

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Wednesday, 20<sup>th</sup> April, 2016

The House met at 2.30 p.m.

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

PRAYERS

PETITION

### DELAYED REHABILITATION OF KISUMU-KAKAMEGA/ KISUMU-KABURENGU ROADS

**Hon. Anami:** Hon. Speaker, I the undersigned, on behalf of the listed residents of Shinyalu Constituency, draw the attention of the House to the following:-

THAT, a good road network is essential for facilitating economic development, investment and access to social services;

THAT, contracts for rehabilitation of the Kisumu-Kakamega and Kakamega-Kaburengu section of the Kisumu-Webuye Road were awarded in 2010;

THAT, almost six years since the contracts were awarded, rehabilitation of the Kisumu-Kakamega section is yet to be completed while works for the Kakamega-Kaburengu section commenced but have since stalled;

THAT, the contractors of that road, particularly the Kakamega-Kaburengu section, have been on and off the site thereby slowing down the completion of the said project whose contract period was to be 24 months, while the Sigalagala-Kambi-Mwanza-Kaburengu section is worst hit by the delayed construction and has become impassable, especially during the rainy season; and,

THAT, lack of any marked diversions on the Kakamega-Webuye Road, coupled with the presence of abandoned machinery and equipment on the site, continues to cause rampant accidents and loss of lives.

Therefore, your humble Petitioners pray that the National Assembly, through the Departmental Committee on Transport, Public Works and Housing:-

- (i) investigates the circumstances that are causing the delay in the completion or rehabilitation of the said section of the road;
- (ii) intervenes in liaison with the Ministry of Transport and Infrastructure, through the Kenya National Highways Authority (KeNHA), to ensure that the road is expeditiously completed for enhanced safety and ease of transport;
- (iii) that the extra cost likely to be occasioned by the delayed completion of the said road works is not offset from public funds but be individually borne by the respective contractors; and,

(iv) makes any other order and/or direction that it deems fit in the circumstances of the matter for the welfare of the residents of Shinyalu and other users of that road.

Hon. Speaker, your Petitioners will ever pray.

**Hon. Speaker:** May I understand whether the Members who have placed requests want to comment on this Petition, starting with Hon. Daniel Wanyama Sitati?

**Hon. Sitati:** Thank you, Hon. Speaker. I want to add my weight to this Petition by saying that the construction of that road has taken longer than expected. Its construction started at the same time with the road from Kisumu to Kakamega, in respect of which the contractors did their job. It also started at the same time with the Kitale-Webuye Road, which has since been completed. Therefore, it is important that this Petition is looked at expeditiously, so that the construction of that road can be completed to ensure that the people using it do not suffer the delay and the damages being caused to the vehicles of the users of that road.

Hon. Speaker, I support the Petition.

**Hon. Speaker:** Hon. Chris Wamalwa.

**Hon. Wakhungu:** Thank you, Hon. Speaker. Indeed, this Petition is very critical. We have so many other incomplete roads projects, including the road that leads to Kitale, which causes a lot of delays and accidents. When it rains, some parts of the road become impassable. It is, therefore, important to call upon the relevant Departmental Committee to take up the matter with the contractors, so that they can expedite the works.

Thank you, Hon. Speaker.

**Hon. Speaker:** Hon. Onesmus Njuki.

**Hon. Njuki:** Thank you, Hon. Speaker for giving me the opportunity to comment on this Petition. I was in Kitale the other day and I used part of the road that has been made. I was invited by Hon. Chris Wamalwa. I can say that the stalling of that project may have nothing to do with Government input. It is a series of problems that are becoming chronic in this country. It is about giving tenders to “cow boy” contractors who have no capacity to perform. They only demonstrate capacity on paper but when it comes to the actual implementation or construction of the roads, they are a problem to the Government. The other day, I saw in a newspaper a certain contractor in Murang’a County who had stayed on a road for two years and yet, he had been paid one-third of the money. The problem is not only restricted to western Kenya, but in Mount Kenya East as well. Mate Road, which starts from Runyenjes Constituency, goes through Tharaka Nithi Constituency, Chuka/Igambang’ombe and terminates in Nkubu. It has taken seven years under one contractor. I do not know what those contractors give to the Government for them to keep on winning contracts and yet, they keep on causing delays in the construction of the roads. Why can they not be banned once and forever? I remember during the time of the late Hon. Michuki, contractors would be removed from the sites and new ones allocated the same roads. The idea of giving one contractor a road with many kilometres should stop. We should have several contractors being given one road so that they can be competing. That way, we can know who is working and who is not. By doing so, we will get rid of this problem.

I support the Petition.

**Hon. Speaker:** Hon. William Cheptumo.

**Hon. Cheptumo:** Thank you, Hon. Speaker. Delay in completing projects is rampant and it is happening everywhere. Last Sunday, Hon. (Ms.) Grace Kiptui, Baringo County MP was involved in a road accident along the Marigat-Loruk Road. That road is in a very bad shape. The Government has put in money and the contractor has been handed over the site, but nothing is

happening. If that road was constructed, Hon. (Ms.) Kiptui would not be in hospital. She was involved in an accident because the road is not in a good condition. When contractors are awarded contracts, they should finish their work with speed. I want to call upon the Departmental Committee on Transport, Public Works and Housing to consider the Marigat-Loruk Road and find out why there has been a delay in completing it and yet, the contractor has already been awarded the contract.

It is important for Kenyans to get value for the money allocated. I support the Petition and we should look at all the other projects that have been delayed in the country.

*(Loud consultations)*

**Hon. Speaker:** Hon. Members, the consultations are too loud. We cannot even follow what is being said. The Petition is committed to the Departmental Committee on Transport, Public Works and Housing. Next Order!

### PAPERS LAID

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

**Hon. A.B. Duale:** Thank you, Hon. Speaker. I beg to lay the following Papers on the Table of the House:-

The Reports and Resolutions adopted by the East African Legislative Assembly (EALA) at its Fifth Meeting of the Fourth Session as follows:-

(a) The Report of the Committee on Legal Rules and Privilege on the oversight activity on the approximation and harmonisation of national laws in the East African context.

(b) The Report of the Committee on Accounts on the oversight activity undertaken by the East African institutions on governance, project performance and implementation of the Assembly recommendations.

(c) The Resolution of the Assembly congratulating the Republic of South Sudan upon joining the East African Community (EAC).

(d) The Resolution of the Assembly to bid farewell to Hon. Amb. (Dr.) Richard Sezibera, the outgoing Secretary-General of EAC.

(e) The Resolution of the Assembly thanking the former First Ladies of the founders of the EAC (1967-1977).

(f) The EAC Disaster Risk Reduction and Management Bill, 2013.

(g) The EAC Customs Management Act (Amendment) Bill, 2016.

(h) The EAC Supplementary Appropriations Bill, 2016.

(i) The EAC Counter Trafficking in Persons Bill, 2016.

The Office of the Controller of Budget, County Governments Budget Implementation review Report for the Financial Year 2015/2016, pursuant to Article 28(6) of the Constitution.

The Report of the Auditor-General on the Financial Statements in respect of the following institutions for the year ended 30<sup>th</sup> June 2015 and the Certificates therein:-

(a) The Council of Governors Secretariat.

(b) The Non-Governmental Organisation (NGO) Coordination Board.

(c) The National Council for Population Development.

(d) The Kenya Bureau of Statistics (KEBS).

(e) The Tana Water Services Board.

The Anti-Doping Policy and Rules from the Anti-Doping Agency of Kenya (ADAK).

Thank you, Hon. Speaker.

**Hon. Speaker:** I refer the nine reports from EALA to the Committee on Regional Integration. Hon. A.B. Duale, have you tabled the Report of the Controller of Budget?

**Hon. A.B. Duale:** Yes, Hon. Speaker.

**Hon. Speaker:** It is committed to the Liaison Committee.

**Hon. Speaker:** Hon. Gideon Irea.

**Hon. Irea:** Thank you, Hon. Speaker. I would like to know from you whether Members of this House have been invited to a national conference that is taking place in Meru, and that has been organised by the governors. That is because governors have the notion that devolution only involves county governments.

Devolution is a creation of this House. The Members of this House should be invited, through the Speaker, to attend and participate in the affairs of building this nation. I want information from you whether there is an invitation from the Governor of Meru County, Hon. Peter Munya, to the Members of this House.

Thank you, Hon. Speaker.

**Hon. Speaker:** Hon. Members, there was a hiccup during the Committee of the whole House yesterday. It is for that reason that I was trying to see where the problem came from. For the benefit of Hon. Mwadime, I recognised from my Office that there was a mistake that was done by the secretariat in not giving every Member the correct copy of the Order Paper. Is Hon. Mwadime around? You must not suffer because of the technical mistakes of the secretariat, subject to you agreeing or not agreeing with the Chairman of the Departmental Committee on Lands. I will be inclined to allow a recommittal of the clauses so that your proposed amendments can be considered by the Committee. It was not your fault.

*(Applause)*

You do not need to raise the issue because I witnessed it. I saw the mistake. I also had an Order Paper similar to the one that the Chair of the Committee had, which was different from the one you had. Indeed, you had submitted your proposed amendments in good time and they had been approved. You can agree with the Chair of the Committee. If you do not agree with him, you will go straight to re-committal so that the House can consider your proposals.

Leader of the Majority Party.

**Hon. A.B. Duale:** Hon. Speaker, as you were consulting with the Clerks-at-the Table, Hon. Mwititi asked whether you have an invitation for Members of the National Assembly to participate in the ongoing devolution conference in Meru County. I have a document which is very authentic. If you allow me, I will table it. Even if we were invited, we would not have attended the conference. This is the same document that has made the Senate to make a resolution in the House yesterday not to go to Meru, save for their Speaker. This document is from the Ministry of Devolution and Planning. It is after Sen. Bonny Khalwale raised a number of issues on the Council of Governors Secretariat and Office in Nairobi.

This document contains over 44 counties that contribute between Kshs6 million and Kshs58 million every year to that Office. If you allow me to itemise them, Turkana County contributed the highest amount, which is Kshs58,000,458 million. Garissa County, where I come

from, contributed Kshs21 million. Homa Bay County contributed Kshs20 million. Mandera and Nairobi counties contributed Kshs31 million and Kshs11 million, respectively.

*(Loud consultations)*

Hon. Speaker, if you allow me, I will start with Baringo County, which contributed Kshs14 million. Then Bomet County, Kshs28 million; Bungoma County, Kshs17 million; Busia County, Kshs11 million; Elgeyo Marakwet County, Kshs6 million; Embu County, where Hon. Speaker comes from, contributed Kshs29 million; Garissa County, where I come from, contributed Kshs21 million; Homa Bay County, where the Chairman of the Orange Democratic Movement (ODM) comes from, contributed Kshs20 million; Isiolo County, Kshs7 million; Kajiado County, Kshs18 million; Kakamega County, Kshs41 million; Kericho County, Kshs20 million; Kiambu County, Kshs12 million; Kilifi County, Kshs11million; Kirinyaga County, Kshs12 million; Kisii County, Kshs19 million; Kisumu County, Kshs27 million; Kitui County, Kshs48 million; Kwale County, Kshs27 million; Laikipia County, Kshs4 million; Lamu County, Kshs15 million; Machakos County, Kshs340,000; Makueni County, Kshs24 million; Mandera County, Kshs31 million; Marsabit County, Kshs26 million; Meru County, Kshs44 million; Migori County, Kshs14 million; Mombasa County, Kshs30 million; Murang'a County, Kshs8 million; Nairobi County, Kshs11 million; Nakuru County, Kshs32 million; Narok County, Kshs15 million; Nyamira County, Kshs17 million; Nyandarua County, Kshs12 million; Nyeri County, Kshs30 million; Samburu County, Kshs10 million; Siaya County, Kshs14 million; Taita Taveta County, Kshs15 million; Tana River County, Kshs39 million; Tharaka Nithi County, Kshs22 million; Trans Nzoia County, Kshs19 million; Turkana County, Kshs58 million; Uasin Gishu County, Kshs10 million; Vihiga County, Kshs29 million; Wajir County, Kshs30 million; and West Pokot County, Kshs19 million.

*(Loud consultations)*

Hon. Speaker, the total is close to Kshs1 billion. The only institution that the Intergovernmental Act allows to pay monies to the Council of Governors' Office is the National Treasury, which paid Kshs112 million. Secondly, there were donors, led by the United Nations Development Programme (UNDP), Ahadi and a few others, who also donated some money. This document shows how the collected funds have been utilised.

When those governors are supposed to be in our counties, in 2013/2014 Financial Year, they spent Kshs41 million on offices rent alone in Westlands. In 2014/2015 Financial Year, they spent Kshs134 million and this year, so far, they have spent Kshs62 million on rent. However, the most outrageous thing is the amount of money they spent on lawyers. That is why you see the status of many lawyers in town has changed. Those of us who knew them know that they were not driving big cars. The Council of Governors (CoG) has spent close to Kshs280 million on legal fees. There is nowhere where it is written that the county assemblies approved that money. They have not approved it. The Chair of the Departmental Committee on Finance, Planning and Trade is sitting here. We must interrogate even the Controller of Budget. We must know how that money was released. After this document was tabled yesterday, the Auditor-General decided to rush the audited accounts, which I have just tabled and we are yet to read them. He just

brought them. It reads: “The Financial Statements of the Council of Governors Secretariat.” It has the pictures of the many leaders.

This is the fate of devolution. So, what are we celebrating? Let us be very honest. Some of us fought for this Constitution so that our people can be in charge of the governance of resources and power. When you see the problems facing Turkana County and the Governor has given Kshs58 million, it is immoral! I will table this document. Hon. Mwititi asked you whether you have our invitation. This should be bipartisan. It is not about Jubilee or the Coalition for Reforms and Democracy (CORD), it is about the money we allocate. The Chair of the Public Accounts Committee (PAC) is sitting here. He must call these people, their lawyers and their landlords and ask them if they operate from the counties or from Nairobi. Is there a reason why we should have a CoG office in Nairobi? Hon. Speaker, if you allow me, I will table this document because it is a public document. I am sure members will study it. There are a number of questions that are being raised. I ask CoG and the county assemblies: Under what provision in law was the money transferred to the accounts of CoG?

Thank you, Hon. Speaker.

**Hon. Speaker:** Hon. Members, as you heard, that document was presented to the Senate pursuant to a question that was raised by one of the Members there. It will look like we are overlapping if we also begin considering it. This document is dated 13<sup>th</sup> April, 2016. It is from the Ministry. I do not know whether the Senate is looking at it now. The document is referenced: “Statements on funding on the Council of Governors activities.”

Let me deal with the less complex one. Yes, I received an invitation to attend the said conference, but I declined on the ground that this is sitting time and it will not be fair for us to adjourn. That is not to say that if individual Members received invitations, there would be anything unto them if they decided to attend and get apprised of what has been happening. This is not one of the documents that are being debated there. Does it appear like Hon. Midiwo wants to say something about this?

**Hon. Midiwo:** Hon. Speaker, I thank you for giving me an opportunity just to say one or two things. You have allowed us to ventilate on this issue. We allocate these monies that are being misappropriated. This House has every duty and responsibility to monitor the use of public funds. That is the purpose of this House.

On Sunday, I visited Pokot with Hon. Samuel Moroto. I went down 80 kilometres in the mountains using a road that has been done by the Governor of that area. The people down there were very happy. They would not be very happy to know that, that road would have been done better had their money not been sent back to Nairobi. Devolution means devolution. With all these government houses, why on earth would the Senate and the governors not work together to have a building owned by the Government of the Republic of Kenya? Why are we paying rent to a building owned by a foreigner? The building housing their CoG offices is not owned by a Kenyan. Hon. Mwititi asked if we were invited and you said you declined. We thank you for it. I wish you could have declined and say that we do not want to associate with the corrupt. It is very important that this House makes a statement. The primary role of the Senate, in which that document was being discussed, is to make laws to deal with such issues in the counties. All we hear is the Senate wanting more money from us. Why is that House not making laws to deter governors from misusing public funds? Why is that House not making laws? Fourteen months to elections, with all these monies being plundered, this country is going to be chaotic. We are going to experience a lot of chaos. You have just heard that a county government like Tana River

gives Kshs39 million. I know even their Constituencies Development Fund (CDF) was not worth that money when we began. So, why are we not using that money where we have sent it? It is good that we canvass these issues. The issues come up because what we sit back and watch happening is unfair. We are misusing our money to the extent that CoG, for whatever reason, has paid a team of lawyers Kshs280 million in three years. That is more than a quarter billion shillings. Sometimes, it is amazing how our country trivialises money. Before we get to the next budget estimates, including the supplementary budget, we must talk about how much money we want to give without proper regulations and rules of how that money is spent.

It would be wise that as we talk about socio-economic audit of the Constitution – because people want them and we have accepted them and I know Kenyans will elect less mischievous ones as elections come in successive years – we need to devise a method where the governor becomes the political head of a county and monies are disbursed the CDF way so that we fund projects that are predetermined.

I know so many contractors who have done works during a financial year in the last three years, but they have not been paid hence the pending bills. However, those are projects which were budgeted for. It means that the governors do the budget, authorise, and then they go around and spend the money on other things. I think something ought to happen. With a heavy heart, I want us to address ourselves to this issue.

Thank you, Hon. Speaker.

**Hon. Speaker:** Can you also suggest how you would want us, as a House, to address the issue? Hon. Lomenen.

**Hon. Ekomwa:** Thank you Hon. Speaker, for giving me this opportunity. You can guess from my face how disgusted I am. Last weekend, I was in my constituency, Turkana South, as well as in Turkana East. We were doing some fundraising. Women were crying because of walking long distances searching for water. Women were crying because of lack of drugs in respective dispensaries. Women were crying for food. They do not have enough food and yet, money worth sinking 28 boreholes – sinking one borehole costs Kshs2 million – is brought back to Nairobi just for governors to eat and wash themselves with Lux soap. They enjoy while the people who voted for them are crying because of thirst and lack of drugs. That is a shame to the Governor of Turkana County. That is not good enough, Hon. Speaker.

**Hon. Speaker:** Hon. Nyenze.

**Hon. Nyenze:** Thank you, Hon. Speaker. I was very surprised when I heard the Leader of the Majority Party mention that Kitui County Government is the second-highest contributor to the Council of County Governors (CoG) kitty, at Kshs48 million. The highest contributor is the Turkana County Government. The counties that are far behind in development are the ones that have contributed the most amounts.

Since this House has the power to appropriate money, we have to make sure that there are laws in place to direct how that money is used. Hon. Speaker, I am sure you have been to Kitui. When you were a magistrate those many years when we were young, you were based at Machakos and you visited Kitui. People walk for about 10 kilometres to get water. It is the same thing in Turkana. I am surprised that our Governor would spend Kshs48 million on the CoG Secretariat. Our friend whom I respect very much, Hon. Mwiti, we cannot go to celebrate corruption when people are perishing in poverty and the county assemblies have not approved that expenditure.

*(Applause)*

Thank you, Hon. Speaker, for declining the invitation. It is like you knew our hearts. We cannot go to celebrate devolution when so much money is being put to waste. I do not want to touch on the Senate, but it is their responsibility to oversee the county governments and to enact legislation that will control them not to misuse funds. All the county governments have proved that there is a lot of corruption. The Kshs48 million that has been contributed by the County Government of Kitui to the CoG Secretariat is a very big shame. I am sure Members of the County Assembly (MCAs) do not know about it. Let us not go to Meru. Let us not go to celebrate corruption. Let the priorities of the people be taken seriously.

We are now reconstituting the Budget and Appropriations Committee. It is good for the Members who will be in that Committee and for this Assembly to make sure that for any money that is allocated to county governments, there are guidelines on things they can do and things they cannot do. This is not control. This is not interfering with county governments. Unless there are safeguards, regulations and structures, all those governors will fleece this country. Devolution is very expensive, but it is very effective where there is no corruption.

As we speak, I know of three governors - and I will not name them for obvious reasons - who could not even afford vehicles when we were campaigning for them. We were hiring choppers for them. Today, they own big houses. What did they do in three years to have that kind of money? That scenario is replicated in every county. The governors have become very rich overnight. I urge the Ethics and Anti-Corruption Commission (EACC) and all the other agencies that investigate corruption to investigate the county governments because that is where corruption is. We are blaming the national Government, but corruption is so much entrenched in the county governments.

With those few remarks, I support that we boycott the Meru conference.

*(Applause)*

**Hon. Speaker:** Hon. Members, I appreciate that this may not have been in the Order Paper, but it is a matter of great importance. It is not possible for all of you to speak. Unfortunately, 82 of you have indicated desire to contribute. Even as we contribute, Hon. Members, it is not lost on us that Article 96(3) of the Constitution provides that the Senate determines the allocation of national revenue to the counties and exercises oversight over national revenue allocated to the counties. This is what you call horizontal allocation through the County Allocation of Revenue Bill. If they exercise oversight over national revenue allocated to the counties, it means that in as much as this House exercises oversight over all State organs, unless you devise another mechanism, we would find ourselves doing the same job that, perhaps, others are doing. We cannot do that unless we are sure that nobody is doing what you may want to do.

**Hon. Njuki:** We are very angry!

**Hon. Speaker:** No! Not anger. If we just say we want to vent anger--- Hon. Ichung'wah, you have two minutes.

**Hon. Ichung'wah:** Thank you, Hon. Speaker. I must begin by thanking you for your wisdom in not allowing us to attend that conference. It is nothing but a conference to massage the egos of the governors, who are not giving any value to the people of Kenya.

During the State of the Nation Address in this House, the President posed a question of whether Kenyans can see the true value in the Kshs1 trillion that has been devolved to the counties. It is quite clear that all the money that has gone to county governments has not been put to good use. Spending Kshs280 million on payments of high flying lawyers is not good for this country. I have just seen in the audited accounts that are to be tabled here, a sum of Kshs150 million has gone into partitioning of offices at Delta Plaza in Westlands.

This House appropriates money for provision of services to this country's population at the grassroots level. The governors are taking the money back to Nairobi, in Westlands, while children at Kiambu District Hospital lack medicines and much more. Last week, hours after His Excellency the President left Kiambu District Hospital, two children died because there was no oxygen. The Governor of Kiambu County could not buy a cylinder of oxygen, which costs less than Kshs50,000, but he could pay tens of millions of shillings to massage the egos of people at Delta Plaza in Westlands.

Hon. Speaker, the way forward is to ask the Senate to exercise their oversight mandate over the county governments, instead of seeking relevance in cheap fights with the National Assembly. The Senate should further empower the county assemblies to ensure that each of the governors is surcharged for the monies they have given to Delta Plaza.

Thank you, Hon. Speaker.

*(Applause)*

**Hon. Speaker:** Hon. Members, the issue we are discussing is what appears to be wastage. If you look at our Order Paper, the business appearing as Order No. 8 is: Approval of the First Supplementary Estimates for the Financial Year 2015/2016. Since you do not appear to be looking for any resolution on this matter, why do we not allow as many of you as possible to speak to this Motion? Indeed, this is the right place to make those observations. We are discussing the Supplementary Estimates. On this one, you will be making some decision or resolution. In fact, you are being asked to approve funds to go to various Government agencies. This is the right place for you to raise these issues, so that we do not speak in vain.

The Member for Chuka/Igambang'ombe, it is inadequate to say that Hon. Members just want to ventilate the matter. Instead of just ventilating it, why do we not go to debate so that many of you who may not have looked at the fine print can express your outrage even as you make your decision one way or the other regarding the Supplementary Estimates? If I get your concurrence, I will call for the next Order so that we can deal with it.

*(Loud consultations)*

**Hon. Speaker:** Hon. Members, even the issues you are raising will find a final place in expression here.

**Hon. (Ms.) Nyamunga:** On a point of order, Hon. Speaker.

**Hon. Speaker:** Let us hear Hon. Rose Nyamunga.

**Hon. (Ms.) Nyamunga:** Thank you, Hon. Speaker. Mine is very different from the issue being discussed.

**Hon. Member:** We have not finished this one!

**Hon. (Ms.) Nyamunga:** I thought that one is over. I am on the next one. Can I go ahead?

**Hon. Speaker:** Yes, Hon. Nyamunga.

**Hon. (Ms.) Nyamunga:** Hon. Speaker, while we appreciate the work that is going on at the Annex of Continental House, which is very important for all of us, we also realise that it will take a lot of time before that building is completed. I am wondering what the Parliamentary Service Commission (PSC) or the management of Parliament is putting in place for Members as we criss-cross around that area.

**Hon. Speaker:** Hon. Nyamunga, that matter is being addressed. By the end of this week, some safe passage will have been created for Members.

**Hon. (Ms.) Nyamunga:** Thank you, Hon. Speaker.

**Hon. Speaker:** Thank you for raising that point. It is good. I know that many hon. Members had raised it in privacy.

Hon. Members, today, we will not hear the reports of the Hon. Members who are in the Departmental Committee on Transport, Public Works and Housing, the National Government Constituencies Development Fund Committee and the Regional Integration Committee. Not unless there is an issue on the National Government Constituencies Development Fund. Is there any report, Hon. Lessonet? Is there any report or progress you may wish to give, Hon. Lessonet?

STATUS REPORT OF NATIONAL GOVERNMENT  
CONSTITUENCIES DEVELOPMENT FUND

**Hon. Lessonet:** Thank you, Hon. Speaker. I want to make a very brief report. The new National Government Constituencies Development Fund Act, 2015 has been in operation from 19<sup>th</sup> February 2016. The regulations also came into effect on 30<sup>th</sup> March 2016. Pursuant to those regulations, I would like to inform the House that the following 23 constituencies have nominated nominees to the constituency committees, popularly known as the Constituencies Development Fund Committees. They are: Nakuru Town West, Gatundu South, Gatundu North, Marakwet East, Marakwet West, Bonchari, Ruiru, Nyaribari Masaba, Mwea, Fafi, Lamu West, Kilgoris, Starehe, Ndaragwa, Kigumo, Endebess, Suba, Chuka/Igambang'ombe, Kitutu Masaba, Tharaka, Rabai, Kathiani and Masinga.

The nominees of those 23 constituencies have been processed by the CDF Board, and they will shortly be before this House for approval, in accordance with the CDF Act. We still have 267 constituencies whose nominees we still await. I would like to request Members to lobby their fund managers to lobby the nominees from the constituencies' offices to fast-track that process.

Further to that, I would like to inform the House that disbursement of funds by the National Treasury to the CDF Board is on schedule. Out of the Kshs35 billion allocated this Financial Year, the National Treasury has disbursed a total of Kshs24 billion to the CDF Board, which must also have been disbursed to the constituencies.

This tells us that the constituencies are holding a lot of money in their accounts. But they cannot spend it for the reason that the constituencies committees are not in place. Therefore, I call upon the selection panels, wherever they are in Kenya, to fast-track that process.

Hon. Speaker, you will have noted that the Members of this House stood firm. We now have different people nominating the members to the CDF committees. Therefore, I urge hon. Members to ensure that they tell those people to hurry up and complete the process.

Thank you, Hon. Speaker.

**Hon. Speaker:** Well. It is obvious that 267 constituencies have not done anything. Next Order!

### MOTION

#### APPROVAL OF THE FIRST SUPPLEMENTARY ESTIMATES FOR 2015/2016

**Hon. S.S. Ahmed:** On a point of order, Hon. Speaker.

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

**Hon. S.S. Ahmed:** Hon. Speaker, bearing in mind the interest that has already been registered in respect of this particular Motion---

**Hon. Speaker:** What?

**Hon. S.S. Ahmed:** Bearing in mind the interest that has been registered in the House on the Motion that has just been read, may I request you to consider restricting our contribution to no more than five minutes each.

**Hon. Speaker:** Very well. Your point is noted, Hon. Shakeel. Let us have the Deputy Speaker moving. Get the Seconder then we make the proposal.

**Hon. (Dr.) Laboso:** Hon. Speaker, I beg to move the following Motion:-

THAT, this House adopts the Report of the Liaison Committee on the First Supplementary Estimates for 2015/2016, laid on the Table of the House on Tuesday, April 19, 2016, and in accordance with the provisions of Article 223 of the Constitution, approves the issuance of a sum of Ksh25,968,239,099 from the Consolidated Fund to meet the expenditure during the year ending 30th June 2016, in respect of the various Votes, as indicated in the Schedule.

#### APPROVAL OF THE FIRST SUPPLEMENTARY ESTIMATES FOR 2015/2016

#### SCHEDULE

Vote		Programmes		Proposed Supplementary Changes (Kshs Millions)		
No.	Details	No.	Details	Current	Capital	Total
1011	The Presidency		Total	1,460.6	(806.0)	654.6
		0702000	P.2 Cabinet Affairs	276.3	(586.1)	(309.8)
		0703000	P.3 Government Advisory Services	(74.5)	-	(74.5)
		0704000	P.4 State House Affairs	648.6	(129.0)	519.6
		0734000	P.6 Deputy President Services	610.2	(90.9)	519.3
1021	State Department for Interior		<b>Total</b>	<b>5,197.7</b>	<b>1,261.6</b>	<b>6,459.2</b>
		0601000	P.1 Policing Services	694.6	763.0	1,457.6
		0602000	P.2 Planning, Policy Coordination and Support Service	3,979.2	148.6	4,127.8

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Vote		Programmes		Proposed Supplementary Changes (Kshs Millions)		
No.	Details	No.	Details	Current	Capital	Total
		0603000	P.3 Government Printing Services	(69.2)	-	(69.2)
		0605000	P.4 Population Management Services	593.0	350.0	943.0
1022	State Department for Coordination of National Government		<b>Total</b>	<b>616.3</b>	<b>(400.0)</b>	<b>216.3</b>
		0604000	P.1 Correctional services	619.0	(388.0)	231.0
		0623000	P.2 General Administration, Planning and Support Services	(2.2)	(12.0)	(14.2)
		0624000	P.3 Betting Control, Licensing and Regulation Services	(0.5)	-	(0.5)
1031	State Department for Planning		<b>Total</b>	<b>(350.2)</b>	<b>(7,108.0)</b>	<b>(7,458.2)</b>
		0706000	P.1 Economic Policy and National Planning	58.3	206.4	264.7
		0707000	P.2 National Statistical Information Services	(29.4)	2.9	(26.5)
		0708000	P.3 Monitoring and Evaluation Services	(0.4)	(0.0)	(0.4)
		0709000	P.4 General Administration Planning and Support Services	(53.3)	(10.0)	(63.3)
		0710000	P.5 Public Service Transformation	(9.5)	2.5	(7.0)
		0711000	P.6 Gender & Youth Empowerment	(316.0)	(7,309.8)	(7,625.8)
1032	State Department for Devolution		<b>Total</b>	<b>470.7</b>	<b>(35.7)</b>	<b>435.0</b>
		0732000	P.3 General Administration, Planning and Support Services	21.8	-	21.8
		0712000	P.7 Devolution Services	91.6	253.5	345.2
		0713000	P.8 Special Initiatives	348.3	337.2	685.6
		0733000	P.9 Accelerated ASAL Development	8.9	(626.5)	(617.6)
1041	Ministry of Defence		<b>Total</b>	<b>(58.8)</b>	<b>34.8</b>	<b>(24.0)</b>
		0801000	P.1 Defence	554.8	34.8	589.6
		0802000	P.2 Civil Aid	-	-	-
		0803000	P.3 General Administration, Planning and Support Services	(613.6)	-	(613.6)
1051	Ministry of		<b>Total</b>	<b>2,156.7</b>	<b>(198.0)</b>	<b>1,958.7</b>

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Vote		Programmes		Proposed Supplementary Changes (Kshs Millions)		
No.	Details	No.	Details	Current	Capital	Total
	Foreign Affairs and International Trade	0715000	P.2 Foreign Relation and Diplomacy	670.0	(36.0)	634.0
		0714000	P.1 General Administration Planning and Support Services	663.6	(264.0)	399.6
		0716000	P.3 International Trade and Investments Promotion	823.1	102.0	925.1
1061	State Department for Education		<b>Total</b>	<b>(311.1)</b>	<b>(14,007.5)</b>	<b>(14,318.6)</b>
		0501000	P.1 Primary Education	(284.5)	(12,898.4)	(13,182.9)
		0502000	P.2 Secondary Education	(1.3)	(479.5)	(480.8)
		0503000	P.3 Quality Assurance and Standards	(100.9)	(250.6)	(351.5)
		0508000	P.8 General Administration, Planning and Support Services	75.6	(379.0)	(303.4)
1062	State Department of Science and Technology		<b>Total</b>	<b>1,024.6</b>	<b>(940.8)</b>	<b>83.9</b>
		0504000	P.4 University Education	1,366.2	(889.4)	476.8
		0505000	P.5 Technical Vocational Education and Training	(192.3)	(1,375.8)	(1,568.1)
		0506000	P.6 Research, Science, Technology and Innovation	(208.0)	(138.0)	(345.9)
		0507000	P.7 Youth Training and Development	179.0	204.4	383.4
		0508000	P.8 General Administration, Planning and Support Services	(120.3)	1,258.0	1,137.7
			<b>Total</b>	<b>(9,508.4)</b>	<b>13,871.9</b>	<b>4,363.5</b>
1071	The National Treasury	0717000	P.1 General Administration Planning and Support Services	(9,682.5)	1,503.4	(8,179.1)
		0718000	P.2 Public Financial Management	47.4	12,622.1	12,669.5
		0719000	P.3 Economic and Financial Policy Formulation and Management	106.7	(253.6)	(146.9)
		0720000	P.4 Market Competition	20.0	-	20.0
			<b>Total</b>	<b>409.2</b>	<b>(1,025.2)</b>	<b>(616.0)</b>
1081	1081 Ministry of Health	0401000	P.1 Preventive & Promotive Health	262.5	193.7	456.2

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Vote		Programmes		Proposed Supplementary Changes (Kshs Millions)		
No.	Details	No.	Details	Current	Capital	Total
			Services			
		0402000	P.2 Curative Health Services	(75.9)	495.4	419.5
		0403000	P.3 Health Research and Development	0.8	-	0.8
		0404000	P.4 General Administration, Planning & Support Services	219.3	(1,427.0)	(1,207.7)
		0405000	P.5 Maternal and Child Health	2.5	(287.2)	(284.7)
1091	State Department for Infrastructure		<b>Total</b>	<b>11,673.4</b>	<b>(1,776.9)</b>	<b>9,896.5</b>
		0202000	P.2 Road Transport	11,673.4	(1,776.9)	9,896.5
1092	State Department for Transport		<b>Total</b>	<b>(0.3)</b>	<b>6,096.0</b>	<b>6,095.7</b>
		0201000	P.1 General Administration, Planning and Support Services	(11.3)	(45.0)	(56.3)
		0203000	P.3 Rail Transport	-	(57.7)	(57.7)
		0204000	P.4 Marine Transport	10.4	1,630.0	1,640.4
		0205000	P.5 Air Transport	(6.8)	4,568.7	4,561.9
		0206000	P.6 Government Clearing Services	7.8	-	7.8
		0216000	P.7 Road Safety	(0.4)	-	(0.4)
1101	Ministry of Environment, Natural Resources and Regional Development Authorities		<b>Total</b>	<b>646.3</b>	<b>1,448.2</b>	<b>2,094.5</b>
		1010000	P.1 General Administration, Planning and Support Services	(65.4)	(12.8)	(78.3)
		1011000	P.2 Environment and Natural Resources Management and Protection	156.9	(1,200.1)	(1,043.2)
		1012000	P.3 Meteorological Services	17.9	(270.0)	(252.1)
		1005000	P.5 Integrated Regional Development	536.9	2,931.1	3,468.0
1102	Ministry for Water and Irrigation		<b>Total</b>	<b>(196.4)</b>	<b>12,952.3</b>	<b>12,756.0</b>
		1001000	P.1 General Administration, Planning and Support Services	(21.0)	(35.0)	(56.0)
		1004000	P.4 Water Resources Management	(29.7)	1,834.6	1,804.8
		1005000	P.5 Integrated Regional	(594.2)	(3,399.1)	(3,993.3)

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Vote		Programmes		Proposed Supplementary Changes (Kshs Millions)		
No.	Details	No.	Details	Current	Capital	Total
			Development			
		0110000	P.4 Irrigation and Drainage Infrastructure	448.6	14,551.9	15,000.4
1111	Ministry of Lands, Housing and Urban Development		<b>Total</b>	<b>(158.7)</b>	<b>(3,539.5)</b>	<b>(3,698.2)</b>
		0101000	P.1 Land Policy and Planning	(108.5)	365.6	257.1
		0102000	P.2 Housing Development and Human Settlement	(8.5)	(157.6)	(166.1)
		0103000	P.3 Government Buildings	(7.5)	(510.0)	(517.5)
		0104000	P.4 Coastline Infrastructure and Pedestrian Access	(2.3)	(57.0)	(59.3)
		0105000	P.5 Urban and Metropolitan Development	(9.8)	(2,949.5)	(2,959.2)
		0106000	P.6 General Administration Planning and Support Services	(22.0)	(231.0)	(253.0)
1121	Ministry of Information, Communication and Technology		<b>Total</b>	<b>(46.1)</b>	<b>5,579.0</b>	<b>5,532.9</b>
		0207000	P.1 General Administration Planning and Support Services	(34.2)	494.7	460.5
		0208000	P.2 Information And Communication Services	3.0	(335.0)	(332.0)
		0209000	P.3 Mass Media Skills Development	(15.0)	(13.5)	(28.5)
		0210000	P.4 ICT Infrastructure Development	-	5,432.8	5,432.8
1131	Ministry of Sports Culture and Arts		<b>Total</b>	<b>1,502.1</b>	<b>(1,380.9)</b>	<b>121.2</b>
		0901000	P.1 Sports	920.0	(1,487.9)	(567.9)
		0902000	P.2 Culture	235.9	107.0	342.9
		0903000	P.3 The Arts	(51.3)	-	(51.3)
		0904000	P.4 Library Services	48.0	-	48.0
		0905000	P.5 General Administration, Planning and Support Services	349.5	-	349.5
1141	Ministry of Labour Social Security and		<b>Total</b>	<b>(243.3)</b>	<b>(542.0)</b>	<b>(785.3)</b>
		0906000	P.1 Promotion of the Best Labour Practice	71.8	(169.0)	(97.2)

Vote		Programmes		Proposed Supplementary Changes (Kshs Millions)		
No.	Details	No.	Details	Current	Capital	Total
	Services	0907000	P.2 Manpower Development, Employment and Productivity Management	(95.9)	(70.0)	(165.9)
		0908000	P.3 Social Development and Children Services	(9.5)	(59.5)	(69.0)
		0909000	P.4 National Social Safety Net	(235.7)	(243.5)	(479.2)
		0910000	P.5 General Administration Planning and Support Services	26.0	-	26.0
1151	Ministry of Energy and Petroleum		<b>Total</b>	<b>41.1</b>	<b>18,596.4</b>	<b>18,637.4</b>
		0211000	P.1 General Administration Planning and Support Services	42.6	(90.0)	(47.4)
		0212000	P.2 Power Generation	-	(4,114.9)	(4,114.9)
		0213000	P.3 Power Transmission and Distribution	(2.5)	23,365.9	23,363.4
		0214000	P.4 Alternative Energy Technologies	1.0	(106.3)	(105.3)
		0215000	P.5 Exploration and Distribution of Oil and Gas	-	(458.3)	(458.3)
1161	State Department for Agriculture		<b>Total</b>	<b>(2,190.4)</b>	<b>(14,852.8)</b>	<b>(17,043.2)</b>
		0107000	P.1 General Administration Planning and Support Services	12.8	(182.2)	(169.4)
		0108000	P.2 Crop Development and Management	(1,357.1)	(945.0)	(2,302.1)
		0109000	P.3 Agribusiness and Information Management	(7.5)	1,982.3	1,974.9
		0110000	P.4: Irrigation and Drainage Infrastructure	(838.8)	(15,707.9)	(16,546.6)
1162	State Department for Livestock		<b>Total</b>	<b>116.8</b>	<b>(647.4)</b>	<b>(530.6)</b>
		0112000	P.6 Livestock Resources Management and Development	116.8	(647.4)	(530.6)
1163	State Department for Fisheries		<b>Total</b>	<b>(37.7)</b>	<b>(306.6)</b>	<b>(344.3)</b>
		0111000	P.5 Fisheries Development and	(37.7)	(306.6)	(344.3)

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Vote		Programmes		Proposed Supplementary Changes (Kshs Millions)		
No.	Details	No.	Details	Current	Capital	Total
			Management			
1171	Ministry of Industrialization and Enterprise Development		<b>Total</b>	<b>402.0</b>	<b>(480.0)</b>	<b>(78.0)</b>
		0301000	P.1 General Administration Planning and Support Services	(24.4)	220.0	195.6
		0302000	P.2 Industrial Development and Investments	(35.1)	(275.0)	(310.1)
		0303000	P.3 Standards and Business Incubation	(16.8)	(425.0)	(441.8)
		0304000	P.4 Cooperative Development and Management	478.3	-	478.3
1181	State Department for Commerce and Tourism		<b>Total</b>	<b>(108.0)</b>	<b>(3,409.0)</b>	<b>(3,517.0)</b>
		0306000	P.2 Tourism Development and Promotion	(69.8)	(3,335.3)	(3,405.1)
		0307000	P.3 Trade Development and Promotion	(46.0)	(23.7)	(69.7)
		0308000	P.4 General Administration, Planning and Support Services	7.7	(50.0)	(42.3)
1182	State Department for East African Affairs		<b>Total</b>	<b>(44.3)</b>	<b>(50.0)</b>	<b>(94.3)</b>
		0305000	P.1 East African Affairs and Regional Integration	(44.3)	(50.0)	(94.3)
1191	Ministry of Mining		<b>Total</b>	<b>9.0</b>	<b>(882.3)</b>	<b>(873.3)</b>
		1007000	P.1 General Administration Planning and Support Services	20.6	(23.5)	(2.9)
		1008000	P.2 Resources Surveys and Remote Sensing	(15.3)	(585.2)	(600.5)
		1009000	P.3 Mineral Resources Management	3.7	(273.6)	(269.9)
1251	Office of the Attorney General and Department of Justice		<b>Total</b>	<b>(249.9)</b>	<b>(97.0)</b>	<b>(346.9)</b>
		0606000	P.1 Legal Services	(167.2)	(9.0)	(176.2)
		0607000	P.2 Governance, Legal Training and Constitutional Affairs	(224.4)	(65.0)	(289.4)
		0609000	P.4 General Administration, Planning and Support Services	141.8	(23.0)	118.8
1261	The Judiciary		<b>Total</b>	<b>(939.9)</b>	<b>(861.8)</b>	<b>(1,801.7)</b>

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Vote		Programmes		Proposed Supplementary Changes (Kshs Millions)		
No.	Details	No.	Details	Current	Capital	Total
		0610000	P.1 Dispensation of Justice	(939.9)	(861.8)	(1,801.7)
1271	Ethics and Anti-Corruption Commission		<b>Total</b>	<b>645.3</b>	<b>(300.0)</b>	<b>345.3</b>
		0611000	P.1 Ethics and Anti-Corruption	645.3	(300.0)	345.3
1281	National Intelligence Service		<b>Total</b>	<b>1,015.0</b>	-	<b>1,015.0</b>
		0804000	P.1 National Security Intelligence	1,015.0	-	1,015.0
1291	Office of the Director of Public Prosecutions		<b>Total</b>	<b>420.4</b>	<b>(181.0)</b>	<b>239.4</b>
		0612000	P.1 Public Prosecution Services	420.4	(181.0)	239.4
1301	Commission for the Implementation of the Constitution		<b>Total</b>	-	-	-
		0613000	P.1 Implementation of the Constitution	-	-	-
1311	Office of the Registrar of Political Parties		<b>Total</b>	<b>27.7</b>	-	<b>27.7</b>
		0614000	P.1 Registration, Regulation and Funding of Political Parties	27.7	-	27.7
1321	Witness Protection Agency		<b>Total</b>	<b>5.0</b>	-	<b>5.0</b>
		0615000	P.1 Witness Protection	5.0	-	5.0
2011	Kenya National Human Rights Commission		<b>Total</b>	-	-	-
		0616000	P.1 Protection and Promotion of Human Rights	-	-	-
2021	National Land Commission		<b>Total</b>	<b>120.2</b>	<b>(150.0)</b>	<b>(29.8)</b>
			P.13 Land Administration and Management	120.2	(150.0)	(29.8)
2031	Independent Electoral and Boundaries Commission		<b>Total</b>	<b>690.8</b>	<b>(71.0)</b>	<b>619.8</b>
		0617000	P.1 Management of Electoral Processes	690.8	(71.0)	619.8
2041	Parliamentary Service Commission		<b>Total</b>	<b>436.0</b>	<b>(1,100.0)</b>	<b>(664.0)</b>
		0721000	P.1 National Legislation, Representation and Oversight	-	-	-

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Vote		Programmes		Proposed Supplementary Changes (Kshs Millions)		
No.	Details	No.	Details	Current	Capital	Total
		0722000	P.2 Senate Affairs	397.0	(200.0)	197.0
		0723000	P.3 General Administration, Planning and Support Services	39.0	(900.0)	(861.0)
2042	The National Assembly		<b>Total</b>	<b>300.0</b>	-	<b>300.0</b>
		0721000	P.1 National Legislation, Representation and Oversight	300.0	-	300.0
2051	Judicial Service Commission		<b>Total</b>	-	-	-
		0619000	P.1 General Administration, Planning and Support Services	-	-	-
2061	The Commission on Revenue Allocation		<b>Total</b>	<b>(15.1)</b>	-	<b>(15.1)</b>
		0724000	P.1 Inter-Governmental Revenue and Financial Matters	(15.1)	-	(15.1)
2071	Public Service Commission		<b>Total</b>	<b>(45.5)</b>	<b>(115.0)</b>	<b>(160.5)</b>
		0725000	P.1 General Administration, Planning and Support Services	(36.8)	(115.0)	(151.8)
		0726000	P.2 Human Resource management and Development	(7.4)	-	(7.4)
		0727000	P.3 Governance and National Values	(1.3)	-	(1.3)
2081	Salaries and Remuneration Commission		<b>Total</b>	<b>97.5</b>	-	<b>97.5</b>
		0728000	P.1 Salaries and Remuneration Management	97.5	-	97.5
2091	Teachers Service Commission		<b>Total</b>	<b>6,806.9</b>	<b>(133.0)</b>	<b>6,673.9</b>
		0509000	P.1 Teacher Resource Management	7,960.0	-	7,960.0
		0510000	P.2 Governance and Standards	(46.0)	-	(46.0)
		0511000	P.3 General Administration, Planning and Support Services	(1,107.1)	(133.0)	(1,240.1)
2101	National Police		<b>Total</b>	<b>38.0</b>	-	<b>38.0</b>

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Vote		Programmes		Proposed Supplementary Changes (Kshs Millions)		
No.	Details	No.	Details	Current	Capital	Total
	Service Commission	0620000	P.1 National Police Service Human Resource Management	38.0	-	38.0
2111	Auditor General		<b>Total</b>	<b>8.5</b>	<b>(247.0)</b>	<b>(238.5)</b>
		0729000	P.1 Audit Services	8.5	(247.0)	(238.5)
2121	Controller of Budget		<b>Total</b>	<b>(51.7)</b>	-	<b>(51.7)</b>
		0730000	P.1 Control and Management of Public finances	(51.7)	-	(51.7)
2131	The Commission on Administrative Justice		<b>Total</b>	-	-	-
		0731000	P.1 Promotion of Administrative Justice	-	-	-
2141	National Gender and Equality Commission		<b>Total</b>	<b>(4.3)</b>	<b>18.2</b>	<b>13.9</b>
		0621000	P.1 Promotion of Gender Equality and Freedom from Discrimination	(4.3)	18.2	13.9
2151	Independent Police Oversight Authority		<b>Total</b>	<b>(23.6)</b>	-	<b>(23.6)</b>
		0622000	P.1 Policing Oversight Services	(23.6)	-	(23.6)
<b>Total Ministerial Expenditure</b>				<b>21,754.1</b>	<b>4,214.2</b>	<b>25,968.2</b>

On behalf of the Liaison Committee and pursuant to Article 223 of the Constitution, it is now my pleasure to present to the House the Committee's Report on the First Supplementary Estimates for the 2015/2016 Financial Year.

The First Supplementary Estimates for the year 2015/2016 was tabled in this House on 15<sup>th</sup> March, 2016 and submitted to the Liaison Committee for review. In reviewing the 2015/2016 Financial Year First Supplementary Estimates, the Committee held five sittings and also sought the views of the National Treasury. More importantly, the Committee received recommendations from the various departmental committees.

In terms of Appropriations-in-Aid (A-in-A), there are increases. The major ones include Kshs11.83 billion in the State Department for Infrastructure due to an upward review of amounts collected as Road Maintenance Levy Fund, and also Kshs640 million for National Environment Management Authority (NEMA) and Kenya Forest Services under the Ministry of Environment and Natural Resources and Regional Development Authorities. However, the Committee noted that reduction of Kshs20 million for foreign relations and diplomacy programme under the Ministry of Foreign Affairs and International Trade.

With regard to Development Estimates, the Committee noted that the allocation have been revised downwards especially on items such as construction of buildings, refurbishment, works on buildings and the purchase of specialised equipment. Those reductions may lead to pending bills if commitments had already been done. For example, the allocation for the construction of Mitihani House by the Kenya National Examinations Council (KNEC) has been reduced and that project has been ongoing for the last 29 years.

The Committee also noted the reallocation of funds across all the Ministries, Departments and Agencies (MDAs) from specific votes such as construction of buildings to general items such as capital transfers to Government agencies, which will make it difficult to monitor the use of those allocations. The Committee, therefore, recommends that going forward, it is important for the various entities receiving resources in form of grants to other levels of Government to submit their detailed budgets for scrutiny to ensure that there is value for money.

As earlier mentioned, the preparation and approval for the Supplementary Budget is provided for in Article 223 of the Constitution, Sections 43(2) and 44 of the PFM Act, 2012 and Section 40 of the PFM Regulations. The PFM Act, 2012 Section 43(2) states that the reallocation per programme should not exceed 10 per cent of the total approved budget of a programme. However, most of the supplementary allocations for the programmes have changes of more than 10 per cent which is an indication of poor planning and lack of programmatic approach to budgeting.

The Committee notes that some of the programmes with changes in expenditure do not have reciprocating adjustments in key performance targets and indicators. There are also cases of transfer of programme from one Ministry to another in the course of the financial year as in the case of the State Department for Agriculture to Water and Irrigation and State Department for Education to Ministry of Information, Communication and Technology.

In this year, movement of programmes distorts budget execution. The Committee observes that the National Treasury did not provide adequate information on budget performance in terms of actual expenditure and outstanding liabilities and commitments, especially of MDAs where there are reductions or increases. This highly limits the oversight role of Parliament especially in assessing the rationale behind budget cuts or increments.

The Constitution provides that the National Treasury should seek approval from Parliament, within two months after the first withdrawal of money from the Consolidated Fund, for purposes of supplementary appropriation. The Committee observes that there is no evidence of whether withdrawals were reported within two months as stipulated by the Constitution and how much of the allocations have already been spent. The Committee also notes that there was no provision by the National Treasury on details of how the increments in external financing for the Supplementary Budget will impact on the public debt. The Committee observed that it has been the trend in Kenya to have optimistic economic growth projections, which often result to higher projections of revenue. When the projected revenues are not achieved, the Government is forced to reallocate, cut its budget or source for additional funds through borrowing. Had the growth rate projections been realistic in the beginning of the financial year, the revenue projections would have been firmed up and, perhaps, there would be no need to amend the expenditure estimates by large margins leading to poor budget implementation.

We now move to recommendations made by the Committee. First, we have the policy recommendations. This country needs to fully embrace performance-based budgeting. In this regard, the Supplementary Estimates should have a scorecard on the performance of the budget

so as to enable this House to make an informed decision. The Committee, therefore, recommends that when Supplementary Estimates are submitted to Parliament, they should be accompanied by the performance status of the programmes. In order to ensure that there is adequate information on budget performance in real time, the National Treasury should issue Exchequer releases by vote and programme. The same should be published on a monthly basis in the *Kenya Gazette*. This will not only enable Parliament to take appropriate action, but the general public will also be adequately informed hence enhancing budget transparency. Further, Ministries, Departments and Agencies (MDAs) should be required to publish in their websites, the monthly Exchequer issues received by programmes.

The Committee notes that year in, year out, Parliament approves supplementary and annual budgets for capital expenditure without any knowledge of details with regard to the start time, progress and geographical location of projects. The Committee recommends that no development budget during the supplementary or annual budget should be approved without a list of projects that are reconcilable with the Development Expenditure.

*(Hon. S.S. Ahmed thumped his desk)*

**Hon. Speaker:** Hon. Shakeel, that is an unusual method of applauding.

*(Laughter)*

Do it in the traditional way.

**Hon. (Dr.) Laboso:** Hon. Shakeel is showing appreciation for the work of the Chairperson of the Liaison Committee.

The Committee noted that there is a problem in reporting the total amounts of foreign or external financing. The National Treasury should firm up the commitments on projects that are foreign-financed, including their records on uptake at the start of each financial year. There should be no changes on foreign financing mid-year as this is lack of respect for the budget process by external donors. The Accra Accord on Aid Effectiveness requires that donors channel aid through country public finance management systems to a maximum extent as possible.

The Committee further recommends that all payments under the Consolidated Fund Services should be comprehensively funded by the annual estimates. Only those caused by macro-economic imbalances should be provided for during the Supplementary Estimates. Going forward, the National Treasury must strive to come up with a realistic budget and avoid the over-estimation of revenue and expenditure. Having a realistic macro-economic framework is vital for ensuring that there is predictability in the Budget.

The Committee noted that there is a segmented construction of buildings across the MDAs and this has often led to delayed completion of buildings under construction. The Committee recommends that the national Government develops a concrete plan by ensuring that there is centralised construction of buildings for all MDAs spearheaded by the State Department for Public Works.

During meetings between Departmental Committees and their line ministries, it was noted that most officials in the line ministries were not aware of the changes in the Printed Estimates as reflected in the Supplementary Estimates. The Committee, therefore, recommends

that the National Treasury builds adequate capacity and carries out adequate consultation before making their presentations to Parliament.

Before I move to areas of reduction, increases and reallocations, I would like to make a clarification regarding the Supplementary Estimates and the Report of the Liaison Committee. The Supplementary Estimates that were laid in this House had increases and reductions in various votes, where the Liaison Committee did not have any issue. Regarding the increment or deduction, the Committee did not make any recommendations. It is in this regard that the Supplementary Estimates laid before this House had already included Kshs332 million in the vote for the Parliamentary Service Commission (PSC) for financing activities of monitoring and evaluation for the Senators. That clarification is important. Anything you may have heard in the public domain is not true. The Kshs332 million was already in the Estimates. We did not make any changes to those Estimates. I urge that everyone, and in particular the media, takes time to fully understand the budget documents, especially the Supplementary Estimates. The Parliamentary Budget Office, which has wide experience on complex budget matters, is available to explain matters on budget when it is called upon to do so. I am convinced that the mis-reporting in today's dailies could not have happened if explanations had been sought. Since there were no changes in it, it is not included in our recommendations; which are as follows:-

With respect to financial proposals, having considered the above matters, the Committee recommends the following changes in the Supplementary Estimates. On proposed reallocations the Committee recommends the following reallocations:-

(a) Reallocate Kshs200 million set aside for purchase of milk coolers under the Livestock Resource and Market Development Support Service Programme to Kenya Meat Commission for modernization of the slaughter houses in Athi River and staff rationalisation at the Commission in the State Department of Livestock.

(b) Reallocate Kshs1.71 billion from the Power Transmission and Distribution Programme in the Ministry of Energy and Petroleum. This will comprise reallocating Kshs1.71 billion from allocations for capital transfer and grants to Kenya Power Company (KPC). This means that Kshs1.2 billion will go to capital grants to KPC, Kshs500 million to the capital transfer for non-financial public entities, Kshs1.5 billion to the Rural Electrification Authority and Kshs210 million to the Kenya Nuclear Electricity Board. The amounts will be broken down as follows:-

A sum of Kshs50 million for the completion of the ongoing grid study, Kshs50 million for the environmental assessment of the Kenya Nuclear Programme, Kshs50 million for the establishment of the legal and regulatory framework and Kshs60 million for publicity and advocacy. That is how that reallocation has been done.

In the Ethics and Anti-Corruption Commission (EACC), there is reallocation of Kshs50 million for the provision of international legal support and outsourcing of legal services to a programme for vetting EACC staff.

There is reallocate of Kshs150 million under the primary education programme in the State Department of Education. This includes reallocation of Kshs100 million from construction of building to fund a shortfall in the contract for supply of computers in secondary schools, which has already been signed. A sum of Kshs50 million for capital grant under the ICT programme for training of teachers under the Digital Literacy Programme.

Next is reallocation of Kshs325 million under the Ministry of Water and Irrigation from the on-going unfunded projects of 2015/2016 Approved Estimates in the Water Resource

Management Programme to the ongoing projects in the water boards within the same programme.

There is reallocation of Kshs200 million for rental of assets for the New York Mission under Recurrent Expenditure to purchase a building under Development Expenditure in the foreign relations and diplomacy programme in the Ministry of Foreign Affairs and International Trade.

An amount of Kshs30 million under the General Administration, Planning and Support Services Programme of the Ministry of Energy and Petroleum will be reallocated to cater for the purchase of motor vehicles for the Cabinet Secretary and the Principal Secretaries. The next lot was for the proposed increments.

The Committee recommends the following increments:-

(a) Increase the Recurrent allocation for the Judiciary by Kshs77 million. This includes Kshs2 million for outstanding cash bail refunds at the Marimanti Law Courts and Kshs75 million for the Political Parties Dispute Tribunal above the Judiciary allocation.

(a) Increase the capital allocations for the Judiciary by Kshs144 million to cater for completed projects for which certificates have been received.

(c) Increase the recurrent allocation for the Office of the Registrar of Political Parties by Kshs14 million.

(d) Increase the Recurrent allocation for the Kenya National Commission on Human Rights by Ksh28.4 million.

(e) Increase the Recurrent allocation for the Witness Protection Agency by Kshs16 million.

(f) Increase the Recurrent allocation for the Commission on Administrative Justice by Kshs16 million.

(g) Increase the Recurrent allocation for the General Administration, Planning and Support Services Programme under the Office of the Attorney-General and the Department of Justice by Kshs119 million.

(h) Increase the Capital allocation for the Tourism Development and Promotion Programme under the State Department of Tourism and Commerce by Kshs187 million to offset the construction cost of Ronald Ngala Utalii College.

(i) Increase the Capital allocation for the Trade Development and Promotion programme under the State Department of Tourism and Commerce by Kshs40 million for the Export Promotion Council.

(j) Increase the Recurrent allocation for the General Administration, Planning Support Services Programme for the Parliamentary Service Commission by Kshs100 million.

(k) Increase the Recurrent allocation for the National Legislation, Representation and Oversight Programme for the National Assembly by Kshs400 million.

(l) Increase the Capital allocation for the General Administration, Planning and Support Services Programme under the Ministry of Information, Communication and Technology by Kshs711 million. The allocation will be for Konza Technopolis Development Authority by Kshs405 million, the Kenya Broadcasting Corporation by Kshs116 million and the National Fibre Optic Cable Infrastructure and e-Government Expansion Programme by Kshs190 million.

(m) Increase the Capital allocation for the industrialisation development and investment programme under the Ministry of Industrialisation and Enterprise Development by Kshs150

million; for KCC, Kshs100 million; Kenya Industrial Training Institute for completion of stalled projects, Kshs50 million.

(n) Increase the Capital allocation for marine transport programme under the State Department for Transport by Kshs1 billion for Lamu Port-South Sudan- Ethiopia Transport (LAPSSET) Corridor Project.

(o) Increase the Recurrent allocation for the General Administration, Planning and Support Services Programme under the State Department for Agriculture by Kshs42 million. This allocation is meant for annual subscription to international organisations, International Fund for Agriculture (IFAD), Food and Agriculture Organisation (FAO) and Desert Locust Control Organisation.

(p) Increase the Capital allocation for the Technical Vocational Education Training Programme under the State Department of Science and Technology by Kshs583 million for construction of technical training institutes - the TTIs.

(q) Increase the Recurrent allocation for university education programme under the State Department of Science and Technology by Kshs1.26 billion for grants to universities to cater for salaries.

(r) Increase the Recurrent allocation for State House Affairs Programme under the Presidency by Kshs220 million to cater for the shortfall in O&M.

(s) Increase the Capital allocation for policing services programme under the State Department for Interior by Kshs299 million for high performance facial recognition system.

(t) Increase the Recurrent allocation for General Administration, Planning and Support Services Programme under the Ministry of Foreign Affairs and International Trade by Kshs88 million for ministerial retreats for the African Union Executive Union Council of Ministers.

(u) Increase the Capital allocation for National Social Safety Net Programme under the Ministry of Labour, Social Security and Services by Kshs240 million for the cash transfers to Orphans and Vulnerable Children (OVCs).

(v) Increase the Capital allocation for crop development and management programme under the State Department of Agriculture by Kshs380 million for the Kenya Cereals Enhancement Programme.

(w) Increase the Capital allocation for irrigation and drainage infrastructure programme under the Ministry of Water and Irrigation by Kshs400 million for National Irrigation Board which was omitted during the transfer of programme from the State Department of Agriculture.

(x) Increase the Capital for the National Security Intelligence Programme under the National Intelligence Programme by Kshs200 million for security operations.

Finally, I now look at the proposed reductions.

Hon. Speaker, the Committee recommends the following reductions:-

(i) Reduce the Recurrent allocations for the Ethics and Anti-Corruption Commission by Kshs130 million.

(ii) Reduce the Recurrent allocation for the Office of the Director of Public Prosecutions by Kshs284 million.

(iii) Reduce the Recurrent allocation for the general administration and support services programme under the National Treasury by Kshs41 million. The reduction will be from hospitality supplies and services, Kshs30 million and Kshs11 million for the Financial Reporting Centre.

(iv) Reduce the Capital allocation for the general administration and planning and support services under the National Treasury by Kshs46 million. The reduction will be from routine maintenance of assets at Kshs20 million and construction of buildings at Kshs26 million.

(v) Reduce the Recurrent allocation for Salaries and Remuneration Commission (SRC) by Kshs150 million. The reduction will be from the funds allocated for other operating expenses.

(vi) Reduce the capital allocation for the Tourism Development and Promotion Programme under the State Department of Tourism and Commerce by Kshs150 million. The reduction will be from the funds allocated to the Bomas of Kenya.

(vii) Reduce the capital allocation for the Power Transmission and Distribution Programme under the Ministry of Energy and Petroleum by Kshs5 billion. The reduction will be from the allocations for the Kenya Development of Solar Power Plants in Garissa.

(viii) Reduce the capital allocation for Information, Communication and Technology (ICT) Infrastructure Development Programme in the Ministry of Information, Communications and Technology by Kshs711million. The reduction will be for the digital learning programme for schools.

(ix) Reduce the capital allocation for the University Education Programme under the State Department of Science and Technology by Kshs583 million.

The Committee recommends that this House therefore resolves:-

(a) To approve the National Treasury (NT) request to spend over and above the 10 per cent threshold on programmes listed in Annex 2.

(b) To approve the Report of the Liaison Committee on the First Supplementary Estimates for the Year 2015/2016.

(c) Finally, to approve a total supplementary expenditure of Kshs25.97 billion to meet the expenditure during the Financial Year 2015/2016 in respect of the votes as provided in Annex 1 of the Report.

I would like to ask the Hon. (Eng.) Gumbo to second.

**Hon. (Eng.) Gumbo:** Thank you, Hon. Deputy Speaker.

**Hon. Speaker:** Proceed.

**Hon. (Eng.) Gumbo:** I wish to second the approval of the First Supplementary Estimates for the Financial Year 2015/2016. Hon. Speaker, these Supplementary Estimates are prepared in compliance with Article 223 of our Constitution, which requires that in any financial year, the supplementary estimates should not exceed 10 per cent of the Budget without the approval of Parliament.

The Constitution also provides that the National Treasury should seek approval from Parliament within two months of the first withdrawal of money from the Consolidated Fund for purposes of supplementary appropriation.

Hon. Speaker, it is still disheartening that, up to now, the Treasury is not complying with that clear provision of the Constitution. In future, when we accept publication of the Supplementary Estimates, we must insist on clear evidence of compliance with this Constitution before the estimates are tabled before the House.

In our Report, we have noted that the fact that this provision of the Constitution is not being complied with clearly implies opacity and contravenes the transparency principle in the expenditure of public funds. Under our overview in number four, we have looked at the legal compliance of these Supplementary Estimates. It shows that it has adhered to most of them. Nonetheless, the Committee has noted some non-compliance. As a Committee going forward,

we will be insisting that ministries, departments and agencies must observe strict fidelity to the written law with regard to the fact that some compliances with the legal provisions have got all the items of budget that are being proposed here.

On the review, we have noted that there is still a bit of concern with regard to austerity measures with regard to current expenditure which is still a major challenge within the Government. Where we are now, it should be possible. We should insist that the Treasury must start thinking of how they can come up with a clear, creative and economic modelling for the expenditures under transport and hospitality, so that the cost benefit analysis on all the expenditure going into these items can be easy to assess and ascertain.

In addition, proposed reductions and capital expenditure by the Treasury should explain measures being taken to ensure that measures are put in place to avert the toxicity of pending bills. As the Public Accounts Committee (PAC), we are rather concerned by the fact that we continually have pending bills. The interest that is being charged on those pending bills is one of the ways that unnecessarily increase public expenditure. We had also observed that the requirement that information on the budget performance be provided is still lacking. This is one of the documents that, going forward, we must require. That is because if we do not get information on actual budget performance, it becomes difficult to ascertain the optimal levels of funding that we are going to approve here.

As a House, we must have a policy to reject Supplementary Estimates in the absence of status reports on how the budget is being implemented. Our Report also speaks that there is a problem in reporting of the total amount of our foreign and external financing. In the absence of a clear report on the total amount of our foreign and external financing, it becomes very difficult to ascertain the accuracy of our indebtedness as a nation. This makes the figures that we get every year on our indebtedness as a nation to become suspect and even inaccurate.

We have also observed that the Cabinet Secretary (CS) for the National Treasury claimed that there is no conciliation. In future, when submitting the Supplementary Budget, the National Treasury must provide a statement on how much has been spent as per Article 221 for each vote of the programme.

In paragraph 25, the Committee noted that there is segmented construction of buildings across Ministries, Departments and Agencies (MDAs), and that has delayed the completion of construction of buildings.

One of the aspects of our system of governance is that the Ministry of Roads, Public Works and Transport has been vilified unnecessarily. As a country, we need to have one point of coordination of construction of public buildings.

We have given a provision of Kshs50 million for international legal support and outsourcing of legal services for the programme of vetting of Ethics and Anti-Corruption Commission (EACC) staff. As we go into that vetting, it has become a concern in the fight against corruption in our country. Some staff of EACC has sought leave in a manner that is unexplained. As we embark on that vetting exercise, it should include lifestyle audit of that staff. The moment officials of EACC become themselves corruptible, the war and fight against corruption shall have been lost.

There is a proposed increase on the recurrent allocation for the national legislation, representation and oversight programme for the National Assembly of Kshs.400 million. This is good but going forward, we need to have a clear breakdown on how we are costing individually, the aspect of legislation, oversight and representation. From where I sit, legislation and oversight

are fairly well costed. But the aspect of representation which is a constitutional mandate of Members of this House has not been clearly and accurately costed. As we go into the budgeting process, let us become bold to an extent and optimally cost the aspect of representation. Effective representation is also necessary for one to be an effective Member of Parliament.

There is an increase in the capital allocations for the technical, vocational and training institutes. The criteria being used in the country in selecting which constituencies get priority in benefiting from that allocation is worrying. From where I sit, I think all constituencies in Kenya need those technical institutions. We need to develop a clear criterion of how we can establish those technical and vocational training institutes as much as we need to develop clear criteria on how we are dispensing the cash for orphans and vulnerable children.

As I conclude, we have provided for an increase in the capital allocation for policing services programme under the State Department of Interior of Kshs.299 million for a high performance facial recognition system. Technology alone cannot fight crime. Technology with people who are not motivated---

**Hon. Speaker:** Give him two minutes.

**Hon. (Eng.) Gumbo:** Technology alone without motivated staff cannot on itself be able to fight crime in this country. Yesterday, my friend Hon. Omulele and I were surprised as we were walking out for lunch. We met two police officers here. One has served in the Police Service for 40 years and another for 35 years, and they are still constables. We were asking ourselves: How can somebody remain in the same position for 40 years and you expect that person to be motivated? Honestly, somebody who was employed in the mid 1970s is still working in the police force as a constable! Clearly, there is a problem with the way we promote our staff.

I wish to second this Motion and ask that this House approves the First Supplementary Estimates for the Financial Year 2015/2016.

**Hon. Speaker:** Can the Members who are upstanding take their seats?

*(Question proposed)*

Hon. Members, I now give a chance to Hon. Shakeel Shabbir to move his Motion under Standing Order No.97.

## PROCEDURAL MOTION

### LIMITATION OF DEBATING TIME

**Hon. S.S. Ahmed:** Hon. Speaker, I would like to move a Procedural Motion with respect to limitation of debate for this particular Motion No.8, being the approval of the First Supplementary Estimates for the Financial Year 2015/16.

Hon. Speaker, I beg to move:-

THAT, notwithstanding the provision of Standing Order No.97(4) and the House Resolution of 10<sup>th</sup> February, 2016 regarding debate in the Report of a Committee, this House resolves that each Members speaking shall be limited to a maximum of five minutes, except for the Leader of the Majority Party and the Leader of the Minority Party who shall be limited to a maximum of 15 minutes.

**Hon. Speaker:** Do you have a Secunder even though it is dilatory.

**Hon. S.S. Ahmed:** Yes.

**Hon. Speaker:** Hon. Munuve, are you seconding?

**Hon. Mati:** I am seconding.

**Hon. Speaker:** Very well. Hon. Members, the Motion by Hon. Shakeel Shabbir is to limit the contribution by every Member. Hon. John Mbadi, you have learnt very bad manners. You cannot be shouting when I am on my feet. This is your eighth year and I am sure by now you know this very well.

Hon. John Mbadi, the Motion by Hon. Shakeel is to limit the contribution of every Member, except the Leader of the Majority Party and the Leader of the Minority Party in the manner that he has proposed, notwithstanding the provisions of Standing Order No.97(4) and the Motion you passed on 10<sup>th</sup> February of this year to five minutes. You want me to propose that Question? Hon. Members, there is no problem. Fortunately, we are well grounded in the law and it is possible to even contribute to a dilatory Motion. If it is the wish of the House that a few of you say one or two things in relation to the proposal by Hon. Shakeel, I will propose the question.

*(Question proposed)*

**Hon. Speaker:** Let me hear, Hon. Ababu Namwamba. He is contributing to the dilatory Motion as moved by Hon. Shakeel.

**Hon. Ababu:** Thank you, Hon. Speaker. This House has to respect the Speaker, otherwise, we could degenerate into anarchy. I am worried and concerned. My concern is that this is a House of debate. We sit here to debate and express our opinion, bring public views and opinion to bear on issues that come to this House. A trend is forming and it is very worrying where before any debate has started, a Member comes up and moves this kind of Motion to limit the time allocated to debate.

Hon. Speaker, you know this since you are a veteran in the affairs of this House. It is absolutely impossible to debate in five minutes. It is not practical and effective to stand here and express substantively and comprehensively to a matter in five minutes. Whereas the Chair has the discretion and Members have that latitude to propose Motions of this nature, let us do it with moderation. It is becoming too much of a habit and trend that, at the end of the day, it is stifling debate.

Budgeting is one of those responsibilities we sought as a House for years. We sought the responsibility, the opportunity and the power to deal with the Budget. Now that the Constitution has given us that important responsibility to deal with Budget, it will not be in order for us to limit the time within which this House deals with matters of the Budget. I want to plead with the House that even if fewer Members contribute, let those contributions be substantive and solid for posterity because we are a House of record. Many years from today, people conducting research and wanting to know how we contributed to a Motion such as this will be shocked to go through the records of this House and see the kind of perfunctory and casual contributions that we made.

Hon. Speaker, this is how Goldenberg entered the lexicon of the finances of this country. We were in such a hurry to approve matters such as this that we ended up with the monster we call "Goldenberg" today. I plead that we defeat Hon. Shabbir Shakeel's Motion and debate this matter substantively.

Thank you, Hon. Speaker.

**Hon. Speaker:** Hon. Yohana Ngéno, Member for Emurua Dikirr.

**Hon. Kipyegon:** Thank you, Hon. Speaker. I also wish to support the honourable general.

**Hon. Speaker:** You cannot support the honourable general? Which one?

**Hon. Kipyegon:** Hon. Speaker, I support “General” Ababu Namwamba. I am saying this because in most cases, we have Motions through which we urge the Government to do one thing or the other. Those are the Motions which normally waste our time. When real Motions or Bills come to this House, we limit ourselves so that we cannot make serious contributions on them. I wish we could give ourselves enough time to look at the Budget and any other matter that is very serious, like amendments to a Bill and other serious issues. We are given five minutes to make contributions but, once you rise, the red light comes on and you cannot even talk. We should give ourselves as much as 15 minutes to speak, if it is possible. We would rather have 10 Members contributing comprehensively and seriously than have 50 Members standing up and sitting down.

Thank you, Hon. Speaker.

**Hon. Speaker:** Hon. Members, your Constitution has made it very clear in Article 121 that the Speaker has no vote. I would urge that you make a decision on this matter as quickly as possible, but you cannot revisit the decision you took on 10<sup>th</sup> February, when you put the limit of 10 minutes, Hon. Ng’eno.

*(Question put and negatived)*

**Hon. Speaker:** Hon. Shakeel Shabbir, you appear to have voted “Noe”. Hon. Members, the debate will be in the usual 10 minutes.

Hon. Midiwo, do you have a point of order?

**Hon. Midiwo:** Yes, Hon. Speaker. I know that we are about to go to the substantive debate, but I rise under Standing Order 96(1), which says that a Member who wishes to postpone to some future occasion the further discussion of a question which has been proposed from the Chair may claim to move:-

“That, the debate be now adjourned.”

I want to do just that for one reason. I am limiting it to one issue. As you notice, the Motion which has just been proposed has some monies being given to Senators. Without debating whether we are opposing or not, the Regulations have just been circulated. It will be nice for this House, using the arguments of my friend, Hon. Ababu, to not rush into approving monies when we do not know how public funds are going to be used. I have had a casual run-through the Regulations, which are supposed to guide the usage of the money given to the Senators which, according to these proposed Supplementary Estimates, is Kshs332 million. The Rules say that the object of the Fund is to provide grants to Senators. If you divide 332 million by 47, it means that each Senator will have access to just a little over Kshs7million shillings as a grant. This House has been taken to court for having vehicles to do our work. Further, what this fund seems to be doing is allowing Senators to undertake county expenditure tracking surveys, to facilitate consultation forums on issues affecting the counties, to assess public perception on service delivery in counties, to undertake research studies and surveys on various thematic issues, to undertake social audit on development projects being undertaken in the counties, to track revenue being collected by county governments; to track and monitor development

activities in counties and/or any other monitoring and evaluation activity relevant to the mandate of the Senate. What is the work of the county assemblies?

The Senators are going to leave their cardinal role given to them in the Constitution. They can set up parliamentary committees in the Senate to do that job. But we are giving them money to go and conduct opinion polls. Members of Parliament must read the effect of money going to their villages when it is given as a grant. In the next Budget, which we have partially gone through, there is an additional Kshs1 billion shillings which has been divided in formulae of 47, 45 and 8. Just casual imagination, the Senator of the County of Nairobi will get a grant of Kshs40 million shillings in an election year. Further to that, let us look at the way that money will be managed. The signatories to the accounts to be opened shall be the constituency office managers. There will be two signatories appointed by the Senator. We cannot just have been complaining about corruption and the governors and then rush to pass a law to open a Pandora's Box. We need to look at this matter critically. I plead with you to allow us to consult as Members of this House and even interrogate these Regulations. These are Regulations that have been made by the Senate and they have not been checked by anybody. To allow them, in an election year, to have money it means that, averagely, each Senator will, between now and the next general elections, get about Kshs50 million as a grant for monitoring by people they appoint, conducting opinion polls and facilitating public *barazas*.

Based on these Regulations, a Senator can even call for a political rally for re-election or his election as a governor and say that he was conducting a public *baraza*. This contradicts the role of the Senate in our Constitution. I want to plead with you to allow us time, at least, until tomorrow to look for another reason. In my view, in most of these constituencies, the Budget and Appropriations Committee has the responsibility. We even had those economic stimulus projects that the Government never finished. We can reallocate this money to finish the projects started by the Executive in our constituencies. In my constituency, the Ramula One Project has been stuck for seven years. You should give me this money so that I can buy equipment for the youth to do the woodwork. This allocation will be done without my vote. I cannot stand here and give money.

These Members of Parliament must ask themselves about the Constituencies Development Fund (CDF), which has been a subject of a lot of noise. No Member here was elected and sat in the CDF Committee. We have always been patrons, but people are making noise and thinking that we were doing this with the CDF. Members of this House do not have that kind of kitty. Why do you want to give it to somebody else? If that is the way the country is used to - to spend money recklessly - then let us give it to all MPs, including Members of the National Assembly so that money meets money out there.

**Hon. Speaker:** Hon. Midiwo, are you suggesting that there are only 47 Senators? I thought they were more than that.

**Hon. Midiwo:** Hon. Speaker, this regulation says that the Nominated Senators, who are largely female, will monitor the national Government. In other words, they have been denied this kitty. It is a club of 47 men dividing Kshs332 million. How discriminatory can a fund be? That is discrimination against women in the Senate. This one requires discussion. I am requesting and begging you to give us the next 24 hours and we will come up with an amendment which we can bring here and direct public funds where they will be better utilised for the sake of whatever little that is left of our country.

**Hon. Speaker:** Hon. Midiwo, do you have a seconder?

**Hon. Midiwo:** Yes, Hon. Speaker. Hon. Ferdinand Wanyonyi.

**Hon. F.K. Wanyonyi:** Thank you, Hon. Speaker. I am perplexed at the genesis of the whole thing. We are talking about money which has no control. Nobody has control over that money. The CDF fund is controlled, budgeted for and audited. How are we going to audit the money that we are allocating? I want to ask you to give us time to look at the genesis of this allocation and understand the motive of this particular proposal. That is because as it is, people want to make money for the general elections. I beg you to give us time to seriously look at this allocation because we have the mandate of making the Budget.

I second.

*(Applause)*

**Hon. Speaker:** Hon. Members, remember that the Motion by Hon. Midiwo is under Standing Order No. 96 which states that the debate on this Motion be adjourned to some other date.

*(Question proposed)*

**Hon. Chepkong'a:** Thank you, Hon. Speaker. I have been on a point of order for quite some time now. I rise pursuant to Standing Order No. 83. I have just seen these Regulations. While at the Liaison Committee, we requested for these Regulations, but we never saw them. I want to seek for your ruling. Is it in order for Parliament and in particular the National Assembly to allocate funds to a proposed fund under Regulations which have not been tabled in this House, in accordance with the law?

Sections 24 and 25 of the Public Finance Management (PFM) Act clearly state that these Regulations shall be tabled and considered by the House within 15 days. In fact, it is inconsistent with the other legislation that provides for 30 days. These Regulations have not been tabled in this House, neither have they been considered by the Committee on Delegated Legislation. What is the appropriateness in terms of allocating funds to a fund whose Regulations exceed the principal Act? It appears to be creating a law that is completely independent of the PFM Act. Is it in order for this House to allocate funds to a fund that does not exist in law? These are merely proposed Regulations and they need to undergo the due process as required by Sections 24 and 25 of the PFM Act, so that we do not spend too much time seeking to allocate these funds.

Hon. Speaker, I raised this issue with the Liaison Committee. Hon. Kamanda and I were against this, but we were intimidated. It is unfair to intimidate Members. We surrendered without necessarily agreeing. We said that we will raise this matter on the Floor of the House. We totally disagreed on this matter. We have no problem with the Senators being given money, but they must be given money in accordance with the law.

Today, the Ethics and Anti-Corruption Commission (EACC) run an advert on leadership and integrity. These Regulations are in breach of that legislation. I am seeking your direction in terms of us allocating funds to a fund that does not exist.

Thank you, Hon. Speaker.

**Hon. Speaker:** Hon. John. Mbadi.

**Hon. Ng'ongo:** Thank you, Hon. Speaker. I had a completely different opinion. There is a point that I want to agree with Hon. Jakoyo and Hon. Chepkong'a. If at all these regulations

were never brought to the National Assembly, then we are voting money to a fund that is illegal. In that case, this fund should be first legally operationalised, and then we can vote. Parliament has a responsibility in the Constitution to uphold the rule of law and we cannot be seen to be the ones violating it. If Members of Parliament and Senators mean well, from now to July is not very far. We can regularise that fund because I have a view that Senators need a more serious and engaged oversight role on counties. We have just spoken about our suspicion that money is not being spent properly in the counties and, therefore, we need the involvement of Senators. When I objected to the allocation of this money last year, I said that we needed a framework. If we are genuine, let us engage with the Senators, refine these regulations, bring them to Parliament and give money during the Budget for the 2016/2017 Financial Year. That would be the right way to go. Sometimes many of us ask why it is very easy to give money to Parliament without a law which is put in place. However, when it comes to giving money to other agencies, including the Independent Electoral and Boundaries Commission (IEBC), getting a half a billion shillings for it is not easy. This is an institution which promotes the democratic culture and space in the country. That is a fundamental question we need to ask ourselves.

As I conclude, I want to caution that it is important that we are not seen to be fighting other institutions. It will come out like we are fighting the Senate. I believe that we need to give the Senate money to exercise their oversight role. However, let us do it within the law. That is why I am proposing that we do not have to do it in the Supplementary Budget. We can do it in the Budget for the 2016/2017 Financial Year.

I agree that our counties need to use money prudently. We need to exercise caution wherever we spend money. The National Assembly has been accused of voting for the Constituencies Development Fund (CDF) and making it appear as if it is its own money. If a constituency does not get a rogue Member of Parliament, the CDF can be used prudently. The CDF has been used well in many constituencies because it has a legal framework that supports good governance. The percentage which is allocated for Recurrent Expenditure in the CDF is very small. It is the only fund in this country where Recurrent Expenditure is less than 30 per cent. It is always the other way round.

Hon. Speaker, the amounts that totalled about Kshs1 billion, which were mentioned as being contributions by county governments to the Council of Governors, are for three years. We do not need to appear as if we are fighting every office that is not in the National Assembly. We also allocate money carelessly. We need to indict ourselves that we allocate money to very many institutions carelessly that its usage becomes a problem. When you have a lot of money and spending it is a problem, you will take that money because you do not have a framework for spending. That is what is happening.

I want to agree that we postpone the debate. Initially, I was opposed to it. I wanted us to dispose of it and give the Senators money to oversee the counties. However, if there is no legal framework, I want to agree that we can postpone debate and engage more and understand these regulations. We cannot vote money and then tomorrow, we say that money is being misused. We will be accused of being negligent.

Hon. Speaker, I support the Motion.

**Hon. Speaker:** Let us have the Chair of the Constitutional Implementation Oversight Committee (CIOC).

**Hon. Baiya:** Thank you, Hon. Speaker, for giving me an opportunity to air my views on this matter. I have serious problems comprehending the constitutional and legal foundation of the

direction the Senate is taking. We, as the National Assembly, set out a procedure for handling regulations generally in this country. We came up with the Statutory Instruments Act, which allows the National Assembly, through the Delegated Legislation Committee, to routinely scrutinise any regulations with a view to ensuring their compliance with the Constitution. These regulations have gone outside that framework.

The function of the Senate is to oversee counties. They do not have monopoly over it. The National Assembly has an oversight responsibility. How can you grant funds to the Senate to undertake the oversight role and forget that the National Assembly is also carrying out the same exercise? That creates double standards.

The Senate is not constitutionally expected to undertake oversight function by monitoring, evaluation, surveying and holding *barazas*. That is not the case. We know for sure that most of them are not even professionals in those lines. They are expected to work with other constitutionally established oversight institutions such as the Auditor-General, the Controller of Budget, the Commission on Revenue Allocation, and the Ethics and Anti-Corruption Commission (EACC). Those are the institutions that give them very professionally conducted reports, which they ought to be working with for purposes of overseeing the counties. They think that they will individually go and carry out the oversight role in their respective counties. That is not practical. It will not bring objectivity. We know that a good number of Senators are candidates for other seats in future. They will bring in a lot of clumsiness in the oversight role.

The Senate requires resources to ensure that their committees are properly resourced to enable them get into resorts in Mombasa or elsewhere. We are not supposed to grant money to individual Senators. Personal grants go into their terms of service of retention, which is unconstitutional. Such monies will not withstand scrutiny.

Thank you.

**Hon. Speaker:** Let us have Hon. Millie Odhiambo.

**Hon. (Ms.) Odhiambo-Mabona:** Thank you, Hon. Speaker. I urge you to consider the request by Hon. Jakoyo because I think the Members of the National Assembly have been bewitched. We need a session to exorcise the spirits that have bewitched Members of the National Assembly. I can only tell Members the reason why I think they are bewitched in a *Kamukuji*. I should apologise because if I explain to Members why they are bewitched, they will know. Part of that bewitchment has to do with what Hon. Njoroge Baiya said. We are all elected Members. The Constitution is very clear about our roles. One of our roles is oversight. We sit here, as Members of Parliament, to approve and give other Members lose money to play oversight roles while we sit here and cheer them. When you do that, it can only be through bewitchment amongst other things.

*(Laughter)*

You cannot give other Members money and yet we are in politics. I will not be politically-correct.. We are giving people lose money. They are going to the constituencies to call lose meetings when we know that we have just passed the National Government Constituencies Development Fund (NGCDF) after people have gone to court to disallow Members of Parliament from active engagement with CDF and then we are cheering them. We can only do that if we agree, as Members of the National Assembly, that we are no longer interested in politics, so that we sit and escort others as they go ahead. We need to sit as a House

and look at the issue of our roles again. I do not have any problem with Senators being given any money. However, as a human rights lawyer very keen on issues of discrimination, if they are getting that money, the National Assembly must get that money because their role is similar to ours. We also do oversight role. Another reason why I would not support this is the framers of the Constitution, which I am one, talked against gender discrimination. Even as the Mover was talking about a club of men, we have women Senators. You cannot have men allocating for them like the women in the Senate are flower girls. If the men are being given money, women Senators must also be given.

Finally, I want to say that, probably, I am the only Member of Parliament who wanted to go to Meru. I disagree with our members who are saying we should not go. I respect you, Hon. Speaker, when you said we do not need to go but, personally, I would have wanted to go for one reason; that if I disagree with them, at the very least, let me whistle blow when I am in Meru. If I disagree with them, let me go there and whistle blow.

However, as the National Assembly, we also need to interrogate the Senators on their roles. They are taking back their roles and giving us as National Assembly to oversee what governors are doing. Most of them are busy trying to get governors off their seats. We made a mistake. We should have made a law that says that once you serve as a Senator, you should stay out for five years before you become a governor so that when they do their oversight role, it is serious oversight role. I was listening to the Senators as they were discussing this issue. Each of them was just engaged on how they can give a very serious political attack on the people they want to unseat from those seats. Therefore, they are giving devolution a bad name when Kenyans are very happy with it. Hon. Speaker, give us a chance so that we can interrogate the legal standing of this fund because, as the Chairman of the Departmental Committee on Justice and Legal Affairs has said, it has no standing in law.

I support Hon. Jakoyo.

**Hon. Speaker:** Hon. Ali Rasso.

**Hon. Dido:** Thank you very much, Hon. Speaker. I also want to add my voice to this debate. I support the proposition by Hon. Jakoyo Midiwo. We should borrow from experiences such as his, Hon. Namwamba's and others. This House should not rubber stamp or role figures across because this is a supplementary budget. I feel that it should just cover gaps within the Budget until the end of the financial year so that there is no crisis within ministries or departments. However, looking at this, it is like we are just going through the budget of ministries and departments. That is not acceptable. The kitty being given to the Senate has totally no role in terms of the developmental activity of this country or in terms of providing services to this country. It is wrong. This House should not approve that money until there is very serious justification that the Senators will use that money prudently. I believe this National Assembly has a serious oversight role under Article 95 of our Constitution. The Constitution also clearly says that we represent people and any money that comes through our hands, under Article 114 of the Constitution, is a money Bill. It has to be done prudently and we have to look at it with a tooth comb.

With those remarks, I say that we need to defer this debate until tomorrow so that we come prepared. Some of the allocations that the Liaison Committee has done, which we feel is unacceptable, must be expunged from the current Supplementary Estimates. Thank you, Hon. Speaker.

**Hon. Speaker:** Hon. Abdikadir, take the Floor.

**Hon. Aden:** Thank you, Hon. Speaker. I wish to join my colleague, Hon. Jakoyo Midiwo, on this very important view. As custodians of the people, who are entrusted constitutionally with the protection of the Constitution, it will really be very wrong for us to say that we allocate money to a fund that clearly violates the management of public funds. It is absolutely wrong because the National Assembly has not had an opportunity to interrogate and look at the Regulations and pass them in good faith knowing that public funds will not be misused. It is going to be very difficult or almost impossible for us to allocate funds to that particular kitty. There is need for a very urgent consultation within the next 24 hours with our colleagues in the Senate. This is because we do not want them to misunderstand us. I know that in the recent past, there were funds which were to be allocated to them and this House did not allocate them.

I request you to appoint a group of very few Members of Parliament within the next 24 hours to go and sit with representation from the Senate and agree on an amicable solution to this because the Supplementary Budget cannot wait. It must pass immediately. What must happen is that agreement should be reached within the next 24 hours. This amount should be dropped out of the current Supplementary Budget so that within the next two or three months, we can review those Regulations and ensure that they are in order. This is because there is a process of de-gazetting them, bringing them to the National Assembly and then having them agreed between the two Houses and for them to be gazetted again.

I ask our colleagues in the Senate to be fair to Kenyans in these circumstances where resources are very limited and are granted mileage to go and do their work. Every Senator is granted mileage to go and do weekly oversight in his county. Why, then, would they want to create this other kitty, which they want themselves to manage, contrary to any law that we know about? It is going to be very difficult to account for this money. I urge that we need an urgent consultation between the two Houses in the shortest period of time so that this Supplementary Budget is not delayed. We should drop out this funding within the next 24 hours and give the two Houses time to consult on the Regulations.

I thank you, Hon. Speaker.

**Hon. Speaker:** Let us now have Hon. Joseph Manje.

**Hon. Manje:** Thank you, Hon. Speaker, for giving me a chance to add my voice to this debate and support Hon. Jakoyo for coming up with the proposal. Let us give them time to go through the Supplementary Budget to check whether there are other issues that we can change. I thought the words "Supplementary Budget" mean a budget that will enable the Government to complete what it had not done throughout the year. Introducing some aspect in between, like allocations to the Senate is deviating from the real essence of a Supplementary Budget. The kitty that is being introduced into the Supplementary Budget by the Senate had been here before. I remember there is a time Kshs1 billion was put in the Budget and we removed it but it has now been re-introduced in the Supplementary Budget. This is not correct. It is good you give him a chance so that we can scrutinise this Supplementary Budget to see whether there is some money that has been allocated to units like devolved units. It is very shameful that our governors are spending a lot of money, which was supposed to go and assist people in the counties, on the Council of Governors (CoG) Secretariat. For example, Turkana County is spending about Kshs58 million on luxurious undertakings in the city. It is shameful. I also realise that the counties that are generally poor are the ones using money in the wrong way. For example, Kajiado County, which is my county, is spending about Kshs18 million to support the CoG

Secretariat. This is money which cannot be accounted for and has not been approved by the Members of the County Assembly (MCAs). I think it is better you give us a chance to scrutinise the Budget so that we do it the right way. I would like to see future Supplementary Budgets showing details of expenditure instead of block expenditure the way it has been. I support the adjournment.

**Hon. Speaker:** Let us have Hon. Ababu Namwamba.

**Hon. Ababu:** Hon. Speaker, we are a House of rules. I have just taken a few minutes to flip through the Regulations. It is actually surprising that they have already been gazetted without going through the process of delegated legislation that is established by this House.

As far as the legal framework for the management of this fund is concerned, we have to take a fresh look at this matter. But I want to tell my colleagues in this House that the sibling rivalry between the National Assembly and the Senate must come to an end at some point. Even the rivalry between siblings ends at some point and you actually become more of partners than rivals in the family.

Parliament, as established in the Constitution of this Republic, is constituted by the National Assembly where we sit and the Senate. We are a twin Chamber of the same Parliament. The Senate has some very substantive and important responsibilities, among those responsibilities is oversight.

We have a serious problem in counties. One of the contributors to the challenge of accountability in the counties is the ineffectiveness of county assemblies to effectively oversee the work of governors. All these governors have run amok and are spending money like there is no tomorrow. The Senate can be a very effective deterrent to this culture that has been established in counties. Let us stop putting hurdles in the path of Senators and the Senate in their oversight role. It is true that we should strengthen these Regulations. It is important that these Regulations go through the process established by the Statutory Instruments Act, but we must make a commitment that we will allow the Senate to access resources for them to effectively undertake their oversight mandate. This is not being nice. It is about the truth. It is about being factual. We have emasculated the Senate. We have made it difficult for the Senate to undertake its responsibilities because of this unnecessary sibling rivalry. What war do we have with the Senate? If the Senate plays its role effectively as an agency of oversight in the counties, what do you lose as Members of this House? Let us strengthen the Regulations. However, let us allow the Senate to get the resources they need to play their oversight role.

*(Applause)*

I want to submit that if you look at this Budget, you will find that there are certain expenditure lines that we could as well raise issues with in terms of how the money is spent. We are giving a considerable portion of money to the Parliamentary Service Commission (PSC), for instance. How do we ensure that this money is used in a manner that is in the best public interest? We give funds for entertainment and travel to the Presidency. We do it in a casual manner that would raise questions about whether that is in public interest. But for the meagre Kshs300 million to allow the Senate to undertake its oversight role, we raise hullabaloo and brouhaha. This has to come to an end at some point. It is my submission that we have a constitutional responsibility and a responsibility to devolution to strengthen the Senate as an agency of oversight over counties.

I want to urge my colleagues, after we have enhanced these Regulations, that let us allow the Senate to execute its oversight mandate. Let us give the Senate not this meagre money but more money to strengthen its oversight mandate.

I submit, Hon. Speaker.

*(Applause)*

**Hon. Speaker:** Hon. Members, I think---

*(Hon. Ababu consulted loudly with Hon. Ng'ongo)*

Hon. Ababu Namwamba and Hon. John Mbadi, let us clear this.

I understand Hon. Ababu Namwamba to be in support of the Motion by Hon. Midiwo to adjourn debate to another date so that it enables the House membership to look at the Regulations. I also want to confirm that there is nothing illegal, contrary to what Hon. Ababu Namwamba claimed, in any regulations being gazetted. Any regulation- or rule-making body is permitted, under the Statutory Instruments Act, to make any such regulations and gazette them, but must submit them to the National Assembly for consideration by the Committee on Delegated Legislation, within a stipulated period. Nothing done under the authority of such gazetted regulations, until annulled by the House, is in contravention of any law. That is the position. Look at Sections 8 to 12 of the Statutory Instruments Act.

Therefore, the most important thing is for us as a House to look at these Regulations. They were considered by the Senate. The Senate presented them to the Parliamentary Service Commission for gazette and not for consideration. It is for that reason that these Regulations bear my signature as the Chairperson of the Commission. However, I also agree that there was a misstep in not tabling them before this House for consideration by our own Committee on Delegated Legislation.

The issue is not denying the Senate resources to perform any of its constitutional functions but that the law must be followed. I think that is the point that Hon. Ababu Namwamba has ably made. So, Hon. Members, allow me to put the Question.

*(Question, that the Debate be now adjourned,  
put and agreed to)*

*(Debate adjourned)*

## MOTION

### APPROVAL OF THE MEDIATED VERSION OF THE POLITICAL PARTIES (AMENDMENT) BILL

**Hon. Chepkong'a:** Hon. Speaker, I beg to move:-

THAT, pursuant to the provisions of Article 113(2) of the Constitution and Standing Order 150, this House adopts the Report of the Mediation Committee on the Consideration of the Political Parties (Amendment) Bill (Senate Bill No.3 of

2014), laid on the Table of the House on Tuesday, 12<sup>th</sup> April, 2016, and approves the Mediated Version of the Political Parties (Amendment) Bill (Senate Bill No.3 of 2014).

Hon. Speaker, the agreed version of the Amendment Bill that was presented to the Senate by Hon. Sen. Khalwale is contained on page 430 of today's Order Paper.

The import of the amendment is to expand the field for political parties that will participate in the sharing of the Political Parties' Fund set aside under the Political Parties Act, 2011.

We had a total of three meetings to consider the proposed amendments. This matter was placed before the Departmental Committee on Justice and Legal Affairs. We presented it to the National Assembly which agreed with us. We had a disagreement between the Senate and the National Assembly and you thereafter directed that a Mediation Committee be formed. It was formed under your direction. The membership of that Committee was as follows:

Hon. Sen. Amos Wako	– Chairman, MP;
Hon. Chepkong'a	– Vice Chairman, MP;
Hon. Sen. Kipchumba Murkomen, MP;	
Hon. Njoro Baiya, MP;	
Hon. Sen. Stephen Sang, MP;	
Hon. Timothy Bosire, MP;	
Hon. Sen. Bonny Khalwale, MP; and,	
Hon. Daniel Maanzo, MP.	

We considered the proposed amendment by Hon. Khalwale, together with the resolution of this House and we came to the conclusion that the threshold that had been proposed in the amendment by Hon. Khalwale was too low. It was not, in our view, encouraging the formation of strong parties. We thought that this provision needed to be strengthened so that we encourage the formation of strong parties that will ensure democracy is engendered in this country and Kenyans benefit from effective and efficient political competition.

As you know, we have a total of 53 registered political parties. Some do not even have a single Member of Parliament in this House. We will be making some proposals that will be included in the Political Parties (Amendment) Bill. We will require a political party that does not produce a Member of Parliament or MCA to cease to exist in the next elections, unless it shows that it is able to compete effectively.

The import of the amendment is to amend Section 25 of the Political Parties Act, 2011 by deleting the word "five" appearing in paragraph (a) and substituting therefor the word "three",

We are also seeking that paragraph (b) is included to read as follows:

"(b) inserting the following new paragraph immediately after paragraph (b)-  
(c) the party does not have at least-"

Hon. Speaker, what we are seeking here is that, if a party wants to participate in the Political Parties' Fund, it must meet a certain criterion. Any party that will participate in this Fund must have at least twenty elected members of the National Assembly; three elected members of the Senate; three elected governors; and forty MCAs.

A party must have all the above. If a party does not have all that, it will not be allowed to benefit from the Political Parties Fund. That is the gist of this amendment. It is fairly straightforward. The principle is to ensure that parties are encouraged to merge and ensure that they are strong enough to compete in a more effective manner.

**Hon. (Ms.) Odhiambo-Mabona:** What of gender?

**Hon. Chepkong'a:** The question of gender, as Hon. Millie is alluding to is contained in the Political Parties (Amendment) Bill that is coming for Second Reading in due course.

With those remarks, I move.

I request Hon. Nyokabi, the Vice Chairlady of the Departmental Committee on Justice and Legal Affairs to second.

**Hon. Speaker:** Let us have Hon. Nyokabi.

**Hon. (Ms.) Kanyua:** Thank you, Hon. Speaker. I also thank the Chairman of the Departmental Committee on Justice and Legal Affairs and the Members of the Mediation Committee for the Political Parties (Amendment) Bill that we are passing today.

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

*(The Deputy Speaker (Hon. (Dr.) Laboso) took the Chair)*

Hon. Deputy Speaker, having looked at the new criterion for funding political parties, the criterion proposed was very low when this matter first came to the Departmental Committee on Justice and Legal Affairs. The feeling of the Committee at the time was that even a party with presence in only one county, even if it does not bother to look for votes in any other county, would qualify for funding under the Political Parties Act.

Looking at the criterion today, any party that is going to qualify for funding is going to be a national party in line with Article 89 of the Constitution. According to the new criteria, a party can only receive funding if it has 20 elected Members in the National Assembly.

There is no single county that can produce 20 Members of the National Assembly. Our biggest county is Nairobi County, has 17 Members of Parliament. Even Nairobi County alone, which is cosmopolitan with a national outlook, will not raise 20 Members of Parliament even if a party is set up for it alone. Twenty Members of Parliament can only be from five, six, seven or nine counties. A party that has presence in nine counties is a party that needs to be supported by taxpayers' funding so that it can grow and sell its ideology anywhere in the country.

The second criterion is when a party has three elected Members of the Senate or three elected Governors. If a party can get three Governors and three Senators, it will have received more than 500,000 votes in terms of quantum of votes. It will be a party that has made effort and is not based in a county.

Lastly, if a party has 40 MCAs, it will also qualify for funding, as per the mediated version of the Political Parties (Amendment) Bill. Looking at the criterion in the mediated version of the Bill, it appears that the country will benefit in the sense that more parties will receive funding. We need more parties to receive taxpayers' funding, noting that this is a multiparty democracy. If we are going to strengthen our parties, they must receive funding from taxpayer.

A lot of the mediation process has gone into cleaning up the earlier Bill. In seconding, I would also urge Members of the National Assembly to accept the mediated version of the Political Parties (Amendments) Bill (Senate Bill No.3 of 2014). Political parties need funding to prepare for the general elections that will be taking place in 2017.

Hon. Deputy Speaker, if you look at the history of our country, you will find that there has been a very good reason why political parties need to receive funding from taxpayers. Our entire National Assembly and Senate are based on a party system. Once they are based on a party

system, it continues to be very important for us to have strong parties that are national, impersonal and not funded by individuals. We want to have parties that are funded by the taxpayer and the criteria will allow those objectives to be pursued under the new Act in the amended version.

I also wish to note that 30 per cent of the funding for political parties should be reserved for marginalised groups who are women, youth and persons with disability. That criterion in the law is not affected by the amendments that we are passing today. If we look at the criteria and the two-thirds gender law, we will find that there will be a further amendment requiring that when the political parties fund is being shared, 15 per cent is shared based on the women who are elected on a party ticket. We continue to encourage our parties to allow women candidates to get their party tickets. It is not just for the parties to give women party tickets where they are weak but for parties to give women party tickets where they are strong.

The ODM must give more women party tickets in Nyanza, the TNA must give more women party tickets in Central and the URP must give more women party tickets in the Rift Valley. In the political parties funding, there will be a 15 per cent reservation for women who get elected on a party ticket.

So, in supporting the mediated version, we have more objectives with the political parties funding and we hope that all these amendments will be passed by the National Assembly.

I beg to second. Thank you.

*(Question proposed)*

**Hon. Oyugi:** Thank you, Hon. Deputy Speaker. First, I acknowledge that I am a Member of the Departmental Committee on Justice and Legal Affairs. Two, I would like to support the mediated version of the Political Parties (Amendment) Bill. The Chairman and Vice-Chairperson have ably moved it. They have explained that the purpose for which this amendment was sought was to strengthen and expand the purview of political parties that benefit from the Political Parties Fund.

We are living in a country where political parties seem to be in proliferation. There are very many political parties in the whole place. Some of them are confined to particular parts of this country. It is good for our political party democracy but it is also not very good in terms of making sure that the nation is held together. This amendment is trying to ensure that if at all you are going to benefit from taxpayers' money, your political party ought to be one that has a national face. At least, having 20 Members of Parliament would be ensuring that you have length and breadth of a couple of counties, having three governors will be ensuring that, at least, you are in three counties which ordinarily will not just be ethnic enclaves. This thing is good in strengthening political party democracy because it is also important that the taxpayer pays political parties and that political parties are not left to the behest of philanthropists who use political parties for their own ends. For taxpayers to get value for money, the political parties that are going to benefit from this kitty ought to be parties that are of national outlook.

As we move forward, of course next year is for elections, we should be encouraging as many political parties as possible to be seeking for membership across the whole place. I know for a fact that the Political Parties Act requires political parties to have offices in the whole place. Any law that will be ensuring that before you benefit from the funding you must be seeking and having a national face is important.

Lastly, as we move forward, and give political parties money, we would like those parties to be cognisant of the fact there are marginalised communities who are the youth, persons with disability and women; people who ordinarily would need affirmative action.

Part of the conditionality which the Political Parties (Amendment) Bill speaks to, in brief, is that political parties must respond to marginalised communities and persons who for a long time have not had affirmative action. It is an amendment that we need to support.

With those many remarks, I support. Thank you.

**Hon. Mulu:** Thank you, Hon. Deputy Speaker. I rise to support the mediated version of the Political Parties (Amendment) Bill. If you look at the agreed amendments, you will find that this Bill is going to help this country get parties which reflect a national outlook.

At the same time, if you look at what we had passed as the National Assembly, you will find that this makes it a bit complicated for the smaller parties to qualify for this funding. The fact that we have moved the percentage from 5 per cent of the total votes to 3 per cent is good for the country. The requirement that these four items must be met: 20 elected Members of National Assembly, three elected Members of the Senate, three elected governors and 40 Members of the county assembly, will not be easy to meet for most of the parties. I see a situation where the number of parties which are going to benefit will still remain very low more so in a situation where we have coalition governments.

The earlier issue I had raised about accountability is that we are likely to live with that issue for a long time. For example, currently under the CORD Coalition, there is internal arrangement between the coalition parties where, internally, the money is shared but in terms of accountability, it is left with ODM. That is not going to be very good for the dominant parties because they will be held responsible in terms of accounting responsibilities for other parties. You do not want to say anything will go wrong, but in case anything goes wrong, then it will complicate matters. This being a law, once it is approved, it is going to be an Act of Parliament. For now we can start with this and that is why I am supporting it. As we move forward, we can think of how to bring more amendments to allow other parties to benefit.

With those remarks, I want to support the mediated version of this Bill so that we get a law which can also go a long way in promoting party democracy.

Thank you.

**Hon. Baiya:** Thank you, Hon. Deputy Speaker for allowing me to speak to this important mediated version of the Political Parties (Amendment) Bill. The mediated version imposes conditions that can only be met by few parties. The threshold is 20 Members of Parliament, three Senators, three governors and 40 MCAs. One of the objectives of the Political Parties Act is to assist in the development of democracy in this country and more particularly, to encourage political parties to develop their ability to win and not just to exist in the Register of Political Parties. This mediated version, therefore, recognises political parties that have regulated themselves in a way that substantially meets the requirements of the Constitution with regard to political parties and that enables them to attract more supporters.

The biggest challenge we have had in this country with regard to political parties is poor internal governance in the way they handle nominations and conduct elections. Political parties that do not uphold internal party democracy and generally meet the objectives of the Constitution will be very disadvantaged in terms of meeting this criterion.

Small political parties or briefcase political parties have been one of the main features in the political landscape of this country. It is time we discouraged the lone ranger political parties

and parties that are formed along ethnic enclave lines, so that we compel those political parties to form alliances or to unite with others to acquire a political voice. For those reasons, we urge Members to support the mediated version of this Bill. It helps to realise and achieve the objective of the political parties we envisaged within the political parties system and also the Constitution. This objective is to ensure that we have good political parties managed along a constitutional criterion which is acceptable to many Kenyans so that people can galvanise around well-managed political parties instead of those briefcase parties.

In the last election, there are only about three or four political parties that would have benefited from the Political Parties Fund. That poses the challenge to the other political parties that wish to join this list and criteria, to up their game and ensure that they improve their party philosophy, ideology, including their own internal management, so as to attract more Kenyans to join them. If they fail to do so, the penalty will be that they are not publicly funded and are left literally to their fate which is to fail.

For those reasons, I support this Bill and urge Members to support it.

**Hon. Deputy Speaker:** Let us have Hon. Mary Emaase.

**Hon. (Ms.) Otucho:** Thank you, Hon. Deputy Speaker for the opportunity. I would like to add my voice to this debate. I support the Mediated Version of the Political Parties (Amendment) Bill.

For a long time, this country has had many parties most of which are just briefcase parties, which wait until the election period to cash in on the registration fees of members only to disappear immediately after that and wait for another election period. This Bill seeks to strengthen parties. We need serious players in the political field so that we have serious and strong national political parties. Having a few strong national parties that reflect the face of Kenya is better than having very many parties that are not serious, some of which are just in business.

I also appreciate the fact that this Bill provides for a 15 per cent additional funding to any party that brings more women into this House. This is an impetus. It will encourage more political parties to give women aspirants nomination certificates so that they can contest for these political positions. That is a good thing. This is a very good Bill.

**Hon. Deputy Speaker:** Let us have Hon. John Waluke. He is not here. Let us have Bernard Shinali. Is he there?

**Hon. Shinali:** Thank you, Hon. Deputy Speaker for giving me this opportunity to add my voice in support of the Political Parties (Amendment) Bill, 2016.

The threshold that has been given to raise 20 MPs, three Senators, three governors and at least 40 MCAs, is one which requires seriousness. It requires a political party which is geared and ready to run this country. We have had small briefcase parties which do not have offices and are not run properly. We have had problems during nominations in political parties. It is an area which we should look into such that nominations are done fairly. Most women opt not to run for office in big political parties because they feel intimidated by the way nominations are done due to violence and misuse of resources. I support the mediated version of the Bill.

**Hon. Deputy Speaker:** Let us have Hon. Nyikal.

**Hon. (Prof.) Nyikal:** Thank you, Hon. Deputy Speaker. I rise to support the mediated version of the Bill. I see a good trend where the negotiations between the Senate and the National Assembly go on very well. We have seen many Bills coming to the Floor of the House and are

negotiated in a harmonious way which is an improvement from the feeling people have had that there is always acrimony between the two Houses.

This negotiated version does what this country has needed for a long time. There are numerous parties that dissipate the contribution and the votes of the electorate, some of which are run from briefcases in vehicles and set out to raise money for registration of parties. They wait for those who have lost in the nominations in other parties so that they give them ticket. They have no base to support those members when they continue with their work in Parliament. These parties will have no choice but to merge. The negotiated version ensures that all the parties we will have, have a broad regional base instead of narrow-based political parties that encourage ethnicity. This leads to the avoidance of proper philosophical or broad discussion of national issues and will tend to relegate the discussions on political matters to narrow, parochial, regional and even ethnic grounds. To that extent, we expect that this will help parties.

It also brings a level playing ground because when you have parties that are funded by the Exchequer all members of the party have equal participation in the parties and not parties that will look at members whether they are making serious financial contributions. With that you will not have parties that are owned or controlled by powerful people. To that extent democracy will be encouraged and practised properly as we expect in this country.

With that, Hon. Deputy Speaker, I support the negotiated version of this Bill.

**Hon. Deputy Speaker:** Hon. Robert Pukose, you have the Floor.

**Hon. (Dr.) Pukose:** Thank you, Hon. Deputy Speaker, for allowing me to contribute. From the outset, I support the mediated version of the Bill. The Committee has done a pretty good job laying the minimum requirement of three Senators, three governors, 20 Members of Parliament and 40 MCAs. It sets a high standard. That makes other parties, like my friend, Hon. Maanzo's to start thinking outside the Wiper Democratic Movement regions because it will not qualify for this. This is because you need to have 20 Members of Parliament but you have 16. My friend, Ferdinand Wanyonyi, will also move out of Kwanza and not just talk about western region where he will not meet the threshold.

It makes the country one. Going forward, we must think of having two large parties like it is in the United States of America where you have the Democrats and the Republicans. If we nurture democracy to that level, as a country, we would have moved a step higher. This is good for this country. The Mediation Committee looked at the bigger picture of our nation. That is a good job. It discourages briefcase parties where people set up briefcase parties and want to give somebody a ticket during nomination so that they can get some money. They hope that if that person wins they can get into a gravy train to get some money to continue with their activities.

With those remarks, I support the mediated version of the Bill. Thank you.

**Hon. Deputy Speaker:** Hon. Millie Odhiambo.

**Hon. (Ms.) Odhiambo-Mabona:** Thank you, Hon. Deputy Speaker. I wish to support the Mediated Version of the Political Parties (Amendment) Bill. In supporting, as a country, we need to move towards democratisation of our parties and towards ensuring better governance of our parties. This will only be possible if we strengthen these parties and move away from the smaller parties. I acknowledge that some of the reasons we have people moving into smaller parties is because of the fact that most times our parties have not been very democratic.

Therefore, I urge Hon. Members to look at the proposed amendments that are coming with the Election Laws (Amendment) Bill and other amendments that are being proposed in the

political parties. This is to ensure a better playing field especially for women. As other Members have said, women tend to find it easier vying in smaller parties because usually there is no room for them in bigger parties. If we provide a level playing field for women in political parties, then I would support such an amendment because it would work towards reforming our political parties. I would, therefore, encourage Members, and at the same time wish it came at this time. However, the Chair of the Departmental Committee on Justice and Legal Affairs has assured me that it is in the amendments that are coming. We should have provided for a criterion that parties which do not elect women in single member constituencies, should lose a certain percentage as a consequence. That will mean that the parties will be more serious about fielding more women candidates. I know that there are several women who are able and capable of vying in their parties but because of many factors including violence and what we call “the finish” most women do not have--- “The finish” is an issue of having money to bribe. I am not asking women to bribe. Men tend to have a lot more money that they use in “the finish” than the women. Because of all those issues and other cultural factors, many women find it very difficult but there are many women who are vying for seats including gubernatorial seats. I know Hon. Deputy Speaker is going for it.

For us to consider parties seriously, it is a shame for us, as a country that even as we speak there is no woman elected as governor even though there are women who vied. There is also no elected woman Senator even though there are women who vied. If you look at the entire House of over 300 Members, you will find that there are only 16 women who have been elected in single Member constituencies. So, I will support a further amendment that pegs the receipt on these funds on the number of women that we bring to the House.

With those few remarks, I beg to support.

**Hon. Deputy Speaker:** Hon. Members, we really need to bring this debate to an end. It is just a mediated version so that we move to the next Order. Let me have two other Members, because we are beginning to repeat ourselves.

Yes, Hon. Ferdinand Wanyonyi.

**Hon. F.K. Wanyonyi:** Thank you, Hon. Deputy Speaker. I have a different view all together. As much as I know that this has been mediated by both Houses, I know the essence of the whole thing is on how to have a strong democracy but, the threshold is a bit too high. In the past, we have had people who are actually good and popular on the ground but are rigged out at a certain stage. You will find that somebody who is very popular is rigged out and the only alternative is to go to a small party.

Personally, I would have been in this House almost 10 years ago but because of rigging, which my friend, Hon. Pukose, knows very well, I was not. He was referring to it because he was sympathising with me because I was supposed to be in this House much earlier but because of the big boys syndrome particularly the big parties which practise dictatorships, I was not. You will find that somebody who is popular on the ground is rigged out. It becomes who knows who. You will find that the most popular person who has spent time to grow his popularity is rigged out and the only alternative is to get a small party as a shelter.

As we sit here, most of these Members of Parliament, I am sure three of us must have come through small parties because big parties are a problem. They are dictatorial. They give you conditions that you are not able to meet and yet you are popular on the ground.

As much as I agree that we need strong national parties, small parties should be given room so that they can also grow alongside. I know for sure that TNA and URP are merging into

one party. That is good for them. Some of them may not join them but we are saying that there are other guys who have very good people on the ground and they should be given time to come in through small parties. The threshold is too high. I would have wanted to change it to 10 Members of Parliament, 20 MCAs, one governor and two senators because I know it is difficult to get these numbers.

Lastly, there is regional base but we are looking at a party which has a national outlook. My party, for example, does not have very many elected Members but it is a national party. So, are we talking about coalitions or parties? Hon. Deputy Speaker, it is not very clear whether they are talking about political parties or coalitions. I want to know because I have not dwelt too much on the same thing. I am not supporting this version.

**Hon. Deputy Speaker:** Hon. Jakoyo, are you on a point of order.

**Hon. Midiwo:** On a point of order, Hon. Deputy Speaker. This being a mediated version of the Bill, and I seem to be listening to the same story from Members over and over again and we have a major Bill ahead of us in the Committee stage, will I be in order to ask that we end the debate and ask for the Mover to reply? Thank you.

**Hon. Deputy Speaker:** I will put it to vote and ask Hon. Members to vote on Jakoyo's Motion.

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

**Hon. Deputy Speaker:** Therefore, I want to call upon the Vice-Chair to respond. You have the Floor.

**Hon. (Ms.) Kanyua:** Thank you, Hon. Deputy Speaker.

**Hon. Deputy Speaker:** What is your point of order again, Hon. Jakoyo?

**Hon. Midiwo:** On a point of order, Hon. Deputy Speaker. Hon. Nyokabi, I am sorry for the interruption. I just wanted us to have enough time to go through the next Order. So, I wanted to move a Procedural Motion to extend time. Could I do that?

**Hon. Deputy Speaker:** Okay. I would have wished she finishes but if it is five minutes to and we have eight minutes--- Hon. Nyokabi, allow him to move the Procedural Motion and then you can reply.

**Hon. Midiwo:** That is what I was looking for because of time.  
Thank you.

## PROCEDURAL MOTION

### EXTENSION OF SITTING TIME

**Hon. Midiwo:** Hon. Deputy Speaker, I beg to move the following Procedural Motion:-

THAT, pursuant to the provisions of Standing Order No.30(3)(a), this House resolves to extend its sitting time today until conclusion of business appearing as Order No.10 in today's Order Paper.

Thank you. The reason is as I have said.

**Hon. Deputy Speaker:** Who is seconding?

**Hon. Midiwo:** I ask Hon. (Dr.) Pukose to second.

**Hon. (Dr.) Pukose:** I second.

*(Question proposed)*

*(Question put and agreed to)*

**Hon. Deputy Speaker:** Okay. We can proceed.

**Hon. (Ms.) Kanyua:** Thank you, Hon. Deputy Speaker. In replying, allow me to donate one minute to Hon. Wanjiku Muhia who wanted to say something burning, I will reply in a minute and then we will close.

**Hon. (Ms.) Muhia:** Thank you, Hon. Deputy Speaker and Hon. Nyokabi. I commend the good work of the Departmental Committee on Justice and Legal Affairs. I wanted to oppose this amendment. In my own opinion, I feel that the drafter was trying to bring in two political parties which possibly could have been FORD(K) and Wiper Democratic Movement (WDM). We must have political parties that are regional. If a party has three Senators, you look at three counties that neighbour each other. They can easily bring three Senators and governors. We will then have three neighbouring counties benefitting from this fund and we continue building the tribal cocoons that we always want to move away from.

The main parties such the ODM, CORD or Jubilee Party have Members all the way from Rift Valley, Nyanza, Coast, Western and Eastern regions. I would like to oppose because I do not want us to have regional political parties on tribal basis. If WDM was guaranteed this they would get Kitui, Mwingi and Machakos. They would not need to move out of the Upper Eastern and they are funded. So, the drafters might have wanted to make the WDM party and the FORD(K) party to benefit from this and so I oppose.

*(Laughter)*

**Hon. Deputy Speaker:** Order Members! I do not think we want to get information on--- Hon. Wanyonyi, what is your point of order? I thought she is saying you are trying to be accommodated. I thought she is even favouring you in her comments.

**Hon. F.K. Wanyonyi:** Hon. Deputy Speaker, I just wanted to inform my good friend that both FORD(K) and WDM have membership throughout the country. If you do not know then please find out before you talk. It is wrong for you to tell this House that these are regional parties.

**Hon. Deputy Speaker:** Okay. Thank you for the information. Hon. Priscilla Nyokabi, please continue.

**Hon. (Ms.) Kanyua:** Thank you. Just to add very quickly to the Member is that the question is one of the elected Senators, governors and elected Members of Parliaments. I am not sure whether FORD(K) and WDM have elected Members across the country.

In reply, we want to thank all the Members who have made contributions to the mediated version of the Political Parties (Amendment) Bill. We thank the Members for their contributions and for accepting the mediated version and for seeing the objectives that were brought in through that amendment to expand democracy. This is to ensure that more parties get taxpayers' funding. The objective and hope is that we will strengthen our democracy and the parties will use the funds in an accountable way. The parties that get political parties funding will create

programmes, ideologies and parties that continue to strengthen our democracy. The more the parties get the political parties funding in a multiparty democracy the better.

So, introducing a new criterion like we have done with the mediated version can only be good for this country and can only strengthen our democracy from strength to strength, especially after the 2010 Constitution that we continue to implement as a country. The Constitution is going to guide our democracy and our parties for more years.

I beg to reply and beg to move that the Report be adopted.

**Hon. Deputy Speaker:** Can you settle down so that I can put the Question? I need to, first, confirm whether we have quorum. Hon. Members, with that information we will postpone the putting of the Question.

Next Order!

## COMMITTEE OF THE WHOLE HOUSE

*(Order for Committee read)*

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

### IN THE COMMITTEE

*[The Temporary Deputy Chairlady  
(Hon. (Ms.) Shebesh) took the Chair]*

### THE COMMUNITY LAND BILL

*(Resumption of consideration in  
Committee interrupted on 19.4.2016)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Members, we are in the Committee of the whole House to consider the Community Land Bill (National Assembly Bill No.45 of 2015). Members please note that we started consideration of this Bill yesterday and we reached Clause 21. So, we will be commencing from Clause 22.

#### *Clause 22*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): We have an amendment by the Chair of the Committee, Hon. Andrew Mwadime and Hon. Joyce Emanikor. Hon. Members if we carry the amendment by the Chair, then we will drop the amendments by Hon. Mwadime and Hon. Emanikor. Can we have the Chair please?

**Hon. Mwiru:** Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 22 of the Bill be amended in sub-clause (2) by deleting the words “at least fifty per cent of members present in a special meeting convened for that purpose, in which at least two thirds of the members of the community are

present” and substituting therefor the words “two thirds of the assembly in a special meeting convened for that purpose”.

The logic of this is that this particular issue has already been taken care of under Clause 16(4) of the same Bill. The other reason is to make sure that there is no abuse in terms of the membership or number of people supposed to be in that kind of meeting.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Members, I ask again that if you want to speak, use the request button and not the intervention button. The ones who are on the request button are the ones I will be considering. If you do not want to participate please pull out your card. Hon. Aghostinho Neto, you want to speak to this amendment?

**Hon. Oyugi:** Thank you, Hon. Temporary Deputy Chairlady. I would like to support the amendment but I have also read a better version by Hon. Mwadime. I am not sure if he is going to move it. The proposal by the Chair is trying to tidy the amendment to the extent that there ought to be two-thirds of Members of the community present. I think the one by Hon. Mwadime talks about the two-thirds Members present voting. I think it is a better amendment. I still support the amendment by the Chair.

Thank you, Hon. Temporary Deputy Chairlady.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Rose Mitaru, you want to speak to this?

**Hon. (Ms.) Mitaru:** Thank you, Hon. Temporary Deputy Chairlady for giving me this chance. I want to say very briefly this evening that the land issue in this nation has been---

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Member you need to speak to Clause 22 as presented by the Chair of the Committee. That is whether you support or oppose that amendment.

**Hon. (Ms.) Mitaru:** Hon. Temporary Deputy Chairlady, I support.

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

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

*(Clause 22 as amended agreed to)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Therefore, Hon. Mwadime and Hon. Emanikor your amendments are dropped!

*(Proposed amendments by Hon. Mwadime and  
Hon. (Ms.) Emanikor dropped)*

Clause 23

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): We have an amendment by Hon. Tiyah Galgalo. She is not in the House. Therefore, her amendment is dropped.

*(Proposed amendment by Hon. (Ms.) T.G. Ali dropped)*

*(Clause 23 agreed to)*

*Clause 24*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Chair, you have an amendment?

**Hon. Mwiru:** Yes, Hon. Temporary Deputy Chairlady.

I beg to move:-

THAT, Clause 24 of the Bill be amended by inserting the words “as provided in section 22(2)” at the end of paragraph (b).

The amendment is providing for referencing of the section that provides for the requirement of a two-thirds majority of the community. Of course that was taken care of earlier on as I discussed.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): I can see Hon. Sakuda.

**Hon. ole Sakuda:** Thank you, Hon. Temporary Deputy Chairlady. I rise to support that amendment for the simple reason that community land has been subjected to a lot of abuse by a few individuals. It was necessary for us to lift up the threshold so that, at least, two-thirds majority is needed in terms of anything that is done on community land.

I support.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Mwadime, would you like to speak to this issue?

**Hon. Mwadime:** Thank you, Hon. Temporary Deputy Chairlady. I support the amendments by the Chair as they cater for what I had proposed to amend earlier under sub-clauses 2, 7 and 8.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Yes, Hon. John Serut.

**Hon. Serut:** Thank you, Hon. Temporary Deputy Chairlady, whereas, I do not want to be seen to be opposing this issue of two-thirds majority I have food for thought to the Chairman of the Committee on Lands, and this is something I thought after I left here last night. The question is; who is this animal called community? Is it a household or the members of a household? I think there is need to define who is a member of a community. This was a question I was confronted with by members of public after yesterday’s debate. They were asking me who is this community. Is it a household representative, husband, wife or children who are of age? It is something which requires thinking.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Serut, the definition will come under Clause 2 which we have not yet reached. So, you can prepare your suggestions for Clause 2 where the definition is well explained.

Let us have Hon. Priscilla.

**Hon. (Ms.) Kanyua:** Thank you, Hon. Temporary Deputy Chairlady. I want to support the Chair on that amendment that he has introduced relating to both Clauses 22 and 24 on the thresholds of the community participation that is required before a decision is made.

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

*(Clause 24 as amended agreed to)*

*Clause 25*

**Hon. Mwiru:** Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 25 of the Bill be amended in Sub-clause(2) by deleting the words “and may relate to any category or class of community land”.

The amendment removes unnecessary words from this statement because there are a number of repetitions in terms of trying to achieve what this sub-clause is supposed to achieve. We are just deleting some words for the purpose of clarity.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Fatuma, you have removed your card. Hon. Korere Paulata, do you want to speak on this amendment?

**Hon. (Ms.) Korere:** No.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Let us have Hon. Sakuda.

**Hon. ole Sakuda:** Thank you very much, Hon. Temporary Deputy Chairlady. As my able Chair has said, the purpose of this amendment is to make this readable and understandable. It is intended at making it as simple as possible by removing any unnecessary word.

I support.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Mwadeghu, I am sorry; I had not seen your request.

**Hon. Mwadeghu:** Ahsante, Mhe. Naibu Mwenyekiti wa Muda. Nikiwa mmoja wa wanakamati, tumezungumzia suala hili tukiulizana maswali mengi ili tuweze kuifanya sheria hii iwe rahisi kueleweka na kila mtu, na kusiwe na shida kuitafsiri.

Kwa hivyo, ninayaunga mkono mapendekezo ya Mwenyekiti.

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

*(Clause 25 as amended agreed to)*

*Clause 26*

**Hon. Mwiru:** Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 26 of the Bill be amended by inserting the following new paragraph immediately after paragraph (c)—

“(d) operation of any other written law.”

We are doing this because, in as much as private land is governed by a particular law straightforwardly, there are other laws which are supposed to affect the management of that particular private land. Therefore, in conversion, we must all make reference to other laws that govern issues to do with private land and ownership.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Fatuma you have put your card back. Would you like to speak to this one?

**Hon. (Ms.) F.I. Ali:** I do not have the Report but listening to the Chair, I think this clause might introduce new dynamics to the community land law, which may cause tension. Referenced to other laws, this is sufficient enough to protect other interests. The other laws that stand alone may not be relevant.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Naomi Shaban.

**Hon. (Dr.) Shaban:** Hon. Temporary Deputy Chairlady, I stand to support the amendment by the Chair of the Departmental Committee on Lands in the sense that this is specific to private land, which may be converted to community land. It is important for us to remember that as you convert private land, it is important to look at other relevant written laws to ensure that you do not clash our interest and end up in a legal tussle, fighting over something which should have been put in black and white.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Savula, do you want to speak on this amendment?

**Hon. Angatia:** Hon. Temporary Deputy Chairman, I would like to support the Chairman on this amendment.

Land is an emotive issue. A single statute like the Community Land Bill cannot resolve all land matters. You need supportive supplementary statutes that are in existence so that when there is a dispute, you look at all the laws before you reach a conclusion.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Chachu Ganya.

**Hon. Ganya:** Thank you, Hon. Temporary Deputy Chairlady. I support the Chairman’s amendment. This is where private land is converted to community land and not the other way round. As a major proponent of community land, if I can get all private land converted to community land, I will be a very happy man.

I support.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Let us now have Hon. ole Kenta.

**Hon. ole Kenta:** Hon. Temporary Deputy Chairlady, I would like to allay the fears my colleague have raised. This is for the benefit of the community because you might find that land had been leased to a third party and the lease expires but by virtue of fruition of law, the land reverts back to the community. I think it is for the benefit of the community. I want to thank the Chairman for this additional provision.

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

*(Clause 26 as amended agreed to)*

*Clause 27*

**Hon. Mwadime:** Hon. Temporary Deputy Chairlady, I have withdrawn this amendment as I have realised that it is going to bring more bureaucracy in setting aside land for public use. When a community sets aside part of the registered community land for public purpose, there should be a clarification on the effect of doing so. This is to ensure that community land rights to such land are secure and prevent abuse of the principal Act. As per the earlier amendments, I realised I am going to bring more confusion and bureaucracies. Therefore, I am dropping my amendment.

*(Proposed amendment by Hon. Mwadime dropped)*

*(Clause 27 agreed to)*

*Clause 28*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): We have two amendments to Clause 28. One is by the Chairman and the other one is by Hon. Mwadime. We will start with the amendment by the Chairman.

**Hon. Mwiru:** Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 28 of the Bill be amended in Sub-clause (2) by deleting the word “an” appearing at the end of paragraph (e) and substituting therefor the word “and”.

This is just a grammatical error and does not require a lot of argument.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. (Ms.) Wanjiku Muhia, do you want to speak to this?

**Hon. (Ms.) Muhia:** Thank you, Hon. Temporary Deputy Speaker. I want to support the proposed amendment by the Chairman. Initially, I thought it was an issue with the articles “the, a and an,” which are sometimes used for the interest of lawmakers. For the interest of the community and land laws, it is good to have clarity.

I support.

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

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

**Hon. Mwadime:** Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 28 of the Bill be amended in Sub-clause (5) by inserting the following new paragraphs immediately after paragraph (c) –

“(d) the member practises activities that threaten or abuse the rights or title of the community on the land;

(e) the member practises activities that are contrary to the approved land use plan in respect of the community land.”

Hon. Temporary Deputy Chairlady, for instance, land which has been granted to a member for exclusive use can be reverted to the community. I brought this amendment for prudence purposes.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Mwadime, have you dropped your amendment?

**Hon. Mwadime:** I have not dropped it; I want it be on record.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Chairman, can I hear you first on this amendment by Hon. Mwadime.

**Hon. Mwiru:** Hon. Temporary Deputy Chairlady, I was reading the amendment. Indeed, a person who has been given some rights to practise something or to do some work on community land may decide to abuse that privilege. I consider this to be an additional ground under which the community can decide to deny him the right that he has already been given. Therefore, for the purpose of an individual abusing the rights of many, these are additional grounds that we can afford to put in this Bill to enrich it. I have no problem with it.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Let me hear from one more Member. Are you supporting the amendment by Hon. Mwadime, Hon. Chairman?

**Hon. Mwiru:** I support the additional amendment.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Let me give the opportunity to Hon. Mwadeghu.

**Hon. Mwadeghu:** Asante, Mhe. Naibu Mwenyekiti wa Muda. Ninaomba niliunge mkono pendekezo la Mhe. Mwadime. Ni jambo la kawaida mara nyingi kuona watu wamepewa hifadhi na wenzao katika makao ama shamba ambalo ni la wenyeji kulingana na sheria. Baadaye, wanaanza kutumia hiyo nafasi vibaya. Mara nyingi huwa ni shida kuwaondoa watu hao. Kwa hivyo, pendekezo la Mhe. Mwadime linaweka mkazo, mbinu na njia ambazo zitatumiwa wakati mtu amekuwa ni wa shida na hawezi kukubalika kwa sababu ya unyonge ama vile anavyotumia ardhi hiyo bila kufuata mapendekezo yaliyokubaliwa.

Kwa hayo machache, ninaunga mkono.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Jude Njomo, do you want to contribute to this amendment?

**Hon. Njomo:** Yes, Hon. Temporary Deputy Chairlady. Unfortunately, I want to oppose this amendment. For example, when an investor in a mining activity comes to a community and obtains the right to do mining within the community land, there are agreements that are entered into amongst the investor, the community and the licensing agents. These agreements give the details of what the mining agent can do and cannot do. In this legislation, we are making it too broad that any member of a community can come with any reason to say that his rights are being abused. Those rights should be captured in agreements that the investor will enter into with the community rather than legislating this because it will leave it open for abuse by people who may be against the investment.

Thank you, Hon. Temporary Deputy Chairlady.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Hellen Chepkwony.

**Hon. (Ms.) Chepkwony:** Thank you, Hon. Temporary Deputy Chairlady. I rise to support the amendment. When land has been declared community land, it will be under the community rules. There should be a penalty or punishment to that person who has done what is not supposed to be done in the community land. For example, a community might have made rules and said that their land should not be sold without consultation of the community. Whoever is entangled in that land might sell it to an investor who can invest in something that pollutes the community land. This amendment is going to protect the land. It is also going to safeguard the health of the community living there against shrewd investors. You can find that in towns, an investor buys land and invests in a manufacturing plant. He lets the waste to drain into the rivers, where the public fetch their water. If you go to Nakuru, you will find that there is a lot of pollution in the lake. This amendment is going to protect that. I support the amendment.

Thank you.

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

*(Clause 28 as amended agreed to)*

*Clause 29*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): We have amendments from the Committee Chair and also from Hon. Mwadime. We will begin with the amendment from the Committee Chair.

**Hon. Mwiru:** Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 29 of the Bill be amended—

- (a) in sub-clause (4) by inserting the words “or” at the end of paragraph (a); and
- (b) in sub-clause (6) by deleting the words “one year” and substituting therefor the words “six months”.

The amendment seeks to give a proper grammatical flow as well as to give a more lenient imprisonment penalty other than being too punitive.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Winnie Karimi, do you want to speak to this amendment?

**Hon (Ms.) W.K. Njuguna:** Yes. Thank you, Hon. Temporary Deputy Chairlady. I oppose the amendment on Clause 29 (b) that the words “one year” be substituted with “six months.” Land matters require time and reducing time will lead to making decisions which can affect the community. So, I oppose this amendment so that it can read as “one year” and not “six months.”

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Serut, you have the Floor.

**Hon. Serut:** Thank you, Hon. Temporary Deputy Chairlady. I support the Committee Chair. Land matters are emotive. If you let them continue for a long time, they, sometimes, turn out to be fatal. The earlier some of these issues affecting land matters are disposed of, the better.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Annah Nyokabi, do you want to speak to this?

**Hon. (Ms.) Gathecha:** Thank you, Hon. Temporary Deputy Chairlady. I rise to support this clause. When it comes to the issue of investment or issues relating to land, the earlier the resolution in terms of areas that need resolution, the better for all parties concerned because it forces everybody to bring the information together and have their facts correct before they proceed. One year's delay becomes a bit too long when it comes to issues of land resolution. This is just for the sake of harmony and communities living in peace.

I support.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Yes, Hon. Chachu.

**Hon. Ganya:** Hon. Temporary Deputy Chairlady, I want guidance from the Chair of the Committee on the issue of penalty. We are reducing the penalty from one year to six months, but listening to my colleagues contributing, it sounds as if it is something different from what is in the Order Paper. So, I want the Chair to clarify what exactly he is trying to achieve by reducing the term from one year to six months before I contribute.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Naomi Shaban. I will get to the Chair, Hon. Chachu.

**Hon. (Dr.) Shaban:** Hon. Temporary Deputy Chairlady, I rise to support the amendment by the Chairperson. This is in reference to Clause 29(5) which is very clear. The situations being referred to would be when somebody who has no authority erects or occupies any building or other structure on a designated grazing land, ploughs or cultivates any portion of land, takes up abode or occupies any portion of grazing land or obstructs the access to any watering place. Some of those acts are not very serious offences. I think the reduction of the sentence period from one year to six months is quite in order.

Hon. Temporary Deputy Chairlady, I beg to support.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Chair, could you respond to the concern by Hon. Chachu.

**Hon. Mwiru:** Yes, Hon. Temporary Deputy Chairlady. We have done wide consultations, even with Hon. Chachu. As a Committee, we realised that these offences are not too grave, even in the Penal Code. That is why we reduced the period from one year to half a year. Even in the Penal Code, these are not very serious criminal issues.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Members, I think we have had good contributions.

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

*(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)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Mwadime, you also have an amendment to Clause 29.

**Hon. Mwadime:** Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 29 of the Bill be amended in Sub-clause (5) by inserting the following new paragraph immediately after paragraph (d)-

“(e) carry out any activity on the land other than lawful grazing of stock, which may prevent or restrict the residents of the traditional community concerned from a reasonable exercise of their grazing rights”

This provision is meant to stop the loophole for conflict between pastoralists and other competing land users other than farming, that may interfere with the grazing by the traditional community.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): I will give the first opportunity to the Chair of the Committee.

**Hon. Mwiru:** Hon. Temporary Deputy Chairlady, I am taking offence with the words “traditional community”. We have defined what a community land should be. It does not have to be traditional because there are other definitions. So, by saying “traditional community”, what is Hon. Mwadime trying to infer? There are a number of other factors that make up a community. When you talk of a traditional community, are we out of the definition of “community” provided in the Bill. He needs to explain further.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): What you are asking is valid. Hon. Mwadime, before we open the debate to others, could you explain what you mean by “traditional community”?

**Hon. Mwadime:** When I talk about “traditional community,” I mean all the earlier definitions of “community.” So, “traditional community” means that definition wholesomely. In your definition, you said it is people who have a common ancestry, traditions and many other things.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. ole Kenta, do you want to speak on this one?

**Hon. ole Kenta:** Hon. Temporary Deputy Chairlady, this is over-legislating. We have stated in some parts of this Bill that communities have a right to decide what activity should take place in specific parts of their land. This is not a good inclusion. The Departmental Committee on Lands has already taken care of that issue.

I oppose.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Yes, Hon. Neto.

**Hon. Oyugi:** Hon. Temporary Deputy Chairlady, I support the amendment by Hon. Mwadime. This is an answer to the question that Hon. Serut asked. The context of the Community Land Bill speaks to the definition of the word “community”, which we have not properly nuanced in the definition. That is where the problem starts. I am happy he has raised it. That sets stage for debate on Clause 2. Clause 29(1) says that the customs and practices of pastoral communities relating to land shall be taken into consideration. As you move to Clause 2, it says that community land in pastoralist communities shall be available for use by the

community for grazing livestock, subject to a couple of other conditions. The conditions are then listed.

The amendment by Hon. Mwadime is simply ensuring that those community rights are protected in written law. I am surprised that Hon. Kenta is opposing this amendment. It is a good one.

I support.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Chairman of the Committee, do I give you chance for a point of order?

**Hon. Mwiru:** Yes. I think I was not heard well. My friend, Hon. Neto, must understand the point I was making. We are aware of Clause 2. We are coming to it and making definitions. Certainly, we are talking about the Community Land Bill and not the Traditional Community Land Bill. This is where my fear is. What is “traditional community?” Is it a “community” or a “traditional community?” In that case, even the morphology and the title of the Bill is likely to change to “the Traditional Community Land Bill.” That is where my fear is.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Okay. Let me hear the Member for Naivasha and then I will come to Hon. Manje.

**Hon. Kihagi:** --- (*Off-record*).

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): The Member for Naivasha, you have not inserted your card in the request gadget. Please, proceed and do so.

**Hon. Kihagi:** Thank you, Hon. Temporary Deputy Chairlady. I had a problem with my card.

I want to oppose this amendment based on the fact that it is introducing a foreign term “traditional community” which we have not defined in this Bill. It is also over-legislating. If you look at all the provisions put herein, you will find that trying to defend and protect community land will definitely feel that we have enough clauses for that purpose. Introducing the issue of “traditional community” will be over-legislating and bringing in confusion. People will be acting on flimsy grounds because we will have said; “which may prevent or restrict the residents.” Restrictions may be frivolous, that you will have much litigation on matters that could have been dealt with by the community land law.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Members, before we continue with the debate, I am made to understand that the Chairman would like to move a further amendment on this clause, in agreement with the Hon. Member.

**Hon. Mwiru:** Hon. Temporary Deputy Chairlady, although we might not have agreed with the direction you have been advised on, we have agreed on a very principal issue on this matter. We have agreed with my neighbour and friend, whom I have even worked in his place, that he can drop that because this matter is taken care of by the Bill. Immediately you talk of tradition, it is a serious matter that we need to revisit the whole Bill.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Members, please let me first concentrate on the Mover of the amendment, Hon. Mwadime.

**Hon. Mwadime:** Thank you, Hon. Temporary Deputy Chairlady. There was some misunderstanding with the Chairman. I said that I will move another amendment for dropping the word “traditional” but the amendment remains.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): I am saying that it is the Chairman who can do that further amendment. Hon. Chairman, are you going to move that further amendment?

**Hon. Mwiru:** Yes, Hon. Temporary Deputy Chairlady.

**Hon. (Ms.) Odhiambo-Mabona:** On a point of order, Hon. Temporary Deputy Chairlady.

**The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh):** I want us to debate something that is clear. Right now, there is a bit of an ambiguity between what the Member wants to do and what the Chairman wants to do. If you just allow the Chairman to complete, I will give you a point of order, Hon. Millie and Hon. Serut.

**Hon. (Ms.) Odhiambo-Mabona:** Hon. Temporary Deputy Chairlady, we might be late.

**The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh):** Go ahead. Let us start with Hon. Millie then I will give Hon. Serut and Hon. Mwadime a chance.

**Hon. (Ms.) Odhiambo-Mabona:** Hon. Temporary Deputy Chairlady, thank you for giving me this opportunity. I want some clarification. Initially, I was encouraging Hon. Mwadime to drop the word “traditional” but based on certain consultations, I am told that there is intention to move an amendment to define “traditional community”. That would change perspective. I do not know if that has been discussed with the Committee and whether they are averse to the introduction of “traditional community”. If they are not averse, then it would make sense that this be retained but that at Clause 2, there be an amendment for “traditional community” because those are two different things. “Traditional community” would connote what was intended by this Bill. If you look at the definition section of this Bill, it widens what community is to even modern communities when what we are talking about here is limited to very few communities.

**The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh):** Hon. Member, your point is made. Hon. Manje, sorry, you have been asking for the Floor for a long time.

**Hon. Serut:** On a point of order.

**The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh):** I will come to you Hon. Serut.

**Hon. Manje:** Hon. Temporary Deputy Chairlady, I also want to clarify and say this clause by itself is discriminative. The intent of the Mover was--- For example, if you are using the land for grazing and you go into agreement with an investor who turns to cultivation, then this Act should give a position to kick the investor out of the place. I thought this was properly covered in Section 28 where we said if the investor changes the position, then at that particular point, it is well covered. So, this one is just an addition of what was there. It should be ignored at this particular point.

**The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh):** You are not supporting the amendment; that is your position. Hon. Serut.

**Hon. Serut:** Thank you, Hon. Temporary Deputy Chairlady. I want to oppose that amendment by Hon. Mwadime. If you look at the earlier definition of “community,” it included other communities living within a particular area. The moment we define a community and bring in the word “traditional”, we are trying to exclude any other person other than a person born and bred within a certain class or a certain tribe, which will be very dangerous.

Let us take the earlier definition of the word “community” so that if Hon. Serut lived in Coast Province, brought up his children there, even if he is not from Coast, he is from *bara*, he can be considered as part of that community for the time he will continue living there.

Thank you.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): I give the Floor to Hon. Mary Wambui.

**Hon. (Ms.) Munene:** Thank you, Hon. Temporary Deputy Chairlady for giving me this opportunity. I oppose the amendment because this country has 42 tribes. Each tribe has its own traditions. If I go to the Maasai community and buy land and I am not a resident of the traditional community, I cannot do whatever I want to do. If he deletes the word “traditional” and allows all Kenyans to buy land anywhere, the amendment will be fine. If he insists on the word “traditional”, we are going to divide this country. It is not good.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Let us have Hon. Mwadeghu. Members you know where we are. We cannot over-debate the amendment because this Bill has already been debated. We are at the Committee of the whole House Stage. After Hon. Mwadeghu contributes, I will put the Question.

**Hon. Mwadeghu:** Mheshimiwa Naibu Mwenyekiti wa Muda, laiti sheria hizi zingekuwa katika lugha ya Kiswahili mungeelewa kikamilifu kile ambacho Mheshimiwa Mwadime anamaanisha. Lakini kwa sababu tunazitunga sheria hizi kwa lugha ya Kimombo, Mheshimiwa Mwadime anapotumia neno “*traditional*” anamaanisha wenyeji. Tukianza kuingilia suala la wenyeji ndipo haya masuala mengine yanaingilia. Kuna utata kuwa wenyeji ni kina nani na waliokuja ni kina nani? Haki zao zikoje? Je, waliokuja wakiwa wengi watawanyima wenyeji haki zao? Natumai haya ndio masuala ambayo Mswada huu ulitakiwa ufafanue, ueleze na uweke baana wazi wazi usawa uko wapi. Lakini kwa sababu tunazitunga sheria hizi tukitumia lugha ya Kiingereza, inakuwa shida kwa wenzetu kuona kuwa Mheshimiwa Mwadime analenga wenyeji wa taifa ili wasipokonywe ardhi ambayo wanaitumia. Naomba tumuelewe Mheshimiwa Mwadime kikamilifu.

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

*(Clause 29 as amended agreed to)*

*Clause 30*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): There are two amendments to this clause. One is by Hon. Tiyah Galgallo. Is she in the House? We, therefore, drop her amendment. The other amendment is by Hon. Mwadime. Hon. Mwadime, please, present your amendment.

**Hon. Mwadime:** Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 30 of the Bill be amended in sub-clause (1) by deleting the words “county government or national government” appearing in paragraph (g).

The provision that the community may reserve special purpose areas for any other purpose that may be determined by the county government or national Government creates room for the two levels of government to interfere with the management of community land and can override the community’s decision on how reserves can be used.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Mwadime, could you read the full text of the amendment after the deletion of the words you want removed so that Members can understand?

**Hon. Mwadime:** After the amendment on Sub-clause 30 (g) it will read “any other purpose as may be determined by the community”. The words “county government or national Government” are deleted for the promotion of public interest.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Thank you. It is now clear. Let me start with the Chair then I will come to you Hon. Nassir.

**Hon. Mwiru:** Thank you so much, Hon. Temporary Deputy Chairlady. Why the Committee was for the earlier version and opposing this amendment is because Kenya is still a Republic and a very unitary one at that. It is not federal. Even if it is federal, we are just talking about devolved governments. I only wish to see how a community would want to be on a high rise estate near Wilson Airport because the land that is adjacent is community land. That is why it is necessary to consider things like land use and planning for purposes of not offending what other developments are supposed to be around that area of the community. I am saying this because if today we wanted to build an airport at Lokichoggio and there is community land nearby, it is only necessary that the county and the national governments are considered for purposes of aviation safety. Those are some of the things we are considering.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Naomi Shaban.

**Hon. (Dr.) Shaban:** Hon. Temporary Deputy Chairlady, I want to ask my brother, Hon. Andrew Mwadime, to look at it from the perspective of the Chairperson as he has tried to explain why Clause 30 (i) and (g) are there. You need people to sit together and agree on whatever is going to be done on that particular chunk of land for promoting public interest. The key words here are “public interest”. Since the community cannot make certain decisions alone, it needs to work with the county and national governments to make a decision on an issue like that or even be advised properly so that the right decision can be reached. So, this is not offensive in any way and it does not mean that the county and national governments can do things without the community getting involved.

Thank you.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Nassir.

**Hon. Nassir:** Thank you, Hon. Temporary Deputy Chairlady. I wish to re-emphasise and to request my brother, Hon. Mwadime, to drop that amendment. When we sat down, I for one was a bit weary of this particular clause. We cannot have a situation where public interest regarding security--- What happens when an army barrack is somewhere next to community land? What happens then?

Ultimately, people who lead the county governments and the national Government are still representatives of the same people. The Bill has also already adequately talked about compensating the registered community land owners.

I request him to drop that amendment.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Member for Narok South.

**Hon. ole Lemein:** Thank you, Hon. Temporary Deputy Chairlady. I rise to oppose the amendment. When you look at that particular clause, the community cannot work in isolation. The county and national governments must be involved.

I oppose.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Members, I think, we can put this to Question.

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

*(Proposed amendment by Hon. (Ms.) T.G. Ali dropped)*

*(Clause 30 agreed to)*

*Clause 31*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Chair has an amendment. Hon Tiyah Galgalo also has an amendment but I do not see her in the House.

**Hon. Mwiru:** Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, clause 31 of the Bill be amended by deleting sub-clause (5) and substituting therefor the following new sub-clause—

“(5) For the avoidance of doubt, every woman married to a member of the community shall gain automatic membership of the community and such membership shall subsist until the spouses legally divorce and the woman remarries, after the death of the spouse, from another community.”

Hon. Temporary Deputy Chairlady, we are trying to cushion ladies because they may not be coming from that community. They could be married from another community but that link can only be cut after divorce. We know of a number of traditions such as of the Maasai's, as I was discussing with a few of them who are my close friends and one Sabaot. Indeed, for the sake of aligning this Bill with the other Acts of Parliament that are already in existence, we have to consider that even traditional marriages are also legal marriages for that matter. So, if a woman has to divorce and get married to another community then she ceases to become part of the community because she has gone out of the community. However, as long as she lives there, she remains with the absolute right of being a member of that community.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Member, I first have to propose the Question.

*(Question of the amendment proposed)*

Let me start with Hon. Millie Odhiambo. I hope all of you have copies of the Bill to make your work easier.

**Hon. (Ms.) Odhiambo-Mabona:** Thank you, Hon. Temporary Deputy Chairlady. I am looking at the Bill. In the amendment the Committee is dropping every man. I have not heard the Chairman explaining. I am as much a protector of women as a protector of men. I have no reason why I would not want to protect men and only protect women. Hon. Chairman, especially for me who is married outside the country, I want my husband to be a member of the community as much as I may also be a member of the community in his country. So, I would oppose and encourage that we accept our men. It is discriminatory and unconstitutional to put a different

standard for men as opposed to women. Let the man who comes like my husband is now a Member of Lambwe Community in Mbita. He is a *Jalambwe*.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Okay. I now give the Floor to Hon. Korere Paulata. Do you want to speak on this issue?

**Hon. (Ms.) Korere:** Yes. Thank you. I rise to support the amendment as proposed by the Chair. Many times land issues have been the biggest part of discrimination on the part of women especially where we have group ranches. Most women are not members of the group ranches. They do not participate in the group ranch elections. So, this is a good amendment. I am sorry for my friend but for a long time women have been the custodians of all the bad customs we have in this country.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): I give the Floor to Hon. Fatuma Ibrahim

**Hon. (Ms.) F.I. Ali:** Thank you, Hon. Temporary Deputy Chairlady. I oppose this amendment. Sub-clause 31(5) is very comprehensive and defines both men and women. In my view, this amendment is to demean women because it shows that it is only women who marry from outside their community. Both men and women marry from outside and move to new localities and are entitled to benefit from different communities. This should be removed.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Your point is made. Hon. Member for Turkana South.

**Hon. Ekomwa:** I also oppose the amendment. Other than what Hon. ladies have said, nowadays love is not genuine.

*(Laughter)*

Most of the love that exists is China-made and for the sake of taking care of some of the resources, men or women might decide deliberately to use love to grab land or resources in communities. We must take care of this. That is why I oppose this amendment.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Mishi Juma.

**Hon. (Ms.) Khamisi:** Asante sana, Mhe. Naibu Mwenyekiti wa Muda. Naunga mkono mabadiliko ya Kamati kuhusu huu Mswada. Nataka kumwambia Mhe. Milly tungeweza kuchukuwa maoni yake lakini anapooa haendi kwa akina bibi yake na hatapewa mali yoyote huko. Lakini bibi anapoolewa anakaa kule kwa akina bwana na pia hupata urithi huko. Kwa hivyo, mabadiliko haya ni mazuri kwa sababu atakuwa pale mpaka wakati wataawachana ama kuolewa kwa jamii nyingine. Kwa hivyo, mabadiliko haya yako sawa na sahihi nayaunga mkono kwa dhati.

**Hon. Member:** Hon. Temporary Deputy Chairlady---

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Member, how have you got the microphone? I have not recognized you; I will give you the Floor later. Let me do it sequentially. I know you are all excited about this. Let us do it slowly. I am not cutting off anybody's time. Hon. Junet is your card on intervention or where are you?

**Hon. Nuh:** Thank you, Hon. Temporary Deputy Chairlady. I wanted clarification from the Chair of the Committee.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Chair of Committee, please listen because the Member is asking for clarification.

**Hon. Nuh:** I wanted a clarification from the Chairman of the Committee---

*(Loud consultations)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Please reduce the consultations.

**Hon. Nuh:** The way I have understood this amendment is that it is protecting women who are married in certain communities so that they can benefit from the community land. What happens in a case where a woman decides to go and live in a community and does not get married but has socio-economic interest in that community?

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): He is asking for clarification from the Chair, that is how he began. Chair do you want to clarify?

**Hon. Nuh:** I have a case and point from my place.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): No, I do not need the case in point. Chair do you want to clarify. Please, Members relax.

**Hon. Mwiru:** Thank you so much for the clarification you are seeking. It is important to note what we have dropped just a few minutes ago on traditional communities. That is what we were trying to caution because there could be a person who has been living with another for years. We have already taken care of that particular clarification you are seeking in the earlier amendments that were dropped by Hon. Mwadime.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): I will give Hon. Nyikal and one more person and then we vote.

**Hon. (Prof.) Nyikal:** Thank you, Hon. Temporary Deputy Chairlady, I oppose this amendment for a very simple reason that somebody can go to court and declare this law unconstitutional because---

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Chair, are you listening?

**Hon. (Prof.) Nyikal:** Chair, there is an issue with this amendment because it is actually against men. Somebody can go to court and declare this law unconstitutional because it clearly discriminates against men. In the Constitution it is clear there will be no discrimination on any basis including gender.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Leader of Majority Party.

**Hon. A.B. Duale:** Thank you, Hon. Temporary Deputy Chairlady. What brought me back to this House is this amendment. From the outset it says for avoidance of doubt, every man or woman married to a member of the community--- First in my community nobody gets married to a community.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Leader of the Majority Party, are you reading the amendments of the Bill or what is in the Bill?

**Hon. A.B. Duale:** How many Order Papers are there?

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): No, I am asking are you quoting the Bill or what the Chair is amending.

**Hon. A.B. Duale:** I am reading what the Chair is amending. "For avoidance of doubt, every woman married to a member of a community shall gain automatic membership of the community and such membership shall subsist unless the spouses legally divorce and the woman remarries, after the death of the spouse, from another community."

First, from the outset, there is the element of absolute discrimination because you are biased to one gender. Secondly, you know the man from Emurua Dikirr who is the only member in this House who is not married. So, he does not understand these matters.

*(Laughter)*

**The Temporary Deputy Chairlady** (Hon. (Ms) Shebesh): Leader of the Majority Party, please finish.

**Hon. A.B. Duale:** He is about to get married but he is not yet married. Secondly, different communities view land in relations to women. We are making these laws for all the 42 communities. I will request the Chair to withdraw because the provision in the Bill is better. Let us leave it the way it is.

**The Temporary Deputy Chairlady** (Hon. (Ms) Shebesh): Hon. Francis Ndiritu. Please Members, relax I will get to you.

**Hon. Nderitu:** Whereas I am a Member of that Committee, I am almost changing my mind. I have a few examples of where men, through negotiations in the family, have settled on the other side of the land where the ladies---

**The Temporary Deputy Chairlady** (Hon. (Ms) Shebesh): So you are opposing and you are a Member of the Committee?

**Hon. Ndiritu:** Yes, because---

**The Temporary Deputy Chairlady** (Hon. (Ms) Shebesh): We normally do not allow Members of the Committee to change their minds on the Floor. You should discuss with your Chair.

*(Loud consultations)*

Hon. Members, everybody wants to speak at the same time. If you allow me, I will take two more members.

Hon. Junet, you have already spoken but you are showing me the Constitution. Do you want to quote something?

**Hon. Nuh:** Thank you so much, Hon. Temporary Deputy Chairlady. Article 27(3) of the Constitution says that women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres. How then do we contravene the Constitution? What about if a man is married by a woman?

**The Temporary Deputy Chairlady** (Hon. (Ms) Shebesh): Hon. Chairman, you must have read the mood of the House.

*(Loud consultations)*

Hon. Members, it is now with the Chair, as the owner of the amendment.

**Hon. Mwiru:** Hon. Temporary Deputy Chairlady, for the first time, I have heard the lady Hon. Members in this House support men, especially, Hon. Millie Odhiambo. I am so convinced from the point of Hon. Millie Odhiambo-Mabona that from where I am, and after consultation with the Members who said they are trying to think again, I feel like I should drop the amendment and take what is in the Bill. That is my word.

*(Applause)*

**The Temporary Deputy Chairlady** (Hon. (Ms) Shebesh): The amendment belongs to the Chair. Since the Chair has dropped it, there is nothing to debate, Hon. Members.

**Hon. Mwiru:** Hon. Temporary Deputy Chair, I have dropped it. I will take what was originally in the Bill.

*(Proposed amendment by Hon. Mwiru dropped)*

**Hon. Ngeno:** On a point of order, Hon. Temporary Deputy Chairlady.

**The Temporary Deputy Chairlady** (Hon. (Ms) Shebesh): It is still me who decides whether I will give you the chance to raise your point of order. It does not matter how loud you shout. When I decide to give you the chance to raise your point of order, I will do so.

Hon. Members, I am giving direction that Hon. Tiyah had an amendment on this one and it is dropped. Now the amendment by the Chair is also dropped. So, there is nothing to discuss because there is no amendment. We have reverted back to what was on the original Bill.

*(Proposed amendment by Hon. (Ms.) T.G. Ali dropped)*

*(Clause 31 agreed to)*

*Clause 32*

**The Temporary Deputy Chairlady** (Hon. (Ms) Shebesh): We had an amendment by Hon. Tiyah Galgalo.

**Hon. Ngeno:** --- *(Off record)*

**The Temporary Deputy Chairlady** (Hon. (Ms) Shebesh): Hon. Ngeno, please, I am trying to connect to the House.

There was an amendment by Hon. Tiyah Galgalo but she is not in the House. So, we drop that amendment.

*(Proposed amendment by Hon. (Ms.) T.G. Ali dropped)*

*(Clause 32 agreed to)*

*(Clauses 33 and 34 agreed to)*

*Clause 35*

**Hon. Mwiru:** Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 35 of the Bill be deleted and substituted therefor with the following new clause—

Existing rights to use and occupy community land.

35. (1) Any person who immediately before the commencement of this Act, held a right to use and occupy any part of community land, whether by virtue of any authority granted under any law or otherwise than under a lease, may continue to use and occupy such land under that right, subject to the same terms and conditions until the lease expires, after which the provisions of sections 28 and 29 shall apply.

(2) Any conversion which commenced before the promulgation of the Constitution shall be deemed to have commenced under this Act, while any conversion commenced after the promulgation of the Constitution shall be null and void.

Hon. Temporary Deputy Chairlady, on this clause, we are proposing that any conversion which commences before promulgation of the Constitution shall be deemed to have commenced under this Act. Any conversion that commences after promulgation of the new Constitution shall be null and void.

After the promulgation of the new Constitution, there has been a rush by the county governments to deal with community land. We are saying that whatever transaction is done by the counties or any other body after the promulgation of the Constitution is null and void because the Constitution is very clear. That is why we are introducing that clause.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Chachu Ganya.

**Hon. Ganya:** Thank you, Hon. Temporary Deputy Chairlady. At the outset, I strongly support this amendment. I want to thank this Committee which is really progressive and has considered very many critical issues. We have worked with it as pastoralist Members of Parliament, and most of our issues have been addressed. In our counties, governors are busy allocating land to investors yet they have no role at all to do that. This law makes all those transactions null and void.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Member for Naivasha.

**Hon. Kihagi:** Hon. Temporary Deputy Speaker, I support this amendment. The first amendment brings clarity. It is also sort of a saving clause to people who had invested in community land by agreement to make sure they are not chased away just because the Community Land Bill has come into place.

Secondly, there has been a rush by the county governments to alienate community land. The Constitution is very specific that community land shall not be alienated other than through a law that shall be passed by this Parliament.

However, I have a concern with the last sentence. I am wondering whether we need to add the following words: "After the promulgation of the Constitution, it shall be as per the provisions of this Act."

*(Hon. Kipyegon consulted loudly)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Ngeno, kindly lower your voice. At the Committee of the whole House, we need to be attentive because we are rewriting the law. Hon. Kihagi, what were you saying about the last sentence?

**Hon. Kihagi:** The last sentence reads: “Any conversion which commenced before the promulgation of the Constitution shall be deemed to have commenced under this Act, while any conversion commenced after promulgation of the Constitution shall be null and void.”

I was proposing that we add the words: “Shall be deemed to be null and void unless it is concluded under the provisions of this Act.”

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Kihagi, I think you know the procedure of the House. It is only the Chairman who can do a further amendment unless you had approached him to move a further amendment on that clause. Can you approach the Chairman and see if he can agree with your further amendment?

**Hon. Kihagi:** I am well guided, Hon. Temporary Deputy Chairlady.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Serut.

**Hon. Serut:** I want to support the amendment, subject to the Chair of the Committee making the pronouncement that anything which is done before the promulgation of the Constitution 2010 is legal. We do not want a situation where anything which was done under the Trust Land Act is nullified by the new law.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Serut, I want you to be clear. Are you opposing the amendment?

**Hon. Serut:** I have been trying to consult with the Chair because community land is what was previously referred to as trust land. It used to fall under the Trust Land Act.

*(Loud consultations)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Before the Leader of the Majority Party came, the House was very quiet. Please, consult quietly.

Make your point, Hon. Serut.

**Hon. Serut:** Hon. Temporary Deputy Chairlady, I have no problem with the amendment by the Chairman. However, we want some clarity on any actions or omissions which were done before the Constitution of Kenya 2010, when Hon. Junet was the Chairman of Migori County Council. What happens to those title deeds?

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Chairman, would you like to clarify so that we debate something that is clear? Please, give him guidance.

**Hon. Mwiru:** Hon. Temporary Deputy Chairlady, I am happy with the concerns which Hon. Serut has. However, it is important to note that before the Constitution of Kenya 2010, there was no community land. It was called trust land. At that particular time, the county councils and municipal councils could transact on those lands. There are other laws governing where there is fraudulence. The county governments are supposed to hold this land in trust of the community. This Bill says that there cannot be any further transactions. Therefore, any activity that has been done after we got the Constitution of Kenya, 2010 is null and void. So, what has been there before can be dealt with in a different regime, including historical injustices and fraudulent land acquisitions.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Nassir.

**Hon. Nassir:** Hon. Temporary Deputy Chairlady, first of all, I wish to inform Hon. A.B. Duale that I am on this side because I am consulting. I have not defected. I am on the right path.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Go ahead, Hon. Nassir. Let us stick to the issues before the House.

**Hon. Nassir:** I am clarifying because I heard him comment on it.

This country has seen bloodshed because of land that has been grabbed. Trust land was stolen.

Clause 35 (2) says “Any conversion which commenced before the promulgation of the Constitution shall be deemed to have commenced under this Act, while any conversion commenced after the promulgation of the Constitution shall be null and void.”

Let us leave this clause the way it was in the original Bill. Let us not give leeway to people who stole land. Many Members want to ensure that we reject this particular amendment. Trust land was stolen from Kenyans.

*(Applause)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Johana, do you want to contribute to this amendment?

**Hon. Kipyegon:** Hon. Temporary Deputy Chairlady, I do not want to contribute to this amendment. I will only support my brothers who are proposing that Clause 35(2) should be deleted. Other than the trust land which was stolen, there are substantive pieces of land which are occupied on leases today. The communities which were supposed to be holding that land are suffering. That is why I believe that Clause 35(2) should be deleted.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Fatuma.

**Hon. (Ms.) F. I. Ali:** Thank you, Hon. Temporary Deputy Chairlady. I strongly oppose the amendment. I think we are legalising stolen trust land and glorifying people who have stolen land that belonged to communities that lived in trust land. I think some members of this Committee are beneficiaries of some of this land which was stolen. I think they are protecting and safeguarding that.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Fatuma, please do not take our debate there.

**Hon. Mwiru:** On a point of order, Hon. Temporary Deputy Chairlady.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Committee Chair, you have the Floor.

**Hon. Mwiru:** Hon. Temporary Deputy Chairlady, I am rising on a point of order for the wordings and the statement by Hon. Fatuma that the Committee could have been a beneficiary of the corrupt deals that had been done before the promulgation of the new Constitution.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Fatuma, please withdraw and apologise.

**Hon. Mwiru:** Hon. Temporary Deputy Chairlady, we are doing this law for the improvement of this country. How can she insinuate that? Can she prove that any member of this Committee benefited from the earlier deals?

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Committee Chair, I have heard you. Hon. Fatuma, you are out of order. This debate is becoming emotional. It does not need to become emotional. Hon. Fatuma, can you, please, withdraw and apologise to the Committee?

**Hon. (Ms.) F.I. Ali:** Hon. Temporary Deputy Chairlady, I wish I had the information to produce here. I withdraw that statement.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Mishi.

**Hon. (Ms.) Khamisi:** Asante sana Mhe. Naibu Mwenyekiti wa Muda. Ninapinga sana mabadiliko haya kwa sababu tunajua kuwa Mswada wa mambo ya mashamba haukuzungumzia Mswada wa kipekee katika mambo ya dhuluma za kihistoria, haswa mambo ya mashamba. Kule kwetu Pwani, zile manuspaa ambazo zilikuwa pale zilifanya madhambi mengi sana kuhusu ardhi za jamii. Ardhi nyingi za jamii zilichukuliwa. Nyingine ziliambiwa ni wakfu lakini zinatumiwa na watu binafsi. Kwa hivyo, kuweka mabadiliko haya kunamaanisha kuwa walioibiwa ardhi zao hawatapata haki. Kwa hivyo, ninaunga mkono ibaki vile vile ilivyokuwa imewekwa awali katika Mswada huu ndio tuupitishie lakini mabadiliko haya yataleta cheche kubwa sana ambazo hatuzitaki katika nchi yetu.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Members, I do not want to interrupt you when you are speaking, but when you are contributing at this stage of the Committee, please just state whether you are opposing or supporting and give one line why you are doing so. It is not the time to start debate again. Leader of the Majority Party, I will give you the chance and then I will put the Question.

**Hon. A. B. Duale:** Hon. Temporary Deputy Chairlady, let me bring some sanity. I indulge the Chair of the Committee. Land is very emotive. If you go by this amendment, which says "Any conversion which commenced before the promulgation of the Constitution shall be deemed to have commenced under this Act," I am telling you that you will bring chaos in this country. Committee Chair, look at the amendment in the original Bill. Clause 35 is very good. Clause 35 (1) (a) says:

"such right is recognised and registered in accordance with this Act."

There are Kenyans who got land legally after the promulgation of the new Constitution.

We cannot lump the two categories of people together. So, I really sympathise with the Chair.

Finally, on a light touch, from what we have heard on the ground, Hon. Nassir is the last person we need in the Jubilee Coalition. If we could bring Hon. Millie Odhiambo closer, we would win a seat. With Hon. Nassir, I am sure we would not win.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Chair, I want to put the Question. I am giving you just one minute to close the debate.

**Hon. Mwiru:** I can understand the point from which every Member is talking. However, even before I drop or stand by my amendment, it is important that I am also heard. Since 2010, when the description of a community land was done by the Constitution, I want to know where the Constitution says other transactions in that particular community land would be null and void. Do I just go against the Constitution, which is superior to this law we are making so that I can appease Kenyans? The only option we have now---

*(Loud consultations)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): I will engage the Chair on your behalf. So, if you want to engage the Chair, do it through me. Continue, Chair.

**Hon. Mwiru:** I will read the provision of Article 63(3) and (4) of the Constitution. It states:-

“(3) Any unregistered community land shall be held in trust by county governments on behalf of the communities for which it is held.”

(4) Community land shall not be disposed of or otherwise use except in terms of legislation specifying the nature and extent of the rights of members of each community individually and collectively.”

Hon. Temporary Deputy Chairlady, that is exactly what I am trying to do here. After 27<sup>th</sup> August 2010, no other activities should have taken place on a community land. I am just conferring in this Bill what the Constitution says.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): I think we have heard the explanation. I will now put the Question.

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

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

*(Clause 35 as amended agreed to)*

*(Clause 36 agreed to)*

#### *Clause 37*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): We have proposed amendments by the Chair and Hon. Mwadime. If the amendment by the Chair is carried, we will drop Hon. Mwadime’s amendment.

**Hon. Mwiru:** Thank you, Hon. Temporary Deputy Chairlady. I beg to move:-

THAT, Clause 37 of the Bill be amended—

(a) by inserting the words “Subject to any other relevant written law” at the beginning of the opening sentence;

(b) by renumbering the existing clause as sub-clause (1);

(c) by inserting the following new sub-clauses immediately after sub-clause (1)—

“(2) An agreement relating to investment in community land shall only be made between the investor and the community.

(3) No agreement between an investor and the community shall be valid unless it is approved by two-thirds of members at a community assembly meeting called to consider the offer and at which a quorum of two-thirds of the members of that community is obligatory.

(4) The community may request the guidance and assistance of the county government or any other relevant stakeholders in considering the offer of investment.”

The amendment seeks to protect members of the community and give them power to make decision on investments on their land. That is so that a few unscrupulous people or members of that community do not make decisions on behalf of the community.

That is the essence.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Sakuda.

**Hon. ole Sakuda:** Thank you, Hon. Temporary Deputy Chairlady. I support the amendment.

As we sit in the Departmental Committee on Lands, all we have been trying to do is make sure that the power on community land goes back to members of those communities. We know a lot of issues and investment decisions had been taken by others outside the communities. By making sure that we go with this, the power to make decisions on investments squarely lies with the owners of the land – the community's members.

I support.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Member for Turkana South.

**Hon. Ekomwa:** Hon. Temporary Deputy Chairlady, I support the amendment.

If the Chairman listens, I request him to take note of a word I am missing in the part that reads "an agreement relating to the investment in the community land shall only be made between the investor and the community." I thought the phrase "a registered community" could have been used. This is because when you just say "community," it becomes ambiguous. It is better to be specific and say "a registered community." The agreement between specific communities should be by people who have registered that land.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Let us hear Hon. Junet first, and then the Leader of the Majority Party will follow.

**Hon. Nuh:** If I heard the Chairman of the Committee properly, I want a clarification from him. First, the only land for any economic development remaining in this country is community land. If he says you have to engage two-thirds of the community to agree that an investor be given opportunity to invest in that land, how does one raise two-thirds of a community which could be having a million people?

*(Hon. Nassir raised his hand)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Nassir, you cannot clarify that because he is asking the Chairman.

Let us hear the Hon. Member for Samburu West.

**Hon. Lati:** Thank you, Hon. Temporary Deputy Chairlady. It is very easy to raise two-thirds---

*(Loud consultation)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Please, let us listen to each other.

Yes, Hon. Member.

**Hon. Lati:** Each community group has a register. We know all the members in that register. We know what two-thirds of each register is. For instance, my group ranch has 212 members. Two-thirds of that can be easily calculated. Hon. Junet, who comes from Migori County, needs some guidance on how group ranches operate.

Thank you.

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

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Mwadime, your amendment is dropped.

*(Proposed amendment by Hon. Mwadime dropped)*

*(Clause 37 as amended agreed to)*

Clause 38

**Hon. Mwiru:** Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 38 be amended by deleting the word “bye-laws” wherever it appears and substituting therefore the word “by-laws”.

“Bye” means “*kwaheri*” in Kiswahili. It should be substituted with the word “by” wherever it appears.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): That is a very easy one.

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

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

*(Clause 38 as amended agreed to)*

Clause 39

**Hon. Mwiru:** Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 39 of the Bill be amended in the opening sentence in sub-clause (2) by inserting the words “and county” immediately after the words “subject to national”.

It is necessary to include the county governments in the clause since in terms of the Fourth Schedule of the Constitution county governments perform some of the functions listed in the clause including survey. That is why we are bringing in the county governments.

*(Question of the amendment proposed)*

**Hon. A.B. Duale:** Hon. Temporary Deputy Chairlady, I want to support this amendment. The way it is in the Bill is based on Article 66 of the Constitution. If we leave this land to the owners, and the way the world is going, somebody somewhere must regulate because people will come and do any kind of business. Some people will start doing some things which are contrary to our culture, our religion and our way of life. So, I want to thank the drafters of this Bill. I want to thank the Chairman of the Committee. You have seen that there are people who want to make money out of some other business.

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

*(Clause 39 as amended agreed to)*

Clause 40

**Hon. Mwiru:** Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 40 of the Bill be amended in Sub-clause (2) by deleting the word “constitutions” appearing at the end of the sentence and substituting therefor the word “by-laws”.

*(Question of the amendment proposed)*

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

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

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): We have dropped Hon. Tiyah’s amendment because she is not in the House.

*(Proposed amendment by Hon. (Ms.) T.G. Ali dropped)*

*(Clause 40 as amended agreed to)*

*(Clause 41 agreed to)*

Clause 42

**Hon. Mwiru:** Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, clause 42 of the Bill be deleted and substituted therefor by the following new clauses—

Arbitration.	42. (1) Where a dispute relating to community land arises, the parties to the dispute may agree to refer the dispute to arbitration. (2) Where the parties to an arbitration agreement fail to agree on the appointment of an arbitrator or arbitrators, the provisions of the Arbitration Act relating to the appointment of arbitrators shall apply.
No. 4 of 1995	
Judicial proceedings	42A. (1) Where all efforts of resolving a dispute under this Act fail, a party to the dispute may refer the matter to court. (2) The Court may— (a) confirm, set aside, amend or review the decision which is the subject of the appeal; or (b) make any order in connection therewith as it may deem fit.

The import of this deletion is that the amendment seeks to give communities the freedom to handle the arbitration process in the manner they deem fit. However, in the absence of an agreement on the arbitration process, the provision of an Arbitration Act applies. The law seeks to provide for the use of judicial proceedings if the use of alternative dispute resolution mechanisms provided for under the Act has failed. It is not necessary for an individual or a member to just go straight to court. We also want to promote alternative dispute resolution mechanisms. That is where we are coming from.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Let us have Hon. Ngeno.

**Hon. Kipyegon:** Thank you, Hon. Temporary Deputy Chairlady. I am in total agreement with the Chair on this particular amendment. When dealing with matters of land issues, before all the other procedures are exhausted, some people usually run to court and block the process of adjudication or demarcation. It is going to save people the agony of waiting for the courts to make those decisions.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): I give the Floor to the Hon. Member for Turkana South.

**Hon. Ekomwa:** Hon. Temporary Deputy Chairlady, I stand to support this amendment. The most critical problem faced by pastoralists or those who own community land is the issue of boundary disputes. This clause has taken care of that. All the conflicts that we have been experiencing in pastoralist areas are because of land. You will find that they go to war because of grazing land and water points. This is not just a simple issue. This is a serious issue to us. We have to maximise all the avenues. The communities should meet to discuss their issues. If they do not agree, they can go to court. Forming commissions will not solve the problem.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Let us have Hon. Neto.

**Hon. Oyugi:** Thank you, Hon. Temporary Deputy Chairlady. I have no problem with the proposal to include arbitration. I would like to request the Chair of the Departmental Committee on Lands that in Clause 42(1), ordinarily when people enter into an agreement, they expressly state that they want to be bound by arbitration rules. The rider he has given that they must be subject to arbitration rules ought to be an express one. That is the first part.

Secondly, ordinarily when you are subjecting yourself to arbitration, you also agree on which arbitration rules you want to be bound by. I am happy that, for example, if at all the arbitration agreement says that we want to be bound by the Kenyan Arbitration Act, that should be an express provision of that particular Arbitration Act.

Thirdly, he is giving the court judicial powers. This is superfluous. Ordinarily, when the court gets an arbitration agreement and there is a contest on the terms of the arbitration conclusion, the court will then, of its own motion, have powers that it can invoke. It is not important to have them provided in this manner.

With those three things, I have no problem.

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

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

*(Clause 42 as amended agreed to)*

*(Clause 43 agreed to)*

#### *Clause 44*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): The Chair has an amendment.

**Hon. Mwiru:** Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 44 of the Bill be deleted and substituted therefor with the following new clause—

General penalty.

44. A person convicted of an offence under this Act for which no other penalty is provided shall be liable to a fine not exceeding one hundred thousand shillings or imprisonment for a term not exceeding six months or to both.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Member for Naivasha.

**Hon. Kihagi:** Thank you, Hon. Temporary Deputy Chairlady. I support this amendment. This is something we really deliberated on especially on the punitive sentence that had been set. We saw that some of the offenders may just be petty intruders. A nomadic pastoralist could just be grazing and just happens to encroach onto another community's land. We found that six months imprisonment or Kshs100,000 fine as opposed to one year imprisonment or Kshs500,000 fine may be more reasonable for such a petty offender.

I support this amendment.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Anne Nyokabi. I will come to you Hon. Fatuma after Hon. Nyokabi.

**Hon. (Ms.) Gathecha:** Thank you, Hon. Temporary Deputy Chairlady. I rise to support. Penalties should be commensurate with the type of crime committed.

*(Loud consultations)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Please, lower your consultations.

**Hon. (Ms.) Gathecha:** For encroachment on other people's land unintentionally, six months instead of one year and a penalty of Kshs100,000 instead of Kshs500,000 as had been proposed, would be more in line.

I support.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Okay. Hon. Fatuma.

**Hon. (Ms.) F.I. Ali:** Thank you, Hon. Temporary Deputy Chairlady. I support this amendment. The Committee really thought out this amendment. Knowing the communities that occupy community land, there is frequency of conflict and we should have even reduced the fine to Kshs50,000 and three months.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Sakuda.

**Hon. ole Sakuda:** Thank you very much, Hon. Temporary Deputy Chairlady. The reasoning in this is that occasionally, for us, as Maasais, our cows are brought to Nairobi and even to some land around Thika. If somebody is told to pay Kshs500,000 fine just because their cows have crossed a boundary to graze on the other side it becomes unbearable. So, we are trying to be lenient to our people. If you tell a Maasai to pay Kshs500,000, it means selling all his cows.

I support.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Junet.

**Hon. Nuh:** Thank you, Hon. Temporary Deputy Chairlady. Hon. Member for Turkana South is on record saying that communities fight over grazing land and water points. They kill each other in thousands. Ever year the Turkana and Pokot kill each other. So, we have to make this fine punitive by jailing offenders for three years so that they do not fight over land anymore.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): The Leader of the Majority Party.

**Hon. A.B. Duale:** Hon. Temporary Deputy Chairlady, Hon. Sakuda must expunge his comments. We are not making laws for the Maasai community.

Why Hon. Fatuma is reducing the fine to Kshs250,000 is because her camels have been encroaching on our land. Her camels move around Garissa and Wajir counties. They also go to conservancies owned by other people. The best thing we can do even for the Maasai community during drought - the Turkanas, Somalis and the Samburus - is to restrain our animals to our regions.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): The Leader of the Majority Party, please, be brief.

**Hon. A.B. Duale:** I support what is in the Bill so that people know that land is owned by particular community and you cannot be a squatter through grazing and looking for water.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Leader of the Majority Party, I was just asking you to refer to the Member as Hon. Fatuma.

**Hon. A. B. Duale:** Not only as Honourable but she is a great Woman Member of Parliament for Wajir, one of the best from the North Eastern region.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Thank you, Hon. Member. Let us have Hon. Nyikal.

**Hon. (Prof.) Nyikal:** I oppose this amendment because from the explanation being given, there is an assumption that only simple offences will take place. Therefore, we are limiting. What is in the Bill as it is was not limiting, which is giving the magistrate or the judge the leeway to know if it is a serious offence they will put at a higher fine and likewise if it is less serious. However, this one limits it. The assumption is that we are talking of only minor offences in this. If we leave it like that, there is discretion. So, I oppose.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): We have heard from both sides. So, I put the Question

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

You are doing the wrong thing. What this means is that the clause remains as it is in the Bill.

*(Clause 44 agreed to)*

*(Clause 45 agreed)*

*Clause 46*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Members, we have an amendment from the Chair from Clause 46.

**Hon. (Ms.) Odhiambo –Mabona:** On a point of order, Hon. Temporary Deputy Chairlady. I can see the proposed amendments by the Chair from Sub-clause 6. I seek clarification from the Chair of the Committee in relation to Sub-clause 46(1)

**The Temporary Deputy Chairman** (Hon. (Ms.) Shebesh): Hon. Millie, let the Chair move and then you can speak on it. Hon. Chair, please move.

**Hon. Mwiru:** Of course gracious lady Hon. Millie, I have not moved yet.

**Hon. A. B. Duale:** *(Inaudible)*

**Hon. Mwiru:** Hon. Temporary Deputy Chairlady, protect me from this man who has assumed--- We know he is the Hon. Leader of the Majority Party, but I have to move this Bill.

**The Temporary Deputy Chairman** (Hon. (Ms.) Shebesh): Go ahead Hon. Chair I am protecting you.

**Hon. Mwiru:** That is why I am helping him in moving this amendment.

Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, clause 46 of the Bill be amended—

(a) in sub-clause (6) by deleting the words “such time as the Cabinet Secretary may determine” and substituting therefor the words “five years of the enactment of this Act”;

(b) by deleting sub-clause (7) and substituting therefor the following new sub-clause—

“(7) If at the expiry of the five years specified in subsection (6) the adjudication is not concluded, such land shall be deemed to be community land and shall be dealt with in terms of the provisions of this Act.”

(c) by inserting the following new sub-clause immediately after sub-clause (8)–

“(9) The provisions of this section shall be subject to the provisions of Article 63(4) of the Constitution and the legislation providing for the review of grants and dispositions.”

The amendment gives new timelines especially where the Government has been dragging its feet in some of the areas where they were supposed to have done adjudication. What is happening in the country is that the adjudication section had been granted in 1960s and yet the Government is not yet able to complete the adjudication process. We are saying they must fast track the adjudication process to make sure that title deeds are given within five years, unless they come back to Parliament to seek further extension for that matter.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Milly Odhiambo, you can now take the Floor.

**Hon. (Ms.) Odhiambo-Mabona:** I just wanted to get some clarification from the Chair of the Committee because the issue I want to raise is not arising from the sub-clauses he has raised. If you look at sub-clause 1, it says:

“(1) Unless the contrary is specifically provided in transitional this Act, any right, interest, title, power, or obligation acquired, accrued, established, coming into force or exercisable before the commencement of this Act shall be deemed to have been acquired under this Act.”

I do not know if the Committee considered this because it looks like we are actually negating what we have already passed. Maybe the Chair could look into that.

Further, with your indulgence, Hon. Temporary Deputy Speaker, I thought I would be sitting until we get to Clause 2. Looking at Article 63 of the Constitution on the definition of “community land”, maybe when we get there the Chair could reconsider. We are going way beyond the definition because we are trying to put what was in the trust land---

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Are you on Clause 2, Hon. Milly? I think you know that is totally out of order.

**Hon. (Ms.) Odhiambo-Mabona:** That is why I actually asked for your indulgence because I am leaving.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Okay.

**Hon. (Ms.) Odhiambo-Mabona:** I was saying this because I am not going to be there and it will come when I have left. I just wanted if they could kindly relook at the issue of definition because I know that---

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Let us not preempt debate. Hon. Milly, I suggest you approach the Chair.

**Hon. (Ms.) Odhiambo-Mabona:** Okay, thank you, Hon. Temporary Deputy Chairlady.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Ngeno.

**Hon. Kipyegon:** Thank you, Hon. Temporary Deputy Chairlady. I wish to oppose this amendment vehemently. I am doing this because I come from an adjudication section which was

demarcated in 1986 and up to date no titles have been given. Suppose today, those sections are to be reverted to community land what will happen? The communities who are living there will fight forever.

I think the Chair should consult further on this one. Please do not lead our country into chaos. Yes you are helping us, but suppose somebody was to go to court on those sections and stops the demarcation process? Unless you put an “x”, that no one should go to court to stop the demarcation until it is complete; also unless you put an “x” that for any land which has been adjudicated a certain timeline be set to complete adjudication and issuance of titles--- When you make it ambiguous, what will happen to those sections which are under demarcation and are not completed? I totally oppose it unless the Chair goes back---

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Member for Narok South let me hear you.

**Hon. ole Lemein:** Thank you, Hon. Temporary Deputy Chairlady. Please protect me from Hon. ole Sakuda. I rise to support. In essence when you look at this particular proposal by the Chair, it fast tracks the issue of adjudication of the lands concerned. I acknowledge the concern of *Mhe. Ngeno* but this proposal will assist in fast tracking the same. I support.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): I give the Floor to Hon. Mishi.

**Hon. (Ms.) Khamisi:** Thank you, Hon. Temporary Deputy Chairlady. I support this amendment. Adjudication process has taken a long time. This amendment has given a time frame and it is going to be done within that specified time. I support this amendment because for a long time people have just been told there will be adjudication in certain areas but they have stayed for even 10 years before the completion of that adjudication process.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): The last one is Hon. ole Kenta.

**Hon. ole Kenta:** Hon. Temporary Deputy Chairman, I would like to agree with Hon. Ngeno because from experience, I know that there are processes which are supposed to be followed in case disputes arise. People have been shown their parcels of land and the moment you revert it back to community land, you are going to start from the beginning. It is safe to take what is in the Bill.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): So, you are opposing the amendment?

**Hon. ole Kenta:** Yes.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Leader of the Majority Party.

**Hon. A.B. Duale:** Hon. Temporary Deputy Chair, I oppose the amendment.

I would like to indulge the Chair of the Committee to look at his amendment. In the Bill, it is securing an ongoing adjudication but his amendment says that if adjudication is not concluded, such land shall be deemed to be community land. It is very dangerous because if the adjudication is not complete, the community will come back. I know where he comes from. The area from which the Member comes is in Mau, which is a hot area.

The Departmental Committee Chair has the good intention of making sure adjudication is done within five years but if you look at it, the Bill safeguards an adjudication process. In his amendment, however, he is saying that if the adjudication is not complete, another community can claim that land. I beg that he drops this amendment and leaves it the way it is in the Bill.

Alternatively, he can introduce a further amendment to bring in the five year clause. The five year safeguard is very good.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Nyikal.

**Hon. (Prof.) Nyikal:** I also oppose this amendment because putting timelines and numbers in law is normally a difficult thing. Sometimes it is not possible. In this case, should it fail, who is being punished? It is not the Government that is in charge, but the community.

As much as the amendment is intended to force the Government to act, should the Government fail to act, who gets punished? It is not the Government officers, but the community. We have had instances in this House where we had to pass laws within strict timelines during the making of the Constitution of Kenya, 2010. We had to come here and extend our sitting time. What is going to happen in this case, are we going to extend our sitting time? We leave to the Government officers who should be forced to do that.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Your point is made. I want to give the opportunity to the Departmental Committee Chair. Do you want to say something before I put the Question?

*(Hon. Duale consulting loudly)*

**Hon. Mwiru:** Hon. Temporary Deputy Chair, it is only logic that can make me withdraw the amendment, not coercion by the Leader of the Majority Party. I am really looking at the amendment. In particular, Hon. Members have no problem with the new proposal on Clause 46(a), in terms of time. The problem is on Clause 46(b). In my place, there are quite a number of adjudication activities going on. I am ready to drop that amendment.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Be on the HANSARD record. Are you dropping it?

**Hon. Mwiru:** I am dropping Clause 46(b) of my amendment.

*(Proposed amendment to Clause 46(b) dropped)*

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

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

*(Clause 46 as amended agreed to)*

*Clause 47*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): We have amendments from the Chair, Hon. Tiyah Galgalo and Hon. Mwadime. Hon. Tiyah is not here so we will drop her amendment. We start with the amendment of the Chair, then the one by Hon. Mwadime.

**Hon. Mwiru:** Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 47 of the Bill be amended by deleting the word “relevant” and substituting therefor the words “provisions of this”.

This is just the procedure for registration of communities as provided for in this Bill.

*(Question, that the word 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)*

**Hon. Mwadime:** Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 47 of the Bill be amended in Sub-clause (2) by inserting the words “and the newly registered community shall elect a community land management committee” at the end of the sentence.

There was no provision to allow transition from the group representatives to the new community land management regime. That is why I am proposing a further amendment.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Chairman of the Committee.

**Hon. Mwiru:** Hon. Temporary Deputy Chairlady, in consultation with Hon. Mwadime, we agreed to drop his amendment because some of the provisions have already been provided for. We had agreed that we can afford to deal with matters in Clause 2.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Mwadime, do you want to reply to that? Did you agree on that?

**Hon. Mwadime:** Hon. Temporary Deputy Chairlady, we did not agree to drop the amendment on this clause. We agreed to drop the amendment to Clause 48 but not 47. We agreed that we were going to include it for transition purposes.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Mwadime, kindly explain so that the Members can understand.

**Hon. Mwadime:** After registering a new group, it is important to provide transition for them to choose a new community land management but as it was, it was just to replace a group. We agreed that we will include a further amendment to Clause 47.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. ole Sakuda.

**Hon. ole Sakuda:** Thank you, Hon. Temporary Deputy Chairlady. Sub-clause 47(2) says that upon registration, the respective group representative shall cease to hold office. Hon. Mwadime is adding the following words: “and the newly registered community shall elect a community land management committee.” He is extending what should be done upon registration when the respective group ceases to hold office. It is of course common knowledge that when you cease holding office, new members are elected. I do not know why he is insisting that it should be there. It is self-explanatory.

Thank you, Hon. Temporary Deputy Chairlady.

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

*(Clause 47 as amended agreed to)*

*Clause 48*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): We have an amendment by Hon. (Ms.) Tiyah Galgalo. She is not in to move her amendment? That amendment is therefore dropped.

*(Proposed amendment by Hon. (Ms.) T. G. Ali dropped)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Mwadime and Hon. Tiyah Galgalo have amendments in sub-clause 2. Hon. Tiyah Galgalo is not here. We will drop her amendment. We will start with the Chairman's amendment and then we will go to Hon. Mwadime's amendment.

*(Proposed amendment by Hon. (Ms.) T. G. Ali dropped)*

**Hon. Mwiru:** Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 48 of the Bill be amended in Sub-clause (2) by inserting the words "ensuring public participation" immediately after the words "Cabinet Secretary".

It is important that the people participate in any legislation, regulations or delegated legislations; so that they can incorporate whatever views they have, including entities that are already registered.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Nassir.

**Hon. Nassir:** Thank you, Hon. Temporary Deputy Chairlady. I have been trying to convince my colleague, the Chairman of the Departmental Committee. The basis for this particular amendment of ensuring that there is public participation is that community land is vested with the county governments. Constitutionally, legislation of this nature should be done in consultation with the National Land Commission (NLC). We are pleading with the Chairman to simply change this amendment to read:

"THAT, Clause 48 of the Bill be amended in Sub-clause (2) by inserting the words "in consultation with the county governments or the Council of Governors and the National Land Commission."

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Member, are you opposing this amendment? Sometimes, you go into such details until the Chair is confused.

**Hon. Nassir:** Hon. Temporary Deputy Chairlady, this amendment is better than what is in the original Bill. However, we are asking him to re-introduce an amendment to the same.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Junet has a point of order. Hon. Member, you are not dressed properly for the House. I will give the opportunity to the Vice Chairman of the Committee and then a few more Members.

**Hon. ole Sakuda:** Thank you, Hon. Temporary Deputy Chairlady. We sat for a long time. I want Members to listen to us carefully. There is always public participation in any

legislation which is made in this country today. Therefore, we decided to include it instead of having the Cabinet Secretary only. Before the Community Land Bill came to this Committee, there was public participation through a memorandum that came from this House, which invited everybody, and not just the National Land Commission and NGOs. Including “ensuring public participation” in the Bill means that even the NLC, the county governments, the Council of Governors and anybody else who would have a contribution to make towards the regulation will have an opportunity to contribute.

Thank you, Hon. Temporary Deputy Chairlady.

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

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): We have an amendment from Hon. Mwadime.

**Hon. Mwadime:** This amendment has been taken care of in Sub-clause 2. Therefore, I withdraw the amendment.

*(Proposed amendment by Hon. Mwadime withdrawn)*

*(Clause 48 as amended agreed to)*

*New Clauses 2A and 7A*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): We have two new clauses.

**Hon. Mwadime:** Hon. Temporary Deputy Chairlady, after wide consultations with the Committee Chair, we agreed that we will have the definitions of some terms in his Schedules. Therefore, I withdraw New Clauses 2A and 7A.

*(Proposed amendment by Hon. Mwadime withdrawn)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Mwadime has withdrawn the new clauses. So, there are no other new clauses. We are going to move to the Schedule.

*Schedule*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Committee Chair, you have a proposed amendment to the Schedule.

**Hon. Mwiru:** Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, the Schedule to the Bill be amended—

- (a) in paragraph 2 by inserting the words “land use planning” immediately after the words “public health or” appearing in sub-paragraph (2);
- (b) in paragraph 8 by deleting the figure “(1)”;
- (c) by inserting the following new paragraph immediately after paragraph 8—

“9. Nothing in this Schedule shall be construed as giving exemption to the application of the provisions of Article 63(4) of the Constitution.”

The reason for amending this Schedule is to correct grammatical errors, to provide clarity as well as to ensure that the provisions of the Constitution shall apply to all matters contemplated in the Bill. The Bill should not endanger the Constitution.

*(Question of the amendment proposed)*

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

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

*(Schedule as amended agreed to)*

*New Second and Third Schedules*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Mwadime, you are the one coming up with these new proposals. They were relevant to the other two that you dropped.

**Hon. Mwadime:** Hon. Temporary Deputy Chairlady, since I had consultations with the Committee Chair, I withdraw the Schedules as the Committee Chair has included them in some of his amendments.

*(Proposed amendment by Hon. Mwadime withdrawn)*

*Clause 2*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Committee Chair, you have an amendment. Hon. Diriye and Hon. Mwadime have amendments too.

**Hon. Mwiru:** Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 2 of the Bill be amended—

(a) by deleting the definition of the term “community” and substituting therefor the following new definition—

“community” means a consciously distinct and organized group of users of community land who are citizens of Kenya and share any of the following attributes—

- (a) common ancestry;
- (b) similar culture or unique mode of livelihood;
- (c) socio-economic or other similar common interest;
- (d) geographical space;
- (e) ecological space; or
- (f) ethnicity.

(b) in the definition of the term “communal use of land”, by inserting the words “by a community” at the end of the sentence;

- (c) in the definition of the term “community land registration unit”, by inserting the words “of the Land Registration Act” at the end of the sentence;
- (d) in the definition of the term “Court”, by inserting the words “or any other court having jurisdiction over land matters as may be prescribed by any written law” at the end of the sentence;
- (e) in the definition of the term “Registrar” by inserting the words “of this Act” immediately after the words “section 9”; and
- (f) by inserting the following new definitions in their proper alphabetical sequence—

“certificate of reservation” means a certificate issued in the interim by the Registrar pending the registration of community land and acquisition of the certificate of title;

“county government” means the county government provided for under Article 176 of the Constitution;”

“organised group” includes any or both formal and informal kinds of organization in the community setup;

“registered community” means a community that has completed the registration processes and is recognized under this law;

“vested interest” means absolute and indefeasible ownership.

The gist of this amendment is to make the definitions a little bit clearer. The amendment also introduces new definitions of some terms used in this Bill.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Neto.

**Hon. Oyugi:** Thank you, Hon. Temporary Deputy Chairlady. I would like to request the Chair of the Committee to reconsider his definition of the word “community”. I am saying this because Article 63(1) of the Constitution lays the basis on which a community ought to be identified. A community ought to be identified on the basis of ethnicity, culture and similar community of interest. This is the gist of this Bill.

I appreciate the fact that people own land as private and public persons. But the Constitution is very clear that you can own land either as a private or public person or as a community. To try to extrapolate the meaning of “community”, as the Chair is trying to do right now in his definition, is fairly risky and unfair in terms of the spirit of the Constitution.

I request him to reconsider the definition to only include common ancestry and similar culture or unique mode of livelihood. That will actually cushion us and make us be in tandem with the constitutional aspirations. Otherwise, we are opening a Pandora’s Box.

I thank you.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): The Leader of the Majority Party.

**Hon. A. B. Duale:** Hon. Temporary Deputy Chairlady, how community land is defined is very important to some of us. I want to thank the Chair for making sure that he has captured what “community land” means. Common ancestry is very important. Where we live as pastoralists, it is not us who came the other day; that has been our land. Now, there is a lot of encroachment. Our culture is always similar. The culture of the Gabra community is known as the culture of the

Gabra community. In terms of socio-economic and other similar common interests, we are pastoralists who keep cattle and camels. In terms of the geographical space, we stay in one part of Kenya. My community does not have community land in any other part of Kenya. Our ecological space is very clear in terms of the climatic condition. In terms of ethnicity, when you talk of North Eastern Kenya you talk of the Somalis. When you talk of Turkana County, you talk of the Turkanas. That is the way community land is defined. Private land is like the land I own along Kiambu Road where I live.

Kenya, as the map shows, is divided into communities. I agree with Hon. Neto. The Chairman has given more factors of definition to make sure that there is some identity. So, I really support the Chair.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): The Member for Narok South.

**Hon. ole Lemein:** Thank you, Hon. Temporary Deputy Chairlady. I rise to support.

The way it is stipulated in this amendment is extremely clear. It will take care of the definitions and the community.

I support.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Chachu.

**Hon. Ganya:** Thank you, Hon. Temporary Deputy Chairlady.

I strongly support the Chairman of the Departmental Committee on Lands. As the Pastoralists Parliamentary Group, we are a caucus of about 84 Members of Parliament. We are the ones who came up with this definition. We wanted to expand what was in the Bill. To be honest, we also felt that the definition in the Constitution is limiting. As owners of community land in this country, we are very comfortable with this definition.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. ole Kenta.

**Hon. ole Kenta:** Whereas I sympathise with Hon. Neto for trying to protect the pastoralists communities, the most dangerous thing is if we leave the definition at including “common ancestry” and “similar culture” and leave out aspects of geographical space. We will be saying that somebody who is a Maasai from Tanzania can come and take land of the Maasai in Kenya. A Somali from Somalia can come and take land in North Eastern. That way, we will bring complications.

This amendment protects everybody and ensures that it is the right beneficiaries who get it.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): So, you are supporting it.

Hon. Ngeno, are you supporting it?

**Hon. Kipyegon:** Yes, I am.

There is only one thing I wanted to mention to Hon. Neto. We live in counties. Counties have different people with different cultures but there is a commonality that makes us occupy or own that community land. In Nakuru, for example, we have several communities.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Members, do not speak if you are supporting. Let us listen to those with opposing opinions.

Hon. Nyikal.

**Hon. (Prof.) Nyikal:** Maybe I would seek an explanation as to how far common ancestry goes. I took example from the Hon. Member who talked of Maasais in Kenya and Tanzania and Somalis in Kenya and Somalia. If we go by ancestry, how far does it go?

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Let me hear the Deputy Leader of the Majority Party, Hon. (Dr.) Shaban.

**Hon. (Dr.) Shaban:** If my colleagues will look at Article 260 of the Constitution on the interpretation of marginalised communities, they will be at peace. Geographical isolation and all that has been put into consideration on page 171 of the Constitution.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Would you want to quote it so that people can hear?

**Hon. (Dr.) Shaban:** No. It is on marginalised communities. That is where the issue is. It is made to look like what the Chairman had suggested is outside the Constitution. That part in the Constitution identifies with geographical and psychological aspects.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Junet.

**Hon. Nuh:** I stand to oppose.

We cannot define “community” in terms of ancestry only. Hon. Duale might be of Luo origin from the way he makes noise in Parliament. His grandfather might have been a Luo. I am telling the truth.

*(Laughter)*

Hon. Temporary Deputy Chairlady, let me explain this.

**Hon. A.B. Duale:** On a point of order.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Let us not lose the thread because it is a very important issue. Hon. Member, please, we were on a very serious trajectory. Please stop that.

I will probably not give you chance to speak again because you are derailing us.

**Hon. Nuh:** What I am saying is that if we are looking at and protecting community land in the context of tribes, we will fail. In the African culture, in the next 50 years, there will be communities that will not have come together because of any ancestral connections. We are overprotective.

**Hon. A.B. Duale:** On a point of order.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Duale, I think it was on a light touch. Please do not take it down.

**Hon. A.B. Duale:** Hon. Junet has made a serious statement. I want him to withdraw it from the HANSARD. My lineage is very clear. I have no ancestral connection with the Luo community. He is the one who has lost identity. In fact, he is not a pastoralist. He does not understand what community land is.

*(Laughter)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Fatuma.

**Hon. (Ms.) F.I. Ali:** Hon. Temporary Deputy Chairlady, what is not appreciated by the people who have just joined this debate is the long struggle community pastoralists and the trust land people have put. I appreciate the broad definition and characteristics put in this new community land Bill. I feel sorry for Hon. Junet who has been in my---

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Members, we do not have to digress because sometimes you spoil what we are working on.

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

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

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

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Mwadime, you have an amendment on Clause 2.

**Hon. Mwadime:** Hon. Temporary Deputy Chairlady, my definition becomes the subset of the Chairman's definition. Therefore, Chairman has covered the definition correctly. I am withdrawing that.

*(Proposed amendment to Part (a) by Hon. Mwadime withdrawn)*

**Hon. Mwadime :** Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 2 of the Bill be amended –

(b) by inserting the following new definitions in their proper alphabetical sequence–

“committee” means a community land management committee;

“community land tenure” means unwritten land ownership practices in certain communities in which land is owned and managed by the community collectively as a group;

“community member” means any individual, families and groups that historically live within the defined boundaries of the community land in question and who are considered as members of the community, with full membership extended to all male and female members above the age of eighteen years”

The Chairman had forgotten to give some definitions. In his definition, he suggests that a family or community leader can own and control community land. The effect of this is centralisation of power in the hands of few people undermining collective involvement of the community members. Therefore, these definitions are going to be captured in the Bill.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Mwadime, you have dropped part (a) but you are moving part (b). Hon. Members, please be aware of that.

*(Question of the amendment proposed)*

**Hon. Mwadime:** That Clause 2----

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): No. you have already done it. I am now opening it up for a few interactions on that. Hon. Member for Naivasha, do you want to speak on this?

**Hon. Kihagi:** Hon. Temporary Deputy Chairlady, I would oppose these further amendments because they will bring conflict. If you look at the Committee proposals, there are a lot of definitions there. I believe they adequately cover issues that we may want to deal with here. So, introducing more amendments may bring confusion to the terminologies.

I oppose.

**Hon. (Ms.) Khamisi:** Hon. Temporary Deputy Chairlady, I also oppose the amendment. As my colleague has said, it will bring some conflict because there are so many other definitions which have already been done in the previous clause especially in Clause 2.

I oppose.

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

*(Clause 2 as amended agreed to)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): I do not know why I see confusion in the face of the Chairman and the Deputy Leader of the Majority Party. Is it that you do not understand what has been done?

**Hon. Mwiru:** It is true, Hon. Temporary Deputy Chairlady. I have been got off guard on this one. I want to be sincere to the country and to this House. Some of the words that Hon. Mwadime was trying to define here are not in the Bill. Something like the definition of “Member” is not in the Bill.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): It has been defeated anyway, Hon. Chairman.

**Hon. Mwiru:** I know it has been defeated, but that is why I was confused.

*(Title agreed to)*

*(Clause 1 agreed to)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Let us have the Mover, the Deputy Leader of the Majority Party.

**Hon. (Dr.) Shaban:** Hon. Temporary Deputy Chairlady, I beg to move that the Committee doth report to the House its consideration of the Community Land Bill (National Assembly Bill No.45 of 2015) and its approval thereof with amendments

*(Question proposed)*

*(Question put and agreed to)*

*(The House resumed)*

*[The Temporary Deputy Speaker  
(Hon. (Ms.) Shebesh) in the Chair]*

**REPORT AND THIRD READING**

## THE COMMUNITY LAND BILL

**Hon. ole Kenta:** Hon. Temporary Deputy Speaker, I beg to report that a Committee of the whole House has considered the Community Land Bill (National Assembly Bill No.45 of 2015) and approved the same with amendments.

**Hon. (Dr.) Shaban:** Hon. Temporary Deputy Speaker, I beg to move that the House doth agree with the Committee in the said Report. I also request Hon. Sakuda to second the Motion for agreement with the Report of the Committee of the whole House.

**Hon. ole Sakuda:** Hon. Temporary Deputy Speaker, I second.

*(Question proposed)*

*(Question put and agreed to)*

**Hon. (Dr.) Shaban:** Hon. Temporary Deputy Speaker, I beg to move that the Community Land Bill (National Assembly Bill No.45 of 2015) be now read the Third Time. I also request Hon. Alex Mwiru to second.

**Hon. Mwiru:** I beg to second.

*(Question proposed)*

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): I will give chances to a few Members to contribute because of the interest in this Bill before we put the Question. I will start with the Member for Narok South.

**Hon. ole Lemein:** Thank you, Hon. Temporary Deputy Speaker. I sincerely thank the Departmental Committee on Lands and the Members for persevering up to this hour. This Bill will be of immense help to the pastoralist community and Kenya in general.

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): Let us have Hon. Nassir.

**Hon. Nassir:** Thank you, Hon. Temporary Deputy Speaker. From the outset, I wish to thank the Departmental Committee on Lands, led by the Chairperson, for indulging and ensuring that everyone took part. As a caucus, we stayed very late at night to consider this Bill so I also thank the Clerks of the Committee for an excellent job done.

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): Let us have Hon. Mwadeghu.

**Hon. Mwadeghu:** Mheshimwa Naibu Spika wa Muda, naomba kutoa mchango wangu kama mwanakamati wa Kamati ya Ardhi. Tumekaa katika vikao na kuchangia itoshavyo. Ni matumaini yangu kuwa Mswada huu utawafaidi watu wa nchi hii ijapokuwa tumekuwa na changamoto nyingi. Nashukuru kwa yale ambayo yamepita kuwa watu wameweza kuridhiana na kukubaliana kuwa yale mapendekezo yote ambayo yaliletwa, hasa na ndugu zetu wachungaji na Wabunge wa Pwani, yamewekwa ndani na tukakubaliana. Kwa hivyo, naunga mkono Mswada huu.

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): Hon. Sakuda.

**Hon. ole Sakuda:** Hon. Temporary Deputy Speaker, I thank my colleagues in the Departmental Committee on Lands. We sat for many hours and called many stakeholders who

voiced various opinions. We have come up with a very good Bill that will solve many issues in relation to community land. We thank even this House because about a month ago when all these other issues came up, the Bill was deferred so that everybody could feel included.

That is the spirit going forward so that all of us can feel included as we craft Bills that will be for the prosperity of this country.

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): Thank you, Hon. Member. Hon. Junet, please, keep it short so that we can give as many Hon. Members as possible.

**Hon. Nuh:** Hon. Temporary Deputy Chairlady, I would like to thank the Departmental Committee on Lands headed by the Chair. This is a very important Bill for this country. It is one of the Bills that will bestow on Kenyans the gains they have made through the new Constitution that they promulgated in 2010.

Trust land was formerly held by former county councils and has been misused in a big way. This Bill is going to address all those anomalies and Kenyans will live in harmony going forward.

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): Hon. Chachu.

**Hon. Ganya:** Hon. Temporary Deputy Speaker, at the outset, I would like to thank the Departmental Committee on Lands led by Hon. Alex Mwiru. As a caucus of Pastoralist Parliamentary Group who are largely affected by this Community Land Bill, we engaged as colleagues with a lot of respect. We even joined the Committee in their retreats in Mombasa and here because we felt we should work through the Committee instead of bringing individual amendments as Members. I thank them for the opportunity they gave us to address issues of grave concern to our people.

For the nine years I have been in this Parliament, there have been clan clashes and an elder called Murkulu called me from North Horr and told me that there is a very bad Bill about land in Parliament. He pleaded with me to take a hard look on it. I am glad I was able to do that with the help of the community.

Thank you.

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): Hon Mishi.

**Hon. (Ms.) Khamisi:** Asante Mhe. Naibu Spika wa Muda. Kwanza natoa shukrani kwa Kamati ya Mashamba pamoja na Wanakamati kwa sababu wamekuwa wavumilivu na walihusisha jamii tofauti tofauti haswa zile ambazo zimekuwa na utata katika suala la ardhi haswa ardhi za jamii. Nataka kusema ya kwamba sisi kama Wabunge tuwe na moyo kama huu. Tushauriane na tuzungumzie ile Misuada muhimu sana.

Hivi sasa najua pia tutakuwa na sheria za ardhi. Tunataka tuwe na ushauriano kama huo. Tukae tuone kama tunaweza kuleta mabadiliko machache katika Mswada ule ndiposa tukija hapa tuwe tunazungumza kwa sauti moja. Ijapokua najua pengine kwa moja ama mbili unaweza kuwa mmetofautiana lakini kwa ujumla tuweze kupata sheria nzuri na Mswada ambao utatusaidia na utatatua yale masuala ya ardhi haswa hili suala la ardhi ya jamii.

Nawashukuru sana.

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): Thank you, Hon. Member. Hon. Francis Nderitu.

**Hon. Nderitu:** I just want to appreciate ourselves as Members of this Committee. We faced a lot of challenges especially some of us who come from places where land has been individualised and titled. We persisted being in this Committee for numerous meetings. We did that because we wanted to have a law for posterity in this country; not that we were keen on any

other issue. I appreciate our pastoralist communities and people from the Coast region because we came together. I am very sure that even the next Bill that will come to the Floor of the House, we are going to do the same for the prosperity of this nation.

Thank you.

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): Hon. Chair.

**Hon. Mwiru:** Thank you so much, Hon. Temporary Deputy Speaker. I do not believe anyone else will thank you. I thank you so much for sitting up to this late hour to make sure that this Bill passes all the stages, together with the clerking team you have been with. I also thank the House itself because it has supported me and my Committee on this line of legislation.

I thank the caucus from the Coast region led by Hon. Nassir who were sitting quite late when we were trying to build consensus in Mombasa. I also want to thank Hon. Kamote who is not here but it is good that it goes to the HANSARD, Hon. Kenta of the pastoralist community, Hon. Chachu and his team. Thank you so much because we were not doing this law for the Departmental Committee on Lands but for the prosperity of this country.

I am so enlightened and have more energy to go on. Thank you.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Deputy Leader of the Majority Party.

**Hon. (Dr.) Shaban:** Mheshimiwa Naibu Spika wa Muda, nami pia nataka kuchukua fursa hii kuwapongeza Mheshimiwa Alex Mwiru pamoja na timu yake ya Kamati ya Ardhi ambao wamefanya kazi nzuri sana na haswa kuweka masaa mengi kuweza kutekeleza kazi hii. Vile vile, ningependa kuwapongeza ndugu zangu wote Wabunge kwa ujumla na haswa Wabunge kutoka Pwani ambao pia, wamelivalia njuga jambo hili kuhakikisha kuwa wameweza kufanya kazi kwa pamoja na kufikia uwiano na kukubaliana kuwa masuala haya ni mazuri. Tuweze kuyaangalia tukiwa pamoja na tukubaliane.

Tunafahamu ya kwamba suala la ardhi ni suala ambalo limekuwa kidonda sugu hapa nchini na haswa maeneo yetu ya Pwani ambapo suala kubwa ambalo limekuwa likikera kila mtu ni suala la mashamba. Ningetoa mfano tu. Katika Katiba ile ya kitambo tuliyoiondoa mwaka wa 2010, wakati huo hata Taita Taveta ilikuwa imetajwa pale kwa masuala haya ya ardhi za kijamii. Tulikuwa na wasiwasi sana kuwa sasa hivi vile jina letu limeondoka kwenye Katiba, suala hili litakuwa vipi.

Tulivyokuwa Bunge la Kumi, tulivyokwenda Mombasa kuweza kukubaliana kama Wabunge hatukuweza kukubaliana maanake kila mtu alikuwa anamuangalia mwenzake na kumuota kidole akiwa na wasiwasi kuwa, je hawa wanafikiria nini ama wanatupangia njama gani? Hivyo basi, sheria hii ikishakubalika na ninaomba na nitashukuru ya kwamba Bunge la Seneti halitakwenda kubadilisha masuala haya mengi ambayo yamezungumziwa, itawezesha Wakenya kusonga mbele na haswa kutuliza kidonda hiki ambacho kimekuwa kikikera Wakenya wengi.

Natoa shukrani kwa Wabunge wote kwa kazi nzuri ambayo wamefanya na haswa wewe kwa kuweza kukaa mpaka saa hizi, saa za usiku ambapo ungekuwa umeenda nyumbani tayari kufanya shughuli zako zingine kwa sababu jamii pia zinangojea. Ninawashukuru wenzangu wote ambao tumekaa hapa mpaka sasa hii. Sheria hii itatuwezesha kama Wakenya kuweza kusonga mbele.

Naunga mkono.

## ADJOURNMENT

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Thank you, Hon. Members. Let me also state that I am very impressed by the work done by this Committee led by Hon. Mwiru. This is one of the landmark Bills that this Parliament is going to pass. It is for the good of the country and so I congratulate your Committee for the good work.

Hon. Members, the time being 8.45p.m., this House stands adjourned until tomorrow Thursday, 21<sup>st</sup> April, 2016 at 9.30 a.m.

The House rose at 8.45p.m.