

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Wednesday, 11<sup>th</sup> September 2019

The House met at 2.30 p.m.

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

### PRAYERS

### PETITION

#### DE-GAZETTMENT OF LAND IN KURESOI NORTH CONSTITUENCY

**Hon. Moses Cheboi** (Kuresoi North, JP): I thank you, Hon. Speaker. This is a Petition to the National Assembly on allocation of land to the Kuresoi Divisional Headquarters in Kuresoi North Constituency of Nakuru County.

I, the undersigned, on behalf of the residents of Kuresoi North Constituency in Nakuru County, draw the attention of the House to the following:

THAT, in the period 1992 - 1993, due to persistent insecurity experienced in the larger Kuresoi, the then Head of State intervened by ordering deployment of security officers to help restore calm in the area and the establishment of a divisional headquarter to be known as Kuresoi;

THAT, in 1997, following a request by the residents of Kuresoi to provide more security officers for security purposes, the then District Commissioner of Nakuru deployed police officers and settled them at the Kuresoi Health Centre since there was no established structures in form of houses or established police station. In 1998, Kuresoi Health Centre was opened and, therefore, necessitated the need to have the officers relocated and housed at a suitable place. Due to unavailability of land to construct a police station and other government offices, the then Hon. Chairman directed the establishment of a police station on land that then belonged to the Kenya Forest Service in Kuresoi Forest. Well-wishers, including saw millers, offered to provide building materials to construct semi-permanent houses for the officers;

THAT, further, following the need to bring government services closer to the residents of Kuresoi, the Government establishment other offices including Provincial Administrative offices, county offices, DO's offices, Chief's office, KFS office substation and the Ministry of Agriculture office, a fully operational police station and the Ministry of Education through the Kenya National Examinations Council (KNEC) office. This, therefore, necessitated the location hosting the said offices being declared the divisional headquarter. Though the land is public, it still belongs to KFS under the Ministry of Environment and Natural Resources;

THAT, efforts have been made to have the piece of land excised and de-gazetted from the KFS by the community and the Provincial Administration, but have not been successful. The residents aver that the land in question now hosts various Government and county offices and the Petition by the residents is to have the land in question, which measures 10 acres, be de-gazetted

and issued in favour of the Office of the President who will host the Provincial Administration, police, both administration and regular, county offices, education offices and other Government offices;

THAT, the de-gazettement does not involve any clearance of forest as it is already being occupied by those various government offices and is situated just in Kuresoi Centre; and,

THAT, the issue in respect of which the Petition is made is not pending before any court of law or any other legal body.

THEREFORE, your humble Petitioners pray that the National Assembly, through the relevant Departmental Committees—

1. Pursuant to Standing Order 216(5)(a), the Departmental Committee on Lands investigates and inquires into all matters raised in this Petition; and,
2. Pursuant to Section 34 of the Forest Conservation and Management Act, 2016, the CS responsible initiates the process of de-gazettement and excising of 10 acres from Kuresoi Forest known as LR. No. Sitoton Compartment Block 7 to be allocated to Kuresoi Divisional Headquarters.

I thank you, Hon. Speaker.

**Hon. Speaker:** The Petition is referred to the Departmental Committee on Lands. I see no request for comments, so we move to the next Order.

### PAPERS LAID

**Hon. Benjamin Washiali** (Mumias East, JP): Thank you, Hon. Speaker. On behalf of the Leader of the Majority Party, I beg to lay the following Papers on the Table of the House:

Legal Notice No.121 of 2019 on Movable Property (Security Rights) (General Amendments) Regulations, 2019.

Legal Notice No.127 of 2019 on the Capital Markets (Derivative Markets Fees) Regulations, 2019.

Legal Notice No.134 of 2019 on the Central Bank of Kenya (Mortgage Refinance Company) Regulations, 2019.

Legal Notice No.141 of 2019 on the Political Parties (Registration) Regulations, 2019.

Legal Notice No.143 of 2019 on the Political Parties (Funding) Regulations, 2019.

Office of the Controller of Budget End of Term Report, 2011-2019.

Performance Audit Report on the Anti-Counterfeit Agency in Combating Counterfeit goods to be referred to the Committee on Trade, Industry and Co-operatives.

Reports of the Auditor-General on the Special Audit on Capital Works on Irrigation Projects undertaken by the National Irrigation Board.

I thank you, Hon. Speaker

**Hon. Speaker:** The Performance Audit Report on the Anti-Counterfeit Agency in Combating Counterfeit Goods as proposed is referred to the Departmental Committee on Trade, Industry and Cooperatives.

Let us have the Chairman of the Mediation Committee on the Division of Revenue Bill. Where is the Chairman of the Mediation Committee on the Division of Revenue Bill? The Hon. Leader of the Majority Party was a Member of the Committee. I have since seen your Report. You and the Hon. John Mbadi were Members of the Mediation Committee. I have seen the Report and have approved it for tabling.

The Chairman of the Mediation Committee may have decided to go to Kikuyu Constituency. Maybe because of the importance of the Report, I will allow that it be tabled anytime later. But you better look for your Chairman and tell him that he is required here and not in Kikuyu Constituency.

Next Order!

*(Hon. Ichung'wah entered the Chamber)*

Chairman of the Mediation Committee, the House sits at 2.30 p.m. Please proceed.

**Hon. Kimani Ichung'wah** (Kikuyu, JP): Hon. Speaker, my apologies. I was held up by members of the Fourth Estate outside.

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

Report of the Mediation Committee on the Division of Revenue Bill No.2 (National Assembly) Bill No.59/2019.

Thank you, Hon. Speaker.

**Hon. Speaker:** Very well. Let us move on to the next Order.

**Hon. Speaker:** Hon. Members before we move on to Notices of Motions, allow me to recognise a group of students from Pures Village care of State House, Nairobi. The group comprises of students from 13 counties, being two boys and two girls from each of the counties namely: Busia, Bungoma, Siaya, Kakamega, Vihiga, Homa Bay, Kisumu, Kericho, Nakuru, Nyandarua, Laikipia, Mandera and Turkana. They are in the Hon. Speaker's Gallery and are welcome to observe the proceedings of the House this afternoon.

**Hon. (Dr.) Robert Pukose** (Endebess, JP): On a point of order, Hon. Speaker.

**Hon. Speaker:** What is your point of order?

**Hon. (Dr.) Robert Pukose** (Endebess, JP): Hon. Speaker, you have always ruled that matters before any committee cannot be debated out there until they are tabled here. I heard the Chair of the Budget and Appropriations Committee (BAC) say that he was with the members of the Fourth Estate and he tabled the Report after that. I do not know whether he was tabling the Report before members of the Fourth Estate and whether that is procedural. That is because it will be very serious for him to have made the presentation out there before it is tabled in the House.

**Hon. Speaker:** Absolutely! It would be a transgression of the House rules. However, we do not know what it is that the Chairman was discussing with the Fourth Estate. They could easily have asked him whether they have agreed or not agreed and he might have said we have or have not. That would not amount to discussing the Report before tabling. There is nothing to clarify because there is no allegation that it has been discussed.

It is good that Hon. (Dr.) Pukose is always hawk-eyed to avoid a breach of the rules. We are now on Order No.6 on Notices of Motions.

Let us have the Member for Marakwet West.

## NOTICES OF MOTIONS

### ADOPTION OF REPORT ON RATIFICATION OF BEIJING TREATY ON AUDIO VISUAL PERFORMANCE

**Hon. William Kisang** (Marakwet West, JP): Thank you, Hon. Speaker. I beg to give notice of the following Motion:

THAT, this House adopts the Report of the Departmental Committee on Communication, Information and Innovation on its consideration of the Beijing Treaty on Audio Visual Performance laid on the Table of the House on Wednesday, 26<sup>th</sup> June 2019 and pursuant to Section 8 of the Treaty Making and Ratification Act, 2012, approves the ratification of the Beijing Treaty on Audio Visual Performance.

I thank you, Hon. Speaker.

**Hon. Speaker:** Hon Chairman, Mediation Committee, please keep your foot down. Tell the villagers that now you are in serious business.

**Hon. Kimani Ichung'wah** (Kikuyu, JP): Hon. Speaker, I am used to being referred to as the Chairman of BAC. The new title of Mediation sounds quite strange.

Hon. Speaker, I can also confirm to Hon. Pukose that I was not tabling the Mediation Report to members of the Press. We were discussing other strategic issues relating to something that the Hon. Leader of the Majority Party knows.

#### ADOPTION OF REPORT ON DIVISION OF REVENUE BILL

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

THAT, pursuant to the provisions of Article 113(2) of the Constitution and Standing Order 150, this House adopts the Report of the Mediation Committee on the Division of Revenue No.2 Bill (National Assembly Bill) No.59 of 2019 laid on the Table of the House on Wednesday 11<sup>th</sup> September 2019, and approves the mediated version of the Division of Revenue No.2 Bill (National Assembly Bill) No.59 of 2019.

Thank you, Hon. Speaker.

**Hon. Speaker:** Next Order.

#### ORDINARY QUESTIONS

**Hon. Speaker:** First Question by the Hon. Member for Kirinyaga Central.

*Question No.387/2019*

#### ALLOCATION OF MONEY TO SECONDARY SCHOOLS IN KIRINYAGA CENTRAL CONSTITUENCY

**Hon. Munene Wambugu** (Kirinyaga Central, JP): Hon. Speaker, I beg to ask the following Question to the Cabinet Secretary for Education:

(i) How much money per school was allocated to secondary schools in Kirinyaga Central Constituency from the Ministry's Transitional Infrastructural Grant during the Financial Years 2017/2018 and 2018/2019 and how it was utilised?

(ii) What measures is the Ministry putting in place to ensure that funds meant for schools in Kirinyaga Central Constituency are not re-allocated and paid to other schools?

Thank you, Hon. Speaker.

**Hon. Speaker:** The Question will be responded to before the Departmental Committee on Education and Research.

Next Question by the Member for Nandi Hills, Hon. Alfred Keter.

*Question No.388/2019*

CONSTRUCTION STATUS OF THE NANDI HILLS – HIMAKI ROAD

**Hon. Alfred Keter** (Nandi Hills, JP): Thank you, Hon. Speaker. Pursuant to Standing Order 42A(5), I rise to ask Question No.388/2019 to the Cabinet Secretary for Transport, Infrastructure, Housing, Urban Development and Public Works.

(i) Could the Cabinet Secretary explain why the construction of Nandi Hills –Himaki Road in Nandi Hills Constituency whose contract was awarded in 2016 under the Kenya Rural Roads Authority (KeRRA) and launched in the same year by His Excellency the President has stalled?

(ii) Could the Cabinet Secretary explain the measures he is taking to ensure that the road is completed on time considering it is an important road connecting 21 tea factories and only covers a distance of 17 kilometres?

**Hon. Speaker:** Very well. The Question is to be responded to before the Departmental Committee on Transport, Public Works and Housing. The Next Question is by the Member for Mbeere North, Hon. Njagagua.

*Question No.389/2019*

FREEZING OF ITIIRA SECONDARY SCHOOL BANK ACCOUNT

**Hon. Charles Njagagua** (Mbeere North, JP): Thank you, Hon. Speaker. I rise to ask Question No.389/2019 to the Cabinet Secretary for Education.

(i) Could the Cabinet Secretary explain why Itiira Secondary School's bank account was frozen immediately after it received Kshs7,420,000 for infrastructure development in the year 2015?

(ii) What measures is the Ministry taking to ensure that the account is operational?

(iii) Why the school was instructed to deposit back the money for reversal to the Central Bank and yet the school is needy?

Thank you, Hon. Speaker.

**Hon. Speaker:** Very well. The Question is to be responded to before the Departmental Committee on Education and Research. The next Question is by the nominated Member, Hon. Dennitah Ghati.

*Question No.390/2019*

IMPLEMENTATION STATUS OF THE BUS RAPID TRANSIT SYSTEM

**Hon. (Ms.) Dennitah Ghati** (Nominated, ODM): Thank you, Hon. Speaker. I seek to ask Question No.390/2019 to the Cabinet Secretary for Transport, Infrastructure, Housing and Urban Development.

(i) What is the implementation status of the Bus Rapid Transit System (BRT) by the National Government?

(ii) What measures have been put in place to cater for the requirements of persons living with disabilities in regard to the use of BRT?

Thank you, Hon. Speaker.

**Hon. Speaker:** The Question is to be responded to before the Departmental Committee on Transport, Public Works and Housing. Before I allow the Member for Bomet County, I want to alert Members that if you intend to raise an issue by way of a Statement, it is important that you ensure your request goes through the normal processes of approval. On account of the issues that are contained in the request, I allow Hon. Joyce Korir to seek the Statement under Standing Order No.44(2)(c). Proceed.

### REQUEST FOR STATEMENT

DEMISE OF JACKLINE CHEPNG'ENO

**Hon. (Ms.) Joyce Korir** (Bomet CWR, JP): Thank you, Hon. Speaker. Pursuant to Standing Order 44(2)(c), I wish to request for a Statement from the Chairperson of the Departmental Committee on Education and Research regarding the passing on of a class six pupil named Jackline Chepng'eno aged 14 years in Kabiangek Primary School in Konoin, Bomet County.

Hon. Speaker, it is sad that a class six pupil in Kabiangek Primary School in Konoin, Bomet County lost her life as a result of negligence and insensitivity by teachers and the management of the said school. It is of great concern that the girl in her puberty stage undergoing the normal monthly periods/menses should not be treated in this inhumane way. It is regrettable that the teacher, instead of assisting the girl, went ahead to mock and embarrass her in front of her classmates that included boys, that she was soiling her dress in the classroom. As a result of the embarrassment caused by her class teacher, the girl went through a lot of pain and depression prompting her to commit suicide. It is sad she lost her life as a result of this inappropriate action and conduct by the teacher.

Hon. Speaker, it is against this background that I seek a Statement from the Chairperson of the Departmental Committee on Education and Research to address the following:

(i) What action will be taken by the relevant authorities on the teacher of the said school in regard to the death of Jackline Chepng'eno?

(ii) The status on the distribution of the sanitary pads by the relevant Ministry to school-going girls in the country and, in particular, in Bomet County, having been budgeted for in the last and the current Financial Year, 2018/2019 and 2019/2020, respectively.

Thank you, Honourable Speaker.

**Hon. Speaker:** Hon. Members, the reason why I have a lot of sympathy for the Member for Endebess is because the Standing Orders are very clear. Hon. Joyce Korir rose to seek a Statement under Standing Order No.44(2)(c). If you read it, you will see there is no provision for comments or even hissing. There is no room for any other Member to hiss or comment.

If that Statement had been processed through my office, I would have advised Hon. Joyce Korir not to include some of the areas she has touched on because she has already placed blame somewhere and made up her mind. Those are matters that, perhaps, she would have canvassed when the Chairperson or representative from the Ministry is giving a response. Already, you

have cast an aspersion and so, you have kind of laid the cart before the horse. Nevertheless, the Hon. Chairperson of the Departmental Committee on Education and Research, Hon. Julius Melly, do you want to give an undertaking as to when you will respond?

**Hon. Julius Melly** (Tinderet, JP): Thank you, Hon. Speaker. This is a matter of great concern because the said kid passed away because of humiliation. Therefore, I take this as a matter of great concern. I will ask the Ministry to respond to it within three days.

**Hon. Speaker:** Sorry!

**Hon. Julius Melly** (Tinderet, JP): By next week, we can bring a report to the House on the said issue.

**Hon. Speaker:** Very well. Hon. Members - and especially those who are Chairmen - I think it is not right to also start pushing another Chairperson to make a commitment. The Hon. Member for Bomet chose the Departmental Committee that her Statement should be directed to.

It cannot be that other Members, while completely ignoring the Standing Orders, want to suggest to her where she should direct it. She made a decision that the Departmental Committee on Education and Research should respond, and Hon. Julius Melly has already given an undertaking that if the House was to sit three days from now, he will give a response. Nevertheless, at the earliest time next week, the Statement by Hon. Melly will be issued to the House and then Members can comment at that time. Please, stop holding your Standing Orders as you are aware. I know what they provide. There is no room for debate on this. I hope these interventions are not about this. The Members who have placed interventions, I hope it is not about this Statement because there is no room for ventilation. Hon. Member for Marakwet East, there is no room for ventilation. Let the Statement be issued by the Chairperson and then you can comment. Any interventions with regards to the Statement are not allowed.

Let us hear Hon. Makali Mulu.

**Hon. Makali Mulu** (Kitui Central, WDM-K): Thank you, Hon. Speaker. I want to raise an issue which is of concern to me and might also concern other Hon. Members. I want to seek your direction and indulgence on this matter.

Hon. Speaker, I have a Bill which is seeking to amend the National Government Constituencies Development Fund (NG-CDF) Act. This Bill went through First Reading in the first week of April, which means as at today, it is about five months since it went through First Reading. I am getting concerned because the concerned Committee seems not to be processing my Bill. I do not know what the reasons are, but I suspect it is because I am trying to curb the budget for the NG-CDF Board. So, I really request you to assist me get this Bill discussed by this House because it seems that the Committee is not willing to facilitate me do my legislative work.

Thank you, Hon. Speaker.

**Hon. Speaker:** The Chairman of the Select Committee on NG-CDF, Hon. Maoka Maore is not present. Who is his Deputy? I will allow the Leader of the Minority Party, Hon. John Mbadi to comment.

**Hon. John Mbadi** (Suba South, ODM): Thank you, Hon. Speaker. Even though the membership of the Committee seems to be quiet, we need a response to this. There is the fundamental question of once Bills have gone through First Reading, how long should Committees hold them in terms of preparation for them to be brought for Second Reading. It is regrettable that a Bill as important as this can be with the Committee from April to September. That is a period of five months. That is quite telling. I am not very sure that the Committee is holding this Bill because it has so much work that is stopping it from processing it. Probably, the Committee is uncomfortable with the Bill. Even if the Committee is uncomfortable with the Bill,

still it has a responsibility to bring its report to this House and tell the House that it is not agreeing with it. However, holding the Bill and sitting on it is irresponsible and the Committee cannot be allowed to do that. That is because Committees are formed to do business for the House. The Committees cannot be allowed to hold Bills at their own will.

Therefore, this has two effects. First, it is coming out clearly that my friend, Hon. Maoka Maore, is not leading this Committee effectively. We have talked about this even previously. We have been in this House long enough and I will tell you that the current Committee on NG-CDF is the worst in the history of the Committees of NG-CDF that I have ever witnessed in this House. The reason is probably leadership or the membership. We want to hear from members of this Committee. What is happening? This Bill has very good provisions but I do not want to go into the details because I would offend the Standing Orders of this House. We want this Bill to be brought so that we debate it with or without the report of the Committee. We actually do not even need the report of the Committee. We probably need to find a way. If they cannot conduct public hearing, we can do the public hearing through another committee.

This is not the first time the responsibility of one Committee has been assigned to another Committee. If the NG-CDF Committee cannot deal with this Bill, then I would request that you rule that this Bill be taken to the Departmental Committee on Finance and National Planning or the Public Accounts Committee (PAC). But I think PAC is an oversight committee. Let us give it to the Departmental Committee on Finance and National Planning. I think it is irresponsible and the NG-CDF Committee needs to up its game.

Remember, this morning, there was a challenge from the Member for Nakuru Town East. I do not know whether I am wrong. It is a fact that this is the first time, from July to September that we have not even been told how much each constituency will get in terms of figures so that we can process proposals. We may discuss with the Leader of the Majority Party and see how to overhaul this Committee because I think it is failing in its duty.

Thank you, Hon. Speaker.

**Hon. Speaker:** Hon. Members, I do not want us to discuss this because I want to make a decision. On a matter like this, we do not have to waste a lot of time because it is clear to me that the NG-CDF Committee, in terms of processing Bills, is the least busy. What other Bills do they consider? If this Bill was referred to the Departmental Committee on Finance and National Planning, as I think it should appropriately have, I am sure by now we would have got a report and the House would have expressed itself in one way or another. I have gone through the Bill and approved it as a legislative proposal because it seeks to limit the amount of funds that are left at the Board so that whatever the percentages you agree as a House, the rest can be distributed among the constituencies so that we do not have too much money left at the headquarters for purposes of people moving around claiming to be holding workshops and such like activities.

In fact, even as the Leader of the Majority Party plans to discuss, the Clerk's Office is directed to immediately refer that Bill to the Departmental Committee on Finance and National Planning to avoid this unnecessary delay for purposes of conducting public hearings on the proposals by Hon. (Dr.) Makali Mulu. So, it is accordingly ordered that the Bill will go to the Departmental Committee on Finance and National Planning. The Select Committee on NG-CDF, please forget about the Bill. It will be handled by the Departmental Committee on Finance and National Planning so that the House can debate it and make a decision. That is the order of the Chair!

Let us have the Leader of the Majority Party.



**Hon. Aden Duale** (Garissa Township, JP): Thank you, Hon. Speaker. That is a very good ruling after what we deliberated last night in the House Business Committee (HBC). This Bill was read the First Time in April and we are yet to see a report. That is not the only Chair. The Standing Orders are very clear. Today, before the Liaison Committee, I have tabled 26 Bills in respect of which Committee Chairs have not brought reports to this House. They can go and check it. The Bills are both Government sponsored and private Members' Bills. The Chair of the Liaison Committee, the Deputy Speaker, is my witness. It is a record.

I do not know whether the Chair of the Departmental Committee on Defence and Foreign Relations is here. There is a Protocol from the Government that was brought in June 2018. The Government is asking me: "What happened to our protocol?" So, it is not only about the Chair of the NG-CDF Committee. I really want all Chairs who were not at the Liaison Committee meeting today to pass through my Office or the Table Office and check the Bills. There are too many formations. I want them to do their formation business on Friday, Saturday and Sunday. When there is a Bill here, Chairs must either be available or they delegate to their vice-chairs. We cannot run the House like this. Today, you will see in the Order Paper... I am sure the Deputy Speaker and the Speaker's Panel will agree with me. You will call out an Order and you will find that the chair, the vice-chair and members of the committee are not here. It is very shameful for you to reach a stage where you have to re-direct a Bill to another committee. In fact, you have indicted that committee. If you have given their work to the Departmental Committee on Finance and National Planning, that is an indictment, and is a plus for the Chair of the Departmental Committee on Finance and National Planning. I will consider him for the honours that we are going to give this year. That is because it looks like you have a reason why you have given that task to him.

It cuts across the board. We want committee chairs to prioritise Private Members' business and Government agenda so that the House can move. From 2.30 p.m. to 7.00 p.m., we have business to transact. I think you will be very firm on that matter.

**Hon. Speaker:** Hon. Members, if you read the Standing Orders clearly... I only see the ladies outside the Chamber in different funny colours. Please, do not bring that to the Chamber. Hon. Members, the Committees of this House are supposed to be a microcosm of the House such that, if I am not here, there is always somebody in the Chair. I do not understand why it is that chairs of committees find it very difficult to delegate to their vice-chairpersons. Each Committee has a vice-chair. They can also delegate to any other member of the committee. What you transact is not personal to you. At the end of the day, the reports will come to the House and the House can make a decision one way or another. I encourage the chairs of committees that if for whatever reason you are unavailable for a meeting, you have a deputy. In the event your deputy is also not there, the committee should go ahead and elect one among itself to chair and proceed with business. Otherwise, this idea of when the chair is not present, there is nothing that happens is reflecting very badly. You are supposed to mirror what happens in the Chamber. That is why there is a Deputy Speaker and Members of the Speaker's Panel. That should be replicated in the Committees as well.

With that said, allow me to recognise officers from the Common Market for Eastern and Southern Africa (COMESA) who are seated in the Speaker's Gallery. The officers are on a benchmarking visit to the Parliamentary Service Commission (PSC) to share experiences and learn some of our human resource aspects, including the ICT-based payroll system popularly known as the Smart HR Payroll System. The team comprises of six members from the divisions

of human resource, information technology, budget and finance of the COMESA Secretariat. They are all welcome to observe the proceedings of the National Assembly this afternoon.

Let us have the Member for Marakwet East, Hon. Kangogo.

**Hon. Kangogo Bowen** (Marakwet East, JP): Thank you, Hon. Speaker. I rise under Standing Order No.171. Standing Order No.171(4) is on the role of the HBC. One of the functions of the HBC, among others, is to prioritise Bills and also check on the calendar of the House. Standing Order No.141 is on the lapse of bills.

In the last Parliament, I had a Bill titled the Kenya Uwezo Bill which we were not able to finish. At the beginning of the First Session of this Parliament, I came to your Office. I went through the same procedure of re-publication and the Bill was read for the First Time at the beginning of this Parliament. Up to today, it has not been balloted for Second Reading. It is a very important Bill which touches on the youth and women of this country. I seek your guidance on how to proceed with this Bill which has stayed for almost two years in the First Reading stage.

**Hon. Speaker:** Did I hear you say that the Bill was read for the First Time? Can you confirm that the Bill was read for the First Time?

**Hon. Kangogo Bowen** (Marakwet East, JP): Yes, Hon. Speaker. The Bill was read for the First Time but it has not been balloted for Second Reading.

**Hon. Speaker:** When?

**Hon. Kangogo Bowen** (Marakwet East, JP): At the beginning of this Session.

**Hon. Speaker:** The beginning of this Parliament?

**Hon. Kangogo Bowen** (Marakwet East, JP): Yes.

**Hon. Speaker:** This Parliament was sworn in on 31<sup>st</sup> August 2017.

**Hon. Kangogo Bowen:** At the beginning of the Second Session of this Parliament. It was around May or June. I am sorry, it was the Third Session.

**Hon. Speaker:** What Committee was it referred to?

**Hon. Kangogo Bowen** (Marakwet East, JP): It was read the First Time. We are waiting for the Second Reading.

**Hon. Speaker:** Which Committee was it referred to?

**Hon. Kangogo Bowen** (Marakwet East, JP): It was referred to the Departmental Committee on Finance and National Planning.

**Hon. Speaker:** When you rise in your place, you must be absolutely sure of your facts. To which Committee was it referred to?

**Hon. Kangogo Bowen** (Marakwet East, JP): It was referred to the Departmental Committee on Finance and National Planning that is chaired by Hon. Limo. That is the Kenya Uwezo Fund Bill.

**Hon. Speaker:** What is the title of the Bill?

**Hon. Kangogo Bowen** (Marakwet East, JP): The Bill seeks to have the...

**Hon. Speaker:** What is the title?

**Hon. Kangogo Bowen** (Marakwet East, JP): The Kenya Uwezo Fund Bill.

**Hon. Speaker:** Maybe, Hon. Limo could comment on whether he was seized of such a Bill. Let us have Hon. Limo.

**Hon. Joseph Limo** (Kipkelion East, JP): Hon. Speaker, I can confirm that, that Bill came to our Committee and it went through public participation. It is scheduled to be tabled, maybe, next week.

**Hon. Speaker:** Have you tabled a report?

**Hon. Joseph Limo** (Kipkelion East, JP): Yes, we only need to table a report. We carried out all the stages including pre-publication and public participation. It is only the report that remains to be tabled.

**Hon. Speaker:** Very well. We will get the Clerk to find out where it is and then it can be brought to the HBC if the report has been tabled. Yes, Hon. Shollei.

**Hon. (Ms.) Gladys Boss Shollei** (Uasin Gishu CWR, JP): Thank you, Hon. Speaker. I ask the Chair of the Departmental Committee on Finance and National Planning to be more specific. Which date was the advertisement run in the daily newspapers and which day did you have the meetings and in which locations? I have been following it and I have not seen any whatsoever.

**Hon. Speaker:** Hon. Limo said he has tabled a report. Obviously, Hon. Limo might not remember the dates or places where they may have sat. If he has tabled a report, we will look at it. The report will indicate where they held sittings and at what hours - hopefully not nocturnal moments. It must have been in broad daylight if, indeed, Hon. Limo has already done public hearings.

Yes, Hon. Limo.

**Hon. Joseph Limo** (Kipkelion East, JP): Hon. Speaker, for record purposes, I did not say that I have tabled the report. I said that we are coming up with the report and will table it before the end of next week. I have to be on record because it is not good to be taken wrongly. That Bill had some controversial clauses and that is the reason why it has not come in the speed which is required. That Bill proposes to merge several funds, including the Women Enterprise Fund (WEF). It had a clause which is touching on the National Government Affirmative Action Fund (NGAAF), which is obviously very controversial. Therefore, it has to be canvassed further and that is why it has taken some time. My Committee, as usual, has gone through this Bill and we are ready to move in one way or the other. We have to also take care that when the Private Member's Bill comes, we do not want it to fall on arrival. We have to resolve issues especially those touching on NGAAF, which are referred to in some part of the Bill.

**Hon. Speaker:** Then table the report next week as you have promised. Even if it has constitutional issues, you are at liberty to point out whatever constitutionality may be involved so that the House can express itself. Let us proceed to the next Order.

## PROCEDURAL MOTION

### EXTENSION OF PERIOD FOR CONSIDERATION OF SPECIFIED PETITIONS

**Hon. Speaker:** The Chairperson, Departmental Committee on Lands, Hon. Rachael Nyamai.

**Hon. (Ms.) Rachael Nyamai** (Kitui South, JP): Hon. Speaker, I beg to give notice of the following Motion:

THAT, notwithstanding the provisions of Standing Order No.227(2) (Committal of Petitions), this House resolves to extend the period for consideration of the following public petitions specified hereunder by the Departmental Committee on Lands...

**Hon. Speaker:** Are you giving notice or you are moving the Motion? You are moving the Motion but not giving notice of the Motion.

**Hon. (Ms.) Rachael Nyamai** (Kitui South, JP): Hon. Speaker, I beg to move the following Motion:

THAT, notwithstanding the provisions of Standing Order No.227(2) (Committal of Petitions), this House resolves to extend the period for consideration of the following public petitions specified hereunder by the Departmental Committee on Lands by a further period of 30 days with effect from 10<sup>th</sup> September 2019:

(i) Public access and use of public utility plots in Nakuru West Ward in Nakuru County;

(ii) Settlement of over 25,000 shareholders of Mutukanio Ngwataniro land in Nakuru and Laikipia counties;

(iii) Irregular transfer and sub-division of land belonging to one Mr. Thomas Anzeze Musila;

(iv) Historical land injustices in Kumlot area in Kericho and Bomet counties;

(v) Invasion by the Kenya Defence Forces (KDF) and eviction of former workers of the late Mayor Jacob Samuel's estate from their land in Roysambu Constituency; and,

(vi) Delays in allocation of Mwea Settlement Scheme to legitimate beneficiaries.

This Motion is very important. I request the House to allow the Departmental Committee on Lands to finalise these petitions. The reason we are asking for extension is that these petitions were brought very close to each other and each one of them was given 60 days. Because of the nature of land issues, the stakeholders whom we needed to engage are many. This is one of the reasons we delayed in finalising them within the stipulated timelines.

Some of these petitions required the response from the National Land Commission (NLC). In the absence of the commissioners, the secretariat took long to put the matters together and give us responses. We have met most of the stakeholders in these petitions. In more than half of them, we are at the stage of report writing. We believe that if we are given 30 more days from 10<sup>th</sup> September 2019, we will finalise all these petitions because they are extremely important. We have spent taxpayers' money to collect information.

I beg to move the Motion. I would like to request Hon. Baya to second the Motion.

**Hon. Speaker:** Hon. Baya, the Member for Kilifi North, you have the Floor.

**Hon. Owen Baya** (Kilifi North, ODM): Thank you, Hon. Speaker. I rise to second the Motion. The Departmental Committee on Lands is doing its work. One of the things that have really held back these petitions is the fact that the NLC has not been constituted. Right now, we are in the process of vetting the nominees so that we can put together the NLC. The Secretariat has tried very much but, at the end of the day, it requires a decision that is made by the Commission. But it is unable to make it. So, you realise that a lot of these Petitions are hanging because we require a decision by the NLC. That is one of the reasons we require more time.

Secondly, the Committee had Bills like the Sectional Properties Bill, the Physical Planning Bill and the Land Value Index Laws (Amendment) Bill that took time for us to complete. Because of that, the petitions also dragged so that the Bills can go through. Looking at the amount of work that we have and the petitions which must be considered within 60 days which are communicated by the Speaker to the Committee, it is not possible to finish them on time. You also realise that this country has a lot of land issues. Therefore, there are very many petitions that are committed to the Departmental Committee on Lands. Even before you start one, you have 10 that are on the waiting list.

Because of that, I beg to second that we, as a Departmental Committee on Lands, be given more time and we extend the period for 30 days so that we can finish these petitions and consider more of them as they come.

I thank you and second the Motion.

*(Loud consultations)*

*(Hon. Cornelly Serem walked into the Chamber)*

**Hon. Speaker:** Order, Hon. Members! Let us do the business which is before the House. There is a Member who is walking as if he is in a disco hall. Hon. Cornelly Serem, you walked in very majestically until you attracted the attention of everybody. You appear to have been doing some jig.

*(Laughter)*

I hope that everybody has heard the reasons this Motion has been brought to the House.

*(Question proposed)*

**Hon. Members:** Put the Question!

**Hon. Speaker:** Is it the desire of the House that I put the Question?

**Hon. Members:** Yes.

**Hon. Speaker:** Hon. Members, I will do that because the reasons proffered by the Chairperson and the Secunder are quite persuasive. I also commend this Committee because it is inundated with most of the petitions almost on a daily basis, including the one that has been read by the Hon. Deputy Speaker this afternoon.

*(Question put and agreed to)*

Hon. Members, is the Member for Marakwet East present? Hon. Kangogo claims that his Bill has been pending for the last almost two years. These are the facts as captured in our Bills tracker. The title of the Bill is the Kenya Uwezo Fund Bill, 2019.

The Mover is Hon. Kangogo Bowen, MP, National Assembly Bill No.42, 2019; date of first publication, 17<sup>th</sup> June 2019 and maturity date, 27<sup>th</sup> June 2019. In the *Kenya Gazette*, it is recorded as Bill No.86, and the date of First Reading is 3<sup>rd</sup> July 2019. That is when the Bill was committed to the Committee.

Hon. Members, I implore on all of us that when you rise in your place and make some allegation, please be factual because if you appear to mislead the House, Members will start thinking that, maybe, the persons responsible for the Bills, particularly the Chairpersons, are guilty of some dereliction of duty. In this case, Hon. Members, this is a copy that has been brought to me by the Clerk and which has been extracted from the Bills Tracker. Honestly, just a while ago, I saw some Members almost rise to go for the head of Hon. Limo, who as you know, has been working tirelessly on various finance-related Bills, and to whom we have just committed the Bill by Hon. Makali Mulu.

Surely, Hon. Kangogo, you owe this House an apology. You should withdraw because this is an official record. This is the title of the Bill, its number, when it was first read, published and maturity time. Everything is captured in our Bills Tracker. To allege that the Bill was read two years ago for the first time, obviously, gives a very bad impression about the working method of the Departmental Committee on Finance and Planning. Hon. Kangogo, given these facts, which cannot be controverted, because this is an extract from the official record which has been sent to me by none other than the Clerk of the National Assembly, you owe this House an apology. Withdraw your allegation that the Bill was read for the first time two years ago. Hon. Kangogo, you have the Floor.

**Hon. Kangogo Bowen** (Marakwet East, JP): Thank you, Hon. Speaker. I actually prepared this Bill in the last Parliament. I am very correct in saying that the Bill was read for the first time around June this year. That is what I said, but I want to oblige with your ruling and apologise to the House for what I did not say correctly.

**Hon. Speaker:** Withdraw that aspect, Hon. Kangogo.

**Hon. Kangogo Bowen** (Marakwet East, JP): Hon. Speaker, I apologise and withdraw.

**Hon. Speaker:** The matter ends there unless the House decides to deal with you otherwise. I am through with you.

Next Order, Hon. Members.

## MOTIONS

### ADOPTION OF REPORT ON APPROVAL OF RATIFICATION OF PROTOCOL TO AMEND THE CONVENTION ON OFFENCES AND CERTAIN ACTS COMMITTED ON BOARD AIRCRAFT (MONTREAL PROTOCOL, 2014)

THAT, this House adopts the Report of the Departmental Committee on Transport, Public Works and Housing on its consideration of the Protocol to amend the Convention on Offences and Certain Acts Committed on Board Aircraft (Montreal Protocol, 2014), laid on the Table of the House on Thursday, June 6, 2019 and, pursuant to the provisions of Section 8 of the Treaty Making and Ratification Act, 2012, approves the Ratification of the Protocol to amend the Convention on Offences and Certain Acts Committed on Board Aircraft (Montreal Protocol, 2014).

*(Hon. David Pkosing on 10.9.2019)*

*(Debate concluded on 10.9.2019)*

*(An Hon. Member entered the Chamber with a bag)*

**Hon. Speaker:** Order, Hon. Members, including the Member who is carrying a bag. Hon. Members, I hope that the bags contain material necessary for your discharge of duties in the House. I do not want to make reference to anything that may have happened in my absence.

*(Question put and agreed to)*

ADOPTION OF REPORT ON APPROVAL OF RATIFICATION OF BILATERAL AIR SERVICES AGREEMENTS BETWEEN KENYA AND THE HELLENIC REPUBLIC, BURKINA FASO, CAMBODIA, SEYCHELLES AND FINLAND.

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 Kenya and the Hellenic Republic; Kenya and Burkina Faso; Kenya and Cambodia; Kenya and Seychelles and Kenya and Finland, laid on the Table of the House on Thursday, June 6, 2019, and pursuant to the provisions of Section 8 of the Treaty Making and Ratification Act, 2012, approves the Ratification of the Bilateral Air Services Agreements between Kenya and the Hellenic Republic; Kenya and Burkina Faso; Kenya and Cambodia; Kenya and Seychelles and Kenya and Finland.

*(Hon. David Pkosing on 10.9.2019)*

*(Debate concluded on 10.9.2019)*

*(Hon. Kangogo Bowen stood up in his place)*

**Hon. Speaker:** The Member for Marakwet East, please be in the House. Again, debate on this Motion was concluded yesterday and what remained was for the Question to be put, which I hereby put.

*(Question put and agreed to)*

Next Order.

SENATE AMENDMENTS TO THE COPYRIGHT (AMENDMENT)  
BILL (NATIONAL ASSEMBLY BILL NO.33 OF 2017)

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

**Hon. Aden Duale** (Garissa Township, JP): Hon. Speaker, I beg to move that the Senate amendments to the Copyright (Amendment) Bill (National Assembly Bill No.33 of 2017) be now considered.

Hon. Speaker, I want to give a brief introduction of the Copyright (Amendment) Bill (National Assembly Bill No.33 of 2017). The Bill sought to amend the current Copyright Act of 2001 in order to domesticate certain provisions of the Marrakesh Treaty which Kenya has signed. That Treaty facilitates access to all published works for persons, who are blind, visually impaired or otherwise print disabled which came into force on 30<sup>th</sup> September 2016. As the Constitution envisaged, all international treaties the country signs must be domesticated. That is what it is trying to do.

The Bill was passed on 25<sup>th</sup> July 2018 and forwarded to the Senate on 29<sup>th</sup> August 2018. Therefore, it has stuck in the Senate for close to a year, but it was passed by our colleagues in the Senate with amendments on 5<sup>th</sup> March 2019. Through the Committee Chair, we can confirm that the Senate proposed amendments to Clauses 5(b), 2(a) and 6 of the Bill are not offensive. We have no problem with them. We can deal with that matter later. I am aware that the Departmental Committee on Communication, Information and Innovation considered the Senate amendments to the Bill on 25<sup>th</sup> March 2019, and received submissions from Kenya Copyright Board and the Committee agreed with the Senate amendments, both as a Committee and stakeholders. Indeed, the proposed amendments are good and have improved the Bill by enriching it. Clause 6 is in line with the provisions of the Public Audit Act of 2015.

I beg to move, and ask the Chair of Departmental Committee on Communication, Information and Innovation to second.

**Hon. Speaker:** Hon. Kisang, you have the Floor.

**Hon. William Kisang** (Marakwet West, JP): Hon. Speaker, the Committee on Communication, Information and Innovation considered the Senate amendments to the Copyright Bill on 25<sup>th</sup> March 2019, during which we received submissions from the Kenya Copyright Board on the three amendments that the Senate put across. As the Leader of the Majority Party has said, what the Senate has done is to enhance the Bill and enrich it. As a Committee, we agreed with all the three amendments. We did not have any other issue.

I beg to second.

*(Question proposed)*

**Hon. Members:** Put the Question!

**Hon. Speaker:** Is it the desire of the House that I put the Question?

**Hon. Members:** Yes!

*(Question put and agreed to)*

**Hon. Speaker:** Next Order!

CONSIDERATION OF SENATE AMENDMENTS TO COUNTY  
GOVERNMENTS RETIREMENT SCHEME BILL

**Hon. Aden Duale** (Garissa Township, JP): Hon. Speaker, I beg to move the following Motion:

THAT, the Senate amendments to the County Governments Retirement Scheme Bill (National Assembly Bill No.10 of 2018) be now considered.

The County Governments Retirement Scheme Bill, 2018 was passed by the National Assembly on Wednesday, 17<sup>th</sup> October 2018, and thereafter sent to the Senate in accordance with the provisions of Article 110(4) of the Constitution. The Senate considered the Bill and passed it with amendments on Wednesday, 31<sup>st</sup> July 2019, which was close to a year later. People should not blame the National Assembly because the Senate has kept it for close to one year. We passed it in October last year and they are returning it in September.

The Departmental Committee on Finance and National Planning chaired by Hon. Limo, who today looks like what we can call – if we borrow from the Executive – the super Chairman



of all the Chairs... I am sure he will not be the Chair of the Liaison Committee because if Hon. Cheboi hears that, there are a number of benefits that he will lose. The Chair of the Constituencies Development Committee must be a worried man this afternoon because he has lost a department.

This Bill sought to establish the County Governments Retirement Scheme as a mandatory scheme for all county government officers. It provides for the establishment of a Schemes Board of Trustees, the management and the administration of that scheme. It also makes sure that there is a scheme to offer lump sum payments and draw-downs of income to its members.

I am happy that the Departmental Committee on Finance and National Planning considered the proposed Senate amendments to the Bill. This is only enriching the Bill. They are aligning the Bill with corporate governance and measures established under the Retirement Benefits Act of 1997. So, there is nothing much that the Departmental Committee on Finance and National Planning has changed and they have agreed with the amendments of the Senate. This makes our lives easy. Hon. Mbadi will agree with me that this was one of the most controversial Bills, but it has come to its final conclusion. We should finish with it today and send it to the President for assent.

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

**Hon. Joseph Limo** (Kipkelion East, JP): Hon. Speaker, as I rise to second, I would like to take this opportunity to thank the Office of the Clerk and yourself for saving my Committee, which has been working very hard. When there is wrong information that we have delayed any Bill, it cannot be taken lightly. This is a serious Committee which should be one of the benchmark stations in this world with regard to legislation.

This Bill came to us and we passed it, as the Leader of the Majority Party has said, in October 2018; after which it was sent to the Senate. It is unfortunate that in this country, some things are delayed by the other House. Fortunately, it came back in August and we started working on it. I can report to you that yesterday, we concluded its consideration during our Committee meeting. When we went through the amendments which were done by the Senate, we realised that most of them were done to make the Bill clearer. It was aimed at aligning it to the Retirement Benefits Act, which is a good move. In fact, most of the amendments did not offend in any way our amendments to the Bill in its original form.

Just to mention a few, under Clause 3, the Senate introduced an extra objective of the purpose of the scheme. The objective of this scheme is to ensure that the employees who are working under county governments have a scheme which will help them in future. We have to recognise that most of the retirees in this country are left to the mercy of God because most of them have nothing to depend on after retiring. The dependency ratio in this country is very high.

On average, every retiree has about five dependants. There is even a saying, referred to as agony of retirement, that in this country, rarely do we have people living for more than five years after their retirement. There is a Bill before this House, through which we want to revisit the retirement law to ensure that retirees access their pension immediately they retire. If, indeed, retirees do not access his pension within the first month of retirement, then they are supposed to be retained in the payroll until such a time that they access their pension so that they retain their dignity. Having worked for the country, we need this pension scheme to be implemented immediately.

During public participation, we got a lot of information that most of the employees, especially the new ones who joined county governments, do not currently have a retirement

benefits scheme. In fact, they have worked for more than five years without saving into any scheme. That is a disaster in waiting.

Having gone through the amendments which the Senate made, we came to a conclusion, as a Committee, that we support all the amendments because they are aimed at making the Bill better.

In fact, we are encouraging this House to pass this Bill without amendments so that it is taken to the President for assent as fast as possible. That is so that we enable county governments to have something to offer their employees or our people on the ground to, at least, have something in future when they retire.

I beg to second.

*(Question proposed)*

**Hon. Speaker:** The Member for Seme, Hon. Nyikal wants to say something.

**Hon. (Dr.) James Nyikal** (Seme, ODM): Yes, Hon. Speaker. We must congratulate the Committee for the good work it has done. For once, it looks like the two Houses are working in harmony. I must say this is the best way forward so that we avoid any controversy.

I support.

*(Question put and agreed to)*

Next Order!

## COMMITTEE OF THE WHOLE HOUSE

*(Order for Committee read)*

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

### IN THE COMMITTEE

*(The Temporary Deputy Chairlady  
(Hon. (Ms.) Jessica Mbalu) took the Chair]*

#### THE COPYRIGHT (AMENDMENT) BILL

**The Temporary Deputy Chairlady** (Hon. (Ms.) Jessica Mbalu): Order, Members!

*(Several Hon. Members left the Chamber)*

The Members who are walking out of the Chamber, please, do so as we start the business of the Committee of the whole House. We are in the Committee of the whole House to consider the Senate's amendments on the Copyright (Amendment) Bill (National Assembly Bill No.33 of 2017).

*Clause 5*

*Senate Amendment*

THAT, Clause 5 of the Bill be amended —

(a) in paragraph (b) by deleting the word “as” appearing immediately after the word “is” in the proposed new subsection (2)(a);

(b) by inserting the following new paragraph immediately after paragraph (b) —

(c) by inserting the following new subsection immediately after subsection

(3) —

(4) The Executive Director shall be appointed for a term of four years and shall be eligible for reappointment for one further term of four years.

We have no amendment to this.

*(Question of the amendment proposed)*

*(Question that, the word to be left out be left out, put and agreed to)*

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

*(Senate amendment to Clause 5 agreed to)*

*Clause 6*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Jessica Mbalu): Hon. Members, this has no amendment but the Order Paper has an error. I want to cross the error through the Chair.

THAT, Clause 6 of the Bill be amended —

(a) in paragraph (b) by deleting the word “as” appearing immediately after the word “is” in the proposed new subsection (2)(a);

(b) by inserting the following new paragraph immediately after paragraph (b) —

(c) by inserting the following new subsection immediately after subsection

(3) —

(4) The Executive Director shall be appointed for a term of four years and shall be eligible for reappointment for one further term of four years.

**Hon. William Kisang** (Marakwet West, JP): Hon. Temporary Deputy Chairlady, I beg to move:

THAT, the Bill be amended in Section 19 of the principal Act in Sub-Section 2 —

(a) by deleting the words “auditor general corporations or to an auditor appointed under this section” appearing immediately after the words “submit to the” and substituting thereof the words “auditor general” and,

(b) by deleting Sub-Section 3 and substituting thereof the following new sub-section “the accounts of the board shall be audited and reported in accordance with the provisions of the Public Audit Act”.

We agreed with the Senate amendments on Clause 6, basically in its entirety. I have just put it out for clarity because what was on the Order Paper was not clear.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Jessica Mbalu): Very well. As the Chairman has put it, we are just cleaning the Order Paper. Otherwise, there is no amendment to this. Let us have a comment from the Leader of the Majority Party.

**Hon. Aden Duale** (Garissa Township, JP): You know this is a House of record. Whoever is preparing the Order Paper must be very categorical. The Committee agreed with the version of the Senate. What is on the Order Paper is not that version. We do not want to look like we are amending the Senate's amendment. Let whoever prepares the Order Paper hear from me that "you must proof-read the Order Paper". That is confusion. Hon. Temporary Deputy Chairlady, you need to make it very clear that there is no amendment. There was an error on the Order Paper. So, we are agreeing with the version that came from the Senate in as far as Clause 6 is concerned.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Jessica Mbalu): Very well on the clarification from the Chair and the Leader of the Majority Party. Just to reiterate, we do not have amendments on the same. It was just cleaning of the Order Paper.

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

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

*(Senate amendment to Clause 6 agreed to)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Jessica Mbalu): We are through with the Committee of the whole House on the consideration of that Bill. We will move the reporting of the same. I call upon the Mover to move.

**Hon. Aden Duale** (Garissa Township, JP): Hon. Chairperson, I beg to move that the Committee doth report to the House its consideration of the Senate's amendments to the Copyright (Amendment) Bill (National Assembly Bill No.33 of 2017) and its approval thereof without amendments.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Jessica Mbalu): You are right. It is very well, Hon. Leader of the Majority Party, who is the Mover.

*(Question proposed)*

*(Question put and agreed to)*

#### THE COUNTY GOVERNMENTS RETIREMENT SCHEME BILL

Hon. Members, we will continue with the Committee of the whole House to consider the County Governments Retirement Scheme Bill (National Assembly Bill No.10 of 2018).

*(Senate amendments to Clauses 3, 4, 6,*

*10, 16, 18, 21, 22 and 23 agreed to)*

**COMMITTEE OF THE WHOLE HOUSE**

*(Order for Committee read)*

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

**IN THE COMMITTEE**

*(The Temporary Deputy Chairlady  
(Hon. (Ms.) Jessica Mbalu) took the Chair]*

**SENATE AMENDMENTS TO THE COPYRIGHT (AMENDMENT) BILL**

**The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu):** Order, Members.

*(Several Hon. Members left the Chamber)*

The Members who are walking out of the Chamber, please, do so as we start the business of the Committee of the whole House. We are in the Committee of the whole House to consider Senate amendments to the Copyright (Amendment) Bill (National Assembly Bill No. 33 of 2017).

*Clause 5  
Senate Amendment*

THAT, Clause 5 of the Bill be amended —

(a) in paragraph (b) by deleting the word “as” appearing immediately after the word “is” in the proposed new subsection (2)(a);

(b) by inserting the following new paragraph immediately after paragraph (b) –

(c) by inserting the following new subsection immediately after subsection

(3) –

(4) The Executive Director shall be appointed for a term of four years and shall be eligible for reappointment for one further term of four years.

We have no amendment to this.

*(Question of the amendment proposed)*

*(Question, that the word to be left out  
be left out, put and agreed to)*

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

*(Senate Amendment to Clause 5 agreed to)*

*Clause 6  
Senate Amendment*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Jessica Mbalu): Hon. Members, this has no amendment but the Order Paper has an error. I want to cross the error through the Chair.

THAT, Clause 6 of the Bill be amended –

(a) in paragraph (b) by deleting the word “as” appearing immediately after the word “is” in the proposed new subsection (2)(a);

(b) by inserting the following new paragraph immediately after paragraph (b) –

(c) by inserting the following new subsection immediately after subsection

(3) –

(4) The Executive Director shall be appointed for a term of four years and shall be eligible for reappointment for one further term of four years.

**Hon. William Kisang** (Marakwet West, JP): Hon. Temporary Deputy Chairlady,

THAT, Section 19 of the principal Act is amended in subsection (2) by-

(a) deleting the words “Auditor General (Corporations) or to an auditor appointed under this section” appearing immediately after the words “submit to the” and substituting thereof the words “Auditor General” and,

(b) by deleting Subsection (3) and substituting thereof the following new subsection “the accounts of the board shall be audited and reported in accordance with the provisions of the Public Audit Act”.

We agreed with the Senate amendments on Clause 6, basically, in its entirety. I have just put it out for clarity because what was on the Order Paper was not clear.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Jessica Mbalu): Very well. As the Chairman has put it, we are just cleaning the Order Paper. Otherwise, there is no amendment to this. A comment from the Leader of the Majority Party!

**Hon. Aden Duale** (Garissa Township, JP): You know this is a House of record. Whoever is preparing the Order Paper must be very categorical. The Committee agreed with the version of the Senate. What is on the Order Paper is not that version. We do not want to look like we are amending the Senate’s amendment. Let whoever prepares the Order Paper hear from me that you must proof-read the Order Paper. That is confusion.

Hon. Temporary Deputy Chairlady, you need to make it very clear that there is no amendment. There was an error on the Order Paper. So, we are agreeing with the version that came from the Senate in as far as Clause 6 is concerned.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Jessica Mbalu): Very well on the clarification from the Chair and the Leader of the Majority Party. Just to reiterate, we do not have amendments on the same. It was just a cleaning of the Order Paper.

*(Question, that the word to be left out  
be left out, put and agreed to)*

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

*(Senate Amendment to Clause 6 agreed to)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Jessica Mbalu): We are through with the Committee of the whole House on consideration of that Bill. We will move the reporting of the same. I call upon the Mover.

**Hon. Aden Duale** (Garissa Township, JP): Hon. Chairlady, I beg to move that the Committee doth report to the House its consideration of the Senate Amendments to the Copyright (Amendment) Bill (National Assembly Bill No.33 of 2017) and its approval thereof without amendments.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Jessica Mbalu): You are right. It is very well, Hon. Leader of the Majority Party who is the Mover.

*(Question proposed)*

*(Question put and agreed to)*

#### SENATE AMENDMENTS TO THE COUNTY GOVERNMENTS RETIREMENT SCHEME BILL

**The Temporary Deputy Chairlady** (Hon. (Ms.) Jessica Mbalu): Hon. Members, we will continue with the Committee of the whole House to consider the County Governments Retirement Scheme Bill (National Assembly Bill No.10 of 2018).

#### *Clause 3 Senate Amendment*

THAT, clause 3 of the Bill be amended by inserting the following new paragraph immediately after paragraph (e)—

(f) protect the benefits of the members of the Scheme.

*(Question of the amendment proposed)*

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

*(Senate Amendment to Clause 3 agreed to)*

#### *Clause 4 Senate Amendment*

THAT, clause 4 of the Bill be amended in sub-clause (3) by inserting the following new paragraph immediately after paragraph (c)—

(ca) gratuity; and

*(Question of the amendment proposed)*

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

*(Senate Amendment to Clause 4 agreed to)*

### *Clause 6*

#### *Senate Amendment*

THAT, the Bill be amended by deleting clause 6 and substituting therefor the following new clause—

- Board of Trustees of the Scheme. 6.(1) The management of the Scheme shall vest in a Board of Trustees of the Scheme.
- (2) The Board shall consist of—
- (a) the chairperson elected by the Trustees from among the members under paragraph (c), (d), (e) and (f);
  - (b) the Principal Secretary responsible for matters relating to finance or a representative;
  - (c) a person nominated by Council of County Governors;
  - (d) a person nominated by County Public Service Boards;
  - (e) a person nominated by County Assembly Service Boards;
  - (f) five persons nominated by most representative trade unions representing employees of county governments of whom at least two shall not be of the same gender as follows—
    - (i) four persons from trade unions representing the employees within the county executive; and
    - (ii) a person from trade unions representing the employees within the county assemblies' service; and
  - (g) the chief executive officer who shall be an ex officio member and the secretary to the Board with no voting rights.
- (3) The vice-chairperson of the Board shall be elected by the Trustees from among their number.
- (4) The chairperson and vice- chairperson shall be of the opposite gender.
- (5) The Cabinet Secretary shall ensure that not more than two thirds of the members of the Board are of the same gender.
- (6) The Cabinet Secretary shall appoint the persons nominated under subsection (2) by notice in the gazette.
- (7) The procedure for nomination and appointment of Trustees under subsection (2) shall be as prescribed in the regulations.



*(Question of the amendment proposed)*

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

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

*(Senate Amendment to Clause 6 agreed to)*

*Clause 10  
Senate Amendment*

THAT, clause 10 of the Bill be amended in sub-clause (1) by deleting the word “three” appearing immediately after the words “absence from” appearing in paragraph (e) and substituting therefor the word “two”.

*(Question of the amendment proposed)*

*(Question, that the word to be left  
out be left out, put and agreed to)*

*(Question, that the word to be inserted in place thereof  
be inserted, put and agreed to)*

*(Senate Amendment to Clause 10 agreed to)*

*Clause 16  
Senate Amendment*

THAT, the Bill be amended by deleting clause 16 and substituting therefor the following new clause—

Remuneration of Trustees.

16. The Trustees shall be paid such remuneration as the Authority may determine in accordance with the Retirement Benefits Act.

*(Question of the amendment proposed)*

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

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

*(Senate Amendment to Clause 16 agreed to)*

*Clause 18  
Senate Amendment*

THAT, clause 18 of the Bill be amended by inserting the following new sub-clause immediately after sub-clause (4)—

(4a) The chief executive officer shall hold office for a term of three years and may be eligible for re-appointment for a further final term of three years.

*(Question of the amendment proposed)*

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

*(Senate Amendment to Clause 18 agreed to)*

*Clause 21  
Senate Amendment*

THAT, clause 21 of the Bill be amended in paragraph (d) by deleting the words “provide regular information” appearing immediately before the words “on investment strategy” and substituting the words “submit reports on a quarterly basis”.

*(Question of the amendment proposed)*

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

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

*(Senate Amendment to Clause 21 agreed to)*

*Clause 22  
Senate Amendment*

THAT, clause 22 of the Bill be amended in sub-clause (1) by inserting the following new paragraph immediately paragraph (f)-

(fa) submit to the Board a report on a quarterly basis, of the reconciliations with respect to the funds held by the Custodian;

*(Question of the amendment proposed)*

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

*(Senate Amendment to Clause 22 agreed to)*

*Clause 23  
Senate Amendment*

THAT, clause 23 of the Bill be amended in sub-clause (2) by-

- (a) inserting the words “at least on a quarterly basis” immediately after the words “including access” in paragraph (d);
- (b) inserting the following new paragraph immediately after paragraph (d)-
- (da) keep and maintain proper books of accounts of the scheme;

*(Question of the amendment proposed)*

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

*(Senate Amendment to Clause 23 agreed to)*

*Clause 24  
Senate Amendment*

THAT, clause 24 of the Bill be amended-

- (a) by deleting sub-clause (1) and substituting therefor the following new sub-clause –
  - (1) A member shall, so long as the member remains in the employment of a sponsor, contribute not less than twelve percent of that member’s pensionable emoluments to the Scheme.
- (b) in sub-clause (2) by inserting the words “not less than” immediately after the words “contribute to the scheme”.
- (c) in sub-clause (5) by deleting the words “on each occasion” appearing immediately after the words “salary of the contributor” and substituting therefor the words “in each month”.

*(Question of the amendment proposed)*

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

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

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

*(Senate Amendment to Clause 24 agreed to)*

*Clause 44  
Senate Amendment*

THAT, clause 44 of the Bill be amended by deleting sub-clause (1) and substituting therefor the following new sub-clause-

(1) The scheme shall be reviewed by an actuary appointed by the Board as provided for in the Retirement Benefits Act.

*(Question of the amendment proposed)*

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

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

*(Senate Amendment to Clause 44 agreed to)*

*Clause 46  
Senate Amendment*

THAT clause 46 of the Bill be amended in the introductory phrase in sub-clause (2) by inserting the word “actuary” immediately after the words “fund Manager”.

*(Question of the amendment proposed)*

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

*(Senate Amendment to Clause 46 agreed to)*

*Clause 48  
Senate Amendment*

THAT clause 48 of the Bill be amended –

(a) in sub-clause (1) by deleting the words “two years” appearing immediately after the words “imprisonment for a term not exceeding” at the end of sub-clause and substituting therefor the words “five years.”

(b) by inserting the following new sub-clause immediately after sub-clause (2)-

(3) A person who is convicted of an offence under subsection (1) (c) shall, in addition to any fine that may be imposed, refund to the scheme three times the value of any loss that may be incurred by the scheme by reason of the commission of the offence.

*(Question of the amendment proposed)*

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

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

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

*(Senate Amendments to Clause 48 agreed to)*

*Clause 55  
Senate Amendment*

THAT clause 55 of the Bill be amended by inserting the following new sub-clauses immediately after sub-clause (6)—

(7) The Auditor General shall cause an actuarial audit and valuation to be carried out with respect to the closed schemes within six months upon the commencement of this Act to ascertain the following for the purpose of transitional management—

- (a) assets acquired by the schemes;
- (b) liabilities accrued by the schemes; and
- (c) employees of the schemes.

(8) The Auditor General shall submit a report on the findings of the audit and valuation to the Board, the Senate and the National Assembly within three months of carrying out of the audit under subsection (7).

*(Question of the amendment proposed)*

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

*(Senate Amendment to Clause 55 agreed to)*

*Clause 56  
Senate Amendment*

THAT, clause 56 of the Bill be amended by deleting sub-clause (6) and substituting the following new sub-clause—

(6) The Retirement Benefits Authority shall, within five years from the commencement of this Act, ensure the implementation of this section.

*(Question of the amendment proposed)*

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

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

*(Senate Amendment to Clause 56 agreed to)*

*New Clause 59*

*Senate Amendment*

THAT, the Bill be amended by inserting the following new clause immediately after clause 58—

Amendment of The County Governments Act is amended by deleting section  
section 132 of 132.  
Act No. 17 of  
2012

*(Senate Amendment to New Clause 59 agreed to)*

*First Schedule*

*Senate Amendment*

THAT, the schedule is amended in paragraph 2 by deleting subparagraphs (1) and (2) and substituting therefor the following new subparagraphs—

(1) The quorum of a meeting of the Board shall be five trustees present and voting and shall include at least two trustees appointed under section 6 (2) (b), (c), (d) or (e) and at least three trustees appointed under section 6 (2) (f)

(2) For special meetings, the quorum shall be six trustees present and voting and shall include at least three trustees appointed under section 6 (2) (b), (c), (d) or (e) and at least four trustees appointed under section 6 (2) (f).

*(Question of the amendment proposed)*

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

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

*(Senate Amendment to First Schedule agreed to)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Jessica Mbalu): Hon. Members, we are through with the Senate amendments to the County Governments Retirement Scheme Bill.

Let us have the Mover.

**Hon. Aden Duale** (Garissa Township, JP): Hon. Temporary Deputy Chairlady, I beg to move that the Committee doth report to the House its consideration of the Senate Amendments to the Senate amendments to the County Governments Retirement Scheme Bill (National Assembly Bills No. 10 of 2018) and its approval thereof without amendments.

*(Question put and agreed to)*

*(The House resumed)*

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

## REPORTS

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Very well, Hon. Members. Let us progress. Let us move to the Senate Amendments to the Copyright (Amendment) Bill (National Assembly Bill No. 33 of 2017).

### SENATE AMENDMENTS TO THE COPYRIGHT (AMENDMENT) BILL

**Hon. (Ms.) Jessica Mbalu** (Kibwezi East, WDM-K): Hon. Temporary Deputy Speaker, I beg to report that the Committee of the whole House has considered the Senate Amendments to the Copyright (Amendment) Bill (National Assembly Bill No. 33 of 2017) and approved the same without amendments.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Mover.

**Hon. Aden Duale** (Garissa Township, JP): Hon. Temporary Deputy Speaker, I beg to move that this House does agree with the Committee in the said Report. I ask the Chairperson of the Departmental Committee on Communication, Information and Innovation, Hon. Kisang who looked at this Bill, to second the Motion for agreement with the Report of the Committee of the whole House.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Hon. Kisang Kipkemoi.

**Hon. William Kisang** (Marakwet West, JP): Thank you, Hon. Temporary Deputy Speaker. I agree with the Chair on the same without amendments.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Order! There is a Member who is still moving.

*(Question proposed)*

We shall pend putting the Question on that particular one. Shall we have the second one, that is, the County Government Retirement Scheme Bill (National Assembly Bill No.10 of 2018).

*(Putting of the Question deferred)*

## SENATE AMENDMENTS TO THE COUNTY GOVERNMENTS RETIREMENT SCHEME BILL

**Hon. (Ms.) Jessica Mbalu** (Kibwezi East, WDM-K): Thank you, Hon. Temporary Deputy Speaker, I beg to report that the Committee of the whole House has considered the Senate Amendments to the County Governments Retirement Scheme Bill (National Assembly Bills No. 10 of 2018) and approved the same without amendments.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Mover.

**Hon. Aden Duale** (Garissa Township, JP): Hon. Temporary Deputy Speaker, I beg to move that this House does agree with the Committee in the said Report. I also request Hon. Limo, Chairman of the Departmental Committee on Finance and National Planning, who looked at this Bill, to second the Motion for agreement with the Report of the Committee of the whole House.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Hon. Limo.

**Hon. Joseph Limo** (Kipkelion East, JP): Hon. Speaker, I second.

*(Question proposed)*

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Again, we will pend putting the Question on that Bill.

*(Putting of the Question deferred)*

Next Order!

**BILL***Second Reading*

## THE PUBLIC FINANCE MANAGEMENT (AMENDMENT) BILL

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): The Chairperson, Budget and Appropriations Committee.

**Hon. Kimani Ichung'wah** (Kikuyu, JP): Thank you, Hon. Temporary Deputy Speaker. I beg to move that the Public Finance Management (Amendment) Bill (National Assembly Bill No. 63 of 2019) be now read a Second Time.

This is a short Bill. It is basically informed by what has been perceived to be a crisis in relation to the disbursement of funds to our county governments since the stalemate that we had with our colleagues in the Senate and the Council of Governors in relation to the Division of Revenue Bill. There has been a lacuna in the law such that if we have a protracted stalemate like the one that has been there this year, there was no mechanism in place in law that would enable the National Treasury and the Controller of Budget to disburse funds to the county governments. It has, therefore, occasioned a lot of suffering for people in the counties. You and Members will agree with me that many of the healthcare workers in the counties – you remember a case in Kirinyaga, Kisumu and a number of other counties where people went on strike demanding payment. I can also tell you, since I do *tangatanga* in the counties over the weekends, I have had occasion to meet....



**Hon. Aden Duale** (Garissa Township, JP): On a point of order.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): What is it, Leader of the Majority Party?

**Hon. Aden Duale** (Garissa Township, JP): Hon. Temporary Deputy Speaker, ‘*tangatanga*’ is not a parliamentary word. And you cannot use the Floor of this House to “*tangatanga*” or use the privilege to sell your formation. You can only sell it on Friday, Saturday and Sunday. This House has the Majority and the Minority. I lead the Majority, which is Jubilee, and he is a member. If he wants to go to “*tangatanga*”, he should turn it into a party, resign and then I will whip him out as the Chair of the Budget Committee. So, can he withdraw that? There is no “*tangatanga*”. There is a very powerful party called Jubilee led by President Uhuru Kenyatta. On the other side, we have a very powerful party called Orange Democratic Movement (ODM), led by Hon. Raila Odinga. The rest coalesce around us. They are not parliamentary parties. They are donkeys.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Order, Hon. Ichung’wah. Hon. John Mbadi, I am not sure you can raise a point of order over another one. The Leader of the Majority Party has raised an issue, so why do you want to raise another one? Are you saying the Chair has committed many sins? Which sins? It can only be contravention of the Standing Orders, not sins. Anyway, what is it?

**Hon. John Mbadi** (Suba South, ODM): Hon. Temporary Deputy Speaker, our Standing Orders are very clear that when you start speaking in English, you must speak in it throughout your speech. When you start in Kiswahili, you must continue consistently. The Member for Kikuyu had started speaking in English, and then he said that he had been *tangatangaring*. I have never known any English word called “*tangatangaring*”. It is not even a Kiswahili word. So, he is speaking in either mother tongue or some other language I do not know where he got it from, which is not allowed in this House. If we allow these bad manners in this House, like it is happening in church, this country is going to be destroyed. The bad manners have gone to church and now it is coming to Parliament and it is led by none other than the chairman of some outfit which we do not know. So, can he withdraw the word “*tangatangaring*” and replace it with the correct word? I do not know what he meant to say, but he should use the correct word and stop *tangatangaring*, if at all he was *tangatangaring*.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Order, Hon. John Mbadi. You also raise issues of the church that Hon. Ichung’wah had not raised. I am not aware of whatever church issues that you are raising.

You know, Leader of the Majority Party, Hon. Ichung’wah did not talk about *tangatanga* being a political party. Be that as it may, Hon. Ichung’wah, use English if you start in it. If you start in Swahili, finish in Swahili. Let us leave that issue of *tangatangaring*. I do not know what it is.

**Hon. Kimani Ichung’wah** (Kikuyu, JP): Thank you, Hon. Temporary Deputy Speaker. I was also taken aback because I do not know what the Leader of the Majority Party was speaking about. In fact, the Leader of the Minority Party is the one who is right in his point of order in terms of mixing languages. Language is also evolving. I used the term “*tangatangaring*”, meaning moving around the counties. I am well advised in terms of mixing languages. Language is evolving. There are many Swahili words that have been incorporated into the English language and vice versa, like ‘safari’ have been incorporated into the English language. Indeed, some Swahili and English words have been incorporated into our vernacular languages. Therefore, do not be surprised if “*tangatangaring*” in the coming years becomes an English word.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Now, Hon. Ichung'wah, you are getting too far. Can you get to the business?

**Hon. Kimani Ichung'wah** (Kikuyu, JP): I am in business, Hon. Temporary Deputy Speaker. I was saying from my engagements with Members of the County Assemblies (MCAs) across the country...

**Hon. Aden Duale** (Garissa Township, JP): On a point of order.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): What is it, Leader of the Majority Party? What is out of order again?

**Hon. Aden Duale** (Garissa Township, JP): Hon. Temporary Deputy Speaker, the Bill before this House is called the Public Finance Management (Amendment) Bill, 2019. Now what we hear is *tangatanga*. I have no problem with *tangatanga* outside this House; I might be part of them. But when it comes to the Chamber, we do not discuss *tangatanga*. Let us be serious. And this is the man who made Hon. Nyoro to be arrested, because he is recruiting people every day. So, tell him to go to the substantive business.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Order, Leader of the Majority Party. You are also treading on a thin line. Hon. Ichung'wah, please get to the business.

**Hon. Kimani Ichung'wah** (Kikuyu, JP): Hon. Temporary Deputy Speaker, let us just ignore what the Leader of the Majority Party said. Just like Hon. Ndindi Nyoro, I am a law-abiding citizen of this country. In terms of recruiting people, I am good at recruiting.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): You know, Hon. Ichung'wah, I am going to rule you out of order. You are still gravitating towards that. Get to the business.

**Hon. Kimani Ichung'wah** (Kikuyu, JP): Hon. Temporary Deputy Speaker, if we may continue, I hope the Leader of the Majority Party will not interrupt again. I was saying as I move around the counties and engage with many MCAs, including those from my own county and constituency, many of them will tell you – even this last weekend I was with a few at a fundraising somewhere – they have not received their salaries since the end of June of the last financial year. Therefore, it is not just the healthcare workers and other staff in the counties that have been subjected to a lot of suffering because of lack of disbursement of funds to the counties, but also legislators at the county level.

Therefore, the main objective of this Bill is to cure the lacuna that is in the law, that if there is a stalemate on the Division of Revenue Bill, like what was there today – I am happy we have just tabled an amended version of the Division of Revenue Bill this afternoon - hopefully we will pass it tomorrow and our colleagues in the Senate will do the same and allow them to publish the County Allocation of Revenue Bill. In future there are no guarantees that there will be no such disagreements between this and the other House. It is also important to note, and it is something that I did indicate during the mediation committee session this morning, that as much as the public and everybody out there have blamed Parliament for the stalemate that has been there over the Division of Revenue Bill, we must also take blame to the Executive, because the Constitution did create other institutions that would help us to navigate through the question of division of revenue and establish an institution like the Intergovernmental Budget and Economic Council (IBEC).

In the FY 2018/2019, Members will remember we passed the Division of Revenue Bill and the County Allocation of Revenue Bill in record time, because there was an agreement at IBEC. Therefore, I want to beg that even as we want to blame the other House and they also want to blame us and the public and the Press wants to blame what they see as sibling rivalry, we also take responsibility where it ought to be. The CRA, the CoG and the national Executive

under IBEC have an opportunity as the Executives in both the national and county governments and the commission in charge of revenue allocation to agree at the IBEC level. If they agree, they make the work of this House and of the Senate much easier.

The main objective of this Bill, therefore, is to put in place interim measures to allow county governments to access the bare minimum of their share of revenue as guaranteed and granted to them under Article 206(2) of the Constitution to enable them to offer services to the public pending enactment of the Division of Revenue Bill; in the event that such a Bill is not enacted before the commencement of the next financial year as happened in this FY of 2019/2020.

The Bill is not in any way envisaged to be a replacement of the Division of Revenue Bill. Nobody should misconstrue this to be coming to replace the Division of Revenue Bill as contemplated in the Constitution. It merely seeks to put in place interim measures for the financing of county governments, as I said, to pre-empt the suffering that we have seen this financial year.

As I said, resources are very limited. With time, our needs and demand for resources will far much outstrip the available resources. So, it is almost guaranteed that every other financial year we will not probably be in agreement on how much resource we will share between the two levels of government. However, the Constitution, as passed in 2010, guarantees that at least a minimum of 15 per cent will be given as sharable revenue to county governments. So, irrespective of whether or not we have passed the Division of Revenue Bill, the 15 per cent that has been granted to the counties by the Constitution ought to be availed to the county governments for them to continue with business, just like the national Government is able to continue with business if we have not passed the Appropriations Bill. The Constitution provides for measures within which Government can access funds to offer services to the public.

Other than safeguarding the 15 per cent, Clause 2 of the Bill proposes to insert a new Section 191A into the Public Finance Management Act, 2012 to allow the Senate, by resolution, to divide the guaranteed 15 per cent among counties in the event that a Division of Revenue Bill has not been passed by the 10<sup>th</sup> day of June. This is in line with the Senate's role of approving the basis for allocation of national revenue among county governments every five years, pursuant to Article 217 of the Constitution.

Hon. Temporary Deputy Speaker, you are well aware that the County Allocation of Revenue Act emanates from the Senate. So, we are also creating a provision within this Bill such that if we are giving our counties the minimum 15 per cent, then the Senate would share that 15 per cent amongst the counties by way of a resolution. We are also guaranteeing them that once such a resolution is transmitted to the National Assembly, it must muster a two-thirds majority to amend it. Therefore, the National Assembly cannot easily reject such a resolution by the Senate. This is, again, in line with the constitutional provisions according protection to special Bills concerning county governments, under Article 110 of the Constitution.

The resolution, as passed, is to constitute Parliament's explicit authorisation to the Controller of Budget to disburse funds to county governments at the commencement of a new financial year. Therefore, once this resolution is passed, the Controller of Budget can use it to approve or authorise disbursement of funds to county governments so that they can continue to offer services to the public.

Hon. Temporary Deputy Speaker, I must say that this Bill is an ingenious way to offer a solution to a problem that has been there. I am privy to a letter in which the Attorney General had given his opinion. He proposed that Parliament, not the National Assembly, enacts a

legislation that would give a solution to that existing lacuna in law where the Division of Revenue Bill has not been agreed to before the end of the preceding financial year. Therefore, I thought this Bill would be a very ingenious way to offer that solution of filling that gap in law and offer a practical solution to the problems that we have seen this year. It is my hope and prayer that this House and the Senate passes it. As you have seen, this Bill concerns county governments in terms of Article 110 of the Constitution. It relates to money which has already been charged on the Consolidated Fund by Article 203(2) of the Constitution. Therefore, as soon as we are done with this Bill, it will be transmitted to the Senate. I hope our good Senators, being the people charged with the responsibility of protecting the counties, will also be accommodative of this Bill and pass it in record time so that next year we are not faced with a similar situation. You realise that today is 11<sup>th</sup> September; it is the day we have tabled the mediated version of the Division of Revenue Bill. It has been a protracted battle for almost three months.

I do not want to go to the issues relating to the Division of Revenue Bill but it has not been a very good experience for both Houses of Parliament. Therefore, it is only fair that the two Houses of Parliament, the Council of Governors, the Commission on Revenue Allocation (CRA), the national Executive and the county executives engage each other on issues to do with division of revenue and share the resources equitably so as to allow services to continue being offered in the counties. I, therefore, hope and pray that our good Senators will also pass this Bill as it is. Earlier this morning, we had an engagement with a number of them during the mediation talks, and there are certain proposals that they made. I take this opportunity to ask them to just let this Bill pass as it is with the 15 per cent. They were indicating that it might be better to do a disbursement of 50 per cent of what is in the Division of Revenue Bill that is yet to be agreed upon. However, there could be a chance in future. For instance, this year, the Kshs316.5 billion that we are proposing in the Division of Revenue Bill is about 30.5 per cent of the last audited accounts. If we were to give them 50 per cent of that amount this year, it would be about Kshs158 billion. If we were to give them 15 per cent, it would be about Kshs155 billion. So, there is a small difference but in future – maybe, in another three years – once the Public Accounts Committee has tabled their audited accounts for the most recent financial statements of Government and our revenues are going up, it would be disadvantageous to the same counties. Therefore, I ask the Senators to rethink the question of percentages and let this Bill pass as it is because the counties may end up losing. If anything, this Bill's import is from what is provided for in the Constitution; the guaranteed 15 per cent. The Division of Revenue Bill has no guarantee of figures.

With those remarks, I beg to move and request the Leader of the Majority Party to second.

*(Hon. (Ms.) Gladys Boss Shollei spoke off record)*

**Hon. Kimani Ichung'wah** (Kikuyu, JP): Hon. Temporary Deputy Speaker, I do not know why Hon. Shollei is harassing us to be brief. The Leader of the Majority Party may second at his own leisure and time. There is a lot of time. It is only 4.00 p.m.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Very well, the Leader of the Majority Party has his time.

**Hon. Aden Duale** (Garissa Township, JP): Thank you, Hon. Temporary Deputy Speaker.

First, I thank the Budget Office. I always have confidence in the men and women who work in the Budget Office of Parliament. They are the equivalent of the National Treasury. They

went and found out a legislative framework that can cure this ping-pong over the Division of Revenue Bill. This is so that as this bicameral Parliament argues about the Division of Revenue Bill, the counties are not victimised by that supremacy battle. I call it supremacy battle because on the outset we were giving the Senate facts and figures. For the Head of State or the other arm of Government to agree with you, you must be based on facts and figures. Ultimately, they had to agree with us on the Kshs316.5 billion, but what happened and what was the damage? The counties suffered, people were not paid salaries and hospitals were closed due to strikes.

Therefore, this is a very serious matter and when the two Houses disagree on a matter, they must look at who is suffering. Our position as the only House that has the constitutional mandate to deal with budget matters, our argument was based on facts and figures. That is why everybody else, including the National Treasury agreed with us. So, what is in this Bill?

Mr. Temporary Deputy Speaker, Article 20...

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

*[The Temporary Deputy Speaker  
(Hon. (Ms.) Jessica Mbalu) took the Chair]*

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): The Leader of the Majority Party, you need to notice change of Chair.

**Hon. Aden Duale** (Garissa Township, JP): Hon. Temporary Deputy Speaker, I am very sorry. You know when there is change of guard on the Chair, there must be some ceremony. I did not notice you had taken over. I have respect for female colleagues in the House and more so, Speakers. So, I am very sorry.

Hon. Temporary Deputy Speaker, this Bill is anchored on two Articles of the Constitution. The first one is Article 203(2) of the Constitution which states:

“(2) For every financial year, the equitable share of the revenue raised nationally that is allocated to county governments shall be not less than fifteen per cent of all revenue collected by the national government.”

This automatically means the Constitution has given not less than 15 per cent of the national revenue of the last audited accounts approved by the National Assembly to the county Governments. The 15 per cent is their money whether this House or the Senate appropriates or not.

As I said, this Bill is drawn from two Articles. If you go to Article 206(2) it states as follows:

“(2) Money may be withdrawn from the Consolidated Fund only-

(a) in accordance with an appropriation by an Act of Parliament;

(b) in accordance with Article 222 or 223; or

(c) as a charge against the Fund as authorised by this Constitution or an Act of Parliament.”

So, the only two funds that the Constitution has guaranteed and allocated money can be charged directly to the Consolidated Fund, which is the 15 per cent to county governments and the Equalisation Fund. Whether the House appropriates or not, those amounts of money can be charged. So, what was the problem and how comes we could not give the 15 per cent to counties during this impasse between the two Houses?

According to a letter, the opinion of the Attorney-General of the Republic of Kenya Justice Kihara, the problem was that for the Controller of Budget to directly charge the 15 per cent and give it to counties the PFM Act had to be amended. That is what we are doing this afternoon. This Bill is not talking about anything else. It is saying in the event there is ping-pong over the Division of Revenue, between the Senate and the National Assembly, the counties cannot suffer, but they can access the 15 per cent given to them by the Constitution which is directly charged to the Consolidated Fund. With the passage of this Bill, we can argue over the Division of Revenue Bill until the cows come home. But the counties will not face a cash crisis.

The current Chair of the Council of Governors was the Minister for Planning in the 10<sup>th</sup> Parliament and was also in-charge of the National Government Constituencies Development Fund (NG-CDF) and was very popular then. The other day, I told him, Chairman I think you have been cheated by the Senate. They are giving you Kshs335 billion which they do not have and we also do not have the money. But worse enough is that he told me they had agreed to give him. This is one of the issues in this country which makes me wonder. The CoG and Senators went to the President of the Supreme Court and the Chief Justice requesting for money. The Judiciary under the leadership of the Chief Justice wanted more money this financial year. So, if they have powers to give themselves money, the Chief Justice could have given the Judiciary more money.

I am so happy that the Chief Justice of the Republic of Kenya as he always says, stuck to the fidelity of the Constitution told the Senators to go back and sit with their colleagues in the National Assembly and resolve the legislative matter within 30 days. I am sure our litigation Department will report on 16<sup>th</sup> next week that the matter was resolved. So, there was nothing about the Chair of Budget and Appropriations Committee or all of us who were in the Mediation Committee denying counties money.

I want to go on record that there is a group that represents political parties. The Commission for Revenue Allocation is the only Commission that has representation from political parties. They are seven; four from Jubilee and three are from the National Super Alliance (NASA) Coalition. They had the audacity not to consult their political parties and leaders. This Commission is the one that brought about this problem. The Constitution states that their function is to give recommendations. They have no other business but to make recommendations which can be accepted or rejected. I want the Chair of that Commission to go back to the Constitution. I do not think she is a lawyer or law maker but I am sure she has...

Article 216 (2) of the Constitution states:

“(2) The Commission shall also make recommendations on other matters concerning the financing of, and financial management by, county governments, as required by this Constitution and national legislation.”

Their main function is to make recommendations concerning the basis for equitable sharing of revenue raised by the National Government. Theirs is to give recommendations by the National Treasury that is answerable to the National Assembly Budget and Appropriations Committee which gives figures. So, this quagmire was brought about by this Commission. They should listen, that their function is only to recommend and they cannot give themselves powers not given to them by the Constitution.

The problem we were having is that people out there were saying we were trying to change the Division of Revenue Bill which has a clause in the Constitution. Not unless we amend it, the Division of Revenue Bill will be there. Therefore, this House, the Budget Office and the Budget and Appropriations Committee have realised that going forward, in order to save

the country from the confrontation and confusion that comes with the Division of Revenue Bill, which in my opinion should have been a Bill exclusively for the National Assembly... That is why the framers of the Constitution contemplated that the County Allocation of Revenue Bill belongs to the Senate. For the National Assembly to amend that Bill, they require a two-thirds majority.

There are senior lawyers including Hon. Shollei here, Hon. Kioni and Hon. Shamalla who were there during the process of constitution-making. The framers of the Constitution contemplated that the Division of Revenue Bill will become a subject of a protracted dispute between the two Houses. If that was the intention of the framers of the Constitution, then we must anticipate that going forward we will have more complicated and protracted arguments on the Division of Revenue Bill. This Bill is important.

We are here on behalf of the people of Kenya to find a long-lasting solution. So, going forward this Bill is saying that, if the two Houses will have their own supremacy battles, which I do not see because the Constitution is very clear between the role of the Senate and the role of the National Assembly. If you feel you are in the Senate and you have very limited powers, just wait for 2022 and become a Member of Parliament and come to the National Assembly. You can either become a Woman Representative, a Member of Parliament or a nominated Member, if you lobby. Some of us were in the 10<sup>th</sup> Parliament and we looked at the Constitution. We realised that power is in the National Assembly. That is why Hon. Kioni came back after he lost as a running mate. That is why Hon. Amos Kimunya, after becoming a Minister for Finance, realised he has to come back because power is in the National Assembly. That is why that House was meant for those people who are elderly and who served as ministers. These are the likes of Hon. Anyang'-Nyong'o, Hon. Amos Wako, Hon. Yusuf Haji and Hon. Kiraitu Murungi, but what happened? Some young guys found themselves there without reading the Constitution. They went there with a lot of energy. With that energy, the only powers they could access was to protect counties. Here you protect the national Government and vet the cabinet.

We must live to the Constitution and exercise your powers as a Senator, a governor or as a Member of Parliament. This Bill is very good and I hope going forward, our counties will not lose money.

I beg to second and ask our colleagues to support it so that by next week we send it to the Senate.

*(Question proposed)*

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): I give the first chance to the Member for Kimilili, Hon. Mutua Barasa.

**Hon. Didmus Barasa** (Kimilili, JP): Thank you, Hon. Temporary Deputy Speaker. I want to be very clear that I support this Bill. Kenyans are supreme and they should never be part of the stand-off between the two Houses of Parliament. Wherever we do not agree with the Senate on the Division of Revenue Bill, Kenyans must continue to enjoy their services.

I really thank the Chair of the Budget and Appropriations Committee for coming up with this very important Bill. How I wish that other relevant committees could also... This is because the law says that Senate participates in law-making but does not give a formula on how they should participate, whether through petitions or whichever way. How I wish that another law is created to provide the framework on how best the Senate can participate in this law-making process to avoid the scenario where you see them overstepping their mandate and originating the

Division of Revenue Bill that is against the Constitution. When this country is not faced with any particular crisis or if the services continue and the county governments are able to access some funds, then the engagement will be much more fruitful and deeper. At times because of staring at a crisis, we may even not have enough time to engage and agree on the amount of money that county governments should share. This Bill is going to make it possible that going forward into the future, wherever there would be some kind of standoff, then there should be no crisis. The two Houses would be able to sit down and have enough time to interrogate the issues that will be before them and come up with something acceptable that is going to save this country.

Even as I support this Bill, I want to be very clear that the Senate should take this Bill very seriously. They should read it and understand it so that it does not take much time. From where I sit, I think even their role is just very limited to just passing it because it is the responsibility of this House to pass such kind of laws. They should not even sit on these Bills because at times this House has approved very good laws that will assist the people of this country but the Senate sits on those laws for a very long time. I just want to urge them that if they have any reservations about this law and because the Constitution is clear that they participate in law-making, we are open to Senators from our counties to come to us if they have any reservations. We can bring it through amendments because this is specifically the role of National Assembly.

With these very few remarks, I support.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Next is the Leader of the Minority Party.

**Hon. John Mbadi** (Suba South, ODM): Thank you, Hon. Temporary Deputy Speaker. I also want to make my contribution to this proposed amendment by Hon. Kimani Ichung'wah on the Public Finance Management Act. I think we are all in agreement. The moment the Supreme Court made a ruling in the form of an advisory opinion that the Division of Revenue Bill is a function of the two Houses, then without providing for the safety net on how to come out of possible disagreements and a dispute between the two Houses, it compromised the passing of this Bill to the extent that as a country, we saw for the first time a near paralysis in terms of service delivery to counties yet Article 203 of the Constitution is clear that we must make sure that counties function.

Therefore, I agree with Hon. Kimani Ichung'wah that probably we need to provide for a temporary measure so that in case of such disagreements in future, at least the counties will be able to function even as we still try to sort out or to have an agreement between the two Houses, that is, the National Assembly and the Senate.

Hon. Temporary Deputy Speaker, my participation in the mediation of the Division of Revenue Bill has taught me a few things. It is said that when a lie is repeated many times, people treat it as the truth. We were in disagreement with the Senate on this issue of how much to allocate to counties, whether Kshs335 billion, Kshs327 billion, Kshs316 billion, Kshs316.5 billion or Kshs314 billion in terms of equitable share. There were about four figures that were bandied around during that time.

The strongest argument against the position of the National Assembly was that a commission that was regarded as professional, that is, the Commission on Revenue Allocation was competent, had done research and, therefore, we ought to have agreed with it. I disagree and say far from it. I am one of the people who have supported the CRA very strongly. It is not correct and accurate to say that there was such a serious research or complex assessment of economic parameters and indicators on the well-researched figure of Kshs335 billion. That is not



true. In fact, the CRA simply came up with what they call the average inflation rate for the first three years of 6.5 per cent. They adjusted the Kshs314 billion figure which was provided in the last financial year and only added 6.5 per cent to it which they called an adjustment for inflation. Is that the figure that we are now being told to treat as if it is such a well-researched figure that we should not even debate about?

The people of Kenya elected Members to the National Assembly. The National Assembly is the house of representatives of the people of Kenya. Anywhere in the world, it is the house of representatives that decides on taxation measures and budgetary issues because there is no taxation without representation. In any jurisdiction, the world over, the house of representatives has the responsibility to ensure that the interests of a country are taken into consideration. Therefore, there is nothing illegal, unprofessional or unprocedural that we did. In fact, in the Budget and Appropriations Committee, we have people who have expertise in matters economics and finance. We are not deficient in terms of capacity. Therefore, when we speak, we are not speaking like laymen. I see the Senate trying to demean our role, capacity and competence by saying that we are just following what the National Treasury or the Executive said. It is not true. As a matter of fact, we interrogated this Budget. We have come up with figures. We have talked about why we feel this amount is desirable and not these other proposals.

All is well that ends well. Now that we are where we are, let us think about the future. The future is that we provide some money for the counties to function as we continue to mediate on the Division of Revenue Bill. However, I want to caution early enough that that safety net should not be misused in future. We should not say that now that we have a way of funding counties, therefore, when it is not necessary, we have to disagree on division of revenue. It is not right and it distorts the economic functioning of a country in terms of managing the expenditure. If, for example, you take four, five or six months without agreeing on how to spend your budget, it means you are interfering with the entire economic indicators of the country. Projected economic growth is based on projected expenditure. If that expenditure is not realised or implemented as planned by economists, you then distort the entire economy in terms of its functioning. What we are supporting in terms of this amendment should only be an exception. It should only happen in exceptional circumstances. It should not be the norm. I fear that if we do not address this matter properly, it may be the norm that every year we will use that provision of the law and disagree even for eight months which will not be good for the economy of this country.

I support the Bill.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Let us have the Member for Tharaka, Hon. Murugara Gitonga.

**Hon. George Gitonga** (Tharaka, DP): Thank you, Hon. Temporary Deputy Speaker. I rise to add my voice to the proposed amendment to the Public Finance Management Act. I support what has been brought to this House as a way of going around the impasse that we have just come out of between this House and the Senate. It is vitally important that the Division of Revenue Act is all the time actuated, acted on and the counties are given the share of revenue that should rightfully go to them. We had a stand-off between the two Houses when it came to the division and allocation of revenue to the counties. While the Senate was convinced that the figure that this House had approved was not appropriate, it was established that it was based on available funds and that the funds the Senate was talking about were not and would not be available for appropriation.

However, this Bill now comes in to ensure that counties do not suffer hardships as revenue is divided between the national Government and the counties. The National Assembly has been accused of stifling devolution, being against the counties and trying to ensure that they do not get sufficient revenue. Nothing could be farther from the truth than actually stating that this House does not support the counties and devolution *per se*. Therefore, this House did a scientific calculation of monies that have to be shared between the national Government and the counties. This is what is contained in the Division of Revenue Bill. However, where a stalemate arises as it happened recently, then this amendment that we have proposed today cushions counties so that they have funds to be running as the dispute is resolved.

Counties have avenues, including going to court. We have a pending court case where the counties are saying that the National Assembly is misconducting itself. With this Bill, we would possibly avoid such cases and have counties, especially employees of counties, being remunerated when it falls due. It is a pity that when we go to our constituencies, we meet our constituents who are residents and employees of counties complaining, whining and whingeing that they have not received salaries for the last three months. The reason this has not happened is because we did not have any amendment as we do now. However, it cannot go without caution that county governments have always had many audit queries. We know of what is going on in the Senate where governors are being summoned and made to account for their actions which, in the view of the ordinary citizens and the Senators, are not merited.

Government money and money allocated to the counties is misused and used in ways that do not benefit the common *mwananchi*. All these are issues that must be avoided. Money will be readily available to the counties, but they must use it prudently for the benefit of the citizens whom we, as the National Assembly, represent. The Senate is there to ensure that counties are taken care of. This House represents each and every Kenyan so that whatever money this House appropriates, whether to the counties, national Government or to whatever departments, must be used prudently and in accordance with the law.

With those remarks, I beg to support the Bill.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Member for Seme, Hon. Nyikal Wambura.

**Hon. (Dr.) James Nyikal** (Seme, ODM): Thank you, Hon. Temporary Deputy Speaker for giving me an opportunity to contribute to this Bill. I rise to support this Bill which amends the Public Finance Management (PFM) Act because it sees the humane angle of the things that we do. In the end, people need to be served. Whatever disagreements we have, we must take into consideration that there are services which go on in the counties. This Bill makes a provision that the counties can access some money, even if there are technical or political problems.

I also support this Bill because it relies on the Constitution. It is guided by the minimum 15 per cent of the revenue which belongs to the counties. The Bill is based on a sound constitutional ground. We are using 15 per cent but we know that we have said many times that it is a low figure and we would like to get more. However, in a crisis, it suffices to give some money for the counties to run their services. I also accept because it is actually fair considering the case of the national Government where Article 222 of the Constitution only provides that you only give 50 per cent of what is in the Appropriation Act, if there is a delay in passing the Appropriation Bill. In that context, it is actually a fairly well-thought-out Bill.

I also support this Bill because of the fear we have of the chances of disagreement between the Senate and the National Assembly. It protects that provision by saying that for the

National Assembly to actually amend that 15 per cent of the revenue when it comes from the Senate, we will have the two-thirds rule. I know with that, that provision is protected.

The big problem we have in the division of revenue is not political, as we have been saying that there is a difference between the Senate and the National Assembly. It is not even legal. I really applauded the Chief Justice when he told the Senate and the National Assembly to go back and sort out that problem because it was not a legal problem. A major factor in this matter is technical and has to do with our budget-making process. The division of revenue is a product of the Budget Policy Statement (BPS). That is where the issues start. By the time we get the BPS, the part for the national Government is usually worked out in detail, ministry by ministry and implementing agents and we are quite clear what their needs are. They are even provided with a ceiling.

*(Hon. Ndindi Nyoro crossed the Floor without bowing)*

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Order! Hon. Ndindi Nyoro, I know that you are announcing that you have come back to the Chamber, but you know the procedures of the House. You cannot cross the walkway without bowing. You were speaking to Hon. Musimba from the other side and then you crossed the Floor without bowing. Can you go back? We are happy because we can see you in the House.

**Hon. (Dr.) James Nyikal** (Seme, ODM): Hon. Temporary Deputy Speaker, since he is doing the obvious, let me proceed.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Just a moment. He has announced that he has come back to the House and he is free.

*(Hon. Ndindi Nyoro went to the Bar and bowed)*

**Hon. (Dr.) James Nyikal** (Seme, ODM): Hon. Temporary Deputy Speaker, if we look at the BPS, I said that the part of the national Government is usually worked out in great detail and even the ceilings are given. That is what comes to this House and goes to the committees to look at. On the part of the county governments, you actually have one figure that is based on only two things: not less than 15 per cent of the revenue and the figure from the Commission on Revenue Allocation which is based on four criteria which is the poverty level, inflation level and others. If you are doing a division between two entities and one entity has great detail of what it needs and the other entity is a mere approximation, obviously there will be a problem.

The IBEC should do more than it is doing now because as the law stands, it is supposed to make an input in the BPS. We should get more data from IBEC and CRA on what is required at the counties. You cannot do a division and you do not know the requirements. When our BPS is done, the budget-making process for the national Government almost ends and what we do in the division of revenue is just share the money. While that is almost the time when the process starts in the county governments, I do not see how you will expect to get a fair division in that situation.

This goes to what happened in our devolution process. The functions of the counties were not costed. I know that the first division of revenue that came in the BPS said that for some places for the national Government, there is only policy and standards and then the implementation. So, a proportion was taken that said that a certain amount of money would go to the national Government and then another amount to the counties. No proper costing was done.

We should have a process that by the time we are getting to the BPS, we have fair detailed data on the needs of the county governments. They can be aggregated so that they are part of the BPS. You have heard very often when Members of this House ask what the county governments would do with that money. That is a very important question because the information they have which they go with to the committees does not contain that information. We have been trying to solve what is largely a technical problem through the political process. The judges were smarter than us because they declared that the division of revenue is not a legal process.

If you look at the solution that has come, it is also technical. They have looked at the Constitution and they have seen that, at least, there is 15 per cent of revenue which should be allocated to the counties and they have looked at the provision that we must protect the two-thirds rule. That is how it should be done. As I support this Bill, we need to look more into the budget-making process and align it so that by the time we will be considering Division of Revenue Bill, we will have some information on the needs of the counties. If we do that, there will be few chances of these differences that are then played out as just a fight between the Senate and the National Assembly, while there are serious technical issues behind it.

We should not use this provision not to look at the law deeply and then every time there is a problem, we say that we will go to this provision to make sure that they get something.

With those remarks, I support this Bill.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): The Member for Ndaragwa, Hon. Jeremiah Kioni.

**Hon. Jeremiah Kioni** (Ndaragwa, JP): Thank you, Hon. Temporary Deputy Speaker, for giving me an opportunity to support this Bill.

I concur with quite a number of sentiments that have been aired by my colleagues. Let me start with what the Leader of the Majority Party said; that, we chose to come to the National Assembly and indeed for a reason. The reason is that if you really want to make law, you come to the National Assembly; if you want to oversee, you come to the National Assembly; and if you want to represent the people, you come to the National Assembly. If you want to do anything outside those three roles you go elsewhere. I say this because as we continue, a couple of issues in the Constitution are getting clear. I know there are many of us who think that we should be amending the Constitution. Certainly, there are areas that require re-looking into. As we consider the idea of amending the Constitution, let us always be careful to protect the gains that we have. One of the gains we have is what has been provided for in the Bill that is before us this afternoon.

The 15 per cent provision in the Constitution was clearly provided for after a lengthy debate for reasons that have been adduced by my colleagues. It is for that reason that I concur with the advice of the Attorney-General. I thought it was automatic that 15 per cent should go to the counties but I agree with the interpretation of the Constitution by our Attorney-General that it is important that we legislate to that effect. It is good that this Bill has come to us this early.

This Bill also helps us, as a country, to understand why we provided for 15 per cent in our Constitution, and not 30 or 45 per cent. I am told that *Ugatuzi* would want the Constitution amended to provide for 45 per cent. If we provide for 45 per cent in the Constitution, we would be saying that even before we think of anything, we must allow 45 per cent of whatever we have as a country, or whatever it amounts to after we have looked at the audited accounts, to go to the counties. We may think some of these things are easy and may be popular among the people, but how practical will it be, as a country, to provide for 45 per cent of the sharable revenue to the counties? Now that we know what to do with the 15 per cent – we would want it to automatically

go to the counties even as we haggle over issues – can we say that 45 per cent of our Budget goes to the counties even before we get to work out the figures or the costing? It is not possible. It helps to understand and continue appreciating why some of these provisions were included in the Constitution.

We are in this stalemate because of the advisory opinion that was given by the Supreme Court. I thank the Chief Justice because of the way he has dealt with this matter this time round. Matters concerning how we collect revenue and spend it must be left to the people's representatives. We are the ones to decide how much taxation should be levied on Kenyans and for that reason, we must also be concerned about how we spend that money and how the money is spent by the Executive. It is important that we get a proper judgement because the advisory opinion will continue holding us in a spiral even in coming years. It is important for us, as a country and even as Members of Parliament, to get a proper judgement from the courts. Now that we volunteered ourselves to that process, it is important for the Supreme Court to properly pronounce itself on who is responsible for the budget-making process, including the issue of revenue allocation. As we said before, vertical allocation is the work of the National Assembly whilst horizontal allocation is for the Senate. I do not think we should leave that issue hanging because we will find ourselves in the same situation next year.

It is also important that I mention that we saw the Council of Governors issue a press statement that said by the 16<sup>th</sup> of this month, they are likely to come to a standstill. If that were to happen, it becomes a security issue. It is a source of instability to this country. We need to look at this issue with soberness. It is not an issue to be handled so casually like the way the Mediation Committee keeps throwing it back and forth. It is an issue that can literally bring down the country or any government. It is for that reason that we need a proper interpretation or direction from the Supreme Court. We cannot continue using advisory opinions. When you give an advisory opinion, you have not exercised your full mind. That is why we have that confusion.

The CRA did a good job by advising, but I agree that they may have gone beyond their mandate. For that reason, our Committee is toiling with a lot of issues, including whether it is possible to merge CRA and the Salaries and Remuneration Commission (SRC) because the work they are charged with can be done under the same roof.

The Governor of Laikipia County told me the other day that he was able to improve revenue collection in his county by 34 per cent. Imagine if as a country we were able to improve our revenue by that percentage. We would be talking about a very different ball game. There are very good gains that have been made by the counties, but it is important that we reflect on the issue of the amount of money that is being used on recurrent expenditure, especially on payment of salaries. The National Government Constituencies Development Fund model that we have in this country, where we spend 95 per cent of the allocation on development, is a model we must look for ways of replicating at the county level. As we amend the Public Finance Act, we need to look at it and if it requires a constitutional amendment, we need to reduce the personnel, the number of people employed at the county level and the layers. We now have three layers. There is a layer that was devolved by the national Government, a layer by the first governors and a layer by the second governors. We are likely to have another layer with the third layer of governors. We need to rein on that aspect so that more money is used to develop our country.

I support this. If you want to have a say in the governance of this country, or you want to influence the direction that things should take in the country, come to the National Assembly, but if you want to be doing some other things, you go elsewhere. The National Assembly has the mandate given to it by the Constitution and it is only fair that the Supreme Court protects that

constitutional provision. It would not be useful to the nation if we allowed the mandate given to the National Assembly to be eroded. It actually introduces confusion like the one we have with the Division of Revenue Bill. It also slows down the development of this country like it has happened in the last four months, where we could not spend because we could not agree on the amount of money that is available.

With those many remarks, I support.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): You have experience, as the Leader of the Majority Party said.

The Member representing the people of Ndhiwa, Hon. Martin Owino.

**Hon. Martin Owino** (Ndhiwa, ODM): I am very grateful, Hon. Temporary Deputy Speaker, for giving me this opportunity to say something about this amendment Bill. I support it fully. It is, indeed, true that when two bulls fight, it is the grass that suffers. I represent a very poor community that depends on small businesses. Their business is always supported by those who work in the counties. When the money was not trickling down to them, their business came to a halt. The effect of the delay of disbursement of monies to the counties is far reaching. Just to mention a few, kids delayed going to school, diseases progressed and some people even died. Many things happened. I do not think that this should have happened in this country because the Constitution is very clear when it comes to the power of division of revenue for the two Houses. Article 222 is very clear that the only House that has the authority to charge the Consolidated Fund is the National Assembly. So, these sideshows are unfortunate and should not have happened. It should go on record that the CRA does a recommendation. A recommendation is a suggestion and then we look at facts. I do not know where the wisdom of survival disappeared for both the governors and the Senate. In fact, if there is a difference, you take what you have first and then you can fight for what you want. What must be heard should come first and then you can fight for the rest. We made it very clear that we have a Supplementary Budget. If they want addition and the revenue is there, that will be done but that fell on deaf ears.

I thank the Budget and Appropriations Committee especially the Chair for bringing this. It is going to seal the lacuna in the law to make sure that if there is anything, then the services of the counties are not interfered with.

Speaking of consumption of goods and services, if there is delay of finances, their value diminishes and people suffer for no good reason. Even if we put this safety net in place for any eventuality, it is also important that the counties must have plan "B" in running counties. Today, it is differences and we do not know what it will be tomorrow. In fact, they say in another way, when the sky is bright, that is the time to save money for a rainy day. Others are collecting and putting money aside for such eventualities. That is wisdom. We should not only rely on the national Government disbursement but also try to set some money aside especially for salaries and other essential services that must be sustained.

I suggest that we put a caveat to this. The Leader of the Minority Party got it right. Human beings are human beings. This provision eventually might be abused. We have to look into that carefully and see other safety nets that we should put in place to ensure that we give 15 per cent. That is genius to put something to safeguard that. Other than that, this is in order. We want our counties to grow. That is where revenue is needed most especially poor rural communities like I represent in Ndhiwa. If the money is not trickling to the counties, they are in danger in almost all areas and that is what increases the poverty in the household situation.

With those remarks, I support and thank the Budget and Appropriations Committee for this amendment Bill.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Let us have the Member for Kibwezi West, Hon. (Dr.) Patrick Musimba.

**Hon. (Dr.) Patrick Musimba** (Kibwezi West, Independent): Thank you, Hon. Temporary Deputy Speaker, for this opportunity to contribute to the Public Finance Management Bill. One, it is timely and, two, it is reflective of a changing landscape in terms of our devolution exercise in the nation and the passage of the 2010 Constitution. What is very important is the fact that the inculcation of Chapter 4 of our Bill of Rights has come under threat under this impasse that has been posed during this Division of Revenue Bill. As such, it caused a lot of anxiety around the country as to the measures we are taking in terms of ensuring that services do not come to a halt. We need to expound and revisit the fact that a country as a going concern cannot be basing itself on the possibility of borrowing. We are busy passing budgets on the basis that I earn Kshs100,000 but I am budgeting for Kshs200,000. We are perpetually budgeting for money that we do not have. We are budgeting for borrowing. In the event you have a year of a downturn like we are experiencing now around the globe - there is a heavy economic downturn - then it is not possible for us to meet obligations even if they are within the threshold of 15 per cent. This begs the question of the viability of county structures if they are not contributing effectively back into the kitty.

Six years after the passage of the 2010 Constitution, and it is something which possibly the Transition Authority ought to have addressed from the beginning, is the potentialities in terms of geospatial surveys that should have been undertaken across the entire nation of building the revenue streams into the kitty of the central Government. This would ensure that we are not just bringing counties which become – for lack of a better analogy – a child who is receiving pocket money and does not have to account for it knowing that at the end of the year there is more coming through and all they have to do is keep reaching out and looking at the dad, which is the national Government, as to when he will undertake the disbursements. We need to have a conversation where it is about how to build and ensure Kenya becomes strong in terms of providence and us standing as giants.

When our traditional partners, the Bretton Woods Institutions, around the world are also facing the same economic pressures that we are in currently, then it means reaching out to that would require cushioning even our Kenya shillings in terms of imports coming into the country. How do you address this to our populace when strategic services and things like medicine such as antiretroviral drugs for people suffering from HIV and AIDS are missing in our hospitals? We have immunisation programmes which have been greatly affected because our traditional partners are not living up to the end of the deal. You have serious challenges that you have seen outburst of diseases which were taken care of in the past such as cholera which are coming out because we are still heavily dependent on aid sent to Kenya through other partners. Certainly, the story of Kenya after 55 years of Independence ought to be greater, that we are not on a crutch. We are no longer a child that needs to be carried or held in their hands. We need to be running and saying that there is potential and when we stand we look like Usain Bolt standing on a track and every other person knows they are only fighting for the second or third position within the Intergovernmental Authority on Development (IGAD) areas, which is the prominence and the survey of our country. We need to be strong and rise up to this occasion. When you look at the impasse that happened, it certainly sent a very worrying signal in terms of us passing the buck saying it is National Assembly that is responsible, the Senate or blame the Cabinet Secretary when that ought not to be the case.

Article 223 gives the Cabinet Secretary for National Treasury the discretion while this House is not in session to make expenditures to cover gaps. The people we are dealing with are the people of the Republic of Kenya who enacted this Constitution and gave us to be custodians for their livelihoods. You cannot affect the very nature of the going concern or aspirations of these people. In the case, you heard the Cabinet Secretary for National Treasury passing the buck saying he needs an advisory opinion from the Attorney General and when it goes to the Attorney General, he says it should be returned to Parliament.

In the meantime, we are staring at a life-threatening crisis. It left the President in a position to say there was money. Who has authority to say they have no money other than the President of the Republic of Kenya? He is holding forte. He took an oath of office to ensure that there is preservation of the people. In this regard, this is where sobriety takes place. We are elected as leaders not to totally agree with each other's opinion, but to know that at the point our opinions or strong feelings, which are certainly for the betterment of the nation, come to be at conflict, we need to rise up and know that there is still a nation to run. There are still children who need to go to the ECD. There are firms which need to move and artificial insemination (AI) programmes to run. There are agricultural services among our populace.

The PFM (Amendment) Bill is a very good initiative in terms of addressing the bare minimums which are there. We agree that in Article 222, we allow the central Government to draw at least 50 per cent upon the Appropriations Bill awaiting the passage of substantive law which is the Appropriations Act, so that services do not grind to a halt. They should know that they have at least six months to continually run the programmes. Whereas we heard from the Chairman of the Budget and Appropriations Committee (BAC) that we want to deal with a nominal sum of 15 per cent, I think we need to move further and be in congruence with the Constitution which says that 50 per cent is the threshold. They should not only address issues to do with salary payments but also, at least, ensure services which had been procured at the bedrock of our counties continue. We do not want anxiety in terms of suppliers. We know the people who supply goods to the counties are mostly SMEs. Their ability to cushion themselves from borrowings from banks is not the same as people who are supplying the central Government. Most of the time, the people at the central Government are big time multinational corporations, which accrue or attract credit from lines abroad. Even if they are local, the banks look at them favourably. When the case is about micro finance institutions (MFIs) or Savings and Credit Co-operative Societies (SACCOs), and this is the mainstay of SMEs' access to capital to offer the services, they are always subjected to imminent pressure.

*[The Temporary Deputy Speaker  
(Hon. (Ms.) Jessica Mbalu) left the Chair]*

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

This House should take this step. We need to move farther and say how we will safeguard or look at the grey areas of the Act, so that the divisions that exist between the National Assembly and the Senate are a thing of the past. All of us are creations of the Constitution. Indeed, as the reviews continue, we want to see a greater involvement by the CRA in terms of looking at where these revenue streams are going to come from. How do we reduce or better our consumption habits as a nation? We need to reduce on imports, so that we are more



dependent on legumes which grow freely. The realities of our arid and semi-arid lands, for instance, Ukambani and a greater part of this country, is that they are experiencing drought. Mitigation measures will come from the counties themselves. We should see how to streamline this towards the budget-making process which begins in February.

At this juncture, I thank the BAC. I support this initiative. It should go through. The Senate should also agree with it and concur with the National Assembly without taking us to another Mediation Committee.

Thank you, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Very well. Hon. Nyoro Ndindi, the Member of Parliament (MP) for Kiharu.

**Hon. Ndindi Nyoro** (Kiharu, JP): Thank you very much Hon. Temporary Deputy Speaker for giving me the chance. I am sure you have been following what has been happening. Even before I support this Bill, it is good for me to take this opportunity to thank the people of Kiharu and the people of Murang'a and the entire population of Kenya for standing with us against the brutality of some individuals serving in our Government. I believe the trajectory we are putting our country on is a very slippery path. I thank our Director of Public Prosecutions (DPP) and courts for standing up and safeguarding justice for the people of Kenya.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Hon. Ndindi, do not stretch that too far.

**Hon. Ndindi Nyoro** (Kiharu, JP): I am now going to the issue. I stand to support this Bill. As you know, there was a great stalemate in this Republic of Kenya just recently. Actually, we are in the same stalemate, especially due to how it is being broadcast out there, namely, as a fight between the National Assembly and the Senate. As you know, when one is vying for a political seat, you definitely go through the responsibilities.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Order. What is it Hon. T. J. Kajwang'?

**Hon. T.J. Kajwang'** (Ruaraka, ODM): Hon. Temporary Deputy Speaker, you were right when you asked the Member not to take far some of the comments which he started with. I was talking from the point of relevance, listening to the discussion the Member was passing across. I have told him elsewhere that I give advice for free on some of these things that are bedeviling him, including how to handle policemen when they come and when they are unwelcome guests into your house. I rendered some of these services free because I have gone through that. That Member is being introduced to them. Some of us have been there. The advice includes how to have a mattress in your small room should the police come for you. So, can the Member come for the free services instead of giving this information in the House when it is not relevant to the discussion?

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Hon. T.J. Kajwang', Hon. Ndindi Nyoro had moved on from that point. However, I think you can still give the free advice in a bilateral over a cup of tea, at least, not on the Floor of the House.

Hon. Ndindi Nyoro, please, proceed.

**Hon. Ndindi Nyoro** (Kiharu, JP): Thank you, Hon. Temporary Deputy Speaker. I thank Hon. T. J. Kajwang'. Among the many pieces of advice that he gives me is, of course, how to throw stones. I take some and, of course, I decline to take others.

Even as we talk about the stalemate and especially the Bill before this House, we have to pinpoint some of the weaknesses we have, especially in this dispensation of devolution. I sit in the Public Accounts Committee (PAC) and we are privy to a lot of things that happen in various

departments of our Government. It is alarming that even as we audit the Government in the PAC, there is a huge budget that we allocate to some of the functions that we call devolved. There is no way you can tell the people of Kenya that, for example, health is a devolved function and it is the role of county governments to offer these services whereas we leave a lot of the health budget to the national Government. If you look at a function like agriculture which is claimed to be with county governments, many questions that are asked by the *wananchi* are directed to governors. However, we also leave a lot of resources in that sector to the national Government. Another function is water. Going to *mashinani*, many households and voters demand for water from our county governments. If you look at where we place a lot of money in regard to water, it is in the national Government. My take has always been that we either fully devolve some of these functions or leave them to the national Government so that we can clearly see where to lay responsibility, either of performance or non-performance.

Hon. Temporary Deputy Speaker, it is also good to note that even in this duplication, if you go to a county like Murang'a or Nairobi, you will find that there is an officer serving in the department of agriculture or the irrigation sector yet we have equivalent officers employed by the national Government in the same capacities. I believe we need to align all these, so that we decrease or bring down the budget that we allocate to the recurrent expenditure on these officers. This will help us to unlock most of our resources to go and serve the people of Kenya. Even as I support this Bill, it is good to know, and I think it was referenced before by some of our colleagues, that we need to borrow from the NG-CDF model especially on devolution. As you know, from the money given to the NG-CDF, only 5 per cent goes to administration. Within it, we have the entire recurrent expenditure. Over 95 per cent of the money allocated through the NG-CDF goes into serving the people of Kenya especially through tangible development. You cannot compare the same with our county governments. It may not be their problem because some of them have inherited challenges. However, we need to take a drastic action to minimise the amount of money that goes to recurrent expenditure especially on salaries.

The Bill before us is going to address some of the major issues that we currently have. When we have a stalemate between the National Assembly and the Senate, just as when we have a fight between two elephants, it is the grass that takes the beating. The people of Kenya, especially those who draw their salaries from the national Government become victims when there is such a stalemate. This Bill will unlock such stalemates so that when there is a disagreement, vital services and people's livelihoods are not hurt.

As I conclude, we also have to think about our roles. When I vied to be the Member of Parliament for Kiharu, I knew that I am coming here to represent the people of Kiharu, to make laws and to oversee. If we are the people who make laws on how to collect revenue and how to reach the supply side of our budget, it should also be our prerogative to determine the demand side of our budget. What I am talking about is the division of revenue. That is purely our role. Because there are many ways of interpreting our Constitution, I believe that this Bill, even as we fight about whose role it is, will protect the workers of county governments and people in the counties when it comes to offering vital services to them.

With those many remarks, I support.

**Hon. Gichimu Githinji** (Gichugu, JP): On a point of order, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Before I give the Floor to the next person, Hon. Gichimu, what is out of order?

**Hon. Gichimu Githinji** (Gichugu, JP): Thank you, Hon. Temporary Deputy Speaker. I rise on a point of order under Standing Order No.95. Going by what has been contributed before this House, a substantial number of Members have contributed and supported the Bill. There is an important Motion awaiting to be discussed by this House. I believe we are all in agreement about this Bill and its debate ought to be closed. The Mover should be called upon to reply, so that we move on with other businesses of the House.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Very well. As you may know, I am not able to make a ruling on that, but I will confirm from the House if the Mover can be called to reply. Order, Hon. Members! I put the Question that the Mover be called upon to reply.

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

Let us have the Mover.

**Hon. Kimani Ichung'wah** (Kikuyu, JP): Thank you, Hon. Temporary Deputy Speaker. As I reply, I want to thank all the Members who have contributed to this Bill. As I said when I was moving, it is an ingenious way of resolving a pertinent question on the issues surrounding the Division of Revenue Bill. I clarified that it is not in any way intended to replace the Division of Revenue Bill. Therefore, since it is a Bill relating to counties, when it is transmitted to the other House, and we have since engaged well with the Senators, it will be passed as it is and give us a framework on which we can disburse money to the counties. I thank all the Members for their contributions.

I beg to reply.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Very well. Hon. Members, we will pend the putting of the Question on that Bill.

*(Putting of the Question deferred)*

Next Order!

## MOTION

### REPORT ON PUBLIC FINANCE MANAGEMENT (BIASHARA KENYA FUND) REGULATIONS AND RELATED SETS OF REGULATIONS

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): The Chairperson, Committee on Delegated Legislation.

**Hon. (Ms.) Gladys Boss Shollei** (Uasin Gishu CWR, JP): Thank you, Hon. Temporary Speaker. I beg to move the following Motion:

THAT, this House adopts the Report of the Committee on Delegated Legislation on its consideration of the Public Finance Management (Biashara Kenya Fund) Regulations, 2019 (Legal Notice No.78 of 2019); the Public Finance Management (Uwezo Fund)(Revocation) Regulations, 2019 (Legal Notice No.79 of 2019); the Public Finance Management (Women Enterprise Fund)(Revocation) Regulations, 2019 (Legal Notice No.80 of 2019); and the Public Finance Management (Youth Enterprise Development Fund)(Revocation) Regulations, 2019 (Legal Notice No.81 of 2019), laid on the Table of the House on Tuesday, 30<sup>th</sup> July 2019, and

pursuant to the provisions of Section 18 of the Statutory Instruments Act, 2013 and Standing Order 210(4)(b) annuls in entirety-

- (a) the Public Finance Management (Biashara Kenya Fund) Regulations, 2019 (Legal Notice No.78 of 2019);
- (b) the Public Finance Management (Uwezo Fund) (Revocation) Regulations, 2019 (Legal Notice No.79 of 2019);
- (c) the Public Finance Management (Women Enterprise Fund) (Revocation) Regulations, 2019 (Legal Notice No.80 of 2019); and,
- (d) the Public Finance Management (Youth Enterprise Development Fund) (Revocation) Regulations, 2019 (Legal Notice No.81 of 2019).

The Committee on Delegated Legislation is established pursuant to the provisions of Standing Order No.210 with the power to scrutinise all statutory instruments presented to this House, to ensure that they comply with the Constitution and all other Acts of Parliament. The Committee is expected to consider, in respect of the statutory instruments, whether it is in accordance with the provisions of the Constitution and whether it contravenes any of the other laws and other statutory instruments.

These particular statutory instruments were published as guided by the principles of good governance, the rule of law and all other considerations to ensure that there are no drafting defects and unjustifiable delays in publishing and tabling of the expenditure from the Consolidated Fund and other public revenues before this House. This is the 17<sup>th</sup> Report of the House recommending annulment of regulations.

For the Information of the House, the Committee has since approved 84 pieces of instruments in the year 2018 and 21 so far in the year 2019 and another 47 are under consideration by the Committee. We will ensure that we work hard to dispense with them. In addition, 33 instruments were referred to the Committee and tabled before this House yesterday. At this point, I want to laud the regulation-making authorities who have continued to comply with Section 11 of the Statutory Instruments Act in presenting and submitting the instruments before the National Assembly for scrutiny. Since 2017, the Committee has interacted with various regulation-making authorities in considering the business before it.

These include the National Treasury, which has presented 35 pieces of subsidiary legislation, the Kenya Revenue Authority, which has presented two, and the Ministry of Transport, Infrastructure, Housing and Urban Development, which has presented 36. There is also the Judiciary, which has presented two, the Ministry of Agriculture, Livestock and Fisheries, which has presented two pieces and four pieces for pre-publication scrutiny, bringing them to a total of six. The Defence Council has presented 19, the Attorney-General has presented four, the Parliamentary Service Commission has presented two, the Ministry of Lands and Planning has presented seven, the Ministry of Tourism and Wildlife has presented five, the National Land Commission has presented two, the Ministry of Health has presented one, the Law Society of Kenya has presented one, which is under pre-publication scrutiny, and the Ministry of Energy has presented one. The Ministry of Petroleum and Mining has presented two and the Ministry of Environment and Natural Resources has presented four that are before us for pre-publication scrutiny.

The Public Finance Management (Biashara Kenya Fund) Regulations that are before us and the Public Finance Management (Uwezo Fund) (Revocation) Regulations, the Women Enterprise Fund (Revocation) and the Youth Enterprise Development Fund (Revocation) Regulations were published on 13<sup>th</sup> June 2019 by the Cabinet Secretary for the National

Treasury. They were tabled in this House on 2<sup>nd</sup> July. The Cabinet Secretary acted in exercise of powers conferred upon him under the Public Finance Management Act (No.18 of 2012), albeit wrongly because consultations on the matter were ongoing and it was therefore, in bad faith for the Cabinet Secretary for the National Treasury to rush to gazette the regulations while pre-publication scrutiny was actively before the Committee. The Cabinet Secretary stated that the purpose of the regulations relating to Biashara Fund, Youth Enterprise Development Fund, Uwezo Fund and the Women Enterprise Fund was to provide a one-stop shop for target groups looking for business loans from the Government and to improve effectiveness and eliminate overlaps. That may sound reasonable.

However, the regulations also were established to ensure that vulnerable and marginalised persons such as women, youth and people living with disabilities, who ordinarily would not access the formal banking sector, would have a place to raise capital to undertake economic empowerment programmes. The regulations were intended to operationalise Articles 27 and 55 of the Constitution, which require that the Government shall undertake affirmative action programmes and other resources in respect of disadvantaged people to ensure that we have equitable development in our State. The said regulations were also intended to operationalise the Presidential Taskforce on Parastatal Reform of 2014, which recommended the merger of certain existing funds. To achieve these objectives, the establishment of Biashara Fund was proposed and sought to revoke the Uwezo Fund, the Youth Enterprise Fund and the Women Enterprise Fund and collapse them into one fund known as the Biashara Fund. That was the presentation of the Cabinet Secretary.

In considering the regulations, the Committee held several meetings with officials from the Ministry of Public Service, Youth and Gender and the National Treasury. During the pre-publication scrutiny meetings, Members raised several valid points. First, Members felt that the Ministry ought to consider addressing the challenges that are facing the existing funds and improve their efficiency and resource distribution and the borrowing practices even before they begin to think of establishing a new fund. Second, Members felt that the proposed merger of the affirmative action programmes would not necessarily address the challenges, in that this fund was intended for vulnerable persons who would not access capital. It was also felt strongly that as an affirmative action fund, the merger would lose the identity of important marginalised group, namely, the youth and persons living with disabilities. Third, it was also noted that the proposed regulations proposed that the Biashara Fund funds would be handed over to financial intermediaries, being banks. Therefore, it was felt that if it is an affirmative action fund, it was serving a group of persons who ordinarily cannot access the traditional banking market and cannot meet the stringent requirements of the banking industry, hence the reason a more informal type of funding system had been established in the first place. So, it would beat the purpose of having an affirmative action process in the first place. It was also felt by the Members that the Biashara Fund Regulations also appear to be punitive to those who have been accessing the funds in a bid to encourage other players who are not necessarily marginalised groups.

Also, it was felt that Members had not been involved in the identification and development of the regulations. Members of Parliament were not consulted despite the fact that they nominate persons to those committees and they play a role in overseeing the implementation of those funds. The youth who have been accessing the fund or have been beneficiaries of the fund or have interacted with the fund were not consulted. Groups of persons living with disabilities in their different groupings were not also consulted. In fact, there was no public consultation by the Ministry in coming up with these regulations as clearly required by the

Statutory Instruments Act. On that basis, the Committee found that the regulations must be annulled because they were not subjected to public participation as required by Article 118 of the Constitution and Sections 5, 5(a), 13 (a) and (m) of the Statutory Instruments Act, which require that public participation and sufficient consultation with stakeholders and persons who are likely to be affected by the regulations must be done.

In fact, today, several Members have explained that they continue to hold cheques in their offices, despite the merge, that belong to Uwezo Fund or the Youth Enterprise Development Fund or the Women Enterprise Fund. Furthermore, Members felt that there was no regulatory impact statement to see how it would impact those who had already borrowed and were making their repayments, as there was no establishment of the manner in which they would transit and ensure continuity without interrupting those who had already accessed the funds. It was also felt that the penalties set out in the Biashara Fund Regulations were much higher than those that are provided in the Public Finance Management Act. Therefore, it was contrary to the parent statute.

Fourthly, it was felt that the revocation of the three existing Funds does not stipulate the manner in which those who were employed by those three funds would be dealt with. Therefore, those employees would be subjected to unfair labour practices, contrary to Articles 41 and 28 of the Constitution, where they have a right to human dignity.

Fifthly, also Regulation No.10 requires the advisory board to prescribe other guidelines for use of the fund. Guidelines are statutory instruments within the meaning of Section 2 of the Act. This, therefore, is contrary to that section of the Act, which requires that the Committee must ensure that the regulations do not improperly delegate legislative power because they do not have the authority to do so.

Sixthly, the regulation-making authority cannot confer power to another institution within the regulations. The Committee, therefore, met and resolved in the presence of the regulation-making authorities, namely, the National Treasury and the Ministry of Gender to have a further meeting to ensure that the necessary modification was undertaken so that the concerns and the illegalities could be looked into and corrected.

However, contrary to Section 16 of the Act, the National Treasury went ahead to publish the regulations and submitted them to Parliament without addressing the issues. In fact, the announcement of the regulations having been published came as a surprise on the day of the Budget Statement by the Cabinet Secretary for the National Treasury. Had we allowed these regulations to pass, we would have set a precedent where the Executive can negate the National Assembly's oversight role.

Therefore, the Committee would like to let this House know that it has taken cognisance of the fact that there is a Bill that is entitled "The Kenya Uwezo Fund Bill, 2019 (National Assembly Bill No.42), which is currently before the National Assembly. It seeks to consolidate the same funds. At some point, the Committee was suspicious and assumed that, that was supposed to be a plan B should the Committee nullify the Biashara Kenya Fund Regulations.

In conclusion, the Committee made the decision that pursuant to Standing Order 210(4)(b) and Section 15 of the Statutory Instruments Act and having scrutinised the Public Finance Management (Biashara Kenya Fund) Regulations, Uwezo Fund (Revocation) Regulations, the Women Enterprise Fund (Revocation) and the Youth Enterprise Development Fund (Revocation) Regulations it recommends to this House to annul in its entirety the said statutory instruments for the aforementioned reasons.

Hon. Temporary Deputy Speaker, as I conclude, allow me once again to acknowledge the tireless efforts of the Members of the Committee on Delegated Legislation. We thank them for

their exceptional commitment and the great work, ethics and spirit of excellence that they have exercised throughout in delivering the Committee's mandate. I am truly honoured and humbled to be Chairperson of that Committee.

With those few remarks, I beg to move this Motion and request my colleague and active Member of the Committee Hon. Jennifer Shamalla, to second the Report.

Thank you, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Very well, let us have Hon. Shamalla Jennifer.

**Hon. (Ms.) Shamalla Jennifer** (Nominated, JP): Thank you, Hon. Temporary Deputy Speaker. I rise to second this Motion.

Indeed, the Uwezo Fund, the Women Enterprise Fund and the Youth Enterprise Development Fund are all affirmative action funds whose objective is to enable women, youth and persons living with disabilities to access the funds using a far less stringent manner from that of the bank process. It is a fund for economic empowerment and to get capital that they cannot obtain from the formal banking sector.

As things stand, the applications are made at the sub-county and county level. As my Chair very eloquently put it, the question was that if these funds had been collapsed, what would have happened to the structures at the county and subcounty level? There were no transitional clauses as to what would happen to employees of the funds.

It is the self-help groups who apply for the funds and not individuals or incorporated companies. Self-help groups would not access the formal banking sector as they would not be recognised. None of these entities were consulted or engaged during public participation when these regulations were published, neither were Members of Parliament who play a crucial and major role of oversight. Having said that, I want to mention the issue of older men in this country. We do have funds as I have earlier said, for women, people living with disability and for the youth. It has been recognised in this country today that there is a terrible sense of emasculation of our men. Going forward as a House and as representatives of the people of Kenya, this is an area that we must address.

I am baffled as to why the National Treasury in spite of going through pre-publication scrutiny with the Committee on Delegated Legislation completely and outrightly refused to comply with the Statutory Instruments Act and refused to listen to the advice of the Members of the Committee.

With those few remarks, I second the Motion.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Very well, I note that Hon. Kamket was nodding in agreement when you talked about the old persons.

Hon. Members, I will propose the Question.

*(Question proposed)*

Shall we start on my left with Hon. (Dr.) Oundo Ojiambo?

**Hon. (Dr.) Wilberforce Oundo** (Funyula, ODM): Thank you, Hon. Temporary Deputy Speaker for giving me this opportunity to contribute to this particular Motion.

I sit in the Committee on Delegated Legislation and had the opportunity to interact with the regulatory-making authority both at the pre-publication scrutiny and the subsequent levels of discussion. What baffled me was the blatant disregard to procedures in enacting these particular regulations.

Having said that, let me focus on the fundamental issues that persuaded most of us in the Committee to without any misgivings recommend for the annulment of these regulations.

The framers of the 2010 Constitution envisaged a situation where our society continues to have vulnerable members who might not be able to access finance and capital for various business opportunities and development projects.

Consequently, Articles 55 and 56 talk about affirmative action for the youth and other marginalised members of the society. It is in that wisdom that the framers of the Constitution laid much emphasis in providing access to all available opportunities to the youth and vulnerable members of the society. The initial drafters of the Regulations, the Uwezo Fund, the Youth Enterprise Fund and the Women Enterprise Fund had in mind to segregate these groups, so they can be given special and dedicated attention to enable them to access financing to undertake various projects.

Any attempt to generally bring all of them together to form one big Fund will in essence defeat the purpose for which they were created and contravene expectations and provisions of the Constitution. So, consequently, the attempt to create one, however laudable in terms of administrative leanness and perceived efficiency will in the end bring about a situation where the intended parties do not get access to the said Funds.

There have been audit queries on the management of the Funds. It would have been important at the very beginning to address those audit queries before moving with speed to merge them, so that probably, we are able to sweep under the carpet the malpractices that have happened at the Youth Enterprise Fund and other similar Funds. Therefore, it is important that the mandarins at the National Treasury get a bit of touch by going down to earth and interacting with the local *mwananchi* on the ground.

The purported Biashara Fund was more or less a kin to a bank. It had all the provisions of a bank, but only the name separated it from one. But if you look at the way it was structured and supposed to be run, it was going to be more or less like a bank. This would have meant the people it was targeting to serve will never have accessed the banking facility because it was meant to deal or address the challenges of the so called un-bankable society to access finance to undertake projects.

Again, the structure was completely detached from the local arrangement. As the separate Funds stand, there is a lot of community participation in identifying projects, identifying and forming groups, training them, capacity building and making dedicated follow-ups to ensure there is recovery of advanced funds. The structure was top heavy and very light on the ground that it was going to be another pyramid scheme, white elephant or an opportunity to loot and waste public funds.

Fundamentally, it was such a shame. You cannot make such fundamental changes without involving members of the public. There was no evidence that there was public participation. There was nothing presented to the Committee or anybody who cared to listen whether members of public were ever consulted. This brings into question the threshold of public participation. Is a newspaper advertisement tacked in a very far away corner of a typical newspaper adequate enough to notify the very people intended to target to make their comments?

By virtue of the fact that there was no demonstrated public participation, it appeared as if this was a scheme designed somewhere else to basically mislead the people of Kenya into signing something which was going to become a scandal in the making. More tellingly, the provision was that part of the Fund could be lend to intermediaries, also again smacked of



conspiracy to basically direct funds to some people or organisation in good books with some Government officials, so that they can use that money as a pyramid scheme or shylock.

Indeed, as we stand now, Uwezo Fund has done tremendous work on the ground. As I speak, the Youth Enterprise Fund has touched the lives of the young people in the constituencies. Many of the small communities and women have benefited immensely from the Women Enterprise Fund. All these three Funds have had dedicated attention to the specific target groups. There is no harm in having them differently, but ensure that we have lean administration with minimal administrative costs. That way, we will deepen financial access to our communities much more than we have done today.

As I speak, I have presided over issuance of cheques under the Uwezo Fund totaling to about Kshs2 million in my constituency. Our Fund has grown from Kshs18 million to Kshs30 million. It will be very unfair to kill such success stories at the expedience of some people who really look at it as if it is free money to loan to their friends for purposes of making abnormal profits.

As I conclude, we seem to assume that the rural poor men are okay. The truth of the matter is that they are increasingly getting marginalised and frustrated because they have been denied access to soft loans. As we debate, probably it is important that we look for ways and means to ensure that our grandfathers and older members of society are able to access financial facilities under the same terms like our honourable ladies, enterprising youths and all the people who are targeted by these Funds. Let us not continuously disfranchise the men in society because if we do that, we frustrate and belittle them. They will abandon the family and no family has ever succeeded without guidance from the father.

With those few remarks, I support the Motion for annulment of the Regulations.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Hon. Gitonga, you have the Floor.

**Hon. George Gitonga** (Tharaka, DP): Thank you, Hon. Temporary Deputy Speaker. I rise to support the Motion for annulment of these Regulations. As has been ably presented by the Chairperson of the Committee on Delegated Legislation, in which I also sit. It is very clear that we have cogent grounds upon which these Regulations and gazette notices should be revoked.

It may appear very well intentioned that Biashara Fund is there to consolidated all the other Funds and come up with one stop shop where every desiring person walks in and gets money in form of a loan repayable on terms and conditions. But this is totally different from what we have in the three Funds, namely the Youth Enterprise Fund, the Uwezo Fund and the Women Enterprise Fund. I start by commending the Women Enterprise Fund which seems to be doing exceptionally well compared to the Youth Enterprise Fund and the Uwezo Fund.

We know very well the different circumstances under which these Funds were created. While the Youth Enterprise Fund and the Women Enterprise Fund were affirmative action, the Uwezo Fund was introduced under political circumstances. I will not go into this, but it remains a fact. However, it is also important that when regulation making authorities including Government departments make regulations, they must comply with the law. We have a problem here because these regulations breached not only the Constitution, but also two statutes, namely the Statutory Instruments Act and most importantly, the parent Act which is the Public Finance Management Act. It is for those reasons that these regulations really have to be annulled. Challenges have faced these three Funds and unfortunately, the Biashara Fund Regulations were not addressing those challenges. They were, in fact, making matters more complicated and in the

estimation of the Committee, this did not seem to serve the purpose for which the three Funds were established.

For example, if Biashara Fund is to be established, money is to be appropriated by the Government to a commercial bank which would lend the money to other lending institutions which would in turn lend the money to the citizens or those who are affected or the consumers of those regulations. Unfortunately, lending of money is always encumbered with collateral or security. This is where the first problem lies. It may totally be different and difficult for citizens to have collateral when it comes to borrowing money that is meant to assist them. For us, as the National Assembly, and exercising oversight function over the Government, we felt this was not desirable. Most importantly, what we found lacking, which must be emphasised at all time is the fact that there was no public participation as far as these regulations are concerned. We have emphasised in this House more often than not that for any legislation to pass, the consumers of that law must be given an opportunity to air their views.

The *wanjikus* down there must be called upon to state what their views are when it comes to consuming that kind of a law. In our estimation, this is one of the laws which must have been subjected to public participation. The intention was to do away with the Women Enterprise Fund, one of the Funds that has really assisted ladies in this county or the Youth Enterprise Fund, which we see intermittently from time to time helping the youth. If we are doing away with the Uwezo Fund, which ranks number two to the Women Enterprise Fund, it is very important that we go to our citizens and ask them what their views are. That way, we will then stand here and present a case that would suit the person consuming the law. Having failed to do so, these regulations do not meet the threshold of approval and the Committee on Delegated Legislation was of the view, which I stand with, that all these regulations plus the gazette notices be annulled.

I support the annulment. Thank you.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): We shall have Hon. Nyikal Wambura.

**Hon. (Dr.) James Nyikal** (Seme, ODM): Thank you, Hon. Temporary Deputy Speaker. I rise to support the Motion of annulment of these regulations. These are three distinct institutions that were established under different legal notices that had totally different structures and even alignment within the Government system. To just come in and bring changes, through regulation without proper public participation and studies to see how they have worked and how they will work, definitely would not have served the desired purpose. Moreover, these institutions were established through a policy that was addressing vulnerable people that were not banked, but were definitely needy of money in small amounts that would support them in their own businesses. They were basically targeting groups that were registered under the social services.

So, to come up and say that you want to put them together and establish something akin to a bank would be trying to establish a bank through the back door. If they wanted to establish a bank, that should be done in a proper manner.

Again, the proposal has indicated that they wanted to use intermediaries. Intermediaries have not worked. Even in the current Funds, there has been an issue with intermediaries. I am not sure, probably the Committee would have given more information on this in terms of the motivation for putting all these things and amalgamating them into one was. I know there are problems. I am familiar with the Women Enterprise Fund, the Uwezo Fund and even the Youth Enterprise and Development Fund. The issues that probably should be addressed so that these

Funds can do better are issues to do with management structures and not the question whether they should be merged or not.

If you look at the issue of structures, many of us know that the Funds, particularly the Uwezo Fund and the Youth Enterprise and Development Fund are to a large extent supported through the constituency offices. They are linked to Government officers on the ground. They do not have their own structures like offices. You will find that the Youth Enterprise and Development Fund and the Uwezo Fund, to a large extent, are aligned to the youth officer on the ground. The Women Enterprise Fund is suffering because you have officers on the ground who, prior to devolution, were aligned to the Ministry of Social Development and Gender, but now they seem to be running on their own and have delinked from the Social Development Officers, particularly women groups that they are supposed to serve. So, we have a problem of mobilisation and we do not have good structures particularly for women on the ground to support them. If that were done, these structures would work very well.

With regard to financial support, the Women Enterprise Fund, the Uwezo Fund and the Youth Enterprise and Development Fund do not have a particular amount of funds that are dedicated for their running. So, you find these officers having very meagre funds to run the institutions and yet they still make fairly remarkable contributions towards funds available to the youth and women. I must say, in the three cases in my mind, the women one has done very well and perhaps better than the youth in utilising these funds. They are using both the Women Enterprise Fund and the Uwezo Fund. Even if you look at the capacity building around them, you will find that the committees that are put in place have not been properly funded. In the case of the Uwezo Fund, the capacity building fund remains in Nairobi at the headquarters, so that on the ground, they are not properly supported. That is what should be addressed. I think we are addressing this issue in a way that will not be helpful at all. We should strengthen these Funds. If we think we should merge them, we should do a detailed study of the impact they have had and the structures that they need, to make them run properly before we think of simply merging them through a regulation.

As I conclude, let me say what my colleagues have said. Every time you are giving out cheques for the Youth Enterprise and Development Fund, the Uwezo Fund or the Women Enterprise Fund, I always have a question in my mind. The men ask: "Where is the fund for adult men?" We are leaving that gap. It should not be assumed that men are not vulnerable. Vulnerability has to do with the means of production and the financial capacity you have. Men are just as needy as women for this kind of funds. We should look at such gaps instead of running to amalgamate this in a way that will not help them be more productive as they are.

With that, I support the Motion for annulment.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Let us have Hon. Kioni.

**Hon. Jeremiah Kioni** (Ndaragwa, JP): Thank you, Hon. Temporary Deputy Speaker for the opportunity to make just a few comments. First, I support the Committee in the decision that it has taken to annul those Regulations for the reason that the procedure that should have been followed was not. It is good to commend the Committee for being that vigilant in the work it has continued to do. We have reasons to commend it for what it has done since the commencement of this Parliament.

There are two issues. There is the idea that was mooted by those in the Executive, but there is also the way they went about executing it. What is clear from the Committee is that the way they proceeded to execute the idea was completely at variance with the provisions of the Instruments Act and perhaps the requirements of the Constitution on issues of public

participation and the rest. There is also the issue of relooking at these Funds and assessing their effectiveness given the time they have been in operation. This idea should not be totally killed; it needs to be taken back to the drawing board. We are at a time when we need to look at this whole concept again.

I support the issue of having a Women Enterprise Fund, the Youth Enterprise Development Fund and perhaps another fund which we call the Uwezo. It is important to check their effectiveness and how efficiently we are managing them. We have also lost a lot of money. In the past, we know the amount of money that was lost in the YEDF. Recently, we saw the Auditor-General say that we have lost money in the Uwezo Fund. It is also important to give room to that idea.

Annulling these Regulations perhaps gives us and the people in the Executive an opportunity to look at this idea all over again. It was an affirmative action. It is the norm everywhere that all affirmative actions have a sunset clause. When do we need to perhaps shape these Funds differently? Under Standing Order No.210(3)(c), the Committee has every reason to look at what is before it and if it is substantive like it is the case today, perhaps provide that it should be done through a Bill as opposed to through regulations because it is a major change in the way we do things. The Executive seems to want to introduce it through the backdoor. It is important to look at this thing. Let them come head on. Let us provide statutory instruments for it and Acts of Parliament to guide us so that we can inform and perhaps fill the gaps like the ones mentioned by the Member for Seme. There are certainly gaps in the structure.

I know that in some constituencies these Funds may be functioning well, but in other constituencies, they are completely absent. I saw the Uwezo Fund at the beginning of this Parliament and then the officers disappeared. Yesterday, we were quarrelling and I have meetings with them in the coming days, but they are not helping across the board. They work depending on the efficiency of the officer who is in your constituency. When you leave institutions to function at the mercy of individuals, it is not very useful. We need to address the management structure so that its functions benefit all.

I do not know why Members mention it as the last thing. This is with regard to men. The whole thing will collapse as long as we continue thinking that men have the capacity to approach commercial banks. In my constituency, I do not think I can get 1 per cent of men who can walk into a commercial bank and get a loan. If these Funds do not address that issue, we have failed. We need to make sure that men are also able to access these funds. We especially wanted women. We were trying to help the young people have a base. We wanted women to become economic partners and help grow the country. We also wanted to see the full potential of that gender. What has happened now is that men have completely disappeared from the scene. If they do so, are we achieving anything or are we helping one side and losing the other?

If it is not an issue in the constituencies of Members who are present in this House, then you must be in another country not Kenya. Where we come from, this is a major problem. The men have a serious problem. If you remove men from being economic partners and people who drive the economy in your area, you will have a lot of problems. We have very high levels of drunkenness. There are many drugs like *muguka*. It is not an English word. You will have to help me with the English words for *muguka* and *miraa* in this country. Those things have taken away men. If we cannot help the few who cannot walk around straight and make them proper people who can help with the economy, all these Funds are not useful to us. While it is a good thing to annul, we cannot kill the idea of relooking at this whole issue and allowing men to access this

money at the same rate as other people. That way, we will be growing this country. Without that, we are losing it.

**Hon. T. J. Kajwang'** (Ruaraka, ODM): (*Inaudible*)

**The Temporary Deputy Speaker (Hon. Patrick Mariru):** Hon. T.J. Kajwang', when you say that from your seat and you are next, I am almost inclined to get another person. Let us have Hon. T.J. Kajwang'.

**Hon. T. J. Kajwang'** (Ruaraka, ODM): Hon. Temporary Deputy Speaker, I apologise for my unwanted conversation, but I am not in the Committee. I would wish that Members of the Committee would allow some of us who are not in the Committee to add value to a journey that they have spearheaded.

I am told that mandarins, brokers and people who are interested in this legislation are watching. I want them to know that we are debating this, not just for procedural propriety, but to get to the substance of it so that they know that we also know that they want to pilfer public resources without giving us reasons. When I listened to the Cabinet Secretary for the National Treasury give his policy guidelines... This is where the issue of consummation of all these Funds into the Biashara entity rose. I did not, for a moment, think that they were going to create a bank. I did not think that in collapsing these institutions, they would reroute the finances and remodel the institutions. What I read from the policy statement was that they would innovatively make it much better than it was so that it would reach the people it was designed for.

What has happened is that they are trying to create a bank. How do you create a bank with public money? Are they creating another National Bank, Cooperative Bank or Consolidated Bank? Even in those situations, the Legislature would like to know the leadership and the shareholding of those institutions. How do you give an independent entity free money from the Exchequer without cost of that money? How? Coming from the National Treasury who were the sponsors of this Biashara concept, it surprises me that they would have designed Regulations such as these. It can only mean lots of mischief from these people. We must annul these things.

Much more than that, we need to go back. It came from Hon. Shollei very well what these Funds are all about. I know that men have issues. I am one of the men who have issues about affirmative action.

Hon. Temporary Deputy Speaker, I am impoverished and not empowered. I wish there was a fund that looks into my interest. This is the essence of Article 100 of the Constitution. When I listen to people like the perpetrators of *Punguza Mzigo* Bill, I do not know how it escaped Hon. Shollei. They are scrapping Article 100 of the Constitution. That is what Mr. Aukot is saying. He wants to scrap Article 100 of the Constitution. He believes that there is some innovative ways of bringing a woman back to the discussion table by some subterfuge. This is how to affirm Article 100 of the Constitution. In fact, it should not have come out of Public Finance Management (PFM) (Amendment) Bill. There should be a standalone legislation crafted out of Article 100 of the Constitution that seeks to improve the woman gender or the gender as a whole. We are not looking at these things in the correct prism. If we did, we would know that we are trying to bring up the marginalised groups and we are springing it from the Constitution, but not just how the management is done on a superficial level or in a table banking discussion. They have also not told us who will absorb the liability. Many of my people in Ruaraka took these loans and they say that this is President Uhuru's money and I should not chase them for it. So, there are liabilities. They are talking about getting the benefits or profits, but they are not talking about how that liability will be absorbed.

The National Treasury should know that we are serious. We are not talking about regulations that will perpetuate the systems that have had these endemic problems. We are trying to create a new institute crafted by what we have learnt before, so that they can think more innovatively and create a system that young people, our women and people from marginalised communities will survive.

I have a problem with the Youth Enterprise Development Fund. Everybody knows that it has been a cash cow. Every young person who comes from university suddenly wears good ties because he associates with the Youth Enterprise Development Fund. The women are doing very well with the Women Enterprise Fund. However, the Youth Enterprise Development Fund is just an orifice in which people make paper work and get money for free and refuse to refund. We told the Chief Administrative Secretary (CAS), Hon. Shebesh that the Youth Enterprise Development Fund will not work until there is proper oversight by legislators. That is how the Uwezo Fund has survived. That is how even the Women Enterprise Fund will survive. There is no nexus between the person who is doing business, the place of doing that business and the facilities for which that business is being done. Somebody says that he comes from Kiharu Constituency and then in the proposals, he says that he wants to do that business in Ruaraka Constituency. The Member for Kiharu and the Member for Ruaraka do not know him, but somewhere in the middle, he gets this money. There is very little oversight, leading to a lot of bleeding of public money. We should have stern legislation and regulations that spring from it, which have been thoroughly scrutinised.

Why re-invent the wheel? We have the Kenya Industrial Estates that follows this procedure of accessing finance to people in vulnerable conditions. We should learn from them and make it better and then direct it to the marginalised under Article 100 of the Constitution and it will be fine. We are not only annulling this, but we are warning them that we will annul any regulation they will bring which does not conform to these things. It is a beautiful thing we came up with the Committee on Delegated Legislation because nothing passes now. I hope they will be vanguards of some of these regulations, particularly from the National Treasury and the Central Bank of Kenya (CBK), who think that they have the muscle to make regulations that do not meet the dictates of the common person.

I have said much, but I have just supported the idea to annul the regulations. I will be one of those who will stand firm and wait to annul another one should they bring them, and ever annul them if they are not going to follow the Constitution and the laws of this country.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Let us now have Hon. Arbelle Malimo.

**Hon. Marselino Arbelle** (Laisamis, JP): Thank you, Hon. Temporary Deputy Speaker for giving me this opportunity to contribute to this Motion. First and foremost, I would like to congratulate the Committee on Delegated Legislation for this Report. The Uwezo Fund, the Women Enterprise Fund and the Youth Enterprise Fund were created to address the challenges many Kenyans face. These Funds have improved the lives of many Kenyans particularly those living in marginalised communities. When the Executive tries to come up with a formula to collapse the Funds into one, known as the Biashara Kenya Fund, it is a good idea, but requires public participation to ensure that the general public is in the picture. We should all be part and parcel of what is happening. It is very hard to know where the office of the Youth Enterprise Fund is in my constituency. This Fund is run by a single person whose whereabouts are unknown. Therefore, we can put the Funds together under one roof, something that is similar to Huduma Centres. Initially, you would go for services in different places or offices, but with the

introduction of Huduma Centres, it became a one stop shop where all Kenyans can go and get all the services they need.

It is good to oversee these Funds. I suggest we use the NG-CDF model. We have a fund manager in the constituency and all these Funds are found in constituencies. It is very difficult to know who is advanced a loan and its repayment period. So, the funds sometimes go down the drain without necessary knowing whether they help anyone. At least, the Women Enterprise Fund, for the first time, is helping our women in the villages.

Because of time and my colleagues are asking me to shorten my contribution to allow them to contribute, I support the Report of the Committee on Delegated Legislation.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): You are very considerate. Hon. Gichimu, you have the Floor.

**Hon. Gichimu Githinji** (Gichugu, JP): Thank you, Hon. Temporary Deputy Speaker. I will be very brief because every Member who has contributed is supporting the Committee in the annulment of the Regulations.

Every law that we make in this this Parliament must follow the laid down procedures and must also adhere to the Constitution. If the Committee, after finding that the Cabinet Secretary or whoever brought the regulations never followed the laid down procedure under Article 118 of the Constitution in respect of public participation, then the regulations must fail. In considering every legislation, public participation and involvement must be taken into account.

As I conclude, so that my colleagues can also contribute, the Funds as they are touch on the local person. Actually, they are the only Funds that do not have major formalities and people are able to access them. The youth and women access them. I believe, going forward, a substantive Bill can be brought before this Parliament to cater for men. We would be more than happy so that men are also not left behind in terms of development.

I support the Committee with regard to the annulment. Thank you.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Let us now hear Hon. Martin Owino.

**Hon. Martin Owino** (Ndhiwa, ODM): Thank you, Hon. Temporary Deputy Speaker. I rise to support this Bill. I thank the Committee for doing a good job. In my constituency, Ndhiwa, what sustains women's income, especially household income, is the Uwezo Fund, Women Enterprise Fund and the Youth Enterprise Development Fund. I think it was not by coincidence that these people wanted to bypass the legislation. Also, it is not a coincidence that they did not do public participation. It was by design. So, we have to annul it. What we need to do with regard to this Fund is capacity development for the workers and the people who are taking the loans. I want to cite that sometimes when women gain because of doing business, men get frustrated and even try to wipe out all the gains. We also need to think about men.

I support the annulment of these Regulations. Thank you.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Hon. Ndindi Nyoro, it is your chance.

**Hon. Ndindi Nyoro** (Kiharu, JP): Thank you, Hon. Temporary Deputy Speaker for the chance to contribute. I rise to support the annulment of these unconstitutional regulations. I urge the National Treasury that before it thinks of collapsing these Funds to look at the many other financing gaps in our country. If you are interested in the Biashara Fund, do not touch the Women Enterprise Development Fund, the Youth Enterprise Development Fund and the Uwezo Fund because they were created for a specific purpose. I urge them to start their Biashara Fund by first identifying the gaps, and one of the gaps is men. They should start a men fund within that

Biashara Fund alongside the other existing Funds. They should also pinpoint the gaps like it was done in Israel, for example, on equity fund because there is low penetration of the private equity fund in our country, seed fund and venture capital. They should target that, run it efficiently and then we can entertain the thought of merging the other Funds.

I do not want to belabour the point about public participation, but of course, I urge the Cabinet Secretary, the National Treasury, and his officers to know that there is a Constitution in this country and people must always be involved. It is very important for us to maintain the identities and also commend the Women Enterprise Development Fund because it is very efficient.

As I conclude, it is good for the country and the nation to know that the Uwezo Fund is efficient in Kiharu Constituency. Just recently, I gave out Kshs5 million and we have put into cycle Kshs2 million.

Thank you. I support.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Hon. Shollei, you now have the opportunity to reply.

**Hon. (Ms.) Gladys Boss Shollei** (Uasin Gishu CWR, JP): Hon. Temporary Deputy Speaker, I beg to reply to all the contributions from the distinguished Members who have covered it extensively and comprehensively. For that reason, I do not wish to belabour the point. I thank them for their contributions. I beg to move.

#### ADJOURNMENT

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Very well, Hon. Chairperson. We shall pend putting of the Question on that Motion to a subsequent time.

Hon. Members, the time being 6.57 p.m., this House stands adjourned until Thursday, 12<sup>th</sup> September 2019, at 2.30 p.m.

The House rose at 6.57 p.m.