

**PARLIAMENT OF KENYA****THE SENATE****THE HANSARD****Tuesday, 5<sup>th</sup> October, 2021**

*The House met at the Senate Chamber,  
Parliament Buildings, at 2.30 p.m.*

*[The Deputy Speaker (Sen. (Prof.) Kamar) in the Chair]*

**PRAYER**

**The Deputy Speaker** (Sen. (Prof.) Kamar): Hon. Members, we have papers to be laid on page 574. I call upon Sen. Cheruiyot to lay the papers on behalf of the Senate Majority Leader.

**PAPERS LAID**

**Sen. Cheruiyot:** Madam Deputy Speaker, I beg to lay the following papers on the Table of the Senate, today, Tuesday, 5<sup>th</sup> October, 2021-

**REPORT ON NATIONAL GOVERNMENT BUDGET  
IMPLEMENTATION REVIEW FOR FY 2020/2021**

(i) Report by the Controller of Budget on the National Government Budget Implementation Review for the Financial Year 2020/2021.

**REPORT OF THE KLRC FOR FY 2020/2021**

(ii) Annual Report of the Kenya Law Reform Commission for the Financial Year 2020/2021.

**THE BREAST MILK SUBSTITUTES (REGULATION AND CONTROL)  
(GENERAL) REGULATIONS, LEGAL NOTICE NO.184 OF 2021**

(iii) The Breast Milk Substitutes (Regulation and Control) (General) Regulations, Legal Notice No.184 of 2021.

*(Sen. Cheruiyot laid the documents on the Table)*

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**The Deputy Speaker** (Sen. (Prof.) Kamar): Let us go to the next Order.

### STATEMENTS

**The Deputy Speaker** (Sen. (Prof.) Kamar): Hon. Members, we have two Statements which were processed three hours before the sitting. However, I cannot see Sen. Halake and Sen. Cherargei. So, I will defer them for this moment so that we move to the next Order.

ARREST AND ENFORCED DISAPPEARANCE OF POLICE  
OFFICER OSMAN OMAR GODANA

DELAYED APPOINTMENT OF SUBSTANTIVE  
DIRECTOR GENERAL IN THE MOH

*(Statements deferred)*

*(The Deputy Speaker (Sen. (Prof.) Kamar consulted  
the Clerk-at-the-Table)*

Hon. Senators, I would like to rearrange the Order Paper.

For the convenience of the House, when it comes to Divisions, I will be waiting on the Whips to alert us when we can deal with Order Nos.8,9 and 10.

### MOTION

ADOPTION OF THE REPORT ON THE PUBLIC FINANCE  
MANAGEMENT (EQUALIZATION FUND ADMINISTRATION)  
REGULATIONS, 2021

THAT, the Senate adopts the Report of the Sessional Committee on Delegated Legislation on the Public Finance Management (Equalization Fund Administration) Regulations, 2021, Legal Notice No. 54 of 2021, laid on the Table of the Senate on Tuesday, 28<sup>th</sup> September, 2021; and pursuant to Section 205 (4) of the Public Finance Management Act, approves the Public Finance Management (Equalization Fund Administration) Regulations, 2021, Legal Notice No. 54 of 2021.

*(Sen. Faki on 28.9.2021)*

*(Resumption of debate interrupted on 29.9.2021)*

*(Division on the Motion deferred)*

**BILLS***Second Reading*

THE DISASTER RISK MANAGEMENT BILL  
(SENATE BILLS NO. 14 OF 2021)

*(Sen. Sakaja on 16.9.2021)*

*(Resumption of debate interrupted on 29.9.2021)*

*(Division on the Bill deferred)*

*Second Reading*

THE KENYA CITIZENSHIP AND IMMIGRATION (AMENDMENT)  
BILL (SENATE BILLS NO. 33 OF 2021)

*(Sen. Kang'ata on 30.9.2021)*

*(Resumption of debate interrupted on 30.9.2021)*

*(Division on the Bill deferred)*

We shall move to the next Order.

*Second Reading*

THE LAW OF SUCCESSION (AMENDMENT) BILL  
(SENATE BILLS NO. 15 OF 2021)

*(Sen. Halake on 4.8.2021)*

*(Resumption of debate interrupted on 30.9.2021)*

**The Deputy Speaker** (Sen. (Prof.) Kamar): Honourable Senators, this Bill had been moved, seconded and the debate started. Sen. (Dr.) Kang'ata had started his contribution but I do not see him here.

So, I will allow any other Member who would like to speak to the Bill but before that, I see a point of order from Sen. Khaniri.

*(Interruption of debate on Bill)*

**QUORUM**

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**Sen. Khaniri:** On a point of order, Madam Deputy Speaker. You have said you are waiting for the Whips to advise time on the time we will take the vote. Under the provisions of our Standing Order No. 35 and 36, I bring it to your attention that we have no quorum as it stands. It will be very difficult to transact business with the thin numbers that I can see here. We would like to hear your ruling.

**The Deputy Speaker** (Sen. (Prof.) Kamar): Clerk, please confirm. Honourable Senators, it is confirmed that we have ten Members. I can see another Member coming in. So, there is no quorum because our quorum is 15. I order that the Quorum Bell be rung for 10 minutes or as soon as we attain the 15 Members.

*(The Quorum Bell was rung)*

We have five Members on the Zoom Platform and 12 in the Chamber. So, the quorum is attained.

*(Resumption of debate on Bill)*

Do we have any Member wishing to contribute to Order No. 11, The Law of Succession (Amendment) Bill (Senate Bills No. 15 of 2021)? Yes, Sen. Cheruiyot.

**Sen. Cheruiyot:** Madam Deputy Speaker, I wish to bring it to your attention that one of the Members you were looking for earlier who had a Statement listed on the Order Paper has come in.

**The Deputy Speaker** (Sen. (Prof.) Kamar): We shall go back to that. We want to complete this one if there is still any Member interested in debating Order No. 11. That brings that debate on The Law of Succession (Amendment) Bill (Senate Bills No. 15 of 2021) to an end. We request the Mover to reply.

The Mover is not here, so we will wait for the convenience of the House at a later time.

*(Reply to the Bill deferred)*

Next Order.

## BILL

### *Second Reading*

#### THE PUBLIC PRIVATE PARTNERSHIP BILL (NATIONAL ASSEMBLY BILLS. NO. 6 OF 2021)

**The Senate Majority Leader** (Sen. Poghisio): Thank you, Madam Deputy Speaker. I beg to Move that the Public Private Partnership Bill (National Assembly, Bills No. 6 of 2021) be now Read a Second Time.

The Objects of the Bill are -

- (1) to prescribe the procedures for the participation of the private sector in financing construction development, operation or maintenance of infrastructure or development projects through public private participation;

- (2) harmonize institutional framework for implementation of public private partnerships;
- (3) give effect to Article 227 of the Constitution which provides for the framework for the procurement of public goods and services;
- (4) streamline and rationalize the regulatory implementation and monitoring mandates of relevant agencies;
- (5) provide for a transparent projects selection process and clear procurement procedures in order to promote private sector investment.

Additionally, the Bill seeks to enhance efficiency in the regulatory process of engagement or private parties and the manner in which PPPs are conducted so that as to ensure the provision of high quality facilities and services.

Further, the Bill provides a comprehensive framework for the implementation of the PPPs and addresses the gaps in existing legal frameworks.

Madam Deputy Speaker, various aspects of the PPPs have been elaborated in the Bill itself including and not limited to – establishment of the PPPs Committee, its composition, functions and powers. Further, it provides for the establishment of the directorate of PPPs, its staff, structure and powers and the appointment of the director general.

In the Bill is a prescription of the manner in which PPPs are undertaken including the manner in which parties enter into and execute project agreements.

Furthermore, what is in the Bill is the process of project identification and prioritization by the contracting authority including the constitution of a project implementation team to oversee the implementation for ease of the project.

Fourthly, the procurement methods are also spoken about. The procurement methods for public-private partnerships including and not limited to direct procurement, privately initiated proposals and comparative billing. Provisions for the application procedures during the prequalification of bidders and provision for establishment of prequalification committees by a contracting authority for this purpose.

Mr. Speaker, Sir, the Bill is about the conduct of public-private partnership projects by county governments. Provisions for project and buildings by the county governments, the approval of public-private partnerships projects by county assemblies and the appropriation and submission of county projects lists.

The financial provisions and prohibitions for the establishment of the Public-Private Partnerships Facilitation Fund and the application of monies received into the Fund. Finally, miscellaneous provisions of the Act, including provisions on local content, offenses and penalties, provision on the participation of State and public officers in public-private partnership projects.

The inspection of public-private partnerships, partnership promises by contracting authorities and the directorates. The Bill will be a useful tool in providing a legal framework for tapping the private sector into developing the environment of our nation. Further, the Bill will ensure transparency and openness in matters of procurement relating to public-private partnerships.

Notably, the Bill will cure the various challenges faced by public-private partnerships in our country, including limited resource financing, fairness in public-

private partnership process and lack of mitigation measures for the risk involved in carrying out some projects.

Madam Deputy Speaker, I encourage hon. Members to look at the Bill. It has far-reaching recommendations and it actually cures the usual problems or fears that we have when we want to enter into Government projects or those who want to invest with the national Government or county governments.

I urge hon. Members to consider urgently, the decisions that have to be made to ensure this works. We have seen the advantages of public-private partnerships (PPPs) and now we have put the law in place. We should be cautious to make sure that nothing goes wrong and to remove fears. Many people would like to know if it is safe to invest with the Government or to have this kind of joint participation in investment. Now there is the protection and legal process. There is provision in bidding, making it open and very reliable so that we can all participate in building big partnerships.

It also encourages Members of this House to look favourably at the possibility that the Kenyan citizens can actually enter into businesses that are big in nature in this country through the PPPs. There is nothing that prevents them from dreaming or thinking big; to bring big projects and funding into the country in order to make provisions for public-private partnerships.

Madam Deputy Speaker, this is a straightforward Bill. It has created an opportunity for us to see mega projects like the ones you see now in the country; the roads being built, the dams and the toll roads. We can take that into any sector now and leave the public and the business that is available to our people to think bigger, to reach out more and bring out more funding and more private involvement in these ventures.

With those few remarks, I encourage debate on this matter but we might also begin to see how to improve the sector and enable us create an opportunity for us as members of the public and private.

The Government has appointed the Directorate, which has a Director-General and staff with a functional office on this matter. They have had an opportunity to meet with the Committee on Finance and Budget and have looked at the Bill and recommendations of the Bill, which have come from the Committee. The Committee will take us deeper into the discussions on this matter.

Madam Deputy Speaker, on this side as the person moving this Bill, I want to recommend to this Senate this Bill and ask my colleagues to second. This is a straightforward matter. It is a matter of saying 'yes' to the PPPs which we are all practising but now under a strict structured manner. For the country to gain from public-private partnerships, as well as promote openness and transparency in these partnerships, this is the chance and our law. This has been passed in the other House and it is here for us and is in the heart of good governance.

Madam Deputy Speaker, I move and ask Sen. Orengo to second this. Thank you very much.

**The Deputy Speaker** (Sen. (Prof.) Kamar): Thank you. Yes, Sen. Orengo.

**The Senate Minority Leader** (Sen. Orengo): Madam Deputy Speaker, I thank you for giving me this opportunity and also thank the Senate Majority Leader for moving

this Bill. As the hon. Member indicated, time has come for this Bill. Once you know the purpose or objective of this Bill---

**The Deputy Speaker** (Sen. (Prof.) Kamar): Order. I would like to ask those who are handling our microphones to check them because when Members press, the lights go on before they are given the microphones. I have seen two Members who have tried and their microphones are on.

**The Senate Minority Leader** (Sen. Orengo): Madam Deputy Speaker, I second the Bill. Public-Private Partnerships are very important now and we live in an age where governments cannot be able to do everything or raise capital. The participation of the private sector and other entities is very crucial as we try to build economies that can compete with the other growing economies in the world, particularly in the field of infrastructure, to catch up with countries that have moved ahead and taken advantages of economies of scale as the world is divided into two entities; the developed world and the developing world.

The Government cannot at all times develop needed infrastructure. It is therefore important for us to create a legal framework because without a legal framework, it is very difficult for this project to be undertaken. Now that we have a Constitution that talks about procurement and how the procurement should be undertaken; particularly procurement relating to Public Private Partnership (PPP). That legal framework is not clear even if one were to read the Public Procurement and Asset Disposal (PPAD) Act, 2015.

Madam Deputy Speaker, on my part, the only worry that I have on public-private partnerships is that if they are not well managed or if there is no regulatory and legal framework, they can be a source for seeking rent and Governments overpricing its activities with collections with the entities that they enter into contract with Governments. Therefore, in this regard, this framework is going to make every sector to play its role including Parliament to play its role because judging entities such as performance of Government without a legal framework is never easy. At the moment, there are many huge infrastructure projects that are taking place but they can never be enough. I am sure that without PPP, undertaking a project like the Nairobi Expressway would have been extremely difficult.

We are aware that there is also an attempt to build an expressway or a huge transport corridor between Nakuru and Nairobi and eventually Kisumu-Kericho-Malaba. The highway to Mombasa is in serious need of development and expansion and with a limited budget, all these projects are going to be difficult to be undertaken. There is also need to have a connection between the international airport in Nairobi, JKIA with the Nairobi City. Those are some of the areas that under the framework of the PPP, the country can move at a better pace with its neighbours.

Madam Deputy Speaker, it is important for Kenya to take advantage of its location and what we have at the moment. Nairobi is easily the hub in the region. However, it can be overtaken by Dar es Salaam, Addis Ababa and Johannesburg which are competitors. However, all things said and done, Nairobi, Kenya, has a greater potential to be the hub. However, that cannot be accomplished if the question of infrastructure is not addressed and raised to international standards.

I therefore commend this Bill because it went through the National Assembly. I am sure it went through the Committee of the National Assembly and Plenary. This is a Bill whose time is due.

Madam Deputy Speaker, I second.

**The Deputy Speaker** (Sen. (Prof.) Kamar): Hon. Senators, I will now propose the Question.

*(Question proposed)*

Proceed, Sen. Wambua.

**Sen. Wambua:** Madam Temporary Speaker, I thank you for giving me this opportunity to weigh in on this important Bill.

I would like to begin by thanking the National Assembly for debating and passing the Public Private Partnership Bill (National Assembly Bills. No. 6 of 2021). I also take this opportunity to thank the leadership of the Senate for introducing this Bill for debate in this Chamber.

It is very encouraging to see that at a time such as this, we are now debating a mechanism to give effect to Article 227 of the Constitution which speaks to procurement of public goods and services; an area that has for many years suffered a lot of abuse. In that supreme law in Article 227, the drafters of the Constitution envisaged a situation where in the procurement of public goods and services, the procuring entities would go for a system that ensures fairness, equity, competitiveness and a cost effective system. Truth be told, a lot of these procurement entities in this country are not living to the expectations and provisions of Article 227 of the Constitution.

Madam Deputy Speaker, I am encouraged because in bringing a legal framework to give effect to this article, one of the things that we do is create a conducive environment for the private sector to flourish. It should be noted that in this country and as in any other country, economic growth cannot be attained without a vibrant and solid private sector. When the private sector joins hands with the public entities to undertake development projects, two important things happen. One, it gives the private sector players an opportunity to access easy and affordable credit to be able to roll out major projects. However, most importantly, it also creates an environment with which a lot of jobs are created and ground is made good for the private sector to flourish in all areas of development.

I say that because I sat in the special committee of the Senate which looked into the issues of the Managed Equipment Scheme (MES) which was initiated as a PPP but it moved from a PPP to MES which eventually became a big mess.

If we had a law to safeguard our Public Private Partnerships (PPPs), perhaps, we would not have gotten where we have found ourselves.

Madam Deputy Speaker, when I talk about creating a conducive environment for the flourishing of the private sector, I am looking at areas like access to affordable credit, Government creating political stability to build confidence among our private sector players and access to reliable sources of energy to power industries. You know that we have a challenge in terms of reliable and affordable sources of energy to power industries.

All in all, I am in support of this Bill. I hope the Senate will pass it and once it does, then the initiative that has started as PPP will end up as PPP and not as other initiatives that change course midway to serve other interests that are not public.

With those remarks, I support.

**The Deputy Speaker** (Sen. (Prof.) Kamar): Thank you.

Sen. (Dr.) Ali, proceed.

**Sen. (Dr.) Ali:** Thank you, Madam Deputy Speaker. The PPPs are usually supposed to be good. However, there are many problems, especially in our region, where people do not follow the rules strictly as mentioned earlier. In our area, we mainly depend on agriculture. The least developed counties usually have higher levels of poverty. When it comes to economic activities, we have low per capita income. We depend on agriculture and exports, which are not even enhanced to the second level.

We have low levels of technology and innovations and do not do very well in that aspect. We then end up depending on mainly aid. People bring in money and take back three-quarters of it. The aid that comes to these counties is used for other things. They mostly use it for other issues like buying big vehicles, paying people who are not even qualified, and most of the money goes back. We mostly depend on aid instead of thinking of technology and innovation. If we think of technology and innovations, then our country will obviously improve.

When we talk of PPPs, then in that case, while the tendency is to advocate for more aid that is more sustainable, it will be science, technology and innovation. That is one way of providing us with more employment and more funds for our people in other sectors.

The Science, Technology and Innovation (STI) policies are usually not done the right way most of the time. That is why we fail most of the time in performance of our PPPs. When you listen to the grapevine about the so-called PPPs in Kenya, you will be surprised. That is why people talk of monies changing hands, and that is why China has taken over Africa. They tend to do that, but give a lot of money to the technocrats and leadership in those areas. In the end, we do not gain much.

Madam Deputy Speaker, my take is that while I have no problem with the Bill, the most important thing, as has been mentioned, is the policy and how the rules are put in place to make sure we or our funds are not misused. Most African countries are the least developed in the world and here, we are talking about STI, which also comes mostly from the West. The little that we innovate disappears and are mostly used by big companies, which do not benefit the locals as is supposed to be.

The World Bank has started a technology bank, but most African countries do not make much use of it. I know that the Committee has looked into it, but I hope they have looked into all the aspects, so that in the long run, we do not fail in our objective to support our people.

Madam Deputy Speaker, I support.

**The Deputy Speaker** (Sen. (Prof.) Kamar): Thank you, Senator.

Sen. Cheruiyot.

**Sen. Cheruiyot:** Thank you, Madam Deputy Speaker, for this chance to make my contribution. There is a history to this PPP Bill that is dear to us, the people of Kericho

County. If you read the Impeachment Report of Gov. Paul Chepkwony when he was brought before the Senate, the team that looked into his impeachment recommended that, as the Senate, we needed to do a PPP law, specifically for counties. This law would guide counties if and when they desire to enter these forms of contract.

We tried it in the last Senate. I think we passed it as House, if I am not wrong, but then it died in the manner in which many of the previous Bills have when they are forwarded to the “Lower House.” For us to be here today, this is great progress. It does not matter the route and means. What matters most is that we eventually achieve that which we wanted.

It may not have come in the format that we expected because our design was a complete unit divorced from the tentacles of the National Treasury and the National Government, but this is good for a start. The establishment of this directorate as opposed to a unit is fairly different. This is as opposed to what we had proposed previously from the National Treasury, where from 2013 to now, many counties that have tried to undertake a particular project and sort the approval of the National Treasury have largely been unsuccessful. This is really unfortunate. That ought not to be the case. That is not the spirit of devolution under our Constitution. Both levels of Government should be able to support each other where there is need. Where there is a good basis and one has expertise over the other, you help out.

Madam Deputy Speaker, since it has been felt in many occasions that the National Government has the requisite experience and the technical know-how of procuring some of these projects, they will actually facilitate many county governments to enter some of these partnerships that will help counties meet their key objectives. Unfortunately, that has not been the case. For us, as a House, this is a perfect opportunity that will grant our counties--- Our main interest as a House, much as we are focused on the wellbeing of us as a Republic, it should be our primary interest to have counties thrive and have the enabling legal framework such as this that is being proposed to undertake and meet many of its key objectives.

I love this Bill because one of the key highlights is that it reduces bottlenecks. If you read the PPP Act, 2013, there were up to 12 entities that would clear any particular project. Knowing the rigorous and some of the difficulties with which many of our Government entities operate, it would be fair to say it would have been impossible.

We have now housed all those entities “whatever approvals that may have been needed” under one single directorate headed by a Director-General. Of course, that Director-General has his team of technical people who will help speed up some of these projects. They will help counties to do proper feasibility studies, bank documentation and Environmental Impact Assessment (EIA) reports by the laws of the land and also do a feasibility financial of the projects.

You should also provide perhaps the necessary training for many of our county governments because I believe when this unit is properly set up, one of the things they will do is that they will train some of these county officers so that by the time the proposals get to Nairobi here most of the work that needs to be done in the counties will have already been established. That is a good gain and proposal in my assessment.

Madam Deputy Speaker, as we have come to observe in this country the challenge is not for want of good laws that the State of our Republic is as is. The challenge lies in the implementation. Unfortunately, as we are increasingly coming to learn even when you set up independent institutions such as this, if Parliament does not play its rightful role, most of the time many of these institutions are actually captured by the Executive. It then gets to a point where for one to get approval or be denied an approval it will depend on the wishes of the National Government which would really be unfortunate.

It had been the wish of many of us who sat in this Committee set up the unit first then we can improve on many of these things.

*(Senators applauded as Sen. Orengo and Sen. Nyamunga entered the Chamber)*

Madam Deputy Speaker, I will forgive Sen. Orengo, who is the Leader of Minority because he is a son of Kericho. So, he gets the chance to interrupt his Senator like all voters are supposed to.

Back to the presentation I was making, as a House if we do not play our rightful role and ensure that this institution actually lives up to the purpose for which it was set up, then we will struggle as a country.

Look at the PPP projects that are being undertaken currently. All of us in this House should be ashamed that this country is undertaking PPP projects to the tune of tens of billions of shillings yet we have not seen the outcome. How can we say that we are representatives of the people yet an expressway is being built here that will cost Kenyans Kshs60 billion, yet we have not seen the collaterals and the agreements that have been made. Was it on a fair price basis such that we will not end up having a country where--- It is possible because this has happened in other parts of the world where a project is built but because it is over-priced--- You know Kenya is legendary for many such projects where if you are not careful citizens may not even be able to use some of these projects because it may end up being expensive.

That is why on many occasions, I have raised concerns. There is a project that---

**The Deputy Speaker** (Sen. (Prof.) Kamar): Order, hon. Members. Please, consult in low tones as you congratulate Sen. Nyamunga. We have not seen Sen. (Dr.) Milgo dressed but we know we have a number of Senators who have been decorated. Congratulations.

**Sen. Cheruiyot:** Congratulations. Mine never goes beyond nomination.

I was mentioning that as a House - and I want my good neighbour from Nyamira to hear this. You know in the part of the country where we come from, there is this proposed PPP project that is supposed to take off from Rironi all the way to Mau Summit where we are hearing that a deal has been signed between the Kenya Government and the French Government whereby this expressway will be built and those of us who can afford will be allowed to use it. The rest of the hustlers and ordinary mortals will be stuck in traffic. We cannot allow such things to happen. That was not the intention of our PPP Bill.

The people of Nyamira and Kericho because you are our neighbour expect us, because they have sent us as legislators to this House to oversight and look into some of these things that are being done.

Let it not be that this particular expressway is one where people sign inflated projects and when you come to charge the citizens, you find that they are paying over 90 percent of the project.

**Sen. Cherargei:** On a point of information, Madam Deputy Speaker. I wanted to inform Sen. Cheruiyot that the expressway has increased from Kshs68 billion with an addition of Kshs7 billion. So it is no longer Kshs68 billion. It is approaching more than Kshs72 billion. In the last one week, it has increased from Kshs68 billion by Kshs7 billion.

**Sen. Cheruiyot:** Thank you. That is good information. We are hearing that part of this money is stuck in Panama. It is because of such projects which are being undertaken in a very dubious manner.

One P stands for public and that is you, I and the people that we represent. Surely, as representatives of the people, do we not have a right to know who these private entities that are signing this Bill are? How are they pricing it? What is the logic of achieving it within five, 10, 15 or 25 years? Can the project be timed a bit longer, maybe 40 years so that people do not have to pay the amounts of money that we are hearing?

I listened to the Director-General of Kenya National Highways Authority and he said it might cost us an upward of Kshs100 per kilometer to use the expressway. So, what economic sense does it make? Does it guarantee free use and movement of goods and services as was expected? The long and short of having a good transport system is to ensure that citizens are able to move freely.

Therefore, the point that I am making this afternoon is that it is not for lack of good laws such as this PPP Bill that our country is in the state that it is in. It will all depend on us as organs of oversight and the Executive which is supposed to sign these agreements, if we are people of value and ensure that we do everything in the best interest of the ordinary citizen and not try to seek personal gain as we are famous for, as the people of Kenya.

It would be unfortunate if we give to the counties this beautiful piece of legislation, then the next thing you hear is that governors have set up private entities and therefore, they are siding up. On one hand, you want to sign as a representative of the people because you were elected as governor but the private entity that is entering into that agreement are your friends and the people that represent your other interests. It would be unfortunate.

It calls upon us, as a House, to be careful. Many of these deals are signed when we are in office. Then when you go out and the public begins to ask us these questions, we also join them in the chorus in asking. They expect better from us.

I hope later on once we have set up and seen the challenges of this unit operating, as a House, we should be able to get a quarterly review as is expected of many of our public entities on what basis we have approved.

There is another challenge that is coming up in this country where we thought that we are dividing the country into 47 county governments so that we send services closer to

the people. However, increasingly as I have seen in the last few days, some counties are actually being considered to be more useful to the Nation than others. It is unfortunate.

We have seen when there is of coffee grant funds, a very famous topic that Sen. Wetangula loves to speak about, you find that out of the about 15 coffee growing counties in this country, only five benefit from these funds; yet when it comes to payment of the loan all of us will pay jointly.

I saw the other day and it is good Sen. (Dr.) Milgo is here, that the National Government has sent letters to various heads of the county education departments saying that we need to fast-track the registration of students so that they get identification cards. I hope the intention is not for registration where people can vote only in certain counties. You need to extend that countrywide. That information needs to come out clearly. When this particular entity works, we will be asking of them to submit the list of projects approved in every quarter. We want to see that when you approve a project in Kericho, you approve in Wajir, Kisumu and Lamu. Then we have one beautiful Republic where every citizen feels to part and parcel of.

With those many remarks, I support this Bill.

**The Deputy Speaker** (Sen (Prof.) Kamar): Sen (Dr.) Ali, did you switch it off? Sen. Faki, proceed.

**Sen. Faki:** Asante, Bi. Naibu Spika, kwa kunipa fursa hii kuchangia Mswada huu wa Ushirikiano Baina ya Taasisi za Umma na Waekezaji wa Kibinafsi Katika Miradi ya Maendeleo. Mswada huu umekuja wakati mwafaka kabisa kwa sababu ijapokuwa Serikali imepanga kufanya miradi mingi ya kimaendeleo, miradi mingi imekwema kwa sababu ya ukosefu wa fedha za kutosha.

Mswada huu utakapopita utasaidia pakubwa miradi ya maendeleo nchini kwa sababu pesa nyingi ambazo zinahitajika kutekeleza miradi zitapatikana kupitia kwa waekezaji wa kibinafsi. Mpango huu utasaidia kupatikana kwa pesa nyingi ambazo zitatumika kutekeleza miradi na huduma nyingine nchini.

Bi. Naibu Spika, tumeona kwamba tayari kuna miradi inayotekelezwa katika Jamuhuri yetu ya Kenya, kwa mfano, Nairobi Express Highway. Huu ni mradi wa kibinafsi ambao unatekelezwa kwa ushirikiano na Serikali yetu. Pia kuna barabara inayojengwa kutoka Westlands hadi Mau Summit. Huu ni mradi unaofadhiliwa na watu binafsi kwa kushirikiana na Serikali yetu. Mpango kama huu sio wa kwanza nchini lakini hatukuwa na sheria ya kusimamia miradi kama hii.

Kila sehemu nchini inahitaji miradi, kwa mfano, barabara, nguvu za umeme na kadhalika. Hii ni miradi ambayo inasaidia pakubwa kuleta maendeleo mashinani. Ushuru au kodi tunazolipa haziwezi kujenga barabara na kutekeleza maendeleo mengi nchini. Kupitishwa kwa Mswada huu kutasaidia pakubwa kuendeleza maendeleo katika sehemu nyingi za nchi yetu ambayo sisi kama raia tutayalipia.

Mswada huu unatoa nafasi kwa serikali za Kaunti kutekeleza miradi ya uwekezaji baina yake na wananchi wake. Jambo hili litasaidia pakubwa kuleta maendeleo mashinani. Kaunti nyingi zina miradi mizuri ya maendeleo, lakini ruzuku zinazotoka kwa Serikali Kuu na kodi wanazookota katika maeneo yao hazitoshi kufadhili ama kusimamia miradi wanaotaka kufanya.

Kuna miradi ya nyumba ambayo kupitia kwa *'affordable housing'* huwa ni nyumba za kiasi za wananchi. Miradi kama hiyo inaweza kufanyika katika kila kaunti. Hata hivyo, pesa zinazohitajika na zile zinazotoka katika Serikali kuu na kupelekwa katika serikali za kaunti kutekeleza miradi ya kawaida hazitoshi. Kwa mfano, kule kwetu Mombasa, kuna Likoni, Changamwe, Hadija na Mzizima *estates* ambazo zinatekelezwa na waekezaji wa kibinafsi. Jambo hili limezua utata. Kama kungekuwa sheria ya uwazi kama hii tungeweza kujua ni akina nani ambao wamefaidika na miradi hii. Ripoti ingewasilishwa katika Bunge la Kaunti ya Mombasa ili kuhakikisha kuna uwazi katika kutoa zabuni za miradi hiyo.

Bi. Naibu Spika, naunga mkono Mswada huu kwa sababu utasaidia pakubwa kuleta maendeleo na kuweka mwongozo; vipi tunaweza kufanya miradi ya uwekezaji wa kibinafsi kwa ushirikiano na serikali zetu.

Kifungu cha 65 cha Mswada huu kinasema-

“Subject to Section 363(5), each County Government intending to undertake Public Private Partnership shall obtain the approval of the respective County Assembly before undertaking the project.”

Lakini tukiangalia kifungu cha 63 hakina 63(3) ambacho kimezungumziwa hapa katika Kifungu cha 65. Ninawasihi wahusika waweze kurekebisha na kuhakikisha kwamba kinaoana na Kifungu cha 65(1).

Hapa wanapendekeza bodi ambayo itasimamia miradi ambayo itatekelezwa kwa ushirikiano wa kibinafsi na Serikali. Hili ni jambo nzuri kwa sababu kwa sasa hakuna mwongozo wowote unaosimamia miradi kama hii. Jukumu hili limetwikwa Wizara husika ambazo zitasimamia miradi kama hiyo. Mara nyingi inakuwa ni shida kutoa mwongozo kwa sababu ya *bureaucracy* au daraja kutoka kwa Waziri, Katibu wa Kudumu na maafisa wengine katika Wizara, kabla mwongozo kutolewa kuhusu utekelezaji wa mradi wowote.

Ninaunga Mswada huu tuupitishie ili tupate manufaa mengi ya maendeleo katika nchi yetu.

Mwisho, jambo ningependa kugusia ni lazima tuwe macho kama Bunge la Seneti na Bunge la Kitaifa ili miradi hii itekelezwe. Ni lazima kuwe na uchunguzi mara kwa mara; yaani *oversight* ili tuone kwamba mwananchi hapunjwi katika kuendesha miradi kama hii. Miradi itakayofanyika iwe ni ya kudumu na fedha zinazotumika vizuri kuyatekeleza.

Miradi mingi inafanywa bila uwazi au katika hali ambayo si nzuri. Si haki barabara ambayo inajengwa kudumu kwa miaka 30, baada ya miaka mitatu inaanza kuchimbuka, kufura manundu, kuwa na mashimo na kwingine inabomoka. Hiyo yote inaonyesha kwamba katika kutekeleza mradi hakukuwa na umakinifu na uangalifu wa kutosha kuhakikisha ya kwamba vifaa vinavyotumika vinastahili. Wakati mwingine mwakandarasi hatekelezi mradi kwa ustadi wa hali ya juu na huwafanya wananchi kuona pesa zao zimepotea.

Ninaunga Mswada huu tuupitishie ili tupate manufaa mengi ya maendeleo katika nchi yetu.

**The Deputy Speaker** (Sen (Prof.) Kamar): Thank you Senator. Sen. (Dr.) Lang'at, proceed.

**Sen. (Dr.) Lang'at:** Thank you, Madam Deputy Speaker, for giving me this chance to support this Bill. The moment we pass it, it will be a landmark for the development of our country.

First, it will promote the development of large projects like roads. When you engage in Public and Private Partnership, it will boost the Government, whenever funding is not sufficient for the construction of large-scale projects. This Bill has prescribed a procedure for engagement, which is important. This procedure will lead to creation of proper regulations that will guide the private partnership engagement in a harmonized way.

I have read about the engagement in the West and even in the US. It has assisted the Government to access funding. This is getting private capital from private organisations that have a lot of money. We have rich people in this country willing to assist, but there are no clear regulations or law that will provide an effective engagement to allow them to participate in development.

Last time I was in Botswana with a team from the Committee on Education and we witnessed so many Kenyans in Botswana who are currently doing farming and are encouraged and supported by the Government.

Madam Deputy Speaker, unless we have such a Bill, we are losing in big way. This is because most people with a lot of capital are not just seated in Kenya waiting for the sun to set, but are going outside looking for opportunities to invest in the countries that have proper laws on such engagements.

I also support what Sen. Wambua said, that these private engagements---

*(Sen. Madzayo was applauded as he walked  
into the Chamber)*

I congratulate Sen. Madzayo. Those are the benefits of engaging in 'handshake' matters.

**The Deputy Speaker** (Sen. (Prof.) Kamar): Order, Members. Let us continue as you congratulate your colleague, Sen. Madzayo.

**Sen. (Dr.) Langat:** Madam Deputy Speaker, allow me to continue. I congratulate my great friend, Sen. Madzayo, and the rest in advance. Save me from this noisemaker called Sen. Cherargei.

**Sen. Sakaja:** On a point of order, Madam Deputy Speaker.

**The Deputy Speaker** (Sen. (Prof.) Kamar): Sen. Sakaja is on a point of order.

**Sen. (Dr.) Langat:** Do not allow him, he wants to cut me short. I want to continue. Allow me to conclude.

**The Deputy Speaker** (Sen. (Prof.) Kamar): Sen. Sakaja.

**Sen. Sakaja:** Madam Deputy Speaker, is it in order for the Senator of Bomet, in the record of this House, to say that it is a product of the 'handshake' when Sen. Madzayo walked in? The way I see it, if I am not wrong, Sen. Madzayo has received the award of the Chief of the Burning Speaker (CBS). I know it because I also have it.

I think we all know that Sen. Madzayo, who has received the CBS has received it on his own merit because of the work he has done in Parliament for a long time.

Is it in order for it to be on the record of the House that someone said that it is a product of the ‘handshake’ or should that phrase be withdrawn?

One day, the children and grandchildren of Sen. Madzayo will look at the HANSARD and they will say that he only received the award because of two people shaking hands, not because of his work in the Republic of Kenya. There are many Members who have received awards even before there was a handshake.

**The Deputy Speaker** (Sen. (Prof.) Kamar): Point taken.

Yes, Sen. Cherargei.

**Sen. Cherargei:** Madam Deputy Speaker, is it in order, for Sen. Sakaja to tell us that the award of Sen. Madzayo---

**The Deputy Speaker** (Sen. (Prof.) Kamar): By the way, we do not counter a point of order. You make your own point of order.

**Sen. Cherargei:** Madam Deputy Speaker is it in order for us to even discuss yet we know that there is a process that is undertaken to get those awards?

**The Deputy Speaker** (Sen. (Prof.) Kamar): That is a very default way of---

**Sen. Cherargei:** Madam Deputy Speaker, it is a statement of fact, what Sen. (Dr.) Langat stated.

**The Deputy Speaker** (Sen. (Prof.) Kamar): Senator, you will get your own opportunity. We had congratulated the Members. The first one has come in. We are waiting for three more. The process is still on, and we should congratulate our colleagues. Let us not add anything. Sen. (Dr.) Langat, if you added something else, that is not in good taste for a colleague. I believe that that is what Sen. Wambua was about to say.

*(Sen. Wambua spoke off record)*

Sen. Wambua is on a point of order.

**Sen. Wambua:** Thank you, Madam Deputy Speaker. I actually thought that Sen. Cherargei would stand in defense of his own name. I heard Sen. (Dr.) Langat asking the Deputy Speaker to protect him from “this noisemaker, Sen. Cherargei.” Is Sen. Cherargei saying that he is a noisemaker in the House?

**The Deputy Speaker** (Sen. (Prof.) Kamar): Senator, you are now making me hear what I did not hear. Hon. Senators, let us put this to rest. Let us support and congratulate our colleagues. We know that this is very senior judge. He should have gotten it a long time ago. We congratulate you, Sen. Madzayo.

We have already congratulated Sen. Nyamunga and we are expecting three more, hopefully before the end of the day. I hope that we are not going back to that. I have ruled that we do not want to go back to that. This is about appreciating colleagues, not telling us where it came from.

**Sen. Kinyua:** Asante, Bi, Naibu Spika. Langu ni kuwa ulimwambia Sen. (Dkt.) Langat kuwa maneno hayo si mazuri na ayaondoe ndio yaondolewe katika rekodi zetu. Lakini, yeye alikuambia asante na akaendelea kuongea. Ni vizuri umkumbushe ayaondoe matamshi hayo.

**The Deputy Speaker** (Sen. (Prof.) Kamar): Asante sana. Hilo ni swala njema.

Sen. (Dr.) Langat, I hope that you understood the Kiswahili. These are colleagues and we normally do not want to put a motive on a colleague.

**Sen. (Dr.) Langat:** Yes, I understood. I had actually said that our colleagues really deserve this. They are hardworking, and apart from hardworking, there are processes that make things happen.

*(Loud consultations)*

That was just a by the way. I withdraw that and say congratulations and good work.

**The Deputy Speaker** (Sen. (Prof.) Kamar): Thank you.

**Sen. (Dr.) Langat:** Madam Deputy Speaker, allow me to finish what I was saying. There is a point to note here. The private partnership engagement will enable us to benefit from research.

More often than not, you will find very important research findings in the public sector, but there are challenges to implement such research findings because of lack of funding. However, when we engage the private sector, such research findings can easily be implemented to support development more so in the area of technology.

Madam Deputy Speaker, you and I were at Moi University. You can remember that most of the research that the university conducted could not find the light of day to be implemented because of funding. Our country normally gets very little funding for the research sector. If we engage in public private partnerships, research that is conducted in public or private universities can easily be implemented to support development.

Additionally, when we get into public private partnerships, we are likely to get quality work when it comes to roads, products and services. This engagement is so important to both the private and public sectors. It will enhance access to technology and effective benefit of skills from different people that are working in the private and public sector. I really support this Bill. It is my prayer that all of us support it so that it assists development in our country.

Thank you, Madam Deputy Speaker. I once again congratulate our partners for their words.

*(Interruption of debate on the Bill)*

**The Deputy Speaker** (Sen. (Prof.) Kamar): Hon. Senators, I had promised that before the Statement hour is over, I will allow two Senators to read their Statements. The first one is Sen. Halake. She has a Statement pursuant to Standing Order No.48 (1).

## STATEMENTS

ARREST AND ENFORCED DISAPPEARANCE OF POLICE  
OFFICER OSMAN OMAR GODANA

**Sen. Halake:** Thank you very much Madam Deputy Speaker. Let me take this opportunity to congratulate my two colleagues. We will congratulate them later, but very well done for the good job that has earned them the Order of the Burning Spears (OBS).

I rise pursuant to Standing Order No.48(1) to seek a Statement from the Standing Committee on National Security, Defence and Foreign Relations regarding the arrest and forced disappearance of police officer Osman Omar Godana, Police Service No.89450, of the National Police Service (NPS) allegedly by State security agents.

In the Statement, the committee should-

(1) Investigate the circumstances leading to the arrest and enforced disappearance of Mr. Osman Omar Godana, a police officer who was last seen in the company of four armed men believed to be security agents on 13<sup>th</sup> September, 2021, at around 9.30 p.m. near Blue Post Hotel in Thika.

(2) Confirm whether Mr. Osman is in the custody of State security agents, and if so, state reasons why he has not been arraigned in court to date in accordance with the law.

(3) Apprise the Senate on the progress made in the search for the missing officer to date.

(4) Inform the Senate on the measures, if any, put in place by the police service to address the increasing incidences of abductions and forced disappearances of members of the public.

I thank you.

**The Deputy Speaker** (Sen. (Prof.) Kamar): The Statement stands committed to the Standing Committee on National Security, Defence and Foreign Relations.

The second Statement is by Sen. Cherargei.

DELAYED APPOINTMENT OF SUBSTANTIVE  
DIRECTOR GENERAL IN THE MOH

**Sen. Cherargei:** Thank you, Madam Deputy Speaker, for this opportunity. I want to congratulate our two colleagues and wish them well because they deserve it. All the best, especially my senior counsel and retired judge, Sen. Madzayo, who is the Deputy Senate Minority Leader.

I rise pursuant to Standing Order No.48(1) to seek a Statement from the Standing Committee on Health regarding the delayed appointment of a substantive Director-General in the Ministry of Health (MoH).

In the Statement, the Committee should-

(1) State whether the MoH has established an organizational structure comprising the technical directorates in accordance with Sections 15(b) and 18 of the Health Act, 2017, and whether the technical directorate are headed by directors in substantive or acting capacity.

(2) State whether the MoH has established the office of the Director General in accordance with Sections 16 and 17 of the Health Act, 2017, and whether the position is substantively filled and functional.

(3) Provide details of the officers who have served in acting capacity as Director-General, including Dr. Patrick Amoth, since the enactment of the said Act, including details of the appointment dates, appointing authority and terms of duration of service.

(4) State whether the appointments of the acting director generals of the MoH were conducted in accordance with the public service policy rules and guidelines on the appointment of public officers in acting capacity.

(5) Elaborate on the measures that the Ministry has taken to ensure sustainability of its systems, structures and processes in the absence of a substantive Director General of health and/or technical directors under the MoH.

(6) Explain how representatives of the Director-General of Health in relevant statutory boards and councils across the Ministries and boards and councils are nominated or appointed in the absence of a substantive Director-General in the MoH.

I thank you.

**The Deputy Speaker** (Sen. (Prof.) Kamar): The Statement stands committed to the Standing Committee on Health.

We will go back to Order No.12. Let us listen to Sen. Seneta.

*(Resumption of debate on the Bill)*

**Sen. Seneta:** Thank you, Madam Deputy Speaker, for giving me a chance to also add my voice on this important Bill. Public private partnership is the hope for the country to have important facilities.

This morning we were handling a Statement concerning a funeral home through a partnership between Kiambu County and Kenyatta University (KU) which has been serving the community very well in terms of providing mortuary services and other services offered in that health facility in Kiambu.

Many a times, when counties want to do big projects like health facilities, roads and other infrastructure such as stadiums, they may not be able to do that without a budget. In this case, when we have a framework to protect public interest, then we shall ensure that we set aside budgets for big projects that will assist the communities.

Looking at the small budgets that go to our county governments, in terms of the functions that they are supposed to perform according to the Fourth Schedule of the Constitution, many counties are unable to do big infrastructural projects that will enhance development in the counties. When we have a framework that will bring on board private partners to do investments in collaboration with county governments, then that will enable county governments to do a lot of infrastructural projects.

I remember one time when we were doing our sporting activities in Uganda, we realised that there are so many stadiums in Uganda. Even high schools had very nice fields. Possibly the government partnered with secondary schools to run stadiums.

At the moment, many of our counties do not have stadiums. We do not have sporting fields where our young people can practice different sporting activities. We also do not have schools and medical institutions to carry out health research. With public private partnership engagements, we may be able to do many of them.

Madam Deputy Speaker, if we have the proposed directorate, I think our country, through the county governments, will realise development in future.

I thank you.

**Sen. Omogeni:** Madam Deputy Speaker, first, I would like to congratulate Sen. Nyamunga and Sen. Madzayo who have been decorated with State medals. I have no doubt that they are the most deserving.

I have known Sen. Madzayo for many years. I practiced before when he was serving as a judge in the Industrial Court. I have known him as an advocate of good standing within the legal profession and a very able debater in this House. I have no doubt he is very deserving.

Madam Deputy Speaker, likewise, Sen. Nyamunga is serving a second term in Parliament. Some of us who have served with her in Committees know how committed she is. She serves in the Speaker's Panel. I have no doubt she was picked and decorated with the medal because she is deserving. My sincere congratulations to the two Senators.

I rise to support the Government initiative to put in place a legal framework that will guide the PPPs. Having served as a Chair of the Ethics and Anti-Corruption Commission (EACC), it is always a risk when you give too much discretion to any public office without putting in place a legal framework that guides the exercise of such discretion.

I am happy that this Bill is a very good attempt to put in place guidelines for PPPs. I join my colleagues who have spoken ahead of me in accepting that there are many benefits that we can get as a country if we properly implement the PPPs. We will not be the first country to take on board this model as a way of bringing development and putting in place infrastructure for a beautiful country, Kenya. This has worked in many countries.

Those of us who have travelled to Philippines have seen very good roads, courtesy of PPPs. We were in the US, I think about two or three months ago and, the lady who was taking us through a program told us that in the US, 23 out of - I believe - 65 basic services are offered through PPPs. The good thing about this is that when you bring in the private sector to some of these undertakings, you get efficiency, professionalism and value for your money. This is a very good initiative. I hope the country will see some change once this is brought on board.

At times when you travel out of the country, come back and land at the Jomo Kenyatta International Airport (JKIA), you get a sense of some embarrassment on the way we have left that beautiful airport of ours to degenerate. I am sure if we took advantage of this new Bill, once it is enacted into law and allowed a private entity to set up a second reception at the airport, they will bring something we can be proud of as a country. I hope once this will be in place, the Government and people of Kenya will take advantage and invite the private sector from out there who can come and help us to put in place some of these infrastructure.

Truth be said; we have over borrowed as a country. I think our public debt is now heading to Kshs10 trillion if it has not already hit there. We do not want this culture of borrowing on behalf of our grandchildren. If we can have private companies that have

finance who can come in and enter into PPPs with the Government, then we will escape borrowing. Why not?

We will also get the advantage of putting in place good infrastructure such as the example I have given of a good terminal and JKIA. Leadership is about giving services to our people. As I support this Bill, when we talk of PPPs let us also give space to the private sector.

I have looked at the composition of the PPPs Committee in Clause 6 of this Bill and I think there is a lot of emphasis on Government representation but we are leaving out the private sector. If as the heading says it is a PPP, we need to give good space in the Committee to the private sector.

Looking into this Bill, we will take into account the many private organizations we have in this country that can be represented in this Committee. For example, the Kenya Private Sector Alliance has been at the forefront in fighting for integrity in the public sector. They are the ones who came up with so many proposals that were to guide amendments to anti-corruption legislations in this country so that we make doing business easier without necessarily having corruption cartels dictating how business is done between Government and the private sector. I hope we will be able to take consideration of giving them a slot to be represented in the PPPs Committees.

I also hope we will think of bodies such as the Institute of Certified Public Accountants of Kenya (ICPAK) and the Professional Society of East Africa. I know my professional body, the Law Society of Kenya (LSK), has had issues in the recent past. I hope as things cool down we can also consider bringing them on board.

In terms of the composition of this Committee, I am also impressed that the Council of Governors (CoG) has been given two slots. We have recognized that under Article 6 of our Constitution, we have two levels of Government that is the county and the national Government. It is good that other than having the Principal Secretary from the national Government and the Solicitor General, the CoG will also nominate two people to sit in that Committee.

*[The Deputy Speaker (Sen. (Prof.) Kamar left the Chair]*

*[The Temporary Speaker (Sen. Kinyua) in the Chair]*

Going to their responsibilities, I am a bit worried that in Article 8, there has not been any attempt to give recognition to the role that public participation should play. I hope that other than just formulating policies, overseeing implementation of the partnerships, approving standards and doing feasibility studies, there will also be an added function of that Committee so that we undertake public participation.

Mr. Temporary Speaker, Sir, you heard what my good friend the Senator of Kericho said that before you do the road from Westlands all the way to Mau Summit in Kericho and ask the people of Kericho and Nyanza to pay for using it, you should engage them through public participation.

I hope we will be able to relook at Clause 8 of this Bill so that we incorporate a clause that obligates the Committee to ensure it undertakes qualitative public

participation before engaging in any project. This is because the people who are meant to use and benefit from that facility should give some input before the Government puts ink on paper.

I applaud the fact that now there is an obligation to ensure that we do proper feasibility studies. If you go down memory lane on the scandals that have happened in this country, many of the companies that have done business with Kenya are what we all “brief case” companies. If you trace them back to their countries, some of them have been declared bankrupt.

I read in the newspapers about Aror Dam and Kimwarer Dam scandals and I was shocked to learn that the company that was awarded the contract had been declared bankrupt in France. This Bill introduces an obligation on a Government entity to undertake feasibility studies and ensure that the company is financially sound from the country of origin because you can end up dealing with crooks and briefcase companies.

In the event of breach of contract, even if you went to court or the International Court of Arbitration, you might get a paper judgment because you cannot enforce it anywhere. It is good to know the financial status of some of these companies, so that you do not enter into a contract with a company that at the end of the day will not be able to undertake the task at hand.

This is a very good Bill, forward looking. I hope that once it is enacted, this country will benefit immensely and, as a country, we will be able to be more innovative in the provision of services and infrastructure to our people. This is so that the culture of borrowing can come to an end.

*(Sen. (Dr.) Ali consulted loudly)*

I want to ask my friend, Sen. (Dr.) Ali, to consult in low tones. With those few remarks, I support this Bill and hope that it will be transformative once enacted.

Thank you.

**The Temporary Speaker** (Sen. Kinyua): Asante sana. Sasa nitamuita Sen. (Rev.) Naomi Waqo ambaye atachangia akiwa kwa mtandao. Tunataka kuona picha yako pia.

**Sen. (Rev.) Waqo:** Ni sawa, lakini sitaendelea kwa lugha ya Kiswahili.

**The Temporary Speaker** (Sen. Kinyua): Ni sawa.

**Sen. (Rev.) Waqo:** Mr. Temporary Speaker, Sir, I support this Bill. I have gone through it and seen that it has some good things for us, as a country. First, it provides the legal framework that will guide this country and all the public-private partners, together with the people who will be doing that.

Again, I support this Bill because it gives the opportunity for our country to do projects that will help us grow. By doing those big infrastructural projects that will help our country grow, that will in turn help us to employ many people.

Many of our youth are not employed and many of our people are suffering because of poverty, but when this will be implemented, it will give people the opportunity to invest in Kenya and attract many private partners. That will help us employ many unemployed people.

Mr. Temporary Speaker, Sir, this Bill will help us economically. As a country, we are struggling because our economy is not doing well right now, but I believe that in future, many partners will come and invest in our country. By even borrowing loans that will help our country to put this into place, we will be able to create employment.

Mr. Temporary Speaker, Sir, I support this, again, because when you put into consideration the counties, many of them like Marsabit County or others have been left behind in terms of development and growth. However, when this will be implemented, some of our counties will get the opportunity to have people who can be invited, partnered with and we will also be able to grow. It will also give us the opportunity as a country to be more innovative and creative and to come up with projects that can help us grow.

Mr. Temporary Speaker, Sir, I support this Bill fully and pray that all our colleagues will also support it.

**The Temporary Speaker** (Sen. Kinyua): Asante sana. Sasa nataka kumuita Sen. Johnson Sakaja.

**Sen. Sakaja:** Thank you Mr. Speaker, Sir. It is very difficult to say Public Private Partnership in Kiswahili. Therefore, allow me to continue in English. As a country, it is about time that, as a country, we become more creative in how we---

**The Temporary Speaker** (Sen. Kinyua): Sen. Faki, Hoja yako ya nidhamu ni gani?

**Sen. Faki:** Bw. Spika wa Muda, Public Private Partnership kwa Kiswahili ni Ushirikiano wa Umma na Waekezaji wa Kibinafsi. Tunajua kuwa lugha ya Kiswahili inakuwa. Nafurahi kuwa uko hapo na utasaidia pakubwa kuweza kuendeleza matumizi ya lugha ya Kiswahili katika Bunge hili.

Lakini pia ningeomba Bunge liajiri mtaalamu mmoja wa lugha ya Kiswahili ili mambo kama haya yaweze kutafsiriwa ili iwe rahisi zaidi kwa wale Wabunge wanaotaka kuongea kwa lugha ya Kiswahili.

Asante Mhe. Spika.

**Sen. Sakaja:** Mr. Temporary Speaker, Sir, I am well informed. Sen. Faki has described what a public private partnership is, but he has not said what it is called. He has said that it is a partnership between the public entities and private investors. Sometimes it is not the investors; it can be different. As Sen. Faki said, there will be merit in having an official interpreter, so that we do not have the ‘*mzungumzishi*’ debacle that we had. Sen. Faki’s description could be different from Sen. Madzayo, even when their counties are close to each other.

Mr. Temporary Speaker, Sir, I was saying that it is high time as a country, a 21<sup>st</sup> century economy, a global economic hub that Kenya is, that we become more creative in the ways in which we finance public projects. This is very welcome. There are many things that we can do as a country to change the manner in which we have been conducting or doing public projects.

Chapter 12 of our Constitution talks about the four principles of devolution, if we were to sum it up. The first one is expenditure responsibilities. It says what the counties can do and what they cannot do. The revenue raising capabilities; it says what taxes the counties or national Government can raise.

The third one, which we always focus on is the inter-governmental fiscal transfers; the revenue sharing that we debate here in this Parliament. We normally do that before we look at number one and two. Number one says what we should do and what this other level should do. Then number two says how much you can raise to do it. Ideally, if you look at countries with a similar fiscal decentralization, number three, the intergovernmental fiscal transfer or the money we give to counties, which is a minimum of 15 per cent, is normally to bridge the gap between number one and two. Counties now just depend on that. They are not looking for ways to increase revenue or negotiate the expenditure responsibilities.

Mr. Temporary Speaker, Sir, four is what we call sun-national borrowing. The only statement that is there in our Constitution is that the national Government shall guarantee borrowing by counties yet we know that many counties enter into borrowing without any approval from the national Government because when you get an overdraft, that is borrowing and most counties have some accounts that run into overdrafts so that they can facilitate some payment yet that is not how it should be done.

Some of the examples that I will give will be focused on Nairobi County, because that is where I am elected. Allow me to digress. I cannot help but notice the shining badges of the recipient of the Chief of the Order of the Burning Spear (C.B.S.). I congratulate Sen. Nyamunga and Sen. Madzayo and welcome them to the club of CBS holders. However, they will be told that moving forward, they will be told that when they wear the big badge, they should not wear the one that they have on now. The badges are for different purposes but when worn, they look good together; the lapel, the badge is especially for uniform and the sash is also amazing. I would just remind them that they should always be careful when wearing the sash so as not to wear it with the flag upside down.

Mr. Temporary Speaker, Sir, the examples that I will give are those of Nairobi County. Two of the biggest problems in Nairobi County are; the lack of a proper mass transit system which involves rail, rapid bus and road network. The cost of such a system as it cannot be afforded by a county like Nairobi because we need to do a proper train system like the ones we see in any 21<sup>st</sup> Century global hub and Nairobi is a global hub. We need a rail system that moves from the biggest roads, in our case, the Thika Super Highway up to this other side of town. We will also need another railway where the Nairobi Express Way has been constructed. The more roads we do, the more traffic we will get.

There is a book that I recommend to Senators that was written by the biographer of former President of the United States of America (USA) President Lyndon B. Jonson but it is about a man called Robert Moses and the fall of New York. Mr. Robert Moses, for many years kept on building roads and more roads in New York City and that is why to date, New York has issues with traffic on the roads. Instead of focusing on mass transit, he just did roads. Although New York has the subways, which reduce some of the pressure, behind all that, it is a mess.

That just goes to prove that the more roads we do, the more traffic we get. We constructed Thika Road hoping that the traffic would reduce traffic. As a result of the

road, everybody moved to Thika Road and that has resulted in a massive traffic at rush hours. You do not want to be on Thika Road at 7.00 a.m.

Mr. Temporary Speaker, Sir, we need a proper mass transit system in Nairobi County. The Japanese did a plan with Japan International Cooperation Agency which cost Kshs200 million half of which was paid by the Nairobi City Council with the remaining amount paid by the Japanese Government. If you look at the plan that was drawn, there is proper parking for train users with properly timed trains getting into town after every five minutes. For example, there would be a train at 7.00am, 7.05 a.m., 7.10 a.m., 7.15 a.m. and so on. The trains also have circular movements, which allow someone to move from Kasarani to South C and so on. Such a project can cost this county about Kshs100 billion. I am making such a guess because Addis Ababa has done their trains at about Kshs45 billion which is less than the cost of the Nairobi Express Way.

Such a project cannot be funded by Nairobi County on its own because our revenues are around Kshs12 billion. We have an approximate budget of Kshs32 billion. What many jurisdictions do an infrastructure bond where the revenue that will come to Nairobi for the next 30 years can be discounted. As the governor of Nairobi County, I would be able to afford Kshs3 billion per year for that project. It can also be made a PPP project where you operate on transfer. There are many people around the world who are willing to come and put money in the mass transit system in Nairobi and collect the train fare for the next 20 years although this Bill talks about a maximum of 30 years. If we do that, we will have improved the lives of the people of Nairobi County without depending on what is collected every month in Nairobi County.

Mr. Temporary Speaker, Sir, another challenge that the people of Nairobi face is water. The problem of water in Nairobi County cannot and will not be sorted out by the Nairobi Water and Sewerage Company or the Nairobi Metropolitan Services by digging boreholes half of which are not working. About 80 per cent of Nairobians, who live in a hub, have never experienced a shower because they do not have access to piped water. The water infrastructure in Nairobi County was set up years ago. The railway had its own parallel water system, which was a little bit more efficient. However, the places that were served by that old line now had more than 100 times more the number of people because of the apartments that have come up in Kileleshwa and Upper Hill area.

We need a complete overhaul of the infrastructure of water and sewerage in Nairobi County. However, can the Nairobi County Government afford that? We have two issues. One is the quantity of water coming into Nairobi and that is why we support the northern water collector tunnel business as well as the improvement of the Ndakaini Dam. However, that is still not enough. The number of million cubic meters that Nairobians need is much more. We first need the quantity but before that, we need the infrastructure.

Mr. Temporary Speaker, Sir, the word 'Cartels' is used a lot by lazy leaders who do not want to solve problems. Because of the manual nature of the systems available, you will find that where there is a lever to open water, a house has been built around it and it is locked and the only person who knows where the lever to open the water is, runs a water truck business. The cost of non-revenue water is 46 per cent in Nairobi County.

The whole water system needs an overhaul. We should put in a leak detection technology which can tell from the even a phone where there is a water leakage or blockage.

With the current water system, Nairobi County cannot implement such a technology. We have a lot of piecemeal plastic bandage solutions to problems that can be sorted out with a long term focus. That is why I completely laud this Bill that looks into PPP which the county or National Government cannot afford at a go.

Secondly, this Bill also caters for the projects that even though you can afford, by removing from the balance sheet through engaging the private sector to fund and getting it off your balance sheet, you get to increase fiscal space to engage in other areas where you can use your money better.

Mr. Temporary Speaker, Sir, I have friends in the national Government and one of them was telling me that in the building where their entity is housed, it is owned by an individual. It is a private building that the Government pays rent. Different entities of the national Government have taken up about seven floors from that building. The Government pays that individual Kshs65 million per year for one floor alone. If you multiply that figure by the seven floors that are rented by the Government, you will realize that is total wastage.

I am happy that this Bill on PPPs is looking at projects that give value for money. There are many investors who I know would be willing to put up buildings for Government and instead of paying the Kshs65 million that the Government is paying per year and in 15 years, that building reverts to the national Government and becomes a property of the Government. I know that many of the people who own the buildings in this city are highly connected and so they will try to frustrate such a move but that is what we need to increase value for money.

Mr. Temporary Speaker, Sir, this Bill is not before this House for the first time; it has just come in a different version. There has been process before. We started with the PPP of 2013 before which, the only PPP project is now the scandal that we are dealing with of the independent power producers of energy who are now fleecing us when the KENGEN, which is doing a huge percentage of the power is supplying power to us at 5.5 per KWH while the independent ones are charging us almost Kshs100.

However, that is the dark past of PPPs. This Bill has had different alterations. There is a version that came to this House in 2017 from the national Government and there were different views and it ended up going into mediation. However, during the mediation stage, the National Treasury realized that there are certain elements that it could introduce so they withdrew the Bill at that time. I think this Bill takes those developments into cognisance and covers those issues. It then reduces bureaucracy in setting up PPPs and sets up a fully-fledged Directorate. It reduces the red tape.

Mr. Temporary Speaker, I am glad that the current Director-General, a very young man, who is a good friend, comes from the private sector. He was at StanChart Kenya. You can see the new thinking he is infusing. The other day, he gave me an example of Kisumu County, who went to the National Treasury with certain projects that they want to do. They were shocked because they expected to have meeting after meeting. The Director-General picked up the phone and asked one person to do this and that, and it was approved.

That is the kind of Government that we want, where things are done quickly. I applaud Mr. Christopher Kirigua for what he has done so far. I would like to urge him *asitie tembo maji*, as they say in Swahili, *mgema akisifiwa, tembo hulia maji*. Let him now completely have all counties benefiting from such arrangements.

This Bill reduces all bureaucracy and gives effect to Article 227 of the Constitution when it comes to matters of procurement. It streamlines the implementation and even reduces all the approval processes that have been there. This then puts us in a proper and harmonised framework for engaging in PPPs.

Mr. Temporary Speaker, Sir, the Bill provides for the roles of the national Government and county governments; that a county government may enter into PPPs agreements. All they need, then, is some simple validation or discussion at the national level. However, it is not that it is going through all the stages to be blocked by the national Government. The county government is responsible for administration over the overall project.

The Bill provides for public participation. I think that is what Sen. Omogeni said needed to be strengthened, because public participation must have an effect. Sometimes we have token public participation where you just get people into a hall, bring them huge documents of a project, whose scope they cannot understand. There is always a group of people, which attends all of these public participation sessions. They come, listen and then sign a paper because they know that they will get Kshs500.

Here, we have meaningful public participation where before that meeting, information on the project will be circulated. On top of that, there will be civic education on the impacts of the project. Therefore, even the environmental and political impact assessments are shared with the people beforehand. When the time comes, these people are now engaged in an enlightened public participation and not token participation for the sake of ticking a box.

There is that liaison between the Directorate and the county governments as well as the different departments. There is also the issue of sustainability. I am glad that there is some small PPP facilitation fund that is created. It will make the processes easier and they can even spread out some of the functions of this Directorate, so that it is not just at the National Treasury level. You can imagine having all the 47 county governments come to the National Treasury. I know that there is a good group of incoming governors. Some of them will come from this House. Once they get in and with all these brilliant ideas, they cannot just all go and line up at the National Treasury; they should have a better way of getting these approvals.

The Bill solves the problems that were there before. The steps that were there in the PPP Act before did not have timelines in the processes. Now, part of the efficiency that Mr. Kirigua and his team are proposing is that every step of the project approval for PPP has a timeline by which it must be concluded. That way, we will not have documents lying.

Those who have been in Government will tell you that documents do not just lie because they want to. They get lost and just stay in drawers because sometimes people require facilitation to get them. That is entrenching corruption, if it is clear that if you

bring these sorts of documents, this will be done in 20 or 30 days. This will lead us to a better regime.

There is also the provision for oversight and the entrenchment of devolution in the Committee on Devolution, where county governments are represented in the PPE Committee. Of course, we would have preferred it to be stronger. I do not know if the Committee on Finance and Budget has provisions for that. I hope they do.

One of the beautiful things about this Bill is that it then gives room for concession for brownfield projects. Many of what we have had before are greenfield projects, where an investor comes and starts something from scratch; put all the infrastructure and then apply for concession or any other mode of PPP. Now, even the brownfield projects where there is already existing infrastructure, you will require concessions.

For instance, if you want to use the existing rail or buildings, you might need currently existing infrastructure. A private investor may need to use the water or rail in Nairobi City County in his PPP without necessarily having to do another one. The private investor may develop a new rail as he uses the existing one.

Mr. Temporary Speaker, my time has run out. However, in a nutshell, I support this Bill. I have only had a cursory glance on this Bill. I had not seen it before today. I will interact with the Committee and propose certain amendments, unless they have been covered by what the Committee is proposing.

I support.

**The Temporary Speaker** (Sen. Kinyua): Asante, Sen. Sakaja.

Ninaona watu wengi sana wanataka kuchangia Mswada huu, ninapendekeza wale ambao nitawapa fursa wasichukue muda mrefu.

Sasa ninamuita Sen. Madzayo ambaye leo ametunukiwa medali ya Chief of the Order of the Burning Spear (CBS).

Karibu, mwenzangu.

*(Applause)*

**Sen. Madzayo:** Asante, Bw. Spika wa Muda kwa kunipa kongole. Ningependa kumpongeza Seneta mteule, Sen. Nyamunga, kwa kupewa shahada hiyo sawa na mimi. Ninashukuru Bunge la Seneti kwa sababu lisingekuwa Bunge hili, pengine hatungezawadiwa medali hizi ya CBS.

Bi. Spika wa Muda, Mswada huu wa Ushirikiano wa Umma na Wafanyibiashara Binafsi ni muhimu sana.

**The Temporary Speaker** (Sen. Kinyua): Sen. Madzayo umerudia mara zaidi ya moja, Bi. Spika. Tafadhali.

**Sen. Madzayo:** Bw. Spika wa Muda, nisamehe kwa sababu wakati mwingine ulimi unateleza. Niwie radhi. Mimi pia ni binadamu.

Bw. Spika wa Muda, kwanza ninaunga mkono Mswada huu. Mswada huu unataka kutengeneza sheria mwafaka ambayo italeta uhusiano bora ulio katika misingi ya kisheria baina ya umma na wafanyibiashara binafsi. Waswahili husema ‘kidole kimoja hakivunji chawa.’ Hii ni kanuni kwamba Serikali au umma peke yake haiwezi kutekeleza miradi bila ushirikiano na wawekezaji wa kibinafsi.

Kote ulimwenguni, tunaona serikali zina uhusiano na wawekezaji wa kibinafsi. Ni lazima Serikali ya Kenya izingatie sheria za kisasa kama hizi ambazo zitaleta uhusiano bora baina na umma na watu binafsi.

Kitu ambacho tunaona ni mfano mzuri wa kuigwa ni kwamba tukiangalia hii barabara ambayo inatengenezwa hivi sasa ya Mombasa kwenda mpaka airport, na imeunganishwa mpaka huko Kawangware, hiyo ni kumaanisha wazi ya kwamba kidole kimoja hakiwezi kuvunja chawa.

Hizi ni juhudi ambazo lazima sisi tuzitie mkazo na tuone ya kwamba zimekita mizizi ndani ya Serikali yetu ama ndani ya nchi yetu; ya kwamba tunaweza kuleta umma na wafanyabiashara binafsi na wote wakaweza kushirikiana na maendeleo yakapatikana.

La mwisho ni kwamba hata tunaona siku hizi wakati wowote ukiwa umeenda katika maeneo ya benki ama biashara kubwa, zamani tulikuwa tunakutana na wale watu ambao wamevaa nguo za kijeshi wakilinda maeneo kama haya. Lakini siku hizi, unaweza kuona kazi kama hizo zimechukuliwa na wafanyabiashara binafsi ambao wanashirikiana. Na wale askari ambao wako pale sio wafanyikazi wa pale ndani ya benki, lakini wanashirikiana na benki kuona kwamba njia mwafaka zinafuatwa na wawekezaji wa pesa katika zile benki. Tumeona ya kwamba muelekeo kama huo umeweza kuleta faida kubwa katika nchi yetu na katika kuongeza biashara binafsi.

Bw. Spika wa Muda, mimi naunga mkono Mswada huu ambao utatuendeleza sisi kama Wakenya.

Asante sana.

**Sen. (Dr.) Milgo:** Thank you, Mr. Temporary Speaker, Sir, for giving me this chance to also support this Bill. Before I do that, let me take this opportunity to congratulate my colleagues, Sen. Madzayo and Sen. Nyamunga, for these wonderful decorations. Congratulations, you deserve the best.

I wish to support this Bill because it shall give effect to Article 227 of the Constitution, which provides for the legal framework for procurement of public goods and services. The mega corruptions that we normally witness in this country and elsewhere actually take place at the procurement level, and when we try to fight corruption, we are just looking at history because corruption took place a long time ago.

This Bill will streamline and provide a safe ground to ensure that public private partnership programmes shall move in a very smooth way, and I support Sen. Sakaja in terms of issues of bureaucracy.

I have already done a Bill on investment promotion. I do realize that many of the public private partners are not brought on board because of the fact that there is a lot of bureaucracy that actually discourages their inclusion in terms of taking part in development in our country.

Once this Bill is enacted, it will enhance efficiency in terms of regulations in the process of engagement of these public private partners, more specifically on the way of conducting and facilitating the engagement.

We do realize that it has become a challenge, particularly in our counties. In my County of Bomet, I can confirm that the lower part, the Chepalungu area, and the lower part of Bomet East, which are very productive areas, there was one public private partner who tried to engage the county, but issues of legal framework became a challenge.

Therefore, the progress of drilling water could not continue in that particular county. The major plan was to drill water and start growing water melons and other agricultural food products in that area. However, this was challenged as a result of the legal issues that affected these public private partnership engagements.

Mr. Temporary Speaker, Sir, public private partnership engagement shall spur development in our country and even reduce the debts that we have been having as a country. Our country has been cherished as one of the countries that have the most progressive Constitution because of providing for the county levels of government.

However, these county levels of government cannot develop at a faster rate because of the fact that they rely on the Exchequer as provisional funding. When they try to engage other public partners, it becomes a challenge because of lack of a legal framework. Once this Bill is assented to, it will be a game changer.

Being the Chairperson of the Committee on Education, we have been looking at the landscape of vocational training centres that are across the counties. We do realize that there are counties that are already engaging public private partners. We found counties that have already engaged Germany and Sweden in terms of developing educational vocational training centres, in terms of start-up capital and even engaging in online training.

You realize that provision of skills to our country is one way of ensuring that we achieve Vision 2030; Agenda 2063; speed up Universal Health Care; development of food and good houses in this country or what I would call the Four Pillar Agenda.

These public private partners that we found having been engaged by some counties, have actually provided them with a lot of ideas, technology and the enablement to develop very excellent programmes in those Vocational Training Centres. With this legal framework, I am sure our counties can engage more and more public private partners in terms of development projects.

We have had many counties that were having challenges, especially during the COVID-19. There were counties that could not even manage to handle this issue because of lack of facilities. However, with public private partners, I am sure that many counties will be open to engage public private partnerships to develop health facilities, infrastructure and that shall speed up marketing issues as well as development in those counties.

I have seen that this Bill has developed a fund that is called Public Private Partner Funding where we shall have monies. These monies will be better managed because I have seen that the committee will have membership from the Council of Governors.

This is one way of encouraging accountability and transparency because in the past, you would come across counties that have engaged public private partners, but when you try to follow up on accountability and transparency of whatever they have done, it has become a challenge.

This Bill shall provide for the legal action that will be taken against anybody that will go against this Bill by setting out the offences, penalties and even ways of ensuring that every culprit is brought to book.

I am sure that this Public/Private Partnerships Bill has actually taken time and it is my prayer that it will be processed as a matter of urgency, to ensure that this country

benefits not only at the national Government level, but also at the county government level. I am sure this is how we can drive our country to become a middle-income country.

Mr. Temporary Speaker, Sir, I support this Bill.

**The Temporary Speaker** (Sen. Kinyua): Asante sana, Sen. (Dr.) Milgo. Wakati huu ni wa Sen. Halake.

**Sen. Halake:** Thank you, Mr. Temporary Speaker, Sir. I rise to support the Public Private Partnerships Bill (National Assembly Bills No.6 of 2021). As has been said, this is a timely Bill given the number of infrastructure that we are engaging in as a country and the need for a good legal framework to ensure the risks both to the country and the parties involved. Public private partnerships have come with a lot of contractual obligations and this piece of legislation is timely, especially at this time when there is a lot of borrowing to finance the gaps in our infrastructural demands.

While this is a timely piece of legislation, not every project lends itself to a PPP. I hope that we will see in this Bill a robust system of making sure that prioritisation or due diligence on what will qualify for value for money when we go the route of PPP or could benefit from the tradition way of public Government procurement, so that we get value for money. The private sector is for profit and we must make sure our due diligence, prioritisation and our way of doing business in the PPPs takes into account what lends itself to PPPs and what does not, what would be value for money because of PPPs or what we do not have the capacity or resources to go the PPP route.

The benefits of PPPs cannot be gainsaid. It will give us access to private sector expertise, resources, technology transfer and ensuring that local capacities are built. Once built, the country will have a transfer of technology and capacities we did not have before. We need to manage the risk of ensuring that Government remains responsible to its citizens even within a PPP arrangement. At the end of the day, it is the Government that is responsible to its citizen, as opposed to the private sector who then, perhaps, is in it for profit.

Madam Speaker, Mr. Temporary Speaker, Sir--- I am sorry, at this time, in the evenings, it is usually 'Madam Speakers' in the seat.

In transfer of risks, we need to make sure that the private sector does not transfer the risks to the public sector. In the past, I have read a couple of PPP style arrangements and wondered who was there to take care of the citizens of Kenya, to whom all the risks had been transferred. As we sat in the Committee on Lands Environment and Natural Resources, we went through myriads of complaints in some of the infrastructure projects. We wondered where the buck stops. We would urge and make sure that this Bill is robust in the way of ensuring that the Government remains responsible and accountable to its citizens within this PPP arrangement.

One of the things I have seen and I am happy about is that the county governments have been included in this. As has been seen in the development world, the local governments would benefit from the PPP arrangement at the local level, especially if the right financing and bond is taken up by the national Government, as was done by the US through the Obama administration. Even though I have not studied this Bill in detail, it is the opportunity for renegotiation. The provisions for the opportunity for renegotiation must be robust in this Bill. Since PPP are such that they are heavy in

investment, also, there are many things that can change in the period because these are long-term projects.

If something changes, the Bill must lend itself for an opportunity for renegotiation, to take into account the new developments and make sure that we correct the course as we go along. There are a number of things that could go wrong. It could be the performance issues with the private sector or change in the policy of the Government. In this Bill, we must see an opportunity for us, as Kenyans, to make sure that we can change course and renegotiate. It does not come out clearly.

Since we have a robust Committee, many of the issues around how this infrastructure projects are being managed have been listed. I hope that, that aspect is revamped and strengthened. Then, we will not have a situation where, should there be changes, variations, force majeure or whatever number of things can come. In long-term nature of these projects, we have a chance to make sure we do not get disadvantaged in any sense.

I do not want to say much because a lot has been said. I will end there, but as the Vice Chairperson of the Information, Communication and Technology Committee, I would like to speak on the value of data collected within a PPP arrangement. Normally, when the Government gets into a PPP arrangement, the private sector will execute. In the cause of execution, a lot of data comes to be owned by the private sector.

This data is mined not necessarily by the Government, but by the private sector. The age of data being the new gold, it is about time this piece of legislation is dynamic, progressive and fit for the purpose of today; that there is data protection to benefit the data owner, which is the country. Many partnerships, even the ones that are not PPP, and looking at the pandemic we are dealing with right now, a lot of data tends to go to the partner that is providing the resources or executing. In this case, we are disenfranchised, our data is not in our hands, and we end up not knowing how to do things next time or the value of the data that was created and who owns that data.

With those few remarks, I support and hope that if we can add value to it, we will propose a few more things. This is timely and will ensure that we have a good framework for collaboration between the public and private sector.

I support.

**The Temporary Speaker** (Sen. Kinyua): Thank you, Sen. Halake. Sen. Nyamunga, you have the Floor.

**Sen. Nyamunga:** Thank you, Mr. Temporary Speaker, Sir, for giving me this opportunity. I thank the President for---

**The Temporary Speaker** (Sen. Kinyua): Je, Hoja yako ya nidhamu ni gani, Sen. M. Kajwang'?

**Sen. M. Kajwang':** Mr. Temporary Speaker, Sir, I observed the manner in which Sen. Nyamunga took off the honorary sash, bungled and dumped it on the Table. That is a national award. It signifies that she is a hero and has done something great for this country. Is it in order for her to manhandle the sash?

**The Temporary Speaker** (Sen. Kinyua): Sen. M. Kajwang', I thought she was just preparing to speak on the matter. I did not see her manhandling it. Sen. Nyamunga, I thought Sen. Sakaja explained the way it is done.

*(Sen. Nyamunga wore her honorary sash)*

*(Applause)*

**Sen. Nyamunga:** Thank you, Mr. Temporary Speaker, Sir. We are seeing some of these things after a very long time. Therefore, we may not be familiar with how to handle them. Definitely, I have no intentions of manhandling it.

Mr. Temporary Speaker, in that vein, I want to thank the President and everybody in authority who has made it possible for us to get some of these rewards that are of very high honour. I am very grateful to the President of the Republic of Kenya.

If a Bill like this comes to the House, it shows that the Parliament of Kenya is very serious. If you put the Public Private Partnership Bill together with the County Resource Development Bill, once these two Bills are passed in Parliament, it will boost our rate of development.

Mr. Temporary Speaker, Sir, there is no way a national Government can develop its country the way it should on its own. We need to put our house in order and make sure that we combine efforts. If we do not combine efforts, it will take us much longer to realize the necessary development that we need in this country.

I congratulate the National Assembly for passing this Bill. It is now in this House. We have had a lot of time to work on it as the Committee on Finance and Budget, and are very optimistic that Members of this House will see it very fit and urgent to pass this Bill. Once this Bill is passed and Regulations put in place, it is going to have people in both the private and public sectors working together. It is also very important that the public is protected. This Bill will protect the people and resources of Kenya.

Mr. Temporary Speaker, Sir, let us talk about waste management. If there was a public private arrangement where we could manage our waste, I think the country could have been very far by this time. The problem that we have of power bills going very high is because of lack of such arrangements. The moment we have waste management, if it is developed well, it will produce power. We will produce manure. That will help in agriculture. We will also create a lot of employment for our people.

Some of these things are very timely, but what is critical is how it is done, so that the people of Kenya do not burn their fingers in the process. The Public Procurement and Assets Disposal Bill is also a very important Bill. If you put it together with this Bill and the County Resource Development Bill, they can take the country very far.

If you have a family where you look at only the head of the family to take care of every aspect, there will be no development in that family. The moment people are apportioned their responsibility, development comes in very quickly and everybody is on board.

The moment this Bill is put in place, our agriculture will definitely improve. The moment we have Public Private Partnership (PPP), we can have a partner who will bring input to our agriculture. For example, in Ahero in Kisumu County, we deal with the rice scheme and sugar industry. Those two industries can be developed to benefit many people. The farmers in those areas will benefit. We need PPP in agriculture.

Another area is transportation, as already mentioned by Sen. Sakaja. We need transportation upgraded in all our counties. I know that all our youth are into the *boda boda* industry. The *boda boda* industry is a good thing, but it should not be our pride that in our country, we can only move by *boda boda*. By now, we should be thinking of how to upgrade our transport system by going for super buses. Once you are in them, you feel secure. It will also control the number of accidents that we have.

If you go to some of the hospitals, you will see the number of patients hospitalized because of accidents that occur in our counties caused by *boda bodas*. A *boda boda* is good because it takes you wherever you want very fast. It has made it very easy for our business people at the rural level, but at the same time, the level of damage that it is doing to our people is critical. The transport system also needs PPPs.

Mr. Temporary Speaker, Sir, I have mentioned agriculture, waste management, and housing. There is no county government that will build enough houses to take care of their citizens, not even as a nation. If you go to the developed world, most of the housing that we see out there is under PPPs.

I encourage the national Government to make sure that once this Bill becomes an Act, it should be fast-tracked, so that we immediately start accruing benefits from it. It is not a Bill that should be put on the shelves and forgotten, because it will fast-track our development, and bring a lot of employment to our young people. This will help in achieving the Big Four Agenda of the President.

We have industries, food security, housing and even infrastructure. It has been mentioned that for us to have proper infrastructure, the Government cannot do it alone because it is very expensive. Even the expressway that we have is a very expensive project, but it is going to improve this City. Everybody will see the benefit of the expressway.

We can criticize it now because we look at it politically, but I am looking at Nairobi in 50 years to come. I am not looking at Nairobi of today where we have politics. Whatever is done, whether it is positive, people make sure that it is negated, so that we get our political mileage. It is not about getting political mileage. It is about giving the people of Kenya the development that we need.

Mr. Temporary Speaker, Sir, this is a very timely Bill. I would like everybody to support it and make sure that it is passed, taken to the President for assent and put into practice.

I thank you for giving me the opportunity.

**The Temporary Speaker** (Sen. Kinyua): Sen. M. Kajwang’.

**Sen. M. Kajwang’:** Mr. Temporary Speaker, Sir, I rise to support this Bill. I take note that this Bill has come from the National Assembly. In the good manner that was established by the High Court, it has been brought to the Senate because it is a Bill that concerns counties. This Bill proposes to annul the 2013 Act and make a few amendments to that Act, including a few institutional reorganizations and broadening certain issues that were a little bit amorphous in the earlier Bill.

Our governors have complained that the existing framework for PPPs in the country is one that inhibits rather than encourages PPPs. In this Bill, I do hope that their views were taken into consideration. I have no doubt that the Senate Committee on

Finance and Budget that has submitted a very detailed report to this House took into consideration the views of governors, who are the people with the boots on the ground. This is to ensure that what we have as an amendment will help them to facilitate PPPs in those counties.

Looking at the portal that has been put up by the PPP unit, which this Bill seeks to re-designate as the PPP directorate, I can see that there are about 64 projects that this unit has considered. Of the 64 projects, only six of them are post procurement; 18 are at the procurement stage, while 40 are at the pre-procurement stage.

Mr. Speaker, Sir, if you look at the pipeline, it tells you that it takes a long time for projects to mature through this PPP pipeline. When you look at the projects that are in post procurement stage, they relate to the roads annuity programme. The Committee on Roads and Transportation owes this House and the nation a detailed explanation on why the roads annuity programme collapsed.

It was the basis upon which the promise of roads was delivered. Tens of thousands of kilometers of roads were made, and those roads traversed each and every county. Even when I go back to my county, people ask why the annuity roads programme did not take off. There were significant challenges, and I do believe that part of it was the contracting arrangement and the fact that money was coming from the private sector to provide a public good.

In fact, the only way I would support this is because of the contracting arrangement and the fact that money was coming from the private sector to provide a public good. An assessment of the annuity roads programme is success or its failure would inform us in ensuring that we have the right laws to guide on PPPs.

Another project at post-procurement is the Lamu Coal Power Project. I find that to be one of the biggest embarrassments of this nation and one of the decisions that this generation has made that will haunt us when we think of the future generations.

During the United Nations General Assembly (UNGA) meeting, I was delighted when China made a public commitment that they will stop sponsoring home-based power projects in or outside China. By all definitions, the Lamu Coal Power Project has collapsed because China was going to be one of the key financiers of the project. Of course, there are public spirited individuals who have gone to court to talk about the destruction of the ecosystem and effects of the biodiversity of having a coal project in Lamu in such a fragile ecosystem.

The fact that the Lamu Coal Power Project went through a PPP pipeline to the point where procurement was done and was being stopped in court by environmental activities, tells us that there could be something missing. There could be a level of rigor, ethical concern or moral responsibility that is still missing in our PPP consideration.

In any sane country, the Lamu Coal Power Project should not have succeeded in a country with vast geothermal and huge hydropower potential and a country that is endowed with wind. It was irresponsible for the PPP unit to midwife the Lamu Coal Power Project, which has since collapsed.

Mr. Temporary Speaker, Sir, the Bill proposes to expand the procurement methods available for PPPs. The 2013 Act had the two methods that are fairly

competitive. In the 2013 Act, the procurement methods that were permissible were competitive bidding and privately initiated proposal.

The Bill has added the aspect of restricted bidding and direct procurement and I think that is dangerous. There are jurisdictions that have gone through similar laws and processes with greater success, but they have not permitted non-competitive bidding.

Mr. Temporary Speaker, Sir, it is not too long ago. During the Committee on Roads and Transportation meeting, Sen. Cherargei posed a question on the procurement of a road that traverses Northern Kenya. The response that we got from the CS involved was that the road was procured under restricted tendering. Those are hundreds of millions of shillings.

Since it was restricted tendering and they cited security as a reason, they do not wish to cooperate with the Committee. They do not want to tell the Committee how many kilometres, the quality of the road, whether it was tarmacked or had gravel. Therefore, we have got the shroud of silence that accompanies restricted bidding and non-competitive practices, and I think that is dangerous.

If we are not careful, we are going to end up with many more “Anglo-leasing” type of issues because the history of procurement in this country is well known. If you open the door that the Cabinet Secretary for the National Treasury can come up with guidelines on non-competitive bidding, this can be greatly abused.

We have seen that abuse in the roads sector. Thank God, Sen. Cherargei has generated a Statement, which the Committee on Roads and Transportation will seek to interrogate to see the extent to which the Executive has abused that provision. I find it a little bit dangerous to use this provision for PPP. Perhaps, the comfort I get is that the rigor, stages and processes involved in coming to fruition of a PPP will reduce the chances of mischief that we have seen in our public procurements.

I said that the old Act had privately initiated proposals. I have had occasion to deal with a privately initiated partnership proposal in my county. We had two in Homa Bay County. The first one happened around 2013/2014 when the first governor of the county was elected. It was an age that perhaps only Dickens could have put in words. It was a time just as in the wonderful book by Charles Dickens known as *A Tale of Two Cities*. It was a time of hope. It was a time of great expectations.

Every governor comes up with great projects they want to launch. In my county, Gov. Cyprian Awiti, in his characteristic style, launched a Kshs560 billion agro-city project. At that time, the national budget of the Republic of Kenya did not exceed Kshs2 trillion.

He told the people of Homa Bay and Kenya that he found a private investor who was willing to inject Kshs560 billion into the economy of Homa Bay County. That was going to provide low cost housing, set up industrial complexes, ensure there are roads and ‘kill’ us with development.

Seven years down the line, nothing has happened. The only thing that has happened is that the Ethics and Anti-Corruption Commission (EACC) is investigating claims that Kshs200 million was stolen in the process. Therefore, without a clear legislative framework, any person with a skin lighter than mine who shows up in a governor’s office and masquerades as an investor---

Even though it is all in comedy and fiction, the nation has never been treated to the antics of a gentleman from the Democratic Republic of Congo (DRC). That is the guy who uses several tricks to convert paper into money. Young people can tell you the antics of the gentleman who uses “*Ngamwaya Kemikal*”.

These are the same kind of fraudsters that have been going to county governments offices. How could a right thinking county government with a budget of Kshs6 billion then announce to the world that Kshs560 billion was coming? That was a clear setup for a con.

I urge the EACC to expedite its investigations and tell the people of Homa Bay the truth; whether indeed Kshs200 million was stolen from the County Government of Homa Bay. If, indeed, it was then those who were in office at that time should be held culpable.

Time passed and we headed into another competitive election. We had another PPP. The first one for agro city were investors from Oman. The second time we had investors from Turkey. The investors from Turkey came and promised to build a Kshs3.8 billion Level 6 Hospital with 210 beds and the project would be completed within a year.

The governor went there with his executive committee members with a caterpillar and they broke ground. That was in 2018. To date, the Homa Bay County Teaching and Referral Hospital is described by almost everyone as a death chamber. Of course, I visited and I think the public is a little bit unkind because you do not judge a book by the cover. The exterior is very decrepit, but inside the beams have some little improvements. What we have not seen is the Kshs3.8 billion PPP project that the county had promised.

As the Senator for Homa Bay, when the Kshs3.8 billion PPP project was announced, I became skeptical following the agro city scandal. Therefore, I visited the PPP unit at the National Treasury. I can tell you that, that unit has got some of the sharpest and brightest young men and women this Republic has within the investment circles.

They gave me the procedure prescribed in the Act for publicly initiated proposals. They told me clearly that what had happened in my county was nowhere close to a PPP because some people from Turkey came and had a conversation with the governor. They got excited and the next day, they launched and announced. That is not a PPP.

It is only a PPP once a proper feasibility study has been done. Technical, financial, ecological factors should also be considered. You have to look at the entire breadth. You have to look at issues of sustainability and value for money.

Therefore, for any governor who wishes to cut corners in rushing to sign contracts with foreigners or people who go to them simply because they have either bleached their skins or are of a lighter complexion, and so, everyone thinks they are investors, we must remind them that this law that hopefully this House will pass this afternoon will be the yardstick with which they will be measured.

Once this House passes this Bill, some projects that have been hanging and stuck in the pipeline, such as Magwagwa Dam that has been pushed by the Lake Basin Development Authority---

The dam has a huge transformational impact on Western Kenya. It will result in control of perennial flooding not just in Kano area, but the entire Western Region. It will

enhance food security and generate electricity. It will also create employment and come along with industrial zones and export processing zones.

If there was anyone who was making a promise to the people of Western Kenya, from parts of Rift Valley into Gusii, former Western and Nyanza provinces, it will be the completion of Magwagwa Dam. It is stuck at the pre-procurement stage. I hope that once we have clarity in the Act, the relevant bodies will move faster.

Finally, we must be creative. For those of us in this House who wish to become governors in the next Government, I promise them that this country is so much financial distress occasioned by heavy borrowing that it will be a great miracle for Equitable Share to rise above the current Kshs370billion. Kenya want a reduction of taxation especially on essential products such as fuel. When we reduce taxation, definitely, we reduce the revenues of a country.

There has been debate about people who have stashed billions of Kenya shillings abroad, but we are not having debate on how to tax the assets and wealth that remains in this country. Tax avoidance and evasion is still one of our biggest leaks when it comes to our tax basket.

In the next Division of Revenue, probably, we will make political promises because no one wants to reduce the amount of money going to counties. In the first division of revenue under the next administration, whether it is “Baba” or the other gentleman, they will have no headroom to increase the amount of money going to counties.

I know that some of the political formations have promised that at least 35 per cent of revenues will go to counties, but there could be practical difficulties in implementing that. What do you do, as a newly elected governor with a wage bill that is already at 60 percent? Unfortunately, that is what some of you are going to find in the counties. This time, governors are hiring all their hecklers, youth wingers and campaigners and putting them into county payrolls.

You will find them there when you go to counties. You will realize that all the money you have is for paying salaries. There will be billions of shillings in pending bills, most of them fishy, yet you will be required to pay. You will realize that the citizens at the county, including the women in the market, are so overtaxed that you cannot increase taxes. People are in so much pain that you cannot revise your valuation roll.

Where will the next Governor of Kisii get money to convert Kisii into the Dubai of Kenya? He will have to go for PPPs. I know that they have hired enough people who sometimes spend most of their time walking around with *rungus*, waiting for troublers to check in so that they can repel them. At least, we have seen that in the last one week. That is on a lighter note.

The serious problem in our counties is that we think that we can solve issues of economic deprivation by providing direct employment, and so, we have overemployed. Public Private Partnerships will be the solution for those governors who are going to take office.

I am glad that this Bill has now provided a Clause that provides clarity for county governments, even though it still requires county governors to get written permission

from the directorate that has been established at the National Treasury. At least, it provides some clarity at brings in the role of the county assembly.

Mr. Temporary Speaker, Sir, if you want to go to Homa Bay to become the governor in 2022, for you to revive the fisheries sector, do not wait for Government financing through Equitable Share. Go for a PPP. The Chinese have mastered the art of fishing. Talk to the Vietnamese and those people who have expertise in deep sea fishing in a structured manner without corruption, and we shall be able to revive the fisheries industry.

If you want to revive transport in Lake Victoria, go for PPP. Since Independence, we, the people of the Lake, have begged to be given a ferry, just like the people at the Coast. However, we have been met with studious silence. The solution will be in PPP.

Each county government is now building huge stadia, yet we are not promoting youth development in sports. Who is going to play in those stadiums? We have seen in places such as Turkey that they have encouraged the private sector to be the ones to build stadia and manage sports teams and talent academies. If you want to spur investment in sports and tap into the creativity and ability of our youth, particularly in counties that have the ability and talent to engage in sports, it will have to be PPP. Even when it comes to infrastructure and trade, such as markets and abattoirs, PPPs will be the way to go.

I support and urge the House to pass this and put the Cabinet Secretary under immense pressure to bring the relevant regulations before Parliament, so that we can operationalize this Act and allow our county governments to proceed.

Finally, I think we should also put a caveat that a governor who is nearing the end of his second term, should not be allowed to engage in a PPP agreement at least six months or one year to the election. Effectively, they will transfer some functions and assets to cronies, so that they continue milking those counties once they are out of office.

I support.

**The Temporary Speaker** (Sen. Kinyua): Thank you, Sen. M. Kajwang’.

Sen. (Prof.) Kindiki.

**Sen. (Prof.) Kindiki:** Thank you, Mr. Temporary Speaker, Sir. I support this Bill for the several reasons. One, it provides a legal framework to enable the private sector to participate in national development.

Secondly, it strengthens the existing PPP unit, which has been in existence for many years, headed by a Mr. Kamau who is the secretary. Unfortunately, they have never pushed through a single project to conclusion for the last ten years. We hope the new institutional framework will speed up the process.

Thirdly, this Bill will remove the opaque nature of procurement processes with regard to PPPs. It will not be an overstatement to say that a lot of development corruption has taken place under the guise of pushing for PPP projects.

Fourthly, I support this Bill because it gives effect to one of the most important provisions we have on economic justice, which is Article 227 of the Constitution. It provides for the need for the country to develop and implement a procurement process, which is transparent and gives people of this country value for money.

Fifthly, I support the Bill because it recognizes the role of PPP projects in counties. I remember about six year ago, when I was the Senate Majority Leader, there was a Motion to remove from office the Governor of Kericho County, Hon. (Prof.) Chepkwony. One of the charges which brought the Governor of Kericho County before this House in impeachment proceedings was having endorsed a PPP project without the enabling legal framework that would allow him to engage the private actor to undertake a certain development project in Kericho County.

This Bill now gives the much needed legal clarity for our governors and county governments to engage the private sector in the development of our counties without encountering legal difficulties.

Sixthly, this Bill again with regard to PPPs in counties recognizes the important role of county assemblies which are the legislative arm of our county governments because they play a critical role. This Bill appreciates that role. We hope as county assemblies consider and approve PPPs projects in counties, they will be guided by Article 185 of the Constitution read together with Article 174 (c) of the Constitution on public participation in identification of projects and also in the prioritization of PPP projects.

As much as I support this Bill, I see a big challenge with it. It is loading the country with more institutions. I do not know why we cannot use the existing institutions to achieve some of the things we want to achieve through this Bill. Every time there is a new Bill, an institution is created. You find in this Bill, the Secretariat of the PPP department in the Treasury has been elevated into a full Directorate with a project fund to oversight these projects and so many other institutions.

Mr. Temporary Speaker, Sir, we must move away going forward from institutionalism and the belief that institutions can solve our problems. We are just creating more jobs for a few people and increasing the current cost of this Government which is almost crumbling under debt and the wage bill.

Mr. Temporary Speaker, Sir, in a nutshell, I support this Bill for bringing on board to our legal framework, transparency, efficiency and value for money in engagement of the private sector in national development.

**The Temporary Speaker** (Sen. Kinyua): Thank you, Sen. (Prof.) Kindiki. Senator Sam Ongeru.

**Sen. (Prof.) Ongeru:** Thank you, Mr. Temporary Speaker, Sir, for giving me the opportunity to contribute and make comments on this Public Private Partnership Bill 2021. This Bill has 88 clauses that define how the Bill will look like and eventually become an Act of Parliament.

One of the things that is attractive in this Bill is to provide a long term contract between a private party and a Government agency for providing a public asset or providing service to the public entity whether it is national Government or county government.

Clauses 64-67 relates to how the county governments can possess and activate the public private partnership in order to leverage on the advantages that accrue from the PPP. One of the things that we must all accept is that the revenue will create public assets or public service which expands your Gross Domestic Product (GDP). Therefore, once the GDP is expanded, the likelihood of creating employment opportunities is very high.

One of the attractions with these PPPs is that a private party bears a significant risk and management responsibilities. That has been assessed according to the report of the World Bank of 2012 that, indeed, the risk that is taken by the private sector may not be a risk that can also be undertaken by the public sector.

We know that in any Government, whether county or national Government will need extra resources that have not been provided for in the budget. Our budgets are restricted because of the nature of the taxes that have been levied on people. Therefore, the collections cannot be beyond the given mark. It is important to look for extra resources elsewhere to advance the development agenda of the national Government or a county government.

Mr. Temporary Speaker, Sir, this Bill is good because we have witnessed that one of the reasons why we prefer PPP is because the private sector is able to galvanize participation in providing extra resources and dormant funds that are laying in pension funds and elsewhere waiting for an opportunity to invest in some bankable projects that one can do. I agree with that concept because the private sector is able to galvanize those funds, bring them on that table and reduce public sector administrative costs by entering into a PPP. They will also allow the risks to be shared as well as reduce the problem of public sector budget constraint as well as public sector which possess a very high mobility in being able to achieve the objectives within given timelines that has been set in the agreement.

It is important to also note that one of the essential elements that must be adhered to and agreed upon is the question of the stages of establishing a PPP. The office in charge of the PPP is domiciled in the National Treasury where there is a secretariat with a Director-General as the person in charge of that secretariat.

I have also seen elsewhere in the Bill where they have captured that there will be representation by the Council of Governors (CoG) by two governors to represent the interests of the 47 county governments.

The innovative aspect of this Bill is the provision by the county assemblies that the county assemblies will be required to pass all agreements or any proposals being made in respect of the PPP. They will have the first opportunity to pass that element.

However, the uncomfortable bit is when they have to seek permission from the National Treasury as that may be a cumbersome element. Once the counties are given an opportunity to enter into PPP, they become part and parcel of it on the PPP directorate through the representation by the two Governors. The element of timelines must be debated and reduced to a most minimum so that the PPP secretariat does not have to create excuses on the reason they are delaying a particular project from being done efficiently.

Mr. Temporary Speaker, Sir, one of the most essential elements that needs to be provided for in the county government and the resources being devolved in the country governments may not be sufficient is water.

Water and sanitation are such critical factors in the county governments that need to have additional resources. If these areas get additional resources, we will meet the demands of water provisions to our populations at the county level. This has a direct bearing on the health status of a county.

Water is life and without water, many people suffer many other communicable diseases that would require minimum sanitation levels to clear them. In fact, some of the cost on health expenditure can be reduced by 50 per cent, by just provision of water and maintaining a certain level of sanitation. People will then be happy and accept that they have achieved certain milestones just by the provision of water.

I believe PPPs will be one such noble aspect in the area of water provision in county governments. Water provision is one of the projects that will need to be invested in. In the end, we will get better results and good yields because of that approach that we will have adopted.

Another area that will attract a lot of interest is the health sector. There is both the preventive and promotive aspect of the health sector, which is cost effective in the long run. The curative process is expensive, but we still need it, particularly in the non-communicable diseases that we encounter from day to day. The provision of pharmaceutical and non-pharmaceutical products to our hospitals is an implementation aspect. Therefore, we want a partnership that will ensure timely provision of those products on a timely manner so that patients do not suffer.

Where it promotes both the promotive and the public health sector aspect of it, that delivery and procurement process must also be done in good time. That way, our people, apart from enjoying access to water, can also enjoy good health because health is defined as a very important index in society.

Any country which has achieved certain minimum level of health provision, enjoys life in full. I think we have every responsibility to spend our resources. Once you exert taxes from people, we must plough back those dividends to the people for them to enjoy those results without any problem.

One of the other elements that needs to be shared between the national and county governments is in the provision of infrastructure development. Some county governments do not have the capacity to raise resources beyond their normal conditional grants that they get from the National Government and the funds that this Senate and the National Assembly decide through the Division of Revenue Bill (DORB) and the County Allocation of Revenue Bill (CARAB). The DORA is now capped at Kshs370 billion for the 47 counties and then CARA distributes horizontally the amount that must go to each county.

When you look at those budgets and the development budget, some counties can hardly have Kshs2 billion or Kshs3 billion for development. Therefore, they cannot enter into capital investment in some of these very important and essential departments like health, water and sanitation. They cannot also go into the provision of pharmaceutical and non-pharmaceutical items. They cannot manage to go into the area of immunization as a primary healthcare delivery system to our people.

Mr. Temporary Speaker, Sir, we need to access resources beyond the normal budget that we have in our kitty. This provides a very important channel through which the private sector can improve the status of the economic wellbeing of a county government.

With regard to major infrastructure road network, we do not have a fair share in terms of national equity in getting the infrastructure to each and every county. We have

seen this infrastructure concentrated in certain areas. Some of the roads that we had put in the budget are no longer being developed. That money has probably been shifted to other counties for development.

I must say with a lot of disappointment that, for instance, in my county there was a road that was supposed to be done; it was in the budget in the Kibaki administration. However, we managed to get it back in the budget in the current Government's administration. This is the Kemora-Amabuko Road from Keroka going to Ibacho on to Kiamokama and to Nyacheki; then another branch coming from Ibacho going to Birongo. It has not been done. It is not anywhere in the current budget and yet it was there in the budget. There was a provision made for it.

This is money that has been accessed externally probably through government to government arrangements and borrowings. We are entitled to that infrastructure, but we have not seen it.

The Sosora-Ekona-Nyantabo Road has not been done. It is just stuck. The one for Ekona-Namasha-Masimba connecting Gesusu Road has not been done. The road network in Nyaribari Chache has not been completed. The road network in Bomachoge Chache has not been completed. The road network in Bomachoge Borabu has not been completed, leave alone the road network in Bonchari which has been done to a certain extent, but more so the one for South Kitutu and North Kitutu which has not been done.

This money which has been borrowed externally as part of the public debt, we ought to share the infrastructure results, benefits or dividends that accrued to it.

I hope that when this Bill finally becomes an Act of Parliament because it touches both on the national Government and the county governments, there are those projects which are mega that have to be done by the national Government and those which will be done by the county governments.

I hope that when this Bill becomes an Act of Parliament that both the national Government and the county governments will partner together to create new industrial parks in counties to generate the micro and small scale macro enterprises in the manufacturing sector with a potential of creating enough employment opportunities for our people. Also, add value addition for the products that are being produced locally.

There are so many items in counties. For instance, in my county, we have avocado. We have a factory which has been established by the current governor which is a great thing. However, we need to increase that capacity to be able to do value addition for the avocado so that our farmers can get competitive prices.

We have done the cold storage at Kiamukana, but I believe that with time going forward, we need to increase such cold storages throughout the county to provide for access of farmers to that cold storage where they can store their products and access the market at a fair price.

In my county, an avocado cost between Kshs1 or Kshs2. However, when they bring it here, they do grading and then then sell it at US\$2. Where is the farmer left? He is a miserable person. He cannot meet these expectations. He cannot afford to put food on his table, pay health bill and school fees for his children.

It is my contention that one of the purposes of this Bill is to rationalize, equalize and have a sense of equity being given to all counties to access and be able to improve

the farming lot. After all, agriculture is a fully devolved. Agriculture is the main backbone of our society and our country. It is one of the biggest earners of foreign exchange.

We need to get the value for our tea, coffee and pyrethrum. Infrastructure and value addition to our agricultural products is critical instead of selling them at throwaway prices. Our milk prices are not attractive, yet farmers are being encouraged to keep dairy animals. When they sell the milk to the milk vans, we do not get the equivalent of the value or investment that a farmer has made to those items.

This is one of the areas where county governments need to make deliberate efforts to address some of these issues that affect infrastructure development in our counties. We our farmers and residents in counties to prosper.

We have the urban centres that need to grow. The issue of garbage collection, disposal and turning it into products that can be generated from processing it, is critical. For instance, in Nairobi, the garbage mount that you see in various areas is enough to create energy for this town if it can be harnessed. The one in Eastlands has been left unattended and we see garbage littered all over. We need to harness the garbage for useful clean energy production, then we will not have to spend money on some of the gases.

Mr. Temporary Speaker, Sir, with those few remarks, I beg to support this Bill. It is an elaborated Bill with 88 clauses touching on every corner of the problems that we have noted.

**The Temporary Speaker** (Sen. Kinyua): Asante sana, Sen. (Prof.) Ongeru kwa mchango wako. Wakati huu ninamwalika Sen. Olekina kuchangia.

**Sen. Olekina:** Mr. Temporary Speaker, Sir, I thank you. I would like to make a few contributions to this Bill on PPP. From the onset, I have to state that a PPP project, traditionally costs more than a regular public procurement entity. This is mostly used to build highways and mega projects. This is advised by the Vision 2030 which sets out a blueprint that puts the country into a situation where it is expected to grow into a middle-income developed country.

The biggest problem I have with such a Bill, which I hope that the Committee on Delegated Legislation will pay a microscopic view, is when it comes to the issue of the regulations. PPP may sound good to everyone, but the biggest problem we have is that it is another form of debt. We have got so many people who traverse this country and say – I am sure my colleague Sen. M. Kajwang’ had alluded to it – I have big investors from abroad who will partner with county governments and then build multibillion dollar industries. This is not the case.

I hope the sponsors of this Bill which came from the National Assembly do not seek to do away with the bureaucracy created by the PPP Act of 2013 by removing all those steps of getting approval and reducing them into three to create more debt for this nation.

When you look at the advantages of the PPPs, one would say that once carried out effectively, through a microscopic financial lens then it will be beneficial for the country. This is a project which ordinarily will take a long period of time. In fact, the minimum is

about 30 years, like the project from the airport to Waiyaki Way. This is a project which will only benefit this country in terms of the users.

However, in terms of any revenue going into the Kenya Revenue Authority (KRA) will not be there.

Mr. Temporary Speaker, Sir, I hope that we consider passing this Bill with a few amendments. I have had a close look what is being proposed. For instance, the Bill proposes to establish a directorate. This directorate will seek to establish a fund that will be funded by Appropriation-in-Aid (A-in-A), grants and donations.

We do not want to see a situation where these so called big investors come all the way from abroad saying that they want to partner with this country, yet they are pulling us to sign off our sovereignty. It is very easy for us to get ourselves into that trap because it is quite seldom that people actually read the fine details of PPPs).

I encourage that as we bring in this piece of legislation, we need to think about the end game. It is very good from the onset. I would love for each and every county, for instance, Narok County, to sign a PPP with a company that will collect all the garbage in the town, take it and use to generate manure and energy. They can also sell that power to Narok Town, to reduce the constant power fluctuation, which causes a lot to destruction to the small industries.

Mr. Temporary Speaker, Sir, if we do that, we really have to think about the sustainability. Will this be another burden to the public? There are people who come in and say that they have a good project and finances, so long as they get a guarantee from the National Treasury.

This Bill seeks to also involve the county governments. The PPP Act 2013 did not envision the county governments seeking these partnerships. Now, every county wants to develop. I would be very skeptical in allowing county governments to sign these contracts without direct supervision and a fine microscopic lens on the terms and conditions of these PPPs.

Some people may be enriching themselves through these PPPs. They will sign off and set up companies in Mauritius, Singapore and everywhere. However, when it comes to the longevity of this project, you will find that it might end up costing the public.

Mr. Temporary Speaker, Sir, I like one aspect of the Bill. The implementing partner of any project which is said to be developed through a PPP must set up a company. That company must have the support of a county, for instance, Narok County, as a minority shareholder.

If the majority shareholders choose to change the ownership of their company and they get approval without setting up the terms and conditions as to why they are changing, this could end up being a scheme to get rich fast. Certain companies can come in, sign agreements with county governments, get funding from the World Bank (WB), because they have to look for funding somewhere, or get money from other venture capitalists.

However, within a short time when the project is not even completed because there is guarantee by the Exchequer of this Republic or the treasury of each and every county government, they take off. They have made their money and not completed the project.

Mr. Temporary Speaker, Sir, I think that these projects are good for the country. It will enable us to have projects like roads and infrastructure development. It will enable us to bring in competition in the power sector, where right now, the monopoly is with the Kenya Power (KP). We have to be very careful that for any project we do, there capacity to understand the veracity of the project, its viability and it will not end up being a big risk to the public.

Whichever way you look at it, it is a debt. For any PPP that comes in, there are three sources of financing; one is debt, equity and grants. Are these grants supposed to repaid, or are these grants which are just given to support that project?

Mr. Temporary Speaker, Sir, as I support this, I want us to be very careful, so that we do not end up over burdening our county governments. The national Government is already overburdened.

The only way that I will support this Bill is if there is no way that Kenyans will end up now having to put money not as A-in-A, but appropriate money into this PPPs. I would want to see a situation whereby if people want to build highway in Narok County, let them bring in all the money to undertake the project. We will give them the land which will be our equity contribution.

This issue of becoming a minority shareholder is not fair. We should have be 50-50 shareholding. When you say the local governments or partners should become minority shareholders if they are not putting in the money, you have to look at the long-term effect of this PPP.

Mr. Temporary Speaker, Sir, finally, I want to highlight a few issues. It would be important for us to enhance on the issue of local content. We do not want a situation whereby we have signed an agreement with a company from the United Kingdom (UK) or China yet the construction of that road is done 100 per cent by the Chinese. The construction materials are imported directly from China, Taiwan, among other countries.

If there are any local materials that can be produced here, we need to look at the local content aspect. I hope that when it comes to the issue of the regulations, the Cabinet Secretary (CS) with directorate developing those regulations will enhance and pay key attention to the issue of local content. This is not a situation whereby one size fits all. All counties are different. Narok County might be interested in a particular project. If it is a highway they want to construct, Narok County can donate land.

Mr. Temporary Speaker, Sir, I will not say that I support this Bill fully. I hope that the Committee will bring a few amendments. The Committee recommends that we pass it, but with amendments so that we ensure the public does not end up being conned by these so-called international businessmen who come here mostly in a briefcase and say they have connections all over. They tell the governor just pay us about Kshs10 million, come to Dubai and let us sign this contract. Once we sign this contract, we will be given money by these financiers. We have to be very careful.

My problem is that if we do away with all the bureaucratic steps where it becomes difficult and we make the procurement process much easier. We have to ask ourselves. Is this direct or restricted procurement going to cause more problems? Why not open it and make it an open-tender system such that anyone around the world does not need to know me for them to sign a PPP with Narok County.

Mr. Temporary Speaker, Sir, Narok County can go to their website and list every project that they are seeking partners abroad; people who can do these projects which are more expensive than the ordinary procurement that we have. Once they do so, anyone out there has the ability and financial muscles that does not require another guarantee.

The only guarantee that I would be happy for Narok County is to give would be that if it is a highway, they will provide that equity and give the land and all the support necessary. The National Land Commission (NLC) must also be involved. I hope that once we finalise this, we will put those issues into perspective.

Mr. Temporary Speaker, Sir, finally, I thank the Committee and look forward to reading the regulations with the Committee of Sen. Faki.

**The Temporary Speaker** (Sen. Kinyua): Asante, Sen. Olekina. Sasa nataka kumwalika Sen. Wario aweze kuchangia.

**Sen. Wario:** Asante, Bw. Spika wa Muda, kwa kunipatia nafasi hii. Kwanza kabisa kabla ya kuchangia Mswada huu ningependa kuchukua nafasi hii kukupongeza kwa kuwa katika jopo la Spika la Bunge hili. Pia ningependa kukupongeza kwamba umeendesha shughuli za Bunge hili katika lugha ya kitaifa ya Kiswahili ambayo sio rahisi. Wakati mwingi imekuwa desturi ya Bunge zote za Kenya kuendesha shughuli zao katika lugha rasmi ya Kiingereza.

Mswada huu ambayo uko mbele yetu wa kubinafsisha shirika la umma, umekuja kwa wakati mzuri kabisa. Miradi mingi imedorora kwa sababu kuna haja kubwa ya kupatikana nguvu-kazi ambayo ni nje ya wale ambao wanafanya kazi hiyo. Sasa tukiweka sheria mwafaka ambayo itabinafsisha itakuwa vyema. Kwa mfano, katika kaunti nyingi utaona uchafu umejaa katika sehemu za makaazi na mijini. Tukiweza kubinafsisha na kupeana mashirika mengine kufanya usafi kwa kufuata sheria hii, kazi hiyo itafanyika vizuri sana.

Bw. Spika wa Muda, ukizuru hospitali nyingi katika kaunti zetu, utaona uchafu mwingi. Kwa hakika kama tunaweza kubinafsisha shughuli za usafi katika hospitali zetu, hospitali zetu zitakuwa safi. Tutapata nguvu-kazi ambayo ni nguvu mpya.

Ukitembea katika mji wa Eastleigh saa hii, utaona uchafu unaotokana na takataka. Kama serikali ya kaunti ingeweza kubinafsisha shughuli ya usafi na kupeana kwa watu binafsi wasimamie usafi wa mji huo, tunawezapata mji safi.

Mswada huu ni sawa kabisa. Bunge la Kitaifa limewezakupitisha Mswada huu, sisi tuungwe mkono ili tupate sheria ambayo itatusaidia sana katika miradi mbalimbali. Ikiwa tutaupitisha Mswada huu, sisi tutapata nguvu-kazi ambayo itakuwa ni kweli imebinafsishiwa shughuli na kazi katika kaunti zetu.

Bw. Spika wa Muda, pia Mswada huu utaleta uwiano kati ya mashirika mbalimbali na serikali zetu za kaunti na Serikali kuu ambayo ni ya utendakazi na ile imebinafsishwa inaweza kufanya kazi pamoja. Watu ambao watakuwa nje ya Serikali ama shirika hiyo watakuwa na uwazi wa kuona kuna kazi inafanyika. Itakuwa ni watu wengi wanafanya kazi hiyo na kutakuwa na uwiano na ushirikiano wa karibu.

Ninaunga mkono, Mswada huu.

**The Temporary Speaker** (Sen. Kinyua): Asante sana, Sen. Wario. Nashukuru kwa wewe kunipa heko kwa kuteuliwa kuwa katika jopo la wasaidizi wa Spika. Sasa nataka kumwalika Seneta wa Kaunti ya Nandi, Sen. Cherargei.

**Sen. Cherargei:** Thank you, Mr. Temporary Speaker, Sir for this opportunity. I have heard a new word called “*nguvu-kazi*”.

I want to rise by supporting this National Assembly’s Public Private Partnership Bill. This Bill is long overdue considering that as custodians of devolution, we should be looking more into enhancing opportunities.

We are aware as we talk today the public debt continues to grow. It is approaching more than Kshs7 trillion and word has it that the National Treasury want it to raise it to Kshs12 trillion. In the near future, the resources that will go to counties will continue to become a challenge. As we talk today, it continues to be a challenge.

One of the biggest supporters of devolution has been the private sector and donations from various agencies and other diplomatic missions in the country.

Mr. Temporary Speaker, Sir, when we put this into perspective, because we have a number, most of us courtesy of your office, we have travelled on parliamentary business. Sometimes outside the parliamentary business there are many Kenyans who are in diaspora. We did discuss the amendment to diaspora directorate creation. Most of them request on how they can partner. Sometimes you travel abroad and some Kenyans would want to maybe send back medical equipment to the country. They want to partner with the local administration.

We have seen twinning of cities. I have seen Mombasa County Governor; Hon. Ali Hassan Joho is twinning with some city. I have seen the Governor of Uasin Gishu County, Hon. Jackson Mandago twinning with other cities. When it comes to those, most of them are concerned about PPP, especially in management of wastage even this Nairobi City County. Many counties going into the future will do a lot of twinning with various cities. With those twinning comes with the issue of public private partnerships.

Mr. Temporary Speaker, Sir, so this is the right way to go. In the first and second set of devolution, most governors have tried to do PPP, but there was no specific law that would govern this engagement between the private and public sector. As I indicated, we have seen even the intended expansion of Uplands all the way to Mau Summit that the French Government wants to partner with Kenya.

Some of them are under public private partnership. We want the law that would guide it, especially to county governments, for some of us, who in future God willing will be running county governments, this is the law that will guide the engagement. That is in trying and expanding opportunities and creating a lot of opportunities for many young people.

Mr. Temporary Speaker, Sir, in a snapshot and upshot, I have had an issue with the Committee amendments on offenses and penalties. I agree that we should not allow. My brother who earlier spoke before me indicated that that there could be briefcase companies or individuals who would want to come into the country, sign funny contracts, they are bankrupt in their nations and do not have necessary amount. They do not have the securitization of their documentation that is needed.

Looking at it, these issues of offenses and penalties are important. I agree that the weight has been drafted, but I would wish that it be enhanced. That the person should fined a fine of not exceeding Kshs2 million, they should go even up to around Kshs10 million and imprisonment of seven years or more.

Mr. Temporary Speaker, Sir, as State officer, one shall not directly participate in any tender under this document. This is to avoid conflict of interest and avoid breaking the Public Procurement and Disposal Act. This is an import that has already been given under the Public Procurement and Disposal Act.

Finally, we already have a directorate of PPP. We would like also the office of the Auditor-General which has been indicated, or any other form of ensuring that we do so. I have seen an audited report that is presented before and the author prepared and submitted a Committee report on the state of PPP in Kenya.

Mr. Temporary Speaker, Sir, I hope Parliament of the Republic of Kenya will have a role in this. We would want to know the state of PPP. If we are not careful, somebody can be a President doing a PPP with other countries, but may be it is the person himself as a natural person doing that transaction yet he is committing the country.

I agree with my brothers who spoke that even governors who are coming at the tail end, we should not only look at the governors, even the Presidents maybe three or six months before he exits the second term. They should not still have those powers to continue committing us. They can commit us to something that will not benefit us.

Mr. Temporary Speaker, Sir, there is a country called Jamaica. Allegedly, they have committed their country to trillions and billions of US dollars for 70 years. You can imagine a President who is exiting today - for instance, President Uhuru Kenyatta - decide to commit to something that will be taken to 100 years. It will be unfair to us and the future generations. We must get value for money.

As I conclude to allow the Senate Majority Leader to reply, you remember yesterday we were even asking the value of money in Ngamia One project. We have seen we have invested a lot for the last nine months under PPP. There are people who have generated billions of shillings to the Ngamia One Project in oil exploration in Turkana County. Even the wind power that Kenyans were defrauded over Kshs80 billion.

Mr. Temporary Speaker, Sir, it was done under PPP agreement. When we asked the Cabinet Secretary (CS) who was just seated across me, they could not have a tentative answer. We must also protect the private sector and the Government. There was a private sector through the PPP partnership agreement in Ngamia One oil exploration for nine years, but those explorations have not been done. We must report to that.

The Senate Minority Leader is insisting that I finish. There are a number and types of values of PPP tenders that have been cancelled. We need to be careful on this one. That is why I said we need to do due diligence. This is my last point.

If a company is domiciled, for example, in Italy or US, we need to do due diligence so that they do not bring a bankrupt government, then you cancel, they take you to court and pay for that money.

Mr. Temporary Speaker, Sir, I hope to see this in the Committee of the Whole to bring the necessary amendments. However, we need to support this not only in the interest of the national Government, but also the county governments to expand opportunities. This is to ensure that it is not only protecting devolution, but also expand opportunities for our devolved counties.

I thank you for this opportunity.

**The Temporary Speaker** (Sen. Kinyua): Asante sana, Sen. Cherargei, kwa hayo majadiliano. Kwa sababu hakuna Seneta mwingine ambaye angetaka kuchangia katika Hoja hii, ninataka kumuita ambaye alileta Mswada huu kuweza kujibu.

**Sen. Farhiya:** Thank you, Mr. Temporary Speaker, Sir, for giving me this opportunity to reply to this Bill.

I beg to reply.

I also wish to thank His Excellency Uhuru Muigai Kenyatta for being in the forefront in ensuring that infrastructure projects in this country are fast-tracked and that whatever borrowing that we did, it was worth it.

The kind of level of infrastructure that this country has experienced for the past at least nine years and more so last four years has been immense. We just need somebody to continue with that legacy to ensure that this country is developed and Kenyans will see the benefits of those projects.

Mr. Temporary Speaker, Sir, the beauty about this is also that the county governments can engage. I want to assure Senators that we have shown that there is a concern in terms of feasibility. That directorate will have people who are skilful. Whether the project is undertaken by the national or county government, that team will scrutinize to do the financial and technical feasibility and other requirements to ensure that project is delivered. The good thing about this project as well is that nothing stops a Kenyan who has the capital, technical skills and ability to perform that project from doing it.

The other thing that is good about these PPP is that most of them will be self-paying. Whatever revenue that is generated from that project is the one that will be paid to the person. Even the running of the secretariat is based on some performance of one per cent so it will be self-sufficient.

If it is found that the project is paying itself quicker than it was envisaged. Let us say it was supposed to pay itself within 30 years and it pays faster than that. In the contract, there will be a provision whereby Kenyans now stop paying for that project.

If you read the Bill carefully together with amendments, the Committee on Finance and Budget of the Senate made many amendments on this Bill. You can look at them in the last pages. Together with those amendments, this is a great Bill and it should be supported.

This Bill will ensure that we develop without incurring more. It will be reliving in terms of the debt burden. Most of the projects are expected to be self-revenue generating. This project will be generating new revenue that will pay for these projects.

Mr. Temporary Speaker, Sir, I beg to reply.

Pursuant to Standing Order No. 61 (3), I request that the putting of the question be deferred to tomorrow. I wish to thank all the Senators who have contributed to this Bill.

**The Temporary Speaker** (Sen. Kinyua): Asante. Swali tutauliza kesho.

*(Putting of the question on the Bill deferred)*

Tunaweza tukaenda katika Hoja hiyo nyingine.

**BILL***Second Reading*THE HEALTH (AMENDMENT) BILL  
(SENATE BILLS NO. 26 OF 2020)

**The Temporary Speaker** (Sen. Kinyua): Sen. (Dr.) Ali, endelea.

**Sen. (Dr.) Ali:** Thank you, Mr. Temporary Speaker, Sir. Pursuant to the provisions Standing Order No. 141 (1) of the Senate Standing Orders, I beg to move that the Health (Amendment) Bill be now read a Second Time.

Before I delve into the content of the Bill, I would like to give some background information on the issues affecting human resource for health. The management of human resources for health has always been a matter of concern in this country. In pre-devolution, we used to have problems with workers, especially in the health sector striking.

This has continued to date, even after the health sector was devolved. Although after devolution, it was the key purpose, which was to bring services closer to the people. We note that this category of officers has also increased post-devolution.

Mr. Temporary Speaker, Sir, the delegation of functions between the national and county governments under the Constitution resulted into human resource for health being recruited at both the national and county level. In theory, this was the prescription that was supposed to have solved the problem.

Since it promised to make it easier for the county to absorb necessary capacity for human resources for health, which is a problem at both levels. However, and sadly so, due to the fact that the health function was not costed before being transferred to counties, counties still continue to attract, employ and retain the health workers that they need.

Mr. Temporary Speaker, Sir, according to the Ministry of Health 2015 Devolved Human Resource Policy Guidelines on human resource, Kenya is one of the counties identified by World Health Organisation (WHO) as having a critical shortage of healthcare workers. This shortage is remarkably worse in the rural areas where the understaffing level of between 50 per cent and 80 per cent at the former provincial health facilities.

Those of us from rural Kenya really suffer the effects of this shortage. For instance, in Wajir County, according to the Kenya Health Workforce Report of 2017, at the time of preparation of that report, it had a ratio of nine doctors, 12 clinical officers and 16 nurses per 10,000 people. The combined ratio of doctors, clinical officers and nurses was one per 10,000 population.

Other counties in the rural Kenya, especially Samburu County had a combined ratio of doctors, nurses and clinical officers of 2.5 per 10,000 population. Turkana County had a ratio of 1.2 per 10,000 population. Migori County had a ratio of 3.7 per 10,000 while Tana River, 2 per 10,000 persons.

Mr. Temporary Speaker, Sir, when you look at this, you will see that Kenyans do not have enough health personnel who work in the rural counties. That is why in the cities or big towns, that is where everybody is, for example, Nairobi, Mombasa, Kisumu and Nakuru counties. If you go to Laikipia County, you will just find them in Nanyuki Town, but in all the other places people are suffering.

During my service in the Committee on Health, I have confirmed that some counties use up to 50 per cent of their revenue to finance recurrent expenditure in respect to human resource for health. When you use 50 per cent of your resources for staff, what happens to the other things you require? You will not have enough vehicles, drugs, facilities or infrastructure and you have to travel from the headquarters to go to the rural areas. If you have to travel from Wajir Town to a place called Godoba, it is over 300 kilometres away. How will people work? How are these people going to help the people of these counties?

Mr. Temporary Speaker, Sir, despite the investment, there is still a shortage of human resources for health, which has resulted in poor working conditions for health workers in the country. To date, human resource for health continues to face challenges of harassment, ethnic profiling, hostile working conditions, health workers shortages, stalled promotions, and failure or refusal to absorb health workers yearly, resulting in severe shortages. There is inability for horizontal or vertical career progression, including inability for inter county or intergovernmental transfers.

As a result of these gaps in the management of human resource for health, the health workers in this country have continued to seek redress and continually agitated for the establishment of the Health Service Commission with full and independent executive functions and powers.

Mr. Temporary Speaker, Sir, you know this well because you have been in the Committee before. Whenever we call doctors or nurses when they are on strike, they will always say that we want to have the Health Service Commission for health workers. It is unfortunate that in the 2010 Constitution, they did not properly participate and were not able to get it.

On hindsight now, they have realised what the Kenya National Union of Teachers (KNUT) did. The KNUT insisted that the Teachers Service Commission (TSC) must be there and they must have their own commission. That is why they survived even if of late they are not doing very well. However, when you have the Health Service Commission for health workers, then things would have worked out well. Unfortunately, it did not happen. Even when they gave their presentation to the Building Bridges Initiative (BBI) secretariat, the Bill that was brought to the House did not contain anything to do with the Health Service Commission.

Mr. Temporary Speaker, Sir, as a result, we have realised that the stakeholders submitted their views to this Bill. Every time you call the stakeholders, they always comment and talk about the Health Service Commission. It appears that the establishment of the commission will offend the functional constitutional integrity of county governments. The same may only be achieved through an amendment to the Constitution. Since we are not able to do that, we however think that this Bill will help county governments.

**The Temporary Speaker** (Sen. Kinyua): Sen. (Dr.) Ali, it is now 6.30 p.m. When we resume, you will have a balance of 52 minutes.

### ADJOURNMENT

**The Temporary Speaker** (Sen. Kinyua): Hon. Senators, it is now 6.30 p.m., time to adjourn the House. The Senate, therefore, stands adjourned until Wednesday 6<sup>th</sup> October, 2021 at 2.30 p.m.

The Senate rose at 6.30 p.m.