same issue of environment, I would like to be more emphatic on this. The biggest threat to this urban environment is corruption. We have to put NEMA on the spot this time. Before I even go to NEMA, this Bill does not have an explicit reference to environmental impact assessment (EIA), which is mandatory for new development. Currently, people are getting EIA licences for buildings and development plans. One of the requirements is that the proponent of a development must submit an environmental audit report after the first year of occupation. The EIA reports contain a series of mitigation measures that must be considered. Currently, once a plan is approved and the building is erected, follow up in terms of environmental consideration is completely lost. NEMA here plays a central role. As we aspire to achieve the face of a new Kenya, planners must play a central role in this.

When we plan, there are some things that we must consider. One of them is the ecologically fragile eco-system. We must protect our wetlands, forests and also ensure that land is put into the rightful use in this country. Those are the aspects which I suppose should be considered.

The Bill also proposes the establishment of a county physical planning forum. My understanding of a forum is a gathering where people share ideas and make proposals on how they can better their lives. I think we are being mean to ourselves. It is not possible for Members of Parliament to participate in the national forum. However, at the county level, we cannot wish away the participation of the Members of Parliament. So, I would like us to consider introducing an amendment to bring into place the provision that Members of Parliament participate in the county physical planning fora.

I would like to support this Bill with amendments. I conclude that if we fail to plan, we are planning to fail. I support with reservations. Thank you.

Hon. Deputy Speaker: Hon. Lempurkel.

Hon. Lempurkel: Thank you, Hon. Deputy Speaker for giving me this chance to contribute. Being a Member of this Committee, I rise to support this Bill. As a Committee, we have gone through this Bill. It is very important to this country, bearing in mind that all

developed countries like America, Italy and Switzerland did proper planning. We need to do proper planning in our cities, towns and also in rural areas. Fifty two years after Independence, our headquarters, which is Doldol, is not planned. I want to urge Members to read this Bill well.

As a Committee, we have gone through this Bill and have stipulated the functions of the national Government, the Ministry and the county Governments to make sure that this country has proper plans. This is because today in Nairobi, when we have an emergency like an accident we do not have proper roads that can be used by ambulances to take victims to hospitals. It is shocking; you find people dying in an ambulance; this is due to poor planning.

If you go through this Bill very carefully it stipulates clearly how we should plan our towns, cities and rural areas; we have a lot of migration from rural areas to towns. This Bill states clearly that it is the role of country governments to make sure that--- Population is increasing and development increasing in rural areas. Without proper planning we will always have problems in this country; that is the reason a few years ago you saw the Government demolishing structures to pave way for a railway line, a road or another public facility.

It is very important for Members of Parliament to read this Bill. I believe that it is a good Bill that will reverse the injustices committed in the past. We know what happened when planning was being done by local governments, especially at the county level; we had a lot of corruption; they passed their own bylaws, just woke up one day, sub-divided land and allocated plots to themselves. Our Committee has gone round the country, and still has pending cases and people fighting over land. This Bill makes it very clear how county governments will plan urban areas, roads, schools and so on.

This Bill also talks about community land, and states clearly how county governments will plan grazing areas and settlements. As pastoralists we need grazing areas and watering points for our animals. They should plan wildlife corridors. During dry spells wild animals move to high lands and during rainy season they go low lands. So, this Bill should provide for planning of corridors for wild animals and livestock. This is very important, especially in my constituency.

We also have upcoming towns; for example Lonyek and Muwarak need proper planning. Once this Bill is passed and assented to by the President will power to the national Government to do this work speedily. I really believe in devolution.

With those few remarks, I support this Bill

Hon. (Ms) T.G. Ali: Thank you Madam Deputy Speaker. **I stand** to support the Bill; I would want to say that planning is critical, especially for land. This will help us in many ways; many times we have had conflict over land because of land of poor planning and non-involvement of committees. In the past planning has been done with some people in mind. Most of the time, some areas with minerals that belong to communities are grabbed. Many people have identified such land as suitable for grabbing.

Physical has also been affected by greed, expansionist trends; most of the time it has been influenced by rich people, who able to invest, and many of the communities who were supposed to take care of were not assisted. Planning has also been done to accumulate wealth by people who intend to invest in future.

I am happy that this Bill is in the House for debate; I am happy that the Committee concerned has brought it to this House at this time. This Bill will bring a lot of understanding among communities, and Kenyans who love this country. I am happy that this Bill deals with land at the national, the county and village levels. We know that communities are not consulted

in terms of how their land will be used. Most of the time people sit down and plan without knowing what communities feel about their land. I am happy that this Bill is alive to that; consultation in terms of ensuring development will be undertaken, and will involve communities at all levels.

I would also want to say that this Bill will look at physical development plans. In the past we did not have proper guidelines on resolve disputes. This lack of consultation has brought of conflict and affected quite a number of communities. I also know that currently there is an between us and Meru, especially between Isiolo and Meru counties. This is because the boundary demarcation has not been very clear. Everybody thinks that the area in question belongs to them. If proper planning is done through consultations, it will bring to an end conflict over land.

I would also want to say that objective of this Bill is very clear. We have different institutions that will deal with land at different levels. These institutions will listen to issues at the different levels, and that will help communities raise their issues.

Planning in any county or area is important, because helps to avoid some disasters. I know that quite a number of people live in areas that are not really habitable; they may be prone to disasters.

Some of them live closer to disaster prone areas – near rivers and close to areas where there are landslides. Most of the time, because we do not plan properly, we incur a lot of expenses evacuating people to safe places. That takes a lot of money. If we do not do proper land planning, we will have a lot of uses related to grabbing of community land. Looking at the current LAPSSSET project in Isiolo and other parts of this country, people identify those areas since they have maps. In fact, they sit in Nairobi and get title deeds for areas that are critical to communities. Where such projects are being rolled out, beneficiaries are not people from those areas.

I want to commend the Committee for coming up with this comprehensive legislation. It will help this country evade disaster and reduce expenses related to lack of proper planning.

Hon. Deputy Speaker, I support.

Hon. Deputy Speaker: Hon. (Ms.) Sunjeev!

Hon. (Ms.) Sunjeev: Thank you, Hon. Deputy Speaker, for giving me a chance to contribute to this Bill. I would like to congratulate the Committee for working on this Bill.

I have said it before and I would like to say it again, that when Bills like this one are discussed on the Floor of the House of Parliament in any country, people should know that something is happening in that country. There is serious work going on in the economy of that country.

If you compare our country with western countries like the United Kingdom (UK), you will find that buildings in their residential areas are very boring and monotonous because they have similar buildings all over. However, they have plans that serve them for a very long time. They have centuries of planning that have gone into the construction of that great country. We should call a spade a spade. We have lagged behind in physical planning. That is why we have cases like the ones that have been mentioned by the Members who spoke before me. In Westlands, Brookside Drive, there are huge tall buildings that take up road reserves and areas where rivers are flowing. What happens? Heavy rains leave roads constructed a month ago in tatters. We should ask ourselves who is responsible for such poor planning. Without pointing fingers, we are responsible. I am a serious advocate of corruption. If giving bribe is bad, then taking bribe is equally bad. You cannot be safe in any of those aspects.

Hon. Deputy Speaker: Hon. (Ms.) Sunjeev, did I hear you say that you advocate for corruption?

Hon. (Ms.) Sunjeev: No, Hon. Deputy Speaker. I advocate against corruption. Sometimes we speak so fast that some words slip out. Thank you for correcting me.

As I was saying, if you give hand outs and you do not collect the same, then you are a sinner for giving handouts, and a sinner for taking one as well.

The bone of contention in this Bill is in Article 66, which talks about commencement of building where an applicant is granted development permission for building works within five years. A lot of people are making noise because developers say five years is not enough. It takes one year to get a licence from the National Environmental Management Authority (NEMA). People have a lot of problems as far as infrastructure is concerned. The common citizens say that it is better and cheaper to build on a plot than buying a completed house. It is common knowledge that developers sell on off-plan basis cheaper than when they sell the same finished product. A lot of people buy off-plan units. The mortgage and interest rates paid for such developments are quite high. Many people are finding it quite difficult to raise the money.

Five years is contentious. I will compare that to the UK, once again. If you submit a plan to the county, it gets obsolete after five years, and you have to re-apply using your old plan. I understand that people will find it difficult to accept but we have to re-look at the five-year term. Five years is a sufficient period for people to go ahead with their construction.

This Bill seeks to bring some form of consistency in the way construction is done. We do not even have to look far. If you visit Lungalunga slums in Nairobi's Industrial Area, you see that people have built next to the railway. That is quite astonishing. Who gives them permission to build next to the railway? Buildings are brought down but you find people going back to the same area to do construction.

When we talk about construction and developers, experts say that the demand for housing in Kenya is more than the supply. Developers rush to put up buildings to meet the supply. They do so without proper planning. Consequently, they put up buildings which are not up to the required standards. Therefore, we should do proper planning as a country to contribute positively in nation building in this particular sector.

With those remarks, I beg to support.

Hon. Deputy Speaker: Mary Emaase!

Hon. (Ms.) Otucho: Thank you, Hon. Deputy Speaker. I was afraid I may not get a minute to contribute to this important Bill.

From the outset, I want to say that one of the most important things at any level of development is physical planning. It contributes to a more balanced and less wasteful use of land and financial resources. In the past, the focus has been basically on urban development, and particularly the layout of new residential areas and other land use areas. However, this Bill seeks to address physical planning in our rural areas.

Hon. Deputy Speaker: Hon. Mary Emaase, you have a balance of nine minutes, which you will utilize when the Bill comes up for debate next time. I hope that Hon. David Kiaraho and Hon. Moroto will be given priority to contribute when this debate resumes; they may give us some insights into it.

ADJOURNMENT

Hon. Deputy Speaker: Hon. Members, it is now 6.30 p.m. Therefore, the House stands adjourned until Tuesday, 24th November, 2015, at 2.30 p.m.

The House rose at 6.30 p.m.