

NATIONAL ASSEMBLY

OFFICIAL REPORT

Tuesday, 4th August 2015

The House met at 2.30 p.m.

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

PRAYERS

QUORUM

Hon. Deputy Speaker: We do not have quorum. Ring the Quorum Bell.

(The Quorum Bell was rung)

Hon. Members, we are now properly constituted. Let us start our business.

PETITIONS

HIVING OFF OF LAND BELONGING TO CHEBORORWA COMMUNITY

Hon. Deputy Speaker: Hon. Members, we have two petitions. Can we have the one by Hon. Kisang. Is the Hon. Member in the House? I have given you the microphone.

Hon. Kisang: Thank you, Hon. Deputy Speaker.

I, the undersigned, on behalf of members of Chebororwa community in Marakwet West Constituency, draw the attention of the House to the following:-

- (i) THAT, during the colonial period, approximately 2,500 acres of land belonging to Chebororwa community was set aside for establishment of a training centre for farmers from Elgeyo Marakwet, West Pokot, Baringo, Uasin Gishu and Trans Nzoia areas.
- (ii) THAT, the land was the community's sole source of livelihood on which they depended for grazing, cultivation, water and other essential needs including medicinal herbs.
- (iii) THAT, in 1943, the farm was made a vaccination ground and later converted to Chebororwa Farmers Training Centre, now called Chebororwa Agricultural Training Centre (A.T.C).

- (iv) THAT, between 1956 and 1957, the land was fenced, resulting in eviction of locals, demolition of settlements, destruction of property and confiscation of livestock.
- (v) THAT, this condemned residents of Chebororwa to homelessness, abject poverty and psychological trauma due to being forced to live along the dangerous cliffs of Kabelio Hills.
- (vi) THAT, in 1996, the Ministry of Agriculture, Livestock Development and Marketing approved a request from Marakwet District Development Committee to hive off 1,800 acres of the said land for settlement of squatters who had been evicted in 1957 by the Colonial Government.
- (vii) THAT, between 2010 and 2012 the Transition Authority transferred the Chebororwa ATC from Elgeyo Marakwet County to Uasin Gishu County, without consulting residents of Elgeyo Marakwet where it was originally located.
- (viii) THAT, by alienating any community from land, which is the main economic mainstay for the livelihoods of many Kenyans violates their right to a decent life as provided for in Article 43(1) of the Constitution.

(Loud consultations)

Hon. Deputy Speaker: Order, Members! The consultations are far too high. The Member reading the petition on behalf of the petitioners cannot be heard. Let us settle down.

Hon. Kipsang: Thank you, Hon. Deputy Speaker. I will continue from where I left.

- (ix) THAT, promises by both the colonial and independence governments and efforts from local leaders to address the plight of residents by returning their land have never borne any fruit.
- (x) THAT, the matter in respect of which this Petition is raised is not pending before any court of law or constitutional body.

Therefore, your humble petitioners pray that the National Assembly, through the Departmental Committee on Agriculture, Livestock and Co-operatives:-

- a) Investigates the circumstances under which the land was transferred from Elgeyo Marakwet County to Uasin Gishu County, and stops the latter from undertaking any developments on the said land pending settlement of the dispute.
- b) Intervenes to ensure that all land processes and transactions in respect to Chebororwa A.T.C Farm by the Ministry of Lands are suspended forthwith, pending determination of the dispute.
- c) Recommends that the Government ensures that the 1,800 acres set aside for the local community in 1996 reverts to them; and
- d) Makes any other recommendations that the Committee may deem necessary for addressing the plight of the petitioners.

And your petitioners will ever pray.

Thank you.

Hon. Deputy Speaker: Hon. Kisang, I heard you praying to the Departmental Committee on Agriculture, Livestock and Co-operatives but from what you have read, it sounds to me like the petition belongs to the Departmental Committee on Lands. I think it shall be

committed to the Departmental Committee on Lands and if they require anything from the Departmental Committee on Agriculture, Livestock and Co-operatives---

Hon. Chepkong'a: On a point of order, Hon. Deputy Speaker.

Hon. Deputy Speaker: Hon. Chepkong'a are you on a point of order? Is this point of order going to help us decide between the two Committees, or it is going to assist him? Do you want to be assisted, Hon. Kisang?

Hon. Kisang: Hon. Deputy Speaker, I do not think I want Hon. Chepkong'a to assist me because he is an interested party. He is from Uasin Gishu County which we have an issue with.

Hon. Deputy Speaker: Hon. Chepkong'a said it is a point of order and not a point of information. So, I will allow him and I hope it is a point of order.

Hon. Chepkong'a: I thank you, Hon. Deputy Speaker. As you know, I come from Eldoret East District where the land is purportedly said to have been grabbed. As you know, we were not consulted before this petition was brought here. It would have been fair if Hon. Kisang would have informed the Members of Parliament; Hon. Tiren and myself---

(Loud consultations)

Hon. Deputy Speaker: Order! What is out of order? Let me hear what is not in order.

Hon. Chepkong'a: There is something seriously out of order.

Hon. Member: Declare your interest!

Hon. Deputy Speaker: Order! I am waiting to here what is out of order. Can I hear him out, Members?

Hon. Chepkong'a: Hon. Deputy Speaker, I am raising a very serious point of order. The Member of Parliament who has read the petition has not disclosed that he actually lives in Eldoret East District, Uasin Gishu County. He wants the land to go to a place where he does not live. He needs to disclose his interest.

Hon. Members: No!

Hon. Deputy Speaker: How does that help the petitioners?

Hon. Chepkong'a: Hon. Deputy Speaker, he is not making a full disclosure that he is a resident of Eldoret East District, where the land falls. The Hon. Member wants to take away land from Eldoret East District, where he is a resident to a different district.

Hon. Deputy Speaker: Hon. Chepkong'a, you are a very experienced lawyer, but I think that is a point of argument and it has nothing to do with a point of order. Hon. Members, we will disregard the point of order by Hon. Chepkong'a.

From the way you are beginning to react it certainly seems there are some serious issues being raised by the petitioners. Let the matter be referred to the Departmental Committee on Lands. All those arguments that you want to bring forth on the Floor can be taken to the Committee meeting and any information they may require from the Departmental Committee on Agriculture, Livestock and Co-operatives can be provided at that level.

Hon. Members, let us leave the petition at that. We have committed it to the Departmental Committee on Lands. The other petition was from the Member for Bomet East, Hon. Bernard Bett.

AUDITING OF KTDA/SUBSIDIARY COMPANIES

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Hon. B.K. Bett: Thank you, Hon. Deputy Speaker.

I, the undersigned, on behalf of the citizens of Kenya and in particular small-scale tea farmers in Bomet County, draw the attention of the House to the following:-

- (i) THAT, in 1999 the Government introduced a policy paper on tea liberalisation geared towards tea industry reforms to ensure efficiency and better returns to the tea farmers. This led to the amendment of the Tea Act (CAP.433).
- (ii) THAT, in 2000 the Government privatised the Kenya Tea Development Authority (KTDA) giving rise to the Kenya Tea Development Agency.
- (iii) THAT, the Kenya Tea Development Agency is responsible for the management of the small-holder tea sub-sector and in particular the production, processing and marketing of high quality tea and management of tea farming.
- (iv) THAT, the Tea (Amendment) Act, 2011 does not provide for the ownership and administrative aspects of tea factories and/or agencies.

(Loud consultations)

Hon. Deputy Speaker: Order, Hon. Members! I know it is the first day of this week when you are meeting but can we, please find a quiet place to do our consultations? This is because we cannot hear the petition.

Hon. B.K. Bett: Thank you, Hon. Deputy Speaker. I will continue.

- (v) THAT, the Kenya Tea Development Agency (KTDA) appears to be micromanaging the affairs of the agency and has thus failed in its mandate.
- (vi) THAT, a few individuals have conspired to withhold information with regard to shareholding, equity and rights from these small-scale farmers and have fraudulently edged out some farmers by registering their factories without consulting the stakeholders.
- (vii) THAT, the KTDA is allegedly mismanaging the tea factories and tea subsidiary companies leading to low tea prices.
- (viii) THAT, tea farmers no longer enjoy their rights and this has led to declined tea returns.
- (ix) THAT, in 2007, the Government constituted a taskforce to reform the tea sector and boost small-scale farmers' returns. The taskforce recommended the establishment of subsidiary companies with the main membership being farmers. These companies comprised of Greenland Fedha Limited, Majani Insurance Limited, KTDA Power Generating Company Limited, Chai Trading Company Limited, KTDA Management Service Limited, Kenya Tea Packaging Limited and the Tea Research Institute.
- (x) THAT, implementation of these recommendations has led to confusion and uncertainty in the tea sector which needs to be resolved.
- (xi) Noting that the issues in respect of which this petition is made are not pending before any court of law or any constitutional or legal body, your humble petitioners pray that Parliament, through the Departmental Committee on Agriculture, Livestock and Cooperatives:-
 - (a) Recommends an audit of the Kenya Tea Development Agency and the subsidiary companies.

- (b) Establishes how the Kenya Tea Development Agency (KTDA) which is a private agency acquired the rights to tea factories owned by small-scale farmers.
- (c) Establishes the method used in registration and incorporation of farmers factories.
- (d) Reviews/ repeals any legislation in regard to the tea sector.

And your petitioners will ever pray.

Hon. Deputy Speaker: Thank you, Hon. B.K. Bett. I believe that, that is rightfully in the Departmental Committee on Agriculture, Livestock and Cooperatives. You will follow due process. You know the rules on how long you are supposed to stay with a petition. Those are the only petitions I had.

Before we move on to the next Order, I can see that we have many guests in our galleries. In the Speaker's Gallery, we have students from Kambau Mixed Day Secondary School from Meru County and Segero Adventist Secondary School from Uasin Gishu County.

In the Public Gallery, we have Our Lady of Mercy, Kebirigo Boarding Primary School from Nyamira County, the Sunrise Academy from Elgeyo Marakwet County, Father Lelei Toror Kaiboi from Nandi County and Bethel Primary School from Kericho County.

You are all welcome to the National Assembly.

Next Order!

PAPERS LAID

Hon. A.B. Duale: Thank you, Hon. Deputy Speaker.

I beg to lay the following Papers on the Table of the House:-

The Human Resource Management Professionals Election of the Council Regulations, 2015 and the Explanatory Memoranda.

The Report of the Auditor-General on the Financial Statements of Kenya Pipeline Company Limited for the year ending 30th June, 2014, and the Certificate therein.

The Report of the Audit-General on the Financial Statements of the Kenya Meat Commission for the year ending 30th June, 2014, and the Certificate therein.

The Report of the Auditor-General on the Financial Statements of the Retirement Benefits Authority for the year ending 30th June, 2014, and the Certificate therein.

The Report of the Auditor-General on the Financial Statements of Tourism Fund for the year ending 30th June, 2014, and the Certificate therein.

The Report of the Auditor-General on the Financial Statements of Tana Water Service Board for the year ending 30th June, 2014, and the Certificate therein and,

The Report of the Auditor-General on the Financial Statements of the Stores and Services Fund under the Ministry of Lands, Housing and Urban Development for the year ending 30th June, 2013, and the Certificate therein.

Thank you, Hon. Deputy Speaker.

(Loud consultations)

Hon. Deputy Speaker: Order, Members! Hon. Members, I do not want to result to sending somebody out of the Chamber. However, this level of consultation is going to force me to do that. Please let us respect this Chamber. Find somewhere where you can consult quietly.

Just for the record, the Human Resource Management Professionals Election of the Council Regulations, 2015 will be committed to the Committee on Delegated Legislation.

The Papers on the Kenya Pipeline, the KMC, Retirement Benefits Authority, Tourism Fund and Tana Water Service Board will be referred to the PIC. The Paper on the Ministry of Lands will be referred to the PAC.

Let us move on to the next Order!

Hon. Kanini Kega: On a point of order, Hon. Deputy Speaker.

Hon. Deputy Speaker: Hon. Kanini Kega, what is your point of order?

Hon. Kanini Kega: Thank you, Hon. Deputy Speaker. Last week on Tuesday, I presented a Motion under Standing Order No.87. Unfortunately, the Motion has not found its way into the House and when I look at today's Order Paper, it is not there. It was a Motion to discuss the conduct of an Hon. Member under Standing Order No.87.

An Hon. Member: Which Member?

Hon. Kanini Kega: The Member for Garissa Township, Hon. Aden Duale. Unfortunately, I have not seen it on the Order Paper. I want an assurance that it is not lost somewhere because I made an inquiry in all the offices today. Unfortunately, I did not find it. I want the assurance of this House through your Office, Hon. Deputy Speaker, that the Motion will find its way to this House very soon.

Thank you, Hon. Deputy Speaker.

Hon. Deputy Speaker: That is okay, Hon. Kanini Kega. I believe this is a House of rules and I can assure you that I have not seen it in the Office of the Speaker. Should it find its way to the Office of the Speaker, it will be dealt with in accordance with our rules. That is an assurance that it has not reached us.

(Loud consultation)

Hon. Members, let us not get excited. The Office of the Speaker does not have a decision on any Motion. If it meets all the rules, it shall find itself on the Floor of the House.

Hon. Members, can we move to the next Order?

Hon. Members: Yes.

THIRD READING

THE TRANSFER OF PRISONERS BILL

Hon. Deputy Speaker: Order, Hon. Members! Hon. Mwangangi, please resume your seat.

Hon. Members, we have several Bills and Motions that were just left without putting of the Question. Let us be patient so that we can dispense of them. I now want to put the Question.

(Question put and agreed to)

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

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Hon. Deputy Speaker: Let us move on to the next Order.

MOTIONS

RATIFICATION OF THREE EAST AFRICAN PROTOCOLS ON DEFENCE MATTERS

THAT, this House adopts the Report of the Departmental Committee on Defence and Foreign Relations on a Protocol, Pact and Agreement relating to Defence Affairs, laid on the Table of the House on Tuesday, 7th July 2015, and pursuant to Section 8 of the Treaty Making and Ratification Act, 2012, approves the ratification of:-

- (i) The East African Community Protocol on Cooperation in Defence Affairs;
- (ii) The Mutual Defence Pact between the Republic of Kenya, Uganda and Rwanda; and,
- (iii) The Agreement on the Establishment of the Eastern Africa Standby Force.

(Hon. Gethenji on 9.7.2015)

(Resumption of Debate interrupted on 30.7.2015 – Morning Sitting)

(Several Hon. Members walked on the aisle)

Hon. Deputy Speaker: Hon. Members, can those coming in do it quickly? We have several Questions to put.

(Hon. Members took their seats)

(Question put and agreed to)

Let us move on to the next Order.

RATIFICATION OF BILATERAL AIR SERVICES AGREEMENTS

THAT, this House adopts the Report of the Departmental Committee on Transport, Public Works and Housing on its consideration of the Bilateral Air Services agreements between the Government of the Republic of Kenya and the Governments of the Republics of Ghana and Niger, laid on the Table of the House on Thursday, 18th June 2015 and, pursuant to Section 8 of the Treaty Making and Ratification Act, 2012, approves the ratification of the Bilateral Air Services agreements between the Government of the Republic of Kenya and the Governments of the Republics of Ghana and Niger.

(Eng. Mahamud on 18.6.2015)

(Resumption of Debate interrupted on 30.7.2015 – Morning Sitting)

Hon. Deputy Speaker: Again, Hon. Members, please settle down. I said we have several Questions to put.

(Hon. Oyoo walked in the aisle)

Hon. K'Oyoo, please take your seat.
Order, Hon. Members! Again, I want to put the Question.

(Question put and agreed to)

ADOPTION OF REPORT ON AIRCRAFT HIRE FOR DEPUTY PRESIDENT

THAT, this House adopts the Report of the Public Accounts Committee on the Hire of an Aircraft for the Deputy President for a Tour of Four African Nations in May, 2013, laid on the Table of the House on Wednesday, 23rd April 2014.

(Hon.(Eng.) Gumbo on 30.7.2015)

(Resumption of Debate interrupted on 30.7.2015 – Morning Sitting)

(Loud consultations)

Hon. Members, I do not think anybody is a new Member not to know how to behave when Hon. Deputy Speaker is upstanding.

(Question put and negatived)

(Hon. Ng'ongo and Hon. Wandayi stood up in their places.)

Obviously, Hon. Members, we do not have the numbers to call a Division. So, the Report falls.
Next Order!

ADOPTION OF SESSIONAL PAPER ON NATIONAL PRODUCTIVITY POLICY

THAT, this House adopts Sessional Paper No.3 of 2013 on the National Productivity Policy, laid on the Table of the House on Tuesday, 17th July 2013.

(Hon. (Ms.) T.G. Ali on 30.7.2015)

(Resumption of Debate interrupted on 30.7.2015 – Afternoon Sitting)

Hon. Deputy Speaker: Hon. Members, we are still putting Questions.

(Question put and agreed to)

Let us go on.

ADOPTION OF SESSIONAL PAPER ON
EMPLOYMENT POLICY AND STRATEGY

THAT, this House adopts Sessional Paper No.4 of 2013 on the Employment Policy and Strategy for Kenya, laid on the Table of the House on Tuesday, 17th September 2013.

(Hon. (Ms.) T.G. Ali on 30.7.2015)

(Resumption of Debate interrupted on 30.7.2015)

(Several Hon. Members stood in their places)

Hon. Deputy Speaker: We have not finished the exercise. Can Hon. Members get seated so that we can finish this exercise?

(Question put and agreed to)

ADOPTION OF SESSIONAL PAPER ON NATIONAL
COHESION AND INTEGRATION

THAT, this House adopts Sessional Paper No.9 of 2013 on National Cohesion and Integration, laid on the Table of the House on Thursday, 31st July 2014.

(Hon. Sakaja on 30.7.2015)

(Resumption of Debate interrupted on 30.7.2015)

(Question put and agreed to)

Hon. Ng'ongo: On a point of order, Hon. Deputy Speaker.

Hon. Deputy Speaker: What is your point of order, Hon. Mbadi?

Hon. Ng'ongo: Hon. Deputy Speaker, I am asking for your ruling and direction on the conduct of committee members. This House forms committees to do business on its behalf. Seriousness needs to be shown by committee members, especially when a Report of a committee

which is adopted by a majority of the Members of that committee is brought to the House, and the Members of that committee either fail to attend House sitting or those who attend do not want to support the Report. This is hypocrisy of the highest order.

It is a shame that a Report of the Public Accounts Committee (PAC) was adopted by a majority of the Committee Members – in fact, there was only one member out of over 27 members who dissented – and now when it comes to voting on that Report in the House, the membership of that Committee is either absent or those who are here do not even want to support that Report. This is a matter that needs to be taken seriously otherwise we are making a mockery of committees of this House.

Hon. Sakaja: On a point of order, Hon. Deputy Speaker.

Hon. Deputy Speaker: What is your point of order, Hon. Sakakaja?

Hon. Sakaja: Hon. Deputy Speaker, as much as I understand where my colleague on the other side is coming from on this matter, he has been in this House longer than me. However, Standing Orders stipulate that once a Committee has laid a Report in the House, it becomes the property of the entire House and it is not a property of the Committee anymore.

He might have a different interest on the issue of the ‘Hustler’s Jet’, but once a Committee has tabled its Report, the Report is a property of the House. The Report has been debated. That is why the entire House has to take a vote. The House has almost unanimously voted no to that Report. So, you should not have sour grapes. It has failed. We should move to the next Order. Members of the Committee have the liberty to change their minds on the Floor of the House.

Hon. Deputy Speaker: Order! Your point has been made. Can we listen to Hon. Makali?

Hon. Mulu: Thank you, Hon. Deputy Speaker. With all due respect to Hon. Sakaja, the Chairperson of The National Alliance (TNA) party, the issue being raised by Hon. Mbadi is totally different from what he is commenting on. What we are saying is this: If you are a Member of a Committee, you have sat in many sessions of that Committee deliberating on an issue, you have been paid the Committee’s allowance and you go against your own Report which you have said is the right report, we need to be guided by the Chair on how we deal with such a situation. It is really bad when we see members of the same Committee voting against a report. I would not mind myself voting against it because I am just a Member of this House.

Thank you, Hon. Deputy Speaker.

Hon. Deputy Speaker: Order, Members! We should not belabour the point. Hon. Pukose, do you have something different to add to this argument? We have heard the arguments of both sides.

Hon. (Dr.) Pukose: Hon. Deputy Speaker, when the Question was put, the choices were ‘Nay’ and ‘Aye’. I do not see any Member of the Committee who voted against the Report because there is no record to that effect.

Secondly, what Standing Order compels a Member to vote in a certain way? I am yet to come across any.

Hon. Deputy Speaker: Hon. Wandayi, do you want to say something different from what has been said or you just want to reiterate what has been said?

Hon. Wandayi: Hon. Deputy Speaker, I agree with my friend and colleague, Hon. Mbadi, who has raised this matter. It is true that a Member could change his or her mind.

However, the Question is: What necessitates a mass change of mind? What would have caused this change of mind between the time the Committee Members voted on the Report and now when they are voting on the Floor of this House? This House is under the glare of the public. The public is keenly watching the activities of this House. Members are on the spotlight. It is not right for us to assume that a whole Committee can change its mind without regard to the reasons why they are changing their minds.

This Report on the 'Hustler's Jet' is very important because it goes to the heart of corruption in this country. If we cannot get to the bottom of the reason why Members can decide to change their minds *en masse*, then we shall be condoning corruption. That is impunity. I suggest that you make a definite ruling on this matter. If we do not do so, we shall be setting a precedent which will come to haunt this House.

Hon. Deputy Speaker: Your point has been made. Let us hear a lady's voice. Hon. Kajuju.

Hon. (Ms.) Kajuju: Hon. Deputy Speaker, under Standing Order No. 1, this is a House guided by rules. We have already adopted the Motion appearing at Order No. 14 as per this Order Paper. I do not know what exactly the Orange Democratic Movement (ODM) Chairperson has issues with. However, we need to know what Standing Orders they are using to raise the issues they are raising or to compel a Member to vote in a certain way after a Committee has adopted a Report. We need your guidance, Hon. Deputy Speaker.

(Loud consultations)

Hon. Deputy Speaker: Order, Members! Order, Hon. Ken Obura! Hon. Members, the point that has been made by Hon. Kajuju holds water. What we can say in this matter is that the horse has bolted; we have dispensed of with the matter. The Speaker has no vote. The votes are with the Members and the House is the final deciding place. So, once a matter has been decided by this House, we go by that decision.

As to the conscience of Members of a committee who sign and change their minds afterwards, that is a matter that can be canvassed at the committee level. If you do not agree with a report, show your disagreement and let that be appended in the report so that we do not get into the situation that we find ourselves in. However, it is upon each Member to make a decision based on their conscience on how they vote on any matter that comes before this House.

I so direct. Thank you.

Can we move on?

Hon. Members, remember the rules that we agreed upon. The Chairperson of the Departmental Committee on Labour and Social Welfare has 10 minutes, all other Members have five minutes each and debate on the Sessional Paper will take one hour.

The Hon. Tiya Galgalo.

ADOPTION OF SESSIONAL PAPER ON
NATIONAL SOCIAL PROTECTION POLICY

Hon. (Ms.) T.G. Ali: Hon. Deputy Speaker, I beg to move the following Motion:-

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THAT, this House adopts Sessional Paper No.2 of 2014 on the National Social Protection Policy, laid on the Table of the House on Tuesday, 17th June, 2014.

I want to take this opportunity to give the background of this policy paper. Social protection has been implemented in Kenya for many years in various forms that include non-contributory and contributory schemes. These schemes are given impetus by the 2006 African Union (AU) meeting in Livingston, Zimbabwe, following which the Government of Kenya initiated a wide consultative process to formulate a national social protection framework. Through this process, the Government has identified several social protection actions in areas of social assistance, social security and health insurance.

The Constitution of Kenya 2010 contains a comprehensive Bill of Rights. Article 43 of the Constitution guarantees all Kenyans economic, social and cultural rights. Article 43(3) of the Constitution mandates the State to provide appropriate social security to persons who are unable to support themselves and their dependants. This right is closely linked to other social protection rights which include the right to health, human dignity, reasonable working conditions and access to justice.

Hon. Deputy Speaker, Article 21 establishes the progressive realisation of social and economic rights and obligates the State to observe, respect, protect, promote and fulfil the rights and fundamental freedoms in the Bill of Rights.

The Constitution also emphasizes the direct application of international agreements ratified by Kenya. This includes the Universal Declaration of Human Rights 1948 which recognises social protection as a fundamental human right for all citizens of the world. This is also reinforced by many UN and ILO conventions as well as regional agreements including the African Charter on Human Rights, People's Rights 1981 and the East African Community Common Market Protocol.

The UN and the ILO protection law initiates SPF and guarantees universal maximum package for social transfers of services within a life cycle approach to social protection. Within this, Vision 2030 envisages an equitable society to which social protection can contribute to. For this purpose, the Social Protection Policy is defined as policy actions including legislation measures that enhance capacity and opportunity for the poor and the vulnerable to improve and sustain their livelihoods and welfare that enables income earners and their dependants to maintain a reasonable level of income through decent work, and that ensures access to affordable health, social security and social services.

The Committee also looked at the analysis of the National Social Protection Policy. The following are some of the things we noted. The overriding goal of social protection is to ensure that all Kenyans live in dignity and exploit their human capacity for better and for social economic development.

To attain this, the following broad objectives will be pursued:

- a) Protecting individual households from impact of adverse shocks to their consumption that is capable of pushing them into deep poverty.
- b) Supporting individuals and households to manage those shocks in a way that does not trap them in poverty by reducing their exclusion and strengthening their ability to graduate from social assistance to become financially stable and sufficient.

- c) Cushioning workers and their dependants from consequences of income threatening risks such as sickness, poverty, health injuries at work as well as threat of poverty in their post-employment life.
- d) Looking at promoting key investments in human capital and fiscal assets by poor household and individuals and ensure resilience in the middle term that will break the intergenerational cycle of poverty.
- e) Promoting synergies and integration among social protection providers as well as positive interaction among stakeholders for optimum functioning of this policy.

The Social Protection Policy is also based on the principle of leadership and integrity and also good governance, evidence-based programming, gender mainstreaming in assessing the implication of both males and females and any other planned action. It will also help in equality and social justice, improve enhancement to common standards, public participation, affordability and sustainability of benefits and flexibility of response to changing circumstances.

The Committee observed the following during the hearing of this policy:

- (i) The Policy should provide strengthened transparency and accountability in social interventions.
- (ii) There is need to incorporate the powers of the Council to the Bill.
- (iii) There is need to review the legislation and policy in social protection.
- (iv) There is need to carry out regular monitoring and evaluation and reporting of social protection programmes and interventions.
- (v) There is need to harmonise data, for example, beneficiaries, despite differences in implementing agencies.
- (vi) The Ministry seeks the formation of the National Protection Council that will bring together key stakeholders in the area of social protection.

The Committee made the following recommendations: The National Assembly adopts Sessional Paper No.2 of 2014 on the National Protection Policy.

The Ministry of Labour, Social Security and Services should strengthen transparency and accountability in social protection interventions. This will be through initiatives such as single registry, implementation of standardization targeting tools, common monitoring and evaluation system, common complaints and grievances handling system and various committees.

The Ministry of Labour, Social Security and Services should ensure that the powers of the Council are incorporated in the proposed Bill.

I beg to move and ask Hon. Gatobu to second.

Hon. Deputy Speaker: Yes, Hon. Gatobu.

Hon. Kinoti: Thank you, Hon. Deputy Speaker. I rise to strongly second and also support Sessional Paper No.2 of 2014 that has been moved by the Chair of the Departmental Committee on Labour and Social Welfare. I am also a Member of that Committee.

I wish to start by first thanking this honourable House since as you observed last week, it is now focusing on the real issues that regard Kenyans. One of the strongest statements by the son of this soil, the President of the United States, is that the solution to Kenyan problems lies with Kenyans themselves.

From the Departmental Committee on Labour and Social Welfare, we propose to the House to adopt this Sessional Paper which seeks to look at the most vulnerable people in this

country: the aged, orphans, widows, retirees and very many people of this country, who unless we intervene as a Government, stand not to exist or lead dignified lives in this country.

I wish to emphasise some of the key issues that the Chair has noted. One of them is Article 43 of the Constitution and the Bill of Rights that we emphasised very much when we were passing the 2010 Constitution. By passing the 2010 Constitution, we signed a promise to the people of this country that they would lead a dignified life in their country.

One of the ways is by having a stable economic life of being able to access basic commodities like food, good shelter and clothing. It does not matter the state of their bodies whether they are disabled, old-aged or whatever form of challenges they face. So, by passing this Sessional Paper, we are bringing this country much closer to achieving that.

My appeal to my hon. colleagues is that this system may not work very well if, as leaders, we do not support it. When we first interacted with the Ministry of Labour and Social Security and Services, many Members of our Committee were in shock that there were beneficiaries to the tune of thousands in our constituencies who were getting money for the elderly that we did not know.

As I second this Sessional Paper, I also appeal to Hon. Members to exercise more oversight role in their respective constituencies to see that the social support committees that we formed in our constituencies are really doing the right thing. We may be sending millions of shillings to our constituencies to support the old and vulnerable people in the society, but the money does not get there. The same sessional paper has proposed a wider oversight through the formation of the Social Protection Council. This is no longer a function of the Ministry of Labour, Social Security and Services, but a function of an autonomous body which is supposed to oversee how this cash transfer is happening.

As I conclude, I want to note that we have promised the people of this country many things. In the Constitution of Kenya, 2010, we promised the children of this country the right to free and compulsory education, which is not happening.

In the last financial year, bursary funds from the Ministry of Education, Science and Technology have not reached our constituencies. We promised the people of this country the right to food, proper shelter and healthcare. We have no option but to fulfil these promises. As the Committee on Labour and Social Welfare, we are edging closer to this through Sessional Paper No.2 of 2014, but as a country, we must think how we can grow our economy.

Soon, many Kenyans will be moving to the Supreme Court to seek justice on whether the Government is fulfilling the promises it made to the people of Kenya through the Constitution of Kenya, 2010. The only way we can do that is by expanding our economy, so that we can be strong enough to cater for the cost of the promises that we made.

I beg to second Sessional Paper No.2 of 2014.

(Question proposed)

Hon. Deputy Speaker: Hon. Nyikal.

Hon. (Prof.) Nyikal: Thank you, Hon. Deputy Speaker for giving me this opportunity. I am a very happy person today as you may know. I must congratulate the Committee and the Ministry of Labour, Social Security and Services for completing the work that we started in 2007

following the Lusaka Meeting and Kenya being party to the African Charter on Human Rights and the International Human Rights Charter of 1948.

I know many Members may not realise, but this is probably the most important sessional paper that will be passed in this House following the famous one of the 60s on African Socialism and its application to development. For the first time, we are adopting a sessional paper that looks into the welfare of the poor and the vulnerable people in our country.

“Social protection” is defined as any measures, whether constitutional as in Article 43 of our Constitution, legal or administrative, that support the poor, the vulnerable, the sick, the unemployed and accords orphans decent life. This is what distinguishes the human society from the animal society.

This country should adopt a socio-economic policy like the one in the Nordic countries unlike the one in the United States where one person is for himself and God for us all. We should adopt a policy that ensures that we take care of all our people who need to be supported. Even those who are employed, sometimes they have incomes that cannot support decent living. This policy seeks to ensure that even these people are supported in a way.

Last week when I was in Vancouver, British Colombia, there was a big argument where children are being supported regardless of the incomes of their families just to ensure that they have a decent living. That is where we should be going. This has been going on in this country for a long time, but in a scattered way.

There is social assistance like in the cash transfers where people are given cash or food. There are contributory schemes like the NSSF and other insurances that have been going on for a long time. We should have a social health insurance that covers everybody like what we have been fighting hard to get. We nearly got one in 2005. The Bill passed through here, but it did not get assent.

The elderly should lead decent life. These are people who get into circumstances like catastrophic illnesses and fire that wipe out their means and immediately make them vulnerable. We are putting in place a policy that will ensure that these people lead decent life.

We have been having cash transfers for the elderly, the disabled, orphans and vulnerable children. We have pension schemes too.

Hon. Deputy Speaker: Your time is up!

Hon. (Prof.) Nyikal: Hon. Deputy Speaker, this is so dear to me and I beg you to just give me two more minutes.

Hon. Deputy Speaker: Having been the Permanent Secretary in that Ministry when this was all happening, I give you two more minutes.

Hon. (Prof.) Nyikal: Hon. Deputy Speaker, we have the workmen’s compensation, bursaries, school-feeding programme, work for food, the *Kazi kwa Vijana* and the agricultural inputs, which are part of this social protection. This has been going on without a policy and a legal framework.

There has been an argument, particularly with the cash transfers, that we are giving handouts. I want to assure my colleagues here that the cash transfers are economic investments and the people who benefit most are business people in the areas where the transfers take place.

In Brazil, this process, in a large-scale, took 16 million out of poverty. At the end of President Lula’s term, the people came out in numbers to ask him to go for a third term. Of

course, he was not in Africa and he refused to take a third term. Just because of social protection, 16 million people were taken out of poverty. For every dollar that is given as cash transfer, we get back IS\$1.8. I cannot forget an old lady in Mombasa who told us that once this money came, she was able to till her land which had not been tilled for 10 years and now she has enough food for a whole year. The money she was given is supporting her.

We also have supportive programmes, so that people do not stay on these cash transfers forever. If we link this with the Women Enterprise Fund, the Youth Fund, the Uwezo Fund and the agricultural subsidises, we will support these people at the hour of need, but they can come out through these processes. We can manage to finance it because we have contributors and the Exchequer, where we should look at. I cannot ask for more time, but I am happy that we are putting in place a policy to make sure that we have a legal framework to deal with social protection.

Hon. Deputy Speaker, you tried with the Social assistance Bill, which became an Act and we worked on it with you. The Hon. Members should take this seriously. If we do this, Kenya will be a different society. Even corruption will end. Most of us are corrupt because we are afraid of poverty in old age.

I support the adoption of this sessional paper.

Hon. Deputy Speaker: Hon. Nyikal, you have made your point. Yes, Hon. Pukose.

Hon. (Dr.) Pukose: Hon. Deputy Speaker, at the outset, I support this sessional paper. This is a very key sessional paper. It is the right way to go. Just as Hon. Nyikal has put it, we have been doing these cash transfers to the elderly and performing other functions without a legal framework. This is timely for this House. This money has actually changed a lot of lives of the elderly people in the rural areas since it was introduced. It is not enough and it has not covered all the elderly people.

In some areas, for example in my constituency, all the elderly people and even some as old as 90, have not been assisted. It has not been adequately addressed. However, if this House takes it seriously in the budget-making process and ensures that we give adequate funding to these groups, all those who are more than 65 years old will be taken care of all over the country. This is going to change many things.

In addition to this, one of the other key areas that we need to look at is the issue of universal healthcare. When we do our budgeting, we provide money through the Ministry of Health. For example, in the last financial year, the Ministry of Health provided the National Hospital Insurance Fund (NHIF) with about Kshs500 million for social protection. Out of that money, about Kshs319 million is what was absorbed. The remaining balance was not taken. That actually makes it very wanting.

Again, we need to look at the framework in which this money can be accessed. This is because one of the difficulties that came in was how NHIF was going to recruit these people. They started by themselves going to recruit instead of using the data that is already with the Ministry of Labour, Social Security and Services, which will just absorb that and look at the numbers that are there. That way, each and every person would be on the NHIF cover. Therefore, these elderly people would also access good healthcare services without necessarily spending the money that they have been given for their own benefits to take care of their health. That is an area that the Government needs to address seriously because when these people were given

money, they ended up spending it on their health. When you go to the rural areas where this money has been given, you will realise that it has changed lifestyles of the elderly people in our society because they are able to access decent living and put decent meals on their tables. Food and health go hand in hand. This is because if somebody is not well fed, then in addition to having nutritional deficiencies, that person could also be subjected to other ailments.

There are many people going into old age in the counties where we have this social protection. If you look at the population strata, you will find that majority of the population are within the elderly bracket. However, if you look at our setup, you will find that the lifespan is about 55 years for males and 58 to 60 years for females. If you go to the developed world, you will find people live to up to 90 or 100 years. Majority of the people there are over 80 years. This is because of the provision of the social protection within their setup.

To me, this is a timely sessional paper. We need to support it and it should not be at the level in which it is. It must go beyond that so that at the stage of implementation, we make sure that it is implemented and those who give out whatever services must also minimise corruption. This is because when corruption is eliminated, any coin that is meant for the development of the social protection will either go to the Uwezo Fund or cash transfers.

With those few remarks, I support this sessional paper.

Hon. Deputy Speaker: Thank you. Before I move to Hon. Michael Onyura, I recognise the presence of visitors. In the Public Gallery, we have Maduwa Primary School from Budalangi Constituency, Busia County; Mbukuni Primary School from Chuka/Igambang'ombe Constituency, Tharaka Nithi County and Kiayata Primary School from Kiharu Constituency, Muranga County.

In the Speaker's Gallery, we have Kiini Secondary School from Maara Constituency, Tharaka Nithi County and, St. Thomas ACK Church from Kiambu County

You are all welcome to the National Assembly.

Hon. Onyura, you can now make your contribution.

Hon. Onyura: Thank you very much, Hon. Deputy Speaker. I rise to support Sessional Paper No.2 on social support. I agree with Hon. Nyikal that this is a very important Paper because, among other things, it is in fulfilment of the constitutional provision that gives every citizen the right to a decent living, the right to live in dignity and the right not to suffer unnecessarily from want. I also noticed the observations by the Committee that it is in fulfilment of certain international provisions both at the UN level and even at the regional level. This is a good step towards fulfilling those areas where we have promised our population. I know that there have been certain initiatives towards this. The one that comes out very obviously at the top has been this one of cash transfers, where the elderly are being supported by being given some funds to keep them going. It is a very good programme. The only problem is the way it is being run. It has not been done transparently. This is because we are asked many questions.

When we go to meet our voters and particularly the elderly, they actually wonder what criterion is being used. Why is it that my neighbour who has the same things I have, including the age and perhaps I am even older than him, gets the cash transfer and I do not? There is need for awareness and civic education on how exactly this should be done.

Personally, I have been thinking that if the funds are not enough and we cannot take care of everybody who is 65 years old and above, what we should then do is just go by age. I think

that will be a very clear criterion and there will be no much argument. We should take the census of all the old people in our communities or in the areas that are being covered starting with the oldest. That way, everybody will know that when they get to certain age, they will definitely get that support. At the moment, it is not that clear and it causes a lot of concern. Because the criterion is not that clear, it has opened room for corruption.

Another area that should be focussed on is that of food security. What needs to be done is not just provide food rations to our people but try to support them to produce this food themselves. This can be done more by providing affordable inputs.

In the last season, we provided inputs particularly fertiliser and seeds to our people. We are expecting a very good harvest. That is one way. As they rightly say, the idea is to keep promoting people so that they are not that dependent and they can do some of the things on their own.

The principle behind this particular programme and what is recommended here is that all of us should be our brothers and sisters keepers. I also want to suggest very strongly that the issue of universal healthcare should be taken seriously. I have no doubt that a properly run and programmed NHIF can do this.

With those comments, I support the Motion.

Hon. (Ms.) Musyoka: Thank you, Hon. Deputy Speaker. I rise to support this Sessional Paper on National Social Protection Policy. This is certainly a very important policy. I agree with all the speakers before me that there is need to have this policy in place, to ensure that the less fortunate in the society are well protected.

The special groups that require social security include Orphans and Vulnerable Children (OVC), the vulnerable groups such as the elderly who have no one to take care of them, and the severely disabled persons who are in our communities and, of course, the unemployed youth who are many. I would urge that we put more effort and resources on the issue of social services because it is very important.

Our country is not among the richest countries. In fact, according to the parameters that are shown at the back of the sessional paper, our poverty level is 46.7 per cent, which is not good.

Our GDP is 2.6 per cent and it has not improved much since Independence. Since we are a poor country, it means that our vulnerable groups are many and so are the needy persons. So, we should have a policy in place that takes care of those groups of people. At the moment, there are programmes that are going on such as the cash transfers, but they do not cover everybody who deserves to have these cash transfers.

We also have the OVC programmes which need to be strengthened. At the moment, as I look around, I find that the NGOs are the ones which mainly take care of the children who are orphaned. We need the Government to have in place a system that takes care of vulnerable groups.

As the Constitution says, everybody has a right to live well and to live freely. It is, therefore, important that we have adequate resources put aside, so that these groups of people can get support.

At the moment, the needy are many and a comprehensive framework is necessary so that we set aside resources and have a programme in place that will take care of all these people. This will get us out of the handout mentality.

We also need to increase our GDP. We need to have ways and means of increasing production in goods and services in the country so that we improve our economy and take care of these people as it happens in other countries that we talk about.

In Argentina, there is a good programme that covers 85 per cent of their vulnerable groups. The implementation policy there ensures that children and adolescents in that category receive certain amounts of money every month. The working age that are unemployed, as they look for jobs, also get some support. There is also a programme which takes care of the youth who are out of school. There is a good after-retirement plan for the old and every other person. Eighty Five per cent is a good figure. We should aim towards getting there. I do not know what figure we have currently but we are not doing as much as we should.

Hon. Deputy Speaker, thank you very much. I support this.

Hon. Korir: Thank you, Hon. Deputy Speaker for giving me an opportunity to support this sessional paper and make my contribution not only as a Member of Parliament, but also as a Member of the Committee responsible for social welfare.

The country is making steps towards the right direction in taking care of vulnerable people in the society. A country that does not move with the below average people is a country that will never go far. As a country, we need to make sure that as the economy grows, every citizen of this country gets to grow with it, otherwise we will have a small percentage of people going forward and a majority of them remaining behind. With that, we are doomed to fail.

We have talked about the cash transfer of the elderly people. I think it is a good move, but we also need to look at it and see how we can help these people become better. It is very unfortunate to give Kshs2,000 every month to somebody because when they get sick they cannot afford to pay their hospital bills. They will still come to you as a Member of Parliament, or they will go around begging for money. We need to restructure this so that whosoever benefits from the cash transfer for the elderly and orphans should also be a beneficiary of universal healthcare. If they are given Kshs2,000 some of that money should be guaranteed so that it goes towards getting them a medical insurance so that when they get sick they go to hospital because they have a medical insurance. Otherwise we will be giving people handouts of Kshs2,000, they use it to drink or use it for their own needs and will not have money to pay hospital bills when they fall sick. At the end of the day, we will not be helping them.

We know there are two things that people need which are not a favour from the Government, but are rights as enshrined in our Constitution. These are providing healthcare to our people, education and food. If we cannot provide those things to our people, then as a country, we will be failing. But we need to look at better ways of helping these people. If the Government is giving these people money, it needs to know what these people need.

As Members of Parliament, before our time comes to an end, we need to enact good laws that ensure that everybody in this country has a life insurance, health insurance and education insurance, so that their children can go to school. If we do those things, then we will be moving this country forward.

When it comes to agriculture, this sessional paper talks about it as being the mainstay of our economy. I grew up in Cherengany. I have never seen Cherengany failing to produce maize. I have never seen Cherengany and Trans-Nzoia failing to produce enough maize to feed this country. But what I am seeing now is that every time at the end of the year, people have problems in selling their crops. That is the problem we have in this country. Nobody should lie to us that we are not producing enough food; we are producing more than enough, but getting the market is the problem. It is very disappointing. In fact, every farmer now wants to grow different crops. It is very unfortunate that we produce enough---

If you go to Trans-Nzoia and Members of Parliament from Trans-Nzoia will agree with me, you will see beautiful maize. However, I fear that at the end of the year, the Government will not have set aside enough money and storage facilities to make sure that when harvesting time reaches the farmers will be covered. The places that are suffering and have no food like North Eastern, Turkana and other areas can be given food from other areas in this country. Thank you, Hon. Deputy Speaker.

Hon. Deputy Speaker: Hon. David Gikaria.

Hon. Gikaria: Thank you, Hon. Deputy Speaker for giving me this opportunity to rise and also give my input in the sessional paper on National Social Protection Policy. Article 43 is very clear. It is a constitutional right for this Government to give social security to Kenyans.

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

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

We were in a committee today in the morning and we were talking on how we are going to actualise Article 100 which talks about women, youth, persons with disabilities and the marginalised communities. This sessional paper is very important. We should implement the recommendations and observations of the Committee. One of them is transparency and accountability in terms of social interventions. Without addressing most of these issues of accountability, we will be doing a lot of zero work where most of the money will be budgeted for the vulnerable groups, but it will never reach them. It is important to critically look at the transparency and accountability aspect of the social protection interventions. Without doing that much, then we will just be going round and trying to---

Secondly, it is also important to address the issue of Internally Displaced People (IDPs), which is a group that emerged after the political wars that were there in the past. You will find out that much as they have been given some farms and a small token to go and start life, this is another group that also needs to be considered. This is a group that is also suffering. I am saying that because in Nakuru County, we have housed thousands of IDPs. As we look at the policy of how to go about the social protection, we also need to look at the aspect of the IDPs and how they can be protected socially. That is because if you go to the various camps that are within the county, there are no facilities at all - neither health nor schools. You find that most of the children who are from those families are suffering so much. As we look into the accountability

and transparency and also the type of groups that need to fall under this, it is important for us to think about IDPs. The strengthening of the Council as it has been suggested by the Committee in the sessional paper is a very fundamental issue that we need to look into.

It has been said that Nakuru County has a home for the elderly. What is happening in that home is pathetic. The county has not been able to budget enough money to take care of the elderly people who are housed in that home. It is very unfortunate that you go there, as a person, to even pay electricity bills so that they can have power and yet the county is there. The sessional paper says that it is looking into this. We must put pressure on the counties that have been bestowed with the responsibility to have those kinds of homes to take care of them. Again, as it has been said, it is not fair to be talking about handouts. We need to encourage those kinds of groupings to be self-sustaining.

With those few remarks, Hon. Temporary Deputy Speaker, I support.

The Temporary Deputy Speaker (Hon. Kajwang'): Thank you very much. Leader of the Minority Party.

Hon. Nyenze: Thank you, Hon. Temporary Deputy Speaker for giving me this chance to contribute to this very important Motion on the adoption of Sessional Paper No. 2. The policies and programmes that have been designed to protect the vulnerable and the poor people from the risks and the difficulties they face in life are very good, but are not coordinated. However, it is a very good way of incorporating all the people who are under risk. The cash transfer programme has been a success, but I appeal to the Government to increase it from Kshs2000 to Kshs5000. That amount is very little.

The other thing I would want to say about the cash transfer is that it should be decentralised from the district headquarters. Those are old poor people who do not have a lot of resources. They travel long distances and waste a lot of time and money. Wherever they go to receive cash, they do not have facilities like toilets. They go to Kenya Commercial Bank (KCB). In Kitui, they suffer a lot because they have to take *boda boda* persons, pay their fare and yet, they are going to receive Kshs2,000. They spend the whole day there. So, I want to urge the Government to decentralise those services so that those elderly people can get their money from the constituency. That way, they can save some money and time. The Bill of Rights in the Constitution of Kenya, 2010, gives Kenyans a right to be served so that they do not suffer poverty, wants and so forth. We have learnt that Kenya is one of the most uneven countries whereby a small population of 10 per cent controls 90 per cent of the resources. Through those social security programmes, that gap can be reduced by taxing the rich and giving those resources to the poor.

In line with the Constitution, every person has a right to social security. The State needs to provide appropriate social security to the vulnerable groups. We cannot say Kenya is a poor country. Even when President Obama was here, he said that Kenya was on the right economic trajectory. We are a country that is endowed with a lot of resources and all we need to do is to exploit them. The greatest resource that we have is the human capital. Kenya is home to *Mpesa* and so many other innovations. It has a lot of creative people. So, it is not a poor country. All we need is to get our act together so that we can develop our human capital and export it to areas where there are shortages of labour like Europe - where the birth rate is declining and they need labour. Through this sessional paper, we have the right policy. If the Government does not

duplicate it and there is proper co-ordination and policies that aim at alleviating poverty from one area, everybody will get their right. Kenyans will benefit and they will contribute to the economy. If we leave them out, they will pull us back.

The Temporary Deputy Speaker (Hon. Kajwang’): That is all the time we had for you, Leader of the Minority. Member for Kilome.

Hon. (Ms.) Muia: Thank you, Hon. Temporary Deputy Speaker. We have discussed the issue of human rights in several meetings and conferences and nothing has been implemented. I thank the Member who saw the need to bring this sessional paper on the Floor of the House.

I will speak on only one issue, namely the issue of the older generation. If you could allow me to read Article 57 of our Constitution, which refers to the older generation, it reads:-

“The State shall take measures to ensure the rights of older persons—

(a) to fully participate in the affairs of society;

(b) to pursue their personal development;

(c) to live in dignity and respect and be free from abuse; and,

(d) to receive reasonable care and assistance from their family and the State”.

When we were campaigning for the new Constitution, we talked so much and persuaded the older generation to support the Constitution so that they would benefit when it was passed. The cash transfer programme is going on. In my constituency, it has only covered 660 persons. The old people are looking at leaders, for instance, I, as if I have been cheating them. I support this sessional paper and request that the coverage be expanded to even cover three times the current coverage, so that many people can benefit out of that. Many people retire at the age of 60 or 70 years and most of them have not invested. When they get to the village with their families, they get a lot of problems. They think that everybody is covered by the cash transfer. So, I support this sessional paper because it covers even the people with disabilities.

Last year, we passed the Bill on persons with disabilities and yet, many of them are suffering on the ground. Nobody cares about their welfare. Once this sessional paper is adopted, I am sure many of those groups are going to benefit.

I support.

The Temporary Deputy Speaker (Hon. Kajwang’): Hon. Members, the House having resolved that this business be transacted within one hour and having heard several Members participate in this debate and the time allocated having elapsed, I now order that the Mover be called upon to reply. Mover, the Chairperson of the Departmental Committee on Labour and Social Welfare, where are you? Or it is the Vice-Chairperson?

Hon. (Ms.) T.G. Ali: Thank you, Hon. Temporary Deputy Speaker. I wanted to donate some few minutes to different Members.

The Temporary Deputy Speaker (Hon. Kajwang’): No. This has come twice when you are on your watch. So, let me tell you that according to the Standing Orders, when the House resolves that a particular period of time be used within the debate, you do not have time to donate. When it is on the converse or when the House does not resolve, then you are free to donate. So, will you proceed please?

Hon. (Ms.) T.G. Ali: Hon. Temporary Deputy Speaker, I wish to thank the Members who have contributed to this. I know there is a lot of interest from the different Members and that is why I was making a request to donate some minutes. However, from the discussions, the

Members have agreed that all Kenyans have a right to social protection. They have agreed that there is great need for coordination of social protection support in this country.

Social protection has been going on without a policy framework. In spite of the fact that many social protection initiatives are going on in this country, we have not put a policy framework in place. From the discussions, we have also realised that there is no problem with the availability of funds. We have contributors and non-contributors to the scheme. Quite a number of times, even during the Budget process, many Members have accepted to set aside money for social protection support.

I also want to thank Dr. Pukose for having brought in the dimension of universal healthcare, which should automatically be included for the beneficiaries of social protection. We have also realised that there are other vulnerable groups that have not been included in this support. Quite a number of Members have talked about internally displaced persons and street children. I thank all the Members for supporting the sessional paper.

I beg to reply.

(Hon. Chepkong'a stood up in his place)

The Temporary Deputy Speaker (Hon. Kajwang'): Order! Hon. Chepkong'a, can you be seated?

(Question put and agreed to)

Next Order!

BILL

Second Reading

THE INSOLVENCY BILL

Hon. A.B. Duale: Thank you, Hon. Temporary Deputy Speaker.

(Hon. A.B. Duale sat down)

The Temporary Deputy Speaker (Hon. Kajwang'): Why is the Leader of the Majority Party sitting down? Order! Leader of the Majority Party, proceed.

Hon. A.B. Duale: Thank you, Hon. Temporary Deputy Speaker. Hon. Makali is a very good friend of mine.

The Temporary Deputy Speaker (Hon. Kajwang'): Hon. Makali knows that he is out of order because the only way to receive the Speaker's recognition is by pressing the intervention button and then I can see you here on the intervention list. That is the only way. You cannot raise your hand or attempt to say many things---

Hon. A.B. Duale: You are not in a classroom.

The Temporary Deputy Speaker (Hon. Kajwang'): In the process, you are intimidating the Leader of the Majority Party. Let us hear him anyway.

Hon. A.B. Duale: Hon. Temporary Deputy Speaker, after the visit by President Obama, I am one of the very few people who cannot be intimidated. I shook the hand of the most powerful man on earth.

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

The Temporary Deputy Speaker (Hon. Kajwang'): Absolutely. Member for Kitui Central, can we now hear you on a point of order?

Hon. Mulu: Thank you, Hon. Temporary Deputy Chairman. I apologize. I meant Hon. Temporary Deputy Speaker. When we were discussing the Companies Bill, we changed the timing for debate and the moving of the Bill. This Bill is as equally important. It is a very voluminous Bill. I do not know whether we are going by the same rules or this is a different case. If it is a different case, I would plead that you allow us to make some amendments to the timings. This is quite an important Bill to this country. I do not know whether I am in order or I need to be guided.

The Temporary Deputy Speaker (Hon. Kajwang'): Thank you very much for saying that, but because you have been in the House for long, I will not spare you. This is a new Bill. The other one that you are talking about is a different one. Nothing stops you, Hon. Makali, from moving that Procedural Motion. We will deal with it accordingly. You are a conscientious member of the Assembly and so, you know what should be done.

Hon. Mulu: Thank you for your guidance, Hon. Temporary Deputy Speaker. With that advice, I propose that we change the timing for---

The Temporary Deputy Speaker (Hon. Kajwang'): Order! I need to get you a mentor in the Assembly to help you go around your issue. If you can cross the Chamber and consult with the Leader of the Majority Party then you would know what to do.

First of all, you cannot move the Procedural Motion from where you are. You cannot rise from where you are and move that Procedural Motion unless I have seen the text of it and approved it. Only then will you be ready to move it. However, you will get into problems because the Standing Orders demand that the Procedural Motion is moved before the Bill is moved. That is now business that you need to know how to conduct.

Leader of the Majority Party, please proceed.

Hon. A.B. Duale: Thank you, Hon. Temporary Deputy Speaker. Hon. Makali is one of the best brains that we have in the Budget and Appropriations Committee. I think he must have come here straight from Kitui Central. I know him to be a man who prepares thoroughly.

Hon. Temporary Deputy Speaker, I beg to move that the Insolvency Bill be now read a Second Time.

The Bankruptcy Act, Cap 53 is what currently governs any matter relating to insolvency. But, over time, that Act has been found to be unsatisfactory in as far as procedures outlined in the same Act are concerned. The procedures are cumbersome, time-consuming and costly. That is what this Bill addresses. It deals with those issues in as far as this Bill is concerned.

The Bill went through the taskforce on the Companies Act which the House has dealt with in the Second Reading. The same taskforce dealt with insolvency and partnership.

The object and purpose of this Bill is to simplify the process of liquidation and re-organizing businesses which, in one way or another, have failed and in turn create an efficient way of re-organizing those businesses that have failed, deal with the process of liquidation and, above all, reduce the time in which the process of insolvency or the failed businesses can take in order to come back.

I will just highlight the main features of this Bill. It is a very voluminous Bill. At the outset, I would like to thank the Departmental Committee on Justice and Legal Affairs led by its chairperson, Hon. Chepkong'a - in which you, Hon. Temporary Deputy Speaker, is also a Member - for taking time to take the stakeholders through and to find time to make sure that this Bill is aligned to the Constitution and international best practices in as far as insolvency is concerned.

Part I deals with preliminary provisions of the Bill which are very unique and general. That happens with each and every Bill that comes to the House.

Part II of the Bill, which includes Clauses 4 to 11, introduces a concept of insolvency practitioners - that we must have men and women who are professionally trained to deal with matters of insolvency. For the first time we have experts. Not any Tom, Dick, Harry or quack can go into the process of insolvency. This Bill in Part II is setting up insolvency practitioners. It provides for the authorization of those insolvency practitioners, how they will be prescribed, their qualifications and the process in which a person must apply in order to become an official receiver for any authorization. That section deals with who gives the notice of authorization accordingly. Basically, Part II deals with the element of insolvency practitioners.

Part III deals with the rules for making bankruptcy orders. It is making very clear what the rules of the game are in declaring an entity or a business bankrupt. They involve bankruptcy orders in respect of natural persons for the administration of estates in line with the benefits of the creditors. This section deals with the nature of the bankruptcy and related processes. It provides for the effects of the bankruptcy on a person, the alternatives such a person may have if he wants to avoid bankruptcy, as well as circumstances under which that person must also adjudicate that bankruptcy. It also outlines the process of adjudication by a court of law on the application of any debtor or creditor.

Part IV of the Bill - that is between Clauses 303 to 361 - provides for alternatives that enable persons who are insolvent to restructure their debts and avoid bankruptcy. That Part deals with how to avoid bankruptcy and restructure your debts so that your business is not declared bankrupt. This Part also sets out circumstances under which the debtor is enabled to enter into a voluntary arrangement with the creditors. It gives the option of an out-of-court settlement for debtors and creditors to go into a voluntary agreement in order to save a business from collapse due to bankruptcy.

Part IV also provides a summary installment order. If you agree between a debtor and creditor to save the business, it gives you a summary installment order which can be made in respect of an insolvent debtor. This is a natural provision where persons state how they are going to restructure their businesses and pay creditors.

Hon. Temporary Deputy Speaker, Part V Clauses 362 to 380, deals with the administration of the estate of deceased persons who are insolvent. This part specifically gives functions to the High Court in respect of how administration of such an estate can be managed. It

prescribes the powers and functions of the trustee with respect to the estate. This part enables the executor or the administrator of the deceased property or the creditor of the beneficiary of the deceased property to apply for orders from the High Court.

Part VI, which includes Clauses 381 to 511 of the Bill, deals with liquidation of companies. It sets out the types of liquidations and provisions that apply to companies that are in that form. It creates offences relating to conduct before and during a company's liquidation. That part also provides for voluntary liquidation of companies.

Part VII, Clauses 512 to 519 of the Bill, relates to the liquidation of a registered company. It specifies the circumstances under which such a company can be liquidated.

Part VIII, Clauses 520 to 623 of the Bill, provides for administration - how to administer insolvent companies, the appointment of the administrators of those companies and how to apply for administration orders. It prescribes the effect of the administration orders. It deals with the process of administering. That part also provides for the termination of the appointment of an administrator, and how to replace him or her.

Part IX of the Bill provides for the company's voluntary arrangements. It gives a company powers to make a proposal for creditors for a composition in terms of satisfying the debts, the procedures and the meetings held in that regard.

Part X of the Bill, Clauses 677 to 690, sets out the provisions that are applicable to companies that are either in liquidation or under a particular administration.

Part XI provides for how to enforce the proposed Act and the legal proceeding of the proposed Act that may be brought under it. It provides for the enforcement of the company's obligation to lodge complaints with the Registrar of Companies. It provides for appeals if you are not contented with the decision of the Registrar. How you can appeal to the Court of Appeal against the decision. How you can appeal for the review of orders made under this Act.

Part XII of this Bill, Clauses 701 to 719 provides for the general administration of the proposed Act. It provides for the appointment of the office of receiver. It also stipulates how to keep the registers of the public interests and how to keep the registers relating to the bankruptcy and others.

Part XIII, which is Clauses 720 to 735, contains general provisions. It gives some powers to the Cabinet Secretary to provide regulations. The moment we enact this law, the CS in charge is asked to bring regulation under this Act. That should contain the transitional provisions in relation to the existing Acts.

In summary, this Bill contains schedules which have very elaborate provisions. It gives effect to different provisions contained in this Bill. The First Schedule specifies the powers of a bankrupt trustee in relation to a bankrupt. The Second Schedule contains provisions relating to the debts of the preferential creditors. The Third Schedule specifies the powers of a liquidator in relation to accompany in liquidation. The Fourth Schedule specifies the powers given to an administrator in relation to a company under administration. The Fifth Schedule contains modified versions of the modern law on cross-border insolvency. The Sixth Schedule sets out the consequential amendments to the Act.

Hon. Temporary Deputy Speaker, as I said earlier, the Company Law and Insolvency Bill are some of the most voluminous pieces of legislation that I have ever seen in my history as a member of parliament. I am sure we drafted with the help of the Departmental Committee on

Justice and Legal Affairs under the Chairmanship of Hon. Chepkong'a and you, being a member. I am sure this sets out a good pace for Kenyan business community. This Insolvency Bill, the Business Registration Bill which is before the House and the Companies Bill which is coming before the Committee of the whole House, are very important Bills. They will simplify how we do business in our country. They are very important pieces of legislations that will transform the economy of our country. The Companies Bill and the Insolvency Bill that I am moving in the Second Reading today are very important. I want to ask my colleagues, Members of the National Assembly that we finish with them. I am happy the Leader of the Minority Party is happy and nodding that it has come. He has helped me push it in the House Business Committee. I do not know what Doctor Susan is telling him. I am sure the politics of Ukambani must be very good after the visit by President Barrack Obama. The Leader of the Minority Party is very excited but, of course, he will tell what the narrative is all about. I also want to hear. This law is very important. It will be good - through the help of the Committee - to finish these two pieces of legislation before we go on recess. I am sure that these are some of the things that the business community, the Kenya Private Sector Alliance and the Office of the Attorney-General have been asking about. These are the questions that we receive in every meeting. It was a serious debate at a presidential round table private sector meeting. They said: "We want to ask the National Assembly to fast-track the Companies Bill and the Insolvency Bill of 2015. I am sure that today, if we agree to finish by tomorrow, next week or the week after, we can do the Committee of the whole House.

With those many remarks on the contents of the Bill, I thought first I will ask the Chair--- But I am happy that because of the two-thirds gender rule, the Chairman has said that I should allow the great lady from Turkana County, Hon. Emanikor, to second this Bill. This is the route we should go. This is how I started. The gender principle Bill should also go through this.

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

Hon. (Ms.) Emanikor: Thank you, Hon. Temporary Deputy Speaker. I rise to second this Bill. I wish the Leader of the Majority Party would take the gender rule principle further beyond just giving me this chance.

I want to support and second this Bill. It may look voluminous and complex, but this is a Bill that simplifies the process of insolvency. It reduces the long bureaucracies and processes. What excites me about this Bill is the opportunity given to bankrupt persons - it is not that I am bankrupt. It gives bankrupt persons a chance to seek ways of bailing themselves out and restoring their normal status.

This Bill requires expertise in practising insolvency. It eliminates the possibility of quacks and brokers coming into the limelight with no qualification. The Bill categorises liquidation as well as its processes. It clearly indicates the nature of bankruptcy and makes provisions applicable to companies in liquidation. It further establishes offences in relation to conduct before and during liquidation.

This Bill enforces companies' obligation to lodge documents with the Registrar of Companies and gives provisions for appeals to the Court of Appeal against decisions.

With those few remarks, I beg to second.

(Question proposed)

The Temporary Deputy Speaker (Hon. Kajwang’): I have a request list here that is not very long. I just want to know if these hon. Members are ready and willing to speak to this Bill or if they may have requested a chance for another debate altogether. They are: Hon. Members for Igembe North, Emurua Dikirr, Kiminini, Alego Usonga, Turkana South, Ainabkoi and Kwanza constituencies. Okay, let us go through that list as it is.

Hon. Member for Igembe North Constituency?

Hon. M’uthari: Thank you, Hon. Temporary Deputy Speaker. I rise to support this Bill. This is a very important Bill in the sense that it sets this provision for the independent administrators to take control of business, equitable distribution and liquidation among creditors in case of the insolvency of the entity concerned. It also provides the mechanism for indentifying and prosecuting managers or directors who, through their illegal actions, have contributed to insolvency.

In short, this Bill is important because it obligates people to take responsibility. If people are being entrusted with responsibility for running public or private entities, they have a responsibility in case the entities fall through their actions. Like you have seen in the history of this Republic since Independence, many people who have been entrusted with companies and many entities, especially financial institutions or big companies, have messed. If those entities which have been destroyed since Independence would have survived, this country would have been better than it is today. We are in a country where people who have committed financial crime and grave crimes like destroying entities and stealing money from public entities end up being rewarded. To a large extent, Kenyans are not bothered to know where somebody gets their wealth. What they want to know is whether you have it or not. Having a law like this in place makes the people get involved. To take responsibility is good.

At the moment, we have the case of Kenya Airways Limited (KQ) which is on its knees; the case of Mumias Sugar Company (MSC) and other companies which are in trouble. At the end of the day, the people who have been involved just go scot-free. They move from one job and go to a higher one or participate in elections many times. If we have strengthened laws like what is being proposed here, we have the possibility of making people who have committed these crimes take responsibility.

We have had leaders coming to Kenya to learn from it. Like the recent visit by the American President, President Barack Obama comparing Kenya to South Korea in the 1960s. The Koreans and Malaysians who were coming to learn from us are far much ahead of us today. It is not just because they have the laws. Having laws is not important.

(Hon. G.W. Omondi received telephone call in the Chamber)

The Temporary Deputy Speaker (Hon. Kajwang’): That hon. Member is obviously out of order. Who is this Member who is obviously out of order? It is just because I am on national television that I did not name you. Do not do that again.

Okay, proceed.

Hon. M’uthari: Thank you, Hon. Temporary Deputy Speaker. I am talking about having strict laws. After we come up with a law like this, we should ensure it is implemented. At the end

of the day, the people who make companies or entities insolvent are made to take responsibility. As I was saying, countries which were at the same level of development with us are ahead of us at the moment. They are ahead of us simply because they respect laws. So, as we come up with this law, the agents are supposed to ensure that it is followed. When you look at this particular Bill, it is very elaborate. In many ways, it is taking care of various interests even for the concerned and aggrieved parties, shareholders, investors and people who are entrusted with the responsibility to manage them. Their interests are taken care of. When we look at this, it is specifying in terms of depth. It is clarifying the role of the courts. Whenever companies or entities are in this kind of a situation, there is a particular procedure to be followed to ensure that justice is carried out for all. It is also asking for the people who have competence in that line so that we do not have quacks carrying out operations which they are not competent or able to do.

I believe that by this august House passing this legislation, we will bring certain order because when we are talking about birth, we must also think about death. Just recently, we passed another law regarding companies or creation of entities. This one is looking at, in the event of death of those companies, what happens? This is a good thing. It is elaborate in terms of procedures and processes that will ensure that there is flow and proper administration of companies in case those companies fall under liquidation. All these provisions are clearly spelt out.

With those many remarks, I support this Bill and the consideration of these various stages that have been identified and what has to be done. Thank you.

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

Hon. Mulu: Thank you, Hon. Temporary Deputy Speaker, for giving me this chance to add my voice to this debate. At the outset, I support the Insolvency Bill, 2014. It is a very important Bill to this country bearing in mind that we have just concluded debate on the Companies Bill.

This Bill is very important because it is reviewing the Bankruptcy Act (Cap. 53 of the Laws of Kenya). It seeks to encourage dissolution of non-viable and inefficient businesses for the benefit of creditors, shareholders and directors. Earlier, I had made an attempt to see whether we could get more time to debate this Bill because it is very voluminous. I will just focus on three areas which I think are very important and which are going to add value to the way we conduct our affairs when it comes to dissolution of companies.

This Bill provides the legal framework for insolvency to ensure that the process is done in a professional way. It authorizes insolvency practitioners and professionals and says what their qualifications should be, so that the process is done by professionals and people who have the right qualifications and competencies. At the same time, the Bill makes provision for the appointment of bankruptcy trustees to make sure that the estates of the people are administered properly and there is proper record-keeping of the processes.

The Bill also provides for creditors meetings, which is very important. This is a meeting where creditors will come together and be given information about what is happening to the company and, at the same time, make a decision on how to take care of their interests, the interests of the shareholders and everybody else. This Bill makes sure that there is a public register of persons admitted into the non-asset procedures. So, for the first time, we are going to have a register of people who have been admitted into non-asset procedures to make sure that

they are known. There are cases where companies have been dissolved and the shareholders of those companies suffer a lot because they have invested, but they are not brought up to speed with information on what is taking place.

The Bill also provides for voluntary liquidation, which individuals or companies could opt for. The circumstances under which voluntary liquidation can take place are provided. The Bill will also ensure that the appointment of liquidators is done properly for those who opt to go for voluntary liquidation. Provisions have also been made in terms of how general companies could be liquidated. This is very important because we are going to make sure that the process of dissolving companies is properly done within the law.

The Bill also makes provision for appointment and replacement of administrators. What is very critical and important to me are the qualifications and duties of such administrators. The necessary qualifications and duties of the administrators are clearly spelt out. At the same time, the Bill makes provision for the procedure of making administrative orders by the administrators so that such orders are properly documented and it is not done in a haphazard manner. This is going to ensure that, as we move forward, the necessary legal framework for insolvency or dissolution of companies is in place. The powers of the administrators are clearly stated, meaning that the administrators will be working within a defined boundary so that they do not do things which are outside their mandate.

This Bill is a very big move towards proper management and dissolution of our companies. It is going to go a long way in providing the necessary enabling environment for businesses to thrive in this country. If the enabling environment is provided through this legal framework, then many investors will be attracted to do business in our country. At the end of the day, this is going to contribute to the economic growth and in the long run, we will be helping our people to get out of the poverty bracket. So, this Bill is very timely.

It has taken a lot of time to have this Bill in place. As a House, we made the first attempt and it had to go back to be re-drafted. I am happy that the Departmental Committee on Justice and Legal Affairs has made some improvements in the drafting of the Bill. When it becomes law, it is going to be very important to our country.

As I conclude, for the first time in the history of Kenya, we are going to have a law – if it is assented to by the President - that enables companies to be dissolved in an organized manner. This will take care of all the interests of creditors, shareholders and directors. Nobody will be left complaining after a company is wound up. So, I support this Bill and urge Members of this House to support it so that it can become law.

With those remarks, Hon. Temporary Deputy Speaker, thank you for giving the chance.

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

Hon. Kipyegon: Thank you, Hon. Temporary Deputy Speaker. I also rise to support this Bill. This Bill, as has been said by other Members, amalgamates two Bills. That is why it is very voluminous. It is important, especially to the business community in this country.

This Bill amalgamates the Bankruptcy Act and the Companies Act. We have always wanted to review our laws, and especially the laws that govern businesses and so many other activities in the country. This important Bill will take care of the needs, changing times and dynamics that we normally have in doing business.

The most important part of this Bill is that it addresses some issues which are very important to the business people. The time it takes a petitioner who files for bankruptcy to be served is long. This Bill takes into consideration the time within which a bankruptcy order is meant to take effect. Once a bankruptcy order has been issued against a petition, the persons who are supposed to be running the company are restricted from carrying out any other activity. When a company is running bankrupt, members of the public might continue doing business with it, which may expose them to conmen and women.

Hon. Temporary Deputy Speaker, in this Bill, the moment an order has been issued, the question of doing other business or conning other Kenyans will be stopped instantly. This will protect the public from trading with insolvent persons.

There is also the question of the 21 days. For a long time, people used to wait for the 21 days to expire so that effects could be taken. In most of the cases, when a 21 day notice is given, some of the companies tend to shrink or even sell their properties so that, when that period lapses, people who may have had interest in this company will still incur losses. The period of 21 days has been reduced. It is now instant. The moment a notice has been issued, it takes effect.

The other issue is non-creditors. Creditors' meetings can be attended by non-creditors. The reason why this clause is included is to deal with conflict of interest. When we have non-creditors sitting in those particular meetings, conflict of interest will be avoided.

There is also liquidation. This Bill provides that when a company is being liquidated, every present and former member, including directors, former directors, shareholders and former shareholders become liable. The introduction of this part was timely because in most cases, people sell companies or they transfer shares and forget what happens to those companies. Some people are mischievous. When they own a company, they want to do everything to run it down, sell it or transfer it. The people who inherit it find that they had left several issues behind. The Bill introduces a situation where, whether you are a former director or former shareholder, you will still be held liable for anything that happens to the company.

Another exciting issue about this Bill is the way it makes it void for the transfer of shares and an attempt to alter members' status after a resolution of voluntary liquidation. In this situation, the Bill prevents people who want to run away from being held liable. It is meant to secure the interest of the existing members so that members who currently own the company are protected.

Another issue I found good in this Bill is that the Attorney-General is given powers to apply to court to liquidate a company unlike previously, especially on grounds of public interest. The Attorney-General is actually the custodian of the public interest. Sometimes in his opinion, when he realises that a company is doing deals that are not for the public good, he can apply for the liquidation of that particular company. This is meant to assist the public and prevent fraud. Most of the companies are fraudulent. I remember there are many people who register over 100 companies, make a deal and disappear or make another deal and then sell them, especially on matters which we all know are meant to assist people to con the public.

Another part the Bill introduces - and which is also important - is the powers which the court can give. The Bill gives the court powers to rescind contracts entered into by the company in liquidation before the liquidation period. This one is also very important because it helps to prevent fraud. You must remember that we have had several issues with most of the companies,

especially those which trade with the Government. I remember in the Public Investments Committee, we dealt with several companies which had done fraudulent business with the National Cereals and Produce Board. When you look at those companies, they do not do any trade. They do not even know what is meant by trading with the Government. They enter into those deals because they want to make money. The introduction of this Bill will take care of such fraudulent companies that are conning the Government and the public. I also remember we had companies which were running the Mara Triangle which have been going to courts and conning the public. We have also seen people registering companies to buy land and sell it, con or do so many things. The introduction of this Bill will take care of those fraudsters and fraudulent companies which may deal a blow to the public.

Lastly, the Bill provides for the administration of insolvent companies. We remember when Uchumi Supermarket was almost collapsing, there was an introduction of an administrator who actually took care of the company until it made money and paid its debtors. The introduction of the administrator in the company will prevent or allow the administrator to come and take care of the company, nurture it and then pay debtors who are owed money by the company and bring it back to normalcy. This is what actually happened to Uchumi Supermarket.

With those few remarks, I wish to support. Thank you very much.

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

Hon. G.W. Omondi: Thank you, Hon. Temporary Deputy Speaker, for giving me the opportunity to contribute to this Bill. In contributing to the Bill I want to comment, at the outset, that the biggest gainer in this Bill is the local risk-taker who invests his seed money into a business and the local entrepreneur who tries to put money to grow his company. In looking at all these things I will restrict myself to the qualifications of the receivers, the introduction or the stage that has been set for insolvency practitioners to turn around companies and not necessarily sell them off when they take them. I will also look at the time-frame. I will also look at the fact that the interests of the shareholders are now being taken into account in this Bill. I will also look at the new introduction to the Insolvency Bill - that is the general requirements to turn around businesses.

To begin with, it is very good that qualifications of insolvency practitioners have been introduced in Part II (6)(1) from (a) to (c). It sets out the qualifications expected of insolvency practitioners. Section 6(2) from (a) to (c) sets out disqualification. What has been happening is that anybody could be appointed as a receiver to a company. Those people ended up running down the companies and neither the shareholders nor the creditors benefited. They ended up stripping the assets of a company because there was no rule at all. Some of them were not qualified. This is now a good thing that sets out that they must now be qualified. The law also sets out the provisions under which some people can be disqualified.

In Clause 5(1) of the same part, there is a penalty against those who are going to masquerade as qualified insolvency practitioners. They are going to be fined and expected to pay Kshs5 million. At Clause 8 of the same part, the Bill stipulates that an insolvency practitioner should apply to the official receiver. I will be bringing an amendment to this. This should not be left to the official receiver to approve the insolvency practitioner. Rather, it should be a panel or a committee within the official receiver's office.

The other bit that is interesting in this Bill is that it gives an opportunity for insolvency practitioners to turn around the business and not to simply liquidate them. The existing insolvency law has been wanting on this. If you remember, historically in this country, Uchumi is put into receivership today and the next day, assets are advertised for sale and nobody tries to turn it around. This Bill sorts out this problem. Insolvency practitioners are expected to go a step further to try and rescue companies. The object of the Bill at 3(1)(b) is that they should do their business to enable the companies fulfil the expectations of the shareholders and creditors.

Also, at Clause 3(1)(b)(ii), they are expected to conduct the business in such a manner to achieve a better outcome for the creditors and all the stakeholders. In (c), the need for turning around insolvent institutions is also dealt with at Clause 3(c)(i) and (ii) of this part. With regard to the time-frame, some insolvency practitioners and receivers have gone into business and taken forever making stakeholders, namely, the shareholders and creditors incur a lot of losses. The Bill requires that within a very short time, they should find out whether the company can be turned around or should be liquidated. The Bill proposes to resolve this at Clause 3(1)(d) and (e). For institutions whose financial positions are irredeemable, they are supposed to take a very short time to sort them out and liquidate them. The procedure for quick resolution is also mentioned at Clause 495 of this Bill.

The next bit is that this Bill takes into account the interest of the shareholders. Currently, the insolvency law has not adequately catered for the interest of the company contributors. They have been looking at the interest of the creditors but, in the process, they end up ripping off the creditors. They have been operating as undertakers. If your company is put under receivership, you know that you are done. Some of them operate as asset strippers instead of making sure that the company survives. This Bill, at various sections which I have mentioned - like 4(2) and 5 - provides that they must apply to the court in order to liquidate. Clause 428(1) provides that any creditor or contributor is given the opportunity to apply to the court to stay liquidation proceedings. This was not there before. Now, any stakeholder, if you feel that your company is being liquidated unfairly, you are given the opportunity to go to court. This has not been there before. Also, Clause 496(2)(d) and (c) gives grounds under which a stakeholder can go to court to stop liquidation.

Moving forward, this is very good. It gives the company's contributors and other stakeholders something to hold on to. If it is left for the insolvency practitioners to decide without giving the other contributors an opportunity to go to court and stop them, they could behave in the olden ways of stripping the assets and selling even very viable companies.

Under Clause 455(1) and (2), both creditors and contributors are entitled to inspect all the records in the company's possession or under its control. Before, once your company went down into receivership, you were not even allowed to go into the company. The receiver took over and you were treated as a criminal. At Clause 455(1) and (2), you are allowed to go and inspect the records of the company.

At Clause 465, this Bill stipulates that if a company is being liquidated, the liquidator may convene a general meeting. You can call a meeting of the court and the shareholders. At Clause 465(2)(a) and (b), a shareholder can request for a meeting to make sure that things are done well.

I will go straight to the new measures that are introduced in this Bill. The Bill is a step in the right direction in that it introduces new measures to preserve and turn around companies. This is at Part VIII.

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

Hon. Ekomwa: Thank you, Hon. Temporary Deputy Speaker for giving me this opportunity. I rise to support this Insolvency Bill. First, it provides a fair and transparent means of declaring an entity or an individual bankrupt.

You will remember that when we were aspiring to be Members of Parliament, there were conditions in the Constitution that for one to be eligible, he or she must not be bankrupt. If you are bankrupt, you are not supposed to vie for any elective post. When we were picking certificates like the certificate for integrity or loan clearance, I asked myself where I would get a certificate that confirms that I am not bankrupt. This Bill provides professional entities that will ensure that a company or an individual is bankrupt or not. It also provides avenues where an entity or an individual will apply for the certificate. Nobody in this nation is ready to be associated with bankruptcy. This is because it undermines the dignity of the individual, an entity or an organisation. This Bill provides transparent and fair avenues for a company to be declared insolvent. If you want to take a loan or a mortgage, one of the conditions that you are given is to value your assets. It should be open. We must get a professional entity that is qualified, respectable and that can handle this issue of insolvency, so that you choose which one will take care of people who will want to witch-hunt an entity, organisation or individual. So, when you have professional entities that will handle this issue, you will be free as an individual, or as an entity, to go to any that you know will do this work in a way that is expected by every Kenyan. After it has done that, you are given, for example, a certificate. Once you are given this certificate, it will be a basis for you to confirm the integrity of that organisation either as a financial institution or whatever office. You will already be prepared, and any entity, company or individual will not just get into an organisation and say you are bankrupt.

I am very happy with this Bill because Members of Parliament, or people who want to be leaders, cannot actually be frustrated by any other person. This is because you will prepare early. You will go and request a confirmation that you are not bankrupt. You will have that certificate and information early, so that you can do anything like take a loan, if you want it.

The Temporary Deputy Speaker (Hon. Kajwang'): Member for Turkana South, does this Bill suggest that people who are not bankrupt will receive certificates saying that they are not bankrupt?

Hon. Ekomwa: Hon. Temporary Deputy Speaker, it might suggest so or not but I am here to also give an opinion. I am here to add value to the Bill. I have analysed the contents.

The Temporary Deputy Speaker (Hon. Kajwang'): I am trying to get your train of thought, and also to steer you clear of irrelevancy. In which part of this Bill does it suggest that people who are not bankrupt will receive certificates saying that they are not bankrupt?

Hon. Ekomwa: Okay. This is what I mean, hon. Temporary Deputy Speaker. I might have used the word that people do not understand. However, when you are cleared as a company through the procedures that have been underlined in the Bill after, for example, a professional body that has undertaken this process has finished the process, what is the conclusion? That is what I mean, hon. Temporary Deputy Speaker. I am making it better; I am of the opinion that we

provide more flesh to the Bill, and say it is even better we provide a report, or even a certificate, to confirm that that company, or entity is not bankrupt. It was just a suggestion, hon. Temporary Deputy Speaker.

I am also pleased with the contents of this Bill on the time taken. You have realised a situation where some directors in a company conspire to sell their assets and just to say deliberately that this company is bankrupt, and maybe charge cheaper prices for the property of that company. So, after a company has been declared bankrupt, the same directors will come later to buy the assets of that company. So, this Bill will actually prevent such behaviour by the directors, because it will have laid down procedures and conditions that confirm, or affirm, that a company is actually bankrupt. I support because this Bill takes care of that.

The other thing that I have seen in this Bill is that it will provide dignity, respect and sustainability of most of the companies and individuals. This is because once this process has been undertaken fairly, any company in this nation will not actually be frustrated; we will have the right measures taken for the sustainability of companies. Most of them have really suffered. They will be eligible to get financial support from any financial institution, or legal entity in the nation.

Without belabouring the point, I really support this Bill and I urge my fellow hon. Members to support it. This is because it also gives Kenya and this Parliament assurance that we are taking care of the companies, or individuals, so that they cannot be misused.

Thank you.

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

Hon. Gikaria: Thank you, hon. Temporary Deputy Speaker for giving me this opportunity to give my contribution on the Bill. Much has been said about this Insolvency Bill.

We are in an era where we are trying to promote young people and encourage people not to think about white collar jobs only. We are encouraging people to go into business and earn a living, and not wait to be employed in some quarters. In the past, people have gone to banks to get loans, borrowed money from friends or used previous savings to start some companies. They look forward to starting companies with the thinking that every other company that has been started will be very successful. When you go into so many other details of trying to understand or get some feasibility study on how you can acquire some business knowledge so that you can start, you end up borrowing so much and finally the business does not do very well. Maybe you are in a company where you are a group of people who have come together to start a company for purposes of making profit, but eventually they end up not realising their objectives. They also end up in so many problems, and even put families in a lot of trouble; finally they are declared bankrupt because they never did their calculations correctly, or their companies are declared insolvent.

The law that has been there to take care of this has not been very friendly. Now that we have the new Bill, with all that has been said by the Mover and the person who seconded, the Member from Turkana and the other speakers, I think this is a very important Bill that is coming to address most of the fears that every person has once their companies start doing badly, and they cannot meet their financial obligations.

We have seen so many companies which have tried but maybe just because of some miscalculation, or international issues that also affect their companies--- An example is the tourism industry, where I might have started an hospitality business in terms of a hotel, but because of some tourist activities and some other countries issuing security advisories to their citizens not to visit the country, this happens. These are unforeseen problems that some people might find themselves in. This Bill addresses many of the issues. For example, if there was a mistake and somebody wanted to seek some court orders to declare your company bankrupt, then the court can give you a hearing and maybe you can restructure your debts and agree with the creditor on how you will settle some pending issues. This is paramount because both the creditor and the directors of a company, or an individual, have an opportunity to correct the mistakes through, maybe, engaging in some consultations; they can agree on how they can address some of the cases that might have been brought on board.

The High Court has been put under some specific limitations regarding how they can handle an insolvency case. It is important because it gives them parameters as to how to move forward. We have seen families which do not take the interest of the business at heart. This is more with the trustees. Whenever somebody has been given duties as a receiver or as a trustee to take care of the interests of the dependants of the deceased---This Bill highlights some of the issues relating to a deceased person and his or her dependants. I do not want to repeat myself since most of the issues have been discussed. However, more important is the issue of appointment of an official receiver. It is something that has given hope to people who are declared bankrupt.

After the Obama visit it is important to state that as one seeks to enter the business world, one needs to look at both the Companies Act and this Insolvency Bill, which I hope will be assented to by the President. This will enable one understand the consequences of a business not meeting its objectives. As we encourage young people and women to register companies, let us also caution them to look at the dark side of things. This is so that we prepare them to handle the situation in case things go wrong. They need to know what the law says about their rights, the rights of the creditors and so on. Creditors, for example banks know their limits as is stipulated in the Bill before the House. So, those getting into the business world need to read the law and understand it. They could also get legal advice from their lawyers.

With those few remarks I beg to support the Bill. The few issues that have been raised can be brought through amendments at the Committee Stage.

Hon. Wamunyinyi: Thank you very much, Hon. Temporary Deputy Speaker, for giving me the opportunity to add my voice to this important Bill before the House. I want to start by briefly looking at the most interesting objects of this Bill. I want us to look at Clause 3. It provides for the operation of a framework for the efficient and equitable administration of the estates of insolvent natural persons and incorporated entities comprising natural persons, assets of insolvent companies and other bodies corporate that maintain a fair balance between the interests of those persons, entities, companies, bodies and those of other creditors. Clause 3(1) talks of enabling those persons and entities to continue to operate as going concerns, so that ultimately they may meet their financial obligations to their creditors in full or, at least, to the satisfaction of creditors and finally achieve a better outcome for the creditors as a whole than would be the case if those persons and entities were adjudged bankrupt.

Look at what it is intended to achieve. I bring this out because if we had these kind of provisions in the law, firms such as Pan-Paper would not be in the condition they are right now. A receiver was appointed at Pan-Paper, but he just ran it down and destroyed everything he found there. He has been selling every bit and piece of equipment that he found there, so as to make money for himself. If we had a law in place that would enable those persons and entities to continue to operate as a going concern, it would have helped business come out of the difficulties they have been experiencing. The condition of Pan-Paper has been worsened by a receiver who has continuously engaged in selling the equipment, so as to meet the cost of his presence in the company.

I want to thank the Leader of the Majority Party and Government for bringing this important Bill before the House. Obviously, Members have gone over and over the issues which are provided for in the Bill. However, it is clear that the consolidation of the various pieces of law for purposes of benefiting all parties is a win-win situation. No one will be affected adversely by the provisions of this Bill. I, therefore, want to emphasize the provision that provides for an efficient management system of insolvency. It is about taking into account the assets, estates, and interests of parties; this is quite interesting. It is going to ensure growth in businesses and eventually our economy. This will lead to creation of jobs for our people. Livelihoods too are going to be enhanced. So, the provision for bringing together creditors, debtors and all other people involved is one of the key factors in the Bill. The clauses in this Bill that ensure that all the parties concerned come to a round table to look at each other's interests and the weight of the issues would enable an amicable resolution of any differences among the parties. This cannot be overemphasized; it is quite clear that it is going to benefit the business community.

More important is the fact that this Bill deals with the environment for businessmen and investment. It ensures that businesses are viable, sustainable and operate to the benefit of the investors. Such benefits are bound to extend to members of our society.

We have had challenges in terms of property administration in this country for a long time. Some of the legislation being repealed has been confusing; such legislation made it very difficult even for matters to be resolved through litigation in court. We know that when we take matters to court for litigation, such matters are bound to take long to be resolved. It is not that we doubt the courts, but the truth is that there are challenges within the courts, and courts might take years to reach decisions. Again, the decision arrived at is at the mercy of the judge.

The provisions which have been given here make it clear. They clarify the issues of liquidation as far as property administration and powers of practitioners in insolvency law are concerned. Their responsibilities and their extent have been made very clear; they are going to ensure that this framework will ensure that there is smooth operation within the business environment in our country and economic growth, which I mentioned earlier. It will benefit most of our people. I know Members have spoken so much about issues in this Insolvency Bill, but I wish to mention that the focus in insolvency on the actual persons plus the corporate entities have not been properly captured in our laws in the past. Because now it is made very clear, it is going to help our operations in business to improve the earnings and profits and clearly where there is an issue, there is a mechanism for dealing with it. As my time comes to an

end, I want to say that I support very strongly this Bill before the House. I trust that Members are going to give it support to ensure that it passes and is implemented to help our people.

With those few remarks, I thank you, Hon. Temporary Deputy Speaker.

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

Hon. Angatia: Thank you, Hon. Temporary Deputy Speaker for giving me the opportunity to contribute to this important Bill. First of all, I would like to thank the Mover because he has given serious grounds on why we should introduce this Insolvency Bill that will lead to enactment of a law that will govern procedures used to declare a company insolvent, individuals bankrupt and the action that should be taken. The Bill has come at the right time, because our parastatals have been using annual financial reports to indicate whether a company is insolvent or not, based on the value of the assets compared to the turnover the company has been achieving. These two factors alone cannot determine effectively if a company is completely insolvent or not, because of what goes on behind the scenes. The directors of the company corruptly devalue the assets that the company has and sell some of them corruptly, so that they can have an opportunity to declare a company insolvent after looting it. This Insolvency Bill will give clear guidelines on how a company can be declared insolvent.

A company like Nzoia Sugar Company is, from their financial statement, not economically viable. It has already been declared insolvent based on the asset value and the turnover that the company is making. Muhoroni Sugar Company and Miwani Sugar Company are under receivership, but the receiver managers in the two companies are doing worse to the companies using the weaker sections of the Banking Act that governs insolvency issues. If we happen to enact this Insolvency Bill, we will save ailing companies like Kenya Airways and Mumias Sugar Company; we will dig deeper into the issues and find a solution. Currently, the banks that have provided loans to Mumias Sugar Company are now threatening to liquidate it, and send the receiver managers away. It was only the Deputy President and the President who intervened and negotiated with the banks to buy time, so that they could restructure their loans and work towards modalities of returning the company to profitability. I am happy this Insolvency Bill is addressing that issue that will help the companies go back to profit-making organisations. There will be introduction of efficiency under the Insolvency Bill instead of dragging them down the line of insolvency and closing down, because of the demands of the banks that had given them loans.

Individuals face a lot of problems. Currently, if you go to a bank and you need a loan from it, it can declare you closer to bankruptcy based on two issues: the gearing ratio and the Credit Reference Bureau (CRB) rating. That is what they have been doing. They just look at your gearing ratio and CRB rating and say: "We cannot loan you. You are bordering on bankruptcy. You are 98 per cent, 95 per cent or 65 per cent closer to bankruptcy based on the gearing ratio and the CRB rating." However, this Bill introduces new mechanisms on how to value bankruptcy or insolvency of an individual, or an organisation which is a move that I welcome. I really support this initiative. It has come at a good time when we are seeing our major corporations in this country facing problems, which arise from the former management or board of directors. We saw Muhoroni Sugar Company selling a whole mill at a low value, so that they could allow receiver managers to take over the management of that company; it was purely looting because there was no clear framework on how you can declare a company insolvent. You

just play around with books and the financial statements, and then you declare a company insolvent, so that you can bring in receiver managers to loot and kill it. The Bill will provide framework on how we can sustain those companies, and make sure that Kenyans benefit from the investment the Government put in the factories.

Another case concerns Mumias Sugar Company. The same thing happened because we did not have a legal framework on how we can control the same people who want to bring down Mumias Sugar Company through bankruptcy. At the stock exchange now, they are playing with the shares of Mumias Sugar. There is an individual of Asian origin who is buying the shares of Mumias Sugar Company at the stock exchange at a low value, so that in future he can control over 29 per cent of Mumias Sugar Company. He will influence the banks to send demand notices for their loans, which they gave to the company when they will be unable to pay, so that they can buy Mumias Sugar Company. We know what they are doing.

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

Hon. Angatia: Hon. Temporary Deputy Speaker, I would like you to protect me from Hon. Wamunyinyi, because this is a serious affair.

The Temporary Deputy Speaker (Hon. Kajwang'): Well, he is on a point of order which is his right to raise. I will hear him.

Hon. Wamunyinyi: Hon. Temporary Deputy Speaker, you have heard what has been reported by this Hon. Member on the issue of Mumias Sugar Company and people involved in the sugar scandals. Is he, therefore, in order to continuously contribute and talk about Mumias Sugar Company and the problems it has when he is a major culprit?

The Temporary Deputy Speaker (Hon. Kajwang'): What is he?

Hon. Wamunyinyi: A major culprit. He has been mentioned in the reports on sugar scandals, some of which have been before this House.

The Temporary Deputy Speaker (Hon. Kajwang'): Have those reports been tabled before this House?

Hon. Wamunyinyi: Yes.

The Temporary Deputy Speaker (Hon. Kajwang'): Are you referring to any in particular?

Hon. Wamunyinyi: Hon. Temporary Deputy Speaker, given time, I can find some of the reports and file them before the House. Is he in order to continue to contribute and insinuate that he is talking for farmers when he himself is a major culprit?

The Temporary Deputy Speaker (Hon. Kajwang'): All right. Let me help you. You may resume your seat. I am trying to appreciate your point of order, but in the absence of this specific report that you refer to, which alleges that the Member is a culprit, it is very difficult to understand where you are coming from. Your point of order seems to be whether there is something which looks like a conflict of interest. Until I see those reports, I am unable to adjudge the issue that you are bringing through. You could quickly run to the library and bring me references, I will entertain it when you are able to substantiate your point of order.

Please, proceed.

Hon. Angatia: Hon. Temporary Deputy Speaker, he has wasted my time. If he is not going to table the documents here---

The Temporary Deputy Speaker (Hon. Kajwang’): No, he has not wasted your time. I will give you more time.

Hon. Angatia: Hon. Temporary Deputy Speaker, if he is not going to table any documents here, I pray that he be named. We should not misuse the Floor of the House to engage in irrelevancies.

The Temporary Deputy Speaker (Hon. Kajwang’): Well, you are also now getting to another terrain. Order! Two wrongs do not make a right. You are also running into another terrain.

Hon. Angatia: Hon. Temporary Deputy Speaker, he should come here with facts. I have never been summoned by any committee.

The Temporary Deputy Speaker (Hon. Kajwang’): Well, you know the procedure of naming Members, which is another procedure in the Standing Orders. So, you follow that procedure if you want to name a Member.

Hon. Angatia: Hon. Temporary Deputy Speaker, I stand guided, but he should apologise because he has no evidence.

The Temporary Deputy Speaker (Hon. Kajwang’): Well, he has nothing to apologise for, in my view, because he has done what is his right to do, except I have asked him to explain himself properly. He is not going to use the Floor of the House to besmirch Members. I am taking it seriously. It is in the HANSARD and I will expect him to explain himself. But that does not also give you the right to throw the same salvo at him.

Proceed, please.

Hon. Angatia: Thank you, Hon. Temporary Deputy Speaker for protecting me. We shall handle this matter inside here and outside Parliament squarely.

The Temporary Deputy Speaker (Hon. Kajwang’): You know that whatever you do outside there is none of my business. I have used some of your minutes in that exchange. So, you will get about three minutes that we have consumed.

Proceed.

Hon. Angatia: Hon. Temporary Deputy Speaker, I am an experienced businessman and I understand what a financial report of a company means. I understand what insolvency means. I was saying that Mumias Sugar Company is leaning towards insolvency and banks have already written to it. I said that the President and his deputy intervened and negotiated with the banks to give more time to Mumias Sugar Company to sort out its balance sheet and restructure the loans. If they were paying Kshs2 million in a month, they should restructure it, so that they can pay Kshs500,000 and take like three or four years more. This will enable them to return to profitability through efficient cash flows to sustain the repayment of the loans. That is what I was saying.

There are no procedures under the Banking Act governing insolvency. This means that external forces had to intervene to save the company. The Banking Act does not clearly specify the mechanism that can be used to renegotiate a loan to avoid the company heading towards insolvency and receiver managers being sent to it. People were just discussing haphazardly. You can go to a bank to renegotiate your loan and they tell you to pay them half of the loan or clear all the arrears before they can give you room to negotiate. If you do not have anything to pay, how will you pay a half?

This is what I am saying about Mumias Sugar Company and Members should understand it. It is very open. If you do business with Mumias Sugar Company, you are doing business as a Kenyan. I have not done any business with Mumias Sugar Company since I came to this House, but I used to be a distributor before and I can confirm that I am an elected Member of the National Assembly from that region; I must defend Mumias Sugar Company.

Lastly, I want to talk about the issue of negotiating with banks. Many banks will give you a 14-day notice asking you to clear your loan or they recall it. Under this item, banks have been used by senior politicians to settle political scores with their political rivals. A rival is then declared bankrupt and, therefore, cannot meet the integrity qualification for him or her to contest as a Member of the National Assembly, a Senator, President or governor. With this insolvency law in place, we will have a proper mechanism, and there will be no way that somebody will walk to a bank and say that “Savula has a loan in this bank and he is unable to pay. So, can you recall the loan, so that we can finish him politically, and so that he cannot go to Lugari and be re-elected as a Member of Parliament since he will have been declared bankrupt?” These are the issues that we are addressing here and not trivials by Members of Parliament who do not understand business. I do not like nonsense.

The Temporary Deputy Speaker (Hon. Kajwang’): All right; thank you very much. Let us have the Member for Ainabkoi.

Hon. Chepkong’a : Thank you, Hon. Temporary Deputy Speaker. I can see that there is a lot of animated discussion on issues that deal with governance. Unfortunately, the Insolvency Bill does not deal with governance. There is a difference between the two Bills.

The Temporary Deputy Speaker (Hon. Kajwang’): I think it brings good governance into the management of bankruptcy and the companies under insolvency.

Hon. Chepkong’a : Hon. Temporary Deputy Speaker, that is correct, but the home of governance is at the Companies Bill, which is pending for a Third Reading.

With regard to The insolvency Bill, this is where a company has failed in its governance and the official receiver, or the person who has been appointed to manage that particular company is seeking to resuscitate the company, so that it can survive turbulence in business.

When a company takes undue risks by not making serious assessment as to what will happen in the near future, it falls under the Insolvency Bill. Be that as it may, this Bill seeks to protect the serious risk takers. As you know, in the business world, if you are looking for people who are going to discover new things, you need to have a high risk taker. This Bill seeks to protect persons who are seeking to innovate and initiate business, so that in the unlikely event that that person runs into serious problems that may lead to the collapse of their company, this Bill will kick in.

In the words of Franklin Delano Roosevelt, once a President of the United States of America (USA), “Courage is not the absence of fear, but rather the assessment that something else is more important than fear”. That is what all serious business people seek to do. They are courageous and this Bill is seeking to protect them.

Bankruptcy in Kenya has been governed by the Bankruptcy Act, Chapter 53 of the Laws of Kenya, formerly the English Bankruptcy Act of 1930. This Act has never been amended. The 1930 English Law is what we have been using, yet in the United Kingdom (UK), several amendments have been done to the Act that was passed in 1930 in the UK.

Liquidation of companies is governed by the Companies Act, Chapter 486; it particularly deals with issues of liquidation of companies. The Act largely reflects the English position of the time; such law has not been repealed and is rarely amended. The objective, as mentioned by the Leader of the Majority Party - I do not want to go into detail - is to secure an equitable distribution of the property of the debtor or the company to the creditors according to their respective rights against them. This is a complete transformation of our legal system. It introduces new jurisprudence into our legal system. For those who are interested, particularly the scholars in universities, this makes very good reading and is text for books on insolvency law. For the first time, we are seeing a very clear and well-thought out legislation being brought to this House.

When the Departmental Committee on Justice and Legal Affairs went through this Bill, we made several amendments. Those amendments led to the withdrawal of the Insolvency Bill 2014 that has given birth to the current Insolvency Bill 2015. The Departmental Committee on Justice and Legal Affairs itself has gone through this Bill and satisfied itself that it meets the international standards of companies which are seeking to do business. One of the things we are seeking is to attract foreign investment. We need an environment which is seamless in terms of reflecting what abounds in the international fora. We do not want to be an island when we are seeking investment from outside, what we call the foreign direct investment. We need to have a law which guarantees that whenever companies run into problems, they are protected.

For the first time, we are introducing in Kenya what is popularly known in the United States of America (USA) as “Chapter 11”. This has been introduced here for the first time. We would not have seen Uchumi or other companies going down. What we did in Uchumi was purely grace. There was no law that governed that particular understanding between creditors and debtors that resuscitated Uchumi. Unfortunately, it has run into the same headwinds in the recent past. The success of the former Chief Executive Officer (CEO) confused him in ensuring that there was good governance. That notwithstanding, this law is a good start in protecting companies, which have run into problems. It seeks to promote business and provides better safeguards for investors who wish to grow their business in this country.

Salient features that we see in this legislation are that this Bill amalgamates the Bankruptcy Act, Cap 53 of the Laws of Kenya and the Companies Act, into one insolvency Bill and modernises it into a new regime governing insolvency in this country. The Bill introduces a provisions on insolvency practitioners as mentioned by the Leader of the Majority Party. An insolvency practitioner will be in charge of administration of bankruptcy and liquidation of companies. The Official Receiver’s Office will be in charge of regulation of the insolvency practice in Kenya. Qualified insolvency practitioners/professionals will apply to the Official Receiver to act as such. For the first time, we are going to have a body of professionals, like lawyers, who will be charged with the responsibility of managing companies that have gone into receivership or have been declared insolvent. Companies that have been declared insolvent, as it is right now, take a straight path to the grave. When this Bill is passed, it will give an opportunity, for the first time, to companies that have been declared insolvent to be revived and resuscitated, to ensure that they continue in business.

The Bill introduces an instant bankruptcy once a petition for bankruptcy is filed. A bankruptcy order takes effect when the court makes an order in respect of a debtor that has been

adjudged bankrupt. This means that there will be no need for a receiving order and one will head straight upon the court issuing that order. This law will ensure that the company, or the person, will be protected to ensure that the assets of the company are not destroyed in the process, as has happened in many companies. As it is at the moment, once a company is declared insolvent, you have all the “vultures” coming into the company with the intention of ensuring that they suck life out of that company by ensuring that the company is completely destroyed. They are there just to make money for themselves, to ensure that they are paid good fees and not to ensure that the company comes back to business. We have seen many companies where the appointed bankruptcy practitioners ensure they go straight to their graves.

We know many companies where the people receiving them have continued doing so from year to year. What this law ensures is that when a company is declared insolvent and is put into receivership, the insolvency practitioners are given a timeline. They will have 12 months within which to ensure that the company is resuscitated. It is not going to be under receivership endlessly. The insolvency practitioner is not allowed, in this law, to continue endlessly sucking the finances of that company.

The Bill introduces alternatives to bankruptcy as mentioned by the Leader of the Majority Party. I do not wish to repeat those instances that were mentioned. Once a bankruptcy order is issued against a person, the person is restricted as to the business activities he/she can undertake. This is meant to protect the public from trading with insolvent persons. As it is right now, we do not know who is insolvent. Many times, people who are insolvent continue to do business. They just move from one company to another. They have caused so many problems and troubles to many companies and microfinance companies. I know of one individual. I do not want to mention his name because he could end up being in this House. He kept on closing one company and opening another one. He is insolvent but he misleads the public that he has a good company. He caused too much trauma to many Kenyans. This law ensures that people who have been declared insolvent do not walk around like they are free people when their status is known.

One of the things that this law introduces is the fact that once you are declared insolvent, your name will be published on the website of the Official Receiver and the courts will also put your name on their website. This will ensure that if you want to trade with somebody, you first check on the website of the Official Receiver to see whether you are trading with a person who has the capacity to do business with you. This Bill ensures that the courts themselves place the persons who are insolvent on their website. We are introducing e-commerce in this particular law.

The Bill also introduces a provision in Clause 19 of expediting creditor’s application, and creditors will not have to wait to see if the value of the debtor’s property can significantly reduce within 21 days. If there is the danger of the property of someone who has been declared insolvent reducing in value, or losing value, this expedited process will ensure that the process kicks in fairly quickly, so that property is preserved.

Hon. Temporary Deputy Speaker, Clause 35 of the Bill introduces a new provision on joint bankruptcies, where two or more debtors who are partners in a business partnership, may make a joint application for bankruptcy order. That is a new field that does not exist in our current legislation; where two persons agree that they have reached a point in which they are no longer a going concern, they can jointly seek to be placed under receivership or bankruptcy.

Creditors meetings can be attended by non-creditors; the non-creditors can offer information on the debtor's affairs. In the current law, under Chapter 4 of the Companies Act, non-creditors are not allowed to sit in the creditors meeting, but for the first time we are introducing new jurisprudence in which the law requires that those people who are not creditors can sit in the creditors meetings, so that they can offer information with regard to the debtor's affairs.

The other thing that this legislation introduces is the list of bankruptcy offences, which has been increased and updated in the Bill. Examples are the offence of bankruptcy in relation to the management of companies, the offence of fictitious losses or expenses and the offence of a bankrupt person living in Kenya without consent. If a bankrupt person decides to run away or take a flight from Kenya, there are serious sanctions in this particular legislation. It protects creditors from those people who are a flight risk, and who just want to come and introduce a business, cause mayhem and run away with people's monies. The Bill introduces entitlement of surviving spouse to household furniture and effects; this will not form part of the estate. So, a spouse who is bankrupt will not dispose the property of the surviving spouse. The other spouse will remain with something in the house.

The Bill also introduces an allowance which may be paid out of an estate to the surviving spouse, or to any of the relatives or dependents of the deceased. This is not provided for in the current law, and it is introduced for the first time in this Bill. It also provides that when a company is liquidated, every present and former members, that includes directors, former directors, shareholders and former shareholders, are liable to contribute to its assets any amount sufficient to ensure that debts, liabilities and expenses of liquidation are covered. That is not contained in the current legislation. So, as a director you do not cause problems and run away, thinking that you will not be held to account. For the first time, this law ensures that if you are a former director, and you caused a lot of problems in the company, like insider trading, you will be held responsible. This will ensure that those who participate in insider trading and resign as directors or members or shareholders, will be held responsible. There are penalties that have been provided for in the law. The people who have caused problems in a company will be required to contribute to ensure that the debts and liabilities of that company are covered sufficiently.

The Companies Bill makes void the transfer of shares and an attempt to alter members' status after a resolution for voluntary liquidation has been passed, thereby securing the interest of existing members during the liquidation period. At the moment, when people enter into voluntary liquidation, they can run away and decide that they do not want to be part and parcel of that company. That practice has been curtailed by this law. The insolvency, or the bankruptcy, law is totally inadequate in this country. The Bill only authorizes insolvency practitioners who can be---

(Hon. Chepkong'a spoke off record)

Hon. Temporary Deputy Speaker, this Bill provides that insolvency practitioners can be the only people allowed to be appointed as liquidators. No other person. If you are not an insolvency practitioner, you will not be licensed to provide liquidation services. The Attorney-

General (AG) has also been mandated to apply to court to liquidate a company on grounds of public interest. Where a company is suspected of commission of offences, or where information has been obtained from the Capital Markets Authority under the Capital Markets Act, or the Registrar of Companies or directors are convicted of offences involving fraud, the AG can apply for these companies to be liquidated. As you have heard in the past, there are companies which have been trading in very suspicious commodities, famously known as cocaine and the rest. If those companies are found to be trading in those commodities, the AG can apply for direct liquidation from court, so that those companies can cease causing a lot of trouble in this country.

The mandate of the Official Receiver has been expanded. The Bill has placed upon the Official Receiver the duty to conduct investigation into the failure of a company. If need be, the Official Receiver can apply to court to have any person examined in court. For the first time, this provision has been introduced to ensure that companies, as you mentioned earlier, will practise good governance. The Kenya Airways Limited (KQ), for instance, came out of serious financial problems in the past but it has again gone into problems. Now, this particular Bill will ensure that past Managing Directors (MDs) and past Chief Finance Officers (CFOs) will be held to account. As we may have seen recently, the Senate is purporting to carry out some investigation in which they have no role. This is a matter which should have been handled by the Departmental Committee on Finance, Planning and Trade, or the Public Investments Committee of this House, so that we can make sound decisions in terms of resolutions that can be implemented. As it is right now, that will be more of a talk show as opposed to seeking solutions to resuscitate KQ.

Clause 474 is new to our laws. It makes it possible for an unsecured creditor to share in the assets of a company under liquidation where there is a floating charge on the company's property. This provision will place a holder of a floating charge in the same position as an unsecured creditor in sharing the company's assets.

The Bill also gives power to the courts to rescind contracts entered into by a company in liquidation before liquidation. Questionable contracts may be set aside, thereby ensuring the financial viability of companies. This protects people who do good business from those who seek to take advantage of their positions in which they have been declared insolvent.

The Bill also seeks to give power to the liquidator to transfer assets of the company to its employees, provided the company's liabilities have been fully satisfied. As it is right now, there is no provision for this. When a company is wound up and there are some assets still, monies cannot be transferred to the employees who have worked very hard to ensure that that company gets to where it is. This power is, however, subject to authorisation by a resolution of the company and/or the company's articles must provide for it. However, the law is also there to assist and ensure that that is done.

In Clause 487, it exempts documents relating to a company in liquidation from stamp duty. This is so that companies that are in liquidation and need to transfer certain assets are exempted from stamp duty.

The Bill also introduces new offences during the liquidation period. Previously offences related to before liquidation were exempted. However, there is a new law that ensures that those who commit offences during and before liquidation are held responsible. There are serious penalties that have been prescribed thereon.

The Bill makes it possible to liquidate unregistered companies. For the first time, a company that has not been registered can be liquidated. This Bill recognises that there are unregistered companies that are operating. If you are one of them, this law applies to you and your company can be liquidated. The procedures for such liquidation are provided in the Bill.

The Bill also provides for an administrator of insolvent companies to manage the company and pay off its debts. This is a new provision that does not exist in our current laws. This is what is called 'Chapter 11' in the US. It will ensure that companies do not disintegrate completely when they are placed under receivership.

The Bill also provides for voluntary arrangement by a company that is potentially insolvent. The directors of a company may make proposals to its creditors for a voluntary arrangement under which the company enters into a composition in satisfaction of its debts or a scheme for arranging its financial affairs. We have known very many creditors who when they see that a company is suffering financially will apply to court to declare that company bankrupt. For the first time, the law allows the directors of a company that is potentially insolvent to enter into some arrangement with its creditors to ensure that they discharge their debt. There is a framework that is already provided in the Bill.

The Bill also provides the general legal guidelines that a company must adhere to while in liquidation, such as lodging documents with the Registrar of Companies and the circumstance and procedure through which the Official Receiver, or any person, may make an application for injunction against the action or omission of a company.

The Bill also seeks to establish and maintain public registers for bankrupt and other insolvent persons. The Bill also provides for the enforcement of the provisions of the United Nations Commission on International Trade Law (UNCITRAL), what we call the modern law on cross-border insolvency. It is famously referred to by its acronym UNCITRAL law. It is a model law by the United States. This law did not previously apply in Kenya. For the first time, this proposed legislation imports some provisions of UNCITRAL into our own laws. Previously, international treaties and agreements with relation to insolvency did not have legal force in Kenya. In line with our constitutional arrangement, the Bill seeks to adopt such law as part and parcel of Kenyan legislation.

In conclusion, the Bill provides for publication of orders by courts in their website to ensure that one knows who has been placed under receivership or declared insolvent. These are matters that courts are now obligated to disclose to the public. The relevant office holders are also required to inform and notify all creditors of the prescribed steps taken during the entire insolvency period.

I thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Kajwang'): I thank you for your researched and clear train of thought in this matter.

The Member for Bahati.

Hon. Ngunjiri: Mhe. Naibu Spika wa Muda, nasimama kuunga mkono hii sheria ambayo itabadilisha mjadala huu kwa sababu ni muhimu sana. Watu wengi wameumia kwa miaka mingi. Kwa hivyo ninaunga mkono kwa kusema marekebisho haya ni ya maana na ninamshukuru mwenye kuipendekeza. Wananchi wameumia hata sisi tumekuwa kwa kampuni

ambazo zimekuwa na shida kwa sababu *liquidators* hawaji kusaidia. Wanakuja kuzimaliza kabisa na kuumiiza.

Kwa hivyo naunga mkono marekebisho ya siku ya leo. Yataleta mambo mazuri ya kubadilisha mjadala huu ili watu wengi waweze kupata njia ya kurekebisha hata wakiwa na deni. Kutapatikana njia ya kulipa madeni na kubaki kwa njia inayotakikana.

Nashukuru na ninaunga mkono sana. Nakushukuru pia kwa sababu ya kunipa nafasi hii. Jambo hilo limenikera kwa siku nyingi lakini imekuwa wakati wake mzuri wa kuletwa Bungeni, ingawa nilikuwa mbali. Ningekuwa na mambo mengi ya kusema lakini nafasi imekuwa ndogo. Naona ndugu zangu hapa wengine na ningetaka pia wachangie.

Asante sana, Mhe. Spika wa Muda.

The Temporary Deputy Speaker (Hon. Kajwang’): Member for Mukurweini.

Hon. Kabando wa Kabando: Thank you very much, Hon. Temporary Deputy Speaker, for the opportunity to contribute for one minute and a half. Streamlining matters of business includes putting in place firm legislative mechanisms that enable institutionalisation of a sector.

We have experienced, in this country, crimes committed in public investments because of lack of tight mechanisms that allow corporations to fold up, be rehabilitated or transited to private ownership. Because of lack of these provisions, we have had very many State corporations mismanaged, deliberately bankrupted and eventually seized through quick processes that are actually originated to misappropriate public utilities.

Therefore, putting in place a system that allows the Judiciary - the courts of law - and also enables owners of companies, including the public sector investments, to be assured, so that there can be transitions that will harmonise businesses that fall because of climate that may be adversarial; for instance, circumstances of production or a challenge in the financial sector, or a collapse of financiers like the banking sector, enables us to create stability. Recently, in the previous Parliament, we were talking about over the counter bidding for private enterprises to enable transitions of family investments, and enable diversifications, so that we could create stability within our country; private investments should not get suffocated by the demise, or death, of the founder who happens to be, perhaps, the sole shareholder. You should allow families to expand.

These are the kinds of concepts that will enable us to stabilise our economy: giving stimulants to the private sector and public sector investments in enterprises that make profit.

Therefore, I support this Motion whose time is overdue. I strongly support.

The Temporary Deputy Speaker (Hon. Kajwang’): Thank you very much. Member for Suba.

Hon. Ng’ongo: Thank you, Hon. Temporary Deputy Speaker, for giving me this opportunity also to make my contribution in the remaining time. One thing that must be said is that the Bankruptcy Act Cap.53 of the Laws of Kenya, was so insufficient in managing struggling businesses in this country. The repealed Companies Act and this law that we are just about to repeal have been some of the causes of disinterest in investing in this country. We have been talking a lot about improving the business environment in this country. One of the reasons why Kenya is not coming out as a competitive investment destination is because of the laws that appear outdated, and which make businesses very difficult in terms of registration and winding up. This Bill is coming at a time I would call “timely” although it is even late. We have talked

about this Bill being transacted in this House for quite some time. It has been with us for quite some time and I am happy now it is prioritised.

Firstly, it has been criminal as any struggling business in this country has never come up. Any business that you hear has been put under receivership is like signing for its death. I fear that even Kenya Airways is likely to face the same fate as other businesses. This has been as a result of the legal framework that we have in this country. It has also been as a result of business practices by the same people who are entrusted with the responsibility of getting the businesses out of the struggling periods. The receiver managers are the same ones who even commit worse economic crimes to these entities to the extent that the businesses end up collapsing.

I am happy that today we are discussing a Bill that is going to ensure that we establish a framework through which any struggling business can be put to some system of professional management that will ensure that the interests of the creditors and the shareholders are well taken care of. One reason why people form limited liability companies, and you very well know this as a lawyer, is to protect people from losing individual wealth as a result of trying to do business. Many people have taken advantage of the fact that we put directors in place on an urgency kind of relationship, but they end up bringing down business entities that they are in charge of. In the process, that results into even greater loss not only to shareholders, but even to those who transact business with the particular companies. I have in mind creditors who are the most disadvantaged. Therefore, one of the reasons why this Bill is important is that Part 1 is going to enable those persons and entities to continue to operate. I am talking about insolvent companies and other corporate bodies, whose financial positions are redeemable.

You will agree with me that most of these companies have their financial positions redeemable, but because they are subjected to these managers, who are not interested in redeeming them, they end up leading them to their death. We should enable those persons and entities to continue to operate as going concerns, so that ultimately they may be able to meet their financial obligations to their creditors in full, or at least, to the satisfaction of those creditors. This means that if companies are going through insolvency and are put under receivership, they will still be treated as going concerns until they are able to pay off the creditors and anybody who has an interest in terms of claims against these companies.

So, the going concern concept that this Bill is emphasising is, in my view, the right proposal that we must support; it is to achieve better outcome for the creditors, so that we do not have a situation where people take advantage. This is because creditors will not participate in the management of struggling businesses. The other people who have given money to companies will not participate in management. Therefore, we need to protect them through legislation.

Hon. Temporary Deputy Speaker, I do not know whether it is my time which is up, or it is the time for adjourning. This is because I thought I had 10 minutes and at the time I started I checked we had less than 10 minutes to the time. So, I do not know whether I will be---

The Temporary Deputy Speaker (Hon. Kajwang'): Deputy Leader of the Majority Party, are you here on behalf of the Leader of the Majority Party, or are you here as the Member for Taveta?

Member for Suba, the hour glass went down.

Hon. (Dr.) Shaban: Hon. Temporary Deputy Speaker, I was going to give a reply.

The Temporary Deputy Speaker (Hon. Kajwang'): I made a bad presumption that you were here as the Deputy Leader of the Majority Party, which you are. However, judging from the excited mood of the Member of Suba, it looks as if he has a few points to make, although he has made all his points now. I do not have enough time for you to respond; so, you will have to bear with me until such a time as we shall continue

Hon. (Dr.) Shaban: Much obliged hon. Temporary Deputy Speaker.

ADJOURNMENT

The Temporary Deputy Speaker (Hon. Kajwang'): So, I order that this business be printed on the next Order Paper for tomorrow afternoon for further debate.

The time being 6.30 p.m., this House stands adjourned until Wednesday, 5th August 2015 at 9.30 a.m. It is so ordered.

The House rose at 6.30 p.m.