

PARLIAMENT OF KENYA**THE NATIONAL ASSEMBLY****THE HANSARD****Tuesday, 5th April 2022**

The House met at 2.30 p.m.

*[The Speaker (Hon. Justin Muturi) in the Chair]***PRAYERS****QUORUM****Hon. Speaker:** Ring the Quorum Bell.*(The Quorum Bell was rung)***Hon. Speaker:** Very well. We now have quorum and we can commence business.**COMMUNICATION FROM THE CHAIR****Hon. Speaker:** Hon. Members, you can take your seats.**PRONOUNCEMENT OF BUDGET HIGHLIGHTS AND
REVENUE-RAISING MEASURES FOR 2022/2023**

Hon. Members, as you may be aware, each financial year, the Cabinet Secretary responsible for matters of finance is required to make a public pronouncement of budget highlights and revenue raising measures for the national Government pursuant to Section 40 of the Public Finance Management Act (PFMA), 2012, the National Assembly Standing Order No.244C and in line with timelines provided under Article 221 of the Constitution.

For clarity, Hon. Members, according to the obtaining sequence in the budget making cycle, it is ordinarily expected that public pronouncement of budget highlights and revenue raising measures for the national Government would be preceded by submission of the Budget Estimates for the national Government, which must be done not later than 30th April each year. As you are aware, the Estimates have not yet been submitted for the House to take the next steps in the budget cycle.

Hon. Members, you will observe that the budget process for the Financial Year 2022/2023 is happening under extraordinary circumstances that are only unique to an election year. These unique circumstances not only call for flexibility, but also necessitates adjustments to facilitate conclusion of the budget processes before the House stands adjourned *sine die* ahead of the General Elections slated on 9th August this year. Indeed, this is not the first time the National Assembly is

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called upon to adjust certain timelines in the budget-making cycle. Those who served in the 11th Parliament may recall that during the last session of that Parliament, the National Assembly adjusted its Calendar for the election year to allow certain steps in the budget cycle to be concluded before adjourning *sine die*.

It may be recalled that at that time, the House adjusted the timelines and permitted the Cabinet Secretary for the National Treasury and Planning to make public pronouncement of the budget highlights for the Financial Year 2017/2018 on 30th March 2017. This was also intended to synchronise the 'Budget Speech' as it was previously known, days for the East African Community (EAC) Member States.

Hon. Members, you are aware that the country will hold the General Elections on 9th August 2022. That being the case, political parties have already scheduled their primaries from 9th April 2022 in line with statutory timelines *gazetted* by the Independent Electoral and Boundaries Commission (IEBC). Further, the House is due to proceed on a long recess from Friday, 15th April to Monday, 9th May 2022 and thereafter adjourn *sine die* on Thursday, 14th June 2022. These election-related circumstances are obviously disruptive to the budget timelines that would ordinarily have been observed in an ordinary year. It is instructive to note that as per the Calendar of the House, the date of 30th April when the Cabinet Secretary is expected to submit the Estimates to this House falls within the recess period. In this regard, if no adjustment is made in order for the Estimates to be submitted before the House goes on recess next week, the House would have breached the practice.

Hon. Members, given the circumstances and noting that the Division of Revenue Bill has since been passed and is due for assent, it has become necessary to adjust the sequence of the budget process, particularly with respect to submission of the Estimates and public pronouncement of the budget highlights and proposed revenue raising measures for the Financial Year 2022/2023.

In this regard, I will allow the Cabinet Secretary for the National Treasury to make the public pronouncement of budget highlights and revenue-raising measures for the 2022/23 Financial Year this Thursday, 7th April 2022, in the National Assembly Chamber not later than 3.30 p.m. Thereafter, the Cabinet Secretary shall submit to the House the Estimates, the Finance Bill, 2022 and any other attendant regulations for consideration by the House.

I hasten to clarify that the foregoing adjustment does not in any case offend the provisions of the Constitution or the Public Finance Management (PFM) Act. In any case, the practice of requiring the Cabinet Secretary for the National Treasury to make public pronouncement of the budget highlights and revenue-raising measures to the House is a creation of this House through Standing Order No.244C, which was made in furtherance to Section 40 of the PFM Act, 2012. With respect to the remaining steps, it shall be the responsibility of the House to consider and pass the Estimates, the Appropriation Bill and the Finance Bill, well before adjourning *sine die* in June 2022.

To this end, I direct the Clerk of the National Assembly to make necessary arrangements in order to facilitate the Cabinet Secretary for the National Treasury and Planning to discharge his duties with respect to pronouncement of the budget highlights and revenue-raising measures for the 2022/2023 Financial Year in accordance with Section 40 of the Public Finance Management Act, 2012 and Standing Order No.224C.

The House is accordingly guided.

MESSAGES

Hon. Members, I have two Messages. Maybe you could take your seats.

(Hon. Mohamed Abdikhaim stood along the gangways)

Member for Fafi, please, take your seat.

APPROVAL OF MEDIATED VERSION OF THE COUNTY GOVERNMENTS ADDITIONAL
ALLOCATION BILL AND PASSAGE OF THE DIVISION OF REVENUE BILL

Hon. Members, as you are aware, Standing Order No.41(4) of the National Assembly Standing Orders requires the Speaker to report to the House any Message received from the Senate. In this regard, I wish to report that on 1st April 2022, I received two Messages from the Senate regarding its passage of the mediated version of the County Governments Additional Allocation Bill (Senate Bill No.35 of 2021) and the Division of Revenue Bill (National Assembly Bill No.8 of 2022), respectively.

(Hon. Khatib Mwashetani and Hon. Aden Duale exchanged hats)

If the Member for Lungalunga and the Member for Garissa Township could stop exchanging their *kofias*.

The first Message reads in part, and I quote:

“...that the Senate by a resolution passed on 31st March 2022, approved the mediated version of the County Governments Additional Allocation Bill (Senate Bill No.35 of 2021), formerly referred to as the “County Governments Grants Bill (Senate Bill No.35 of 2021)”.

You will recall that the County Governments Grants Bill (Senate Bill No.35 of 2021) was referred to the National Assembly towards the end of the last Session having been passed by the Senate. The House passed the said Bill on 2nd December 2021 with further amendments and referred it back to the Senate for reconsideration. However, the Senate rejected the National Assembly’s amendments. This in effect committed the Bill to a Mediation Committee in terms of Article 112(2)(b) of the Constitution.

Consequently, Hon. Members, the Mediation Committee developed a version of the mediated version of the said Bill which was passed by the Senate last week and is scheduled for passage by this House today. Indeed, it is listed as Order No.8 in today’s Order Paper.

Hon. Members, the second Message from the Senate refers to the passage, by the same House, of the Division of Revenue Bill (National Assembly Bill No.8 of 2022). It will be recalled that the National Assembly passed the Bill on Thursday, 3rd March 2022 without amendments. The message from the Senate reads in part, and I quote:

“...the Senate considered and passed the said Bill without amendments on Thursday, 31st March 2022”.

The Message thus conveys the concurrence of the Senate with the National Assembly on the Division of Revenue Bill (National Assembly Bill No. 8 of 2022) in terms of Article 110(4) of the Constitution.

Therefore, Hon. Members, the Bill having concluded the bicameral passage in the Houses of Parliament, and given the urgency associated with it, I will present it to His Excellency the President for assent in accordance with the provisions of Article 110(5) of the Constitution, tomorrow morning.

I thank you, Hon. Members.

Order Members! Member for Garissa, today you are having difficulties sitting and you never have that problem. Have you been infected by the Member for Cherangany?

NOMINATION OF PERSONS FOR
APPOINTMENT AS MEMBERS OF EACC

Hon. Speaker: Hon. Members, the second Message is from His Excellency the President. Pursuant to the provisions of Standing Order No.42, I wish to convey a Message from His Excellency the President relating to the nomination of persons for appointment to the Ethics and Anti-Corruption Commission (EACC).

Hon. Members, the Message, which was received in my Office yesterday, 4th April 2022, conveys in part, that, pursuant to the provisions of Article 250 (2)(b) of the Constitution, the procedure set out in sections 7 (1) and 10 of the Ethics and Anti-Corruption Commission Act as read together with sections 3 and 5 of the Public Appointments (Parliamentary Approval) Act, 2011, His Excellency the President, has nominated the following persons for appointment to the office of a member of the Ethics and Anti-Corruption Commission:

1. Dr. Cecilia Mbinya Mutuku; and,
2. Mr. John Ogallo.

Hon. Members, sub-sections 10(2) and (3) of the Ethics and Anti-Corruption Commission Act (No. 22 of 2011) states as follows:

“10(2) The President shall, within fourteen days of receipt of the names of successful applicants forwarded under subsection (1)(f), select the person to fill the vacancy in the Commission and forward the name of the person to the National Assembly for approval.”

Hon. Members, having received the Report of the Public Service Commission on recruitment of persons for appointment as commissioners, His Excellency the President has forwarded the two names to fill the existing vacancies. He now seeks the approval of the nominees by this House.

Hon. Members, whereas the Ethics and Anti-Corruption Commission Act (No.22 of 2011), provides a lesser period within which the House is to consider the respective nominees, Section 8 of the Public Appointments (Parliamentary Approval) Act, (Act No.33 of 2011), requires the National Assembly to undertake the exercise within twenty-eight (28) days.

Subsequently, Hon. Members, in accordance with the provisions of Standing Order 45, I hereby refer the Message from His Excellency the President, together with the Curriculum Vitae and other testimonials of the nominees to the Departmental Committee on Justice and Legal Affairs for consideration.

The Committee is expected to notify the nominees and the general public of the time and place for holding the approval hearings and thereafter, upon conclusion of the hearings, table its report to enable the House to consider the matter within the statutory timelines.

I thank you, Hon. Members.

(The Speaker consulted with the Clerk-at-the-Table)

Hon. Speaker: The tall Member for Tigania West appears not to know whether he is in the House. Hon. Mutunga, take your seat. Your height is intimidating the Member for Samburu County. Member for Malava. Is this the Member for Ruaraka? Member for Ruaraka, I need you in the House.

PETITIONS

GAZETTEMET OF RACHUONYO NORTH AS A HARDSHIP AREA

Hon. Members, Standing Order No.225(2)(b) requires the Speaker to report to the House any Petition, other than those presented by a Member. Further, Article 119 of the Constitution provides for the right of any person to petition Parliament to consider any matter within its authority, including petitioning the House to enact, amend or repeal any legislation.

Hon. Members, in this regard, I wish to report to the House that my Office has received a Petition from Mr. Fredrick Gaya of P.O. Box 10, Kendu-Bay, calling for the gazettelement of Rachuonyo North Sub-County as a hardship area in order to improve education standards through infrastructure development, digitalisation, career progression and provision of adequate number of teachers in the area.

In his Petition, the petitioner avers that Rachuonyo North Sub-County is currently hamstrung by prevailing hardship conditions that are a direct result of dire poverty levels in the area. In his view, the Government holds a substantial part of the blame for this situation on account of historical neglect of the region and through its abdication of its constitutionally-mandated responsibilities of equitable sharing of national resources. Subsequently, this abdication of responsibility has adversely affected both teachers and learners in various and extensive ways.

Further, the petitioner is convinced that the Government has portrayed an element of discrimination against Rachuonyo North Sub-County by denying its teachers hardship allowances and better staffing whilst providing the same facilities to Suba North and Suba South sub-counties despite the fact that all three sub-counties are located in Homa Bay County.

Hon. Members, the petitioner highlights the plights plaguing Rachuonyo North Sub-County as being exemplified by lack of factories, barren sandy soils, rugged and rocky terrain, poor rainfall, perennial floods, and devastating poverty that continues to affect education standards in the area. He thus seeks the intervention of this House in, among other things, securing the gazettelement of Rachuonyo North Sub-County as a hardship area in order to improve education standards through infrastructure development, digitisation of basic education, career progression and provision of adequate number of teachers in the area.

Hon. Members, having determined that the matters raised by the petitioner are well within the authority of this House, I order that pursuant to the provisions of Standing Order 227(1), this Petition be committed to the Departmental Committee on Education and Research. The Committee is required to consider the Petition and report its findings to the House and to the petitioner in accordance with Standing Order No.227(2).

Thank you, Hon. Members.

Yes, two minutes comments. I know these days comments on petitions afford those who cannot sit for more than 30 minutes an opportunity to be heard. This is a very interesting time. So, it is important for you to make full use of the two minutes. The first one is the Member for Mwea. He is not aware there is a Petition.

Hon. Josphat Kabinga (Mwea, JP): Hon. Speaker, I am aware that you have made some comments which are interesting at this time. The Petitioner has a point in as far as demarcation and recognition of some areas in this country as hardship areas is concerned. Even as we think about these hardship areas, we need to think about the smallest units that can be designated as hardship areas. We have counties that are known to be rich and are not hardship areas, but have sub-counties, wards, locations and sub-locations which should be considered as hardship areas.

As I contribute, I have in mind my own constituency. Despite the fact that we are the number one rice growing area in Africa, we have some parts that are dry like those neighbouring Mbeere, which is already designated as a hardship area. Yet these sub-locations are not categorised in the same way. We have locations like Kiandegwa and South Ngariama in Mwea which are dry areas and need to be considered in this category.

Therefore, even as I support the Petitioner, I want the Public Service to also look at...

Hon. Speaker: Member for Endeless.

Hon. (Dr.) Robert Pukose (Endeless, JP): Thank you, Hon. Speaker, for allowing me to contribute to this Petition by Fredrick Gaya on the hardships within Rachuonyo North Sub-County. Even as the Committee looks into this, we have had several petitions on gazettelement of hardship areas in various places. I think the gazettelement that exists was done during the colonial times. So, it is important that this Committee prepares a proper report and asks Members from the hardship areas to present their cases, so as to consolidation all hardship areas, which this House will then pass.

Endeless is a hardship area because the terrain is difficult and when it rains, even reaching schools is a problem. Occasionally, you find some of the teachers posted to Endeless looking for transfer to other areas. My constituency borders West Pokot and people ask themselves why those in West Pokot get hardship allowances and those in Endeless do not. Yet the terrain is very difficult and for teachers or any civil servants to get housing in the area is a big problem.

I think we need to revise the criteria for hardship so that it does not just reflect semi-arid areas, but also areas with difficulties of accessibility, housing and terrain.

Hon. Speaker: Member for Kiminini.

Hon. (Dr.) Chris Wamalwa (Kiminini, FORD-K): Thank you, Hon. Speaker. With climate change, we have seen a lot of difference in terms of the gazetted hardship areas. It is, indeed, important that the relevant Committee should visit the areas and revise the criterion used. We have seen areas which were accessible, but which have now been affected by climate change and the terrain has also changed. I want to agree with the petitioner that it is in order for the relevant Committee to revisit and review, so that we can come up with new areas. Many areas have been affected by climate change or one reason or another, and are now hardship areas and should be considered in terms of compensation for hardship allowance.

Hon. Speaker: Member for Nyando.

Hon. Jared Okelo (Nyando, ODM): Thank you, Hon. Speaker. I want to support this Petition by Mr. Gaya, of North Karachuonyo. It is true that the area, which I know very well, deserves hardship allowance. I am aware that there was a multi-agency approach by the national Government that was led by the Public Service Commission that went across the country between 2020 and 2021 to rationalise this matter. When this idea of hardship allowance came into being, there were certain areas that were omitted for reasons that we are yet to understand and a very classical example besides Karachuonyo North was Nyando Constituency.

Hon. Speaker, Nyando is known for its perennial flooding and sits between Muhoroni and Nyakach constituencies. When this idea came about, Muhoroni and Nyakach were considered, but

Nyando was left out, yet it is where the real flooding is domiciled. So, we wonder what kind of criterion was followed in apportioning hardship allowance to certain areas and alienating others. We hope that the report that is yet to come out from the exercise that was undertaken by the national Government will consider areas such as Karachuonyo North, Nyando and many others that really deserve. We are not advocating for others to be left out of this scheme because it has many good parts, but we also hope that those that were inadvertently left out will be put into this criterion, once and for all. We lose a lot of public servants into these areas that are being considered.

Hon. Speaker: Member for Tharaka.

Hon. George Gitonga (Tharaka, DP) Thank you very much, Hon. Speaker. That Petition is quite timely and it is important that it is investigated along the lines that I brought a Petition to the House for my constituency, Tharaka. Tharaka enjoys hardship allowance when it comes to teachers and the Judicial Service Commission staff, but the rest of the civil servants have been left out. My Petition was based on that element of discrimination on why some civil servants were getting hardship allowance and others were not. The Petition went through the Departmental Committee on Labour and Social Welfare and a recommendation was made that it was merited. Unfortunately, I was later informed by the Ministry of Labour and Social Protection that the National Treasury had said that they lacked sufficient funds to implement that recommendation. This is very unfortunate because Tharaka is an arid and semi-arid area and as you said, its terrain is very rocky and those who work there, especially civil servants, have to undergo a lot of strenuous moments going to and from their places of work. As we are all aware, the House is going into election time and I will be reviving this again in the next Parliament, God willing. Those civil servants who have been left out should be considered favorably just like the other ones.

Hon. Speaker: Member for Funyula.

Hon. (Dr.) Wilberforce Oundo (Funyula, ODM): Thank you, Hon. Speaker. The Petition is timely and raises very weighty issues that require serious consideration. The notion or the fallacy that all constituencies and all areas are homogeneous in terms of topography and facilities is a very wrong assumption. We have raised this in respect to the Equalisation Fund. You will find that some areas have high poverty indexes as a result of historical issues. It is high time the Public Service Commission and all interested stakeholders developed a very clear criterion and measurement tool to determine which areas are hardship areas and which ones are not. With the continued effects of climate change, we will have very many changes in the way we rate or categorise counties or constituencies. It is high time we developed a criterion that can be changed or altered depending on the way things go.

It is ironic that 10 years after devolution, we still talk about hardship areas yet we continuously pump billions of shillings into county governments. How come they have never addressed the challenges of water, poor roads, food security and the rest?

It is important that as we develop this tool, we look at it holistically, so that we can know which areas deserve attention and which do not by virtue of getting huge allocations of the county government funds.

I support the Petition.

Hon. Speaker: Let us have Nominee 001.

Hon. David ole Sankok (Nominated, JP): Thank you very much, Hon. Speaker. I was waiting for the other petition because I wanted to comment on it. Hardship allowance is important. It should be given to the well-deserving. I am waiting for the other petition.

Hon. Speaker: Let us have the Member for Kitui Central.

Hon. Makali Mulu (Kitui Central, WDM-K) Thank you, Hon. Speaker. I thank the Petitioner for this important Petition. This matter of areas being categorised as hardship or not has been raised by many Members in this House.

I remember at one point during the last Parliament, the Ministry of Public Service and Gender indicated that they had done a comprehensive report covering the whole country indicating which areas qualified as hardship areas. I urge the Government to fast-track that report, so that it is brought to this House, debated and passed, so that civil servants in places categorised as hardship areas can benefit.

That report showed that if you go to an area like Kitui, you will find that teachers and doctors earn hardship allowances, but policemen and people working in the Judiciary do not. That discrimination must be done away with. It can only be done away with by having a comprehensive report which addresses this matter. I urge the Departmental Committee on Administration and National Security - where I am a Member - to fast-track this matter and sort it out for the whole country rather than just for Karachuonyo, which is just one part of the country.

I submit, Hon. Speaker.

Hon. Speaker: Let us have the Member for Dagoretti South.

Hon. John Kiarie (Dagoretti South, JP): Thank you very much, Hon. Speaker. I would like to commend the Petition that has been brought by Mr. Gaya. When the Committee is considering this Petition, they should consider two matters.

The first one is an issue to do with over-investment in the centre. Sixty years after Independence, we should not be talking about some areas being hardship areas.

Secondly, the Committee should also make recommendations on which State agency should take up this matter because the zoning of hardship areas should not just be limited to far-flung areas. There is something called urban poverty. Hardship areas in urban areas are even worse than hardship areas in those far-flung areas. Even as this matter goes to the Committee, I pray that they will look at this issue through these two lenses and make a proposal on which State agency should do this zoning and what considerations they should make.

Second, it is the fact that these hardship issues are coming up because we are over-investing at the centre. Thank you for allowing me opportunity to contribute to this Petition.

Hon. Speaker: Let us have the Member for Central Imenti.

Hon. Moses Kirima (Central Imenti, JP): Thank you, Hon. Speaker, for giving me this opportunity to contribute to this Petition. When the Committee is considering the Petition before us, let it consider all aspects that are said to be hardship areas. I am happy that my friend, the Member for Tharaka, has mentioned that all schools in his constituency which neighbour schools in my constituency, some have a distance of about 200 metres apart, are declared hardship areas, but those in my place are not. The environment, conditions and amenities are the same, and so, one wonders why this discrimination. Who are the people going round describing some areas as hardship areas?

Let us have public participation all over the country, so as to review what has been stated as hardship areas. In places like Kiamuri in Central Imenti, you find a school has only two teachers with eight classrooms and about 300 students because other teachers are across the boundary on the Tharaka side, which is gazetted as a hardship area. Then, some people say that students are failing in some areas yet it is the State which is facilitating the same through declaring some areas as hardship areas and leaving others.

My prayer is that when the Committee will be considering this, it should come up with an idea of how to go round, de-classify and classify the same, so that all the areas are included.

Hon. Speaker: Member for Ndhiwa

Hon. Martin Owino (Ndhiwa, ODM): Thank you, Hon. Speaker. I want to support this as well. My concern is that we need to redefine or review the meaning of hardship. This is because what it was then is not what it is now. For example, Karachuonyo, which is one of the largest constituencies, just like Ndhiwa, the condition is worsened by lack of infrastructure and water problems and there are no bridges.

For example, a teacher goes to school in boots and walks for five miles. Even if they own cars, they park somewhere and walk to class. Those teachers cannot perform well because first of all, they are already tired. I agree with Hon. KJ that all this is happening because of lack of fairness in distribution of resources. If we can get bridges, we can build classrooms and roads. There is a place in Ndhiwa where we have a school up on a mountain and there are no roads going there. Teachers struggle to get there because of lack of infrastructure.

My point is that we need to redefine what hardship is and how it can be categorised. Which is this criteria people are talking about? So, when we implement, it should be homogeneous and everybody facing the hardships can be considered, but not picking and choosing areas, which I think is unfair.

Hon. Speaker: Member for Tigania West.

Hon. John Mutunga (Tigania West, JP): Thank you, Hon. Speaker, for the opportunity to add my voice to this very important Petition. The idea of criteria is important because we need to look at the geography, ecology, amenities and many other issues. It becomes more complicated when you are in a constituency where part of it is declared a hardship area and the other is a non-hardship area. In such a case, we have most civil servants or public servants concentrating in the areas that are declared hardship areas because of the benefits.

I come from Tigania West, which borders Isiolo County, which has many benefits. When we were looking at the issues of the Equalisation Fund, the Speaker stood on the Floor of this House and requested the Committee that was handling this Fund to go down to all sub-locations. Looking at Meru, it is considered as a high potential area, but I come from a constituency which is low potential.

Therefore, it is important for us to go down and get details of sub-locations, so that we can demarcate the hardship areas based on the agro-ecology of the area, the difficulties people face and risks to life. The Committee has a serious job to do. We expect them to do serious public participation and look at most areas to avoid biases or differences in the same sub-locations.

I support the Petition.

Hon. Speaker: Member for Vihiga County.

Hon. (Ms.) Beatrice Adagala (Vihiga CWR, ANC): Thank you, Hon. Speaker. I want to support that Petition. Some areas are considered as hardship areas and the Committee should consider areas where teachers are not getting the hardship allowance. In Vihiga County, there are teachers who teach in schools that are located in very far places like Ochwore. When you go to Ochwore, getting to the main road to Maseno is terrible and I am sure those teachers are not getting the hardship allowance. The ones in Kaptich near Lukose also have a lot of difficulty getting to the main road. So, as they revise the areas that get hardship allowances, Vihiga should also be considered. If they are only thinking of the arid areas or areas that are affected by terrorism, they should know that Maragoli Hills is an arid area since the trees were removed. As much as they are considering arid areas, they should also consider Vihiga County because our teachers are suffering.

Hon. Speaker: The Member for Pokot South.

Hon. David Pkosing (Pokot South, JP): Thank you, Hon. Speaker, for this great opportunity to also add my voice to this issue of hardship allowances. Pokot is also classified under hardship areas. My message to the Committee is that there is need to develop a formula. Everybody wants their area to become categorised as a hardship area and it might be the best time for the Committee to develop a formula like what I see in the Commission on Revenue Allocation. It should be a periodical formula such that it comes to Parliament after five years, so that we can then look at the parameters and develop our county in a uniform manner rather than the idea that counties or constituencies are begging to be categorised as hardship areas. For us to become objective as a country, we need to develop a formula.

Secondly, I want to take an example of West Pokot. I do not know whether people know what they are asking for. When you are in a hardship area, two things will happen. Many people will be looking to go and work in the hardship areas, but when they reach there, they want to live along the highway. We have seen this in West Pokot where most people want to come and work in our county headquarters because they have special interest or to get more money. However, when they reach Kapenguria, they only want to work there and not in far flung areas. They need to consider that they should go to the hardship areas and not just live around towns.

Hon. Speaker: The Petition is, therefore, accordingly referred to the Departmental Committee on Education and Research.

Next Order!

PAPERS LAID

Hon. Speaker: The Leader of the Majority Party.

Hon. Amos Kimunya (Kipipiri, JP): Hon. Speaker, I beg to lay the following Papers on the Table of the House:

Annual Corporate Report for the FY 2020/2021 from the Office of the Auditor-General.

Reports of the Auditor-General and Financial Statements in respect of the following institutions for the year ended 30th June 2021 and the certificates therein:

- a) The Parliamentary Service Commission;
- b) The Judicial Service Commission;
- c) The Political Parties Fund;
- d) The Kenya Local Loans Support Fund;
- e) The Rural Enterprise Fund;
- f) Independent Electoral and Boundaries Commission;
- g) Kenya Vision 2030 Delivery Secretariat;
- h) Ministry of Foreign Affairs;
- i) Witness Protection Agency;
- j) The Commission on Administrative Justice Mortgage and Car Loan;
- k) Business Registration Service;
- l) Business Registration Service-Official Receiver;
- m) Office of the Registrar of Political Parties Car Loan Scheme;
- n) Office of the Registrar of Political Parties Mortgage Loan Scheme Fund;
- o) The National Lands Commission Housing Scheme Fund;
- (p) Receiver of Revenue-Revenue Statements (Recurrent) by the National Treasury;
- (q) State Officers House Mortgage Scheme Fund; and,
- (r) Stores and Services Fund.

Reports of the Auditor-General and Financial Statements in respect of the following institutions for the year ended 30th June 2020 and the certificates therein:

- (a) Kabarnet Hotel Limited;
- (b) The Commission on Administrative Justice Mortgage and Car Loan;
- (c) Lands Limited;
- (d) National Cereals and Produce Board; and,
- (e) Nyandarua Institute of Science and Technology.

Report of the Auditor-General and Financial Statements in respect of Mandera East Constituency for the year ended 30th June 2020 and the certificate therein.

Reports of the Auditor-General and Financial Statements in respect of the following constituencies for the year ended 30th June 2019 and the certificates therein:

- (a) Kipipiri;
- (b) Naivasha;
- (c) Bomet East;
- (d) Kuresoi South;
- (e) Tiaty;
- (f) Nakuru Town East; and,
- (g) Kinangop.

Report of the Auditor-General and Financial Statements of Eming Technical Training Institute for the year ended 30th June 2019 and the certificate therein.

Reports of the Auditor-General and Financial Statements in respect of the following institutions for the year ended 30th June 2018 and the certificates therein:

- (a) Government of Kenya Ministries, Departments and Agencies; and,
- (b) Eming Technical Training Institute.

Reports of the Auditor-General and Financial Statements in respect of the following institutions for the year ended 30th June 2017 and the certificates therein:

- (a) Government of Kenya Ministries, Departments and Agencies;
- (b) Eming Technical Training Institute; and,
- (c) The Consolidated Fund.

Reports of the Auditor-General and Financial Statements in respect of the following institutions for the year ended 30th June 2016 and the certificates therein:

- (a) Government of Kenya Ministries, Departments and Agencies; and,
- (b) The Consolidated Fund.

Thank you, Hon. Speaker.

Hon. Speaker: Let us have the Chairperson of the Departmental Committee on Finance and National Planning, or is it the Member for Kitui Rural, Hon. Mboni Mwalika?

Hon. David Mboni (Kitui Rural, CCU): Thank you, Hon. Speaker.

(Technical hitch)

Hon. Speaker: It looks like there is a problem with your microphone. That is better. You are now audible.

Hon. David Mboni (Kitui Rural, CCU): Thank you, Hon. Speaker. I beg to lay the following Paper on the Table of the House:

Report of the Departmental Committee on Finance and National Planning on its consideration of the Prompt Payment Bill (Senate Bill No.16 of 2021).

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Hon. Speaker: Very well. Next Order.

QUESTIONS AND STATEMENTS

ORDINARY QUESTIONS

Hon. Speaker: The first segment is on Questions. The first Question is by the Member for Kuria East, Hon. Marwa.

Question No.091/2022

UPGRADING OF MUHURU BAY-MIGORI-KEHANCHA-LOLGORIAN-
MARARIANTA-LEMEC-NGORE NGORE-NAROK ROAD

Hon. Marwa Kitayama (Kuria East, JP): Thank you, Hon. Speaker. I rise to ask Question 091/2022:

- (i) Could the Cabinet Secretary provide status of upgrading to bitumen standards of the Muhuru Bay-Migori-Kehancha-Lolgorian-Marariantanta-Lemec-Ngore Ngore-Narok road?
- (ii) Could the Cabinet Secretary also provide an update on the progress of the construction of the projects' feeder roads namely, Tarang'anya-Senta-Ntimaru; Game C13 Junction-Kendege Technical Training Institute Junction; Masurura C13 Junction-Getagaita-Kongori-Kegonga; Loliondo C13 Junction-Kugitimo-Kegonga-Senta-Nyamtiro OSBP-Isebania One Stop Border Post, and, Kilimapesa C13 Junction-Mashangwa-Ntimaru Roads?
- (iii) What measures has the Ministry put in place to ensure speedy completion of the said roads?

Thank you, Hon. Speaker.

Hon. Speaker: Very well. The Question will be replied before the Departmental Committee on Transport, Public Works and Housing. The next Question is by the Member for Mwatate, Hon. Mwadime.

Question No. 098/2022

REFURBISHMENT OF SGR STATIONS AT MTITO ANDEI AND VOI

Hon. Andrew Mwadime (Mwatate, ODM): Thank you, Hon. Speaker. I rise to ask the Cabinet Secretary For Transport, Infrastructure, Housing, Urban Development and Public Works the following Question:

- (i) Could the Cabinet Secretary consider a policy change to ensure that the Nairobi - Mombasa express passenger train on the Standard Gauge Railway (SGR) makes regular stops at the Mtito Andei and Voi Stations to enable the passengers, who normally include tourists, to disembark and visit surrounding tourist areas, hence promoting economic activities around Mtito Andei, Voi and the adjacent areas?
- (ii) Could the Cabinet Secretary indicate whether there are plans to refurbish the two stations surrounding them....

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Hon. Speaker: (ii) Could the Cabinet Secretary indicate whether there are plans to refurbish the two stations considering their importance to the rail transport network and supporting the economy of the region?

You are reading something different.

Hon. Andrew Mwadime (Mwatate, ODM): Thank you, Hon. Speaker.

Hon. Speaker: The Question will be replied to before the Departmental Committee on Transport, Public Works and Housing.

The third Question is by the Member for Central Imenti, Hon. Kirima.

Question No. 99/2022

EFFECTS OF EUCALYPTUS TREES ALONG RIVER BANKS

Hon. Moses Kirima (Central Imenti, JP): Hon. Speaker, I rise to ask the Cabinet Secretary for Environment and Forestry the following Question:

- (i) What is the Government's policy with respect to planting of Eucalyptus species of trees commonly referred as Blue Gum along river banks and water catchment areas, a common practice in the eastern region of the country, particularly in Central Imenti Constituency?
- (ii) What measures has the Ministry taken to prohibit the planting of Eucalyptus species of trees along river banks and water catchment areas, considering their pernicious effects to springs, rivers, and streams which leads to reduction of water volumes resulting to among other concerns, intercommunity conflicts over the scarce resource?
- (iii) What steps is the Ministry taking to ensure that the said trees planted along the banks of Kathita and Mawara Rivers in Central Imenti Constituency and other water catchment areas across the country are removed to avert perennial shortage of water in the said areas?

Hon. Speaker, there is also a Question that I asked about title deeds which was referred to the Departmental Committee on Lands. I was given 60 days to get the answer which is three months ago. Up to now, I have not got any answer. I have never been called in that Committee.

Hon. Speaker: Is it three months ago?

Hon. Moses Kirima (Central Imenti, JP): Yes.

Hon. Speaker: That was in January.

Hon. Moses Kirima (Central Imenti, JP): That was the moment Parliament opened.

Hon. Speaker: Was it in January or December?

Hon. Moses Kirima (Central Imenti, JP): That was the moment we opened which is in February.

Hon. Speaker: You agreed to be given the answer within three months. Because I was not part of the agreement, you can only go to the person who promised to give you the answer. How do I know about this?

Hon. Moses Kirima (Central Imenti, JP): Any delay is supposed to be reported to you, Hon. Speaker.

Hon. Speaker: Hon. Kirima, that Question was indicated to be responded or replied to before the Departmental Committee on Lands. Go and see the Chair of the Committee.

This Question will be replied before the Departmental Committee on Environment and Natural Resources. The next Question is by the Member for Mathare, Hon. Oluoch.

Question No. 100/2022

STATUS OF CONSTRUCTION OF MABATINI WARD-HOSPITAL
WARD BRIDGE IN MATHARE

Hon. Anthony Oluoch (Mathare, ODM): Hon. Speaker, I rise to ask the Cabinet Secretary for Transport, Infrastructure, Housing and Urban Development the following Question:

- (i) Could the Cabinet Secretary provide the status of construction of the Shining Hope for Communities (SHOFCO), Mabatini Ward - Hospital Ward Bridge in Mathare Constituency and explain why the contractor abandoned the site for about two months?
- (ii) Could the Cabinet Secretary also provide details of the contractor, explaining whether he or she has the capacity to undertake the works, and provide details of other similar works undertaken by the said contractor stating their location, nature and contract amounts; status of completion of each project; and, any other road construction project awarded to the contractor in Nairobi County, particularly in Mathare Constituency?
- (iii) What steps is the Ministry taking to ensure that the construction of the said bridge is completed within the set time frame with a view to ensure that the residents of Mabatini and Hospital Wards in Mathare Constituency access Thika Highway and Juja Roads through the bridge?

I thank you, Hon. Speaker.

Hon. Speaker: The Question will be replied to before the Departmental Committee on Transport, Public Works and Housing.

The next segment is the request for Statements. There is a request by the Member for Wajir East, Hon. Amin.

REQUEST FOR STATEMENT

COMMERCIALISATION OF WAJIR INTERNATIONAL AIRPORT

Hon. Rashid Kassim (Wajir East, WDM – K): Thank you, Hon. Speaker. Pursuant to the provisions of Standing Order No. 44 (2)(c), I rise to request a Statement from the Chairperson of the Departmental Committee on Transport, Public Works and Housing regarding the commercialisation of Wajir International Airport in Wajir County.

Wajir Airport was started in 1977 for security reasons to control and monitor air space along the Somalia border but, over the years, the airport was open to civilian and commercial aircrafts. Today, at least three aircrafts fly from Nairobi to Wajir on a daily basis. Further, civilian aircrafts fly from Somalia to Nairobi via Wajir International Airport. There is also a potential to transport meat and meat products to other countries, and in particular to Middle East Countries. The viability and optimisation of the said airport as a commercial transport hub is hampered by heavy presence of security personnel, especially the Kenya Defence Forces (KDF) who man the

entries, gates and its surrounding areas, thus hampering and slowing down the way of doing business on the said potential hub.

It is against this background that I seek a Statement from the Chairperson of the Departmental Committee on Transport, Public Works and Housing on the following:

1. Could the Chairperson explain what measures the Government has put in place to construct and develop the Wajir International Airport to the required standards for purposes of commercialisation transport; and
2. Could the Chairperson further explain what measures the Government has put in place to ensure that Wajir International Airport is run and managed appropriately by other entities and not the Kenya Defence Forces (KDF) whose front presence has hampered the way of doing business on the said potential airport?

Thank you, Hon. Speaker.

Hon. Speaker: Hon. Pkosing.

Hon. David Pkosing (Pokot South, JP): Hon. Speaker, that is a very good Statement. It is also weighty. Without anticipating debate, we can take two weeks as a committee but you have previously advised Members... Sometimes when we come with Statements, at the end of it, I will be reading the Statement. I cannot take supplementary questions. Maybe the Member has a reason why he is asking that Statement. You advised that we should have a more interactive session between the Cabinet Secretary and the Member. The best advice you have given is to go the Question way. If that was a Question, what I would have done under your direction is to bring the Cabinet Secretary and Hon. Amin. Then Hon. Amin, the Cabinet Secretary and KAA would have a very good interaction which might lead to a very good way forward that will satisfy his people. In terms of statements, the way I look at it is done. I will just bring the Statement and leave it there. I cannot take supplementary questions from the Member. However, since he chose that route, it will be in two weeks.

Hon. Speaker: Well, he has chosen the direction of a Request for a Statement. It is like somebody choosing how they wish to leave the earth; it can either be by firing squad or drowning in a river. So, you will be given a statement in two weeks, Hon. Amin, do you want to say something?

Hon. Rashid Kassim (Wajir East, WDM-K): I think on the procedure the Chairman is pursuing, I believe I will get prompt and reliable information regarding this Statement and that is quite appropriate. So, if you will allow, the Chairman of this committee can allow active interaction between us: the Cabinet Secretary, KAA and KDF for that matter. This is so that we can have an amicable solution and a way forward for manning the Wajir International Airport.

Hon. Speaker: You know the route you have chosen is for the Chairman to bring you a Statement from the Ministry. So, he is just explaining that had you gone the route of a Question, perhaps it would have been a lot better because then he would have called all those concerned, invite you and have some interaction. That is why he is saying, when he reads the Statement which you will be given... Remember, those functionaries are very happy writing us all manner of Statements. So, it will be brought here, the Chairman will read it and you may desire to ask some supplementary questions which the Chairman may not be privy to, yet if you had gone the route of a Question, they would have been there to hear your supplementary questions and respond to them accordingly. If you are not satisfied, the Chairman can even adjourn the meeting to another day so that they can bring a more satisfactory answer. Since you have gone this route for the time being, let us just be contended with what the Chairman is going to bring.

Hon. Rashid Kassim (Wajir East, WDM-K): Okay. Thank you.

Hon. Speaker: The next request is by the Member for Garissa Township.

FUEL CRISIS ACROSS THE COUNTRY

Hon. Aden Duale (Garissa Township, JP): Hon. Speaker, pursuant to the provisions of Standing Order 44(2)(c), I rise to request for a Statement from the Chairperson of the Departmental Committee on Energy, regarding fuel crisis/shortage across the country as a result of delayed subsidy payment to oil marketing companies.

Hon. Speaker, the fuel crisis we are facing today dates back to September 2021. The Energy and Petroleum Regulatory Authority (EPRA) under Section 101(y) of the Petroleum Act No. 2 of 2019, Legal Notice No. 196 of 2010, and Legal Notice No. 26 of 2012, on 14th September 2021, issued the maximum wholesale and retail petroleum that was effective from 15th September to 14th October 2021. The drastic increase led to public outcry as maximum wholesale and retail petroleum prices significantly rose to historic high pump prices. One litre of super petrol went up to Ksh147.75 in Mandera; Ksh144.15 in Moyale Town; Ksh145.34 in Elwak Town; Ksh143.19 in Kibish Town; and, Ksh134.72 in Nairobi and its environs.

Hon. Speaker, on 14th March 2022, EPRA increased the pump prices of petrol and diesel by Ksh5 per litre. Despite that, the Government maintained the margins of oil companies at zero meaning no profits for the companies. The cash flow for the Oil Marketing Companies (OMC) is seriously affected by incessant delays by the National Treasury to reimburse them under the subsidy programme thereby leading to hoarding the little fuel they still have in their reserves. EPRA blamed the delays in the disbursement of the fuel subsidy cash by the Ministry of Petroleum and the National Treasury. EPRA increased the pump prices of petrol and diesel by Ksh5 per litre on 14th March 2022.

Despite the prices increase, the Government maintained the margins of oil companies at zero meaning no profits for the companies. The cash flow for the Oil Marketing Companies (OMC) is seriously affected by incessant delays by the National Treasury to reimburse them under the subsidy programme thereby leading to hoarding the little fuel they still have in their reservoirs. The Oil Marketing Companies (OMC) facing a cash crunch are bypassing Kenya's independent petroleum dealers by exporting their stock to Rwanda, Tanzania, Uganda, and the Democratic Republic of Congo (DRC), where they are guaranteed instant cash on sales.

Hon. Speaker, it is on account of this background, that I seek a Statement from the Chairperson of the Departmental Committee on Energy on:

- (i) Could the Chairperson provide the total number of registered Oil Marketing Companies (OMC), petroleum dealers, and small oil dealers, their network distribution across the country, and percentage shares of the market in the country?
- (ii) Could the Chairperson provide the total amount of money collected under the Fuel Levy Fund from September 2021 to date?
- (iii) Could the Chairperson provide a breakdown of reimbursement of fuel levy fund per month from September 2021 to date and reimbursement due to be paid to the Oil Marketing Companies (OMC), petroleum dealers, and small oil dealers?
- (iv) Could the Chairperson explain the measures put in place by the Government to curb the fuel crisis in the country and also ensure that Kenyans are not affected as they are now in the streets and in all the petrol stations?

- (v) Could the Chairperson explain plans put in place by the Government to ensure that petroleum dealers make the current situation as short and as unrestrictive as possible?
- (vi) Could the Chairperson explain why the National Treasury had stalled the processing of the Petroleum Products (Taxes and Levies) (Amendment) Bill, 2021?
- (vii) Could the Chairperson explain the position of the Government on the inadequacy of fuel in the country and contingent measures put in place by the Government in the case of a pro-longed Russia-Ukraine crisis in our country?

Thank you, Hon. Speaker.

Hon. Speaker: Given these constant changes in the configuration of chairs of committees, I do not know who the Chairman of the Departmental Committee on Energy is.

(An Hon. Member spoke off record)

You are the vice-Chair even. I do not know. They change very quickly.

(Hon. Elisha Odhiambo raised his hand)

Even the Member for Gem is raising his hand. Is he also a vice-Chair?

(Loud consultations)

Are you the vice-Chair?

Hon (Ms.) Gladwell Cheruiyot (Baringo CWR, KANU): Yes, your Excellency. Sorry.

(Laughter)

I wish you well.

Yes, Hon. Speaker. I am the vice-Chair of the Departmental Committee on Energy. I know the crisis is here and affects everybody and because of that and on behalf of my Chair, the questions are many and the work that is supposed to be done is so rigorous. I request that we bring the answers on Tuesday next week considering the crisis.

Hon. Speaker: Hon. Pukose, two minutes max.

Hon. (Dr.) Robert Pukose (Endebess, JP): Hon. Speaker, the fuel crisis is actually a very serious thing affecting many Kenyans. As we are aware, every Kenyan is now wondering what is really happening and are looking upon this House to give direction.

The Committee needs to handle this urgently. I thank Hon. Duale for raising this issue. On Thursday last week, we passed the Supplementary Appropriation Bill and we expected the Principal Secretary for Petroleum, Mr. Kamau, to give a statement to the effect that everything will normalise by Wednesday. But when we pass by petrol stations, we find people moving around with jerrycans looking for fuel. This can be very hazardous because with jerrycans of fuel in the House, people might end up with accidents. It is something the Government needs to be serious about and move with speed. They should disclose where the money for subsidy is.

Thank you, Hon. Speaker.

Hon. Speaker: Member for Emuhaya, Hon. Omboko Milemba. *(Technical hitch)* There is something wrong with these microphones.

Hon. Omboko Milemba (Emuhaya, ANC): Thank you, Hon. Speaker, for this opportunity. Let me thank Hon. Duale for raising this matter.

This is extremely unprecedented. Even during the old times of President Moi, we did not see Kenyans queue like they are doing for fuel like people looking for water. The laws that govern how to carry and handle petrol do not include carrying such a substance in jerrycan. We are headed for a big mess. The vice-Chair, as she said, should bring an answer by Tuesday so that Kenyans know what is really happening with fuel.

Yesterday I watched a clip of one of the Principal Secretaries in that particular Ministry who seemed to say that there is something called panic buying which has caused such a huge shortage. That was such a casual answer that some people panicked because there was lack of fuel in a place around Eldoret and panic engulfed the entire country and that is who we can explain the shortage. That is very casual. We cannot blame panic buyers on the road with cars. So, we wonder how this panic buying is causing such a hullabaloo. When the Chair gets the answer, it should come out clearly to state the role the subsidy that was spared for fuel doing to cause this. What is the role of the war in Ukraine? I am a teacher of History and Government. I know that Russia is one of the largest producers of oil but we need to exactly clear how it is affecting Kenya.

Hon. Speaker: Member for Kikuyu.

Hon. Kimani Ichung'wah (Kikuyu, JP): Thank you, Hon. Speaker. I also rise to say a word or two on the fuel crisis.

I have seen a clip going round from the President of the neighbouring country, the Republic of Tanzania, her Excellency Madam Suluhu, where she asks politicians to explain to the people how the Russia/Ukraine war is affecting the price of fuel. But it is also good for us to explain to the people of Kenya that as much as there is an implication from the Ukraine/Russia war, as a House and as a country, we put safeguard measures against such eventualities. We created the Consumer Protection Fund with the Petroleum Development Fund which as we heard yesterday that the Ministry announced that they have already paid about Ksh8.2 billion to oil marketers to compensate them. The crisis in this country has emanated from Government's failure to pay oil marketing companies. When tax-payers' money is put in a fund, the National Treasury and the Ministry in charge cannot misappropriate that money. We have seen reports that have been tabled in this House by the Auditor-General that stipulate how money has been misappropriated from the Petroleum Development Fund to government agencies. We have also heard of a mysterious unnamed private entity that has benefitted from this money. Therefore, as we explain to Kenyans that the Russian/Ukraine war has had an effect, we must be truthful and honest to our people and tell them that we are in the problem we are in today because of failure by Government to ensure that the fund that has been put in place to protect consumers is not misused. It is misuse and misappropriation of these funds that has got us into this crisis. I ask as a House

Hon. Speaker: Member for Makueni.

Hon. Daniel Maanzo (Makueni, WDM-K): Thank you, Hon. Speaker, for giving me an opportunity to comment on this very important matter.

There has been a lot of trouble in the last four days. As it has been stated before, when Kenyans buy fuel in jerrycan and keep them in their houses, there is every danger and likelihood of fire being caused and lives being lost. Action should be taken urgently so that there is no panic buying and storage of fuel in that form. Under the Energy Regulations, fuel is carried in metallic containers and specified containers because of locking.

At the same time, the transport industry has been affected greatly especially the boda boda sector which serves Kenyans from all over the country. Eventually, the country has been inefficient

in that regard. We have also seen major traffic jams in petrol stations that have caused a lot of time wastage, delays and inconvenience to Kenyans.

The best way forward is for the Ministry to quickly issue a comprehensive statement even they present to Parliament on Tuesday so that Kenyans can know exactly what is happening and predict or be told how the problem is going to be sorted and how long it is going to take. When there is uncertainty, whatever was issued to the Press yesterday through a television interview did not look satisfactory. There is need for the Cabinet Secretary for Energy and the Principal Secretary to quickly issue a press statement...

Hon. Speaker: Hon. Sankok.

Hon. David ole Sankok (Nominated, JP): Thank you very much, Hon. Speaker, for giving me this opportunity to support this Statement by Hon. Duale. It has come at the right time when Kenyans are really suffering. We are in an emergency situation. I thank the Vice Chairperson of the Departmental Committee on Energy – I do not know why she is not the Chair – for giving us an assurance that she will bring the answer by Tuesday next week.

Hon. Speaker, Kenyans are lining up and carrying petroleum products in jerrican. Some of them may even smoke around these petrol stations which is dangerous. Yesterday, the PS for State Department of Petroleum citing panic buying was the most retrogressive answer I have heard from a top government official. This House should censure such public servants who are not aware of what is happening and the suffering of Kenyans. How can panic buying cause shortage? Does it mean that our car tanks have enlarged and they are now consuming more fuel?

In the same interview, the PS said that they have allocated Ksh34 billion to oil marketers and fuel will be made available soon yet in the same breath, he attributed the fuel shortage to the war between Russian and Ukraine. I do not know how the Ksh34 billion will stop the war in Ukraine for us to get fuel by Wednesday. Such casual answers from public servants are shameful.

Hon. Speaker, I saw this coming because of conflict of interest in business. The moment Rubis entered into the market, we knew such things will happen as taxes would now be diverted to private businesses, the way we have diverted Kenya Airways (KQ) funds to private...

(Hon. David ole Sankok's microphone went off)

Hon. Speaker: **Hon. Speaker:** Member for Funyula.

Hon. (Dr.) Wilberforce Oundo (Funyula, ODM): Thank you, Hon. Speaker. Indeed, it is a sad situation. This crisis ought to never have happened. It is an unnecessary mess. For this to have happened, it is symptomatic of an epitome of failed planning. Obviously, it became apparent that Russia was going to invade Ukraine as early as late December last year. Any serious planner should have planned on this.

Hon. Speaker, the cost of increasing fuel prices dates to sometime back when we introduced several taxes in this House. Those of us who oversaw and prosecuted the Bill and the Motion in this House are here today. When I grow up, I would wish to travel the road from Damascus so that I can turn from Saul to Paul. It is important that we must look at what we do in posterity and not just to please our masters, at that particular time, because masters can turn against you anytime. Kenyans continue to suffer because it was convenient for them then as they were the ones calling the shots. But now the coin has turned and the shoe has changed. We pity and sympathise with fellow Kenyans, *lakini tumezoea kuwa Wakenya; tutavumilia hali yetu.*

Hon. Speaker: Hon. Wangwe.

Hon. Emmanuel Wangwe (Navakholo, JP): Thank you, Hon. Speaker. Whereas I share with Kenyans the heavy situation of lack of petroleum products in the country, all of us should come together and think of what to do. Today, I wish to speak as someone who has been in the industry. At this moment, economists have to come back on the drawing table and think of how the country is going to manage itself.

Hon. Speaker, whereas we are addressing the current prices today, in the next reading, we forecast a situation where fuel prices are likely to go up, by as high as Ksh30 per litre. Will the cushion Fund that we appropriated sustain the country? This is a matter that we need to leave to the economists to rethink. Either for them to allow the forces of demand and supply to exist or cushion against the consumption.

Finally, as much the Russia/Ukraine war is a challenge, let the Government support and cushion Kenyans in general.

Hon. Speaker. I submit.

Hon. Speaker: We will leave it at that. There was no debate. This was to merely...

(Hon. Mbogo Ali raised his hand)

Is that a new Member who is raising his hand? No. It is not the Member for Gem. There is a Member who seats at the corner. Member for Kisauni, Hon. Mbogo Menza, let me hear your voice on this.

Hon. Mbogo Ali (Kisauni, WDM-K): Thank you, Hon. Speaker. I wish to contribute to this matter. I also wish to identify with my colleague Hon. Wangwe who we used to work together in the industry. I had made a request for a Statement on this matter before we went for recess. At that point in time, the Government owed 54 oil marketing companies Ksh35 billion. I had requested for a Statement because I knew this was going to happen, and it has happened.

The Kipevu Oil Storage Facility which is a government facility has enough fuel for the country. However, because of this cushion Fund that has been introduced, most oil companies cannot afford to take fuel from Kenya Pipeline Company (KPC) to their facilities because they need to raise invoices to the National Treasury which does not pay in time.

Other than that, there is also an issue of Value Added Tax (VAT). The moment you raise an invoice, the Kenya Revenue Authority (KRA) is on your case demanding you pay for VAT on time. Out of the 54 oil marketing companies, 47 are indigenous owned companies. Only 7 companies are multinationals which have the capacity and financial muscle to take this heat. But the 47 companies are at the verge of collapsing and very soon they will close shop. If you do not believe me, we have these small companies which own two or three petrol stations that have all closed down and most of the workers have been sent home because of lack of petroleum products in the market.

In addition, the margins have been squeezed. When these small companies buy fuel, they are only allowed a margin of Ksh2. How can Ksh2 cover the operating cost?

Hon. Speaker: Very well. The Vice Chair has already given an undertaking that she will bring a response to the Statement on Tuesday next week.

(Hon. Elisha Odhiambo spoke off record)

Member for Gem, this is not business. In Kiswahili, this is called *mazungumzo baada ya habari*.

(Laughter)

There used to be a programme on one of the TV stations that was known as *Gumzo Mtaani*. This is not business. Now let us go to business.

Next Order!

MOTION

APPROVAL OF THE MEDIATED COUNTY GOVERNMENTS ADDITIONAL ALLOCATION BILL

This Motion will be moved by the Vice Chairperson of the Mediation Committee. Who is the Vice Chairperson? Is it Hon. Makali Mulu?

Hon. Makali Mulu (Kitui Central, WDM-K): Thank you, Hon. Speaker. I am not the Vice Chairperson but a Member of the Mediation Committee. The Vice Chairperson, Hon. Kanini Kega, has requested that I stand in for him in moving this important Motion.

Hon. Speaker, I beg to move –

THAT, pursuant to the provisions of Article 113 (2) of the Constitution and Standing Order 150, this House adopts the Report of the Mediation Committee on the County Governments Additional Allocation Bill (Senate Bill No. 35 of 2021), laid on the Table of the House on Thursday, March 31, 2022, and approves the Mediated version of the County Governments Additional Allocation Bill (Senate Bill No. 35 of 2021).

The County Governments Grants Bill which is going to change the title provides for additional allocation to county governments for the Financial Year 2021/2022. These additional allocations to the counties are financed either from proceeds of loans and grants from development partners or the national Government share of revenue pursuant to Article 202(2) of the Constitution. This Bill came from the Senate to the National Assembly on Thursday, 2nd December 2021. The National Assembly passed the Bill with amendments. However, on 21st December 2021, the Senate rejected the amendments from the National Assembly and it resulted in the Bill being committed to a Mediation Committee pursuant to Article 113 of the Constitution. The Mediation Committee held four sittings to deliberate on the Bill. In one of the sittings, the Committee did stakeholder participation and met with the National Treasury, the Commission on Revenue Allocation, the Controller of Budget and the Council of Governors.

The Mediation Committee deliberated on the Bill and came up with an agreed or mediated version which is attached to this Report. Some of the key resolutions of the Mediation Committee include the title of the Bill changing from the County Grants Bill to the County Governments Additional Allocation Bill. This change of title expands the allocation to cover resources allocated to county governments from the national Government's share of revenue or proceeds of loans and grants from development partners. The objects of the Bill were enhanced to include a new object of additional resources from development partners in the form of loans and grants.

There is also an additional clause which provides for the National Treasury to table the agreements in the National Assembly and the Senate before inclusion in the Budget Policy Statement (BPS). The Bill has also been changed to be an annual Bill and the National Treasury will be submitting the Bill together with the Division of Revenue Bill and the County Allocation

of Revenue Bill. Lastly, the explanatory notes on Clause 4 of the Bill will be maintained to explain the schedules attached to the Bill.

The approval of this Bill will unlock Kshs39 billion additional allocations for the Financial Year 2021/2022 which the counties have not been able to access due to the lack of a legislative instrument for the facilitation of the transfer of these funds. These allocations are majorly financed by development partners such as the World Bank, the EU and Danish International Development Agency (DANIDA). They cover issues on health, agriculture, water and sanitation programmes which are very crucial to improved service delivery at the counties.

As I conclude, I would like to thank Members of the Budget and Appropriations Committee, more so Members of the Mediation Committee, for their insightful contributions in coming up with this Report and the Bill. I urge the House to approve the County Governments Additional Allocation Bill to facilitate the transfer of funds to the counties. Those Hon. Members who have checked the so called 411 must have seen the Council of Governors is already complaining and requesting the National Assembly to fast-track this Bill so that they access this Kshs39 billion which they are not able to access unless this Bill is passed.

A number of things came up during mediation. I want just to single one which I think is very important. In the process of discussing this Bill, there was an agreement between the representatives of the two Houses that, when these additional resources, loans and grants are provided by either development partners or the national Government, there seems to be a skewed allocation of resources to specific counties. Everybody was questioning the issue of equitable distribution of the resources. So, this is one of the areas which was very contentious. It is an area that meant the Senate takes so long to agree with us. As we move to the future, it will be important that we think of another Bill which will ensure that there is fairness in distribution as we distribute these additional resources to the counties. If you analyse the distribution, you will realise that there are some counties which do not get these resources unless it is clearly stated that they are for every county. I think this is an area we urge the Hon. Members on as we pass this Bill. As we move into the future, this is an area we need to consider.

Hon. Speaker, I also urge Members to really support these amendments we have agreed on. Both Houses have agreed. The faster we approve this Bill as a House, the better for the counties because they will be able to access the resources once the Bill is signed.

With those many remarks, I move and request Hon. Naisula Lesuuda to second and plead with the Members that we approve this Bill. Thank you, Hon. Speaker.

Hon. Speaker: Hon. Lesuuda.

Hon. (Ms.) Naisula Lesuuda (Samburu West, KANU): Thank you, Hon. Speaker, for giving me this opportunity to second this important Motion. Just as Hon. (Dr.) Makali has said, it is important. We need to fast-track it so that counties access the Kshs39 billion which is additional funds to the counties through grants.

When we sat with Members of the Senate who are part of the Mediation Committee, it was very easy to agree on the amendment that came from the National Assembly. The amendment was to change the title of the Bill so that it is not just limited to grants but also other additional funds that will be sourced from the national Government and development partners. The contentious issue was mostly whether we make this Bill an annual Bill or one that is just passed once. We agreed as a Committee that there would be no harm if it is an annual Bill that comes together with the Division of Revenue Bill and the County Allocation of Revenue Bill. It was noted that these additional funds will mostly go into agriculture, health and sanitation programmes which are very important in our counties. It is important to note that counties should be accountable. One of the

issues that was raised on why it should be an annual Bill is to ensure that our counties are accountable for the funds they are given as additional resources. That is so that the services can reach people at the county level.

As I conclude, it was also important to note what Hon. Makali has said. That Members felt that there has not been fairness in allocating these additional funds, especially the grants, to the counties. It is important that the National Treasury and the national Government get a way of ensuring that there is fairness so that it is not always the same counties that get these additional funds. Every other time you see the grants or additional funds that have been given, it is to specific counties while we know that the counties have different needs. It is important we look at fairness and accountability of these funds once they go to counties.

I second.

(Question proposed)

Hon. Speaker: Hon. Sankok, do you want to contribute? If I mistook you, do not mind. I can get the Member for Funyula.

Hon. (Dr.) Wilberforce Oundo (Funyula, ODM): Thank you, Hon. Speaker. Hon. Sankok is exceptionally quiet today; something must be seriously wrong with his system. I actually noticed this in the morning when I saw him; he did not look like the vibrant Sankok we know.

Indeed, it is a good thing that the mediation process between the National Assembly and the Senate has ended amicably. I attended one and I felt sorry because of the rigidity and animosity that was exhibited by the Senators towards the Members of the National Assembly. It was uncomfortable and uncalled for. I am happy to know that this time round, there was unanimity on many issues, and that the two parties have agreed. The issue of the running of county governments, equitable share, conditional grants and its impact on the ground is a debate that seems not to go away. That is a debate that we need to find a way of mainstreaming into our discussions anytime we are dealing with the Division of Revenue Bill. As we pass this special grants Bill, we need to put into place measures to ensure that there is value for money. The national Government shares revenue to county governments each year, but if you go to the ground, what you see is a depressing state of affairs. In many counties, the health services have collapsed, people travel long distances to look for water and support towards the agricultural sector, and food production is minimal. So, we keep asking many questions. Where does the money go to? Who oversees the money?

Each year other than this year, there have been conditional grants to the counties to fund polytechnics or vocational training centres, build county headquarters and upgrade municipal roads and services, yet the lot and type of services being rendered remain the same and are of no value to the people of Kenya. We need to ask several institutions in this country to take their work seriously. County assemblies are supposed to oversee county governments. It is sad that the High Court declared as unconstitutional the mandatory basic academic qualifications for one to be a Member of the County Assembly (MCA). As long as we continue to have no minimum academic requirements for MCAs, we are not going to achieve the objectives of devolution that were envisaged by the fathers of devolution like the Rt. Hon. Raila Amollo Odinga. In the fullness of time, we need to ask the courts of law to descend from their ivory towers, go to the ground and sit in the county assemblies to see the damage that is being done to devolution because of not having a serious body to oversee the activities of county governments.

Another level that is supposed to oversee the county governments so that there is value for money is the Senate. We know that the Senate is at the national level and only deals with audited

accounts. It is like a mortician, so to speak, because it deals with the audited accounts at the tail end. However, nothing much comes out of it. I have never seen the Senate reprimand any particular governor or recommend to bar any governor from contesting any seat because of poor service delivery. We hope that something will come out of it. Devolution is the way to go and we must protect it.

I support the Report.

Thank you.

Hon. Speaker: Hon. Wangwe.

Hon. Emmanuel Wangwe (Navakholo, JP): Thank you, Hon. Speaker. I wish to support the Report on the mediated version of the County Government Additional Allocation Bill (Senate Bill No. 35 of 2021). The main issue here is allowing the flow of funds. Once the funds have been allocated in the budget, they should flow as quickly as possible. What is obstructing the fund is a small issue. Grants that come from either the Government or from foreign governments should be allocated properly so that they support the main budget that would have been allocated through the Division of Revenue Allocation Bill to the county governments. Key on this is the ruling by the High Court on how the matter is supposed to be treated through case No. 252, which gave the Senate the power to originate this Bill. In completion of the passage of this Bill, it will give a legal framework for disbursement of the conditional grants, especially the Ksh39 billion that is meant for various projects.

There is also the small issue of the title. During the mediation, it was not a big issue that the title could obstruct the flow of funds. It is a mere presentation on how you want to call a title. I, therefore, want to thank the Mediation Committee because they were quick to accept what was possible and move on, at least for the county governments to access the funds. When you look at money given to us by donors, it is always time-bound. As we continue to debate on this, let us be considerate to appreciate the Mediation Committee. As long as they have given us this Report and we approve it, it will resolve the issue of the timeline, which is crucial for donors. Donors would not want to see that they give us money then we keep it and do not allow its expenditure by various counties.

There is also need to come up with an alternative way of disbursement of funds, since the absorption rate has been low due to delays in disbursement. Whereas we have 47 counties, they do their own budgets. We do not do the budgets for the 47 counties. When we hold money in Nairobi, it delays their absorption of funds.

Finally, I want to look at the conditional grants that have diverse conditions. They may need to be reviewed annually or otherwise depending on the nature of agreements that have been entered into. The Mediation Committee looked at this from a National Assembly perspective and from the Senate perspective. The Senate felt that they should be reviewing this Bill annually. Instead of it being a perpetual Bill, they want the Bill to be looked at by the two Houses each year. This was not a big issue, and the Mediation Committee has confirmed ceding to that position. That is a good thing. Anything that could help the flow of funds from Nairobi to counties was looked into by the Mediation Committee and allowed to help us move forward. I want to ask my colleagues to vote for this mediated version of the Bill so that we do not further obstruct the flow of funds to the counties. However, we must caution counties that the money that is going to their various accounts should not be money that they tend to assume, and instead of putting... They may want to double the amount. For example, the money that was meant for fighting the locust menace, some counties went to their county vote heads and voted for their own money. Counties

should be accountable and prove financial prudence for the Kenyan Government to move forward. I submit.

Thank you.

Hon. Speaker: Member for Seme.

Hon. (Dr.) James Nyikal (Seme, ODM): Thank you, Hon. Speaker, for giving me the opportunity to contribute to this Motion. I rise to support the report on the mediated version of the County Governments Additional Allocation Bill. I support it because basically, it increases the flow of funds to county governments. That is something we always support in all forms and ways. Sometimes we disagree politically, but we are in agreement that the funds should be sent to the counties.

This Bill gives room for additional funding to projects that we think should be supported by funds from the national Government like in the health sector, although some of the funds have not been used well. For example, some of funds in the Managed Equipment Services (MES) have been used for education services. Therefore, giving additional conditional grants is useful.

Secondly, this Bill makes provision for county governments to receive grants and loans that come from our development partners that do not go directly in the Division of Revenue Bill. That is important because support from development partners should be seen to support counties. In fact, that is where most of these funds should be channelled to. That is a good thing. Moreover, this Bill has been expanded to provide that there can be agreements between counties and development partners, although such agreements have to pass through Parliament. That is an important thing. It is also important that this is not a one-off Bill, so that then from time to time, we will consider a Bill of this nature. As indicated in the Bill, this will be an annual Bill that will be introduced together with the Division of Revenue Bill. It, therefore, means that every year, during or after passing the Division of Revenue Bill, we will look at areas that need support either from the national government or from development partners, and allocate more funds. That way we will not have delays in the disbursement of the funds.

The Bill also provides for equity. If you look at it carefully, we can see the amounts of money counties will receive on top of what they have been allocated through the Division of Revenue Bill. It also belies a very important point; that when we consider the Division of Revenue Bill after approving the Budget Policy Statement (BPS), it means that somehow we do not have enough information on what the counties need. That is the only way we would quickly find out that there are areas not catered for, so that we cater for them. That is a good thing. In my view, and I have said this before, it speaks to the functionality of the Intergovernmental Budget and Economic Council (IBEC). It is at that point where discussions between the national and county governments, and the Commission on Revenue Allocation (CRA) take place. That is the point at which it should be clear which areas need to be supported, way in advance before we consider the BPS and the Division of Revenue Bill. In the long run, if we get that right, we may not need this Bill. Such areas will be taken care of in the Division of Revenue Bill. As we progress, devolution is work in progress. We learn more and more. If we have this Bill annually, it will show us direction on the additional support that counties need.

With those remarks, I support the report.

Hon. Speaker: Member for Tigania West.

Hon. John Mutunga (Tigania West, JP): Thank you, Hon. Speaker, for the opportunity to also contribute to this Report. Two of the main sources of funding for development are both loans and grants. Many countries committed themselves some time back to allocate 0.7 per cent of their national budget to the development of developing countries. That is why we have donor funding,

which sometimes is in the form of grants. If the commitment was adhered to, we would have a lot of money. As fortunes and the global economy changes, the allocation has been decreasing. Therefore, the level of commitment has not been as it was post-1945 after the World War II.

This Bill guides the process through which we should allocate money to counties. There are many projects in this country which need a bit of guidance. Most of these projects are directly under county governments. The reason is that most donors would prefer working directly with beneficiaries. And in most cases, you realise that beneficiaries are at the local level. Therefore, there is need for a mechanism to have the provided resources reach the beneficiaries. The list of the projects in this particular arrangement mainly fall under the productive sectors. The productive sectors negotiate directly with donors to get grants and loans. When they get this money, they majorly use it for development purposes. The Bill guides the process. For this financial year, the guidelines have been given carefully listed. As per the mediation report, the guidelines are sound and credible in terms of how the money is going to be disbursed to different county governments.

One thing I would like to bring to the attention of Members of Parliament is that over time, there has not been participation by Members of Parliament (MPs) in determining priority of what is supposed to be done with donor funds at the county level. In most cases, MPs are avoided. This is because the funds go directly to counties. We are not part and parcel of the process of choosing priority projects. There should be a provision in this legislation that allows us to participate or partner in these development projects. It is an issue that needs to be debated in this House. The money is from the national Government and does not necessarily belong to county governments. It is recognised as such because of the demands of donors. They demand that their money is sent directly from mother ministries to beneficiaries.

The Bill also outlines the processes that are supposed to be used to guide the management of these resources. You realise that a Ministry like that of Agriculture, which does not have a lot of allocation in the national Budget, has a lot of projects funded directly by donors. It is important for us to realise that some of the functions of the Ministry are key, and they need to be funded by the Exchequer. I have in mind a function like research for development. Donors may not fund research for your own kind of thought-through development. Donors fund research that contribute to their initiatives within a country. It is, therefore, very important for us to fund our research centres with money from the Exchequer. But you realise that the situation in Kenya is that most of research work is funded by donors. This is always within the provisions of the project document. During project designs, some of these things are articulated and, therefore, are captured as such. I would like to propose that the Government should look at that fundamental area so that we can conduct research for development based on our own perception and understanding of development, and not necessarily rely on donor-based research for development, which is problematic in approach, and limited in scope in terms of developing the country.

Hon. Speaker, I support adoption of the Report.

Hon. Speaker: Member for Makueni.

Hon. Daniel Maanzo (Makueni, WDM-K): Thank you, Hon. Speaker. I rise to support the Motion. I want to agree with Hon. Mutunga that a lot of times, donors want to deal directly with county governments. Devolution is one of the most important phenomena of our Constitution. There are a lot of expectations from Kenyans that devolution will take development to the grassroots level. Unfortunately, that is not what has happened. Up to now, after about 10 years of devolution in Kenya, averagely Ksh80 billion has been allocated to every county. Unfortunately, while only about Ksh1 billion has been sent to each constituency through the NG-CDF in the last

10 years, you will see a big difference between what has been funded through NG-CDF and what the county governments have achieved.

Hon. Speaker, that is how the foreign donors came in to directly give more funds to the counties other than the normal funding that we do through the national Government and the division of revenue. Quite a number of projects go on in different counties. They are funded by different donors according to the negotiations by different county governments. In the case of Makeni, we have a food processing plant which, at first, was funded by the county government with Ksh3billion. When they were buying the processing equipment, I am aware that the European Union (EU) gave them an additional Ksh100 million or so. Despite that funding, that particular plant has never taken off, and it has not assisted the farmers as it was intended, yet the county government was assisted by international organisations.

Similarly, the United States Agency for International Development (USAID) constructed a milk processing plant at Kathonzi Sub County. However, it did not take off as it was expected, although there was additional funding like the one we are discussing now. A plant to process green grams was put up in Makindu and again, up to today, nothing much has come out of it. What am I trying to say? These funds went to Makeni County. They were supposed to serve the people and devolution purpose. The projects were funded by the county government and international organisations. The question that then arises is: How then do you control the funding of these extra monies into the counties, and how do you account for it? When the money was allocated to different counties for the first time, especially the monies for the improvement of the environment, we did not see any serious project there except small-time projects. The environment now is very important because of climate change, yet environmental programs are implemented by the counties. A lot of donors come in to do these particular projects, especially tree planting and other initiatives, whereby the monies were not accounted for properly in the past.

When we come up with this legislation, what will be the role of the Senate? How will the Senate monitor this? The work of the Senate is to pool monies from the national Government in relation to devolution and go out to the counties to serve the people there, supplement or improve what has not been sufficiently covered by the normal monies which are allocated. This law will improve this. We will have more accountability. Someone from the Auditor-General's office will now be able to follow up the projects. We really need to synchronise how the national Government funds projects. We should bear in mind that we borrow money which comes into the Budget, and then we have these grants. Some of these grants are conditional grants which go to the counties, and they are not accounted for properly.

I beg to support the Motion and urge Members to support it so that we can live the dream of devolution, which is in our Constitution.

I thank you, Hon. Speaker.

Hon. Speaker: Member for Gichugu.

Hon. Gichimu Githinji (Gichugu, JP): Thank you, Hon. Speaker. I rise to support the Motion on the Approval of the Mediated Version of the County Governments Additional Allocation Bill (Senate Bill No. 35 of 2021).

From the grants that have been given, I note that Kirinyaga County – where I come from – will benefit with Ksh297 million from the total conditional grants for the national Government revenue; with an additional conditional grant of leasing of medical equipment of Ksh153,297 million, which is given across all the counties. As one of my colleagues has contributed here and said, these conditional grants ought to have some connection with the Members of Parliament, so that we can see where we can also partner with other sources, incomes or the monies that are

usually allocated to the constituencies. This is because these funds are supposed to also take care of the interest of our constituents because they fall under the counties.

As a Member of Parliament and a resident of Kirinyaga County, I have also noted that some of these conditional grants take time to be implemented. The county governments take their sweet time before they implement projects. Sometimes they are also used for political expediency. There are no clear oversight structures that are usually laid out on how to spend this money. When these projects are being implemented, the county governments should clearly indicate that they do not emanate from the normal budgetary allocations. They should always be pegged and clearly marked as donor funds so that people can differentiate between them and what comes from their taxes.

The projects that are implemented by the national Government using the donor funds are done in a very straight and effective way. For example, we have the Kerugoya-Kutus Bulk Water Project, which is also connected with the sewerage system which is being implemented by the national Government using donor funds. That project has really been fast-tracked. However, other projects that are implemented through the conditional grants to the county government lag behind. As legislators, we should think through how these conditional grants from the national Government revenue should be implemented. We ought to have legislation whereby we have a stake. We should not necessarily control the funds, but follow up to know that they have been implemented. We, as legislators, are also involved in the allocation of funds.

I beg to support the Motion. I rest my contribution.

Thank you, Hon. Speaker.

(Hon. David ole Sankok spoke off record)

Hon. Speaker: Very well. There being no other Member to contribute, I call upon the Mover to reply. You cannot be given two opportunities to contribute to one Motion. We gave Hon. Sankok a chance but he did not...

Hon. Makali Mulu (Kitui Central, WDM – K): Thank you very much, Hon. Temporary Deputy Speaker. I want to take this opportunity to thank Hon. Members who have contributed to this important Motion. As the National Assembly, we have listened to what the Members have said. The money will go to the Council of Governors (CoG). Once they get it, they should address some of the issues which were raised by the Members here on accountability and fair distribution of the resources in the county.

Once this Bill is assented to, they will receive Ksh39 billion. They must make sure that Kenyans get value for money by providing services and goods so that we can improve the living standards of our people.

With those many remarks, Hon. Speaker, I reply.

Hon. Speaker: Very well. Hon. Members, for obvious reasons, we will defer putting of the Question and move to the next Order.

(Putting of the Question deferred)

BILL

Second Reading

THE ELECTIONS (AMENDMENT) BILL

(Hon. Amos Kimunya on 30.3.2022)

(Resumption of Debate interrupted on 31.3.2022)

Hon. Speaker: The Bill was moved, seconded and question proposed, so it is time for debate.

Hon. Murugara.

Hon. George Gitonga (Tharaka, DP): Thank you very much, Hon. Speaker. I rise to support the Bill proposing various amendments to the Elections Act. As a member of the Departmental Committee on Justice and Legal Affairs, I confirm that we sat and went through this Bill. We confirmed that in spite of the fact that the election cycle has already kicked off, there are pertinent provisions in this Bill that we can apply in the coming election. We have made a provision that the commencement date of the amended law will be the date of gazette. The reason I say so is because there is clamour in the country that elections have to be free and fair. Everybody is crying over this. Let us have credible elections where a loser is going to concede, and the winner is going to be applauded. We do not wish to have tugs of war whether on the streets or in the courts regarding elections, especially where it is contended that those elections are flawed.

The amendments are proposed principally by the IEBC. The main purpose is to ensure that decisions of the court which have been coming out from time to time with regard to how we have conducted elections in the past are adhered to and anchored in statute law. This is one reason why I say these are good proposals. We should move and amend the laws as proposed.

The Departmental Committee on Justice and Legal Affairs has also come up with proposals to make further amendments, and I am in total concurrence with those proposals because they are justified. There is justification to propose that we can make the proposed amendments in the Bill better so that Kenyans have the assurance that we have a good election law in place. Kenyans should be assured that the elections we are just about to conduct will be credible, fair, just and justifiable.

Let me make a few comments on the further proposed amendments by the Committee. The first one is that we are proposing that any Kenyan who goes to a polling station will be at liberty to vote using either an ID card or a passport. The law says a passport but having considered the word 'passport' alone, we know there are many Kenyans with expired passports. An expired passport is not a passport in law, and it cannot be used anywhere. Even banks would not accept it. This is why we have proposed that one will have to use a valid passport; one that is current, acceptable in law and can be used for all purposes, such as banking and voting.

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

*[The Temporary Deputy Speaker
(Hon. Christopher Omulele) took the Chair]*

The law provides that voter registration cannot continue until a by-election is conducted. However, we noted that that closure should apply only to the constituency where there is a by-election. The rest of the constituencies in the country are not affected by a by-election in one constituency. That limitation affects the rights of Kenyans. We have also noted that when it comes

to voter transfer, there are many limitations to the effect that one ought to have lived or carried out business in the new constituency for at least six months. We found that to be limiting to Kenyans. Let Kenyans be able to move at any time they want from whatever constituency to wherever they want to go. Let them vote for whoever they want. Sometimes an election is similar to religion. In Kenya, we have freedom of religion through the freedom of association. You can practice your religion without any hindrances. When it comes to elections too, let Kenyans choose whoever they want to vote for, wherever they want to do it. There is no harm in a Kenyan citizen in Garissa choosing to come to Tharaka to vote for me. We do not have to put any limitations, such as having lived there for at least six months or whatever period. There are a raft of other amendments being proposed which, in my view, are good proposals, and we should carry them so that we make the Elections Act good and useful to Kenyans.

With those remarks, I support.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Nyenze Edith.

Hon. (Ms.) Edith Nyenze (Kitui West, WDM-K): Thank you, Hon. Temporary Deputy Speaker. I do not wish to speak to this Bill, but to the next one.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Very well.

Hon. Cheruiyot Jesire, Member for Baringo.

Hon. Gladwell Cheruiyot (Baringo, KANU): Thank you, Hon. Temporary Deputy Speaker. Sorry, I was consulting. I am not comfortable with bringing a new election law at this time. I do not know the shortcoming in the current Act that makes us to consider this Bill at this time. I am not sure if we need this law now. I speak my mind. When I perused the Bill, I realised that one of the amendments proposed by the IEBC is that the presiding officer will become the final person in transmitting results from a polling station to the national tallying centre. I do not know if this Bill serves us well now. I come from a school of independent opinion. I do not feel that we should really struggle at this time, when more than a quarter of Members are on the ground campaigning for nominations. The Bill may not carry the opinion of the majority of Members. As a person who is going to go through these elections, I oppose the Bill. I am not supporting it. I am not supporting any amendment until otherwise stated. But for now, I am not supporting any amendment in the current Bill.

Thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Christopher Omulele): The Hon. Chachu Ganya.

Hon. Chachu Ganya (North Horr, FAP): Hon., Temporary Deputy Speaker, I stand to support the amendments to this Bill by the Committee.

While it may be too late in the day, if it will add value to our electioneering period or the elections that are supposed to happen in August, I do not see it doing any harm. It has undergone the due process. I am sure that the relevant Committee of this House has done the necessary scrutiny of the Bill and conducted public participation as well. Because of that, it is the tradition of this House to support the work done by our Departmental Committees if we feel that they have done their work well.

In particular, I support this Bill because it allows Kenyans with valid passports or identity cards to vote wherever they are supposed to vote in a polling station of their choice. In the past, we had to have a voter's card to do so, which was hard to come by sometimes. But use of the identity card is the way to go and that is the way it is done in many other jurisdictions. An identity card is sufficient for one to be enabled to vote.

I have also listed the other amendments that the Mover of the Bill proposes, and as far as I am concerned, they are appropriate. For that reason, I support the Bill.

Thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Christopher Omulele): The Hon. Oundo, Member for Funyula.

Hon. (Dr.) Wilberforce Oundo (Funyula, ODM): Thank you, Hon. Temporary Deputy Speaker. Any amendment to the elections laws at this particular time needs to be looked at very carefully to ensure that it does not disenfranchise or harm any particular participant; more so those contesting any elective post. It is important that we take a keen eye. A person like my friend, hon. Sankok can afford to look elsewhere because he is not affected in any way.

The Elections Laws (Amendment) Bill (National Assembly Bill No.3 of 2022) basically looks to tidy up some definitions and changes in terminology that run throughout. For example, instead of the nomination that we take our nomination papers to the IEBC before elections, we are now looking at registration of a candidate. The vogue term now doing rounds in most countries at the party level is normally party primaries. Probably at the opportune time in the Committee of the whole House, instead of definition of nomination given in Clause 2 of the Bill, we could look at party primaries and expand that definition so that we put in place what we talked about in the Political Parties Bill so that we synchronise everything.

Most of these amendments are basically issues of terminologies. However, I want to spend a little time to look at Clause 20, which seeks to amend Section 39 of the Elections Act. It gives a systematic chronology of the process of transmitting results from the polling centre or polling station all the way to the national tallying centre, and specifically deals with the presidential election. Due to the clout and clamour of the Office of the President, and being the symbol of unity of the Republic of Kenya, and coming from the fact that quite a number of key functions are retained in the national Government, the Office of the President is becoming a hotly contested Office. Therefore, whoever ends up being the winner of that Office needs to be somebody who has been elected in the most democratic manner in a free and fair election.

Looking at the past elections under the new Constitution 2010, they have all ended up in a petition in the Supreme Court. The Supreme Court made a ruling in the 2013 election, even though they faulted the process. In 2017, a ruling was made and the presidential elections were nullified purely on the basis of transmission of the election results. We believe that the IEBC and the Departmental Committee on Justice and Legal Affairs have had a sober and in-depth review of these provisions of Clause 20 to ensure that the process is credible and it is as timely as it can be.

If we look at the way the country is prepared, we look at the constituency level. It might be important that the collated results at the constituency level ought to be the results to be transmitted at the national tallying centre so that we are so sure and avoid too much in the system. I find it extremely difficult to require that, that person must be physically present to deliver the results. All of us know that unless you are flying, travelling all the way from Mandera, El Wak or from the far end takes several days. That is why you find quite a number of our colleagues from North Eastern rarely go to their constituencies. They run their constituency from Eastleigh.

(An Hon. Member spoke off record)

We Fatuma wacha!

Therefore, it is important that we re-look at this particular point very clearly to avoid a situation whereby the declaration of the presidential result will be unnecessarily delayed simply because of transport challenges and this kind of thing.

Hon. (Ms.) Fatuma Gedi (Wajir CWR, PDR): On a point of order, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Just hold on, Hon. Oundo. The Hon. Gedi, what is out of order?

Hon. (Ms.) Fatuma Gedi (Wajir CWR, PDR): Hon. Temporary Deputy Speaker, there are some utterances that cannot go unchallenged. Is the Hon. Member in order to say that North Eastern MPs run their constituencies from Eastleigh, when he knows that the Members of this House go to their constituencies, I included? Can he substantiate and prove or withdraw and apologise; or can he exclude me? I hosted him in my constituency.

The Temporary Deputy Speaker (Hon. Christopher Omulele): The Hon. Gedi, you have made your point.

Hon. (Ms.) Fatuma Gedi (Wajir CWR, PDR): I hosted him in my constituency and he knows the work I have done for my people, including all the MPs from North Eastern who work for their people. They do not operate...

The Temporary Deputy Speaker (Hon. Christopher Omulele): Allow the Temporary Deputy Speaker to deal with it now. You have made your point.

The Hon. Oundo, that was absolutely uncalled for. Please, withdraw it and apologise. They represent those constituencies. Unless you have substance, the Hon. Oundo, do not cast aspersions on how other Members run their constituencies. These are elected Members of this House.

Hon. (Dr.) Wilberforce Oundo (Funyula, ODM): Hon. Temporary Deputy Speaker, in the interest of national unity and for the benefit of our colleagues from that region, I unreservedly withdraw and apologise. There was no harm meant. It was a pun.

As I was saying, some areas are far flung. It takes a long time to travel to the national tallying centre, which presumably will be Nairobi. Waiting for the physical appearance of the presiding officer or the returning officer will delay the announcement of the proclamation of the results. We must find a way where we can expeditiously return the forms to the national tallying centre so that we are able to declare the winner of a presidential election. Delaying declaring presidential election results brings a lot of anxiety to the country and to the supporters, and is a precursor for post-election violence.

The second issue I need to look at is Clause 21(2), which proposes that the Commission shall make regulations for the better carrying into effect the provisions of this Section. We have less than five months to elections. Any regulations made by the Commission must be approved by this Parliament through the Committee on Delegated Legislation. I am at pain to understand how that is possible and how it will be done so that we actualise the amendments that we have made here. Is it that we are going to go into an election whereby the Act, as amended, will not be operational for lack of regulations? How are we going to navigate through this “minefield”? I hope the amendments being proposed by the Departmental Committee on Justice and Legal Affairs have dealt with this matter to ensure that we deal with it at a particular time.

Clause 22(1)(a) on Section 77 says that an electoral dispute under sub-section 1 shall be lodged with the Commission within 48 hours. For any claim or appeal to be heard, it must be presented with evidence. I am at pain to understand how one can collect evidence and lodge a complaint within 48 hours after the so-called “party registration process.” Indeed, this is a matter that needs to be opened up. It is critical because this could be the last option one has before his name appears on the ballot paper. It is important that we provide for extension of time to allow aggrieved persons time to gather adequate evidence to ensure that whatever appeal they lodge is of some merit and can withstand a judicial process.

Finally, in Clause 23, they have made a capping to the effect that any appeal and petition arising out of an election for member of county assembly will end at the High Court. I am not so sure that this is really in the best interest of the litigants or it is to avoid unnecessary wastage of the court's time and moment. However, indeed, we should allow all petitions maximum latitude. Complaints about county assembly seats are as important as complaints about other elective seats because the county assemblies play a very important role in devolution. Appeals about county assembly elections should be allowed to go all the way to the Court of Appeal, just like appeals about National Assembly and Senatorial elections. All of us are interested in having credible and fair elections. Any attempt to do the same is most welcome. We should never introduce bottlenecks in the election process. That will avoid a situation where people would feel aggrieved.

With those few remarks, I support.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Mutunga, Member for Tigania West.

Hon. John Mutunga (Tigania West, JP): Thank you, Hon. Temporary Deputy Speaker, for giving me an opportunity to contribute to the Elections (Amendment) Bill of 2022. Changes in circumstances warrant that we revise the rules of the game. It is coming at the right time and it is important that we do appropriate revision.

The credibility of an election is very important. Therefore, we need to guide elections very well. It is a very expensive affair. Discontent can bring a lot of problems. It is important for us to guide each election process. For the IEBC to have proposed these amendments, they must have, among other things, realised that there is some mischief that needs to be cured before the general elections. That is why it is satisfying to understand that this Bill will be assented into law before the general elections.

Further amendments by the Committee inform us that this Bill has been properly looked into. The Committee has looked at the Bill with its membership bearing in mind the fact that they will be affected by it just like any other person who will be vying for any seat in this country. Therefore, the Members of the Committee have given us the comfort that the Bill is in good shape and it will support everyone. It complies with the general requirements of ensuring integrity of the election process, the integrity of the conveyance system and the integrity of the management of the election itself. The proposal to use the identity card and the passport, and not the Huduma Namba, is important because many people have not received their Huduma Namba. Understandably, the Huduma Namba is intended to integrate the many national documents into one. However, given that many Kenyans are yet to receive their Huduma Namba, it is considered appropriate to use the National Identity Card or Kenyan Passport that has not expired.

Hon. Temporary Deputy Speaker, the provision on transfer of votes from one part of the county to another, and the one that says people should not register in places they have not been living for six months was not in good faith. People change their polling stations based on various circumstances, including convictions, interests and many other issues. People can even change their polling stations at the very last minute. We support this Bill to cure that mischief to enable voters to register where they feel is best for them and where they feel they will have the best satisfaction in as far as voting is concerned.

Having said so, I note that this law is made in very good faith. It is, therefore, very good for us to support this legislation to come into being within the shortest time possible.

I support.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Member for Makueni, Hon. Maanzo Dan.

Hon. Daniel Maanzo (Makueni, WDM-K): I thank you for giving me an opportunity to discuss this very important Bill. An election law is very sensitive. When I looked at this Amendment Bill and the existing Act, I came to the conclusion that, although the amendments have been proposed by the IEBC, it could be a case of over-legislation on matters which have already been settled. These are matters that have been in practice since 2011 and have been useful.

The only new useful thing I have seen is on county election petitions – the provision that the High Court becomes the final court in determination of county election matters so that they do not bother the Court of Appeal and the Supreme Court. That is an improvement because there was no law limiting that aspect. An MCA could petition all the way to the Supreme Court and unnecessarily take a lot of the court's time. That could be an improvement. Although the Departmental Committee on Justice and Legal Affairs is unanimous that this is a good law, there is a lot of repetition. We have to bear in mind the political parties law that we passed in this House recently, which was sent to the Senate for their concurrence. This Bill will also follow the same process. So, I am wondering whether we have enough time to debate and pass this Bill here and then send it to the Senate for their approval in the midst of political party nominations. The Senate may approve it with amendments and the Bill may end up being committed to a Mediation Committee of the two Houses. Will we be able to pass this Bill and have it signed by the President before we adjourn *sine die*? If the process was to be expedited and have all this achieved, it would mean that there is a little bit of interest in the enactment of this law.

This Bill has tried to reiterate certain things. It is worth noting that Section 83 of the Elections Act of 2011, which deals with nullification of an election, was declared unconstitutional in the Katiba Institute case. Therefore, some suggestions have been made in line with that unconstitutionality aspect. Probably, there is a proposal to improve the law for subsequent elections, hence, necessitating this Amendment Bill. I am just wondering why it has taken so long for the Bill to arrive in the House. How do we synchronise this Bill with the new Political Parties (Amendment) Bill and, more so, with regard to the new proposed definitions of “nomination” and “registration of candidate”? They mean one and the same thing. In fact, right now, political parties are in the process of preparing for nominations. My political party, the Wiper Democratic Movement, had meetings today in relation to the same. Tomorrow, we will meet all the candidates who want to participate in the nomination process. So, the process has begun. The nominations will start on 9th of this month. I believe the various political parties, including ODM – which is a vibrant political party whose nomination ticket is highly coveted compared to that of the UDA – are preparing to conduct their nominations. How do we halt the practice that is currently working in favour of something that is work in progress? Although this amendment came from the IEBC, how do we make sure that the current law is used meaningfully now? The new law will be used during subsequent elections and not during the coming elections. If it moves fast through the legislative process and catches up with the coming elections, probably some of its information and practice will be useful. I participated in the last two presidential election petitions as an Advocate of the High Court of Kenya. The big problem with the second petition, which was successful, was revealing information contained in the IEBC servers as ordered by the Supreme Court. The information was never revealed.

What is being introduced in this law is that a presiding officer at a polling station will be the final determinant of the total sum of the electoral count of that polling station and he or she will immediately wire it to the tallying centre. We have given so much power to the wrong person – the presiding officer. The right person is the returning officer of a particular constituency. Within a particular constituency, it is easy to get the total vote count and hold the returning officer

accountable. We are now making the presiding officer accountable. If you sue, it means you are going to include the presiding officer in the suit. That will bring in a lot of work. The IEBC did not think through clearly on this one. Our Departmental Committee on Justice and Legal Affairs (JLAC) did not think through what it is and yet, we have a lot of election practitioners there, including my good friends Hon. Kaluma and T.J. Kajwang'. They understand this very well. This will increase the number of people you will sue because the returning officer is one of the determinants. Suppose the returning officer wires the wrong information. Bearing in mind the magnitude of an election, if we have several errors planned in many polling stations across the country, even the Supreme Court will have difficulties determining who won the election. That is a recipe for chaos.

During the Committee of the whole House, we must clean up this law. We must be practical and systematic so that we do not end up with a law that is impossible to implement. We have only 120 days to the next general elections to be held on 9th August. This could give us a challenge. Proper justification was not given by the IEBC. I am one of the MPs who want the IEBC to function well by being practical and useful to this country. That is because it is important to our election process. The presidential results and the county results will be affected. Last time, we had a number of election petitions for governors, and they were contentious. Some of them went up to the Supreme Court. In the case of Machakos County gubernatorial election petition, the High Court approved it, but the Court of Appeal overturned it. When it went to the Supreme Court, it was reverted to the former position of the High Court. You can see that the problem was the collection of data and what happens at polling stations. In fact, there were extra polling stations which had not been gazetted and they did not belong to the IEBC. That is why the results ended up that way. Opening of the ballot boxes became a challenge. They had already been interfered with during their storage. I believe this is the process that the IEBC is trying to cure. The IEBC has participated in all the election petitions and it is aware of what happened. It is difficult to find out what mischief we are trying to cure through this law. Will it just be a law that the IEBC will say they amended an Act of Parliament after 10 years? During the Committee of the whole House, we have to really scrutinise this Bill. We have good lawyers in this House. We should give the country a good law so that when the best candidate wins, the rest will be satisfied.

I support. Thank you.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Maanzo, you have spoken to something that is very important. I hope Hon. T.J who is sitting in as the anchor of the Committee has noted it and the Committee will be able to deal with it as we go along. You participated in those petitions and you know that a returning officer in a constituency is vital. So, if we are going to spread it all the way to the presiding officers to be held accountable... I hope you have listened to what he has said. He has a point that needs to be cleared.

Hon. ole Sankok.

Hon. David ole Sankok (Nominated, JP): Thank you very much, Hon. Temporary Deputy Speaker, for giving me an opportunity to speak to this important Bill – the Elections (Amendment) Bill (National Assembly Bill No.3 of 2022).

At the outset, I oppose it. I do not understand who is chasing who and what the urgency is for. We are just from amending the Political Parties Bill. We are approximately 122 days away from the general election. Is the IEBC bringing amendments so that it can have an excuse for not conducting free and fair elections? The amendments are being introduced while they are prepared to use the existing Act. We must be careful as a House because preparations for an election are not done in one day; it is a process. If you change the rules of the game midway, there will be a lot of

excuses for some of the players to play it rough. I hope this Bill is meant for the 2027 elections. If it is meant for the elections that are due in 120 days from now, this amendment will not be attainable if it has to go through all the stages of a Bill. If it is a Bill that is being pushed down the throat of the National Assembly, like the BBI Bill, it is a risk. This is not the time to introduce a Bill that will raise political tensions. We are only a few days away from the general elections.

On the issue of transfer of voters, there must be a reason. Voters can only transfer their voting stations if they stay in a constituency for more than six months. They must understand who they want to elect. It is about development and track records. You cannot be from Turkana and know the track record of those contesting in Mpeketoni in two days. It is not possible. It may also disadvantage small communities. The Constitution provides for counties and constituencies to safeguard the interest of such minority groups so that they can be represented in this House. I can use the example of Narok North Constituency, which borders Nakuru, or, better still, Kajiado North Constituency. If today we decide that there are two communities, one living in a cosmopolitan county and another one living in a fairly cosmopolitan county, you can decide that only one community will end up in the leadership of that constituency. One community can transfer all voters to another constituency to have enough numbers to win the seat. There must be a reason for limiting transfer of voter registration. One must have stayed in an electoral area for at least six months.

We also have to be genuine. We over-legislate. There are laws in place governing elections. It is only that we contest presidential election results. There is competition for the position of Member of County Assembly (MCA), but we do not fight. There is competition for the positions of members of parliament and governors, but we do not fight. If we think we will avoid post-election violence through this Bill, I am sorry! It will not cure the problem. Why is it that it is only one position whose results are always contested? Why was the Building Bridges Initiative (BBI) constitutional amendment all about sharing of power that belongs to that one position? Was it creating the position of prime minister so that we could massage the ego of a loser? There are so many losers in county assembly and parliamentary contests. You defeated your competitors and you do not share power with them. You do not share salaries with them. You come to this House alone. However, when it comes to the apex leadership, we are trying to over-legislate. I can say without fear of contradiction that it may not even be all Kenyans or all competitors. The only times we have had disputed presidential election were in 1997, 2007, 2013 and 2017. There is a name that did not miss in those elections. I can say without fear of contradiction that, that name is the single denominator of violence. In 2002, when the name missed from the ballot, we did not have post-election violence.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Sankok, you will have to withdraw that bit about a denominator of violence. Just withdraw that statement.

Hon. David ole Sankok (Nominated, JP): Okay. I withdraw and apologise but there was post-election violence in 1997, 2007, 2013 and 2017. There must be something that causes the violence. In 2002, we did not experience any post-election violence. We had a peaceful change of regime.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Oundo wants to raise a point of order. Hold on, Hon. Sankok.

Hon. (Dr.) Wilberforce Oundo (Funyula, ODM): Hon. Temporary Deputy Speaker, despite the fact that you have asked Hon. Sankok to withdraw some line of argument that seems to have no basis at all, he seems to continue in the same line of argument, which is surely disrespectful to the Office of the Speaker. He could be suffering from selective memory. He does

not remember that there was post-election violence in 1992. He selectively remembers a few and not all of them. This is the tragedy of Kenya's politics.

Thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Sankok, it is the right of every contestant in every election – be it for this Assembly or any other election – if they feel aggrieved, to petition or challenge the results. It is a constitutional right.

Hon. David ole Sankok (Nominated, JP): I do not deny the constitutionality of appealing against a disputed election. However, I am against post-election violence as a result of rejection of outcome of elections. Thank you very much, Prof. Oundo, for reminding me that we also experienced post-election violence in 1992. I had forgotten about that but check the record on who rejected the outcome of the elections. You will trace it to whatever I am saying.

Anyway, let us not over-legislate to try and cure a problem that does not exist. That is what I am simply saying. If you watch Kenyans before announcement of election results, you will see they stay together, marry one another, borrow sugar from one another, own companies together and do business together. Only after announcement of election outcome and subsequent rejection of the same do we witness violence. I am just trying to implore the House not to over-legislate.

The nullification of the 2017 presidential election result was simply because of transmission of results. It was not because of the numbers or because the winner was not known. It was because of the process of transmitting the results from point A to point B. If I were to support the Bill a little, then I would support that part. I oppose this Bill because there is nothing at all about voting rights of the 6.5 million persons living with disabilities (PWDs). Some of them cannot access voting stations or the print media.

I reject this Bill in totality.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Very well. Hon. Sankok, you will note that the aspirations of every Kenyan are carried in the elections that we speak about. Elections are a way of dividing the national cake across the country. So, different offices attract different levels of attention from different citizens. That is why elections are emotive. Sometimes, people will react in certain ways. That is why we should really be careful about what we say about contestants in these elections. Let us try to be magnanimous to all aspirants. You will make your choice. Somebody else will also make their choice for different reasons. We must be careful to keep the country together so that all of us have a country to live in.

We shall now have Hon. Mwakwona Mwashako, Member for Wundanyi.

Hon. Danson Mwashako (Wundanyi, WDM-K): Ahsante sana, Mhe. Naibu Spika wa Muda, kwa kunipa nafasi ya kuunga mkono Mswada huu. Bunge la Taifa liko na majukumu ya kuangazia sheria zilizoko na zile ambazo zinahitaji kufanyiwa marekebisho zinafanyawiwa marekebisho wakati wowote. Mwenzangu Mhe. Sankok amesema kwamba tunapoelekea uchaguzi sio wakati mwafaka wa kubadilisha sheria za uchaguzi. Mawazo hayo sio sawa. Tuko na vikao mpaka mwezi wa sita. Hata kama kutabaki siku moja kusitisha vikao vyetu na uchaguzi utakuwa umebakia miezi miwili, kama kuna jambo litakalokuja katika mawazo ama katika Bunge la Taifa ambalo litawezesha uchaguzi ufanyike katika hali ambayo ni shwari zaidi na itakayokuwa ya wazi zaidi, basi itakuwa sawa kufanya marekebisho hayo.

Mhe. Naibu Spika wa Muda, sheria hii ambayo tunaunga mkono leo imekuja wakati ambao ni mwafaka. Hakuna haja ifike mwezi wa nane, tarehe tisa, alafu kwanza twende uchaguzi na maswali ama dukuduku ambazo hazikuangaziwa wakati Bunge lilikuwa na nafasi ya kuketi. Sheria hii inaeleza kinaga-ubaga kwamba mpigaji kura mahali popote nchini akitaka kubadilisha eneo lake la kupiga kura, basi anaruhusiwa iwapo ataweka maombi katika Tume Huru ya Uchaguzi na

Mipaka. Tukumbuke kwamba tumetoka katika wakati wa kufanya ile wanaita kwa kimombo *Enhanced Voter Registration*. Wananchi wengi walitaabika sana kubadilisha sehemu zao za kupiga kura. Ilistahili kwamba mtu aende pale ambapo ameishi kwa muda wa miezi sita kabla ya kuomba kubadilisha kituo cha kupiga kura. Wakenya wengi wamesafiri. Tunakumbuka kwamba tumetoka katika janga la COVID-19. Watu wengi walihama makao yao wakarudi mashambani. Walipoenda kubadilisha kura, waliambiwa hawajakaa huko miezi sita. Chifu wa eneo lile anakataza watu fulani wabadilisha kura. Sheria hii inafanya mambo haya yawe rahisi.

Pili, sheria hii inasema kwa urahisi kwamba ukitaka kujitambulisha kama mpiga kura, basi unahitaji kitambulisho ama *passport* ambayo iko sawa. Hili ni jambo zuri. Kulikuwa na wasiwasi ama taharuki Kenya nzima. Watu wengine walidhani kwamba Huduma Namba zitatumika ndio upige kura. Sheria hii inafanya mambo haya kuwa wazi. Lakini wakipiga kura tunakuwa na changamoto sana na rufaa. Mtu ambaye hajaridhika kama Mjumbe wa Bunge la Kaunti akilalamika kortini, mambo haya yanachukua muda mrefu sana. Ni lazima iende tena mpaka kwa korti ya juu. Lakini leo hii, sheria hii inaeleza kwa urahisi kwamba mtu ambaye anawania kiti cha wodi ama Bunge la Kaunti akiwa na malalamishi baada ya uchaguzi, basi maamuzi yale yatafanywa katika korti ya chini. Hili ni suala nzuri. Hii inamaanisha kwamba mambo haya yatasuluhishwa kwa urahisi. Mahakama ya juu itabaki kuangalia yale malalamishi ya wale ambao hawataridhika kutoka ngazi ya kitaifa ambapo ni Mbunge na kwenda juu.

Mhe. Naibu Spika wa Muda, naunga mkono sheria hii asilimia mia moja. Ijulikane nchi nzima kwamba kila mara tunapogundua kwamba sheria ina matatizo, itatuzuia tusifikie malengo ya nchi, basi, hata kama ni siku gani, Bunge la Kitaifa lina ruhusa ama uwezo wa kikatiba wa kubadilisha sheria hiyo.

Naunga mkono Mswada huu.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Very well. Hon. Gichimu, Member for Gichugu.

Hon. Gichimu Githinji (Gichugu, JP): Thank you, Hon. Temporary Deputy Speaker. I rise to support this Bill. While it might not be the right time for the amendment of the elections laws, I seek to allay the fears of some of the Members of this House. This law can only be applicable where it is possible. If the electoral cycle has already started, the law will be applied only in areas where it is applicable. However, in areas that the law will already be overtaken by events, it will only be applicable after the law comes into effect. It might not affect any process that has started.

May I also allay the fears from Hon. Oundo, Member for Funyula, and Hon. Maanzo? Members of the Committee picked a few things they have commented on. The Departmental Committee on Justice and Legal Affairs was only a lead Committee of this Parliament. This law will eventually be made by the entire House. The Members of this House still have an opportunity to bring in any amendments that they feel will add value to the law. This is the opportunity to do that. We are only debating during the Second Reading stage. At the appropriate time – during the Committee of the whole House – those views will be ventilated on. They are very much welcome. I also appreciate that this Bill did not emanate from the Departmental Committee on Justice and Legal Affairs. We are only the lead Committee. It emanated from the Leader of the Majority Party as Government business. However, as Members of the Departmental Committee on Justice and Legal Affairs, we welcome any views that will enrich the Bill.

I support this Bill because it gives clarity in some very pertinent areas. The word “nomination” has been used interchangeably before in party nominations and registration of candidates for elections by the Independent Electoral and Boundaries Commission (IEBC). This

Bill makes reference to that aspect. Nomination will only apply. Initially, it was a bit confusing. Nominations applied to party nominations and registration of candidates for elections by the IEBC. With that clarity, it will not be confusing anymore.

The issue of transmission of results has been clearly put into law. Initially, it was a bit ambiguous. It was left to the administrative action of the IEBC. The law will be very clear that any dispute that arises, especially on presidential elections, can be easily tackled after following the process of transmission of the results that is clearly provided for in this Bill.

Another issue that we, as the Committee supported is to remove the limitation of transfer of votes. Every Kenyan has a right to vote for anybody and anywhere in this country. There should be no limitation whatsoever. In the wisdom of the Committee, we feel that the proposal to restrict a voter to transfer a vote by placing very stringent requirements is unconstitutional. It limits the freedom and right to choose or elect a leader of one's choice.

The clarification of the documents that are supposed to be used for elections is very clear. Someone might think that a passport that he possesses, even if it is expired, can be used to vote. There is confusion. Sometimes people use expired passports to vote. The Bill brings out that clarity. It must be a valid passport. Once you are issued with an identity card, it is permanently valid, unless you lose it and it is replaced. However, the passport expires within a certain period of time. With that clarity, someone who goes to vote with an expired passport will not be qualified to vote.

I do not want to belabour this law, which streamlines a few things. Any law is a living document which can be amended any time.

I believe this is the right time to amend the law but it will only be applicable in areas that fit in the current electoral cycle. For example, the issue of transmission of results is not limited by time. It will be done only after people have voted. The issue of streamlining nominations and other areas will find their way in the current electoral cycle and will be useful to avoid any dispute that may arise, especially in transmission of presidential election results.

With those remarks, I beg to support.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Mbui, Member for Kathiani.

Hon. Robert Mbui (Kathiani, WDM-K): Thank you, Hon. Temporary Deputy Speaker, for giving me this opportunity. I rise to also support the Bill. There have been a lot of disputes, as my colleague, Hon. Sankok, has alluded to. In almost every election cycle, particularly on presidential election, we have had a dispute. Every single electoral cycle is marred with a lot of conflicts, and most of them end up in court. Once in a while, the conflicts end up in the streets and transform themselves into post-election violence. So, it is important that we take election matters seriously. In Kenya, elections are sometimes a matter of life and death. If elections are poorly handled, the ensuing post-election violence claims many lives, peoples' properties, and slows down the economy. When supporters of a disgruntled candidate take to the streets, nothing positive happens. The economy is shut down. People close their shops. People do not go to their offices. It is a very serious matter. We must get elections right. I feel sad when I listen to colleagues say that maybe it is too late or too early. I think this is something we must do continuously. It is something that we must address all the time to make sure that we finally get it right. We should move our election management to the way it is handled in other countries, where those who win take up leadership positions while those who lose go home because they know the processes have not been abused. We ended up at the International Criminal Court (ICC) because of mismanagement of elections.

I support the IEBC in trying to ensure that they get it right this time, but I want to caution the Commission. We have witnessed problems with the election laws that we enact. There is a clear timetable of elections, but there are people who start campaigning immediately after an election. That is clearly against the law. If there is an election timetable that has been put out by the IEBC, anyone campaigning outside the timetable should be stopped. I am saying this because the IEBC continues to be in office for five years. They are not there to just conduct one election. They are there to ensure that they guide the processes and manage elections and everything that is concerned with elections. We have seen people going around and bribing the voters for the last three to four years. It is only towards the tail-end, when elections are around the corner, that IEBC starts calling out people who engage in early campaigns. You see when they started to bite, they were told by the court that they do not have jurisdiction. They needed to have done this immediately after the previous elections so that they could know what they can do and what they cannot.

The IEBC has tried to improve the processes by making sure that voter identification is done in a proper manner. It is indicated in the Bill that other than an ID card, a voter may use a passport - but it has to be valid. That is important. The Bill is also aligned to the recently passed Political Parties (Amendment) Act. The Bill tries to clarify what nomination and registration of candidates mean. It redefines the role of the IEBC versus the Office of the Registrar of Political Parties (ORPP). That is something that is proper. Let us not forget that the ORPP is involved in party nomination rules and party membership lists. The IEBC now requires the lists to be submitted to them from ORPP.

On the issue of presidential election, first and foremost, we must address the matter of how the media get the results. That has been one of the major bones of contention. We have seen situations where the media pick results from some centres and circulate the same quickly and people start celebrating too early. In a presidential election, we are talking about 1,450 wards and polling stations. It takes a long time before you make a decision on who has won. When the media start transmitting results too early, it creates anxiety. It ends up being a problem when those results are overturned. I am happy that the Bill tries to deal with the issues that were raised by the Supreme Court in the last election disputes. The Bill indicates how presiding officers will handle transmission of results. They will forward the results electronically and directly to the national tallying centre and deliver physical copies to the constituency tallying centre. The constituency returning officers will, again, forward the tallied results to the national tallying centre and deliver the physical copies as well. The Bill also indicates that results will be announced after tallying and after ensuring that results from all polling stations or most of the polling stations have been delivered. The national tallying centre will rely on polling station returns to announce results. That is critical. People must know that results announced at polling stations are final. Those are the results that will determine the winner and the losers—at the ward, constituency, county and national levels.

I have a concern on the proposal by the IEBC that the decision of the High Court on a dispute on election of MCA is final. I do not know whether it is constitutional. I do not know whether that provision could be challenged in court. I do not know whether we can make a law limiting the rights of candidates for MCA positions. If it were possible, and if it is not unconstitutional, obviously it helps to free the superior courts so that they can handle other cases from other levels. There are many people who require the attention of the courts during election disputes. If it is not unconstitutional, it is a good idea because it will free the court to be able to handle other matters. Otherwise, let us improve our electoral laws. Let us do so up to the last day.

I support.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Finally, let us hear Hon. Kaluma Opondo, Member for Homa Bay, as the last person on my requests list as the Mover prepares to reply.

Hon. Peter Kaluma (Homa Bay Town, ODM): Thank you, Hon. Temporary Deputy Speaker. Election is a process. My position is that the process for the 2022 general election is already on. The Bill clarifies the definition of “nomination” as registration of candidates to align it with the Political Parties Act and limits the extent to which aggrieved MCA candidates can prosecute their petitions. This Bill can be supported only with very many substantial amendments. In terms of talking about coalition political parties, the Bill is relevant.

Hon. Temporary Deputy Speaker, we are in the electoral season. Unless a law concerning election is so critical to the process, we should not bother with it. We are being told that we need to add the word, “valid” before the word, “passport” to correct the electoral process. It is so that IEBC understands the kind of passport that can be used in an election. In a good legislative process, we do not use adjectives. A passport is a passport and it has to be valid! We do not use words like "valid" or "legitimate" to make it complete. Everybody knows an expired passport is no passport. So, we cannot be engaging in legislation concerning elections at this time to define things like those.

We have provisions being suggested, for example, IBEC is to establish systems for live transmission of election results. Does the IEBC run the media? We already have provisions on freedom of the Press and freedom of access to information. My view is that whenever media houses want any results, they can approach the IEBC and the results will be relayed, or the IEBC can be recorded when they are releasing the results. When we obligate the IEBC to establish mechanisms for live transmission, are we saying that IEBC is going to establish some media to do that, or how do we want to achieve it?

In the same provision we are being told that various courts had come up with some judgements. We do not sit as Parliament to legislate court decisions. Their judgements are already in place! We cannot be sitting as a Parliament to say: in Maina Kiai, this-and-that was said and put in law. There is the realm of law called judgement-law. In terms of electoral processes, those judgements we say are good form part of the laws in terms of case judgement-law. We cannot say that we are sieving judgement and picking out phrases to legislate so that we are in conformity with some court. So, no major gap is being shown to us in that regard. We are being told of this-and-that judgment. We are even being told that after the High Court, in some matter, deleted some provisions of the law, those provisions are still available for deletion in the Bill. We are deleting provisions which were annulled by the court! When a law is annulled, it ceases to exist. There is no further work required of Parliament in terms of cleansing it. In law, Hon. Temporary Deputy Speaker, and you are a better lawyer on governance and administrative law than myself, when something is said to be null and void, it is as good as not being in existence. It never falls back on this Parliament that the court said Section 39(1)(b) is null and void, delete, or Section 39(1)(d) is null and void, delete. We cannot be deleting what is already deleted. It has already been annulled by the courts. There is no need there.

There is a provision which bars persons running as political party candidates from jumping to vie as Independent candidates. I have no problem with that provision. We in political parties do not want to allow people to waste our time then they jump ship. But, is it implementable? It is already done. So, in as much as we are thinking about it being a good law, it is not opportune to bother about it now because it can only apply in the future elections. By the time we are done with

this business, and the Senate be done with it, pray we do not go into Mediation Committee, people who want to jump having wasted our time in political parties would have jumped. So, some of these issues maybe good but they can wait. I am saying this to avoid a situation where we cause anxiety or suspicion about legislative processes at this critical election time.

Save for a few who have read this Bill, people are asking what could be Parliament up to, and why now? Unless the Mover explains with greater substance and solidity, the legislative gap we are sealing, it is not justifiable we move the way we are doing. We are being told that we should be dealing with transfer of voters. Even that to me is a very good provision and I would want to support it the way it is. Look at it this way: the voter registration and transfer closed on 28th of last month. None of it is going to be done in relation to this election. So, the question I am asking is: what is the hurry with whether people want to transfer or not? I support the provision. I am one of those who disagreed with the Committee on its proposed deletion so that we can have people registering where they know they should and if they are to move, then the reasons are prescribed. The issue is that voter registration process and voter transfer closed down on 28th of March. One can now not transfer. You now cannot register in preparation of the General Election. The question is: why the hurry in bothering whether people want to transfer and the parameter? That makes me think, though the provision is good, even that should wait. There are good provisions in the Bill, there are many provisions which are bad but there are other provisions we do not need to bother with as we approach and process this election. So I support this Bill but I request that at the Committee Stage, the Leader of the Majority Party looks at the Bill being moved by him as our leader in the House and only tasks Parliament with matters which are critical to this election, deleting other which are taking our time. We are very busy now. So, whenever we are here, we must engage the time of this Assembly of the nation on only those things without which we cannot have sound firm process.

Hon. Temporary Deputy Speaker, with those few comments, I support.

(Applause)

The Temporary Deputy Speaker (Hon. Christopher Omulele): The Hon. Kaluma, I admire advocacy as the devil's advocate. You can argue from any side of your mouth (*Laughter*). I have enjoyed your submissions. Thank you.

Hon. Jimmy Angwenyi (Kitutu Chache North, JP): What is devil's advocate?

The Temporary Deputy Speaker (Hon. Christopher Omulele): The Hon. Angwenyi, in interpreting the law, there is always a chance when you are considering a law that you should consider the other side, the worst case scenario of that law and that is what the Hon. Kaluma has interpreted.

Leader of the Majority Party, you may now reply.

Hon. Amos Kimunya (Kipipiri, JP): Thank you, Hon. Temporary Deputy Speaker.

Let me start by thanking the Members who have contributed to this Bill. I listened to the contributions and broadly, there is concurrency about all the issues including the ones the Members are not happy with and those zero down to two/ The provision on changing the submission of members list from 120 days to 90 days whose intension was to synchronise the party nominations with Independent nominations. What is good for the goose is good for the gander. It to have some uniformity within the electoral system. But I hear the argument on the other side that political parties have not come to a point where they can substantially reduce the trust deficit by their members hence it might not be the right thing to do until the political parties have demonstrated

that they can be relied upon to do justice in nomination processes. This is exactly why that gap was created in the first place. Since that mischief is still there and it has not been demonstrated why we should remove it, I am persuaded and I will be happy to support the amendment to that clause if Members feel that way.

The other one that has also been brought about is on the issue of registration of voters being dependent on one proving they have a stake in a certain area. The proposal is to have six months in an area. Hon. T. J. Kajwang' demonstrated—with residents in his constituency who are very mobile or potentially mobile and may also have tenancies that may not be documented by paperwork that will require legal standing—that it would be very difficult to ask a person to prove they have been a resident of Mathare in the last six months. So, the practicability of that may be an issue. Because I would not want to be the one tying or disenfranchising somebody from being registered as a voter and not exercising their Article 38 rights on account of that they cannot demonstrate they are residents or they own a house, it is one of the clauses that I am willing to look at. I agree with the observations of the Committee that, perhaps it is premature to bring that until we have proper addressing system that can tackle or that Amos Kimunya resides in number this of this area and hence it can prove I have resided in this address for the last six months so that I be registered as a voter. In our mobile system and with the pastoralists moving between places, it is too early for that. On those two, I am willing to concede. I just want to put that for the record because that has also caused a lot of concern.

On all the other matters, I think the law is good. It is born out of frustrations. Some of the amendments are just cleaning up consequential amendments arising from us passing the Political Parties Act. Like I said in moving, we shifted some responsibilities and some nomenclature to the Registrar of Political Parties. We need to make sure that we do not have confusion between who does nomination and who registers candidates. There is a whole raft of clauses that are just addressing that bit.

The other most important bit is what the Hon. Kaluma has mentioned. Let me first of all speak to those who are asking why this Bill is coming this late. It has not come late. The Bill is being processed in this House late though it came in touch with Parliament about eight months ago, as a legislative proposal. Members may recall that we even asked questions in this House on why the chairman of the IEBC was talking to the media and saying Parliament is delaying legislating on electoral laws. I got concerned, as the Temporary Deputy Speaker got concerned. We asked where the laws that had not come to Parliament were. We were told we are late only to realise later on that the chairman of the IEBC and his team were negotiating with the Departmental Committee on Justice and Legal Affairs on a proposal which only became law when I published, it at heavy insistence, in January. There is a record of the raft of communication I had with the Attorney General as way back as November. I was asking for this Bill so that we could process it together with the Political Parties Act. It would have been concurrent.

When you say Hon. Kaluma is playing the devil's advocate, he has unfortunately gone beyond that. Having been a part of the team that was delaying for those eight months and having been part of causing the delay, he is now trying to get what they call *ex turpi causa non oritur actio* in law. It should apply to him. He cannot claim relief that we should not be discussing this Bill yet it is him and the Committee that were part of delaying the Bill from coming here. Indeed, had we passed this Bill in good time, we would have had the benefit of it applying in these nominations. But, it is never too late. The good thing is that Members will get some reprieve because, either way, we are deleting the 90 days. So, it does not matter. The other provisions relate to the election day itself. Hence, we are still in good time.

Most importantly is to also know that we are not doing this Bill for this year. We are doing it for posterity. Hence, we are never late when we do things for posterity. Even if we were doing this on 8th June 2022, on the last day of going home, we would still be within our right to legislate.

The other item I wanted to mention and on which I have taken legal advice is on when the courts declare a certain section of law as null and void—that the courts cannot order the Kenya Law Reform Commission to delete those items from Acts of Parliament. It is only Parliament that is constitutionally mandated to do anything to do with law. I disagree with Hon. Kaluma and others who may have had that orientation because, until Parliament pronounces itself on a law, no section of the law can be deleted. Whether or not the courts declare that section null and void, hence dead. It does not apply. That section still stays in our statute books. The most unfortunate thing and I have said this before is what somebody who downloads the Elections Act No. 24 of 2011 from the Kenya Law Reform Commission website, the official website, finds. What do they find? The Act still has a 1(e) and a 1(g) in Section 39. They will believe that is the law of the land. It is because nobody has cleaned it up.

Part of the things we are removing in the sections that were declared null and void is actually to clean up the law, for the avoidance of doubt and so that no other person is ever confused because of accessing the wrong law. That is the work of this Parliament. Once we do that, Section 39(1)(c) which is the most contentious and the courts pronounced themselves on it will be cleaned. If we do not clean up this, it really does not matter who wins the presidential election. Whoever loses could as well go back to court and say there is this one Form 34A that has been found from a polling station in Kipipiri. It does not seem to be in accordance with the others. That nullifies the election because, as we were told then, it is not the quantum that matters. It is the process.

Kenya being what it is, we have seen the BBI train being stopped through some arguments that have since been torpedoed and reversed by the Supreme Court. We do not want a situation where elections would be subjected to that yet we have the opportunity to clean up the law for avoidance of doubt. That is so that when people go to vote, they know that everything will be done rightly, the presiding officer counts and there is a maximum of 700 voters per stream under the command of a presiding officer. Those 700 votes are then accounted for and submitted to the national tallying centre which is already required in the law, any way. The only problem was the prescribed form of that submission. For avoidance of doubt, it was not in the law. That is how Section 39(1c)(a) was nullified. So, we cannot sit back and say we remove it because it was nullified. Then, we would have a lacuna in law. There will be no way of transmitting those results yet they are expected. There is cross-referencing in other sections of law that ask for transmission of those results but the way of doing it, which Parliament is supposed to do, has not been provided for.

So, for those who are wondering, it is not late. We are within our time to do this law. We are not doing it for this election. We are doing it for posterity. If it works—I am sure the Senate will do their bit and we get this law to act and help this election—it will only help to reduce the tension. It bring clarity and to make sure that elections are in accordance with our Constitution. That calls for transparency and the principles captured in terms of what an electoral system should provide. This Bill is providing that. I want to thank the Committee led by the able Vice- Chair T.J. Kajwang’ and his Chair Muturi Kigano, and the input of Hon. Kaluma in that Committee. I thank the whole team for the work they have done in having this Bill. By the time we get to next week, we will have processed the Elections (Amendment) Bill (National Assembly Bill No. 3 of 2022) by the Constitution Implementation Oversight Committee (CIOC) and the Elections Campaign Financing Bill, so that we deal with them in one Afternoon Sitting. It is then that people

will see the impact one Bill can have on another Bill. With that, we will have done our bit as the National Assembly towards the reform of the electoral system in Kenya.

With those words, I want to thank you with your team for the energy expended on this Bill. I beg to reply.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Thank you, the Leader of the Majority Party. For good reasons, I direct that the next necessary steps will be taken in regard to that business to be undertaken when it will be set down in the Order Paper again.

I direct that we move on to the next business on the Order Paper.

COMMITTEE OF THE WHOLE HOUSE

(Order for the Committee read)

*(The Temporary Deputy Speaker
(Hon. Christopher Omulele) left the Chair)*

IN THE COMMITTEE

*[The Temporary Deputy Chairman
(Hon. Christopher Omulele) in the Chair]*

THE COFFEE BILL (SENATE BILL NO. 22 OF 2020)

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Members, we are now in the Committee of the whole House to consider the Coffee Bill (Senate Bill No. 22 of 2020). Hon. Mutunga, I understand you are standing in for the Chair?

Hon. John Mutunga (Tigania West, JP): Yes, Hon. Temporary Deputy Chairman.

Clause 3

The Temporary Deputy Chairman (Hon. Christopher Omulele): There is an amendment by the Chair, Hon. Mutunga.

Hon. John Mutunga (Tigania West, JP): Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 3 of the Bill be amended by deleting paragraph (b) and substituting therefor the following new paragraphs—

“(b) provide a regulatory framework for the registration, licensing, issuance of permits, issuance of certificates, production, processing, quality assurance, coffee trading, marketing and credit finance;

(ba) provide for enforcement of the regulatory framework and coffee standards in the subsector;

(bc) provide a framework for interlinkages amongst state agencies, regulators and players along the coffee value chain including the public private partnerships;

(bd) promote farmer-based associations or platforms for representation of farmers’ interests;

(be) provide a framework for the establishment of a Coffee Stabilisation Fund;”

The reason is that the proposed amendment seeks to provide for additional objects of the Bill. This rose from stakeholders’ submissions and it enriches the provisions of the bill.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Mutunga, are you done with moving of the amendment?

Hon. John Mutunga (Tigania West, JP): Yes, Hon. Temporary Deputy Chairman.

(Question proposed)

The Temporary Deputy Speaker (Hon. Christopher Omulele): Let us have Hon. Gichimu.

Hon. Gichimu Githinji (Gichugu, JP): Hon. Temporary Deputy Chairman, I support the amendment by the Committee. It enhances the issue of regulatory framework for registration licencing and issuance of permits which had not been captured in the objects under the Bill. So I support.

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

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

(Clause 3 as amended agreed to)

(Clauses 4 and 5 agreed to)

Clause 6

Hon. Gichimu Githinji (Gichugu, JP): Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 6 of the Bill be amended by inserting the following new paragraphs immediately after paragraph (d)—

“(da) determine the provisions to be made for capital and recurrent expenditure and for the reserves of the Board;

(db) enter into association with other bodies or organisations within or outside Kenya as the Board may consider desirable or appropriate in furtherance of the purpose for which the Board is established;”

The reason is that the proposed amendment seeks to provide additional powers to the Coffee Board of Kenya. The powers will further enhance the functions of the board.

(Question proposed)

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

(Clause 6 as amended agreed to)

Clause 7

Hon. Gichimu Githinji (Gichugu, JP): Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 7 of the Bill be amended—

(a) in sub-clause (1)—

(i) by inserting the following new paragraph immediately after paragraph (c)—

“(ca) Principal Secretary for the time being responsible for cooperatives or the Commissioner for Cooperatives;”

(ii) by deleting paragraph (d) and substituting therefor the following new paragraph—

“(d) one person representing small scale coffee growers nominated by the Council of County Governors;”

(iii) by deleting paragraph (e) and substitute therefor the following new paragraph—

“(e) two persons of the opposite gender nominated by the umbrella body representing large scale coffee growers;”

(iv) by deleting paragraph (g) and substituting therefor the following new paragraph—

“(g) one person nominated by the umbrella body representing medium scale coffee growers;”

(v) by deleting paragraph (h) and substituting therefor the following new paragraph—

“(h) two persons of the opposite gender nominated by the cooperative society representing the largest number of small-scale coffee associations in Kenya; and”

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

“(3) The Board may from time to time co-opt professional experts in financial management, international commodity trade or in any other area they need technical or professional support.”

(4) The appointment of the chairperson or members of the Board under subsection (1) (a), (d), (e), (f) and (g) and shall take into account the gender, regional and other diversities of the people of Kenya.”

The reason is that Clause 7 of the Bill provides for the composition of the Coffee Board of Kenya and the amendment proposes for an additional member, the Principal Secretary responsible for cooperatives or the commissioner of cooperatives for the time being. In order to achieve that, paragraph (d) has been amended by reducing the number from two persons to one person. The composition has also been rationalised to provide for the representation of small scale, medium scale and large scale coffee growers which ensures adequate coffee farmers’ representation. Further, the amendment provides for co-option of professional experts to benefit the board. Finally, appointments should take into account gender and regional diversities of the people of Kenya. I submit.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Members, I need to give direction. Hon. Gichimu, you also have proposals to this clause?

Hon. John Mutunga (Tigania West, JP): Yes, Hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Christopher Omulele): The direction is that in the event the proposals by the Chair are carried, part (a) of Hon. Gichimu's proposals will have been taken care of so that the only proposal that he will have to prosecute will be part (b) to that clause. Are we together, Hon. Gichimu?

Hon. John Mutunga (Tigania West, JP): Yes, Hon. Temporary Deputy Chairman. The proposed amendments by the Committee to Clause 7 seek to delete and substitute therefor, and to insert. My amendments also seek to do the same.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Yes, that is why we are saying that if the ones by the Chair are carried, you will only be left by part (b) of your proposal to prosecute. If the proposals by the Chair are not carried, you will prosecute your proposals in full.

Hon. Gichimu Githinji (Gichugu, JP): Hon. Temporary Deputy Chairlady, I had consulted the Chairman on this matter and I thought my amendments are more inclusive. We are also seeking to add the Principal Secretary (PS) in charge of the National Treasury to the Board. Under the Bill, we are also creating the Coffee Fund. This was omitted in the original Bill. The Committee might also have overlooked the exclusion of the National Treasury in the Board yet there are financial issues in the Bill.

Secondly, we also seek representation of small-scale coffee farmers, who are the majority. Because the government is taking almost half of the Board, we propose that small-scale coffee farmers also have some say in the Board.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Gichimu, I hear you. And you have a special place because you are sitting next to the Chairman and you say you have consulted. I would like to direct that if you have consulted and the Chairman is agreeable, then he would allow your amendment to take precedence over his. If your amendment is carried, then the one by the Chairman would fall by the wayside. The Chairman has to go on record on this.

Hon. John Mutunga (Tigania West, JP): Thank you, Hon. Temporary Deputy Chairman. Hon. Gichimu proposes two amendments to the same clause, which we consider extra. One of the amendments is to bring the PS for Treasury to the Board of the Fund. The other amendment seeks to qualify representatives of small-scale farmers from being members of the largest association to members of a cooperative union. We have no issue with the issue of a cooperative union, because according to arrangements in the coffee sector farmers join a coffee society, the societies form a cooperative and the cooperatives aggregate into a union. So representation at a union level makes a lot of sense.

On the other hand, increasing the number of members of the Coffee Board of Kenya is problematic. Already there are 10 people on the Board, including a Chairman appointed by the President. The membership is already against provisions of the Mwongozo Code. This House can make a decision and allow 11 members to the Board. The 12th member will be the CEO who is ex-officio. That is how we can bring in representation of the National Treasury.

Thank you, Hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Let me consult a little bit.

*(The Temporary Deputy Chairman
consulted with Clerks-at-the-Table)*

Hon. Gichimu and the Chairman, these are your proposals. If the Chairman seeks to withdraw his amendment, then he should do so, so that Hon. Gichimu can move his amendment. But if we proceed with the amendment by the Chairman and it is carried, then the one by Hon. Gichimu will fall as I directed earlier. He will only be able to prosecute part (b) thereof. It is a decision you can make now. If the Chairman is desirous of withdrawing his amendment, I can propose the question.

Hon. John Mutunga (Tigania West, JP): Hon. Temporary Deputy Chairman, I consider Hon. Gichimu's amendments a little bit more comprehensive than the Committee's amendments.

The Temporary Deputy Chairman (Hon. Christopher Omulele): So you are withdrawing your amendment?

Hon. John Mutunga (Tigania West, JP): Yes.

The Temporary Deputy Chairman (Hon. Christopher Omulele): The proposed amendment by the Chairman stands withdrawn.

(Proposed amendment by Hon. John Mutunga withdrawn)

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Gichimu, proceed.

Hon. Gichimu Githinji (Gichugu, JP): Hon. Temporary Deputy Chairman, I beg to move:

THAT, clause 7 of the Bill be amended—

(a) in sub clause (1)—

(i) by inserting the following new paragraphs immediately after paragraph (c)—

(ca) the Principal Secretary responsible for co-operatives or a representative nominated by the Principal Secretary in writing;

(cb) the Principal Secretary responsible for the National Treasury or a representative nominated by the Principal Secretary in writing;

(ii) by deleting paragraph (e) and substituting therefor the following new paragraph—

(e) one person nominated by the umbrella body representing large scale coffee growers;

(iii) by deleting paragraph (h) and substituting therefor the following new paragraph—

(h) two persons of the opposite gender elected by small-scale coffee growers through their unions;

(b) in sub clause (2) by deleting the words “sub-section (1) (d), (e), (f) and (g)” and substituting therefor the words “subsection (1) (d), (e), (f), (g) and (h).”

The justification is that the original Bill had excluded the PS for National Treasury, who is a very important person in this matter because we are also creating the Coffee Stabilisation Fund. The amendments by the Committee on the issue of cooperatives had not indicated a representative nominated by the PS. The PS might not always be available to attend board meetings. That is why Hon. Mutunga was saying my amendments are more elaborate. The amendments also seek to

capture a wider representation of small-scale farmers through their unions so that they can have a say, given that they are the majority coffee farmers in this country.

I beg to move the amendments.

(Question of the amendment proposed)

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

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

(Clause 7 as amended agreed to)

Clause 8

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Gichimu, you have a proposal to amend the clause.

Hon. John Mutunga (Tigania West, JP): Hon. Temporary Deputy Chairman, I am not sure if we are done with clause 7.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Yes, we are.

Hon. Gichimu Githinji (Gichugu, JP): Hon. Temporary Deputy Chairman, I beg to move:

THAT, the Bill be amended by deleting clause 8 and substituting therefor the following new clause—

Qualification for appointment.

8. A person shall be qualified for appointment as a member of the Board if that person—

- (a) in the case of a person appointed under section 7 (1) (a), (e) and (f), holds a degree from a university recognised in Kenya;
- (b) in the case of a person appointed under section 7 (1) (d), (g) and (h), holds a Kenya Certificate of Secondary Education or its equivalent;
- (c) has three years' experience in the coffee sector; and
- (d) meets the requirements of Chapter Six of the Constitution.

The justification is that the Coffee Board of Kenya will represent farmers, including small-scale farmers. It is not like an ordinary board. Small-scale farmers in rural areas are knowledgeable about coffee matters but they may not have degrees. In this amendment, I seek to exempt those farmers from being represented by people with degrees. A person appointed under section 7(1)(a), (e) and (f) can have a degree. That is the Chairman, a person representing the Institute and a person representing large-scale farmers or plantations.

In (b), in case of a person appointed under 1 (d), (g) and (h) these ones can have the Kenya Certificate of Secondary Examination (KCSE) or an equivalent. So that even if the farmers might not be much educated, they can also have representation in the Board.

Looking at the structure, we have four representatives from the Government. The Chairperson ought to have a degree and two other people. Therefore, any guidance on complicated matters can still be given to the Board members who might not have degrees but are also representing the small-scale coffee farmers. That is the justification.

(Question of the amendment proposed)

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

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

(Clause 8 as amended agreed to)

Clause 9

The Temporary Deputy Chairman (Hon. Christopher Omulele): There are two amendments. One, by the Chair and another by the Hon. Gichimu. If you could agree because clause 7 has a carryover effect to this clause 9.

Hon. Chair, you have the right to go first.

Hon. John Mutunga (Tigania West, JP): Thank you, Hon. Temporary Deputy Chairman.

This amendment should be adopted with further amendments in the sense that in 9 (1) we had omitted the (h) provision within the Board of Directors. I understand that Hon. Gichimu had already made that provision. So, the Committee will withdraw our amendment and carry Hon. Gichimu's amendment which included the omitted provision (h).

(Proposed amendment by Hon. John Mutunga withdrawn)

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Chair, it is on record that you have withdrawn the Committee's proposal.

Hon. Gichimu will now proceed to prosecute his proposal.

Hon. Gichimu Githinji (Gichugu, JP): Thank you, Hon. Temporary Deputy Chairman. I beg to move:

THAT, clause 9 of the Bill be amended –

(a) by renumbering the existing provision as subsection (1);

(b) by deleting the words “section 6 (1) (d), (e), (f) and (g)” and substituting therefor the words “section 7 (1) (d), (e), (f), (g) and (h)”;

(c) by inserting the following new subsection immediately after subsection (1) –

“(2) The persons appointed under section 7 (1) (a), (d), (e), (f), (g) and (h) shall be appointed at different times but not more than six months shall lapse between one appointment and the other in the case of a vacancy in the Board”.

The justification is that there was an omission by the Committee and the original Bill, that provision 9 (1) (h) had not been regarded yet it was included in clause 7 on membership of the Board. This is the only correction that this amendment seeks to do.

Also, clause 9 (2), gives clarity on when the appointments will be done. To avoid a situation where there will be no Board, the appointments can only be done when there is a vacancy in the Board. The proposal by the Committee, which I agree with, says that those appointments can only be done within intervals of six months. However, this can only occur when there is a vacancy. The Board is not perpetually open for appointments. This is the clarity we are seeking to bring under sub-clause 2.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Christopher Omulele): I see interest from Hon. Wanyonyi, the Member for Westlands.

Hon. Tim Wanyonyi (Westlands, ODM): I support the amendment.

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

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

(Clause 9 as amended agreed to)

(Clause 10 agreed to)

Clause 11

The Temporary Deputy Chairman (Hon. Christopher Omulele): There is a proposal by the Chair.

Hon. John Mutunga (Tigania West, JP): Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 11 of the Bill be amended in sub-clause (1) by deleting paragraph (c).

Paragraph (c) is a repetition of paragraph (b), therefore the need for deletion.

(Question of the amendment proposed)

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

(Clause 11 as amended agreed to)

*(Clause 12, 13, 14, 15, 16, 17, 18, 19,
20, 21, 22, 23 and 24 agreed to)*

Clause 25

The Temporary Deputy Chairman (Hon. Christopher Omulele): There is a proposal to delete by the Chair.

Hon. John Mutunga (Tigania West, JP): Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 25 of the Bill be deleted.

At the Committee level, we proposed that clause 26 be deleted. The proposed amendment to clause 26 and new clauses 26 A, B, C and D clearly delineate the functions of the county

governments and the Boards on issuance of license, permits and registrations. Clause 25 should be deleted and consolidated in the proposed new clauses for logical flow.

(Question of the amendment proposed)

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

(Clause 25 deleted)

Clause 26

The Temporary Deputy Chairman (Hon. Christopher Omulele): Chair, you have a proposal to this.

Hon. John Mutunga (Tigania West, JP): Hon. Temporary Deputy Chairman, I beg to move:

THAT, the Bill be amended by deleting Clause 26 and substituting therefor the following new clause—

Licenses issued by
the Board.

26. The following licenses shall be issued by the Board —
- (a) a coffee buyer's license, authorizing the holder to —
 - (i) buy or deal in clean coffee produced in Kenya or to import clean coffee from outside Kenya, and to process, in Kenya for local sale or export, coffee of any country of origin; and
 - (ii) deal in roasting, blending and packaging coffee for the local market or for export.
 - (b) a commercial coffee miller's license authorising the holder to conduct the business of milling and marketing of coffee;
 - (c) a grower miller's license, authorising the grower to mill and market his or her own coffee;
 - (d) a warehouseman's license, authorising the holder to conduct the business of warehousing coffee;
 - (e) independent cupping laboratory license, authorising the holder to offer coffee quality analysis services;
 - (f) a coffee roaster's license authorising the holder to buy at the auction or secondary market, roast or grind and package clean coffee for local sale or export and for importing clean coffee for value addition either for local sale or for export.
 - (g) coffee liqueur's license;
 - (h) processed coffee import permit;
 - (i) clean coffee movement permit for exports;

The proposed amendment seeks to clearly delineate the Board's role in issuance of different licenses. The existing clause 26 has been re-arranged in the subsequent proposed amendments for logical flow.

(Question of the amendment proposed)

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

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

(Clause 26 as amended agreed to)

(Clauses 27, 28, 29, 30, 31, 32 and 33 agreed to)

Clause 34

Hon. John Mutunga (Tigania West, JP): Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 34 of the Bill be amended in sub-clause (2) by deleting the word “sub-regulation” and substituting therefor the word “subsection”.
The proposed amendment corrects a typographical error.

(Question of the amendment proposed)

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

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

(Clause 34 as amended agreed to)

Clause 35

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Chair.

Hon. John Mutunga (Tigania West, JP): Hon. Temporary Deputy Chairman, I beg to move:

THAT, the Bill be amended by deleting Clause 35 and substituting therefor the following new Clause—

Revocation or
alteration of a
license or
permit.

35. A licensing authority may revoke, alter or suspend a license or permit issued under this Act if in its opinion—
- (a) an offence under this Act, or in respect of the licensed activity under any other written law, has been committed by the license or permit holder or any employee of the license or permit holder; or

(b) a condition of the license or permit has been contravened or not complied with.

The proposed amendment seeks to provide for the circumstances under which a license or permit may be altered, suspended or revoked. It further seeks to separate the aspect of surrender of licenses or permits which is provided for in the proposed new Clause 35A.

(Question of the amendment proposed)

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

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

(Clause 35 as amended agreed to)

(Clause 36 agreed to)

Clause 37

The Temporary Deputy Chairman (Hon. Christopher Omulele): Chair.

Hon. John Mutunga (Tigania West, JP): Hon. Temporary Deputy Chairman, I beg to move:

THAT, the Bill be amended by deleting Clause 37 and substituting therefor the following new Clause—

Appeals
to the
High
Court.

37. (1) An applicant for or holder of a license or permit who is aggrieved by a decision of the licensing authority may appeal to the High Court on or in respect of—

- (a) the grant, refusal, renewal, variation or revocation; or
- (b) the conditions imposed on the grant, renewal or variation, of a license or permit.

(2) An appeal under this section shall be lodged within thirty days from the date on which the appellant first received notice of the decision.

The proposed amendment enriches the provision by providing for the circumstances under which a person may appeal at the High Court.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Gichimu, do you have something to say to this amendment?

Hon. Gichimu Githinji (Gichugu, JP): Yes. Hon. Temporary Deputy Chairman, I support the amendment by the Committee. Under the original provision in the Bill, it was not clear in the

manner in which the aggrieved person ought to appeal. The amendment brings the issue of the High Court. The initial one was talking about judicial review. However, this amendment gives clarity. I support it.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Wanyonyi, Member for Westlands.

Hon. Tim Wanyonyi (Westlands, ODM): Hon. Temporary Deputy Chairman, I support the amendment. It makes sure that there is no ambiguity. This gives the Bill the necessary predictability of the law.

Thank you.

The Temporary Deputy Chairman (Hon. Christopher Omulele): The amendment gives jurisdiction clearly. Well spoken.

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

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

(Clause 37 as amended agreed to)

Clause 38

The Temporary Deputy Chairman (Hon. Christopher Omulele): Chair.

Hon. John Mutunga (Tigania West, JP): Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 38 of the Bill be deleted.

The proposed deletion of Clause 38 is necessary since there is an overlap between the provisions of the Clause and Clause 70 of the Bill which provides, comprehensively, the functions of the Coffee Research Institute of Kenya. However, Clause 38(1)(d) was transferred to Clause 70. It is captured in the amendments in Clause 70.

(Question of the amendment proposed)

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

(Clause 38 deleted)

(Clauses 39, 40, 41, 42, 43 and 44 agreed to)

Clause 45

The Temporary Deputy Chairman (Hon. Christopher Omulele): Chairman, you have a proposed amendment.

Hon. John Mutunga (Tigania West, JP): Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 45 of the Bill be amended by—

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- (a) in sub-clause (2) by deleting the words “and the direct settlement system provider”;
- (b) by deleting sub-clause (8).

The proposal arose from stakeholder engagements that the Committee had. The stakeholders were opposed to the system.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Gichimu.

Hon. Gichimu Githinji (Gichugu, JP): It is true, Hon. Temporary Deputy Chairman. I was involved in the public participation with coffee farmers in my constituency. This provision was a thorn in their flesh. They did not know how they trace their money should direct settlement systems fail. They have a very good and elaborate system and leadership which they can use if there are issues.

The other issue is that this system would take part of their money, because it would have to be managed. Probably a secretariat would be formed to manage it. That would add more cost to farmers. They are happy with the system they currently have. I support the Committee amendment. My people would be happy if the system were removed from the Bill. Thank you, Hon. Temporary Deputy Chairman. I needed to clarify that.

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

(Clause 45 as amended agreed to)

The Temporary Deputy Chairman (Hon. Christopher Omulele): Leader of the Majority Party.

Hon. Amos Kimunya (Kipipiri, JP): Hon. Temporary Deputy Chairman, I beg to move that the Committee do report to the House its consideration of the Coffee Bill (Senate Bill No. 22 of 2020) up to clause 45 and its approval thereof with amendments, and seek leave to sit again.

(Question put and agreed to)

(The House resumed)

*[The Temporary Deputy Speaker
(Hon. Christopher Omulele) in the Chair]*

REPORT

THE COFFEE BILL

The Temporary Deputy Speaker (Hon. Christopher Omulele): The Chairperson.

Hon. Amos Kimunya (Kipipiri, JP): Hon. Temporary Deputy Speaker, I beg to report that a Committee of the Whole House has considered the Coffee Bill (Senate Bill No. 22 of 2020) up to clause 45 and approved the same with amendments, and seeks leave to sit again.

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The Temporary Deputy Speaker (Hon. Christopher Omulele): The Chairman, Hon. Mutunga.

Hon. John Mutunga (Tigania West, JP): Hon. Temporary Deputy Speaker, I beg to request the House to approve amendments made up to clause 46 until the next time we meet.

The Temporary Deputy Speaker (Hon. Christopher Omulele): The Member for Tigania, just look for where the document says 'to move agreement with report'.

Hon. John Mutunga (Tigania West, JP): Hon. Temporary Deputy Speaker, I beg to move that the House do agree with the Committee in the said Report.

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

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Gichimu.

Hon. Gichimu Githinji (Gichugu, JP): Hon. Temporary Deputy Chairman. I beg to second.

(Question proposed)

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Member, I will not take the next steps. I direct that they will be taken when the matter will be set down again in the Order Paper.

(Putting of the Question deferred)

Hon. Members, I must thank you for staying the course today. We have done quite a bit of good work. Thank you.

ADJOURNMENT

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Members, the time being 7.01 p.m. this House stand adjourned until Wednesday, 6th April 2022 at 9.30 a.m.

The House rose at 7.01 p.m.