



REPUBLIC OF KENYA

THIRTEENTH PARLIAMENT

NATIONAL ASSEMBLY

THE HANSARD

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THE HANSARD

Thursday, 14th March 2024

The House met at 2.30 p.m.

[The Deputy Speaker (Hon. Gladys Boss) in the Chair]

PRAYERS

QUORUM

(Hon. Deputy Speaker consulted with the Clerks-at-the-Table)

Hon. Deputy Speaker: I direct that the Quorum Bell be rung for ten minutes.

(The Quorum Bell was rung)

Hon. Deputy Speaker: We may now proceed. First Order.

COMMUNICATION FROM THE CHAIR

DELEGATION FROM THE REPUBLIC OF FINLAND

Hon. Speaker: Hon. Members, I wish to introduce a Delegation from the Republic of Finland seated in the Speaker's Gallery. The Delegation comprises the alumni of the Democracy Academy, an Institution for Young Political Aspirants in the Republic of Finland. The Democracy Academy is run by Demo Finland as an organisation that supports democracy by parties for parties.

Hon. Members, the Delegation is in our Parliament to engage with the Kenya Disability Parliamentary Association (KEDIPA) and the Kenya Young Parliamentarians Association on, amongst other things, supporting political parties in addressing the needs of the persons with disabilities and the youth within their internal party structures and political commitment policies.

The Delegation brings valuable insights and experiences from Finland, known for its progressive approach to the rights and inclusion of persons with disabilities. Their presence underscores the importance of international cooperation and the exchange of ideas in advancing the rights and empowerment of persons with disabilities and youth.

Hon. Members, on my behalf and that of the National Assembly, I welcome them to Parliament and wish them fruitful engagements.

Thank you.

(Applause)

PAPERS

Hon. Deputy Speaker: Leader of the Majority Party, do you have any Paper?

Hon. Kimani Ichung'wah (Kikuyu, UDA): No.

Hon. Deputy Speaker: Hon. Members, I will re-order the Order Paper and allow the next part of Papers. We have the Chairperson of the Departmental Committee on Environment, Forestry and Mining. Then, we will return to the Leader of the Majority Party.

Hon. Kamuren, are you doing it on behalf of the Chairperson?

Hon. Charles Kamuren (Baringo South, UDA): Hon. Deputy Speaker, I beg to lay the following Paper on the Table:

Report of the Departmental Committee on Environment, Forestry and Mining on the Budget Implementation Monitoring for the Financial Year 2022/2023 for:

- (i) Vote 1332 – State Department for Forestry; and,
- (ii) Vote 1192 – State Department for Mining

Thank you.

Hon. Deputy Speaker: Chairperson, Departmental Committee on Defence, Intelligence and Foreign Relations.

Hon. Major (Rtd) Abdullahi Sheikh (Mandera North, UDM): Hon. Deputy Speaker, I beg to lay the following Paper on the Table:

Report of the Departmental Committee on Defense, Intelligence and Foreign Relations on its consideration of the Ratification of the African Union Convention on Cross-Border Cooperation (Niamey Convention).

Thank you, Hon. Deputy Speaker.

Hon. Deputy Speaker: Allow me to recognise some schools seated in the Public Gallery. They are Nyamira Girls' School, Bondo Constituency, Siaya County; Gathimu Secondary School, Ol Kalou Constituency, Nyandarua County; and Acacia Crest Senior School, Kajiado East Constituency, Kajiado County. I also wish to recognise Tangaza University from Langata Constituency, Nairobi County, seated in the Speaker's Gallery.

We may proceed—Chairperson for the Select Committee on Delegated Legislation.

Hon. Samwel Chepkonga (Ainabkoi, UDA): Hon. Deputy Speaker, I beg to lay the following Paper on the Table:

Report of the Select Committee on Delegated Legislation on its consideration of the Statutory Instruments (Amendment) Bill (National Assembly Bill No.3 of 2024). Thank you, Hon. Deputy Speaker.

Hon. Deputy Speaker: Chairperson, Departmental Committee on Finance and National Planning.

Hon. Kuria Kimani (Molo, UDA): Hon. Deputy Speaker, I beg to lay the following Paper on the Table:

Report of the Joint Departmental Committees on Finance and National Planning and Housing, Urban Planning and Public Works on their consideration of the Senate amendments to the Affordable Housing Bill (National Assembly Bill No.75 of 2023)

Hon. Deputy Speaker: Leader of the Majority Party, are you ready? Proceed.

PAPERS

Hon. Naomi Waqo (Marsabit County, UDA): Hon. Speaker, I beg to lay the following papers on the Table:

1. Sessional Paper No.3 of 2024 on the Power of Mercy Policy from the Office of the Attorney-General.
2. Addendum to the Report of the Multi-Sectoral Working Group on the realisation of the two-thirds gender principle from the Ministry of Gender, Culture, the Arts and Heritage (to be referred to the Departmental Committee on Justice and Legal Affairs).

3. Reports of the Auditor-General and financial statements for the year ended 30th June 2023 and the certificates therein in respect of—
- (a) Kenya Development Response to Displacement Impacts Project (KDRDIP) I: IDA Credit No.6021-KE and Grant No. TFOA 7762-KE by the Ministry of East African Community and Regional Development;
 - (b) Kenya Towns Sustainable Water Supply and Sanitation Programme – Credit No. P-KE-E00-011 (AfDB Loan No.200200000501) by the Athi Water Works Development Agency;
 - (c) Nairobi Intelligent Transportation System Establishment and Junctions Improvement Project Phase I (EDCF Loan Agreement No. KEN-6) by the Kenya Urban Roads Authority;
 - (d) The Establishment of Bus Rapid Transit Line 5 Project (EDCF)
 - (e) Regional Centre on Groundwater Resource Education, Training and Research in East Africa (RCGWRET and REA);
 - (f) Integrated Health and Environment Observatories and Legal and Institutional Strengthening for the Sound Management of Chemicals in Africa (No. AFR/CHEMOBS Project/C/07-2017) – State Environment and Climate Change;
 - (g) Regional Mombasa Port Access Road Project (Loan No. KFW 27459, Grant No. KFW 202061919) and Credit No. KFW 84010) by the Kenya National Highways Authority;
 - (h) Programme for Legal Empowerment and Aid Delivery Project (Credit No. KE/FED/2018/397-591) by the Office of the Attorney-General and Department of Justice;
 - (i) Support to enhancement of quality and relevance in higher education, science and technology project (Credit No.2100150027993) by the State Department for Higher Education and Research;
 - (j) Kenya Gold Mercury Free ASGM (Project No. GEF/UNDP/GOK-00108253) by the Ministry of Environment, Climate Change and Forestry;
 - (k) Sound Chemicals Management Mainstreaming and UPOPS Reduction in Kenya (Project No. P00099820) by the Ministry of Environment, Climate Change and Forestry;
 - (l) Nairobi Rivers Basin Rehabilitation and Restoration Program: Sewerage Improvement Project Phase II (AfDB Loan No. 2000200003407 and ADF Loan No. 2100150040550) by the Athi Works Development Agency;
 - (m) Combating poaching and illegal wildlife trafficking in Kenya through an integrated approach (Grant No.00108406) by the State Department for Wildlife;
 - (n) Rwabura Irrigation Development Project by the National Irrigation Authority;
 - (o) Northern Collector Phase I: Additional Rehabilitation and Development of the Network Project (Credit Number CKE-1074) by the Athi Works Development Agency;
 - (p) Kenya Off-Grid Solar Access Project (KOSAP) (Credit No. 6135-KE) by the State Department for Energy; and,
 - (q) Kenya Copyright Board.

Thank you, Hon. Deputy Speaker. I beg to lay.

Hon. Deputy Speaker: Thank you. Next order.

NOTICES OF MOTIONS

ADOPTION OF REPORT ON BUDGET IMPLEMENTATION MONITORING FOR STATE DEPARTMENTS FOR FORESTRY AND MINING

Hon. Deputy Speaker: The Chairperson of Departmental Committee on Environment, Forestry and Mining

Hon. Charles Kamuren (Baringo South, UDA): Hon. Deputy Speaker, I beg to give notice of the following Motion:

THAT, this House adopts the Report of the Departmental Committee on Environment, Forestry and Mining on its examination of the Budget Implementation Monitoring for the Financial Year 2022/2023 for the following votes, laid on the Table of the House on Thursday, 14th March 2024:

1. Vote 1332 – State Department for Forestry.
2. Vote 1192 – State Department for Mining.

Thank you.

Hon. Deputy Speaker: Thank you.

The Chairperson of the Departmental Committee on Defence, Intelligence and Foreign Relations.

RATIFICATION OF THE AU CONVENTION ON CROSS-BORDER COOPERATION

Hon. Major (Rtd) Abdullahi Sheikh (Mandera North, UDM): Hon. Deputy Speaker, I beg to give notice of the following Motion:

THAT, this House adopts the Report of the Departmental Committee on Defence, Intelligence and Foreign Relations on its consideration of the African Union Convention on Cross-Border Cooperation, laid on the Table of the House on Thursday, 14th March 2024 and pursuant to the provisions of section 8(4) of the Treaty Making and Ratification Act, 2012, approves the ratification of the African Union Convention on Cross-Border Cooperation (Niamey Convention).

Thank you, Hon. Deputy Speaker.

Hon. Deputy Speaker: Thank you. Next order.

Hon. Raphael Wanjala (Budalangi, ODM): On a point of order, Hon. Deputy Speaker.

Hon. Deputy Speaker: What is your point of order? Yours is a statement, right?

Hon. Raphael Wanjala (Budalangi, ODM): No, it is a Notice of Motion.

Hon. Deputy Speaker: Oh, yes. Chairperson of the Select Committee on Implementation. You have the microphone.

ADOPTION OF THE FIRST REPORT ON IMPLEMENTATION STATUS OF REPORTS ON PETITIONS AND RESOLUTIONS PASSED BY THE HOUSE

Hon. Raphael Wanjala (Budalangi, ODM): Thank you, Hon. Deputy Speaker. I beg to give notice of the following Motion:

THAT, this House adopts the Report of the Committee on Implementation on its consideration of the First Report on implementation status of reports on

petitions and resolutions passed by the House, laid on the Table of the House on Thursday, 26th October 2023.

ADOPTION OF THE SECOND REPORT ON IMPLEMENTATION STATUS OF
REPORTS ON PETITIONS AND RESOLUTIONS PASSED BY THE HOUSE

Hon. Raphael Wanjala (Budalangi, ODM): Hon. Deputy Speaker, I beg to give notice of the following Motion:

THAT, this House adopts the Report of the Committee on Implementation on its consideration of the Second Report on implementation status of reports on petitions and resolutions passed by the House, laid on the Table of the House on Thursday, 26th October 2023.

Thank you, Hon. Deputy Speaker.

Hon. Deputy Speaker: Next order.

QUESTIONS AND STATEMENTS

Hon. Deputy Speaker: Chairperson of the Departmental Committee on Administration and Internal Affairs, do you have a response?

Hon. Gabriel Tongoyo (Narok West, UDA): Hon. Deputy Speaker, I have got three statements. I had already responded to one sometime back through a statement read by the Member for Kericho County, who is not in the House today. So, I seek your indulgence on the same.

Hon. Deputy Speaker: You can table it.

Hon. Gabriel Tongoyo (Narok West, UDA): The other statement is on a question asked by the Member for Soy, whom I cannot see in the House.

Hon. Deputy Speaker: Were you supposed to respond to it today?

Hon. Gabriel Tongoyo (Narok West, UDA): I responded to the one read by the Member for Kericho County just before we went for recess. So, it has been overtaken by events. I have one for the Member for Soy, who is not in today.

Hon. Deputy Speaker: You can proceed. The question was placed to the House.

STATEMENTS

INSECURITY IN FAFI CONSTITUENCY

Hon. Gabriel Tongoyo (Narok West, UDA): I will respond to them, starting with one by the Member for Fafi. Hon. Farah Yakub requested a statement regarding insecurity in Fafi Constituency. He particularly sought the following:

1. A detailed account of recent attacks, shedding light on the circumstances that led to the insecurity.
2. What additional resources or support are being provided to strengthen the capacity of the personnel in Fafi Sub-County to respond to the recurring security threats?
3. Immediate and long-term measures are put in place to address recurring terrorist attacks.

I want to state as follows. Terrorism and terror-related threats have continued affecting Garissa, Wajir, Mandera and Lamu counties, mainly because of their proximity to Somalia. Insecurity within Fafi is largely complicated by the porousness of the border, radicalisation of the youth and proliferation of small arms and light weapons. The militants mainly target

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security personnel by planting improvised explosive devices. The targeting of security personnel is partly due to the fact that they have sealed loopholes used to move contraband goods originating from Somalia. The returnees and sleeper cells exacerbated the security situation in the areas. The security situation has resulted in disruption of delivery of public goods and services in hotspot areas, especially education, health and infrastructure development, as well as loss of lives and livelihoods and destruction of property.

The following additional resources or support have been provided to strengthen the capacity of the security personnel in Fafi Sub-County to respond to the recurring security threats.

1. Additional formed police units have been deployed to the sub-county, including the Quick Response Unit, General Service Unit, Special Operations Group and Border Patrol Unit.
2. Continuous training of security officers.
3. Use of armoured vehicles.
4. Use of surveillance equipment.

The immediate and long-term measures put in place to address recurring terrorist attacks include:

1. Enhanced implementation of county action plans on countering violent extremism.
2. Sustained vigilance on online platforms that include Facebook, IMO and WhatsApp, mostly exploited by terror operatives to coordinate their activities.
3. Increased and enhanced patrols along the borders and security coverage of communication infrastructure.
4. Intelligence reports have been crucial in sighting suspected Al Shabaab militants, and necessary action has been taken to thwart their efforts.
5. Enhanced vigilance of both local community and refugees.

Thank you, Hon. Deputy Speaker. Security is our responsibility. As leaders, we should all take measures and steps to sensitise communities on their roles in helping security personnel. They should report all suspects within their areas of jurisdiction.

GRUESOME MURDER OF MS. RACHAEL NYAMBURA IN MATUNDA TOWN

Hon. Deputy Speaker, I think I can proceed to respond to the other statement sought by the Member for Soy Constituency.

Hon. Deputy Speaker, the Member of Parliament for Soy Constituency has requested a Statement regarding the gruesome murder of one Ms. Rachael Nyambura in Matunda Town. The Member of Parliament particularly sought to be informed of the following:

1. Why did police officers from Matunda Police Post decline to respond to a distress call from Mama Leah's family following a tragic killing despite being 400 metres from the scene of the incident?
2. Is there a policy that bars police officers from responding to incidences proximal to their station because they are outside their administrative jurisdiction? If so, what is the rationale behind implementing such a policy?
3. What steps are being taken to ensure the incident is promptly investigated and perpetrators brought to justice to provide closure to the bereaved family?
4. What actions are in place to ensure proper coordination between police stations in different counties to ensure timely response to emergencies and crime?
5. What measures have been put in place to ensure security in Matunda Town, Soy Town, Moi's Bridge and other towns in Soy Constituency?

Hon. Deputy Speaker, I want to state as follows.

On 4th November 2023, at around 2245hrs, an initial report was made at Matunda Police Station vide OB No.38/04/11/2023 stating that Mr David Munyaka and his wife, who are proprietors of Modern Hardware within Matunda Township, were heading to their vehicle, Prado Reg. No. KBC 900R when they were suddenly hit by an unknown vehicle. There was neither a distress call nor any information concerning the incident made to the police prior to the phone call. Officers from Matunda Police Station and the Directorate of Criminal Investigations, Likuyani, located approximately half a kilometre from the scene of the incident, rushed to the scene. The officers established that the victims had been taken to St. Luke Hospital in Eldoret.

The following day, the Directorate of Criminal Investigations officers from Soy, together with the Crime Scene Support Services personnel, went to the home of David Munyaka in Matunda Township and confirmed that the incident in question took place on 4th November 2023 at 1930hrs. They also established that Ms. Rachael Nyambura Munyaka, aged 62 years, and her son, Mr. John Kaguora, aged 30 years, were attacked on their way home after closing their business within Matunda Township. Along a feeder road that leads to their home approximately 150 metres from their business premises, they found a motor vehicle, a Toyota Premio partial Reg No. KCD white in colour, and parked in the middle of a narrow road facing the direction they were headed.

As soon as John went past the said vehicle, he heard somebody screaming and on turning back, he saw his mother, who was behind him, being run over by the vehicle. John went for his father, and together, they rushed her to St. Luke, where she was pronounced dead on arrival.

On 8th November 2023, David started receiving threatening messages demanding payment of Ksh4.5 million or elimination of his son in like manner as that of his late wife. The number continued sending messages until 12th November 2023, when police officers tracked it to Nzoia Ward, and the handset was recovered. The handset led police to Hon. Collins Sifuna, the MCA for Nzoia Ward, who is said to have handed it over to the persons arrested with it.

On 15th December 2023, the MCA, Collins Sifuna, availed himself at DCI Soy offices without being summoned. While in custody, another threatening message was sent to David using the same number. He was released on a cash bail of Ksh80,000 by Kamukunji Police Station. The case is being handled by the DCI Soy, which has since opened Inquiry File No. 4 of 2023 and forwarded the same to the Office of the Director of Public Prosecution (ODPP) for advice.

On the second question on policy, I want to respond as follows. No policy bars any police officer from responding to an emergency or any crime outside their administrative jurisdiction. Matunda and Uasin Gishu areas are geographically separated by Eldoret-Kitale Highway. The nearest police station on the Rift Valley side is located about 4 kilometres away from Matunda Town, yet Matunda Police Station is hardly a few metres from the town. Members of the public from the Rift Valley region typically report incidences at Matunda Police Station in the Western region due to its proximity.

On the third question about the steps to ensure that the incident is promptly investigated, I want to report that DCI Soy is investigating the case. We had mentioned that Inquiry File No. 4 of 2023 had already been opened and forwarded to the Office of the Director of Public Prosecution (ODPP).

Regarding the actions being taken to ensure proper coordination between police stations in different counties, I would state the following: Officer Commanding Police Stations at the borders between counties usually coordinate to ensure that the citizens are served efficiently. Further, the Sub County Police Commanders of both Soy Sub County and Likuyani Sub-County coordinate activities that touch on either of their two sub-counties.

The last question concerns measures to ensure security in Matunda Town, Soy Town Moi's Bridge, and other towns in Soy Constituency. I beg to respond as follows:

Soy Town (Uasin Gishu County): due to proximity, the Officer Commanding Station (OCS) Soy responds to any emergencies or ongoing crime at the Soy market and later refers the matter to his counterpart in Likuyani Police Station, who has jurisdiction over part of Soy Township.

On Matunda Township (Kakamega County), the OCS Matunda responds to all security issues that require an immediate response on behalf of OCS Moi's Bridge and takes over the matter.

In the meantime, there is a proposal to open a new police patrol base within Matunda on the side of Uasin Gishu to improve security. In the spirit of community policing, members of the public have donated a house that can accommodate up to six officers as a short-term solution to improve service delivery.

Concerning Moi's Bridge (Uasin Gishu), the OCS Moi's Bridge responds to incidences and emergencies on behalf of OCS Matunda Police Station and takes over if the matter needs further investigation.

The concerned Member of Parliament had an opportunity of partially asking some Questions to the Cabinet Secretary when he was last in the House.

Thank you, Hon. Deputy Speaker.

Maj (Rtd.) Abdullahi Sheikh (Mandera North, UDM): On a point of order, Hon. Deputy Speaker. On a point of order.

Hon. Deputy Speaker: You know I can hear you. You do not have to say it three times. Once is enough.

Maj (Rtd.) Abdullahi Sheikh (Mandera North, UDM): Hon. Deputy Speaker, I listened to the able Chairman responding to specific questions by answering them. The last one was a statement. In my view, the Cabinet Secretary was supposed to be here to answer those specific Questions, especially those touching on insecurity. So, I do not understand why the Cabinet Secretary is not here, and the Chairperson is answering those Questions. It shows the lack of seriousness by the Cabinet Secretary responsible for security. The *Al Shabaab* are now ravaging the residents in the North Eastern. So, for those questions, I want to beseech that the Cabinet Secretary avails himself here so that we can interrogate him further.

Chairman, please ask the Cabinet Secretary to come here in person so he can answer those specific questions on matters of insecurity in North Eastern.

Thank you very much.

Hon. Deputy Speaker: Hon. Chairperson, were those Statements directed to your Committee?

Hon. Gabriel Tongoyo (Narok West, UDA): These are Statements, Hon. Deputy Speaker. I think there is a clear difference between Statements and Questions.

(Hon. Maj (Rtd.) Abdullahi Sheikh consulted loudly)

Hon. Deputy Speaker: Hon. Member, kindly desist from heckling. That is out of Order. Kindly desist from heckling. We said those questions had been brought before the House as Statements. However, if you want the Cabinet Secretary to come and answer them, you can always have them as Questions. They can then be provided to the Cabinet Secretary when they are called to come here.

I will come to you, Hon. Kangogo.

Hon. Farah Yakub (Fafi, UDA): Thank you, Hon. Deputy Speaker.

Hon. Deputy Speaker: Use the other microphone. That one is faulty. Switch it off. Proceed Hon. Member.

Hon. Farah Yakub (Fafi, UDA): Thank you, Hon. Deputy Speaker, for giving me this chance and for the possibility of responding to what the Chair has said. I thought this was a House of Standing Orders and respect, but I do not see that. The Chair responded to my question as a statement. There is a difference between questions asked to the specific Cabinet Secretaries and statements sought. The response given by the Chair and Hon. Member from Fafi Constituency is said to be in response to the Statement I sought. I did not seek any statements. I asked a specific question to the Cabinet Secretary on security in Fafi Constituency. The manner in which the question was answered was less than two pages, flaccid and shallow. I asked for specific details on accounts and abductions. So, I request that the specific Cabinet Secretary concerned with security appear before the House.

Last night, a Meru businessman was shot dead by the *Al-Shabaab* in my area at a place called Dar es Salaam. I am perturbed to hear that the Cabinet Secretary does not want to appear but answers our questions with very shallow statements. Under your guidance, I request that the Cabinet Secretary for Interior and National Administrations, Hon. Kindiki, appear before the House so that we can raise concerns and issues on security not only in Fafi Constituency and Lamu but throughout Northern Kenya.

Thank you, Hon. Deputy Speaker.

Hon. Deputy Speakertable: Hon. Yakub, did you give the Statement here in the House or sent it to the Table office?

Hon. Farah Yakub (Fafi, UDA): It is a Notice of Question 045/2024 by the Member for Fafi, Hon. Farah Yakub, to ask the Cabinet Secretary for Interior and National Administration, not a statement. Even the statements did not address the question I asked. Thank you, Hon. Deputy Speaker.

Hon. Deputy Speaker: Clerks-at-the-Table will note that the questions that are supposed to go to the Cabinet Secretary are answered by him as opposed to them coming to the House as statements to be answered by the Chairperson. I think there must have been confusion there. Let us proceed to the Statement by the Hon. Leader of the Majority Party. Hon Kangogo, I said I would give it to you before we go to the next Statement.

Hon. Kangogo Bowen (Marakwet East, UDA): Thank you, Hon. Deputy Speaker, for directing the Chairperson of the Departmental Committee on Administration and Internal Affairs to inform the Cabinet Secretary to appear before us on the issue of insecurity. On the same issue, North Eastern, the Coast, and the Rift Valley form almost three-quarters of the landmass of this country. This is the part of the country that has been left to terrorists, bandits, cattle rustlers, and murderers. The answers we have been receiving from the Cabinet Secretary on insecurity are cosmetic, copy, and paste. For many years, whether you ask a question or make a statement, the response we get has been cosmetic in nature.

This time, we have seen how the Government is fighting corruption and illicit brews in this country. We want the Government to have the same energy and strength to fight bandits, terrorists, and cattle rustlers. We cannot leave over three-quarters of this country to bandits and terrorists, because when you talk about the entire North Eastern region, there is no peace. Cattle rustlers are dominating the entire Rift Valley. The *Al Shabaab* has taken over the entire Coast Province. So, in which part of the country are we safe? Are we talking about Nairobi and a few other patches? We need to take the issue of insecurity very seriously.

Hon. Deputy Speaker: I think we adequately directed that to the clerks' desk and the chairpersons. Okay, next is the Hon. Leader of the Majority Party. Do you have your weekly Statement?

(Hon. Kangogo Bowen consulted with Hon. Kimani Ichung'wah.)

You are letting Hon. Kangogo distract you.

Hon. Kimani Ichung'wah (Kikuyu, UDA): Thank you, Hon. Deputy Speaker. He distracted me from other critical business when he mentioned that *Al Shabaab* had taken over. I informed him that there is nowhere in this country that *Al Shabaab* has taken over. Maybe there is a problem with cattle rustlers, but terrorists and bandits can never take over this country, nor shall we allow bandits to take over this country.

BUSINESS FOR THE WEEK OF 18TH TO 22ND MARCH 2024

Hon. Kimani Ichung'wah (Kikuyu, UDA): Hon. Deputy Speaker, allow me to read the usual Thursday Statement on behalf of the House Business Committee (HBC).

Hon. Deputy Speaker, pursuant to the provisions of Standing Order 44(2) (a), I rise to give the following Statement on behalf of the House Business Committee, which met on Tuesday, 12th March 2024, to prioritise business for consideration during the week. With regard to business scheduled for Tuesday next week, the House is expected to undertake the Second Reading of the National Disaster Risk Management Bill, 2023 and the Houses of Parliament (Bicameral Relations) Bill, 2023, should they not be concluded today.

Additionally, debate will also be undertaken on the following Motions, should they not be concluded today:

1. Report of the Auditor-General on Financial Statements of selected State Corporations;
2. Report of the Auditor-General on the National Government Constituencies Development Fund for five Constituencies in Vihiga County;
3. Report of the Auditor-General on Financial Statements for the Kenya Slum Upgrading Low-Cost Housing and Infrastructure Trust Fund;
4. Report on the Inquiry into the maize flour subsidy programme for the Financial Year 2022/2023;
5. Report of the Auditor-General on the financial statements for the Land Settlements Fund; and,
6. Reports of the Auditor-General on the National Government Constituencies Development Fund for nine constituencies in Bungoma County.

Hon. Deputy Speaker, given that the House is expected to proceed on a short recess next week, we also aim to conclude the consideration of the Division of Revenue Bill 2024 at all remaining stages once the report on the Bill is Tabled. In accordance with the provisions of Standing Order 42A (5) and (6), I wish to convey that the Cabinet Secretary for Youth Affairs, Creative Economy and Sports is scheduled to appear before the House on the afternoon of Wednesday, 20th March 2024 to respond to the following Questions:

1. Question No.231/2023 by the Member for Nyeri Town, Hon. Duncan Mathenge, regarding the progress of the Ministry's policy in stopping the construction of new stadia across the country;
2. Question No.053/2024 by the Member for Ndhiwa, Hon. Martin Owino, regarding the measures by the Ministry in promoting sports development and nurturing talents among communities;
3. Question No.054/2024 by the Member for North Imenti, Hon. Abdul Dawood, regarding the timeline for the release of Ksh42 million committed by Sports Kenya on 13th December 2017 intended for the partial construction of Meru Divisional County Offices; and,
4. Question No.055/2024 by the Nominated Member, Hon. Irene Mayaka, regarding the policy framework guiding the provision of Medical Cover for Sportspersons in the Country.

Hon. Deputy Speaker, in conclusion, the House Business Committee will reconvene on Tuesday, 19th March 2024, to schedule business for the rest of that week. I now lay this Statement on the Table of the House.

Thank you, Hon. Deputy Speaker.

Hon. Deputy Speaker: Thank you Next Order.

BILL

Second Reading

THE REGIONAL DEVELOPMENT AUTHORITIES BILL
(National Assembly Bill No.7 of 2023)

(Moved by Hon. Peter Lochakapong on 7.3.2024)

(Debate concluded on 13.3.2024 – Afternoon Sitting)

(Question put and agreed to)

*(The Bill was read a Second Time and
Committed to Committee of the whole House)*

Hon. Deputy Speaker: Next Order.

MOTION

ADOPTION OF REPORT ON EMPLOYMENT OF PERSONS
WITH DISABILITIES IN PUBLIC INSTITUTIONS

THAT, this House adopts the Report of the Committee on National Cohesion and Equal Opportunity on the compliance to Article 54(2) of the Constitution regarding employment of Persons with Disabilities in public institutions, laid on the Table of the House on Wednesday, 21st February 2024.

(Moved by Hon. Yusuf Adan on 13.3.2024 – Afternoon Sitting)

(Debate concluded on 13.3.2024 – Afternoon Sitting)

(Question put and agreed to)

COMMUNICATION FROM THE CHAIR

SENATE AMENDMENTS TO
THE AFFORDABLE HOUSING BILL
(National Assembly Bill No.75 of 2023)

Hon. Deputy Speaker: Hon. Members, I have a Communication from the Chairman regarding that Order. Before we proceed with Orders Nos.10 and 11, which relate to the consideration of the Senate amendments to the Affordable Housing Bill (National Assembly Bill No.75 of 2023), I wish to guide the House on the procedure to be followed.

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You will recall that on Wednesday, 21st February 2024, the National Assembly passed the Affordable Housing Bill (National Assembly Bill No.75 of 2023). It seeks to, inter alia, give effect to Article 43(1)(b) of the Constitution to provide a framework for the development and access to affordable housing and institutional housing.

Following its passage by the House, the Bill was forwarded to the Senate for consideration pursuant to the provisions of Article 110(4) of the Constitution. The Senate made various amendments to the Bill as conveyed to the House on Wednesday, 13th March 2024. The Senate amendments were committed to the Departmental Committee on Finance and National Planning and the Departmental Committee on Housing, Urban Planning and Public Works for joint consideration and reporting to the House.

The manner of disposing of Senate amendments to National Assembly Bills is provided for in Standing Orders 145 to 148. In summary, the House will generally debate the Senate amendments for not more than one hour under the Motion "That the Senate amendments be now considered". Thereafter, should the House resolve to consider the amendments, it will dissolve into a Committee of the whole House to dispose of the amendments sequentially. On the other hand, should the Motion be negatived, the provisions of Article 112 of the Constitution relating to the mediation process will apply.

Similarly, should the Committee of the whole House amend or reject any of the Senate's amendments, the mediation process will also apply. Instructively, the Chairperson of the Departmental Committee on Finance and National Planning will move the Senate amendments to the Bill, should the Motion be approved.

In conclusion, should the House pass the amendments as proposed, the Speaker will then proceed to forward the Bill to the President for assent in accordance with the provisions of Article 112 of the Constitution. The House is accordingly guided. Thank you. I saw Hon. Kimani walking out. He is the Mover. I can see he is here.

MOTION

SENATE AMENDMENTS TO THE AFFORDABLE HOUSING BILL (National Assembly Bill No.75 of 2023)

Hon. Kimani Ichung'wah (Kikuyu, UDA): I beg to move:

THAT, the Senate amendments to the Affordable Housing Bill (National Assembly Bill No. 75 of 2023) be now considered.

Let me first take this opportunity to thank both the Departmental Committee on Finance and National Planning and the Departmental Committee on Housing, Urban Planning and Public Works for the quick consideration of the amendments from the Senate. After the Message you read yesterday, I know the Committee retreated and held their meeting yesterday evening up to very late. Indeed, they were still working on this draft Report when I spoke to the Chairman way after midnight. I must thank both Committees led by Hon. Johana Ng'eno and Hon. Kuria Kimani, respectively.

The Senate effected several amendments that enriched the substance of this Bill. More so, the new Part III—Clause 31A to Clause 31F. These seek to introduce the role of county governments in affordable housing and create county committees to help advise Governors in consultation with the National Housing Board on the rollout of affordable housing in counties. Some of these are progressive amendments. I have seen the Committee agrees with them. The Committee also disagrees with the Senate on several amendments. Reading their Report, many of the Committees' reservations on the amendments done by the Senate are not fatal. The Committees observe that future statutes can cure them.

That observation tells us that the spirit of our bicameral Parliament is such that we are not seen to be constantly fighting and getting into mediation between the two Houses. What we find not fatal in a proposed amendment can be amended in further statutes. For instance, the Committee on Finance and National Planning does not agree with some amendments. However, they have stated in their observations that these things can be cured using the Finance Bill that will be coming shortly.

The Ministry of Lands, Public Works, Housing and Urban Development is also in the process of doing another comprehensive Housing Bill that looks at the entire spectrum of housing. That will be from what Members contributed during our Second Reading of the Affordable Housing Bill. That includes issues concerning rural housing, which I know Prof. Ojiambo Oundo was very keen on. The Ministry is working on a comprehensive Bill that deals with a whole spectrum of housing, from our rural and social housing to the affordable housing we are doing through this Bill.

After due consideration between the Committees, the Ministry, and the leadership in the Senate, we have agreed that some of the Committees' reservations can be cured through the statute coming in the name of a Housing Bill that will be tabled before the House. Therefore, we ask Members to adopt the Committees' Report as it is. We will go to the Third Reading and the Committee of the whole House upon conclusion of this debate within the one-hour timeline given for consideration of this Motion, as we said. We could propose that the House agree with the Senate in the amendments; we have the Bill enacted into law now and assented to by the President as you guided, without any undue delay. We have taken note of the few reservations that were there.

The Chairman of the Departmental Committee on Finance and National Planning has committed that he has taken note of those that will be rectified through the Finance Bill that will be tabled before the end of next month. The Chairman of the Departmental Committee on Housing, Urban Planning and Public Works has taken note of those that will be done through the Housing Bill. A few minor ones can be done through miscellaneous amendments. I am taking them up with the Office of the Attorney-General to ensure they are done. Therefore, in the spirit of bicameralism, we need not get into mediation and fights with our brothers and sisters in the Senate. We should mostly agree with them when we get to the Committee of the whole House.

With those few remarks, since time is very limited on this, I beg to move. I ask the Chairman of the Departmental Committee on Finance and National Planning, Hon. Kuria Kimani, my namesake and younger brother, and Member of Molo Constituency, to second.

Hon. Kuria Kimani (Molo, UDA): Hon. Deputy Speaker, I beg to second.

Thank you, Hon. Deputy Speaker and the Leader of the Majority Party. At the outset, I would like to thank the Members of the Departmental Committee on Finance and National Planning and the Departmental Committee on Housing, Urban Planning and Public Works. We got the Report from the Senate yesterday and we burnt the midnight oil to process the amendments. As the Leader of the Majority Party has said, by and large, we agreed on most of the amendments made by the Senate. For the information of the House, one of the key amendments that is proposed is the role of county governments. The Senate will establish county committees to make sure that affordable housing projects are spread across the country in the spirit of fairness and ensuring that no county is left behind in terms of this responsibility of affordable housing and institutional housing.

Key to note also is a proposal to reduce from 2 per cent to 0.5 per cent the amount of the levies that the Kenya Revenue Authority (KRA) is supposed to take. Although we agree that all the other levies that are collected by KRA on behalf of various agencies like the Railway Development Levy, the Petroleum Development Levy or the Import Declaration Fee attract a

levy of 2 per cent, this will be a key departure from the KRA Act. These are some of the amendments that we hope to fix in the Finance Bill.

Also, another amendment that has been proposed by the Senate is the definition of social housing. It ensures specification of incomes of people who will benefit from the houses to make sure that the implementing agencies ensure that the affordable housing units are not just for the rich or the middle class, but they are also for those that earn the minimum wage in this country.

Key to also note among the amendments is the inclusion of the National Construction Authority and the State Department for Public Works as some of the implementing agencies of these projects. We have seen some buildings collapse due to lack of proper supervision by the State Department of Public Works and sometimes due to lack of empowering the National Construction Authority to supervise the construction of these projects as mandated by respective Acts of Parliament. Therefore, involving the National Construction Authority and the State Department for Public works will ensure they maintain the integrity of the buildings so that we do not have them collapsing. These two entities will play a more active role.

The Bill we approved and sent to the Senate had provisions of Sharia Law to the effect that mortgages that are going to be provided in this programme are Sharia compliant. Hon. Tandaza was concerned that maybe the Senate had proposed an amendment to that. I would like to confirm to him that the Senate did not propose any further amendment to what this House approved on that. So, the mortgages that are going to be issued through the affordable housing scheme will be to be Sharia-compliant as far as possible. This is a step in the right direction, especially as our Muslim brothers and sisters observe the holy month of Ramadhan.

The National Assembly had amended provisions of the Housing Levy be tied to the Tax Procedures Act in terms of the date of collection and the penalties thereof. However, Senate has disagreed with the National Assembly on this particular amendment and has brought back the penalty at 3 per cent if this Housing Levy is not levied on time. We still feel that this particular Levy should be tied to the Tax Procedures Act so that it is remitted to the Kenya Revenue Authority as a civil debt, just like all the other levies and taxes are levied. We hope that subsequently, in the coming legislation, then we will again tie the collection of the Housing Levy to the Tax Procedures Act to ensure that there is fairness and uniformity in how we do tax administration in this country.

For the comfort of this House, the issue of institutional housing continues to come up. It is a very critical area because many students in universities, polytechnics and Kenya Medical Training Colleges live in deplorable situations. We are happy to observe that the amendments that were proposed by this House to include institutional housing as part of the functions of the Fund have been accepted by the Senate. This will ensure that our students in universities and colleges will have decent places to stay in when they are in school. That is why we agree with these amendments and therefore they do not need to go for mediation. The Departmental Committee on Finance and National Planning and the Departmental Committee on Housing, Urban Planning and Public Works have agreed.

Hon. Deputy Speaker, I beg to second.

(Question proposed)

Hon. Deputy Speaker: Yes, Hon. Makali. I will come to you Hon. Mbui

Hon. (Dr) Makali Mulu (Kitui Central, WDM): Thank you, Hon. Deputy Speaker, for giving me this opportunity. I want to make my contribution to this Bill which has been forwarded to us by the Senate.

I have listened to the Mover and the Seconder. They suggest that even though there are some areas they do not agree with as a Committee, for now we can just move on and approve

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them. It is important for us to note that if we do that automatically it means the coming Finance Bill will not be able to address the issues because if this is assented to in another one month, we will still require not less than six months to propose and pass an amendment. It is important to note that, that will be happening in the next Finance Bill. So that means whatever is not convenient to Kenyans, then we have to live with that for about one year.

There is a matter the Senate has raised which I brought up. I am happy that the Senate has picked it. The matter concerning targeting. Once the houses are done, do we have some affirmative action in place to make sure that Kenyans who are unable to pay the required deposits will still get the houses? Today, I am a very happy Member of Parliament because the Senate has picked that. Once we pass the amendments, we will be sure that out of the total number of houses to be constructed, there will be a share for Kenyans who cannot at all afford them. Whatever share that they will be given, it will be upon them to plan and see how they can access that share.

What does that imply? It implies that at the end of the day not the rich or the middle class Kenyans will take up all the houses. We have said many times that we are using public land to construct the houses and once they are complete, they will be sold to individuals or private sector. That is subsidising the houses when they are sold to the private persons. If we do not accommodate low income earning Kenyans, it will be unfair and that will be discrimination in terms of who benefits. I am happy that, that has been picked by the Senate.

The other critical matter is the issue where if you do not remit the money, you are charged 3 per cent penalty. The Chairman of the Committee has come out very clearly that we should treat this matter just like we treat taxes so that if there is a delay in paying the tax, let this matter be treated the same. But unfortunately, we are saying we are going to accommodate that 3 per cent in the form it is. This means that for the next one year anybody who has been delaying the payment of that levy then has to face the consequences of paying 3 per cent penalty. This is an area I wish we amend.

The other proposal is to bring on board Public Works and the NCA. The NCA is a regulatory authority so, I do not know how we are bringing them on board. Is it in terms of implementation or is it in terms of quality assurance? The NCA currently is designed to implement. Mostly they just oversee and make sure that standards are met. Bringing NCA and public works on board is an area I would wish that we make it very clear in the Bill on what role NCA will be playing. Otherwise, it will not make sense for the NCA, which is a regulatory authority, to become an implementer in this arrangement.

With those many remarks, I support.

Thank you.

Hon. Deputy Speaker: Hon. Robert Mbui, the Member for Kathiani.

Hon. Robert Mbui (Kathiani, WDM): Thank you, Hon. Deputy Speaker, for this opportunity.

Democracy is very interesting because I opposed this Bill in its totality when it was presented to the National Assembly. Now, the same Bill went to the Senate and has been brought back with amendments. This shows that probably, the Senate was listening to some of the issues we raised when we indicated that this Bill is flawed. In future, we should listen to each other here so that the Senate does not notice some basic mistakes we make because we cannot talk to each other.

I hoped that the Senate would reject this Bill and save Kenyans from the burden. The Senate was established to protect devolution. Earlier on, I said that this Bill should have been a Senate Bill. The National Assembly is only mandated to deal with the national Government. Now, we have gone into the implementation of how people will get houses and how these houses will be put up. This is the work of the Senate. I hoped that the Senate would have protected devolution and insisted that this should be handled by the county governments. In

my opinion, the national Government's involvement was unconstitutional and still is unconstitutional.

They had some vague issues to clarify such as how people will benefit from these houses and how the valuation of the houses will be determined. I raised these concerns and pointed out that it was unfortunate that developers were building houses at a cheaper cost than these affordable houses. I also questioned the location of these houses as our rural communities may not be interested in them. Perhaps it would be better to focus on building affordable housing in urban areas and major cities. The other issue is the repayment period. These are some of the things that the Senate should have addressed.

It is disappointing that the Senate has also become another choir for the Executive. The only difference is that they sing Soprano as the National Assembly sings base. Unfortunately, the two Houses have become a rubber stamp for the Executive.

We have to be careful that we do not pass Bills that end up in court. There are major issues in this Bill that will take us back to court. Land is a big issue. Most of the places where these houses are being built have ownership disputes. How will we tackle this problem so that we have seamless implementation? Once this becomes an Act of Parliament, we are all bound to respect and implement it. We have to be careful about what we pass in this House.

The other time we passed a policy here to send our policemen to Haiti. The Prime Minister of Haiti came here and signed a document with the Head of State and he could not even land back into his own country. We have to think through these issues. We also passed the Finance Bill of 2023 and the same Members who were shouting "yes" are now telling the villages that the Bill was flawed. The same thing will happen with this Affordable Housing Bill. Now you are shouting "yes" and tomorrow you will be telling the hustlers that there was a mistake. Even the Deputy President said that the Finance Bill of 2023 was flawed. I hope you do not tell us the same about this Bill.

With those remarks, my position remains the same; I oppose.

Hon. Deputy Speaker: Hon. Johana Ng'eno.

Hon. Johana Kipyegon (Emurua Dikirr, UDA): Thank you, Hon. Deputy Speaker. I also appreciate that the Bill which had gone to the Senate has come back with amendments. I support it.

As the Chairperson of the Departmental Committee on Housing, I want to express my appreciation for the Senate's efforts in enriching the Bill, even though they mainly focused on the counties. The passage of this Bill will help to address all the issues that have been raised by members of this House and the public. The proposals put forward by the Senate demonstrate our shared responsibility towards providing affordable housing to Kenyans.

A Member has touched on the NCA which falls under public works. The State Department of Public Works has been building Government houses. The NCA is majorly in this Bill as an inspectorate and quality assurance authority in the building of these houses.

We have all gone through this Bill either in the First Reading, Second Reading and now the Senate. Everybody is asking for the proper implementation of this programme. After this Bill is passed, the implementation will lie on the Executive to ensure that they deliver on the promises they made to the people.

I wish to support and urge Members to support this Bill. As the Chairperson of the Housing Committee, I wish to state that we support all the amendments proposed by the Senate. We are in total agreement.

I thank you.

Hon. Deputy Speaker: Hon. Members, I wish to recognise the presence of the following schools in the Speaker's Gallery:

1. Nguuni Boys Secondary School from Mwingi Central Constituency in Kitui County

2. The University of Nairobi from Starehe Constituency in Nairobi County
3. St. Angela's Girls Karura from Kiambaa Constituency, Kiambu County

Also seated in the Public Gallery are:

1. Masumba High School from Kibwezi West Constituency, Makueni County
2. Manthi Junior School from Imenti Central Constituency, Meru County
3. Baitigitu Junior School from Imenti South Constituency, Meru County
4. St. Lukes Yatta Boys School from Kitui Rural Constituency, Kitui County

On behalf of the Members of the National Assembly and myself, we welcome you to the National Assembly.

Next is Hon. George Murugara

Hon. George Murugara (Tharaka, UDA): Thank you very much, Hon. Deputy Speaker. As I support the Motion, it is important that I make a few clarifications.

A member has suggested that the amendments made by the Senate cannot be reintroduced for six months as it would be considered a rejection by Parliament. However, this is not entirely accurate. The six-month rule applies only to motions passed or rejected in the House. Some of the observations we had which the Senate did not agree with can come through a Finance Bill and be effected that way.

We have done intensive public participation in respect to housing. While there may be one or two issues that may arise, the position remains that Kenyans are eager to see the housing policy implemented. It is important that we involve county governments. This is why we agree with the proposals by the Senate, that there will be a committee of county governments that is supposed to oversee the construction of these houses.

There is mention of the fact that there may be land problems especially where these houses will be built. We all know exactly what happens when there is a land dispute. No land is being acquired compulsorily. If there is any compulsory acquisition, the law is clear on how this is done. Those affected are adequately compensated. Therefore, what we are debating today is proper. We should move on to the Committee of the whole House so that we can pass the proposed amendments or reject them.

Hon. Deputy Speaker, I support.

Hon. Joseph Makilap (Baringo North, UDA): On a point of order, Hon. Deputy Speaker.

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

Hon. Joseph Makilap (Baringo North, UDA): I rise under Standing Order 95. We had an opportunity to discuss this Bill, and it is now a good opportunity for us to call upon the Mover to reply.

(Loud consultations)

Hon. Deputy Speaker: How many are in favour of putting the question?

(Loud consultations)

I thought you all agreed. Now let me put the question. How many are in favour of putting the question?

(Question put and agreed to)

(Loud consultations)

(Several Members stood in their places)

Hon. Deputy Speaker: Hold on, do not go to the next Order. The numbers are not enough. Let us....

COMMITTEE OF THE WHOLE HOUSE

(Order for Committee read)

[The Deputy Speaker (Hon. Gladys Boss) left the Chair]

IN THE COMMITTEE

*[The Temporary Chairman
(Hon. David Ochieng') in the Chair]*

SENATE AMENDMENTS TO THE
AFFORDABLE HOUSING BILL
(National Assembly Bill No.75 of 2023)

(Loud consultations)

The Temporary Chairman (Hon. David Ochieng'): Order, Hon. Members. What is out of order? We have not even started. Come on. Order, Hon. Members.

*(Hon. Samwel Chepkonga, Hon. Owen Baya and
Hon. (Dr) Ojiambo Oundo consulted along the aisle)*

Order, Hon. Baya, Hon. Chepkonga and 'Hon. Nyalenda Girls'. Order, Hon. Members. Hon. Chepkonga and 'Hon. Nyalenda Girls' resume your seats.

Hon. Harrison Kombe (Magarini, ODM): On a point of order, Hon. Temporary Chairman.

The Temporary Chairman (Hon. David Ochieng'): Member for Magarini, there is nothing out of order. Just hold your horses. You are a senior Member of this House and know how it works.

Hon. Members, we are now formally in the Committee of the whole House to consider the Senate Amendments to the Affordable Housing Bill (National Assembly Bill No.75 of 2023), that was passed by this House last month.

Senate amendment to clause 2

THAT clause 2 of the Bill be amended—

(a) in sub – clause (1) by inserting the following new definition—

“County Committee” means the County Affordable Housing Committee established under Part IV of this Act;

(b) by deleting sub-clause (2) and inserting the following new sub-clause —

(2) For purposes of this Act, “affordable housing unit” refers to —

(a) a social housing unit means a house targeted to a person whose monthly income is below twenty thousand shillings;

(a) an affordable housing unit means a house targeted at a person whose

- monthly income is between twenty thousand and one hundred and forty-nine thousand shillings;
- (b) affordable middle-class housing unit means middle to high income housing targeted at persons whose monthly income is over one hundred and forty-nine thousand shillings; or
 - (c) rural affordable housing unit means a house under section 42 targeted at a person living in any area which is not an urban area.

Senate amendment to clause 5

THAT clause 5 of the Bill be amended in subsection (2) by deleting the words “business or company which” and substituting therefor the words “person who”.

Senate Amendment to clause 7

Default on payment
of amount of Levy.

7. Where an amount of the Levy remains unpaid after the date when it becomes due and payable by a person liable to remit the amount, a penalty equal to three per centum of the unpaid amount shall be due and payable for each month or part thereof that the amount remains unpaid and shall be summarily recovered as a civil debt for the person liable to remit the amount.

Senate amendment to clause 9

THAT clause 9 of the Bill be amended –

- (a) in paragraph (d) by deleting the words “section 38” and substituting therefor the words “section 42”; and
- (b) by inserting the following new paragraph immediately after paragraph (e)—
 - (ea) loans approved by the Cabinet Secretary for the time being in charge of the National Treasury;

Senate amendment to clause 10

THAT clause 10 of the Bill be amended –

- (a) in subclause (1) by deleting the word “development” appearing immediately after the words “funds for the” and substituting therefor the words “design, development and maintenance”;
- (b) in subclause (2) –
 - (i) by deleting the word “development of affordable housing schemes” appearing in paragraph (d) immediately after the words “facilitate the” and substituting therefor the words “design, development and maintenance of affordable housing schemes in all counties”;
 - (ii) by inserting the following new paragraph immediately after paragraph (g)—
 - (h) facilitate the provision of services to the projects under the management of the Fund.

Senate amendment to clause 11

THAT, clause 11 (4) of the Bill be amended—

- (a) in paragraph (a) by deleting the word “two” and substituting therefor the word “point five (0.5%)”;

- (b) by inserting the following new paragraph immediately after paragraph (b)—
 - (c) not less than point five percent (0.5%) of the monies to the county committees for the administration of the County Committees as may be approved by the Cabinet Secretary for the time being responsible for the National Treasury.
- (c) by inserting the following new subsection immediately after subsection 4 –
 - (4A) The monies under subclause (4)(c) shall be appropriated as a conditional grant to county governments.

Senate amendment to clause 12

THAT clause 12 of the Bill be amended in sub-clause (3) by deleting the words “National Assembly” and substituting therefor the word “Parliament”.

Senate amendment to clause 13

THAT clause 13 of the Bill be amended in sub-clause (3) by deleting the words “the National Assembly for approval before disbursing funds out of the Fund” and substituting therefor the word “Parliament”.

Senate Amendment to clause 14

- THAT clause 14 of the Bill be amended in sub-clause (3)—
- (a) by deleting the word “his” appearing in paragraph (b) and substituting therefor the word “their”;
 - (b) by deleting the word “his” appearing in paragraph (c) and substituting therefor the word “their”;

Senate amendment to clause 15

THAT clause 15 of the Bill be amended in sub-clause (2) by inserting the following new paragraph immediately after paragraph (d)—

- (da) inspect and enforce compliance to this Act, guidelines and regulations set under the Act.

Senate amendment to clause 16

- THAT clause 16 of the Bill be amended—
- (a) in sub-clause (1) –
 - (i) by deleting paragraph (b) and substituting therefor the following new paragraph—
 - (b) has ten years’ experience in a senior management position in the public service or private sector; and
 - (ii) by inserting the following new paragraph—
 - (c) meets the requirements of Chapter Six of the Constitution.
 - (b) in sub-clause (2) by deleting the words “other than as an ex-officio member” appearing immediately after the word “Board”.

Senate amendment to clause 17

THAT clause 17 of the Bill be amended—

words “Act, 2012, the” and substituting therefor the word “Board”.

Senate amendment to clause 34

THAT clause 34 of the Bill be amended by deleting the word “Fund” and substituting therefor the word “Board”.

Senate amendment to clause 35

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

Agreement with
private institutions and
persons.

35. (1) The Board may enter into an agreement with a private institution —

- (a) to develop and construct affordable housing units and associated social and physical infrastructure; and
- (b) for the supply of goods and materials in connection with the construction of affordable housing units.

(2) The Board shall, before entering into an agreement under subsection (1), publish in at least two newspapers of nationwide circulation and on electronic media, a notice of intention to enter into an agreement and invitation of tenders from the public in the prescribed form.

(3) The Cabinet Secretary may, in consultation with the Board, prescribe guidelines for the publication of a notice under subsection (2) and invitations to tender.

Senate amendment to clause 36

THAT clause 36 of the Bill be amended in sub-clause (1) by deleting the word “Fund” and substituting therefor the word “Board”.

Senate amendment to clause 38

THAT clause 38 of the Bill be deleted and substituted with the following new clause—

Eligibility criteria.

38. (1) A person is eligible for allocation of one affordable housing unit if the person meets the criteria prescribed in regulations.

(2) In this section, a person means a natural person.

Senate amendment to clause 39

THAT clause 39 of the Bill be amended in sub-clause (1) by deleting the words “section 30” and substituting therefor the words “section 38”.

Senate amendment to clause 40

THAT clause 40 of the Bill be amended by—

- (a) renumbering the current paragraph as sub-clause (1); and
- (b) by inserting the following new sub-clause—

(2) The Cabinet Secretary may in consultation with the Board issue regulations for the better carrying out of subsection (1).

Senate amendment to clause 42

THAT clause 42 of the Bill be amended by deleting sub-clause (4) and substituting therefor the following new sub-clauses—

- (4) A person who has made a voluntary saving and has not been allocated an affordable housing unit—
 - (a) may withdraw their savings by issuing ninety days' written notice to the agency for refund with any accrued interest; or
 - (b) may apply to the Board for approval of issuance of an affordable mortgage to develop a rural affordable housing unit;
- (5) An application in sub-section (4) (b) will be accompanied by an agreement that the applicant agrees to have their saved deposits and the land upon which the unit is to be built to be used as collateral.
- (6) Upon approval by the Board, the applicant shall cause a charge on the title in subsection (5) to be executed in favour of the Board.

Senate amendment to clause 44

THAT clause 44 (2) of the Bill be amended by deleting paragraph (a) and substituting therefor the following new paragraph—

- (a) to a fine not exceeding twenty million shillings or imprisonment of a term not exceeding ten years, or both; and.

Senate amendment to clause 45

THAT clause 45 of the Bill be amended in sub-clause (1) by deleting the words “he is” appearing in paragraph(b)(i) and substituting therefor the word “they are”.

Senate amendment to clause 47

THAT clause 47 of the Bill be amended—

- (a) in sub-clause (2) by inserting the following new paragraphs—
 - (i) immediately after paragraph (a)—
 - (ab) criteria for eligibility of allocation of an affordable housing unit under section 38 after paragraph (a);
 - (ii) immediately after paragraph (i);
 - (j) the typology and dimensions for affordable housing units relative to the incomes of the individual applicants;
 - (k) the procedural guidelines for the Board to off-take affordable housing units under an affordable housing scheme;
 - (l) the interest rate or administration fee for a loan issued under section 41; and
 - (m) criteria for eligibility of allocation of a low interest mortgage under section 42.
- (b) by inserting the following new sub-clauses—
 - (3) The Cabinet Secretary shall table before Parliament, the regulations made under this section within thirty days of commencement of this Act.
 - (4) Regulations made under this section shall not take effect unless approved by a resolution passed by Parliament.

(5) If a House of Parliament does not make a resolution either approving or rejecting any regulations within fifteen sitting days after submission to it for approval, the House shall be deemed to have approved those regulations.

Senate amendment to clause 48

THAT clause 48 of the Bill be amended by inserting the following new sub-clause immediately after sub-clause (3) –

(4) Any ongoing project or programme on affordable housing implemented pursuant to a commitment or obligation under subsection (3) shall be deemed to be a project or programme commenced under this Act.

Senate amendment to clause 49

THAT clause 49 of the Bill be amended in sub-clause (1) by inserting the word “before” after the word “immediately”.

(Question of the amendments proposed)

The Temporary Chairman (Hon. David Ochieng’): I can now hear the point of order. Hon. Kombe, let me hear you now.

Hon. Harrison Kombe (Magarini, ODM): Thank you, Hon. Temporary Chairman. The Member stood on Standing Order 95 that calls for the Mover to reply. That process did not take place. Are we in order to go to the Committee of the whole House?

(Loud consultations)

The Temporary Chairman (Hon. David Ochieng’): Order, Hon. Nyikal.

Hon. Members, the matter you are raising with me has already been dispensed with. There is nothing I can say on it at all. For guidance, the reason I have read so many clauses is that the House has no amendments to them. They are being considered together as I have read the 29 of them because the House has no amendments to them. We will carry them together as they have been read to you.

Hon. (Dr) Otiende Amollo (Rarieda, ODM): On a point of order, Hon. Temporary Chairman.

The Temporary Chairman (Hon. David Ochieng’): Hon. Otiende.

Hon. (Dr) Otiende Amollo (Rarieda, ODM): Thank you, Hon. Temporary Chairman. I agree with the difficulty you find yourself in because you were not the substantive Speaker when the Mover was not called upon to respond. It just adds to the litany of improprieties that we propagate as a House.

I rise under Standing Order 130E, and I will read it:

“130E. Except as otherwise provided in these Standing Orders, the same rules of order and of debate for the conduct of business shall be observed in Committee as in the House.”

Therefore, my understanding is that whether or not there is an amendment, we as Members are entitled to be heard on these matters. On that account, I beg to be heard on these matters.

The Temporary Chairman (Hon. David Ochieng’): Hon. Otiende, who has just spoken, is spot on. We have reached the point where I will now give you a chance to contribute to the clauses I have read out. You should now consider the clauses by commenting on them. That is the stage we are at in the Committee of the whole House. The Floor is open for any comments.

Hon. Otiende Amollo (Rarieda, ODM): Can I proceed now?

The Temporary Chairman (Hon. David Ochieng’): Do you have a point of order?

Hon. Otiende Amollo (Rarieda, ODM): No. I want to contribute, as you have guided.

The Temporary Chairman (Hon. David Ochieng’): Alright. You can go ahead.

Hon. Otiende Amollo (Rarieda, ODM): Hon. Temporary Chairman, all these clauses as properly read by you are improper, irregular, and should be rejected in totality. I heard Hon. Mbuvi say that the National Assembly has become a House of bass and the Senate a House of soprano. If that is so, we must now be at the alto stage because it is clearly the same charade.

In fairness to the Senate, at least, they considered some amendments. They have slightly endeavoured to try and improve one or two things, but they have still overly failed miserably. The fact that even the Senate amendments are not being properly considered by this House shows that those who are propagating this whole idea are only interested in the funds and not in the why, what or how of the Bill. The technical, legal and policy issues we raised on the Affordable Housing Bill still remain untouched. To that extent, these amendments do not improve the original Bill and should be rejected.

Allow me to just give one example before I sit down. When we raised the question of how affordable housing relates to counties in this House, nobody wanted to hear that. At least in the Senate, they endeavoured to introduce Clause 31(a) that establishes the County Affordable Housing Committee. They then prescribed who should be in the Committee. This begs two questions. First, if we agree that affordable housing is a mandate for the county governments, why are we prescribing and legislating for the county governments on how to execute their mandate? It means we are reprobating from the Constitution.

(Applause)

Secondly, establishing County Government Committees, which are subordinate and answerable to the National Housing Corporation (NHC), is usurping the mandate of the county governments and placing it at the national level. That is just one example.

All the policy, legal and technical issues still remain unresolved. Kenyans will vindicate us one day, if not the courts.

The Temporary Chairman (Hon. David Ochieng’): Thank you, Hon. Otiende. Let us hear from Hon. Chepkonga from the Majority side.

Hon. Samwel Chepkonga (Ainabkoi, UDA): Thank you, Hon. Temporary Chairman. I rise to support the amendments that have been proposed by the Senate. I completely disagree with my very good and learned friend, Hon. Otiende Amollo. I normally call him the ombudsman.

Article 95 of the Constitution states that the National Assembly resolves issues of concern to the people. Article 96 of the Constitution states that the Senate protects the interests of the counties. We cannot discuss issues affecting counties in this House. In fact, the relevant House has brought the amendments, which we are agreeing with. Hon. Otiende Amollo knows that housing is a concurrent function in the Constitution. The Senate had to come up with amendments that take into account the issues that concern the counties. The Senate has done very well. That is the reason I support their amendments which are very constitutional. They have done the right thing in accordance with the National Assembly Standing Orders and the Senate Standing Orders.

The Temporary Chairman (Hon. David Ochieng’): Before I give an opportunity to the next person to intervene on this matter, join me in welcoming students from PCEA Elburgon Secondary School from Molo Constituency in Nakuru, Kaptebeswet Secondary School from Ainamoi Constituency in Kericho County, Kagumo Girls Secondary School from Kirinyaga Central Constituency in Kirinyaga County, and Oololaimutia Secondary School from Narok East Constituency in Narok County. They are seated in the Speaker’s and Public Galleries. We welcome them to the House to follow the proceedings this afternoon.

I will give this chance to Hon. Mary Emaase. Do not worry. I will come to the Minority side.

Hon. Mary Emaase (Teso South, UDA): Thank you, Hon. Temporary Chairman. I rise to support the amendments by the Senate. I strongly disagree with my friend, Hon. Otiende Amollo, who said that this Bill does not address their concerns. This Bill is doing the opposite because it is addressing a majority of the concerns that were raised by the public such as affordability, suitability, location of the units, and guarantee of ownership.

Clause 2 introduces new definitions of the various categories of units that will be established. There will be social housing units targeting those earning below Ksh20,000, affordable housing units targeting those earning between Ksh20,000 to Ksh149,000, and affordable middle class units targeting those earning over Ksh149,000. We also have the rural affordable housing units targeting all those living in areas that are not urban. I do not know whether the Hon. Member has read these amendments.

Thank you, Hon. Temporary Chairman. I support the amendments.

The Temporary Chairman (Hon. David Ochieng’): Member for Funyula.

Hon. (Dr) Ojiambo Oundo (Funyula, ODM): Hon. Temporary Chairman, the tragedy that has been the Affordable Housing Bill continues. It went to the Senate and we thought that the Senate will have the temerity and courage to cure the mess, but they have only amplified it. We find ourselves in a more terrible mess than we were in before the Bill left this House.

I want to echo the sentiments raised by the Leader of the Majority Party on the issue of a bicameral approach to the preparation of Bills. We wish the same spirit could also be amplified in the National Assembly. Even though some of the amendments to the Bill were improperly presented, they were raised during the Committee of the whole House, but they could not be considered because of our partisan nature of doing things. They have now gone to the Senate and they have been mutilated.

I want to mention a very fundamental mistake that has occurred. The word “agency” was defined as an institution allocated monies for affordable housing in the original Bill that was passed here. The NCA has no mandate to implement affordable housing. It is a regulator and a supervisory body. I do not know how you will cure that fatality. I would not imagine that anybody who has attended a housing policy lecture would have allowed this kind of mess.

As I conclude, I want to tell my neighbour, Hon. Mary Emaase, that on matters of housing policy, we are very careful about how we define categories of housing ownership, and what constitutes affordable housing or low-income housing. It has no reference at all to a person’s income because income is not static; it is ever changing.

The Temporary Chairman (Hon. David Ochieng’): Member for Kitui South.

Hon. (Dr) Rachael Nyamai (Kitui South, JP): Thank you, Hon. Temporary Chairman. I support the amendments as presented by the Senate, and as read by yourself.

First of all, I listened to Senior Counsel Hon. Otiende Amollo and I think he slightly contradicted himself as he was engaging. First, he appreciated the inclusion of the Senate, but he said that we do not know who will be in those committees. The committees that have been introduced are a good idea. They will be addressed in the regulations going forward.

Also, these amendments have introduced a higher level of participation through those committees. Affordability has been widely addressed through identification of those intended to benefit from the social houses by focusing on their level of income.

Hon. Temporary Chairman, the Senate also addressed quality by stating that we must involve NCA and State Department responsible for matters relating to Public Works. So, to me, the Bill has been enhanced and we need to appreciate this.

Thank you, Hon. Temporary Chairman.

The Temporary Chairman (Hon. David Ochieng’): This chance then goes to the Member for Mombasa County.

Hon. Zamzam Mohammed (Mombasa County, ODM): Asante sana Mhe. Mwenyekiti wa Muda, na mimi niweze kuchangia Mswada huu ambao umeletwa hapa. Sijui Bunge hili lilikuwa wapi wakati ule wakipitisha bila kurekebisha ndio hapa tuletewe tena waseme kuna marekebisho. Mimi bado ninapinga Mswada huu. Ikiwa yule ambaye anakatwa pesa yake ana shamba lake na hajengewi katika shamba lake, basi huu ni ulaghai. Huu ni wizi wa hali ya juu. Tuangalie tusiweze kufinya ugatuzi kwa sababu ikiwa jambo hili ni la kaunti, kwa nini wasiwachiwe hao wapange mikakati yao mpaka ije itokee huku juu. Wakenya bado mpaka sasa wanahangaika. Na mimi ninarudi pale pale. Ikiwa kweli Serikali inataka kujenga nyumba ambazo ni za watu wa mapato ya chini, ushuru unaokatwa kwingine unatosha.

The Temporary Chairman (Hon. David Ochieng’): Asante sana.

(Hon. Zamzam spoke off the record)

Mimi ndiye niliyekupatia. Basi niko na nafasi ya kukata pia. Haya malizia basi. Mpe Mhe. Zamzam amalizie.

Hon. Zamzam Mohammed (Mombasa County, ODM): Mhe. Mwenyekiti wa Muda, mimi ninasema kwamba tusiwadhulumu Wakenya. Hao ambao tunawakata pesa zao za *Housing Levy*, wengi wana madeni ambayo wamejenga majumba yao. Na kama kweli wanataka kujenga, jambo langu ni kuwa basi wasijenge kwenye shamba la Serikali. Maanake huwezi kuniambia wanikata pesa kisha unijengee kwa shamba ambalo si langu. Nitakuwa na uhakika gani kuwa mimi nitamiliki hiyo nyumba. Kama wanataka kujenga kweli, wawajengee kwenye mashamba yao ambayo wanamiliki wao wenyewe.

Asante sana.

The Temporary Chairman (Hon. David Ochieng’): Asante sana. Deputy Leader of the Majority Party.

Hon. Owen Baya (Kilifi North, UDA): Hon. Temporary Chairman, I would like to draw the attention of the House to the Standing Orders. Although Hon. Otiende Amollo read Standing Order 148, he twisted it to fit his circumstance to want to debate this Third Reading as if we are doing Second Reading. When we come to Third Reading, we comb clause by clause. Even though you have read several clauses, which is okay, we need to debate amendments. That is the essence of the Third Reading. We cannot open debate as if we are in the Second Reading.

(A Member spoke off the record)

No, I am coming there. There is a difference.

Hon. Temporary Chairperson, we need to take a vote.

The Temporary Chairman (Hon. David Ochieng’): Order, Hon. Baya! Order Members. I suppose you are contributing on amendments.

Order, Hon. Members. Order, Hon. Baya. I read around 21 clauses. So, I will not limit Members on which clause they speak on. As long as you take your two minutes or one-and-a-

half minutes, I will not limit Members as proposed by Hon. Baya. I was hoping you were going to contribute on the areas which you want to contribute on but not limit Members to debate. So, if you want to contribute, I will give you a chance to contribute but not to limit Members on how they are going to contribute on this.

(Hon. Owen Baya spoke off the record)

I have already guided accordingly, Hon. Baya. I will not take direction from you on this matter. I will give you a chance to contribute on the amendments, but not on guiding how debate will happen on this matter.

Hon. Timothy Toroitich, are you contributing or guiding on how debate is going to happen?

Hon. Timothy Kipchumba (Marakwet West, Independent): Thank you, Hon. Temporary Chairman, for the chance to contribute on Senate amendments. I support the amendments, but I have few reservations. I support to the extent that there is a formation of a county committee. However, if you read provisions of Clause 31G, it says nothing in this Act shall preclude county governments from enacting legislation related to affordable housing in their counties. That means we are opening a Pandora's Box. We are opening avenues for the 47 county governments to make legislations in respect to affordable housing. That is a recipe for conflict because if the 47 counties are allowed to enact specific legislation on the Affordable Housing Programme, despite the existence of a uniform law—the Affordable Housing Bill, which will soon become an Act—it could lead to interpretation nightmares. There is a possibility of conflicts arising with different county governments creating varying legislation on this subject.

It is something that we must look at critically as a House so that we have one uniform legislation providing for formation of county committees, and we avoid a situation where each county government makes a specific legislation on the Affordable Housing Programme.

Hon. Temporary Chairman, that is my submission.

The Temporary Chairman (Hon. David Ochieng'): Hon. Members, I think we have had enough debate on this. I want to put this...

(A Member spoke off the record)

We are not debating the Affordable Housing Bill afresh; we are considering amendments of the Senate, and I have given Members enough time on this matter.

(Loud consultations)

Hon. Members, there is nothing out of order completely. I have given six on this side and four on this side.

(A Member spoke off the record)

No! Hon. Nyikal.

Hon. James Nyikal (Seme, ODM): You are still saying we cannot contribute. If we were going clause by clause, that would be right, but now we have taken all the clauses and we are still limiting people on time. My colleagues, I will tell you, if we ignore all the processes, this will be nullified.

The Temporary Chairman (Hon. David Ochieng'): Hon. Nyikal, this is your chance. This is your chance.

(Hon. Nyikal spoke off the record)

Hon. Members, I think we have had enough reactions to this.

(Senate Amendment to Clauses 2, 5, 7, 9,10,11,12,13,14,15,16,17,18,19,23,32, 33,34,35,36, 38, 39, 40, 42, 44, 45, 47, 48 and 49 agreed to)

(Loud consultations)

Senate amendment to New Clauses 11A, 11B

THAT, the Bill be amended by inserting the following new clauses immediately after Clause 11—

Investments by the Board. 11A. The Board may, with the approval of the Cabinet Secretary in charge of Treasury, invest any income that is not immediately required.

Borrowing by the Board. 11B. The Board may, with the approval of the Cabinet Secretary in charge of Treasury, borrow funds for the advancement of the objectives of the Act.

(The new clauses were read a First Time)

The Temporary Chairman (Hon. David Ochieng’): Hon. Chairperson, move Second Reading.

(Loud consultations)

Hon. Nyikal, order! Order, Members!

(Hon. Irene Mayaka consulted loudly)

Order Hon. Nyakerario! Order.

(Loud consultations)

Hon. Members, it cannot be right that when I rule them wrong, you clap, but when I rule you wrong, you make noise. It is not the way it is done. It cannot be that when I rule them out of order, you clap and make ululations. When I tell you that you are out of order...

(Hon. Makali Mulu stood in his place)

Hon. Makali Mulu, resume your seat. Resume your seat!

(Loud consultations)

(Hon. (Dr) Makali Mulu and Hon. (Dr) James Nyikal spoke off the record)

The Temporary Chairman (Hon. David Ochieng’): Hon. Nyikal and Hon. Makali Mulu, resume your seats. You have been heard. This matter will proceed as per the law and procedures of the House, and not as per the feelings of Members on what they feel is wrong or right. Let us proceed!

Hon (Dr) Makali Mulu (Kitui Central, WDM): On a point of order, Hon. Temporary Speaker.

The Temporary Chairman (Hon. David Ochieng’): Before we proceed, let me listen to Hon. Makali Mulu on what is out of order.

(Loud consultations)

Allow us to listen to Hon. Makali Mulu. Go ahead.

Hon (Dr) Makali Mulu (Kitui Central, WDM): Hon. Temporary Chairman, with all due respect, the clauses have been voted for. We have no problem with that. You and I have been in this House for over 10 years. When we are in the Committee of the whole House, we always go clause by clause. In a situation where you read from Clause 1 to 46 and there are amendments, you need to guide the House.

The Temporary Chairman (Hon. David Ochieng’): That is okay. Can I give guidance on this issue? It seems there is some lack of understanding of the procedure. I want you to listen carefully. When we are in the Committee of the whole House dealing with Bills, clauses that have no amendments are not considered for debate at all. All the clauses I have read have no amendments. That is the point. No Member in this House has an amendment to the Senate’s amendments. So, that has to be clear to you. Let us proceed.

Hon. Chairman, move them one by one.

Hon. Kuria Kimani (Molo, UDA): It is one Clause: Clause 11A and B.

The Temporary Chairman (Hon. David Ochieng’): Move one by one.

Hon. Kuria Kimani (Molo, UDA): Okay.

Senate amendment to New Clause 11A

THAT, the Bill be amended by inserting the following new clauses immediately after Clause 11—

Investments by the Board.

11A. The Board may, with the approval of the Cabinet Secretary in charge of Treasury, invest any income that is not immediately required.

(The new clause was read a First Time)

(Question, that the new clause be read a Second Time, proposed)

Hon. Members: Put the Question.

(Question, that the new clause be read a Second Time, put and agreed to)

(Question, that the new clause be added to the Bill, put and agreed to)

Senate amendment to New Clause 11B

THAT, the Bill be amended by inserting the following new clauses immediately after Clause 11—

Borrowing by the Board. 11B. The Board may, with the approval of the Cabinet Secretary in charge of Treasury, borrow funds for the advancement of the objectives of the Act.

(The new clause was read a First Time)

(Question, that the new clause be read a Second Time, proposed)

The Temporary Chairman (Hon. David Ochieng’): Yes, Member for Funyula.

Hon. (Dr) Ojiambo Oundo (Funyula, ODM): Hon. Temporary Chairman, I want Kenyans to know that if they borrow, there is a cost for it and it will be passed on to the Kenyan who will buy the house. So, the issue of affordability is a smokescreen. We will get into the same regime of looting, borrowing, misusing the money, and passing over the cost of borrowing to the final cost of the House. Affordability is a mirage.

The Temporary Chairman (Hon. David Ochieng’): Thank you.

(Question, that the new clause be read a Second Time, put and agreed to)

(Question, that the new clause be added to the Bill, put and agreed to)

Senate amendment to New Clause 31A

THAT the Bill be amended by inserting the following new clauses immediately after Clause 31—

PART III (A)— ROLE OF THE COUNTY GOVERNMENTS
IN AFFORDABLE HOUSING

Establishment of County Rural and Urban Affordable Housing Committees. 31A. (1) There is established in every county, a County Rural and Urban Affordable Housing Committee.

- (2) The County Committee shall consist of the following—
- (a) a non-executive chairperson who shall be nominated by the county governor;
 - (b) the County Executive Committee member responsible for matters relating to housing or their representative designated in writing;
 - (c) three other persons who shall be nominated by the county governor, of whom—

- (i) one shall be a representative of a registered association of traders operating in the county;
 - (ii) one shall be a representative of a registered residential association; in the county;
 - (iii) one shall be a member of the public residing within the county; and
 - (d) the chief officer for the time being in charge of housing, who shall be an *ex-officio* member and the secretary to the County Committee.
- (3) A person nominated under subsection (2) (a) and subsection (2)(d), shall be vetted and approved by the county assembly.
- (4) In nominating a person as a member under subsection (2) (a) and subsection (2) (d), the county governor shall—
- (a) ensure that not more than two-thirds of the members are of the same gender;
 - (b) ensure that ethnic minorities within the county are adequately represented; and
 - (c) consider marginalized groups including youth and persons with disability.
- (5) The members of the Committee shall be appointed within thirty days of the commencement of this Act.

(The new clause was read a First Time)

(Question, that the new clause be read a Second Time, proposed)

(Question, that the new clause be read a Second Time, put and agreed to)

(Question, that the new clause be added to the Bill, put and agreed to)

New Clause 31B

Qualifications
appointment.

- for 31B. (1) A person qualifies to be appointed as the Chairperson of the County Committee if that person—
- (a) holds a degree from a university recognized in Kenya;
 - (b) has at least five years' experience in matters relating to housing, built environment, banking, or finance;
 - (c) has resided in the county for a period of not less than five years.; and
 - (d) meets the requirements of Chapter Six of the Constitution
- (2) A person qualifies to be appointed as a member of the County Committee, if the person—

- (a) meets the requirements of Chapter Six of the Constitution;
- (b) has not been convicted of a criminal offence which attracts imprisonment for a term not exceeding six months;
- (c) has not been adjudged bankrupt or entered into a composition or arrangement with the creditors of the person; and
- (d) is not disqualified under any other written law from appointment as such.

(The new clause was read a First Time)

(Question, that the new clause be read a Second Time, proposed)

(Question, that the new clause be read a Second Time, put and agreed to)

(Question, that the new clause be added to the Bill, put and agreed to)

New Clause 31C

- (e) Tenure of office.
- (f) 31C. (1) The Chairperson and members of the County Committee, shall hold office for a term of three years and may be eligible for re-appointment for an additional final term of three years.
- (g) (2) Notwithstanding the provisions of subsection (1), a member of the County Committee may be removed from office if that person—
- (h) has been absent from three consecutive meetings of the Committee without justifiable cause or the written permission of the Chairperson;
- (i) is adjudged bankrupt or enters into a composition or arrangement with the creditors of the person;
- (j) is convicted of an offence involving anti-economic crimes or corruption;
- (k) becomes incapable of carrying out the functions of their office due to an infirmity of mind or body;
- (l) violates Chapter Six of the Constitution; or
- (m) fails to disclose any interest in a matter under consideration by the Committee as provided for under this Act.

(The new clause was read a First Time)

(Question, that the new clause be read a Second Time, proposed)

Hon. Kimani Ichung'wah (Kikuyu, UDA): Hon. Temporary Chairman.

The Temporary Chairman (Hon. David Ochieng'): Is that the Leader of the Majority Party?

Hon. Kimani Ichung'wah (Kikuyu, UDA): Yes.

The Temporary Chairman (Hon. David Ochieng'): Go ahead.

Hon. Kimani Ichung'wah (Kikuyu, UDA): Thank you, Hon. Temporary Chairman. I rise to support this amendment. There are Members who read the Bill, unlike Hon. Zamzam who has spoken on the involvement of counties. I wish she had bothered to read the Bill. Hon. Temporary Chairman, protect me from the Member for Kilifi who has this penchant for shouting like she is in Shakahola.

The Temporary Chairman (Hon. David Ochieng'): Go ahead.

Hon. Kimani Ichung'wah (Kikuyu, UDA): Hon. Zamzam spoke about the involvement of county governments. I wish she had bothered to read the Committee's Report and amendments from the Senate. Hon. Chepkonga told her that new Clauses 31A, 31B, 31C, 31D, 31E and 31F relate to the constitution of county committees. They give a role to the county governments in affordable housing. This clause limits the terms of those who will serve in the county committees to a term of three years. This will ensure that there will be a good array of professionals who will have opportunities to serve in the county committees.

It also speaks on integrity because they will be managing funds that will be appropriated to the counties. They have also been identified as part of the implementing agencies of affordable housing.

Hon. Temporary Chairman, I support the amendment. I beg those who are in the Committee of the whole House not to shout or yell; rather they should take their time to read and understand the Bill.

The Temporary Chairman (Hon. David Ochieng'): Thank you, Leader of the Majority Party. Hon. Otiende.

Hon. (Dr) Otiende Amollo (Rarieda, ODM): Hon. Temporary Chairman, the Leader of the Majority Party has this habit of thinking he is the only intelligent person who reads and understands. Therefore, he is imputing that we debate without reading and understanding the business before the House. It is fair for him to make his point without trying to diminish others. The fact that you went to your village school does not make you more intelligent than the rest of us. Your world view is Kikuyu.

(Laughter)

The Temporary Chairman (Hon. David Ochieng'): We shall ignore that statement because we did not have village schools.

(Question, that the new clause be read a Second Time, put and agreed to)

(Question, that the new clause be added to the Bill, put and agreed to)

Senate amendment to New Clause 31D

THAT, the Bill be amended by inserting the following new clauses immediately after clause 31—

Remuneration of the
County Committee
members.

31D. The Chairperson and the members of the County Committee shall be paid such sitting allowances or other remuneration for expenses as recommended by the Salaries and Remuneration Commission.

(The new clause was read a First Time)

(Question, that the new clause be read a Second Time, proposed)

The Temporary Chairman (Hon. David Ochieng'): Hon. Chairperson, do you want to say something about it? What is it about?

Hon. Kimani Kuria (Molo, UDA): Hon. Temporary Chairman, New Clause 31D provides for a small allowance to be paid as a sitting allowance to the members in the counties who will be involved in matters affordable housing in the counties.

(Question, that the new clause be read a Second Time, put and agreed to)

(Question, that the new clause be added to the Bill, put and agreed to)

Senate amendment to New Clause 31E

THAT, the Bill be amended by inserting the following new clauses immediately after clause 31—

Conduct of affairs and
business of the County
Committee.

31E. (1) The conduct of affairs and business of the County Committee shall be in accordance with the First Schedule of this Act.

(2) Subject to subsection (1), the Committee may amend its own procedures for the better carrying out of its functions.

(The new clause was read a First Time)

(Question, that the new clause be read a Second Time, proposed)

Hon. Kimani Kuria (Molo, UDA): This seeks to provide for the conduct of affairs of business at the county committees in accordance with the First Schedule.

(Question, that the new clause be read a Second Time, put and agreed to)

(Question, that the new clause be added to the Bill, put and agreed to)

Senate amendment to New Clause 31F

Functions of the
County Committee.

31F. The County Committee shall—

- (a) in consultation with the Board, develop a framework for the attainment of affordable housing in the county;
- (b) advise the governor on affordable housing programmes within the county;
- (c) develop a five-year affordable housing investment programme for the county and annual housing investment programme for the county;
- (d) collaborate with the boards of cities and municipalities in developing plans for social and physical infrastructure related to affordable housing pursuant to section 21 of the Urban Areas and Cities Act;
- (e) make periodical written reports on the five-year affordable housing investment programme for the county and annual housing investment programme for the county to the Board;
- (f) to make annual reports to the county assembly on the implementation of affordable housing in the county; and
- (g) to perform such other duties as may be assigned by the county governor in writing.

Cap 303, Laws of
Kenya.

(The new clause was read a First Time)

*(Question, that the new clause be
read a Second Time, proposed)*

Hon. Kimani Kuria (Molo, UDA): This New Clause provides that the county committee will develop a five-year Affordable Housing Programme and an annual plan in the counties that must be presented to the county assemblies for approval.

The Temporary Chairman (Hon. David Ochieng’): Hon. Member for Funyula.

Hon. (Dr) Ojiambo Oundo (Funyula, ODM): Hon. Temporary Chairman, as much as it is towards improving the role of the county governments, there is a catch. There are two issues: New Clause 31F(d) could easily be misinterpreted to make Municipal Boards and City Boards to be agencies yet it is not expressly provided for in the Schedule.

In (f), of what use is it to make reports to the county assemblies yet they did not appropriate any money for purposes of affordable housing? This is where the elephant lies, and that is why rushing these things is a problem.

For record purposes, those of us who went to Starehe Boys Centre boarded a train from Sio Port to come to Nairobi. We did not go to village schools all our lives.

*(Question, that the new clause be read
a Second Time, put and agreed to)*

*(Question, that the new clause be
added to the Bill, put and agreed to)*

Senate amendment to New Clause 31G

THAT, the Bill be amended by inserting the following new clauses immediately after clause 31—

County legislation.

31G. Nothing in this Act shall preclude county governments from enacting legislation related to affordable housing in the counties.

(The new clause was read a First Time)

(Question, that the new clause be read a Second Time, proposed)

The Temporary Chairman (Hon. David Ochieng’): Hon. Chairperson.

Hon. Kimani Kuria (Molo, UDA): Hon. Temporary Chairman, before I go on, I would like to correct the information that has been passed in this House by Hon. Oundo. County governments are one of the implementing agencies. This means that if they would be allocated funds for implementing affordable housing, those reports would fall squarely in their oversight of the county assemblies.

Hon. Temporary Chairman, this New Clause 31G precludes county governments from enacting legislation related to affordable housing in the counties.

The Temporary Chairman (Hon. David Ochieng’): Hon. Toroitich Timothy.

Hon. Timothy Kipchumba (Marakwet West, Independent): Hon. Temporary Chairman, I have heard the Chairperson of the Departmental Committee on Finance saying that this provision precludes county governments from making legislations. The provision says nothing in this Act shall preclude county governments from enacting legislation. This means that county governments will make legislation on the Affordable Housing Programme, which in my opinion would bring an issue of conflict. We have a legal framework in this country to provide a uniform law for provision of the Affordable Housing Programme. If we allow each county government to make a law on this subject, we shall have 47 different Acts of county assemblies on this subject. Therefore, I have an issue with it. Probably, he should clarify.

The Temporary Chairman (Hon. David Ochieng’): Clarify, Hon. Temporary Chairman. It is quite straightforward.

Hon. Kimani Kuria (Molo, UDA): Hon. Temporary Chairman, Hon. Toroitich read correctly that nothing in this Act shall preclude county governments from enacting legislation relating to affordable housing in the counties. For example, an Appropriations Bill by any county assembly to allocate funds for establishing whether it is institutional housing or affordable housing for the counties, would be a piece of legislation emanating from a county assembly anywhere in the country. There is nothing that would stop any county assembly in this country from making such a programme. It means that this Affordable Housing Programme and the institutional housing programme being enacted at the national Government level can be done in the counties. We have seen several counties already doing it, and therefore, there is nothing out of order.

The Temporary Chairman (Hon. David Ochieng’): Just to guide Member for Marakwet West...

(Hon. (Dr) Ojiambo Oundo spoke off the record)

Hon. Oundo, you have just spoken to this.

The county assemblies can make laws on anything devolved as long as they do not contradict the national laws. Where they contradict, the national law takes precedence. That is the law we passed in this Assembly.

Member for Seme.

Hon. (Dr) James Nyikal (Seme, ODM): Hon. Temporary Chairman, if we have (g) which provides for counties to make laws, yet funding for all these things is coming from the levy, does it mean that as they make the laws they must refer to the national body? It would then be like what we have here whenever we have the Finance Bill. This money will not be given through the division of Revenue Bill. It is a levy on its own and a law is being made at the county level. What will be the process, particularly with regard to financing?

The Temporary Chairman (Hon. David Ochieng’): Hon. Dido Raso.

Hon. Ali Raso (Saku, UDA): Hon. Temporary Chairman, this Clause tells us that you are not going to prevent the county from taking the initiative in terms of establishing housing units. The Hon. Member for Seme is saying that this thing is domiciled at the national level and patented. However, that is not the case. If Marsabit County, for instance, wishes to come up with 2,000 housing units above what has been allocated or given by the national Government, let it be so that the county can have the freedom of action.

The Temporary Chairman (Hon. David Ochieng’): Member for Dagoretti North.

Hon. Beatrice Elachi (Dagoretti North, ODM): Thank you, Hon. Temporary Chairman. I have worked in the county before. Clauses 31F and 31G, without us reading them the way the Senator has put to us, concern ensuring that the whole process of housing leaves the national Government and goes to the counties. Remember, the county assembly will be considering laws because the executive, which is the governor’s side, has requested. We are saying yes to it, but it is one clause about which I remember what senior Murugara said. We have to relook it, especially paragraph (d). You must look at all that and ask yourself: what will happen with collaborations with city and municipal boards? It is a very good catch for counties and it is a crisis that will be in the national Government.

Hon. (Dr) Ojiambo Oundo (Funyula, ODM): Hon. Temporary Chairman.

The Temporary Chairman (Hon. David Ochieng’): Yes, Member for Funyula.

Hon. (Dr) Ojiambo Oundo (Funyula, ODM): We probably need to reflect on New Clause 31G) soberly. During the last Committee of the whole House, some amendments were thrown out on account that there needs to be uniformity in affordable housing. We had proposed a segregated approach because what is affordable in Mandera is not what is affordable in Busia. However, the proposal was thrown out. Allowing counties to set other laws to domesticate this law or do the same work is a contradiction. Is there a contemplation in any way that county assemblies can appropriate funds and undertake affordable housing parallel to the levy we are creating here? That is the understanding. We need to be very careful. We might push it down the throats of Members and Kenyans, but this will come to haunt us.

The Temporary Chairman (Hon. David Ochieng’): We are probably pushing this too far. Whether that clause is there or not, if you look at the Fourth Schedule to the Constitution, nothing will stop county governments from making their laws relating to housing. Whether that clause is there or not, it will not stop county governments. It is something that, even if we debated, will not take us anywhere.

*(Question, that the new clause be read
a Second Time, put and agreed to)*

*(Question, that the new clause be
added to the Bill, put and agreed to)*

Senate amendment to New Clause 37A

THAT, the Bill be amended by inserting the following new section immediately after clause 37:

Priority of ownership for slum residents.

37A. The Board shall, where an affordable housing project is to be implemented on land on which exists a settlement—

- (a) issue a notice, in the prescribed form, to the residents in that settlement of the intended implementation of the project
- (b) put in place a mechanism for the resettlement of the residents; and
- (c) offer to the residents in that settlement, the first right of purchase of a unit in the project.

(The new clause was read a First Time)

(Question, that the new clause be read a Second Time, proposed)

Hon. Kimani Kuria (Molo, UDA): Hon. Temporary Chairman, this is meant to apply where there is already an established settlement earmarked for affordable housing. Those people have to be given notice, resettled, and preference has to be given to them in the purchase of the units to be built in that settlement.

(Question, that the new clause be read a Second Time, put and agreed to)

(Question, that the new clause be added to the Bill, put and agreed to)

Senate amendment to New Clause 42A

THAT, the Bill be amended by inserting the following new clause immediately after section 42:

PART VA – OWNERSHIP OF AFFORDABLE HOUSING UNITS

Issuance of a certificate of ownership.

42A. (1) The Board shall, with the approval of the Cabinet Secretary, transfer the ownership of an affordable housing unit to a qualified applicant upon completion of payment of the agreed price.

(2) The Registrar shall not, without the written consent of the Board, register a transfer of any housing unit under this Act.

(3) The certificate of the Board that any affordable housing unit has been sold to an individual under the provisions of this Act shall be conclusive evidence of consent under subsection (2).

(4) The registration of an owner of affordable housing units shall be undertaken in accordance with the Sectional Properties Act.

(The new clause was read a First Time)

(Question, that the new clause be read a Second Time, proposed)

Hon. Kimani Kuria (Molo, UDA): Hon. Temporary Chairman, this amendment is meant to safeguard ownership of the houses. The Senate observed that some houses may be allocated to people who are not beneficiaries. Therefore, this amendment will ensure that only people who have paid for houses benefit from the housing scheme.

The Temporary Chairman (Hon. David Ochieng’): Member for Dagoretti North, is it a contribution or a point of order? You are confusing the two.

Hon. Beatrice Elachi (Dagoretti North, ODM): Hon. Temporary Chairman, Clause 42 gives one an opportunity to withdraw one’s savings by issuing a 90-day notice. I can decide to contribute today and tomorrow opt out. The second proposal says one may apply to the Board for approval of issuance of an affordable mortgage to develop a rural affordable housing unit. Will I now get the mortgage to develop on my land yet this was an affordable housing, or what happens? What happens, especially when I am living in a city like Nairobi?

Hon. George Murugara (Tharaka, UDA): On a point of order.

The Temporary Chairman (Hon. David Ochieng’): Hon. Murugara.

Hon. George Murugara (Tharaka, UDA): That is Clause 42, which is not being debated. We are on new Clauses 42A and 42B. Clause 42 is the one that has been read. Our colleague there is a little bit out of psyche.

Hon. Mark Mwenje (Embakasi West, JP): On a point of order.

The Temporary Chairman (Hon. David Ochieng’): Yes, Hon. Mwenje.

Hon. Mark Mwenje (Embakasi West, JP): Thank you, Hon. Temporary Chairman. I rise on Standing Order 1. I believe that the issue raised by the Member for Dagoretti North is not the one touched by the Chairman of the Departmental Committee on Finance and National Planning. I would kindly request that he further clarifies on whether it was New Clause 42A. I heard him reading what is on Clause 42.

Hon. Kimani Kuria (Molo, UDA): Hon. Temporary Chairman, the issue raised by my good friend, Hon. Beatrice Elachi, relates to Clause 42 which is part of the amendments brought by the Senate, and we have already resolved as a House. The stage we are now is debating new clauses. The new clause that I moved for Second Reading is New Clause 42A. I hope that gives proper guidance.

The Temporary Chairman (Hon. David Ochieng’): Thank you.

*(Question, that the new clause be read
a Second Time, put and agreed to)*

*(Question, that the new clause be
added to the Bill, put and agreed to)*

New Clause 42B

Restrictions to
owners of affordable
housing unit.

42B. Except with the prior written consent of the Board, a purchaser of an affordable housing unit under this Act shall not by contract, agreement or otherwise sell or agree to sell his or her unit or any interest therein to any other person.

(The new clause was read a First Time)

*(Question, that the new clause be
read a Second Time, proposed)*

The Temporary Chairman (Hon. David Ochieng’): Chairman.

Hon. Kimani Kuria (Molo, UDA): Hon. Temporary Chairman, this is meant to safeguard beneficiaries of the housing scheme not to be duped into selling the houses and to stop people from using others’ identity cards and Kenya Revenue Authority personal identification numbers to purchase on behalf of others and then have the houses transferred to themselves.

The Temporary Chairman (Hon. David Ochieng’): Member for Rarieda.

Hon. (Dr) Otiende Amollo (Rarieda, ODM): Hon. Temporary Chairman, the danger of rushing all these things is that you end up with serious problems.

The Temporary Chairman (Hon. David Ochieng’): We are not rushing anything, Member for Rarieda. We have taken our time on this very important stage.

Hon. (Dr) Otiende Amollo (Rarieda, ODM): No, it is not this particular stage. You know, Clause 42B is intended to cure a problem created by the Bill itself. However, it seeks to cure it in an unconstitutional manner. Once you have bought property, it becomes yours and you immediately fall under Article 40 of the Constitution. Article 40 of the Constitution is so clear on protection of property. You can buy property on your own or in community with others.

Article 40(2) says:

“Parliament shall not enact a law that permits the State or any person-

(b) to limit, or in any way restrict the enjoyment of any right under this Article on the basis of any of the grounds specified or contemplated in Article 27 (4).”

Your right to property includes you keeping and selling it. Article 40 directs Parliament not to enact such a legislation and Clause 42B is purporting to do the very thing now. That is outrageous.

The Temporary Chairman (Hon. David Ochieng’): Thank you. The Member for Funyula.

Hon. (Dr) Ojiambo Oundo (Funyula, ODM): Hon. Temporary Chairman, this is an absurdity of the whole process. Honestly speaking, how can somebody in their right sense insert this particular clause? In the reminiscent days of the Commission on Lands, you could not sell or charge a property until you had the consent of the Commissioner of Lands. That was a licence that was given to you under the Government Lands Act which has long been abolished. We are suggesting that a person who will get affordable housing will never have a chance to upgrade to another housing. For one to go to another housing, he must dispose the first house in an open market and move to a higher level. What is happening? I just do not understand!

The Temporary Chairman (Hon. David Ochieng’): Thank you. Member for Kitui Central.

(Loud consultations)

The Temporary Chairman (Hon. David Ochieng’): I will come back to this side.

Hon. (Dr) Makali Mulu (Kitui Central, WDM): Hon. Temporary Chairman, this new Clause 42(b) will kill the whole Bill. The Constitution is very clear from what Hon. Otiende has just read. We are having a clause that is unconstitutional. It is unfortunate that we are not supposed to amend anything here. We shall see how that will go. I cannot buy a house and after obtaining its ownership, you tell me I have to go to a board to seek authority if I want to sell it. Once I pay for a house, it becomes my house and I can sell it anytime. This clause needs to be reviewed.

The Temporary Chairman (Hon. David Ochieng’): Thank you. Member for Seme.

Hon. (Dr) James Nyikal (Seme, ODM): Hon. Temporary Chairman, some things are ridiculous. With the number of houses we want to build for people, say that when one wants to sell their house there will be a board that must authorise them to sell. I just imagine the magnitude of the integrity and bureaucratic issues that will arise, leave alone the constitutional issues that have been raised by Hon. Otiende. How can you own a house that you will need the authority of another person to sell it? This is madness.

The Temporary Chairman (Hon. David Ochieng’): Thank you. Hon. Chepkonga.

Hon. Samwel Chepkonga (Ainabkoi, UDA): Thank you, Hon. Temporary Chairman. You know, some contributions are very hilarious, particularly the one that came from Hon. Otiende Amollo. The clause is written in plain English. It says “the purchaser.” Article 40 of the Constitution talks about a proprietor. Those are not the same language. A purchaser has not acquired total ownership because he has not paid the total amount. So, if he has not paid for the property, he does not own it. He needs consent from the board to sell it. Otherwise, he will defraud us. Hon. Otiende is a lawyer and this should be clear.

The Temporary Chairman (Hon. David Ochieng’): Thank you. Hon. Bashir.

Hon. Major (Rtd) Abdullahi Sheikh (Mandera North, UDM): Hon. Temporary Chairman, this Clause 42B is confusing. It talks about a purchaser. For them to qualify not to sell, there must be additional information that says: “If the purchaser has not finished paying for the house.” As it is, who is a purchaser? I want to add the term...

(Hon. Ichung’wah spoke off the record)

Hon. Temporary Chairman, protect me from the Leader of the Majority Party. He is interfering with my speech.

The Temporary Chairman (Hon. David Ochieng’): What is the Leader of the Majority Party doing? We shall listen to Hon. Bashir in silence. Allow him to make his point.

Hon. Major (Rtd) Abdullahi Sheikh (Mandera North, UDM): Hon. Temporary Chairman, let us differentiate. If I am a purchaser, it means I have paid for it. However, if Clause 42B is to stand, it must have a rider that says: “If the purchaser has not completed paying for the house, then they cannot transfer the house.” As it is now, it is unconstitutional. It has to go with a further amendment.

The Temporary Chairman (Hon. David Ochieng’): Thank you. I gave five Members from this side. I want to give four from the other side before I come back to this side. This side, please cool down. I gave five Members. Allow the other side to also have their five.

The Member for Manyatta.

Hon. Gitonga Mukunji (Manyatta, UDA): Thank you, Hon. Temporary Chairman. When these houses will be built, there will be subsidisation on issues like land and taxes. These are not houses that are supposed to be in business of being sold. There is a law in this country that says if the Government pays for your education in school, for example, a master’s degree, you have to work for the Government for five years so that it gets value for its money. We do not want to make billionaires out of these houses. We want houses that are going to be used and not to be sold. So, this clause is solving that. I support.

The Temporary Chairman (Hon. David Ochieng’): Thank you. Member for Emurua Dikirr.

Hon. Johana Kipyegon (Emurua Dikirr, UDA): This is just to add to what my fellow Member to the Committee has said ...

(An Hon. Member interjected)

The Temporary Chairman (Hon. David Ochieng’): Hon. Member, I have told you to wait. Go ahead.

Hon. Johana Kipyegon (Emurua Dikirr, UDA): Hon. Temporary Chairman, I want to make a follow up on what *Mheshimiwa* said. We should remember that these are houses that will be done using taxpayers’ money. They will not be done using anybody’s private money. They will be built on taxpayers’ money and they will be built on public land. Therefore, the Government has the authority to give regulations on whether you can sell your house immediately you purchase it or retain it for as long as you live. We need to understand that this is not a private institution that we are dealing with.

Thank you.

The Temporary Chairman (Hon. David Ochieng’): Thank you. Hon. Mbeyu.

Hon. Gertrude Mwanyanje (Kilifi County, ODM): Hon. Temporary Chairman, Clause 42(b) ...*msitufundishe kizungu*. If I may read Clause 42(b) says:

“Except with the prior written consent of the Board, a purchaser of an affordable housing unit under this Act shall ...”

(Hon. Kimani Ichung’wah interjected)

The Leader of the Majority Party, *nisikilize*. Hon. Temporary Chairman, protect me.

Hon. Kimani Ichung’wah (Kikuyu, UDA): On a point of order, Hon. Temporary Chairman.

The Temporary Chairman (Hon. David Ochieng’): What is out of order, the Leader of the Majority Party?

The Temporary Chairman (Hon. David Ochieng’): Hon. Mbeyu, I want to listen to Hon. Ichung’wah’s point of order. You will have your chance just now.

Hon. Kimani Ichung’wah (Kikuyu, UDA): Hon. Temporary Chairman, as you know, we are a House of rules and procedures and we have young children at the Speaker’s Gallery who are watching the proceedings. This House has rules on the language use. If you begin in Kiswahili you must complete in Kiswahili. You cannot mix two languages. Therefore, what Hon. Mbeyu did when she said “*msitufundishe kizungu*” then she continued to transact business in English is out of order. She must choose which language she is conversant with. I know English may be a challenge.

The Temporary Chairman (Hon. David Ochieng’): Hon. Mbeyu.

Hon. Gertrude Mwanyanje (Kilifi County, ODM): Hon. Temporary Chairman, *nilikuwa ninasema, huyu... Mwenyekiti...*

The Temporary Chairman (Hon. David Ochieng’): Hon. Member, I do not want to get involved in this. I want you to make your point. Please make your point.

Hon. Gertrude Mwanyanje (Kilifi County, ODM): The Leader of the Majority party is confusing me. Hon. Temporary Chairman, I was reading Clause 42B so that my people can understand the English of the Leader of the Majority Party when translated into Kiswahili.

Clause 42B reads:

“Except with the prior written consent of the Board, a purchaser of an affordable housing unit under this Act shall not by contract, agreement or otherwise, sell or agree to sell his or her unit or any interest therein to any other person.”

This clause provides that except with the prior written consent of the Board, a purchaser of an affordable housing unit under this Act shall not by contract, agreement or otherwise, sell or agree to sell his or her unit or any interest therein to any other person. Who is a property purchaser? *Ningependa watu wa Kilifi waelewe.*

The Temporary Chairman (Hon. David Ochieng’): Order, Hon. Member. You cannot do that. Member for Kajiado Central.

Hon. Memusi Kanchory (Kajiado Central, ODM): Thank you, Hon. Temporary Chairman. I want us to be very reasonable and sober when legislating.

(Loud consultations)

The Temporary Chairman (Hon. David Ochieng’): There is a Member of Parliament on the Floor. Can we listen to him?

Hon. Memusi Kanchory (Kajiado Central, ODM): Thank you, Hon. Temporary Chairman. We need to remind ourselves that these houses are built on public land as a result of contributions by all Kenyans who are working. As Members of this House, we cannot allow people to benefit from the sweat of others and make business from these houses.

(Applause)

There is no other way of putting this. This law is to cure that mischief. Thank you.

The Temporary Chairman (Hon. David Ochieng’): Hon. Mayaka.

(Technical hitch)

Hon. Irene Mayaka (Nominated, ODM): Thank you very much, Hon. Temporary Chairman. I am still on the contentious clause that we are dealing with. I heard Hon. Chepkonga bring up the issue of semantics. In all honesty, we say that the devil is in the details; the difference between a purchaser, a proprietor and an owner are clear as shared by Hon. Otiende. As a House, we need to be very careful. We should not pass a clause that is in contradiction with the Constitution. We all know that the Constitution is supreme. In my view, we should review and re-look at the provisions of Clause 42B because it is in direct contradiction with the Constitution. We do not want to pass a law only for someone to go to court tomorrow and stop this whole process yet we had the opportunity to do the right thing.

The Temporary Chairman (Hon. David Ochieng’): Thank you. Lastly, Hon. Caroli.

Hon. Caroli Omondi (Suba South, ODM): Thank you, Hon. Temporary Chairman. There are certain nuances of law that we all need to understand on a matter such as this. There is the concept of absolute ownership of property and the limitations that come with that. When you read this, there is a drafting problem. I have not seen the definition of a purchaser in the documentation. We need to address that.

Secondly, we need to understand very clearly that affordable housing has special arrangements; they are subsidised and not a purely market thing, and so, there must be some restrictions. It is not the first time that our laws have put the concept of consent on the enjoyment of private property. We have Land Control Boards for agricultural land; they are for the specific purpose of ensuring that agricultural land is protected and managed in a certain way. This is not a new concept; the concept of consent is allowed under our laws.

The Temporary Chairman (Hon. David Ochieng’): Thank you.

Hon. Caroli Omondi (Suba South, ODM): I have not finished.

The Temporary Chairman (Hon. David Ochieng’): Can we hear what Hon. Caroli is saying? Please finalise your statement.

Hon. Caroli Omondi (Suba South, ODM): The concept of consent is not new in our laws. We should have it, but it should not be unreasonable with wealth. The purchaser has to be defined because he or she may be different from the owner under the law.

The Temporary Chairman (Hon. David Ochieng’): Lastly on this matter, let us have the Leader of the Majority Party.

Hon. Kimani Ichung'wah (Kikuyu, UDA): Hon. Temporary Chairman, allow me to thank Hon. Caroli, Hon. Chepkonga and the Member for Kajiado Central for putting the record straight. Hon. Otiende Amollo has a problem with the school I went to because it is in my village, but so are all these other children seated in the Speaker’s Gallery. They all attend their village schools just like I attended the Alliance High School.

The Temporary Chairman (Hon. David Ochieng’): I wish you could avoid that.

(Hon. Gertrude Mwanyanje consulted loudly)

Hon. Kimani Ichung'wah (Kikuyu, UDA): I was waiting for the Member for Kilifi to finish making noise so that I can continue. New Clause 42B clearly puts it that a purchaser shall not sell the house except with the prior written consent of the board. Hon. Chepkonga has put it very well that until you become the owner of the house upon completion of payment, you co-own that house together with the board. This is because the board owns the house that it is selling to you. Therefore, you cannot transfer without the consent of the other person who co-owns that house with you.

Secondly, they say; ‘if it walks like a duck and quacks like a duck, then it probably is a duck.’ During the Second Reading of this Bill, we were here when many of these people who are now opposing this particular clause were telling us that this Bill is designed to make sure people with means will buy all these houses using proxies and then transfer the houses back to themselves. The Senate listened to you and amended this Bill to ensure that those with cartel tendencies will not use this Bill to use proxies to buy houses, and then soon after transfer them to themselves. You will only be able to transfer the affordable house to a third party upon attaining what Hon. Caroli Omondi referred to as absolute ownership.

That is where Hon. Irene Mayaka should have listened to what she is referring to as semantics. What Hon. Chepkonga was telling you about the difference between the purchaser and the owner are not semantics. The English Oxford Dictionary has a different definition of who a purchaser is. A purchaser is somebody who buys while an owner is somebody who owns the house. You do not own the house until you finish the process of purchase. When you are a purchaser for value, you shall not be allowed to transfer without the consent of the board. This is to avoid the cartels that were already getting ready to buy and then sell using proxies, including their drivers or house girls. They will be ashamed that the house girls, *mama mboga*, and even touts will be able to own houses.

Hon. (Dr) Otiende Amollo (Rarieda, ODM): On a point of order, Hon. Temporary Chairman.

The Temporary Chairman (Hon. David Ochieng’): Hon. Otiende, what is out of order?

Hon. (Dr) Otiende Amollo (Rarieda, ODM): Hon. Temporary Chairman, it is okay to debate. I am comfortable with the fact that no matter what we say, this will pass. I have no problem with that. My problem is with Hon. Chepkonga and the Leader of the Majority Party purporting to mislead the nation in terms of misinterpretation of the law.

The Temporary Chairman (Hon. David Ochieng’): Hon. Otiende, what is out of order?

Hon. (Dr) Otiende Amollo (Rarieda, ODM): It is out of order to mislead the nation in terms of what it actually reads.

The Temporary Chairman (Hon. David Ochieng’): What makes you think so?

Hon. (Dr) Otiende Amollo (Rarieda, ODM): The point is this...

The Temporary Chairman (Hon. David Ochieng’): Order. Order Hon. Members.

Hon. Otiende, I gave you a chance on this and you guided us well. I want to believe what you are saying and what Hon. Ichung'wah is saying are all points of debate. None of you is misleading or leading the other. I want to request that you let this lie. You have made your point. Leader of the Majority party, you have one minute to finalise.

Hon. Kimani Ichung'wah (Kikuyu, UDA): Thank you, Hon. Temporary Chairman. There was no point of order. I, therefore, rest my case by saying that this will protect very many innocent Kenyans who would have been taken advantage of by being used as proxies by cartels to buy houses and then transfer to themselves. Nobody will make money out of this programme.

(Question, that the new clause be read a Second Time, put and agreed to)

(Question, that the new clause be added to the Bill, put and agreed to)

Senate amendment to First Schedule

THAT the First Schedule of the Bill be amended—

- (a) in paragraph 1 by deleting the words “at least half” appearing in sub-paragraph (4) and substituting therefor the word “majority”; and
- (b) in paragraph 2 by deleting the words “fifty plus one” and substituting therefor the words “majority”.

(Question of the amendment proposed)

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

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

(Senate amendment to First Schedule agreed to)

Senate amendment to Third Schedule

THAT the Third Schedule of the Bill be amended by inserting the following new paragraphs immediately in paragraph 5—

5A. National Construction Authority.

5B. State Department responsible for matters relating to Public Works.

(Question of the amendment proposed)

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

(Senate amendment to the Third Schedule agreed to)

The Temporary Chairman (Hon. David Ochieng'): The Hon. Chepkonga and Hon. Otiende, you can take this after. I now call upon the Mover to move reporting. The Hon. Leader of Majority Party.

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Hon. Kimani Ichung'wah (Kikuyu, UDA): Hon. Temporary Chairman, I beg to move that the Committee do report its consideration of Senate amendments to the Affordable Housing Bill (National Assembly Bill, No.75 of 2023) and its approval thereof without amendments.

The Temporary Speaker (Hon. David Ochieng): Thank you very much. I will now put the Question.

(Question proposed)

(Question put and agreed to)

(The House resumed)

IN THE HOUSE

[The Deputy Speaker (Hon. Gladys Boss) in the Chair]

MOTION

CONSIDERATION OF SENATE AMENDMENTS TO THE AFFORDABLE HOUSING BILL

Hon. Deputy Speaker: The Temporary Chairman.

Hon. David Ochieng' (Ugenya, MDG): Hon. Deputy Speaker, I beg to report that the Committee of the whole House has considered Senate amendments to the Affordable Housing Bill (National Assembly Bill No.75 of 2023) and approved the same without amendments.

Hon. Deputy Speaker: Mover of the Bill.

Hon. Kimani Ichung'wah (Kikuyu, UDA): Hon. Deputy Speaker, I beg to move that the House do agree with the Committee in the said report. I request Hon. Makilap to second.

Hon. Joseph Makilap (Baringo North, UDA): Hon. Deputy Speaker, I second.

(Laughter)

(Question proposed)

Hon. Deputy Speaker: Do you want to say something?

Hon. Kimani Ichung'wah (Kikuyu, UDA): Thank you Hon. Deputy Speaker. Let me take this moment to thank Members who have considered all the amendments by the Senate.

As I said while moving the Motion for agreement with the Senate, that many of these amendments enrich the Bill. They protect the home owners who will buy these houses and the country against cartels that intended to use this law to acquire houses then sell them for value, at rates that they will make profits. From the Departmental Committee on Finance and National Planning and the Departmental Committee on Housing, Urban Planning and Public Works report, there are a number of minor amendments that the Committee had not agreed with. They have proposed, that they could be considered in Miscellaneous Statutes because they are minor in nature. Some could also be done through the Finance Act and others through the Comprehensive Housing Bill that the Ministry is working on. I hope that the committees will pick up all those issues to make sure that we continue improving this legislation.

In conclusion, legislation is a process. It is not something you do with finality. We did a law through the Finance Act and we have now reviewed what was done. Many of the issues

or almost all that the court raised have now been addressed. We will continue legislating and improving on our laws. I, therefore, give assurance, even to those who went to Ambira High School, like the Hon. Otiende Amollo whom I know is a very good legislator...

(Laughter)

He is very keen in considering all issues that come to the House, but when we also point out...

Hon. (Dr) Otiende Amollo (Rarieda, ODM): On a point of order.

Hon. Deputy Speaker: What is your point of order Hon. (Dr) Otiende? Let us hear his point of order.

Hon. (Dr) Otiende Amollo (Rarieda, ODM): Thank you, Hon. Deputy Speaker. Is it in order for the Hon. Leader of Majority Party to take me to a school I never went to? I went to the Maranda National School, which remains a national school to date. So please...

(Laughter)

Hon. Deputy Speaker: The Hon. Leader of Majority Party is duly informed now.

Hon. Kimani Ichung'wah (Kikuyu, UDA): Thank you, Hon. Deputy Speaker. I did not know my good friend Hon. Otiende went to Maranda High School, which is also a village school in Bondo the same way the Alliance High School is a village school in Kikuyu, where I come from.

(Laughter)

Therefore, we all went to some village schools, including these beautiful children in the Public Gallery. They go to some village schools in their villages. We must encourage all our children in this country.

That is why I was saying it is also equally important that Members should come here well-equipped. Hon. (Dr) Otiende Amollo knows that I was not referring to him when I said that Members should come here well equipped. I know Hon. (Dr) Otiende Amollo, Hon. (Dr) Nyikal, Hon. (Dr) Oundo do read. I took issue with Hon. Zamzam who was speaking to issues that have been addressed by the Committee in the report that was tabled here. There were also issues that had been addressed in the amendments but she was speaking to them without having read the report. I challenged her - I do not just say things for the sake of it - if she had read the report and she indeed confirmed to have not read. That does not mean she has no capacity to read as Hon. (Dr) Otiende Amollo might have insinuated. Of course, I have tremendous respect for Members especially those who have capacity to read. I know there are also some with challenges to read and understand English.

(Laughter)

Hon. Deputy Speaker, you saw the difficulty the Member for Kilifi had in trying to articulate something in English and we understand her.

With that, I thank all these Members, including the Member for Kilifi, who the Hon. Deputy Leader for Majority Party Owen Baya has already commissioned housing in her own neighbourhood. I want to ask the Member for Kilifi that your brothers and cousins who have no jobs, will now have an opportunity to get jobs in the Affordable Housing Scheme being undertaken by the Member for Kilifi North.

(Loud consultations)

I request the Member for Kilifi to mobilise the people of Kilifi, just like I will mobilise the people of Kikuyu to go and look for jobs in this Affordable Housing Scheme.

With that, I support and I beg to thank all Members.

Hon. Gertrude Mwanyanje (Kilifi County, ODM): On a point of order.

Hon. Deputy Speaker: Are you on a point of order? Do you have your card?

I cannot see it here.

Hon. Kimani Ichung'wah (Kikuyu, UDA): Put the Question now.

Hon. Deputy Speaker: I will give you a minute to prosecute your point of order. The Hon. Member for Kilifi, please just keep it to a minute.

Hon. Gertrude Mwanyanje (Kilifi County, ODM): Hon. Deputy Speaker, I wonder why the Hon. Leader of Majority Party, whenever he needs to put straight a document in this Parliament, has to deal with the Kilifi Women Representative. Ask him what interest he has? This is because I speak for the people of Kilifi, not for him, from the village schools. Thank you.

(Loud consultations)

Hon. Deputy Speaker: Hon. Members, you cannot just heckle from your seats. Just draw my attention to your point of order once and I will let you speak. Let me proceed.

(Question put and agreed to)

Next Order.

MOTION

ADOPTION OF REPORT ON FINANCIAL STATEMENTS OF SELECTED STATE CORPORATIONS

THAT, this House adopts the Report of the Public Investments Committee on Commercial Affairs and Energy on its examination of the reports of the Auditor-General on the financial statements of selected State corporations, laid on the Table of the House on Wednesday, 6th December 2023.

(Moved by Hon. David Pkosing on 13.3.2024 – Afternoon Sitting)

(Resumption of debate interrupted on 13.3.2024 – Afternoon Sitting)

Hon. Deputy Speaker: My records show that Hon. Gideon Mulyungi had a balance of seven minutes. If he is not here, any Member who wants to contribute press the intervention button. Hon. Charles Ngusya, I can see you have pressed the intervention button. Hon. Nyakundi?

Hon. Charles Nguna (Mwingi West, WDM): Sorry, Hon. Deputy Speaker. I do not have interest in this.

Hon. Deputy Speaker: There being no further interest in this matter, could I have the Mover to reply? The Chairperson of the Public Investments Committee on Commercial Affairs and Energy.

(Hon. Deputy Speaker consulted with the Clerks-at-the-Table)

We will move to the next Order and come back to this one later.

(Motion deferred)

BILL

Second Reading

THE NATIONAL GOVERNMENT
ADMINISTRATION LAWS (AMENDMENT) BILL
(National Assembly Bill No.73 of 2023)

Hon. Kimani Ichung'wah (Kikuyu, UDA): Hon. Deputy Speaker, I beg to move that the National Government Administration Laws (Amendment) Bill (National Assembly Bill No.73 of 2023) be now read a Second Time.

The Departmental Committee on Justice and Legal Affairs considered this Bill over a long period. Many people have been all over pressuring many Members for consideration of this Bill for obvious reasons. Part of the objects of this Bill were some slightly contentious issues that have since been ironed out. I must take this opportunity to thank Hon. Murugara and the Members of the Departmental Committee on Justice and Legal Affairs for considering some amendments to some statutes like the National Security Council Act. These were a bit contentious. We were able to resolve them. Some are those that touch on the Office of the Attorney-General Act of 2012, especially on the custody of our National Seal.

From the Committee's Report, you can see that the Hon. Members of the Departmental Committee on Justice and Legal Affairs have resolved and agreed that the Seal should remain with the Office of the Attorney-General and not the Head of Public Service.

The Bill also sought to amend two other statutes: The National Government Coordination Act of 2013 and the Assumption of Office of the President Act of 2012. A majority of the amendments in the Bill relate to the administration of government. It specifically seeks to alter the role of governmental bodies and officials including the Assumption of Office of the President Committee by adding new members that include the National Security Advisor, the National Security Council Committee, the Attorney-General, the Head of Public Service, and the Offices of the Chief Administrative Secretary. That is why I said that I know people have lobbied many Members to have this Bill considered. We have been telling them to hold their horses and be patient because the time will come. That time has come.

The Assumption of the Office of the President Act has been amended. The Committee has agreed with what has been proposed, to increase the membership of that committee. On the National Security Council, there were reservations. I believe the Chair of the Departmental Committee on Justice and Legal Affairs will speak on this as he seconds this Motion. Those of the Office of the Attorney-General were also agreed to and so were those on the National Government Coordination Act of 2013, with amendments.

However, on the National Government Coordination Act of 2013, there was a line of thinking that we should limit the Chief Administrative Secretaries to 22 in line with the line ministries. It is also worth noting that other schools of thought also inform the thinking—there are state departments within the ministries. These go beyond the number of ministries up to the level of 50 to 51. Therefore, even the positions of Chief Administrative Secretaries can be more than 22 in line with state departments established along line ministries.

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On the Assumption of Office of the President, the Bill has the objective of strengthening the composition of the Assumption of Office of the President Committee by incorporating the secretary to the National Security Council and the Principal Secretary in the state department responsible for matters relating to defence as additional members of this committee. The Joint Committee did not agree. It proposes that they amend by deleting the proposed paragraph (c) appearing in the proposed amendment to Section 5(2). The rationale was removing the National Security Advisor as a member of the Assumption of Office of the President Committee because the Office of the National Security Advisor is not statutory. Therefore, the proposal is to insert new amendments immediately after the proposed amendment of Section 5(2). They would delete the words “Cabinet Secretary” appearing in paragraph (c) and substituting it thereof with the words “Principal Secretary”. This is because the rest of the members of that committee are Principal Secretaries and the Act provided for the Cabinet Secretary. That will be cleaned up to make sure those sitting in this committee are Principal Secretaries.

The Committee agrees on many amendments on the Office of the Attorney-General. In many jurisdictions in the Commonwealth, the Office of the Attorney-General is the official custodian of the government seal. I thank the Departmental Committee on Justice and Legal Affairs because, in their wisdom, they have chosen to work like many other commonwealth democracies.

The Bill proposes to amend the National Government Coordination Act to provide for the establishment and function of the Office of the Head of Public Service and the Chief Administrative Secretary. The Office of the Head of Public Service has been subjected to a lot of litigation in courts. Today, the current holder of that office is in court. The amendments in this Bill seek to create a legal framework that anchors the Office of the Head of Public Service and the Office of Chief Administrative Secretaries in law. You know that even the Office of the Chief Administrative Secretaries has been challenged in court. That matter is active in court. I will not dwell on it.

In their wisdom, the Committee has designated the Chief Administrative Secretaries as public officers. It has also put an elaborate mechanism within which Chief Administrative Secretaries will be recruited and appointed into office.

[The Deputy Speaker (Hon. Gladys Boss) left the Chair]

[The Temporary Speaker (Hon. (Dr) Rachael Nyamai) took the Chair]

Hon. Temporary Speaker, I do not want to belabour the point. As I said, this is a small omnibus Bill that seeks to amend four statutes: The Assumption of Office of the President Act, the National Security Council Act, the Office of the Attorney General Act, and the National Government Coordination Act. Therefore, there is no need to belabour that point.

The Departmental Committee on Justice and Legal Affairs, in consideration of the National Security Council Act, noted very good points. I agree with the Committee that these are issues touching on security that need to be ironed out within the Executive. Once the Executive agrees on how the National Security Council (NSC) should be constituted, who the members would be, how the appointment of the National Security Advisor will be done and what the role of that office will be, they can always re-introduce whatever the Executive may want.

Hon. Murugara will tell you that, as the Committee considered this Bill, it was not clear what the Executive really intended to do with this particular law. Therefore, by mutual agreement, we agreed that this can be re-considered in another Bill. I am sure that since there is another National Government Coordination (Amendment) Bill that is on the way, there is an opportunity, if they want to entrench the Office of the National Security Advisor, to expand

the NSC or make amendments to that, they can use it or any other Act. It can also be an amendment to the National Security Act to rectify some of the things that may be achieved through this Bill. Therefore, when we get to the Committee of the whole House, we will propose amendments in line with the joint committees' report to amend and drop some of the proposals in this Bill.

With those many remarks, I beg to move and request the Chairman of the Departmental Committee on Justice and Legal Affairs, the one and only Member for Tharaka Constituency, Hon. "Sir" George Murugara, to second.

The Temporary Speaker (Hon. (Dr) Rachel Nyamai): Hon. Murugara.

Hon. George Murugara (Tharaka, UDA): Thank you very much, Hon. Temporary Speaker.

Hon. Temporary Speaker, I beg to second the Second Reading of the National Government Administration Laws (Amendment) Bill (National Assembly Bill No.73 of 2023). I fully associate myself with the observations and debate by the Leader of the Majority Party when moving the Bill.

To start with, it is important that Hon. Members of this House get hold of the Committee Reports. The Reports by the Departmental Committee on Justice and Legal Affairs are two: the main report and an addendum. It is important for Members to get these reports and read them so that they understand exactly how the Committee reasoned before it came to the decisions it made. It is also important to point out that there is even a dissent by Hon. Otiende Amollo. Whoever is keen can look at it. It is important that this is debated in both ways. These laws are especially very important because they touch on security and administration of our country.

We did not have problems with the Assumption of the Office of the President Act. We agreed to most of this apart from observing that we had difficulties with the Office of the National Security Adviser, which does not exist but it was to be formed under this law. We agreed to increase the number of persons to represent the President-elect to six.

When it came to the amendment of Section 2 of the National Security Council Act to introduce the National Security Council Committee, we had difficulties because it was actually being introduced by Section 5 of the proposed amendment. The problem we had was about the constitutionality of the proposed committee. It is supposed to be a committee of the NSC but we were legislating that members who are not members of the NSC sit in the committee. The net effect would be introducing new members who are not members of the NSC to sit there and make security decisions. One such person is the National Security Advisor. Sub clause 3 seeks to make the secretary to the NSC to become the secretary of the committee. That may be the case in reality but that office is not constitutional.

We rejected the whole of Clause 5 and went to Clause 7, which again we were not able to approve because we could not find the constitutionality of the office. That is why it is proposed that if we are to create the office, we may have to look at other laws including the National Administrative Laws.

From there, we went to Section 28 on the Office of the Attorney General's Office in which it was proposed that the National Seal be removed from there and kept by the Head of Public Service. Unfortunately, it was agreed unanimously that the custodian of all the legal instruments of the country is the Attorney-General. Therefore, it would be improper and unwise to move the National Seal. There may exist other seals in the country, including the Presidential Seal. We do not have a problem with them being held by other persons in accordance with whatever law. However, when it comes to the Republic Seal, this, like all the laws of the country, must be kept by the custodian of those laws.

From there, we went to the National Government Coordination Act 2013. This is where the Office of the Chief Administrative Secretary (CAS) is proposed. We made proposals to this

to make it an office in the Public Service. The appointment is to be done by the Head of State, who is the President of the country, with recommendation from the Public Service Commission (PSC). We removed the requirement that they would have to be approved by Parliament because we never thought it necessary. In any event, we made a qualification. How you qualify to become a CAS is by holding a degree from a recognised university, which makes it quite high in hierarchy. I warn Members of Parliament that they do not have such requirements for their qualification and so, these persons will possibly be placed higher than Members of Parliament in the Government hierarchy.

We also gave the other requirements and their responsibilities. They will perform all functions relating to their portfolio as assigned to the office by the Cabinet Secretary. They will also perform any other functions as will be assigned to them from time to time. There was a proposal that they become liaison officers with Parliament. This was rejected on the basis that the persons who are supposed to come to Parliament are only cabinet secretaries. The CAS do not have that mandate. They may come in as observers and they may be sent as messengers but they cannot bring any communication to the House from the Cabinet Secretary or whatever quarters because they do not qualify for that.

The Leader of the Majority Party has hinted to the capping of the number of CAS below what was proposed. However, eventually, after debate, the capping was removed. This is because we evaluated this office to show that it is an office in the Public Service, which has the power to create offices and so does the President. Therefore, depending on need, he should be free to make whatever appointments he considers desirable and necessary for effective management of public affairs of the country. They can be 10, 15, 22 or even 40 depending on the exigencies of the offices that the President may be dealing with.

At the Committee of the whole House stage, we will introduce some amendments to ensure that this House produces a law that cannot be challenged in court. We are doing this today because there was a court decision which said that these offices were unconstitutional. Indeed, when we looked at this Bill, some of the provisions attributing to these offices may have been in contravention of the Constitution.

Finally, we worked on the Office of the Head of Public Service. We debated Sections 2 and 12 of the National Government Coordination Act, on the Office of the Chief Administrative Secretary, so that they can be read together. Section 8, which is the last bit, is on the Office of the Head of Public Service. There was debate on this because many Members felt that the Constitution does not provide for such an office.

However, we agreed on the Head of Public Service since he heads the public service from the Office of the President and he is the Chief of Staff. We renamed this as Head of Public Service in the Executive Office of the President. That way, he would appear as if he is the Head of the entire public service when that role is constitutionally vested in the Public Service Commission.

We were able to propose his roles amongst other responsibilities and how he would be appointed with the approval of the National Assembly and the President. We said he would be the Chief of Staff for the President, in-charge of administrative functions in the Executive Office of the President.

We removed the function of being the custodian of the public seal. This, in our view, is a function of the Office of the Attorney-General. We concluded by saying that he will perform such other functions as may be assigned to him by the President. Eventually, we created the Office of the Chief Administrative Secretary as we concluded the laws we were looking into.

Hon. Members, please find some time to read through the Report and acquaint yourself with this debate on the two offices being created.

With those very many remarks, I beg to second this Bill.

The Temporary Speaker (Hon. (Dr) Rachael Nyamai): Thank you very much, Hon. Murugara.

(Question proposed)

Hon. Members, bearing in mind that this was handled by two Committees, I would like to give this opportunity to Hon. Tongoyo, Chairperson of the Departmental Committee on Administration and Internal Affairs, to make his contribution.

Hon. Gabriel Tongoyo (Narok West, UDA): Thank you, Hon. Temporary Speaker. It is good that you have mentioned this because there was less reference made to the same.

I take this opportunity to also support the National Government Administration Laws (Amendment) Bill (National Assembly Bill No.73 of 2023) as moved by the Leader of the Majority Party, who is the sponsor of this Bill, and seconded by my colleague, Sir George.

As we all know, this amendment Bill has largely four issues. There is the proposed amendment to the Assumption of the Office of the President Act to include the National Security Advisor; amendments to the National Government Coordination Act, and the National Security Council Act, and amendment to the Office of the Attorney-General Act.

First of all, I want to appreciate both Committees – the Departmental Committee on Justice and Legal Affairs (JLAC), which was the lead Committee, supported by the Departmental Committee on Administration and Internal Affairs. They put a lot of time and commitment to come up with this Report.

The issue of the National Seal was unanimously agreed, based on reason, logic, and traditions among the Commonwealth countries, and also as supported by our Constitution. The National Seal should always remain with the Attorney-General. That has been the practice as clearly stated in the Constitution. It was the opinion of the Committees that it should remain as so and should not be changed. You know, when something is working, you should not interfere with it.

I think the issue of the Assumption of Office of the President has clearly been stated by the Leader of the Majority Party and my colleague. Of course, the President-elect always needs a helping hand when preparing to take-over. We thought that the membership of three people was little and there was need to increase that membership to six so that it gives him an advantage when preparing for the swearing-in. This was not contested by the committees. We all agreed.

On the issue of the National Security Advisor, Members felt that attempting to expand the NSC through the backdoor by introducing an advisor or stranger was unconstitutional. It would have offended Article 240 (2) of the Constitution. This is because the National Security Council Act clearly states the membership of the National Security Council. The members include the President, the Deputy President, the Cabinet Secretary for Interior and National Administration, the Cabinet Secretary for Defence, the Inspector-General of Police, and the Chief of Kenya Defence Forces.

Of course, there was a window in the Constitution that says the National Security Council, at any given time can appoint a secretary. Looking at the Constitution and other prevailing laws, it was the feeling of the Membership of the joint Committee that the Secretary can come from the membership of the NSC. So, on the issue of introducing a sub-committee, the Constitution is very clear. It gives the NSC the mandate and leeway to appoint sub-committees as they see fit.

Article 240 of the Constitution goes further to state that if there is need to co-opt any person based on the merits of their expertise, the National Security Council Act gives them the power to do so. We saw it was an offence to the Constitution to introduce a sub-committee through the backdoor. So, the Committee rejected that amendment.

On the issue of the National Government Coordination Act, it largely talked about entrenching of the Office of the CAS and the Head of the Public Service, who doubles as the Chief of Staff to the Executive Office of the President. We took into consideration the fact that this office has been in existence for a long time. It has had many holders like Nyachae and Mzee Muthaura, among others despite the fact that this office has never been entrenched into the law. There was a case in the Court of Appeal, and maybe my learned friend can remind me the case number by Omtatah. He was trying to challenge the legality of that office, and the court ruling was very clear that the President, as the Head of Government, cannot run it single handed. So, the Chief of Staff, who is the Head of Public Service, is part of the Executive Arm of the Presidency. We thought it is critically important to have this office recognised in law, so that it can help the President in the day-to-day running of the Government. It was the honest opinion of Members of both Committees that this office should be established.

Hon. Temporary Speaker, the National Government Administration Laws (Amendment) Bill introduced CASs. This has been well articulated by Hon. Murugara. This has been a contested issue. It has been back and forth in court. It was the Committee's opinion that this office be established within the Public Service, as clearly stated in the Bill. We removed the requirement for them to be vetted by Parliament, or to even come to Parliament to represent cabinet secretaries. That is very clear and should go on record.

I read reports in the newspapers yesterday that the number of CASs has been capped at 22. That is not the case. That was the case in the initial draft but there was a re-submittal. We opened it up to give the President power and leeway to appoint as many as he thinks may be necessary at any given time, with the advice and consultation of the PSC. The PSC is mandated by the Constitution, in Article 234, to abolish and create offices.

We call upon the Members of this House to support the issue of CASs. There has been a lot of clamour and noise in this House about the unavailability of cabinet secretaries. However, we should accept that they at times get overwhelmed and overstretched. The Chief Administrative Secretaries will go a long way in helping them run some activities within the State Departments.

Lastly, the issue of the Public Seal has been discussed. I call upon this House to rise to the occasion and support this Bill so that we can move this country forward.

I support the Bill.

The Temporary Speaker (Hon. (Dr) Rachael Nyamai): Hon (Dr) Otiende Amollo, Member for Rarieda.

Hon. (Dr) Otiende Amollo (Rarieda, ODM): Thank you, Hon Temporary Speaker. Before I start, could I get your direction? As the only...

The Temporary Speaker (Hon. (Dr) Rachael Nyamai): Senior Counsel, give me a minute. Could those who are interested in contributing to this debate, please, press their intervention buttons?

Hon. (Dr) Otiende Amollo (Rarieda, ODM): May I get your direction, Hon Temporary Speaker? As the only dissenting voice out of a Committee of 30 Members, and now that the Mover and the Secunder have taken 45 minutes to contribute, could I get your direction in terms of how much time you could give me?

The Temporary Speaker (Hon. (Dr) Rachael Nyamai): Hon. (Dr) Otiende Amollo, you will have 10 minutes.

Hon. (Dr) Otiende Amollo (Rarieda, ODM): Very well. I will prosecute the Bill.

The Temporary Speaker (Hon. (Dr) Rachael Nyamai): Please, make use of your 10 minutes to say everything you want to say.

Hon. (Dr) Otiende Amollo (Rarieda, ODM): Thank you, Hon Temporary Speaker. I want to thank you and also thank the Committee. It is true that we had five issues, three of which we had convergence on. I will not speak about them. We converged and agreed on the

issue of the National Security Advisor, the removal of the Public Seal from the Office of the Attorney-General, and agreed on the expansion of the Committee on the Assumption of Office.

My divergence is on two issues. The first one is the issue of the Chief Administrative Secretaries while the second one is that of the Head of Public Service.

This country's history is clear, if you look at the Bomas Report and the Exit Report of the Committee of Experts. The people of this country wanted a limited Executive in two respects. One is in terms of powers, and the Constitution has endeavoured to do that. The second one is in terms of numbers. They did two things to cure the issue of numbers. They removed the Office of the Assistant Minister and limited the number of Cabinet Secretaries to between 14 and 22 for a good reason. To introduce the Office of the Chief Administrative Secretary is to introduce the Office of the Assistant Minister by a different baptismal name. Therefore, we are seeking to defeat the will of Kenyans as a House and that is unacceptable.

Secondly, it amounts to sabotaging the very desire of Kenyans that they expressed for over 20 years, including in a referendum. If you are reconsidering the structures of Parliament or the Executive, you should not just bring a proposal to this House. You should wait and include it in an amendment to the Constitution so that the people can tell you whether they still want a limited Executive or not. That is not the case here. We are now limiting it by legislation.

Hon. Temporary Speaker, there is another problem with the introduction of Chief Administrative Secretaries. If you look carefully at the roles of cabinet secretaries and principal secretaries, there is no new role that is being given to the Chief Administrative Secretary. None at all. None that is not already undertaken by those two offices. We are duplicating roles with the danger of giving some roles by legislation to people who have no constitutional roles. I have a big problem with that. There is nothing new.

More importantly, and this is why Kenyans did not want a bloated Government; is that the cost of maintaining the Public Service, be it the Judiciary, the Legislature or the Executive, is far too high. Kenyans would even reduce the size of this House if they had their way. Instead of reducing the number of people in Government, we are working towards increments, and not just an increment of a defined number of 22 people but an increment, as Hon. Murugara has said, of an undefined number that the President can decide at his whim.

This comes at a time when the cost of living is high, and on a day that the medical personnel in this country have gone on strike because medical interns cannot be hired. The basic cost of hiring one intern is Ksh42,370. The cost of hiring one Chief Administrative Secretary, going by the last batch, is a basic salary of Ksh800,000 plus benefits, which adds up to Ksh2 million. Hiring one Chief Administrative Secretary is equivalent to hiring 47 medical interns. If we get 50 CASs, as was prescribed last time, we would be talking of 2,350 interns. If we get 100 CASs, as the Committee is recommending, just multiply the number of interns by the same figure. We do not have money to pay interns but we have money to create offices and pay their occupants. I have a big problem with that.

Lastly on this point, the creation of this office was declared unconstitutional and remains so. It was not for want of legislation. There are two cases that speak to this issue very clearly. First, there are the Nairobi High Court Constitutional Petitions No.33 and No.42 of 2018, in which Justice Mrima clearly declares in paragraph 310(b) of his judgment that the court declares the Office of the Chief Administrative Secretary unconstitutional. This is not about numbers or legislation. This is on the reading of the Constitution.

The other cases are Petitions E080, E084 and E150 of 2023, being considered by three judges – Justice Ong'udi, Justice Kimondo and Justice Visram. In the decision, the majority again declared the Office of the Chief Administrative Secretary unconstitutional in paragraph 301, with one dissent. The dissent is by Justice Ong'udi. She dissents by stating in paragraph 38 of her dissent that she finds that the creation of an additional 27 posts is unconstitutional. On the contrary, the establishment of 23 posts is constitutional. We are going even further than

the dissent. We are not only creating 23 posts so that we find a way of fitting in Justice Ong'udi's decision, but we are going beyond 50 posts. If it was unconstitutional then, it is even worse now.

Hon. Temporary Speaker, the position of the Head of the Public Service has a long history. If you look at the Report of the Committee of Experts and the Bomas Report, we started with the very powerful Office of the Chief Secretary. Before the promulgation of the Constitution of Kenya, 2010, people knew who the Chief Secretary was even before the ministers. This is because the position was very powerful. It was necessary to divorce that office, which came with the presidency, from the public service. It was determined that routine public officers should be headed by the PSC. This is because they are permanent employees who do not need to play politics. On the other hand, there are those who come into office with the elected President and the Executive. They are not employed on permanent basis. Their offices are transitional. That is why we introduced the Office of the Secretary to the Cabinet. It was to ensure that the public service is divorced from the transitional office of the President.

The Constitution clearly defines the roles of the Secretary to the Cabinet. Introducing the Head of Public Service in the Bill conflates the two offices suddenly again. It removes the permanent control of public servants from the PSC and purports to put it under the transitional clause of the Head of Public Service. This does not address the role of the Secretary to the Cabinet. All these roles, which are described here, are supposed to be roles of the Secretary to the Cabinet. This transfers the roles of the Commission to an individual. It also does something worse. It removes the clear boundaries that are in the Constitution. As Hon. Chairman has said, it is possible that the Committee has attempted to define it within the Executive. However, it still remains Head of Public Service. He will head the public servants who are on permanent basis within the Office of the President.

Lastly, as Hon. Chairman of the Departmental Committee on Administration and Internal Affairs has said, there was a court case which challenged the legality of that office. The court stated that there is nothing wrong with the President having a head of public service. He had him without legislation. Why are we creating it? Why are we creating a problem where there is none? I oppose the bits on the Head of Public Service and Chief Administrative Secretary.

The Temporary Speaker (Hon. (Dr) Rachael Nyamai): Member for Marakwet West, Hon. Timothy Toroitich.

Hon. Timothy Kipchumba (Marakwet West, Independent): Thank you, Hon. Temporary Speaker, for granting me an opportunity to support this Bill. I will limit myself to the amendment in respect of the Chief Administrative Secretaries. The Departmental Committee on Justice and Legal Affairs has responded to the Court of Appeal's decision which declared that post unconstitutional. We have created a proper legal and institutional framework for the creation of the Office of Chief Administrative Secretaries. When they were appointed, the issue was the legal framework under which they would serve. I have read the provisions that are proposed by the Committee.

This office is now properly anchored in law. Clause 12A (3) of the Bill provides that the President shall, on the recommendation of Public Service Commission and approval of the National Assembly, appoint Chief Administrative Secretaries. This House will have a say on their appointment. There was a ruling by Hon. Speaker that there was no legal provision requiring this House to approve their nomination. For the first time, this House will vet Chief Administrative Secretary nominees to determine their eligibility to serve this country. That is a plus.

Hon. Mwengi Mutuse (Kibwezi West, MCCP): On a point of information, Hon. Temporary Speaker.

The Temporary Speaker (Hon. (Dr) Rachael Nyamai): What is out of order, Hon. Mutuse?

Hon. Mwengi Mutuse (Kibwezi West, MCCC): I would like to inform my learned colleague, Member for Marakwet West.

The Temporary Speaker (Hon. (Dr) Rachael Nyamai): Would you like to be informed, Hon. Timothy Kipchumba?

Hon. Timothy Kipchumba (Marakwet West, Independent): Yes, I accept to be guided.

Hon. Mwengi Mutuse (Kibwezi West, MCCC): The Bill does not propose vetting of Chief Administrative Secretaries by the National Assembly. It is the Head of Public Service who will be subject to parliamentary approval.

The Temporary Speaker (Hon. (Dr) Rachael Nyamai): Hon. Timothy Kipchumba, proceed with your debate with that information in mind. Being the Vice-Chairman of the Committee, he must have information on the Bill.

Hon. Timothy Kipchumba (Marakwet West, Independent): Hon. Temporary Speaker, unless I am not reading the right thing, Clause 12A (3) of the Bill is very clear that the President shall, on the recommendation of the Public Service Commission and approval of the National Assembly, appoint the Chief Administrative Secretaries. 'Approval' implies vetting. This House will vet the Chief Administrative Secretaries and ascertain whether they are fit to serve the country.

Hon. George Murugara (Tharaka, UDA): On a point of information, Hon. Temporary Speaker.

Hon. Timothy Kipchumba (Marakwet West, Independent): I do not need further information. Let me proceed with my argument. When they address the House on this matter, they will raise those arguments.

The Temporary Speaker (Hon. (Dr) Rachael Nyamai): Hon. Chairman, I will allow Hon. Timothy Kipchumba to continue with the debate. If you note something is not accurate, you will deal with it later.

Hon. Timothy Kipchumba (Marakwet West, Independent): Very well, Hon. Temporary Speaker. The fact that this House has been given the mandate to approve the appointment of the Chief Administrative Secretaries is a plus. We will ascertain whether these individuals qualify to serve in that capacity or not.

It also provides that they must meet certain minimum constitutional requirements like compliance with Chapter Six of the Constitution. That is an integrity test which was not available prior to the proposed Bill. It clearly provides that a person who has been convicted of an offence carrying a penalty of imprisonment for a term of at least six months does not qualify to be appointed. However, there is a problem here. It says that if that person pays a fine, then he will be eligible for appointment. If one is convicted to serve a prison term or pay a fine, we should look at the offence but not the way the sentence has been meted out. This is because whether you serve six months or pay a fine, you have already committed an offence.

The Bill also sets out the roles of the Chief Administrative Secretaries. Before this Bill, there was no provision on their roles. It has clearly highlighted them. This is a plus to the law making process. Committees often invite cabinet secretaries and principal secretaries but they do not appear before them. The Bill highlights clearly that Chief Administrative Secretaries shall be liaison officers between Parliament and the Executive. They shall also be liaison officers between the Executive and county governments. It has clearly defined their role to avoid conflicts between the cabinet secretaries and principal secretaries in the ministries.

I support the Bill as it is progressive and responds well to the decisions of the Court of Appeal.

Thank you, Hon. Temporary Speaker.

The Temporary Speaker (Hon. (Dr) Rachael Nyamai): Thank you very much, Member for Marakwet West. I will give a chance to the Member for Marsabit County. After that, I will purposively give an opportunity to the Vice-Chairman of the Committee, so that we get some facts right. I understand that what was in the Bill has changed. The initial intention changed after interaction amongst the membership of the two committees.

Member for Marsabit County, please proceed.

Hon. Naomi Waqo (Marsabit County, UDA): Thank you, Hon. Temporary Speaker, for giving me an opportunity to contribute to this important Bill. Through it, we will overcome some challenges that we have or reduce the gaps that are in our system.

I also congratulate the Departmental Committee on Justice and Legal Affairs and the Departmental Committee on Administration and Internal Affairs for a job well done. They have given this Bill a lot of attention and came up with recommendations that will guide our nation to another level. It is clear that the memorandum of objects and reasons is that the National Government Administration Laws (Amendment) Bill No.73 of 2023 seeks to make various amendments to the Assumption of the Office of the President Act (No.21 of 2012). The Bill also seeks to enhance the representation of the president-elect in the committee by increasing the number of representatives from three to six.

In my opinion, this is a good proposal because when there are only three representatives, an emergency could arise preventing one from attending. It is safer to have five to six people as this will help them to effectively discharge their duties. I support the proposal to increase the number from three to six so that they can effectively work within the short timelines and be productive. The Bill also proposes to amend the National Security Council Act No.23 of 2012. This is good because it designates the National Security Advisor as the Secretary to the National Security Council.

I also briefly want to draw your attention to the last amendment; that is, the National Government Co-ordination Act No.1 of 2013. The Bill proposes to amend it to provide for the establishment and functions of the Head of Public Service and the offices of the CASs. We are aware that our Government wants to be very effective in its administration so that it serves Kenyans in the best possible way. This is not the first time we are talking about the Office of the CAS. They have been there in the past but it does not mean that we were constitutionally aligned.

There was a big lacuna which we are overcoming by coming up with this amendment. It will enable us to have the 23 CASs depending on what the Government agrees on. We are reducing the number from 51 to 21 due to the challenges that we had faced. The 23 CASs will join the ministries and improve their work. Many times, the cabinet secretaries and the principal secretaries have had a challenge in their performance due to the workload. It is honourable for us to approve this Bill so that the 23 can be appointed. I support this Bill due to the qualification aspect – which was not considered in the past. We have not been talking of the qualification of the officers but you can clearly see that a person shall be eligible to be appointed as CAS if they have a bachelor's degree from a university recognised in Kenya. That means whoever will be appointed should be well educated.

Section 12A (4)(b) clearly states that the individual must have knowledge of and experience in the Public Service. This will ensure that we do not give opportunity to people who have no experience or political aspirants who lost elections. Section 12A(4)(c) states that they must satisfy the requirements of Chapter Six of the Constitution. Accountability and integrity must be put into consideration for public officers so that as they serve in different offices, their productivity matches the office.

Section 12A(5) of the Bill also tells us who is not qualified for the position. It is clear that anybody who has been convicted of any offence in the past does not qualify. Those who have been adjudged bankrupt also do not qualify. There is nothing meaningful that one can do

after being adjudged bankrupt by any court. You cannot be competent due to your past record. This will give hope to Kenyans who are qualified for these offices.

Section 12A (5)(c) says you will not qualify to be appointed CAS if you hold any office in a political party. This gives opportunity to people who have not been associated with any political party or hold any political office. There are many Kenyans who have worked hard and qualify for such great opportunities. They have given guidance that they will give consideration to the people who will be employed.

I, therefore, support this Bill and encourage Kenyans who qualify to come out. I especially encourage the women who are waiting for these opportunities to make sure that they have their papers ready. Once you are appointed, make sure that you give your best to the nation. You do not represent yourself but the nation.

With those remarks, I support and encourage all Members to support this Bill so that these nominees are appointed as soon as possible for efficiency.

The Temporary Speaker (Hon. (Dr) Rachael Nyamai): Next is the Vice-Chairperson, Hon. Mutuse.

Hon. Mwangi Mutuse (Kibwezi West, MCCC): Thank you, Hon. Temporary Speaker. At the outset, I wish to register my support for the proposed amendments by the State Law Office as moved on the Floor of the House by the Leader of the Majority Party and as amended through the Report by the Joint Committee of the Departmental Committee on Justice and Legal Affairs and the Departmental Committee on Administration and Internal Affairs. The initial Report was tabled in this House on 21st February and the Addendum was tabled before the House on 12th March 2024.

I speak about these reports because there may be confusion in the original text. The original texts of the Bills that have been proposed for amendment have been altered by amendments that were brought through public participation and committee reports. Procedurally, they will be prosecuted when the Committee of the whole House is convened. That is the information we wanted to give to Hon. Members.

Hon. Temporary Speaker, the National Government Administration Laws (Amendment) Bill (National Assembly Bill No.73 of 2023) principally proposed to amend four statutes. The first one being the Assumption of the Office of the President Act, which appears to have a consensus, that it is justified for the President elect to be given prominence, in the committee preparing his assumption of office. Therefore, the additional number of nominees by the President elect to six from the current two appears not controversial. Thus, I will say very little about it.

The second law that is proposed for amendment is the National Security Council Act, 2012. The amendment was speaking to formation of the committees. One, was to add the National Security Advisor to be a member of the National Security Council. It has been ably articulated that it was unconstitutional. You cannot expand particularly Article 240 of the Constitution through legislation. That principally is not known in law.

Two, the committee also reasoned that advisors in their very nature are personal staff to the appointing authority. A President may choose to have a security advisor while another may choose not to. Therefore, if we legislate that the National Security Advisor shall and must be the Secretary to the National Security Council Committee, you will be tying a future President who may not be interested in having a security advisor.

There are many advisors a President may want like economic, gender and legal issues. The question that begs an answer, and why we proposed an amendment was what happens to other advisors, if we elevate one advisor to the level of a constitutional office holder. That is why the Committee in its Report proposed that the amendments to the National Security Council Act, 2012 be deleted and the current situation continues to prevail.

The amendment to the National Security Council Act, 2012 was proposing a committee of principal secretaries which was going to take away the role of the National Security Council Committee. We thought this was unnecessary because it would introduce unnecessary bureaucracy. The current law requires and gives options to the National Security Council Committee to adopt members. Therefore, there is no need to legislate on that which can be operationalised, using the current law.

Hon. Temporary Speaker, the third piece of legislation that was sought to be amended is the Office of the Attorney-General Act. The amendment speaks to the Public Seal of the Republic of Kenya currently deposited with the Attorney-General. This amendment was seeking to move it from the Office of the Attorney-General to the Office of the Head of Public Service. The Committee in its wisdom thought that was a misnomer. It is important for the House to know that the Public Seal is a constitutional symbol provided for in the Schedules to the Constitution. Therefore, it is not an option. The emblem itself is provided for in the Constitution and it must be treated with a lot of seriousness.

The Attorney-General, being the office created by the Constitution under Article 156 as the Chief Legal Advisor to the Government even on matters of contracts, is the best placed office to be deposited the Public Seal. The Committee thought that amendment in itself was mischievous and there was possibility, if the Public Seal is moved from the Office of the Attorney-General to an office within the presidency, to be subject to abuse. There may be a good President today, and a bad one tomorrow. So, we must legislate for posterity.

Hon. Temporary Speaker, allow me to speak in detail about the fourth piece of legislation that this law seeks to amend, which is the National Government Co-ordination Act, 2013. The amendments to the National Government Coordination Act, 2013 seeks to introduce two offices. First, is the Office of the Head of Public Service. As has been articulated, this office has existed in our governance architecture since Independence. At the time we did our Constitution in 2010, it did not appear that we should expressly provide for it. This practise has continued from 2013 and successive Presidents elected under the new Constitution, have always had the Office of the Head of Public Service. As ably articulated by Senior Counsel Hon. (Dr) Otiende Amollo, courts have had occasion to interpret the legality of the Office of the Head of Public Service. They have returned the verdict that any President in office, is at liberty to appoint a Head of Public Service.

What is the rationale for us legislating for the position of Head of Public Service? Government exists in two faces, if I may say so. There is a political face because a President is elected through an election and he becomes the Chief Executive of the country, through a manifesto and pledges. There is the proper public service, which is the traditional civil service of public servants who are ordinarily expected to be neutral.

One must create an interface between the proper public service and the political system that comes with the election of a President, who is the Chief Executive of the country. The rationale to justify the creation of the Office of the Head of Public Office is so that as the titular head of the executive office of the President, he can create the necessary interface between the political system and the proper public service.

We supported the amendment because this has been the practise which has existed. The fact it has not been in law is even a greater justification for it to be included in legislation. So that we do not do things out of whims or personality, but because the law says so. We find every justification in law and practise for the creation of the Office of the Head of Public Service.

This office is not being created for a particular individual or person in mind. It is being created for posterity. This law will survive the current Government and will be there to guide future governments. Therefore, I urge this House to look at it not from the perspective of this Government or current holder of office, but for posterity. An important factor that we have

considered in creating this position is that it will be a public service position. This means that the PSC will advertise and people will be interviewed for it.

Hon. Temporary Speaker, add me two minutes so that I can comment on the other one. It is not a State office, but an office within the public service appointed at the pleasure of the President.

Let me now go to the CAS. This appears to be the most controversial inclusion in these amendments. I know as a matter of fact, and I wish I had said this when Hon. (Dr) Otiende was here, that the law follows society or what legal scholars call sociological jurisprudence or sociology of the law. The reality is that from 2013, President Uhuru Kenyatta and even later during the handshake government between President Uhuru Kenyatta and Rt. Hon. Raila Odinga, the incoming Chairman of the African Union Commission (AU)...

The Temporary Speaker (Hon. (Dr) Rachael Nyamai): Add him one more minute.

Hon. Mwangi Mutuse (Kibwezi West, MCCP): There has been Cabinet Administrative Secretaries. That speaks to the reality that our governance system had a gap which required to be filled by the creation of an office to assist the Cabinet Secretary. This is in whichever name, but now the office is being described as the Office of the Cabinet Administrative Secretary. A misnomer is being created that the Committee has left it open. Therefore, the President can appoint the number that he requires. If you look carefully at our amendment, it says that the complement shall be determined by the PSC, which is the body created under the Constitution to determine complements in the public service. This is a position within the public service so, we only gave the power to the right commission which is the PSC to determine the complement.

The Temporary Speaker (Hon. (Dr) Rachael Nyamai): Thank you very much Hon. Mutuse. Members on the minority side, your leader takes precedence. The Hon. Junet Muhamed, Chief Whip of the Minority Party.

Hon. Junet Mohamed (Suna East, ODM): Thank you, Hon. Temporary Speaker. First and foremost, I want to say that the Committee through the Chair, Hon. Murugara, has done a good job to some extent.

(Applause)

Of all the Bills they have presented to this House for the last year, this is one Bill that they have diagnosed well. I must commend them for a good job because they have removed most of the offensive clauses. That is the way a committee of Parliament should do.

(The Temporary Speaker (Hon. (Dr) Rachael Nyamai) left the Chair)

(The Temporary Speaker (Hon. Peter Kaluma) took the Chair)

Secondly, this is a clear example of why Members should take time to read the report of committees when tabled because certain times like this one, committees change Bills fundamentally. I think they have deleted close to 19 clauses of this Bill. Having said that and being a Member of the Departmental Committee on Justice and Legal Affairs, I agree that this time they have done a wonderful job and have served the country well. However, I want to differ with them on one issue: The issue of cabinet secretaries.

As a country, we got a new Constitution in 2010. If you see some offices properly provided in the Constitution, it means the Kenyan people did not want any extra offices. They

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said they want to have a minimum of 14 and a maximum of 22 cabinet secretaries and principal secretaries. They have put all that in the Constitution. That Constitution went through a referendum which was the will of the people of Kenya.

If we come back through this House and start creating offices which are supposed to be constitutional... If Kenyans wanted to have assistant or deputy ministers, whom we are now referring to as CASs, they would have voted in the referendum for the position to be put in the Constitution. We now call them CASs, but they should really be assistant or deputy ministers. I can tell you for free without any fear of contradiction that if this Bill is enacted, becomes an Act of Parliament and assented to by the President, if it is declared unconstitutional and vindicated through a constitutional court, it is going to be because of this CAS position. All the other things are correct and captured well. Most of the appointees of this year's positions are going to be election losers in their constituencies, counties and wards.

The President has a lot of avenues to accommodate those people. He does not have to create an office for them through a statute. This is an abuse of the legislation process. If he wants to accommodate them, he can make them chairs and directors of parastatals. He can even tell them to cook tea for him in his offices and pay them. There are many ways he can accommodate them. We do not need to create an illegality through a statute.

Look at what Kenyans are going through; high taxation. We are taxing Kenyans to the bone for us to create offices for people. I heard the Vice-Chairperson of my Committee say that during the previous regime, the CAS positions were there. Yes, but this Government came on the platform of not creating offices for big men and women. '*Hatutengenezi ofisi ya wakubwa na wadosi,*' that is what we were told. What are we doing this afternoon through this Bill? We are creating offices for big men and women of this country. In that list, when it is presented, you will not see *mama mboga*, *boda boda* or vulnerable people. You will only see big men and women who are known. I can even table the list here now. I can determine the people who will be appointed to those offices. Are we going to tax Kenyans? Today, the discussion in this country is about taxing bread and milk. That is what we are discussing this afternoon. So, you want to tell me we are going to tax bread and milk so that we can create offices for people? Why can they not do other things?

Hon. Stephen Mogaka (West Mugirango, JP): Point of Order.

The Temporary Speaker (Hon. Peter Kaluma): What is out of order?

Hon. Stephen Mogaka (West Mugirango, JP): Hon. Temporary Speaker, is the Chief Whip of the Minority Party in order to insinuate that he knows the people to be appointed to these positions even before they are created by law? I submit he must be out of order.

The Temporary Speaker (Hon. Peter Kaluma): Are you forgetting that some people had been appointed to those positions before and the same were nullified?

(An Hon. Member spoke off the record)

Hon. Junet Mohamed (Suna East, ODM): Let me forgive my colleague. I know he is angling for his cousin to be on that list. I do not know whether it will happen. I know he is from Nyamira. God knows whether he will appear on the list. Having said that, I know that cousin might get it or not. I am now losing my thought process.

I wanted to say that we are discussing the high taxation in this country. You can see what is happening. People are blaming loans and other things. Yes, we have to pay our loans and tax Kenyans. However, we cannot tax Kenyans to pay a CAS Ksh1 million. I must stand on the Floor of this House to oppose that. If a politician feels that he wants to get a job, he should be given a job that is already in the Constitution.

Lastly, after being appointed, these CASs are going to be sent to Parliament to answer Questions. How can Parliament listen to unconstitutional figures? Parliament only listens to

cabinet secretaries and principal secretaries who are in the Constitution. How do we listen to people who have been created through a statute or by hand? I cannot waste my four hours in a Committee to listen to someone whom I have just created like children created through test tubes. Let me tell you something, it is not proper to have these CASs who will earn over Ksh1 million.

The Temporary Speaker (Hon. Peter Kaluma): Hon. Naomi Waqo is on her feet on a point of order.

Hon. Naomi Waqo (Marsabit County, UDA): I have a lot of respect for my brother, Hon. Junet Mohammed. Is it right for him to refer to Kenyans; the CASs, as test tube babies? Surely, that is very wrong.

(Laughter)

I do not know the people who will be appointed or those who will be there although he says that he already knows them. Is it right for him to refer to grown-ups in that manner?

The Temporary Speaker (Hon. Peter Kaluma): Hon Junet Mohammed, you cannot refer to people that way.

Hon. Junet Mohamed (Suna East, ODM): I have heard my sister very well. However, you see children can come through many ways. They can come biologically or through test tubes. Cabinet secretaries and principal secretaries are coming biologically, CASs test-tube-wise. It is the way you take or understand it. We are creating 22 offices in a statute that will cost Kenyans billions of shillings. A CAS will earn over Ksh1 million or something close to that. He or she will have transport, a car assigned, offices, staff and all manner of packages that come with it. Not now in this country, when the whole of the Kenya Kwanza Government is talking about reviving the economy. They are saying this economy is in the doldrums and they are trying to revive it. Is this the right time to create such offices at the expense of Kenyans who are suffering and being taxed? No! Our conscience, as a House, must say no.

The President can give the 22 people other jobs. The Government is like an elephant. The President can hide you somewhere inside there and earn as much as you want. An office does not have to be created. I can tell you without any fear of contradiction that if we go this way, very soon they will table another Bill to create offices for other people, religious people, and Muslim and Christian leaders, to pray for us every day. We cannot go that way as a country. We gave ourselves a Constitution that came through the sweat and blood of the people of Kenya. We proscribed all offices and functions in the Constitution.

Secondly, if you want to address the unconstitutionality of the CASs you should bring a constitutional amendment Bill. Do not bring a statute. Do not address something that needs to be addressed in the Constitution through a statute! For God's sake, if we form government as of today, we will have a constitutional review. We provided those things in the Building Bridges Initiative (BBI). In the BBI, we proposed to have deputy president, but Kenyans rejected. We now want to create offices that are supposed to be constitutional through a statute. This issue should go to a referendum so that people can decide if we need a deputy president or a deputy minister among others. But if every day we are going to sneak a Bill here so that we satisfy certain quarters, I am not going to be party to it. I beseech my colleagues here, let our conscience now prevail. Kenyans gave us the mandate to legislate on their behalf. Let us not be used as a rubber stamp. Once this Bill is...

The Temporary Speaker (Hon. Peter Kaluma): We are running out of time. I will give you one minute.

Hon. Junet Mohamed (Suna East, ODM): In conclusion, if we do things the way we are doing now, we will betray the will of the people. The people of Kenya did not send us to this House so that we can legislate and create statutes that form unconstitutional offices. No!

My humble submission is that I want Members to go back to their conscience and let us reject this thing called CAS once and for all.

Thank you very much.

The Temporary Speaker (Hon. Peter Kaluma): Hon. Sabina Chege, the Jubilee Party Whip in the National Assembly.

Hon. Sabina Chege (Nominated, Jubilee): Thank you, Hon. Temporary Speaker for giving me this opportunity. At the outset, I stand to support the proposed amendments on the four statutes. I will dwell much on the assumption of the Office of the President and the National Security Council Acts. I am happy that the Vice-Chairman was able to clarify the issue of the Attorney-General and the Seal. I am quite satisfied with the Committee's stand that the Seal remains with the Attorney-General.

On the issue of National Government Coordination Act, my colleagues have dwelled on the issue of the CAS with the assumption on who the position has been made for and the reasons why. There have been a lot of mentions about the Constitution. This Constitution was made by the people and laws are made by the people, for the people. The law is not cast on stone and that is why even when we were supporting the BBI, there was an oversight on some few things when the Constitution was made. Remember when we were passing the Constitution, we were told 80 per cent was okay and we would amend 20 per cent. We went through a journey with Hon. Junet and the rest of the Members who were for the BBI. It was quite a loss when it was challenged.

It is purported that the CASs positions will be held by politicians. One of the things that makes me support the Bill is that we have the role of the CASs and their qualifications spelt out. When Hon. Junet says that we will not get *mama mboga*, I would like to inform that they are not limited if they qualify. It is very important for us to go through the qualifications of the CAS. A *mama mboga* who is eligible with bachelor's degree qualifies. We have *Mama mbogas* with bachelor's degrees.

(Hon. Junet spoke off the record)

Hon. Junet, you were heard and I also want to be heard. Hon. Temporary Speaker, you need to protect me from Hon. Junet. There is a bachelor's degree from a university recognised in Kenya, a person who has knowledge and experience in public service and satisfies the requirement of Chapter Six of the Constitution. Those are qualifications that are proposed. A person is not qualified to be a CAS if they have been convicted or they have been judged bankrupt or they hold any office in a political party. It is made clear that anybody who holds a political party position or anybody who is a legislator or anybody who is a public officer or holds any State office cannot be a CAS.

Hon. Temporary Speaker, I would like to remind my colleagues that currently, we are Members of Parliament, but one day we will be referred to as former Members of Parliament. I fail to understand why we discriminate against former Members of Parliament appointed to serve in other capacities. Some have only served one, two or three terms. This does not mean that they do not qualify to serve in any other office once they are not re-elected. I pity many young people who are joining politics. We have seen less than 30 years old becoming Members of Parliament. We all know the nature of politics in Kenya, but does this mean that if they do not get re-elected at the age of 40, they are automatically disqualified from holding any other State office?

Therefore, as we criticise the proposed names, let us see ourselves being former Members of Parliament in the future. We should treat our former colleagues the same way we would want to be treated once we leave office. I do not understand why we make it look bad for politicians to be appointed to offices because they did not make it back to Parliament.

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(Hon. Farah Maalim spoke off the record)

The Temporary Speaker (Hon. Peter Kaluma): Hon. Sabina Chege, do you want to be informed?

Hon. Sabina Chege (Nominated, JP): Let me hear what he has to say. If it is not good information, I will reject it.

Hon. Farah Maalim (Daabab, WDM): For your information, it is only in the last election that a substantive number of the former Members of Parliament came in. The tradition has been that only a maximum of 15 per cent of incumbents get re-elected. As you put it, when we come here, we behave like we will never come out of it until we become victims after the next election. As someone who has been around for longer than most, I have seen this happen time and time again. The majority of us who are here now will not come back to this House after the next election.

Hon. Sabina Chege (Nominated, JP): Thank you. That is valuable information and I appreciate it. Sometimes, when we are elected or nominated to certain positions, we tend to assume that we will always hold those positions. However, we should remember that we will not be in these positions forever. Therefore, as we criticise the shortlisted names, we should also consider how we would like to be treated when we are no longer in power.

I thank the Committee for the thorough deliberations. The number of CASs must be less than 22 so that they almost equal the number of cabinet secretaries. Yes, we are facing difficult financial times, but we should consider the value that the appointment of additional CASs would bring to our ministries. Our greatest challenge lies in addressing wastage, particularly regarding corruption. I recall the former President stating that we were losing Ksh2 billion each day. Is this amount greater than the cost of paying additional CASs? If this Bill is passed, I implore the appointees to prioritise reducing wastage within the Government. We must allocate funds based on the needs of the people.

Therefore, the 21 or 22 CASs being added to the Government will not be the only ones adding expenses. We can make significant savings if everyone works diligently and with the best interests of Kenyans in mind. Health and education should be given priority. I propose a law to be passed in this House to consolidate all funds and provide free education from nursery to university. This will ensure that children from vulnerable backgrounds access quality and free education. It will enable them to sit at the same table as their privileged peers. There are many ways of sorting out the problems that we have. This cannot be made to look like the only solution. We do not have the chief administrative secretaries, but the problems are still there. Let us sit as this House and ask ourselves how we legislate and offer solutions to this country. This is because God has appointed us at a time like this so that we bring change.

From where I stand, I support. I hope that during the Committee of the whole House, the Committee will bring those amendments so that we can make sure that what we pass in this House becomes lawful. I am very sure that we have a final solution on this matter of chief administrative secretaries that was in court.

Thank you, Hon. Temporary Speaker for the opportunity.

The Temporary Speaker (Hon. Peter Kaluma): Thank you. Hon. (Dr) James Nyikal.

Hon. (Dr) James Nyikal (Seme, ODM): Thank you, Hon. Temporary Speaker, for giving me this opportunity.

I rise to discuss the green document, the Bill, that we are discussing. I do not support it. I must appreciate the work that has been done by the Committee, but to a large extent, that

will come when we get to the Committee of the whole House. We are discussing this Bill, and as it is, I do not support it.

One must always look at the philosophy of a Bill. The philosophy of this Bill shows that it is controlled by the Executive. Period! If we have a constitutional arrangement and you see an effort to get things around it, just know that it is always dangerous. The Constitution gives the Executive the authority and the leeway to work, but at the same time, it is a check on the Executive. When you remove those checks, you put the country in danger.

Hon. Temporary Speaker, adding the secretary of the National Security Council and a Principal Secretary for Defence to the assumption of office will bring in the element of the military. You do not want to do that when dealing with a purely civil matter. We are always very careful on how we handle military when dealing with civil matters. That definitely cannot be a good thing. It may be okay to add more people to represent the President elect. That is considerable. But I see mischief in bringing in the Principal Secretary for Defence.

Why would one say that they want a National Security Council advisor when all the people in this Council are heads of the security organs of the State? What other advice do they need to add in there? At least, the Committee agreed with us on that. There is a provision that if you want technical advice, whether on the use of drones or to develop satellites, you can get those technical people and bring them in. You do not have to bring that into the Constitution.

I want to speak on the National Security Committee becoming a committee of the Council, which is actually established by the Constitution. Quite often, those committees just usurp and take over. Again, I am happy that the Committee saw that. It is something that I would not want to see in any Bill at all. It indicates bad thinking and intentions; the desire to control all the time. You are bringing in people who are probably easier to manipulate.

The Office of the Attorney-General, the Public Seal, is the utmost symbol and authority of the legal arm of the Government. How can you take it from an office which is constitutionally constituted, and give it to an office that is as at now, administrative? You are intending to make it legal by a statute by removing it from a position it constitutionally held. What are you intending to do? Obviously, the Head of Public Service, as appointed, will answer directly to the Executive. They are obligated and owe their position to that. On the other hand, the Attorney-General is obligated by the Constitution. That is the place where we need it. I am happy you also saw that.

Consider the co-ordination of the national Government. You want the position of the Head of the Public Service - which is an administrative position that works very well to coordinate the Public Service - to be established in law. This is something that has been working for years, as indicated in the Report. You want to bring it in through an Act of Parliament. What is the intention? If it is not broken, do not fix it. What is the intention and philosophy behind it?

Lastly, the position of the chief administrative secretary originates from the former position of the assistant minister. I worked as a permanent secretary when we had assistant ministers, and there was always a problem. We have the offices of the principal secretary, and the cabinet secretary, and ministries have directors of administration. We always had a problem with finding out what the assistant minister was supposed to do. If we bring them back, what will they do? I can see suggestions here of what they will do. One suggestion was liaison with Parliament. All ministries have technical officers who liaise with Parliament. Were they liaising with the Clerk, the National Assembly or committees? I do not think we need that position.

The Bill states that we should liaise with the county governments on matters of concurrent mandate. We have the Intergovernmental Relations Technical Committee (IGRTC) in place. It has fora and people who can actually link the national Government and the county

governments. The problem is that our IGRTC is not working. We are bringing in somebody who will literally kill them. That is not necessary.

Another function that is mentioned is providing inter-ministerial and sectoral coordination. We are establishing the Office of the Head of the Public Service. That is the person who will coordinate those issues. Why do we have to come up with another office to co-ordinate the same? Who will this person be reporting to? If you look at those issues, you will see a desire for control.

I definitely oppose this Bill. However, the Committee may save the Bill when we get to the Committee of the whole House stage. Let us just hope that not enough people oppose it during the Second Reading. However, if we had debated the Report as the Committee had recommended, I would have supported it. I do not support the green document as it is now.

The Temporary Speaker (Hon. Peter Kaluma): Hon. Gertrude Mbeyu.

Hon. Gertrude Mwanyanje (Kilifi County, ODM): Ahsante, Mhe. Spika wa Muda. Nimengojea nafasi hii ili niweze kupinga hoja moja katika Mswada huu. Ningependa kuzungumzia ualikaji wa hawa mawaziri wadogo. Ninaomba Serikali iwalipe na kuwaandika madaktari. Madaktari huwa wanapata shida. Madaktari wamegoma na *interns* hawajaandikwa kazi, ilhali tunawahitaji zaidi.

Walimu wengi katika shule za sekondari wameandikwa na kulipwa mishahara na *school board of management*. Nilikuwa katika shule ya upili ya Bahati Girls, ambayo ni *national school* siku ya *prize giving*. Walimu 32 katika shule ya Sekondari ya Bahati wanalipwa na *the board of management*. *The Teachers Service Commission (TSC)* imeshindwa kuwaandika na kuwalipa mishahara. Hawa mawaziri wadogo ambao wanaandikwa wanapaswa wafahamu kuwa wizara hizo zote zina mawaziri na *principal secretaries*. Ni kazi gani ambayo hawawezi kufanya mpaka ni lazima waongeze mtu mwingine? Ninafikiria ni *conflict of interest*. Pale Kilifi, kwa mfano, mama aligombea kiti cha Mwakilishi wa Kike, akashindwa, lakini bado hajateuliwa kama CAS ilhali alifanyia kampeni Serikali. Tutakuwa tunafanya kazi gani pale kaunti?

Mhe. Spika wa Muda...

The Temporary Speaker (Hon. Peter Kaluma): Order, Hon. Members. Hon. Mbeyu, you will have eight minutes when the matter is scheduled to be considered by the House in future. I am grateful, on behalf of the Speaker, for the interest shown. Hon. Members, you will have future debates on this matter. There is nothing we can do about limitations of time under our Standing Orders.

ADJOURNMENT

The Temporary Speaker (Hon. Peter Kaluma): Hon. Members, the time being 7.01 p.m., this House stands adjourned until Tuesday, 19th March 2024, at 2.30 p.m.

The House rose at 7.01 p.m.

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