

NATIONAL ASSEMBLY

OFFICIAL REPORT

Wednesday, 3rd August 2016

The House met at 2.30 p.m.

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

PRAYERS

PETITIONS

ENACTMENT OF LEGISLATION TO COMPEL ACQUISITION OF INTEREST-FREE LOANS

Hon. Speaker: This is a conveyance of a Petition on enactment of legislation to confine national and county treasuries to use interest free loans and financial lending.

Hon. Members, pursuant to the provisions of Standing Order 225(2)(b), I wish to convey to the House that my office is in receipt of a Petition by one Mr. David Gesicho from Kakamega County. The Petition concerns confining of national and county treasuries to exclusive use of loans and other financial lending that do not attract interest.

Hon. Members, the Petitioner humbly submits that the Republic of Kenya has over the years been operating an unbalanced annual National Budget with recurring budget deficits. He states that domestic borrowing by the National Treasury may have contributed to the high interest rates by commercial banks in the domestic financial market. The Petitioner further contends that the only effective solution to control the budgetary deficit is by cutting Government spending. The Petitioner is requesting the National Assembly to enact legislation to confine the national and county treasuries to the exclusive use of specific interest-free loans and other financial lending instruments that do not charge interest rates. He gives examples of Islamic lending options such as *Sukuk Al-Murabaha*, *Sukuk Al-Ijarah* and *Sukuk al-Istisna*, which he submits to be interest-free and quite flexible.

The Petitioner prays that the National Assembly:-

- (i) Enacts legislation to provide for exclusive use of financial lending instruments that do not attract commercial interests whereas the national and county treasuries borrow money on domestic and international financial markets;
- (ii) Enact legislation to provide for the statutory distribution of the total national annual budget deficit between the national and county governments *pari passu* to the allocation of revenue between the two levels of government; and,
- (iii) Enact legislation to provide for capping of total national and county governments annual borrowing to not more than 5 per cent of the National Domestic Product.

Pursuant to the provisions of Standing Order 227, the Petition stands committed to the Departmental Committee on Finance, Planning and Trade for consideration.

I thank you.

Do I assume that the people whose names appear here want to comment on this? I can see Hon. Makali Mulu.

Hon. Mulu: Thank you, Hon. Speaker. I want to take this opportunity to thank the Petitioner for the important issues he is raising in his Petition. The Petition is reminding the House of the issue of budget deficit which is with us every year. What the Petitioner is saying is that we need to think seriously about how to fund budget deficits without interfering with interest rates.

This House has already initiated some legislation which might help, at the end of the day. The Departmental Committee on Finance, Planning and Trade might also need to fast-track amendments to that legislation. The Petitioner is raising the issue of a single treasury account. The county governments have accounts in Central Bank and the national Government cannot borrow from them because they are independent. The issue of introducing the single treasury account is to make sure that whichever Government account has money, it can be borrowed from that account and used for purposes of national interest.

What will happen is that this will reduce the demand for loans from the commercial banks. To some extent, it will reduce crowding out the private sector in terms of borrowing. If that happens, the supply for money will be high as compared to demand and interest rates which are likely to be low. This Petition is very important to this country. We need to support the Petition and ask the Departmental Committee on Finance, Planning and Trade to take it seriously and, if possible, conclude it within the 60 days allowed without taking the normal time of three to four months.

I want to thank the Petitioner for presenting that Petition. Thank you.

Hon. Speaker: The Petitioner is asking for enactment of legislation to provide for that. Everybody is welcome to contribute ideas as to how that legislation should look like.

Hon. M'uthari: Thank you, Hon. Speaker. I also rise to support the Petition. It is important given the fact that, sometimes, there is over-borrowing from the National Treasury and even from the counties. By the end of the day, the country is committed. This kind of a prayer is important so that, by the end of the day, we can have sanity in that particular sector.

Thank you.

Hon. Francis Waititu: Thank you, Hon. Speaker. I also support this Petition about the borrowing from the national Government and the county governments. We have seen of late that when the borrowing comes from the national Government, at least, there is a way of paying. But in the county governments, I have seen many of them now borrowing even from overseas. The concern is: After the governor who is now in place leaves office, I do not know whether they have ways of repaying those loans. I know about four or five counties that have borrowed money even from outside this country. It is a good Petition and when it comes to the Committee level, we should all go and look at it carefully and see whether the counties will be able to repay those loans in future.

Thank you.

Hon. Speaker: Is it now a constitutional provision and a requirement that county government can only borrow on a guarantee by the national Government? Any borrowing outside the country by a county government without the guarantee from the national Government would be *ultra vires* the Constitution. Hon. Robert Mbui.

Hon. Mbui: Thank you, Hon. Speaker. Actually, I was queuing so that I could give a notice of Motion. I will allow my colleagues to contribute on that Petition.

Hon. Speaker: Those who want to comment on the Petition should press the intervention button. I have no way of knowing those who want to comment on it.

Hon. (Ms.) Juma: Shukrani sana Mhe. Spika, kwa kunipa nafasi hii. Nataka kuunga mkono mapendekezo katika malalamishi haya. Mwanzo, kwa sababu katika benki za kiislamu, sheria zake huwa ni za kiutu zaidi. Nakubali kuwa baadhi ya senti za Serikali hazitaharibika zikiwekwa katika benki kama hizo. Pesa za Serikali pia hazitaliwa ovyo ovyo na benki zenye kulaghai watu na benki zenye tamaa ya kula pesa za Serikali ambazo zinahitajika kutumika kwa wananchi humu nchini, ambao wana shida nyingi.

Jambo lingine ambalo nakubaliana nalo ni kuweka vikwazo katika asilimia ya pesa ambazo Serikali kuu inaweza kuchukua kama mkopo kutoka benki zozote. Kiwango cha asilimia tano ya bajeti ya nchi - kama nimeelewa sawa - ni jambo nzuri sana.

Hivi sasa, tunajua Serikali kuu imechukua madeni makubwa ambayo yatatulemea sisi na vizazi vijavyo. Kwa hivyo, kutunga sheria ambayo itaizuia Serikali kuu kukopa kupita kiwango fulani itakuwa jambo la busara.

Ahsante.

Hon. Speaker: Members, even as you comment on these petitions, you must show knowledge of the existing legislation like the Internal Loans Act and External Loans Act. Your contributions must be informed by knowledge of existing legislation and specific provisions of the Constitution so that you do not appear like the Petitioner. You must show that you are a cut above the Petitioner. The Petition is committed to the Departmental Committee on Finance, Planning and Trade for normal processing.

Next Order.

Hon. Speaker: Hon. Joyce Emanikor, the Member for Turkana County. She is absent and not desiring to be present; or having forgotten that the House sits from 2.30 p.m. on Wednesday afternoon. Hon. Robert Mbui.

NOTICE OF MOTION

INSTALLATION OF CCTV CAMERAS IN PUBLIC BOARDING SECONDARY SCHOOLS

Hon. Mbui: Thank you, Hon. Speaker. Hon. Speaker, I beg to give notice of the following Motion:-

THAT, aware that incidences of buildings in public boarding secondary schools being torched by unruly students are on the rise; concerned that most perpetrators of the dastardly acts of arson in schools go unpunished due to the difficulty in establishing a nexus between them and the acts; deeply worried that students behind arson in various schools evade responsibility by seeking admission in other schools where they transfer similar vices; afraid that if left unabated, this trend will turn dormitories in public boarding secondary schools into death traps for innocent students and expose school properties to the risk of arbitrary destruction by riotous students; cognizant of the duty to preserve the lives of innocent students and school properties from the incessant threat of arson; appreciating the role of Information and Communications Technology (ICT) in enhancing security surveillance; this House urges the Government to speedily roll out installation of Closed-Circuit Television (CCTV) cameras in strategic

locations in all public boarding secondary schools as an enhanced security mechanism for surveillance of students' activities; makes provisions for regular and mandatory checks to confirm compliance and enforcement of the mechanisms; and enforces strict admission criteria, including maintenance of a profile of alleged perpetrators of arson to ensure that they do not escape liability by transferring to other schools without proper screening.

Hon. Speaker: Next Order. Hon. Kaluma.

STATEMENT

PRIVATE MEMBERS' MOTIONS AND BILLS DELAYED BY COMMITTEES

Hon. Kaluma: Thank you, Hon. Speaker. I stand with your permission to raise a matter that is affecting the business of Members with regard to Private Members' Motions and Bills. It is not specific in the Standing Orders. It is taking too long for Private Members' Bills and Motions on matters of critical national policy to be transacted in Committees and to be remitted to the House for consideration.

Hon. Speaker, I recently raised the matter concerning the Police Vetting Bill. You can imagine it took one-and-a-half years for communication to come from the Budget and Appropriations Committee and another relevant Committee, the Departmental Committee on Administration and National Security. While that was happening, the vetting process which I sought to have provisions relating to it in the National Police Service Act repealed had gone half way, thus rendering that legislative proposal in vain.

Hon. Speaker, a number of Members, if not all, come to this House seasonally for specific purposes, to either further some legislative agenda or move a nation to some policy directions. In as much as there could be no clear provisions, I want your direction by way of a formal communication with regard to how long it should take a Committee seized of a Private Members' Bill or a Motion to transact that business. I was going to propose a period of one month to a maximum of three months so that we do not leave so much business not transacted in this House, if some of us are not fortunate to return to this House in the manner that the people of Kenya usually do.

The biggest problem is actually in the Budget and Appropriations Committee. There is too much work in that Committee admittedly. However, priority and time should be given to these Motions and where possible, those Private Members' Bills so that, we do not end up not engaging in business for which we sought election for. Thank you, Hon. Speaker.

Hon. Speaker: Again, it will be noted that from time to time, including yesterday, I have encouraged Committees to form sub-committees. It is not because of lack of technical advice from the staff. The technical advice is there. Unfortunately, Committees take too long when they have to sit as an entire Committee. However, if Committees could agree to form sub-committees, and especially when you are considering legislative proposals from your colleagues, it will help to fast-track the businesses. Again, it is not fair for the Speaker to appear to want to police Committees. However, in fairness, Committees have a duty and obligation to Members to ensure that they do not inadvertently delay business of Members. If you are going to come up with whatever resolution, then present it to the House. Of course, we are alive to the provisions of Article 114 that, if it is a money Bill, then the House may only proceed after the advice of the relevant Committee which, in this case, is the Budget and Appropriations Committee. That way,

it gets time to sit with the Directorate of Budget in Parliament as well as getting the views of the Cabinet Secretary in charge of the National Treasury. I would want, for the time being, to encourage Committees, especially with regard to the issues raised by Hon. Kaluma, to form sub-committees to be able to fast-track whatever business that may be pending before them.

I am hoping that Members are in possession of a Supplementary Order Paper.
Next Order!

MOTIONS

REPORT OF THE COMMITTEE OF THE WHOLE HOUSE ON THE FOREST CONSERVATION AND MANAGEMENT BILL

Hon. Speaker: Hon. Members, I am assuming that everybody is in possession of the Supplementary Order Paper whose reason was merely for purpose of being able to put the Question. This is because in the morning, the House got busy with other things and Questions were not put. Member for Sirisia, allow me to put the Question. The Member for Kiminini is too far from you to communicate.

THAT, the House do agree with the Report of the Committee of the whole House on its consideration of the Senate amendments to the Forest Conservation and Management Bill (National Assembly Bill No. 49 of 2015).

(Question put and agreed to)

Hon. Speaker: Next Order.

REPORT OF THE COMMITTEE OF THE WHOLE HOUSE ON THE NATURAL RESOURCES (CLASSES OF TRANSACTIONS SUBJECT TO RATIFICATION) BILL

Hon. Speaker: Hon. Members, again it straight. It is putting the Question since the Committee of the whole House has already dealt with the matter.

THAT, the House do agree with the Report of the Committee of the whole House on its consideration of Senate amendments to the Natural Resources (Classes of Transactions Subject to Ratification) Bill (National Assembly Bill No. 54 of 2015).

(Question put and agreed to)

Hon. Speaker: Next Order.

RATIFICATION OF BILATERAL AIR SERVICES AGREEMENTS BETWEEN KENYA, VIETNAM AND LIBERIA

Hon. Speaker: Hon. Members making their way in, please, do so quickly so that I can put the Question. Again debate on this Motion was concluded and what remains is for me to put the Question.

THAT, this House adopts the Report of the Departmental Committee on Transport, Public Works and Housing on its consideration of the Bilateral Air Services Agreements between the Government of the Republic of Kenya and the Governments of the Socialist Republic of Vietnam and the Republic of Liberia respectively, laid on the Table of the House on Wednesday, 27th July, 2016, and pursuant to the provisions of Section 8 of the Treaty Making and Ratification Act, 2012, approves the ratification of the Bilateral Air Services Agreements between the Government of the Republic of Kenya and the Governments of the Socialist Republic of Vietnam and the Republic of Liberia.

(Question put and agreed to)

Hon. Speaker: Next Order.

BILL

Third Reading

THE KENYA NATIONAL EXAMINATION COUNCIL (AMENDMENT) BILL

Hon. Speaker: Member for Emurua Dikirr, sit down! You cannot see very well. Hon. Members, again, debate on this Bill was concluded. It is a Bill which was moved by the Hon. Member for Kiminini.

(Question put and agreed to)

(The Bill was accordingly read the Third Time and passed)

MOTION

PROVISION OF WATER TO PUBLIC FACILITIES

THAT, aware that water is one of the most basic human needs; concerned about children in primary schools, especially, those that do not have access to clean tapped water; also aware that the Government is already providing electricity and food to these schools; deeply concerned that lack of water leads to a host of hygiene-related problems including jigger infestation, cholera and others, this House resolves that the Government formulates a financial framework for and provides tapped water to all public facilities, especially primary schools, as water is life.

(Debate concluded on 3.7.2016- Morning Sitting)

(Question of the Motion as amended put and agreed to)

Resolved accordingly:

THAT, aware that water is one of the most basic human needs; concerned about children in primary schools, especially, those that do not have access to clean tapped water; also aware that the Government is already providing electricity and food to these schools; deeply concerned that lack of water leads to a host of hygiene-related problems including jigger infestation, cholera and others, this House resolves that the Government formulates a financial framework for and provides tapped clean and safe water to all public facilities, especially primary schools, as water is life.

Hon. Speaker: Next Order!

COMMITTEE OF THE WHOLE HOUSE

(Order for the Committee read)

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

IN THE COMMITTEE

*[The Temporary Deputy Chairman
(Hon. Cheboi) took the Chair]*

THE MISCELLANEOUS FEES AND LEVIES BILL

The Temporary Deputy Chairman (Hon. Cheboi): Order Members! We are now dealing with the Miscellaneous Fees and Levies Bill (National Assembly Bill No.30 of 2015).

(Clauses 3, 4, 5 and 6 agreed to)

Clause 7

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Langat.

Hon. Langat: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 7 of the Bill be amended –

(a) in sub-clause (3) by deleting the word “duty” and substituting therefor the words “declaration fee” in paragraph (a); and,

(b) by inserting the following new sub-clauses immediately after sub-clause (5) –

“(6) Out of the fee collected under sub-section (2), ten percent shall be paid into a Fund established and managed in accordance with the Public Finance Management Act, 2012.

(7) The monies in the Fund under subsection (6) shall be used for the payment of Kenya’s contributions to the African Union and to any other international organization to which Kenya has a financial obligation”.

The first section of the amendment relates to clean up of the Bill and it refers to the word “duty” and substituting it with the words “declaration fee”.

The second part of the Bill proposes that part of the fees collected---

Hon. Wakhungu: On a point of order.

The Temporary Deputy Chairman (Hon. Cheboi): What is out of order, Hon. Wamalwa?

Hon. Wakhungu: This is a very important Bill. I am keenly looking at the Order Paper and I cannot see Clause 7 and follow what Hon. Benjamin Langat is moving. Can he clarify?

The Temporary Deputy Chairman (Hon. Cheboi): Let us hear Hon. Langat's response to what Hon. (Dr.) Wamalwa has raised.

Hon. Langat: I did not hear exactly what he is asking. Clause 7(a) is a clean-up, of the word "duty" and replacing it with the words "declaration fee".

There was an agreement with the African Union (AU) that all the member states should get a way of funding their activities.

Clause 7(b) (6) is proposing to create a fund that will be managed in accordance with the Public Finance Management (PFM) Act.

The section written says: "The monies in the Fund under sub-section (6) shall be used for payment of Kenya's contributions to the African Union and any other international organization to which Kenya has a financial obligation".

In Clause 7 we are simply creating a fund which will finance Kenya's obligations to the international bodies.

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Duale.

Hon. A.B. Duale: I know Hon. Chris is like me. It is good to understand the amendment.

When the AU Heads of State met, they agreed to fund all the activities, whether AMISOM and others, through their budgets. The Committee on Defence and Foreign Relations will ask questions, if a certain amount of money is given to AU operations for example in Somalia and South Sudan. The National Treasury had decided to give part of the monies to fund the amount allocated for Kenya by the AU.

In fact, this was not in the original Bill, but it came after the Rwanda meeting of AU.

The Temporary Deputy Chairman (Hon. Cheboi): Okay. You have done well, but you have approached it in a different manner. You should have come under a point of information which hopefully, Hon. Langat would not have had problems with.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Cheboi): I will give an opportunity to two Members. Let us start with Hon. Patrick Makau of Mavoko Constituency.

Hon. King'ola: I support, Hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Theuri.

Hon. Theuri: I support, Hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Cheboi): Since there are no major issues. I will, therefore, put the Question.

*(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)*

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

(Clause 7 as amended agreed to)

(Clauses 8, 9, 10, 11 and 12 agreed to)

Hon. (Eng.) Gumbo: On a point of order.

The Temporary Deputy Chairman (Hon. Cheboi): What is your point of order?

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairman, I had an amendment on Clause 9, and I do not know why it has not been prosecuted.

The Temporary Deputy Chairman (Hon. Cheboi): It is not in the Order Paper.

Hon. (Eng.) Gumbo: It is there. We had discussed it in the Committee.

Hon. Langat: On a point of information.

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Gumbo, do you want any information.

Hon. (Eng.) Gumbo: Yes. Reluctantly, I will accept.

The Temporary Deputy Chairman (Hon. Cheboi): Reluctantly accepted.

Hon. Langat: Hon. Temporary Deputy Chairman, there is a bit of confusion.

The Temporary Deputy Chairman (Hon. Cheboi): Who is confused?

Hon. Langat: We started with the second Bill. I think many members are thinking we are on the Controller of Budget Bill. We are in the Miscellaneous Fees and Levies Bill.

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Langat, you know engineers are perfect in following order. I think what this engineer has done is to fix his mind that House Business flows in a particular manner. That is the engineer's mind. We are on the second Bill. I had put the Question and it was taken. So, we will proceed to the next clause.

First Schedule

Hon. Langat: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, the First Schedule be amended by deleting Tariff Numbers 4105.10.00, 4105.30.00, 4106.21.00, 4106.22.00, 4106.31.00, 4106.32.00, 4106.40.00, 4106.91.00, 4104.11.00, 4104.41.00, 4104.49.00, 4106.92.00, 7404.00.00, 7503.00.00 and 7602.00.00 and their corresponding descriptions and export levy rates.

This section is dealing with the export levy rates on the semi-processed hides and skins.

This country exports manufactured goods. If we were to put export levies on processed items, we will not be competitive as a country and our manufactures will not see outside the country and we will kill the industrialization process.

The deletion of all export levies on semi-processed hides and skins will encourage value addition in the hides and skins sector.

Therefore, my Committee proposes that we remove those export levies and encourage our manufactures to be competitive and have the spirit of value addition.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Cheboi): I will give an opportunity to the Member for Nakuru Town East.

Hon. Gikaria: Thank you, Hon. Temporary Deputy Chairman. I support what the Chairperson of the Departmental Committee on Finance, Planning and Trade has said. It is important for us to encourage the locals to do business. In fact, it has always been in people's minds that if we do not give incentives to the local business people, they cannot compete with our friends who come into this country.

I support the amendment.

The Temporary Deputy Chairman (Hon. Cheboi): Let me give an opportunity to Hon. Makenga.

Hon. Makenga: I support the amendment.

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

(First Schedule as amended agreed to)

Second Schedule

The Temporary Deputy Chairman (Hon. Cheboi): Let us have Hon. Jude Njomo. He does not seem to be in the House. It is not the business of the Chair to look for Members, especially when they know they have amendments. Is his reason for being away something biological? Maybe, then, we can understand.

(Hon. Gikaria spoke off the microphone)

Hon. Member for Nakuru Town East, that is not the official language used in the Chamber. You only say "aye" when you are applauding.

Proceed, Hon. Jude Njomo.

Hon. Njomo: Thank you, Hon. Temporary Deputy Chairman. My apologies! I was answering a call of nature.

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

THAT, the Second Schedule be amended—

(a) in Part A by inserting the following new sub-paragraph immediately after subparagraph (xx) —

(xi) raw materials for direct and exclusive use in construction by developers or investors in industrial parks of one hundred acres or more located outside the municipalities of Nairobi and Mombasa as approved by the Cabinet Secretary for the National Treasury upon recommendation by the Cabinet Secretary responsible for matters relating to industrialization.

(b) in Part B by inserting the following new sub-paragraph immediately after subparagraph (iv) —

(v) raw materials for direct and exclusive use in construction by developers or investors industrial parks of one hundred acres or

more located outside the municipalities of Nairobi and Mombasa as approved by the cabinet secretary for the National Treasury upon recommendation by the Cabinet Secretary responsible for matters relating to industrialisation.

In order to spur economic growth, create wealth and employment opportunities and reduce poverty in line with Vision 2030, I propose to exempt from import declaration fees (IDF) and railway levy, importation of materials for direct and exclusive use in construction by developers and/or investors in industrial parks of 100 acres or more located outside the municipalities of Nairobi and Mombasa, approved by the Cabinet Secretary for the National Treasury on recommendation by the Cabinet Secretary responsible for industrialization.

Among the partner states in East Africa, Kenyan manufacturers and investors pay the highest IDF fees of 2.25 per cent while in Uganda, they are zero-rated. In Tanzania, they attract a levy of 0.8 per cent. Kenyans pay a further levy of 1.5 per cent putting them at a total disadvantage when it comes to competing and also at the cost of production. This venture will enhance cost-saving to the investors, which will further be translated into availability of more funds to increase their investment. Ultimately, this will mean that there will be more jobs created in our country because the industries will expand further and spur rapid economic growth in areas outside Nairobi and Mombasa, where we actually need that growth.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Cheboi): On this one, I will give an opportunity to more Members than I would ordinarily. It has to come out a little clearer. Let us start with the Chair of the Committee, Hon. Langat.

Hon. Langat: Hon. Temporary Deputy Chairman, I support the amendment. We are currently trying to attract manufacturers and investors into this country. If we allow more private investors to invest in industrial parks, we will encourage more manufacturers and all to do business with ease. Having an industrial park encourages the ease of doing business in a country. That is because investors will find ready land and infrastructure. This is a very good amendment. I do not know why he talks about outside Nairobi and Mombasa. It would have been better if it was just the whole country, including Mombasa and Nairobi. I support the amendment so that we can encourage investors to come to our country and improve the business in the country.

The Temporary Deputy Chairman (Hon. Cheboi): Let us have Hon. Iringo.

Hon. Kubai Iringo: Thank you, Hon. Temporary Deputy Chairman for giving me this opportunity. I support Hon. Jude Njomo's amendment to this Bill. I strongly support him in that if we allow foreign investors or even local investors who are constructing big establishments, it will encourage many more to enter into that venture.

Secondly, I support the idea of doing it outside Nairobi, Mombasa and other big towns, so that we can decongest our cities and towns.

I support the amendment.

The Temporary Deputy Chairman (Hon. Cheboi): Let us have Hon. Makenga.

Hon. Makenga: Thank you, Hon. Temporary Deputy Chairman. Just as the Hon. Member who has proposed the amendment has said, this will spur the economy and development in the country. I support the amendment.

The Temporary Deputy Chairman (Hon. Cheboi): Let us have Hon. Ntutu. I will be a bit reluctant to give an opportunity to Members who do not have cards. They keep raising their

hands, fingers and toes and it becomes a bit difficult for me to know whether they are stretching or they want to contribute.

Hon. ole Ntutu: Thank you, Hon. Temporary Deputy Chairman. I think they want to speak. I support this amendment that has been proposed by my good friend, Jude. Any encouragement of investors is good for the country. This would ease the cost of doing business in our country. The more investors we have, the more our economy will grow. I support this amendment and everybody should support it.

The Temporary Deputy Chairman (Hon. Cheboi): Would the Leader of the Majority Party be interested in giving the last contribution?

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

(Second Schedule as amended agreed to)

The Temporary Deputy Chairman (Hon. Cheboi): I am watching you very closely, Member for Nakuru Town East. I notice that there are a few Members who do not seem to have cards. That is the Member for Nakuru Town East, the Member for Subukia and a few others. It will be a bit difficult for me to notice you especially when you protest when you do not get an opportunity. We will proceed.

(Clause 2 agreed to)

(Title agreed to)

(Clause 1 agreed to)

The Temporary Deputy Chairman (Hon. Cheboi): We are through with that one. Therefore, we will ask the Mover to move reporting.

Hon. A.B. Duale: Hon. Temporary Deputy Chairperson, I beg to move that the Committee doth report to the House its consideration of the Miscellaneous Fees and Levies Bill (National Assembly Bill No.30 of 2015) and its approval thereof with amendments.

(Question proposed)

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Members, we will now move to the next Bill. The Engineer should be keen on this one. We will now be doing the Controller of Budget Bill (National Assembly Bill No.21 of 2015).

THE CONTROLLER OF BUDGET BILL

Clause 3

Hon. (Eng.) Gumbo: On a point of order, Hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Cheboi): We have not even started the business, Hon. (Eng.) Gumbo. What is your point of order?

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairman, I have the Supplementary Order Paper. Part of what we are discussing is the amendment to the Controller of Budget. I submitted amendments which I discussed with the Committee, but they are not in the Supplementary Order Paper.

The Temporary Deputy Chairman (Hon. Cheboi): Which ones are these?

Hon. (Eng.) Gumbo: I discussed them with the Committee. I even have the stamp showing that the Committee actually received the amendments.

The Temporary Deputy Chairman (Hon. Cheboi): Can we hear from the Chair? However, Hon. (Eng.) Gumbo, this is a ship that has taken off.

Hon. (Eng.) Gumbo: Temporary Deputy Chairman, what will be the use of bringing amendments if they cannot be discussed?

The Temporary Deputy Chairman (Hon. Cheboi): To whom did you give them?

Hon. (Eng.) Gumbo: I gave them to the Office of the Clerk. They were received.

The Temporary Deputy Chairman (Hon. Cheboi): Let us listen to the Chair first and then we will see what to do. I hope the Committee has processed those amendments, if that is what you are asking.

Hon. (Eng.) Gumbo: I was hoping that all those amendments will be carried.

The Temporary Deputy Chairman (Hon. Cheboi): I will listen to the Chair of the Committee and the Leader of the Majority Party on it, and then we will make a decision.

Hon. Langat: Hon. Temporary Deputy Chairman, I know that we discussed his amendments in the Committee, but that was an informal arrangement. Usually, all the amendments are submitted to the Clerk of the National Assembly and then they are processed in the manner provided for in the Standing Orders. I may not be able to answer him but, of course, I am aware that we discussed his proposed amendments. Regarding some of them, I told him to come and file them in the House. I do not know whether he submitted them through the right channel.

The Temporary Deputy Chairman (Hon. Cheboi): Let us hear the Leader of the Majority Party, so that we may know the real position.

Hon. A.B. Duale: Hon. Temporary Deputy Speaker, what guides the House is the Order Paper. There was an Order Paper earlier on and now we have the Supplementary Order Paper. In both Order Papers, Hon. Gumbo's amendments are not there. As the Chair said, appearing before a Committee with regard to amendments does not guarantee you that they will appear on the Order Paper. That is within the Standing Orders. Even as I speak, I have a raft of amendments. When yesterday I realized that my amendments were similar to those of the Chair, I consulted the Controller of Budget, because I am the sponsor of the Bill, and she concurred with me that the amendments of the Chair can take precedence over mine. My only problem was if the amendments of Hon. Gumbo were in the Order Paper that came out in the morning. They were not in the original Order Paper, and that would have been something. The amendments are not in both Order Papers, and the only thing he is citing is his appearance before the Committee. There are many Members who appeared before the Committee and raised issues, but their amendments are not in the Order Paper. What will guide us – and you need to rule – is the Order Paper before us.

The Temporary Deputy Chairman (Hon. Cheboi): Let me get it clearly from Hon. Gumbo. Where did you take your proposals? Is it to the Committee or to the Clerk's Office?

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairman, I took my amendments to the Clerk on 22nd July. They were signed received. After they were received by the Clerk, the Committee called me formerly. I did not just appear in the Committee. We discussed.

Hon. Temporary Deputy Chairman, it is not right to be dishonest. The Committee invited me formerly because they wanted to see if they could take up the amendments and I said: "No! These amendments have to be debated on the Floor of the House." So, for the Chairman to come here and say that it was an informal appearance is being dishonest!

The Temporary Deputy Chairman (Hon. Cheboi): Why would you then blame the Chair if you did not go to the Committee to see if they could take over the amendments? What I would be suggesting so that we can sort out this issue much more easily is this: Since the Chair of the Committee has an opportunity, he can be able to process some of the amendments if they so wish. But as far as I am concerned we will be guided by the Order Paper.

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairman, what is the point in Members proposing amendments if they cannot come to the Floor of the House? We are now completely negating the aspect of law making. Making amendments is not an easy thing. We spend time to make amendments and bring them here. This matter cannot be treated casually. Honestly, it should not. Why are we here?

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Gumbo, I suggest that you consult the Mover of the Bill. They can bring in amendments at any particular time. But as far as I am concerned, I will be dealing with what is in the Order Paper.

(Loud consultations)

Hon. Langat: On a point of order, Hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Cheboi): What is your point of order, Hon. Langat? Can you resume your seat Hon. (Eng.) Gumbo?

Hon. Langat: Hon. Temporary Deputy Chairman, do not allow the Hon. Member to sabotage what we are about to do. The Order Paper is published five hours before the sitting. The Member had all the time from when the first Order Paper was published up to the time the Supplementary Order Paper was published, which is supposed to be one hour to the sitting. For the Member to rise, when we are seated in the Committee of the whole House, and try to say that we should not proceed, is not fair.

Hon. Temporary Deputy Chairman, I rose earlier on and said that the Member appeared before my Committee. I informed him in the Committee that he did not need to come to my Committee because he was supposed to prosecute his amendments on the Floor of the House. The Order Paper was published early enough. The hon. Member should have sorted out this matter before the stage we are in right now.

The Temporary Deputy Chairman (Hon. Cheboi): We will have to proceed because this is a matter that has just come to the Floor. As far as I am concerned, I am guided by the Order Paper. Other things are done behind the scenes. We cannot take so much time on this matter. If you have issues, Hon. Gumbo, you can take to them and they will be able to process those particular amendments now. If you insist that you are the only one who is supposed to do it, then it becomes difficult for me to help you.

We will, therefore, proceed, Hon. Members.

Proceed, Hon. Langat. We are in Clause 3.

(Hon. (Eng.) Gumbo shouted at Hon. Langat)

Hon. Langat: Hon. Temporary Deputy Chairman, Hon. Gumbo is threatening some of us.

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

Qualification for
appointment as
Controller of Budget

THAT, the Bill be amended by deleting Clause 3 and substituting therefor with the following new Clause 3 –

3 (1) A person shall be qualified for appointment as the Controller of Budget if such a person-

- (a) is a citizen of Kenya;
- (b) holds the qualification for the office specified in Article 228 of the Constitution;
- (c) holds a degree in finance, accounting or economics from a university recognized in Kenya; and
- (d) meets the requirements of Chapter Six of the Constitution.

(2) A person shall not be qualified for appointment under subsection (1) if the person –

- (a) is a member of Parliament;
- (b) is a member of a county assembly;
- (c) has not met his or her tax obligations;
- (d) has been removed from office for contravening the Constitution or any other law; or,
- (e) is an undischarged bankrupt.

We are trying to detail the qualifications for appointment as a Controller of Budget. We are just bringing this from the Independent Offices Act which was passed before we passed the Public Audit Bill and now the Controller of Budget Bill. The House had passed the Independent Offices Act which was supposed to guide in the appointment of holders of independent offices. However, since we are making a law which details each of the independent offices, we are bringing those qualifications from the Independent Offices Act to the relevant Controller of Budget Bill. That amendment is about the qualifications for appointment as a Controller of Budget. I have detailed the requirements.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Cheboi): I will give an opportunity to two Members. I will start with Hon. Kathuri, Member for South Imenti.

Hon. Murungi: Thank you, Hon. Temporary Deputy Chairman. I support the amendment as moved by the Chair of the Departmental Committee on Finance, Planning and Trade. On this detail, I wish he could also include qualifications in terms of experience of the Controller of Budget as 3(1)(e) because it is just left open. A person with one year's experience after school can qualify.

Also, with regard to the amendment to Clause 3(2), I am worried why he should state the reasons why one should not be appointed. There are so many reasons besides those ones listed which could disqualify a person from appointment. Maybe, he could leave Clause 3(2) to the recruitment panel.

The Temporary Deputy Chairman (Hon. Cheboi): Let us have Hon. Mlolwa, Member for Voi. Do you want to speak to this one?

Hon. Mlolwa: Hon. Temporary Deputy Chairman, I support the Chair of the Departmental Committee on Finance, Planning and Trade because this is already in the provisions in the other legislation.

I support the amendment.

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

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

(Clause 3 as amended agreed to)

Clause 4

The Temporary Deputy Chairman (Hon. Cheboi): On this clause, we have an amendment by Hon. Mutura, Member for Makadara. What is it, Hon. Mutura? Proceed.

Hon. Kangara: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 4 of the Bill be amended in sub-clause (1) by inserting the following paragraph immediately after paragraph (c)—

“(ca) by enforcing budgetary ceilings prescribed by Parliament on national and county government expenditure;”

This amendment takes cognisance of the fact that the Controller of Budget under Articles 206 and 207 of the Constitution is squarely mandated to see to it that the ceilings are enforced by the national Government and county governments.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Cheboi): I will give an opportunity to two Members. Let us start with the Leader of the Majority Party. Do you want to speak to this?

Hon. A.B. Duale: Hon. Temporary Deputy Chairman, I oppose this amendment. I oppose it based on a very good reason. This proposed amendment seems to stretch beyond the constitutional provisions for the roles of the Controller of Budget. Since it is an independent office, the roles of the Controller of Budget are defined in the Constitution. We cannot add extra roles unless we amend the Constitution. Let us not introduce something that will be unlawful.

Secondly, enforcement of ceilings is assured through the Appropriations Bill which this House passes. It cannot be a function of the Controller of Budget. Ceilings, particularly for county governments, must be decided through the Commission for Revenue Allocation (CRA) and the Senate and brought to this House for approval. It is not a role that you can just give to the Controller of Budget. The functions of the Controller of Budget are well stipulated in the Constitution. If you want to change any of the functions of the Controller of Budget, you must amend the Constitution.

Finally, the Appropriations Bills are passed here both for the national Government and county governments. Expenditure is about revenue performance at both levels of Government. The Controller of Budget deals with revenue performance. What is the performance of revenue that was allocated to county governments and the national Government? I want to tell my brother Benson that this is a good idea, but it will fundamentally affect the role of the Controller of Budget as stipulated in the Constitution.

The Temporary Deputy Chairman (Hon. Cheboi): Let us have Hon. Makali Mulu.

Hon. Mulu: Thank you, Hon. Temporary Deputy Chairman. The intention of this amendment is good. However, it is unprocedural in terms of the way public finances are managed. The work of the Controller of Budget is to implement the budget after it has been passed by Parliament and the county assemblies. Determination of the ceilings is the work of Parliament and county assemblies.

What worries Hon. Mutura is the fact that some county assemblies are spending about 80 per cent of revenue on recurrent expenditure and only 20 per cent on development. At the national level, we do not even spend the required 30 per cent. Confirming that the ceilings are adhered to is the work of Parliament and not the Controller of Budget. I request my colleagues that despite the good intentions, this amendment would not be good for the country.

The Temporary Deputy Chairman (Hon. Cheboi): I have no requests for now and so, we will dispose of it in the normal manner. Hon. Members, be very keen because I am now putting the Question. When I hear Hon. Oburu wants to say something to this, owing to his age and experience in this House, I am tempted to give him an opportunity. Let us have Hon. Oburu.

Hon. (Dr.) Oginga: Thank you, Hon. Temporary Deputy Chairman. While I agree that the role of the Controller of Budget is prescribed in the Constitution, there is nothing prohibiting the Controller of Budget from enforcing the ceilings. Ceilings are determined by Parliament. Parliament does not have the capacity to enforce adherence to the ceilings. I support the amendment because it will ensure that when the Controller is on a day to day basis controlling the budget, he or she ensures that those expenditures do not exceed the particular ceilings which are already determined by Parliament.

The Temporary Deputy Chairman (Hon. Cheboi): I will give an opportunity to two more Members. I understand that the card that the Member for Subukia is using is a bit faulty. We will give you an opportunity, Hon. Member for Subukia.

Hon. Gaichuhie: Thank you very much, Hon. Temporary Deputy Chairman. It is true my card is faulty, but they are rectifying it right away.

I support this amendment because the role of the budget officer is not just to issue funds, but also enforce the budgetary ceiling. I cannot see any problem with this amendment. That is a function that should be performed by the Controller of Budget (CoB). It is good it is in law other than just assuming. What Hon. Mutura is trying to do is having it in law. It should not be an assumption. It should be there in law.

The Temporary Deputy Speaker (Hon. Cheboi): I assumed that when we gave the Hon. Member for Subukia, it was in his capacity as the Vice-Chairperson of the Departmental Committee on Finance, Planning and Trade. Therefore, I would like to give an opportunity to another Member, rather than the Chairman. Let me give it to the Member for Nakuru Town East Constituency.

Hon. Gikaria: Thank you, Hon. Temporary Deputy Speaker. I support this amendment. Those counties do so many supplementary budgets which keep on changing the dimension of the budget. In Nakuru, they have changed it six times, I think. What happens to the CoB? Will she

be able to track down how you continue? It is a very good amendment, but it needs to have some precautions also. When we change our budgets, it is because we have already undertaken some development. At the county level, it is important for us that the CoB takes time to control. If there is request for money from the recurrent expenditure and they have surpassed their expenditure, then the CoB can say “No”.

I support the amendment.

The Temporary Deputy Chairman (Hon. Cheboi): Okay. Members, make your decision. Since this is a fairly contentious clause, it is good for Members to vote clearly.

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

(Clause 4 as amended agreed to)

The Temporary Deputy Chairman (Hon. Cheboi): Let me bring this to the attention of Members, you might vote for a clause and then lose it when we are trying to include it in the Bill. You must be very careful. If you make a decision, make sure you follow it all through.

Clause 5

Hon. G.W. Omondi: I beg to move:-

THAT, Clause 5 be amended by-

- (a) renumbering the existing provision as sub-clause (1);
- (b) inserting the following new sub-clause immediately after the renumbered sub-clause (1)-

“(2) The Controller of Budget (CoB) shall be entitled to make comments or give views on the estimates submitted pursuant to subsection (1)”

The Temporary Deputy Chairman (Hon. Cheboi): We will move a bit fast now. Hon. Mulu and Omondi, very briefly.

Hon. G.W. Omondi: Thank you, Hon. Temporary Deputy Speaker. I bring this amendment because we do not want the Controller of Budget to be a rubberstamp. We want her to do documents which she should be able to comment about when given a chance because there could be some flaws in it.

For that reason, I am proposing that we add that sub-clause.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Cheboi): I will give chance to a few Members. I will give the Leader of the Majority Party and the Chairman of the Committee in that order.

Hon. A.B. Duale: Hon. Temporary Deputy Chairman, I oppose for one simple reason. That is a function of Parliament. How do we give the functions of oversight of estimates to the CoB? I am talking from what the Budget Office of this House has advised when I saw these amendments.

I want to go on record on the one we have just passed. Ceilings are provided for in the Appropriation Bill. Which other ceilings are you giving to the CoB? We need to be very careful in how we legislate.

The Temporary Deputy Chairman (Hon. Cheboi): Just deal with this one, Hon. Leader of the Majority Party.

Hon. A.B. Duale: On this one, I ask Hon. Omondi to see that the function of CoB comes in after estimates and Appropriation Bills have been passed.

The Temporary Deputy Chairman (Hon. Cheboi): Okay. Chairman of the Committee!

Hon. Langat: Hon. Temporary Deputy Chairman, I oppose this amendment. It is good for the Member to know the functions of CoB and where they start to take effect. The CoB is supposed to authorise withdrawals after Parliament has passed the estimates and the Appropriation Bill. That is when the CoB should start their operations.

If we were to go this direction, we are telling the CoB that he or she must make comments in the budget-making process.

The Temporary Deputy Chairman (Hon. Cheboi): Let us not take too much time on it, Hon. Benja. You have done it. Let us allow the Members to make their decision.

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

(Clause 5 agreed to)

Clause 6

The Temporary Deputy Chairman (Hon. Cheboi): We have amendments by both Hon. Langat and Hon. Mutura. We will start with Hon. Langat. Let us move quicker. We do not want too many discussions in this. Members can just take it up when you bring it clearly.

Hon. Langat: I beg to move:-

THAT, Clause 6 of the Bill be amended –

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

(1) –

“(1A) The reports submitted under sub-section (1) shall provide information relating to-

- (a) the approved budget;
- (b) the total funds released by programmes;
- (c) the absorptive capacity of funds by projects; and,
- (d) reasons of the decline if any”;

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

“(3) For the avoidance of doubt, the reports submitted under sub-section (1) shall not include reports on recent economic developments and outlook, including revenue, grants and loan forecasts and receipts”.

The intention is to make clear the reports which are being submitted by the CoB. We are simply saying she should provide information relating to the approved Budget; total funds released by the programmes; absorbed funds by projects; and reasons for the decline if there are any.

In the Bill, we are also making a proposal that the CoB should stick to the reports relating to her mandate. That is why we are saying:

“(3) For the avoidance of doubt, the reports submitted under sub-section (1) shall not include reports on recent economic developments and outlook, including revenue, grants and loan forecasts and receipts”.

This is a mandate given to the National Treasury by the Constitution. The CoB will begin her function after the Appropriation Bill.

The Temporary Deputy Chairman (Hon. Cheboi): Okay.

(Question of the amendment proposed)

Let us very quickly have two Members. Hon. Makali Mulu and Hon. Cyprian Iringo. Quickly!

Hon. Mulu: Thank you, Hon. Temporary Deputy Chairman. I support this amendment. Even as I support, I really wish the Chairman would have included the issue of reporting to include reporting on inputs and outcomes, rather than financial reporting only. We have changed to programme budgeting. That would have really helped us. Currently, she is just reporting on finances without telling us how much is being achieved as a result of using those resources. That is very important. Unless that is being addressed, I wish he could consider that amendment.

The Temporary Deputy Chairman (Hon. Cheboi): Okay. Let us have Hon. Iringo.

Hon. Iringo Kubai: Thank you, Hon. Temporary Deputy Chairman for giving me this opportunity. I support the Chairman of the Departmental Committee on Finance, Planning and Trade on this amendment. This will help in giving the CoB a chance to control and check on irregularities and mischief which might be happening within the boundaries of revenue. At the end of the day, it will add control.

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

The Temporary Deputy Chairman (Hon. Cheboi): We will proceed to Hon. Mutura. Hon. Mutura, prosecute yours.

Hon. Kangara: Thank you, Hon. Temporary Deputy Chairman. Mine is an insertion on Clause 6. I beg to move:-

THAT, Clause 6 of the Bill be amended in sub-clause (2) by—

(a) inserting the following paragraphs immediately after paragraph (c)—

(d) information on—

(i) unauthorised withdrawals made from the Consolidated Fund, a county Revenue Fund or the Equalization Fund; and,

(ii) the level of compliance by the national and county governments in submitting copies of budget estimates or the County Fiscal Strategy Paper within the required timelines.”

(b) deleting sub-clause (5) and substituting therefor the following new sub-clause—

“(5) The Controller of Budget shall—

- (a) publish and publicise the reports referred to in this section not later than fourteen days after the reports are submitted to Parliament; and,
- (b) make the information in the reports available on a website.”

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Cheboi): I have a few Members who want to speak to this.

Let us have Hon. Bunyasi.

Hon. Bunyasi: Thank you, Hon. Temporary Deputy Chairman. Unfortunately, I support part of Hon. Mutura’s proposal. On the proposed (d)(i), they are not reporting the authorised withdrawals from the Consolidated Fund. However, the second part on the level of compliance by the national Government and county governments in submitting copies of the budget estimates needs to be more holistic. I do not think it fits here very well.

I oppose (d)(ii).

Thank you.

Hon. S. S. Ahmed: Thank you, Hon. Temporary Deputy Chairman. I rise to support part of the proposal in respect to withdrawals. As it has been stated, the function of the Controller of Budget does not extend to the level of compliance in respect of the national Government. So, I do not agree with Part (ii) but I agree with Part (i)

The Temporary Deputy Chairman (Hon. Cheboi): Let us have the Leader of the Majority Party.

Hon. A.B. Duale: Hon. Temporary Deputy Chairman, again, I oppose on very good grounds because I have read this Bill. What Hon. Mutura is trying to do is provide for the reports of the Controller of Budget. The amendment proposes to include further requirements on what information the Controller of Budget reports should be made of.

It is illegal for any withdrawal to be made from any public fund. I want Hon. Mutura to listen to me. It is illegal for any withdrawal to be made from any public fund without express approval by the Controller of Budget. Therefore, it is inherent that this nature of information could be contained--- This is from the Budget Office. Every report of the Controller of Budget that is tabled in this House clearly shows where withdrawal has taken place. It is also in line with the provisions of the Public Finance Management (PFM) Act on penalties. In fact, it goes further to say that if you withdraw without the concurrency and approval of the Controller of Budget these are penalties under the PFM Act, 2012.

We should not legislate on things that already exist. There is no withdrawal from County Fund, National Fund or Consolidated Fund as we stand here without express approval of the Controller of Budget.

The Temporary Deputy Chairman (Hon. Cheboi): Now make your decision, Hon. Members.

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

(Clause 6 as amended agreed to)

Clause 7

Hon. Kangara: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 7 of the Bill be deleted and replaced with the following new clause—

Special reports.

7. (1) The Controller of Budget shall prepare and submit the following special reports as provided for in the Constitution —

- (a) in accordance with Article 225 (7), a report to Parliament on funds withheld by the Cabinet Secretary giving a detailed account as to why the withholding should be continued or withdrawn;
- (b) pursuant to any investigations conducted under Article 252(1)(a), a report to Parliament, the national executive, county assemblies or county executives, or any other state agency as may be appropriate, on any matters that have come to the attention of the Controller of Budget relating to the performance of his or her functions;
- (c) pursuant to Article 254(2), and upon request by the President, National Assembly or the Senate, a report on a particular issue;
- (d) a report on any issue as may be requested by a Governor or a county assembly.

(2) A report submitted by the Controller of Budget under subsection (1) shall, where appropriate, include in its recommendations the criminal prosecution of persons responsible for violation of the law relating to public finance management.

What is worth noting is Clause 7(2). The reason for this is because these reports are tabled in the National Assembly and the Senate. They detail how money has been siphoned and even stolen. However, to prompt the Office of the Director of Public Prosecutions (DPP) you have to write and explain the same report. So, I propose this amendment so that they can respond. Once the report shows that there is clear violation of the law and money has been stolen, the DPP and the Ethics and Anti-Corruption Commission (EACC) should not wait for someone to prompt them to read the report.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Cheboi): I will give a few Members a chance. I will start with the Whip of the Majority Party.

Hon. Katoo: Thank you, Hon. Temporary Deputy Chairman. I rise to oppose these proposals for a simple reason. If you look at the last recommendation by Hon. Benson Mutura, you will find that he gives the Controller of Budget powers to prosecute when he says “A report submitted by the Controller of Budget under subsection (1) shall, where appropriate, include in its recommendations the criminal prosecution of persons responsible for violation of the law.” The Controller of Budget has powers to conduct investigations. Therefore, to recommend any criminal prosecution is not really the job of the Controller of Budget. That waters down everything on the recommendation of Clause 7.

I oppose this amendment because the DPP cannot propose something he has not investigated.

The Temporary Deputy Chairman (Hon. Cheboi): Let us have the Leader of the Majority Party.

Hon. A.B. Duale: My colleague has done very well. Let me now go to other issues. I want to show where these penalties and offenses are shown in law. We should not get out of the role stipulated under the Constitution for the Controller of Budget. This clause provides reports by the Controller of Budget. The special reports are, the way he has cited, in accordance with Article 225(7) of the Constitution on the renewal or stoppage of transfer. The Controller of Budget has powers for renewal or stoppage of funds.

Article 221 is on investigations on own initiative. If you look at the PFM Act, 2012 as well as the Public Finance Regulations passed by this House and any other written laws within the financial sector, you will find that there are penalties for violation of public finance laws and judicial mechanism is very elaborate. We cannot give an extra function on criminal investigation to the controller of Budget.

In law, the Controller of Budget is supposed to bring reports to Parliament. If the President asks for a report she will give it but if Parliament asks for a report, she will appear before Parliament. However, the Controller of Budget cannot have criminal investigation powers. She will report. That is the function of the Auditor-General. The Auditor-General will say this has happened and that will be picked by EACC and the Director of Criminal Investigations (DCI), as simple as that.

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

(Clause 7 agreed to)

(Clause 8 agreed to)

Clause 9

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Langat, be brief if you can. Just go to the gist of the amendment.

Hon. Langat: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 9 of the Bill be amended -

(a) in sub-clause (1) by deleting the words “in consultation with the Public Service Commission”; and

(b) by deleting sub-clause (3)

Hon. Temporary Deputy Chairman, if you look at Article 252 of the Constitution on the independent offices, you will see that they are supposed to recruit their own staff. Therefore, my Committee is proposing that the requirement to consult the Public Service Commission (PSC) will affect that independence. Hence we are proposing to delete any reference to the PSC in the recruitment of staff by the Controller of Budget because the office is supposed to be independent.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Cheboi): I will give an opportunity to two members. Let us have Hon. Kimaru James, the Member for Kesses.

Hon. J.K. Bett: Thank you, Hon. Temporary Deputy Chairman. As per the recommendation of the Committee Chair, I suggest that the inclusion of the PSC does not in any way affect the independence of independent offices. This is because it gives the overall guidelines on integrity and other related issues. I am of the opinion that consultation with the PSC should remain.

The Temporary Deputy Chairman (Hon. Cheboi): Let us have Hon. Gaichuhie.

Hon. Gaichuhie: Thank you, Hon. Temporary Deputy Chairman for indulging me. I support Hon. Benjamin Langat because, as a Committee, we looked at other independent commissions and offices. The way they recruit their staff is exactly the same way we are proposing. They do not consult the PSC because they are independent offices. That is why I support my Committee Chair.

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Mulu, you have the Floor.

Hon. Mulu: Thank you, Hon. Temporary Deputy Chairman. I thank the Chair of the Departmental Committee on Finance, Planning and Trade for this important amendment. We have said in this House many times that independent commissions are independent and they should not be subjected to another independent commission.

On that note, I support this amendment and urge Hon. Members to support it.

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

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

(Clause 9 as amended agreed to)

(Clauses 10, 11, 12, 13, 14 and 15 agreed to)

Clause 16

Hon. Langat: Hon. Temporary Deputy Chairman, I beg to move:-

THAT Clause 16 of the Bill be amended in sub-clause (2) by inserting the word “audited” immediately before the word “financial” in paragraph (a).

This is basically a correction of an error.

(Question of the amendment proposed)

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

(Clause 16 as amended agreed to)

(Clauses 17, 18, 19, 20 and 21 agreed to)

Clause 22

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Langat, once you are through with the microphone, make sure you switch it off. Otherwise, that gives whichever side you vote for an undue advantage because it is magnified.

Hon. Langat: I think you are very generous with me today because it has been on all the time.

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

THAT, Clause 22 of the Bill be deleted and substituted with the following new clause –

Repeal of No. 8 of 2011. 22. The Independent Offices (Appointment) Act is repealed.

Hon. Temporary Deputy Chairman, what we are basically doing is repealing Section 22 of the Independent Offices (Appointment) Act. This is because the section deals with appointment and qualifications of the Controller of Budget. We have brought those clauses to this Bill, which is the relevant Bill for the Controller of Budget. That means we need to remove this section from the Independent Offices (Appointment) Act. We are repealing that because we have brought all those provisions to this Bill which we are dealing with now.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Cheboi): I now give the opportunity to the Member for Marakwet West.

Hon. Kisang: Thank you, Hon. Temporary Deputy Chairman. I rise to support the proposal by Hon. Langat.

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Mlolwa, you have the Floor.

Hon. Mlolwa: I support the Chairman of the Departmental Committee on Finance, Planning and Trade.

The Temporary Deputy Chairman (Hon. Cheboi): That goes on record.

*(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)

New Clause 3A

Hon. Langat: Hon. Temporary Deputy Chairman, I beg to move:-

THAT the following new clause be inserted immediately after Clause 3 –

Vacancy and procedure for appointment of the Controller of Budget. 3A. (1) The office of the Controller of Budget shall become vacant if the Controller of Budget –

(a) resigns in writing by a notice addressed to the

President;

(b) is removed from office under the provisions of Article 251 or Chapter six of the Constitution; or

(c) dies.

(2) Where a vacancy occurs under subsection (1), the Public Service Commission shall within seven days by notice in the Gazette, at least two newspapers of national circulation and at least two television and radio stations declare the office vacant and invite applications.

(3) An application under subsection (2) shall be forwarded to the Public Service Commission within fourteen days by a qualified person.

(4) The names of all applicants under subsection (3) shall be published in the Gazette.

(5) The Public Service Commission shall within seven days of expiry of the period prescribed under subsection (3) convene a committee for the purpose of considering the applications and shortlisting three persons for appointment as Controller of Budget.

(6) The Committee under subsection (5) shall consist of the following persons –

(a) a representative from the Office of the President;

(b) a representative from the Ministry for the time being responsible for matters relating to finance;

(c) a representative from the Office of the Attorney-General; and

(d) a representative from the Ministry for the time being responsible for matters relating to the public service.

(7) The Committee shall hold its proceedings in public and submit to Parliament a report of the interview proceedings including the scores awarded to each candidate by each member of the committee and the criteria used in selecting the three shortlisted candidates.

(8) The Public Service Commission shall within seven days of the shortlisting of candidates under subsection (5), forward the names to the President.

(9) The President shall within seven days of receipt of the names under subsection (8), nominate one candidate for appointment as the Controller of Budget and forward the name to the National Assembly.

(10) Where the National Assembly –

(a) approves the nominee, the Speaker of the National Assembly shall within three days of the approval, forward the name of the nominee to the President for approval.

(b) rejects the nominee, the Speaker of the National Assembly shall within three days of the rejection, communicate the decision to the President who shall submit a fresh nominee from amongst the candidates forwarded by the Public Service Commission.

(11) If the National Assembly rejects all or any subsequent nominee under subsection (10), the provision of subsection (1) to (9) shall apply with the necessary modifications.

(12) The President shall within seven days of receipt of the name under subsection (10) (a), by notice in the Gazette appoint the Controller of Budget.

(13) For the avoidance of doubt, the Public Service Commission shall only provide secretariat services for the committee convened under subsection (5).

(14) Despite the foregoing provisions, the President may by notice in the Gazette extend the period specified in respect of any matter under this section by a period not exceeding twenty one days.

Hon. Temporary Deputy Chairman, that section deals with the vacancy and the procedure for appointment of the Controller of Budget. In the event of a vacancy arising in that office, there should be a process of recruiting another Controller of Budget.

Basically, we are providing for how the position may become vacant. The holder may resign or he is removed from office. The office can also be vacant through death. What is written there is the process of getting a new Controller of Budget in the event of a vacancy.

(Question of the new clause proposed)

(New clause read the First Time)

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

The Temporary Deputy Chairman (Hon. Cheboi): Let us start with Hon. Ann Nyokabi.

Hon. (Ms.) Gathecha: Thank you, Hon. Temporary Deputy Chairman. I rise to support the new clause. The office of the Controller of Budget is a very important one and proper procedures need to be followed in order to determine who the successor will be as they continue to make very controversial statements within the media that sometimes leave Hon. Members and the public at large in amazement.

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Lentoimaga, you have the Floor.

Hon. Lentoimaga: Thank you, Hon. Temporary Deputy Chairman. When we were dealing with the previous amendment, you denied us a chance to talk. The PSC was mentioned but it was rejected.

The Temporary Deputy Chairman (Hon. Cheboi): Do not go there.

Hon. Lentoimaga: Hon. Temporary Deputy Chairman, the PSC is also mentioned here as an institution that will deal with the appointment of the Controller of Budget. I support this amendment but I do not understand why we rejected the previous amendment.

The Temporary Deputy Chairman (Hon. Cheboi): I do not want to go there with you because you said that I denied you an opportunity to speak and yet I am sure that there are a few Members who spoke to it.

The Temporary Deputy Chairman (Hon. Cheboi): Let us now have Hon. (Ms.) Birdi.

Hon. (Ms.) Sunjeev: Hon. Temporary Deputy Chairman, I support the amendment by the Chairman of the Committee.

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

(The new clause was read a Second Time)

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

New Clauses 4A and 4B

Hon. Langat: Hon. Temporary Deputy Chairman, I beg to move:-

Deputy- Controller of Budget. THAT, the following new clauses be inserted immediately after clause 4-

4A. (1) Pursuant to Article 252(1)(c) of the Constitution, there shall be a Deputy Controller of Budget who shall be recruited through a competitive process and appointed by the Controller of Budget.

(2) A person shall be qualified for appointment as the Deputy-Controller of Budget if such person-

- (a) is a citizen of Kenya;
- (b) holds the qualification for the office specified in Article 228 of the Constitution;
- (c) holds a degree in finance, accounting or economics from a university recognised in Kenya; and
- (d) meets the requirements of Chapter Six of the Constitution.

(3) A person shall not be qualified for appointment under subsection (1) if the person –

- (a) is a member of Parliament;
- (b) is a member of a county assembly;
- (c) has not met his or her tax obligations;
- (d) has been removed from office for contravening the Constitution or any other law; or
- (e) is an undischarged bankrupt.

(4) The Deputy-Controller of Budget shall deputise the Controller of Budget and perform such duties and exercise

such other powers as the Controller of Budget may delegate to him or her.

(5) In the performance of his or her duties, the Deputy Controller of Budget shall report to the Controller of Budget.

4B.(1) Where –

(a) the Office of the Controller of Budget becomes vacant;

(b) the Controller of Budget has been suspended in accordance with the Constitution;

(c) the appointment of a person as Controller of Budget is pending; or

(d) the Controller of Budget is, for any reason unable to perform the functions of his or her office,

then, until a person is appointed to and has assumed the functions of that office in accordance with section 3, or until the Controller of Budget has resumed the performance of those functions, the Public Service Commission shall recommend the most senior officer in the office of the Controller of Budget to the President for designation as the acting Controller of Budget.

(2) A person designated under subsection (1) shall meet the minimum qualifications for appointment to the office of the Controller of Budget and shall serve for a period of not more than ninety days.

(3) When acting in terms of subsection (1), the acting Controller of Budget shall have all the powers of the Controller of Budget.

Hon. Temporary Deputy Chairman, New Clause 4A deals with the appointment of the Deputy Controller of Budget. It says that he shall be recruited through a competitive process. We have provided the qualifications which are the same as those of the Controller of Budget.

We have also indicated the role of the Controller of Budget. We are saying that the Deputy Controller of Budget shall deputise the Controller of Budget and shall perform such duties and exercise such other powers as the Controller of Budget may delegate to him or her. In the performance of his or her duties, the Deputy Controller of Budget shall report to the Controller of Budget.

We were very keen to make sure that the person appointed reports directly to the Controller of Budget so that we do not create two centres of power within the same office like we did elsewhere. Basically, there will be harmony and the working relationship will be good.

Under New Clause 4B, in the event that there is a vacancy in the Office of the Controller of Budget, we are creating a situation where an acting Controller of Budget will be appointed and the procedure will be that the PSC shall recommend the most senior staff to the President for appointment as an acting Controller of Budget until a new Controller of Budget is appointed under the Constitution.

(Question of the new clauses proposed)

(New clauses read the First Time)

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

The Temporary Deputy Chairman (Hon. Cheboi): I will allow two Members to contribute to the new clauses. I will start with the Leader of the Majority Party.

Hon. A.B. Duale: Thank you, Hon. Temporary Deputy Chairman. I was of the opinion that we protect the Office of the Deputy Controller of Budget. I am happy that the Chairman has confirmed that the Deputy Controller of Budget shall perform such duties and exercise such powers as the Controller of Budget may delegate to him or her. If we do not do that, there might be a conflict between the two offices. Whoever will be the Deputy Controller of Budget will be under the Controller of Budget.

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Letimalo, you have the Floor.

Hon. Letimalo: Hon. Temporary Deputy Chairman, I am a bit concerned about the appointment of the Deputy Controller of Budget because we are saying that he will be recruited through a competitive process and appointed by the Controller of Budget. How can the Controller of Budget and not the PSC appoint his deputy? This is a very senior position and in case the Office of the Controller of Budget falls vacant, then the Deputy Controller of Budget assumes that position. That should be replaced. That responsibility should lie with the PSC.

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

(The new clauses were read a Second Time)

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

New Clause 9A

Hon. Langat: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, the following new clause be inserted immediately after clause 9 –
Secondment. 9A. (1) In addition to the staff recruited by the Controller of Budget under Article 252 (1)(c) of the Constitution and section 9 of this Act, any public entity may, upon request by the Controller of Budget, second to his or her office such number of public officers as may be necessary for the purposes of carrying out the functions of this office.

(2) A public officer seconded under subsection (1) shall, during the period of secondment, be deemed to be an officer of the Controller of Budget and shall be subject only to the direction and control of the Controller of Budget.

(3) For purposes of this Act, a public officer who is seconded

to the Office of the Controller of Budget under this section, shall be deemed to be an employee of the Controller of Budget and shall enjoy the same benefits as an employee recruited directly by the Controller of Budget under this Act.

(4) The Controller of Budget may upon request by a public entity second an officer for an agreed period, for purposes of capacity building of the institution.

(5) A public officer seconded by the Controller of Budget under subsection (4) above, shall be deemed to be an officer of that institution and shall be subject only to the direction and control of that institution”.

Hon. Temporary Deputy Chairman, this is dealing with the procedure for secondment of staff from other public service organs or from the Controller of Budget to other public entities. This is just a procedure.

(Question of the new clause proposed)

(New clause read the First Time)

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

The Temporary Deputy Chairman (Hon. Cheboi): Hon. (Ms.) Winnie Karimi.

Hon. (Ms.) W.K. Njuguna: Thank you, Hon. Temporary Deputy Chairman. I rise to support this because the procedures are clearly stated.

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

(The new clause was read a Second Time)

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

New Clauses 19A and 19B

Hon. Langat: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, the following new clauses be inserted immediately after Clause 19 –
Offences by officers of the office of the Controller of Budget. 19A. (1) Any officer of the Office of the Controller of Budget commits an offence if that officer—

- (a) engages in a corrupt act;
- (b) knowingly and willfully conceals information on the Controller of Budget’s findings for whatever reason, including in order to obtain a financial benefit for the officer or an accomplice or another person;
- (c) knowingly and willfully fails to disclose information

- on fraud or corrupt practice by a State Organ or public entity;
- (d) fails to disclose any conflict of interest in any matter under consideration in the course of discharging any functions under this Act; or
- (e) knowingly and willfully discloses, publishes or publicizes the Controller of Budgets' report or its contents to third parties including the media before the report is finalized and formally submitted to Parliament or a county assembly and copied to the entity that is subject of the report.

(2) Any officer of the Office of the Controller of Budget who commits an offence under subsection (1) shall be liable on conviction to a fine not exceeding ten million shillings or to imprisonment for a term not exceeding five years, or to both

General penalty

19B. Except as otherwise provided for under this Act, a person who is convicted of an offence under this Act for which no other punishment is provided, such person shall be liable to a fine not exceeding two million shillings or to a term of imprisonment not exceeding one year or, to both

Hon. Temporary Deputy Chairman, this is providing for instances where offences may arise and the respective penalties so that everybody performs their duties with integrity.

(Question of the new clauses proposed)

(New clauses read the First Time)

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

The Temporary Deputy Chairman (Hon. Cheboi): I want Members to take legislative notice that we are currently 51.

Hon. A.B. Duale: This is an important amendment. Representatives of the Controller of Budget in counties collude with governors to fake reports to make money. The representatives of the Controller of Budget in Garissa and Kericho counties decided to go to bed with the governors. I hope the 47 representatives of the Controller of Budget in the counties are watching. They should know that we are putting a law in place, and their days are numbered. If the President assents to this Bill, they will now be arrested. A Kenyan can now file a criminal case against them. They are all looting our resources. The days of the officers from the Office of the Controller of Budget are numbered.

I support the amendment.

The Temporary Deputy Chairman (Hon. Cheboi): The Member for Kwanza, do you want to contribute?

Hon. F.K. Wanyonyi: Hon. Temporary Deputy Chairman, I will naturally do so. I want to support what my friend, Hon. A.B. Duale has mentioned. We have rampant corruption going

on out there. For example, we have had cases where officers were suspended because of corruption and you do not see their cases for a long time. I have a case where 12 officers in my county were suspended. Some of them are very rich. Sometimes their lifestyles change overnight. I support this provision and I hope that the Government of the day takes these cases seriously. The EACC should deal with these culprits.

The Temporary Deputy Chairman (Hon. Cheboi): I will give the opportunity to two Members. Let us have Hon. Chanzu, the Member for Vihiga.

(Loud consultations)

Order, Hon. Members! You are kindly requested not to leave the Chamber. It is critical because we are dealing with numbers.

Hon. Chanzu: Hon. Temporary Deputy Chairman, this is what has been lacking in our laws. When it comes to operationalisation of the various Articles of the Constitution, there are some areas which are vague. This Bill will help us because in the last three-and-a-half years, we have not had anything said on the issue of county governments embezzling funds, and yet a lot of funds are being misappropriated out there.

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Chanzu, we do not have a lot of time.

*Question, that the news clauses be read a Second Time,
put and agreed to)*

(The new clauses were read a Second Time)

*(Question, that the news clauses be added to the Bill,
put and agreed)*

The Leader of the Majority Party, when you make the decision very close to where I am, it sounds like it is three or four Members. This is because it influences my sound senses.

(Clause 2 agreed to)

(Title agreed to)

(Clause 1 agreed to)

Let us have the Mover moving reporting. Hon. Mulu, I request you to take your sit. I will be very keen to make sure that Members do not leave at this point in time because there is a very thin line between quorum and lack of it.

Hon. A.B. Duale: Hon. Temporary Deputy Chairman, you cannot enforce quorum because a Member can leave the Chamber.

The Temporary Deputy Chairman (Hon. Cheboi): Under Standing Order No. 1, I am able to do it.

(Laughter)

Hon. A.B. Duale: Hon. Temporary Deputy Chairman, I beg to move that the Committee doth report to the House its consideration of the Controller of Budget Bill (National Assembly Bill No.21 of 2015) and its approval thereof with amendments.

(Question proposed)

(Question put and agreed to)

(The House resumed)

[The Deputy Speaker (Dr. Laboso) in the Chair]

REPORTS THIRD READINGS

THE MISCELLANEOUS FEES AND LEVIES BILL

Hon. Cheboi: Hon. Deputy Speaker, I beg to report that a Committee of the whole House has considered the Miscellaneous Fees and Levies Bill (National Assembly Bill No.30 of 2015) and approved the same with amendments.

Hon. A.B. Duale: Hon. Deputy Speaker, I beg to move that the House doth agree with the Committee in the said Report. I also request Hon. Benjamin Langat, the Chairman of the Departmental Committee on Finance, Planning and Trade to second the Motion for agreement with the Report of the Committee of the whole House.

Hon. Langat seconded.

(Question proposed)

(Question put and agreed to)

Hon. A.B. Duale: Hon. Deputy Speaker, I beg to move that the Miscellaneous Fees and Levies Bill (National Assembly Bill No.30 of 2015) be now read the Third Time. I also request Hon. Benjamin Langat, the Chairman of the Departmental Committee on Finance, Planning and Trade to second.

Hon. Langat seconded.

(Question proposed)

Hon. Deputy Speaker: Let us have Hon. Sakwa Bunyasi.

Hon. Bunyasi: Hon. Deputy Speaker, I wanted to contribute in the Committee of the whole House.

Hon. Deputy Speaker: Can I put the Question?

Hon. Members: Yes!

Hon. Deputy Speaker: Hon. Members are of the opinion that I should put the Question. I have ascertained that we have the requisite quorum.

(Question put and agreed to)

(The Bill was accordingly read the Third Time and passed)

THE CONTROLLER OF BUDGET BILL

Hon. Cheboi: Hon. Deputy Speaker, I beg to report that a Committee of the whole House has considered the Controller of Budget Bill (National Assembly Bill No.21 of 2015) and approved the same with amendments.

Hon. A.B. Duale: Hon. Deputy Speaker, I beg to move that the House doth agree with the Committee in the said Report. I also request Hon. Benjamin Langat, the Chairman of the Departmental Committee on Finance, Planning and Trade to second the Motion for agreement with the Report of the Committee of the whole House.

Hon. Langat seconded.

(Question proposed)

(Question put and agreed to)

Hon. A.B. Duale: Hon. Deputy Speaker, I beg to move that the Controller of Budget Bill (National Assembly Bill No.21 of 2015) be now read the Third Time. I also request the Chair of Departmental Committee on Finance, Planning and Trade to second.

Hon. Langat seconded.

Hon. Deputy Speaker: Hon. Langat is, today, not in a mood of saying much.

(Question proposed)

Hon. Deputy Speaker: Hon. Wanyonyi wants to say a word.

Hon. F. K. Wanyonyi: Just like Hon. Duale has said, we will pass this Bill. I am embarrassed people in this country are in a hurry to make money. We have heard of people being seconded to the Office of the Controller of Budget and getting into corrupt deals. I hope and pray that we should send a very strong warning.

Hon. Deputy Speaker: Hon. Wanyonyi, did you talk of “corrupt Bills”.

Hon. F. K. Wanyonyi: No! I said “corrupt people”. The people who are seconded to this office are in a hurry to make money. In the process, there is rampant corruption, particularly, in the counties.

The penalties under Clause 19(b), in my view, came a bit late. I oppose this. We should take this very seriously to curb corruption in this country. People are making many funny deals out there. I hope this House sends a very strong warning to the people out there who are corrupt, particularly in the Office of the Controller of Budget.

I support this Bill, thank you Hon. Deputy Speaker.

Hon. Deputy Speaker: Hon. Langat, I can see that you are on intervention.

Hon. Langat: I am not, Hon. Deputy Speaker.

Hon. Deputy Speaker: Hon. Alois Lentoimaga, do you want to say a word on this? Hon. Members, please do not leave because we are just about to put the Question.

Hon. Lentoimaga: Thank you, Hon. Deputy Speaker for giving me this opportunity. I support this Bill and the amendments that were brought, especially on the audit of expenditures in the counties, the National Government Constituencies Development Fund (NGCDF) and the national Government. Just like my colleagues have said, there are serious corruption practices when it comes to auditing.

We have witnessed situations where when auditors go to the counties or institutions that spend public funds, they do not do the auditing. Instead they collect money. They normally put a figure and failure to provide that amount they write serious statements and accusations against that institution.

These penalties are very good. I want to appeal that they must be implemented to help fight corruption. One thing with Parliament is that we pass laws but fail to implement them and take action against people who break them.

Hon. Deputy Speaker: Hon. Letimalo, we need to keep the requisite numbers. Can I just give you a minute?

Hon. Letimalo: Thank you, Hon. Deputy Speaker. Mine is just a quick comment. I am in support of the entire Bill. I just want to request the Chair of the Departmental Committee on Finance, Planning and Trade not to be fast in dismissing amendments brought by other members.

If you look at the amendment brought by Hon. Mutura under Clause 7 compared with the New Clause 19A, you will find that it recommends penalties and enriches them.

Personally, I am really reluctant about the appointment of the Deputy Controller of Budget by the Controller of Budget. These are officers in the same office. Therefore, it requires an independent office that should be neutral and impartial to make this appointment. Otherwise, this is likely to create infighting among members of that office.

Hon. Deputy Speaker: Hon. Members, unfortunately, we are not at the debating stage, it might have to wait for six months after this Bill has been moved.

Having confirmed we have the requisite quorum, I will put the Question.

(Question put and agreed to)

(The Bill was accordingly read the Third time and passed)

POINT OF ORDER

OMISSION OF ENG. GUMBO'S AMENDMENTS ON THE CONTROLLER OF BUDGET BILL

Hon. (Eng.) Gumbo: On a point of order.

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

Hon. (Eng.) Gumbo: Hon. Deputy Speaker, I rise on a point of order under Article 94 of the Constitution. One of the roles of Parliament is to make laws. That role is performed by Members, and it includes making amendments to Bills in this House. When a Member brings a matter concerning---

(Loud consultations)

Hon. Deputy Speaker: Hon. Members, can we listen to the Member's contribution?

Hon. (Eng.) Gumbo: When a member brings a matter concerning his proposed amendment being impeded in one way or another, that matter cannot be treated with flippancy. I am very disappointed by the Chair of the Committee of the whole House while moving the Controller of Budget Bill. I brought my amendments on 22nd July, 2015, and they were received at the Clerk's office.

For the Chair to suggest that I should have followed to confirm that the amendments appeared in the Order Paper, reduces me to working in the Clerks' Office. I am not sent here by the people of Rarieda to work in the Clerks' Office. We have to be told why we are called before Committees. It is wrong and demeaning as an MP and a Chair, for a fellow Chair to say that when I appear before his Committee, after he has called me, that is an informal engagement. Why then was I called? The ownership of amendments is with the Member.

I am keen to see what action your office is going to take on the Clerks' Office. Making amendments is not an easy thing, and a walk in the park. I sit up to 2.00 a.m., in the morning. I cannot make amendments and somebody decides that because he does not like them they should not appear on the Order Paper. Then I am treated with flippancy and told to find out why he or she did not check the Order Paper.

Is it my business to check the formatting of the Order Paper? Is this how we are going to work? I have been in this Parliament for nine years and I have never seen this before. If the Office of the Clerk is failing, that is something of concern. However, you cannot tell me that I should check to find out if what I proposed is in the Order Paper. Why then are we being asked to make amendments? I am very upset and this matter has to be taken seriously. If we are not supposed to make amendments, we should be told so, so that we do not waste time. If amendments have to conform to certain trends, we should also be told so.

We cannot be treated like this. This is not a nursery school! This is the National Assembly of the Republic of Kenya. Hon. Members spend time because they do not even have research officers to make their amendments. We do them on our own. How do I make amendments and then I am called to appear before the Committee for one-and-a-half hours?

I have engaged the Departmental Committee on Finance, Planning and Trade on the Public Audit Bill and the Public Procurement Bill. Why then did it not apply that time? Now, when I have gone through the same process the Chair comes here on record to say that was an informal engagement. Is that the way we are going to work in this House? Are there Hon. Members who are more equal than others, if the Chair feels that he is not comfortable with certain amendments? To the extent, I know that amendments are owned by the Hon. Member who proposes them. Whether the Chair is comfortable with the amendments or not is not the issue. I am appealing to you, Hon. Deputy Speaker.

I sent my amendments and they were received by the Office of the Clerk. Once they are received, it is not my business how they move within Parliament. If there is an issue, let us argue them on the Floor of the House. I am not a mad person. I have proposed amendments to many laws, probably more than any other Member.

Hon. Deputy Speaker, I am very upset about this matter because I have been treated most unfairly. Your Office must take action on the person who was responsible for my amendments not appearing on the Order Paper today.

Hon. Deputy Speaker: Your sentiments have been taken, Hon. (Eng.) Gumbo. I can see the Chairperson of the Departmental Committee on Finance, Planning and Trade is upstanding. Do you have a comment to make on the same?

Hon. Langat: Thank you very much, Hon. Deputy Speaker. While I sympathise with what happened to Hon. Gumbo's amendments, he has mentioned me adversely suggesting that I played a role in his amendments not appearing on the Order Paper. We have always engaged with the Hon. Member and other Hon. Members in the Committee. I wish to inform the Member that those engagements are usually in the spirit of trying to get consensus so that when we come to the House, we come with one or two documents or amendments. The Member remembers that while he was in my Committee, I told him that he needs to fight for his amendments on the Floor of the House. At no time did I promise him that I would carry over his amendments.

Hon. Gumbo is the Chair of the Public Accounts Committee (PAC). He is an old Member of this House. He knows that the Chair of the Departmental Committee on Finance, Planning and Trade does not determine which Private Members' amendments appear on the Order Paper and which ones do not. I agree that if there are issues in the Office of the Clerk, you should follow them up.

I want the Hon. Member to know that I did not play any role in his amendments not appearing on the Order Paper. I sympathise with his situation but I do not want him to accuse the Chair of the Departmental Committee on Finance, Planning and Trade because I did not and would never in any way determine which amendments appear on the Order Paper and which ones do not. All the amendments come to the Floor of the House. It is up to the Hon. Members of the House to determine whether the amendments pass or not. I sympathise with his situation but he should not blame the Chair of the Departmental Committee on Finance, Planning and Trade or the Committee for that matter.

Hon. Deputy Speaker: The matter now squarely lies with the clerks at the Clerk's Office. The matter will be dealt with and you will be given a response, Hon. Gumbo. Every Member of this House is equal and has a right to propose any kind of amendments. It is only this House that determines whether or not the amendment is taken. An amendment cannot be wished away or thrown away before it gets to the Floor of the House. Sometimes, when there are too many amendments, we ask you to discuss with the committees for purposes of eliminating those ones that are similar. This is to avoid running a lot of paper when the amendments are similar. Amendments are allowed from all Members. That matter shall be communicated to you after we get to the bottom of why your amendments were not on the Order Paper. Can we move on?

MOTIONS

APPROVAL OF THE MEDIATED VERSION OF THE LAND LAWS (AMENDMENT) BILL

Hon. Deputy Speaker: This Motion will be moved by the Vice-Chair of the Mediation Committee.

Hon. Mwiru: Hon. Deputy Speaker, I beg to move the following Motion:-

THAT, pursuant to the provisions of Article 113(2) of the Constitution and Standing Order 150, this House adopts the Report of the Mediation Committee on the Consideration of the Land Laws (Amendment) Bill (National Assembly Bill No.55 of 2015), laid on the Table of the House on Thursday, 28th July, 2016, and approves the Mediated Version of the Land Laws (Amendment) Bill (National Assembly Bill No.55 of 2015).

It is important to realise the genesis of what we are about to debate. This Bill was passed by this House in June and was forwarded to the Senate. During the Second Reading Stage in the Senate, the Bill was thrown out. Therefore, pursuant to Article 113, this matter had to be sent for mediation in both Houses.

Pursuant to Standing Order No.149(2) of the National Assembly and Standing Order No.154 (2) of the Senate, the two Houses constituted a Mediation Committee on the Bill so that they could come up with a mediated version whose report is now before this House.

The mediation was wholly in consensus and agreement right from the election of the leadership. We did it by consensus. The Senate provided the Chair and the National Assembly provided the Vice-Chair. The Mediation Committee constituted of 10 Members - 5 Members from the Senate and 5 Members from the National Assembly. They consisted of the following:-

- (1) Sen. Lenny Kivuti, MP - Chairperson;
- (2) Hon. Alex Mwiru, MP - Vice-Chairperson;
- (3) Sen. George Khaniri, MP
- (4) Hon. Chachu Ganya, MP;
- (5) Sen. Hargura Godana, MP;
- (6) Sen. Naisula Lesuuda, MP, CBS;
- (7) Sen. (Prof.) John Lonyangapuo, MP;
- (8) Hon. Daniel Maanzo, MP;
- (9) Hon. Moses ole Sakuda, MP; and,
- (10) Hon. Francis Waweru, MP.

Whereas we appreciate what the National Assembly had done for one full year in trying to build up to the Bill which the Senate rejected, I assure the House that after the Mediation Committee met, some of the sticky issues which were coming out were ironed out amicably. This is after public participation under Article 118 of the Constitution, 2010. We were able to put the matter through public participation so that if there were further matters which had not been ironed out, then we could have done so. This was done. The following stakeholders appeared before the Committee:-

- (i) the Ministry of Lands and Physical Planning;
- (ii) the Council of Governors;
- (iii) the National Land Commission;
- (iv) the Institute of Surveyors of Kenya; and,
- (v) Haki Jamii, which was a conglomeration of quite a number of NGOs under that umbrella.

What came out is that most of what we had done as a National Assembly was almost 90 per cent of what they concurred with. Out of our deliberations, as a Committee, we realised that there are very few issues that we were supposed to tackle as a Mediation Committee. This matter was expedited. From the time this Committee was constituted by the Speaker on 28th June, our reporting today is occurring less than one month later. We also had to move out and consult with other stakeholders. I thank most of the Members of this House, including the Senate.

Hon. Deputy Speaker: Hon. Wanyonyi, what is your point of order? What is not in order?

Hon. F.K. Wanyonyi: Hon. Deputy Speaker, I am seeking a clarification. We have passed very many Bills. I am sorry to interrupt my good friend. He needs to tell us the gist of the whole thing so that we follow up. I am trying to follow up but I am not getting him. Can he tell us about it first, so that I can follow up what they have done? I am just seeking your clarification.

Hon. Deputy Speaker: Hon. Wanyonyi, I thought that is what he was doing. It is only that he has not said the Bill they were mediating on.

Hon. Mwiru: Thank you very much, Hon. Deputy Speaker. I wish to draw the attention of the Hon. Member to what I am moving. He has read the Order Paper and he should have seen what I am moving. I am moving the mediated version of the Land Laws (Amendment) Bill (National Assembly Bill No.55 of 2015). It is already on the Order Paper. The reports are already there. They might not have been circulated but I know they are in Room 8. I need to proceed because the matter is already on the Order Paper.

Hon. Deputy Speaker, land being a very emotive issue in this country, we needed to walk the very narrow path and not the broad one. That way, we can carry the views of most of the people so that we can make a law that will benefit this country. I am happy that this matter went to the Mediation Committee. This enabled the Senate to adopt the idea that the National Assembly had adopted during the debate in the Second Reading.

More importantly, the Land Laws (Amendment) Bill is supposed to streamline the earlier statutes that were enacted by this House in 2012. It envisages amending the Land Registration Act, the Land Act and the National Land Commission Act. That is why many times people refer to the “omnibus laws”.

Out of the 100 clauses in the Land Laws (Amendment) Bill that this House passed, only seven clauses had an issue with the Senate. This is what was reported to the Mediation Committee. Those are the clauses that we have mainly tackled. Of the seven clauses, what we came up with as amendments is upon agreement and consultation with the stakeholders. Therefore, out of the 100 Clauses, 93 were not affected. So, the adoption of those other clauses will be as per what the National Assembly had passed. Sometimes when we are developing this Bill, some stakeholders may not be able to go through them. Because of suspicions sometimes, it may look like some individuals including my Committee were moving their own. I want to thank the caucus especially the Members representing the pastoralists at the Coast that we were able to discuss and move together up to where we have reached. I want to thank them most sincerely that whatever sticky issues that came out, we discussed them together to bring---

(Technical hitch)

It is for the prosperity of this country that law reforms be taken seriously. When we were doing the Constitution 2010 of this particular country, most of the things were anchored on issues to do with land. Most of the skirmishes we have seen in this country even after elections are to do with land and not on the votes. Matters to do with historical injustices are more based on land than anything else. What we have done with this Bill at the Mediation Committee is to look keenly even on matter to do with evictions. Therefore this Bill tackles the matters to do with evictions and historical injustices.

I understand that even as we were traversing the country; even as we were taking up the stakeholders’ feelings in the Coast, Rift Valley and some sections of North Eastern, they felt that they may not move together with the rest of the country. Therefore, we were to bridge all those gaps to ensure that the Bill tackles the aspirations of all those regions within this country so that we move forward as a country.

One thing that we realized is that there are a number of NGOs and civil society groups that are involved in matters of land. However, if you tell them to come out and make suggestions on some clauses or some areas that they argue about, you find that it becomes very

difficult because they want to bring it as an umbrella thing; they just want to argue about land. If we are to do any law, we must get to know exactly where it affects and what is supposed to be the effect after we have enacted it as a Parliament. It is also important to note that the same mediated version has already been passed by the Senate. It is only awaiting our approval as a National Assembly because it is prerequisite in the Constitution. We should also do the same so that this law can be passed before 27th August, 2016 which is a constitutional timeline.

Hon. Deputy Speaker: Hon. Member, I think you will help Members if you told them what you are doing. You went up to the point of telling Members that there are seven clauses that the Senate did not agree on. You just need to tell Members what those seven clauses are and how you have mediated upon them. It will make it easier for them to debate and see that you have now come to the consensus. Tell us what the seven areas were.

Hon. Mwiru: I am well guided, Hon. Deputy Speaker. I was just about to come to that. On the Land Laws (Amendment) Bill the one that I am moving right now, everything was agreed up to the title of this Bill. On Clause 2, we felt that we need to amend what we had already passed in the National Assembly. The only thing under Clause 2 was deleting the word “means” and putting “includes”. Which means it was just about language so that it conforms to the Constitution.

The amendment seeks to provide for the definition of “caution” in land as included in the caveat. “Caveat” and “caution” are almost the same thing. The other clause that was affected was Clause 3 of that Bill. Previously, under Clause 3 there was no consultation with the county government but we have now included that matter of consulting the county government together with the national Government.

We also introduced a new Clause which is Clause 3A, that the Bill be amended by inserting New Paragraph 3A. This is for the purposes of administration and effective land management for county government to assess all documents maintained in the registration. What is happening is that county government may require to assess documents held by the national Government for their own use, not necessary for any generation of revenue but for the purpose of their usage and planning. After that they can consult with national Government and assess those records.

We are saying this because if the records are only kept by the national Government after registration and the county government cannot access, there is a likelihood of the county government assuming an area that has already been registered or alienated from the public and producing other records which are against what has been registered. Therefore, duplication will be eliminated if they can access those other records at the national Government.

We only amended Clause 15 so that we do not include the county land management boards. The gist of this is that the county land management boards are independent of the National Land Commission (NLC). This is a board that can be sued, can sue and has been approved at the county level. The Mediation Committee suggested that the NLC should move their structures down to the counties without creating other unnecessary bodies which are parallel to their roles.

It was agreed upon by the Mediation Committee that like other commissions such as the Independent Electoral and Boundaries Commission (IEBC) or the Judicial Service Commission (JSC), they should devolve themselves as an entity and agency to the counties and not just create another amorphous body which is likely to run parallel. We had an example in Kajiado County where the Chairman of the county land management board had to write to the NLC Chairman

telling him that whatever action he was trying to take is illegal and he would sue him. You can see the kind of parallel operations that they were conducting.

The other one is Clause 36 of the Bill. It was supposed to be amended in sub-clause (a) by deleting the word “and” appearing in paragraph (1) and substituting therefor the word “public”. There was need for the NLC to be given discretion to maintain an effective land information system for management of public land.

Article 67 of the Constitution gives the NLC mandate to manage public land on behalf of county governments and the national Government. If they cannot afford to maintain land management systems especially on public land then the likelihood is that we will not know which land belong to the public and which one does not. The proposal was that although the national Government, and the Cabinet Secretary for that matter, can have land management systems on his own or as a national Government, the NLC must also be able to assess that land. It must have another land management system that involves the public land.

Under Clause 47(c) of the Bill, the amendment is seeking to secure the pre-emptive rights avoiding anarchy in the land sector. There are cases where leases have expired. When they expire, the authorities do not even dare to report or inform the owner or the person who was holding the lease that their lease has expired. We have seen scenarios where people are given land just immediately after the expiry of the lease of another person. If the lease is about to expire, the person who was holding the lease must be informed before any other action can be taken.

In some cases, they look at areas where the owner or the previous holder of the lease has died and they cannot inform the siblings or the heir so that they use that particular law to deprive the siblings of that land. They should be given notice five years before the expiry of that lease so that they can afford to reapply in case they want to. They should also be able to check who the kin are in case that owner is dead so that, at least, he or she will have the pre-emptive right to apply for that lease or renewal of that lease. That is the essence of Clause 47 as it has been amended.

I thank the House most sincerely. We have walked this very long path from 2015 to date. With this mediated version of the Bill from both Houses, I ask that the House gives us the impetus to start this reform on land. I call upon Hon. ole Kenta to second me on this.

Hon. ole Kenta: Thank you, Hon. Deputy Speaker. From the outset, I would like to confirm that I am seconding this Motion. I would also like to commend the Chairman of the Departmental Committee on Lands because they have done a tremendous job and the Committee should be congratulated. This is a constitutional Bill. The speed with which the Mediation Committee carried out its mandate is commendable.

Issues of land in Kenya are very emotive, as the Chairman has said. As the pastoralist community and the people from the Coast, we really got involved with the Committee and they listened to us because those are the areas that still have community land. Those parcels of land are affected by the said laws. The most important thing is that out of the 100 and above clauses only seven came for mediation and the changes were minimal. That points to the fact that the stakeholders - the National Assembly and the Senate - agreed. That is how we should conduct ourselves when it comes to these laws.

I perused through the changes and I do not need to go through all of them. I would just like to talk about the pre-emptive rights where families have been disinherited. People wait like vultures for the expiry of leases such that when a family owns land they do not even know that the land is being repossessed. Those issues must be addressed. This law must address this

because we have had all those historical injustices. They did not just come about during colonial times. Even now, those historical injustices are going on. This should have been a stand-alone bill on historical land injustices. However, because of the time constraints it can do for now. These are the things that we need to look at in future.

The other issue is the inclusive and participatory nature of what went into this Bill and the mediation. I do not want to take an unnecessary long time considering that the Chairman has ably put across what they did. We need to support these amendments and we do not need to waste more time. I would like to commend the Mediation Committee.

I beg to second.

(Question proposed)

Hon. Deputy Speaker: I can see Hon. Silverse Anami.

Hon. Anami: Hon. Deputy Speaker, I rise to support the adoption of this Report. It is encouraging to know that the Mediation Committee was able to reduce the level of disagreement between the Senate and the National Assembly. I would like to underline the fact that the contentious issue, which amongst many was public participation, has been handled amicably.

Hon. Deputy Speaker, we need to get used to engaging the public and involving them in all the decisions that we make. People have histories and fears when laws, especially pertaining to land, come about.

I thank the Departmental Committee on Lands for going out of the way to indulge the public in the formulation of these instruments. But that is not all. We should show the sensitivity, need and willingness to involve the public even more by sensitising the members of the public on the import of these instruments, so that they can use them. There is no need for us to come up with such a constitutional instrument and then the people are not aware of it. Many Kenyans suffer from that lack of awareness on provisions of instruments like this.

The whole situation of landlessness in Kenya leads to non-productivity and that demands for creative and pragmatic policies on land use. You will find Kenyans suffering from lack of food yet we have a lot of fallow land around. We are struggling to achieve the 10 per cent forest cover yet we have fallow land in forests. It is good for the Committee to follow up this Report and even demand that the Ministry of Lands, Housing and Urban Development and other responsible authorities expeditiously develop regulations that will embrace poverty reduction through expeditious and prudent use of land. Use of land is a contentious issue. The issue of ownership of land leads to poor land use because some people have more land than they need. While addressing the semantics, which you have done, it is good to find out what is creating this discontent and fears in the management of land policies.

I am happy the Report outlines very well the place of the National Land Commission (NLC). This issue caused a two-year standoff between the Ministry and the NLC. Now that we are making a breakthrough and have a Report that is acceptable by the National Assembly, the Senate and will be acceptable across the country, and the Council of Governors (CoG) and the Ministry are participating in it, it is important for us to move forward and develop regulations or urge the responsible institutions to develop regulations that will continuously bring harmony that Kenyans strive for.

This reminds us of the Ndung'u Report, which has a lot of information about historical injustices. I am happy this Report is anxious to deal with those conflicts and historical injustices. One way of dealing with the issues is by being frank about them and laying them flat on the

table, so that everyone can accept them. Many people have lost land. People in my constituency lost land over small conflicts between communities. We need to address these issues. The reason this instrument became a constitutional concern is because of the people who were waiting for this Constitution. Now that we have this breakthrough, we should quickly have a roadmap to take us there because this is where Kenyans are waiting to go. We should be thinking about how much land one can own, especially when you are not using it. How much can an individual or an institution own? This situation of landlessness is even causing problems in schools. Many schools in my constituency do not have title deeds to the land they have. It is only the fence that shows their land and we have people who are claiming this land after 60 or 70 years. We need to deal with that issue. Without a roadmap to show that the NLC has some timelines within which to settle issues of community and institutions' land and put these issues to rest we will be sitting on a time bomb.

In dealing with these land issues, we need to put into consideration the fact that development is based on land. For example, in my constituency, schools cannot expand even as the population is growing because of landlessness. Any time you attempt to buy land, it is a very hard task. The prices go up and it is quite impossible to access land. We need to deal with those issues.

Hon. Deputy Speaker: Hon. Anami, I have given you a lot of latitude. I would wish that we stick to the question of relevance. Remember, we sufficiently debated the Land Laws. Our debate today is about the mediated version. We can stick to that, so that we do not do a second debate.

Hon. Anami: Thank you, Hon. Deputy Speaker. In fact, I was avoiding that. But you will recall that I really waited for this opportunity throughout the debate. I never had opportunity to talk about the people of Shinyalu Constituency. Nevertheless, I have covered my part only that it was to commend the Mediation Committee for what they have come up with. Justifiably, I put on record the wish of the people of Shinyalu that this be expeditiously dealt with. We have extended the deadline. We would like this law to be signed so that we can access land and have the opportunity to implement the provisions.

Having said, I support the adoption of the Report. The faster we do it, the better because it will have an impact on poverty reduction in our country.

Hon. Deputy Speaker: Thank you. Hon. Sara Korere?

Hon. (Ms.) Korere: Shukrani Mhe. Naibu Spika. Nasimama kuunga mkono Ripoti iliyo mbele. Imechangiwa na Kamati ya Pamoja na Uwiano wakiongozwa na Mwenyekiti ambaye ni Mwenyekiti wangu katika Kamati. Ninampongeza.

Ni muhimu kuzingatia kwamba, katika Kipengele cha 97, wamezungumzia maswala ya jinsi ya kufurusha watu ambao wamekaa kwa ardhi isiyo yao kihalali. Hili limekuwa swala nyeti sana katika nchi ya Kenya tukizingatia matukio ya mara kwa mara ambapo tumeona wananchi wakifurushwa katika sehemu tofauti tofauti Kenya. Tumeshuhudia dhuluma ambayo wananchi wanapitia wakati wanafurushwa kutoka kwa ardhi. Mara kwa mara, wanaomiliki ardhi hii huambiwa kuwa si yao. Mara nyingi, utapata hii ni ardhi ya babu zao ambayo imenyakuliwa na mabwenyenye. Kwa hivyo, wakati tunaweka mikakati kuhusu jinsi watu watakavyofurushwa katika ardhi, liwe swala nyeti ili kufurushwa kwao kusiwe na dhuluma na kupoteza maisha yao.

Mhe. Naibu Spika, ukitazama Ripoti hii ambayo imefanywa na Kamati ya Pamoja, utazingatia kwamba wamebainisha wasiwasi majukumu ya Tume ya Kitaifa ya Ardhi na Wizara ya Ardhi. Kwa wakati uliopita, tumeshuhudia mizozo kati ya hizi idara mbili ambayo imeathiri utendakazi wao. Kwa hivyo, kupitia Ripoti iliyo mbele yetu, ni matumaini yangu makubwa kuwa

Wizara ya Ardhi na Tume ya Kitaifa ya Ardhi watatekeleza majukumu yao bila mizozo. Hii Ripoti imengojewa sana na Wakenya, hasa tukizingatia ya kwamba jamii nyingi zimengoja kuona vile tutasuluhisha dhuluma za kihistoria ambazo zimewakumba.

Katika Kipengele cha 3, wamejumuisha serikali za kaunti katika kutatua maswala ya ardhi. Baadhi ya dhuluma ambazo jamii zimeshuhudia kwa wakati uliopita katika unyakuzi wa ardhi, utakuta watu wachache, ambao ni mabwenyenye na wanajulikana kuwa na sifa mbaya za unyakuzi, wanaketi katika ofisi kubwa hapa Nairobi na kuchora vile watakavyonyakua ardhi ya wananchi ambao hawana habari kuhusu yanayoendelea.

Kwa hivyo, tukizingatia kwamba ardhi nyingi ambazo labda hazijafanyiwa chochote ni ardhi za jamii, serikali za kaunti zinafaa kuhakikisha kuwa jamii ambazo zinamiliki ardhi hizi hazijapokonywa ardhi zao kupitia mlango wa nyuma na mabwenyenye.

Kwa hivyo Ripoti hii ni ya kufana sana na itakuwa na manufaa kwa Wakenya wengi. Tunapoelekea katika msimu wa kupiga kura Mwaka 2017, swala la ardhi ni nyeti sana. Ni muhimu tukumbuke kwamba baadhi ya wanasisia ambao wameishiwa na maarifa na neema, watachukua swala la ardhi kuwapiganisha Wakenya. Tukizingatia Ripoti ambazo ziko mbele yetu na Miswada ambayo imepitishwa katika Bunge hili, ni matumaini yangu kubwa kwamba hatukakuwa na vurugu wala fitina maanake tutakuwa na sheria ambayo itatoa mwongozo kambambe kuhusu jinsi swala la ardhi, ambalo ni nyeti katika taifa letu, litatutuliwa.

Ninaunga mkono Ripoti hii na kuipongeza Kamati ambayo imeleta.

Hon. Deputy Speaker: Asante. Hon. Ferdinand Wanyonyi.

Hon. F.K. Wanyonyi: Thank you, Hon. Deputy Speaker for the opportunity. I also want to take this opportunity to thank the Departmental Committee on Lands for having had this mediation. I want to commend the Chairman, who is not listening, for the fact that the documents being held at the lands office in Nairobi will be taken to the county governments. That is a very important issue. In the past, people have had to travel all the way to Nairobi for a very simple issue like to find out about land status. This is very expensive.

It is, therefore, good that the mediation came up with a solution. The documents being held by the national Government will be sent to the counties, so that there is no duplication. Sometimes they get the wrong information. To avoid that, they have to countercheck what is exactly happening in the Lands Office in Nairobi. One has to go to the county and find out what is happening and sometimes, that is where corruption comes in. I am against corruption in this country because it is very expensive and embarrassing, to say the least. It is good we have done this.

Secondly, the NLC has been devolved to the counties. That is a good step forward. I come from Kwanza, Trans Nzoia, in the Rift Valley, where there are many land issues. The Committee has come to my place and has witnessed cases where we have a lot of noise on the issue. It is good to devolve the land issue instead of coming to Nairobi, which is very expensive, especially for the old and poor Kenyans. In the rural areas, there are old men in their sunset days who want to leave their land in clear way. Their days are numbered and they do not want to die before solving their land issues. You will find a man of 70 or 80 years coming to Nairobi to check on his land status. It is good we have devolved the NLC to the counties. I hope we are not devolving corruption because that is what happens. I had a word with the Chairman in Trans Nzoia, where you find a very different story. The point of reference is the Member of Parliament. Very early in the morning, you find old men coming to the Member of Parliament with all sorts of complaints. Some complain about somebody saying *leta kitu kidogo*, so that they can assist you. They basically want to reap from where they have not sown, which is not good.

I am concerned about the issue of the expiry of lease. I want to invite the Departmental Committee on Lands to Trans Nzoia, where we have had so many such cases. You find that a family that has been sitting on a piece of land for 15 to 20 years is told to leave the land overnight. I think there is something in the law although I am not a lawyer, that says that if you have stayed on a piece of land for over seven years, that land becomes yours automatically. I do not know whether that was looked into. I am afraid the document is so heavy and I did not see this and that is why I was asking for clarification. If somebody has been on some land for the last seven years, that land becomes his. I am told that if there is an indication that somebody has to leave that land, you have to give them five years. That is enough time for the family to sort themselves out and if there is a problem, to find an alternative settlement. Again, I want to commend the Mediation Committee. The time has been very short.

Yesterday, I got a call from my constituency and was informed that there is a family which has been living on some land, and I think the Chairman knows the issue, for God knows for how many donkey years and had been told by the chief to leave the land. I did not know where to start, but this family has been on the land and so, I told them not to leave. I told them to stay put. This is an issue.

Hon. ole Kenta: Hon. Deputy Speaker, on a point of information.

Hon. Deputy Speaker: Hon. Wanyonyi, do you want to be informed?

Hon. F. K. Wanyonyi: If it is in my favour, I would accept it.

Hon. ole Kenta: Hon. Deputy Speaker, mine is in good faith. So, the member should not worry. In fact, I want to advise him that what he is talking about is called in law adverse possession, where somebody stays on a piece of land for more than 12 years uninterrupted. Definitely, that entitles them to the land. So, it is not seven years, but 12 years. Uninterrupted stay means the owner has never come to try to evict the occupier. The occupier has enjoyed 12 years of uninterrupted stay.

Hon. F.K. Wanyonyi: I now get it right. I am going to tell my electorate because they voted me in and that is why I am here. I am going to tell them to stay put until there is a problem. If you get involved in land issues, you will find yourself lost because one party will say that the Member is favouring the other because of clanism. When you go the other side, you will have the same problem. So, I normally tell my people not to involve me, but if it is 12 years, it is good. I think they have stayed for more than that. So, I will tell them to stay put because the owner has never come. The chief is telling them to prepare to go. Where will they go? Will they come to my place?

The Committee did a good job. As my colleague said, it is good to look at these things for the future. The way we are moving, the population of this country is increasing so fast, particularly in my area. So, we are going to have a lot of insecurity because if we do not know where to go, what happens? That means that you cannot take your children to school. Secondly, you are landless and have no means of fending for your family. What happens? You are creating chaos for these people. Somebody somewhere will have to pay for it. Let us be very clear on this law much as we give somebody five years. Maybe somebody has stayed on the land innocently and then the notice comes and they do not know where to go. What happens? I thank the Member for the clarification. I will tell my people to stay put.

Maybe this country needs to eventually go the Tanzania way of *vijiji vya ujamaa* or the eco villages. Maybe this is the solution. I am straying out of the topic that we are discussing, but given the fact that our population is growing very fast and land is not growing, we eventually will have to create the eco villages where people can settle and farm. That is where we are

heading. As it is now, land is getting depleted. I have four boys and I only have 40 acres of land and plus the grandchildren, I will have a lot of problems. We can solve this problem by introducing eco villages or *vijiji vya ujamaa*.

Hon. Deputy Speaker, before I finish, if you give me one minute, we have an issue of internally displaced persons (IDPs) in Trans Nzoia and I hope the Chairman will look into it.

Hon. Deputy Speaker: Hon. Winnie Karimi.

Hon. (Ms.) W.K. Njuguna: Thank you, Hon. Deputy Speaker, for giving me this chance to contribute and support this Report of the Mediation Committee on the Land Laws (Amendment) Bill.

Land matter is the mother of all communities and family conflicts due to lack of proper adherence to the existing laws. We have seen many places families fighting for land which they do not know the right owner. We also have historical injustices. Some counties, especially Kirinyaga County, claim land from other counties which has not been identified as theirs. We want these historical injustices to be corrected immediately after the conclusion of this Motion.

People have suffered especially where there are land disputes. Some people register caveats or cautions on land because there are disputes. In most cases, the caveats are removed without the knowledge of one of the parties and this causes a big problem among the people who claim that land. Therefore, these proper laws are going to streamline all these problems and create peace in the country. People have settled in certain land for a very long time and they have multiplied yet they do not have ownership over that land. They do not have title deeds. This causes a lot of conflicts in communities, for example, the Mwea Irrigation Scheme. The area has a high agricultural potential, but people who own the land rent it out. They are not motivated to improve it because they do not have title deeds.

If these laws are put in place, our people will get title deeds. This will solve a lot of problems because people will not steal other peoples' land. At the Mwea Irrigation Scheme, owners of land only have copies of minutes written on a piece of paper to show evidence of ownership of land. When you have a title deed, nobody can claim your piece of land. These pieces of paper are not registered anywhere and the owners can even sell the land to many unsuspecting people, causing a lot of fights. I am very happy with these amendments. I congratulate the Mediation Committee for coming up with these laws, which are going to solve land historical injustices.

Still in Kirinyaga County, there is a dispute which has been appearing in newspapers, about 54,000 acres of land which is being claimed by the neighbouring county, yet it does not belong to them. The documents are there and I am sure this land is going to be given to the right owners after these amendments, which clearly identify the legal ownership of land, are passed. Therefore, I support the Report. It is going to solve a lot of our problems in this country.

Hon. Deputy Speaker: Hon. Twalib.

Hon. Bady: Asante, Mhe. Naibu Spika kwa kunipa nafasi ya kuchangia Hoja hii. Nakushukuru zaidi kwa sababu hapo awali, vile vile, ulinipa nafasi ya kuchangia mambo haya ya ardhi.

Naunga mkono Ripoti hii nzuri na kuipongeza Kamati ya Pamoja ya Uwiano kwa kufanya kazi nzuri. Ningependa kumpongeza Mwenyekiti wetu wa Kamati ya Ardhi, Mhe. Mwiru, kwa kazi nzuri. Kama Mbunge wa Eneo Bunge la Jomvu, sehemu ya Pwani ina shida nyingi ya maswala ya ardhi na nimeona juhudi yake. Kulingana na Ripoti hii, nimemsikia akizungumzia mikataba ya kupangisha, yakikaribia kuisha ni muhimu kwa wale wanaohusika kujulishwa miaka mitano kabla, ili wajue namna ya kuzirudisha kwa uhalali na kuhakikisha

kuwa hawatafurushwa kabla ya kujua watakachofanya. Ni muhimu kuwa wanapojulishwa, Kamati izingatie uhalali wao kwa sababu kule Mombasa kuna watu wanaoishi mahali na mikataba ya kupangisha yana mtu mwingine. Ni vile tu hakuwatoa mahali pale. Kwa hivyo, ni muhimu uhalali uangaliwe ili mikataba ya kupangisha yakiisha, mashamba yarejeshewe wenyewe badala ya kuyarejesha kiholela. Ni muhimu kuzingatia mambo haya na kuhakikisa kuwa wenyeji wanapewa haki yao.

Tulihakikisha kuwa dhuluma za kihistoria zimeshughulikiwa na Mwenyekiti ametaja mambo yote katika maeneo haya. Vile vile, Hoja hii imehusisha watu wa Tume ya Kitaifa ya Ardhi na inafafanua jinsi ya kushughulikia dhuluma za kihistoria.

Kipengele cha 97 kinazungumzia hali itakayozingatiwa kabla ya watu hao kufurushwa. Sheria inasema kuwa watu wakikaa mahali zaidi ya miaka kumi na miwili, wana haki ya kusema hapo ni kwao. Kupitishwa kwa Hoja hii kutatupa sisi afueni. Kwa mfano, pale Jomvu, kuna watu ambao wameishi pale Alidina kwa muda wa zaidi miaka 40. Ninaona Mwenyekiti anafurahia kwa sababu anaelewa hali hiyo na tutaendelea kuishughulikia. Nina hakika kuwa watu hawa watapata afueni.

Ningependa kupongeza juhudi za Kamati. Hivi juzi, Kamati hii ya Ardhi ilikuwa kule Miritini. Kama nilivyosema hapo awali, kuna mradi wa Standard Gauge Railway (SGR) na ule wa barabara ya Dongo Kundu, na wananchi wangu wanafanyiwa kipimo cha nyumba, lakini si cha ardhi. Mwenyekiti alifika pale na kuwapa moyo sana kuwa mambo hayo yalifanywa kinyume na sheria. Kamati, vile vile, ilifanya tathmini ya mahali pale. Walisema kuwa si sawa watu kuondolewa kwenye ardhi bila kulipwa fidia. Kwa mfano, ikiwa mtu ameishi pale kwa miaka 20 au 25, kumfanyia fidia ya nyumba ya udongo kwa sababu yeye ni maskini si sawa, na kumlipa Ksh25,000, Ksh30,000 au Ksh50,000 haiwezi kujenga nyumba mahali pengine akaweza kuishi. Kamati ilishughulikia mambo haya kwa kidete na kusema kuwa watu wenye barua ya kumiliki shamba wanafaa kupewa hati miliki kwa sababu barua hizo zinaonyesha dhahiri kuwa wao ndio wenye ardhi. Fidia ya ardhi sharti iangaliwe mwanzo.

Ningependa kumshukuru Mhe. Mwiru kwa juhudi zake. Ningependa kuondoa tetezi na ninazungumza bila kuogopa kuwa watu wa Pwani hawakupewa nafasi. Tulichangia Hoja hii na ikaungwa mkono, kupitia kwa Mwenyekiti, kuhakikisha kuwa mapendekezo yetu yaliletwa. Ikiwa kutakuwa na tetezi yoyote, tutashirikiana na Kamati hii ya Pamoja ya Uwiano kuangalia jinsi ya kuzitatua shida za watu wa Pwani. Matatizo yako zaidi kwa wale ambao wana barua ya kumiliki mashamba lakini hawajapewa hati miliki. Kama wenzangu walivyosema, mtu atapata usingizi pale atakapopewa hati miliki ya ardhi. Hati miliki itamwezesha kusema kuwa habanduki mahali pale kwa sababu ni shamba lake.

Ningependa kusema kuwa ni muhimu tuiipatie Kamati hii nguvu na tuichukue Ripoti hii kwa vifua vyetu ili tuelimishe wananchi walio mashinani kuhusu sheria ambayo tumepitisha na kuwaeleza haki zao. Ni sharti tuunge mkono Kamati hii ili tukimbie pamoja panapo matatizo na wananchi wetu watakuwa sawa.

Kwa niaba ya wananchi wangu wa eneo Bunge la Jomvu, ningependa kurudisha shukrani na pongezi kwa juhudi za Kamati ya Ardhi kwa kazi nzuri iliyofanya katika eneo Bunge langu na sio tu kwa kuzungumza hapa Nairobi, lakini kwa kuzunguka eneo lote.

Hon. Deputy Speaker: Hon. Timothy Wanyonyi.

Hon. Wetangula: Thank you, Hon. Deputy Speaker. I want to support this Motion. I think the Mediation Committee has ironed out some of the issues that had been raised by this House and the Senate. Record keeping is one of the problems in land management. The records

in the Lands Registry are chaotic. The proposal to have the NLC come up with a system of improving record keeping is in order. This will enable investors to easily access these records.

Land ownership is an area where records are missing. For those of us who represent urban constituencies, we have many problems. For instance, in Nairobi, many leases have expired and the people occupying those properties have no idea that they have expired because they have not been given any notice. They just find out that somebody else has assumed ownership. We should look into this area and streamline it. There are many informal settlements in urban areas and this brings a lot of tension especially in areas where people occupy land that has not been properly defined.

Hon. Deputy Speaker, in my constituency, people have been residing there for over 50 years and then somebody turns up and says that they are encroaching on land that belongs to him and they need to be moved. Where do we take these people? That is the question which we must address very urgently. The NLC must try and streamline land ownership. We do not see these problems in other countries. People live on a piece of land for many years and they are still squatters. In some parts of this country, people literally live as squatters in their own communities. The Government must address this area by ensuring that the NLC, the Ministry of Land, Housing and Urban Development streamline land ownership.

There is a proposal that the NLC should streamline its operations and devolve its functions to the counties, so that they can have some level of management there. It will help to ensure that people do not travel long distances to Nairobi or to the former provincial headquarters to access land records. It is important for these records to be easily accessible to everybody, including any land owner or investor who needs to own land. We have a system which can help us to achieve that. Last year, the NLC gave notice that all schools must acquire title deeds. Most of our schools have lost land because they do not own it. They do not have records or any document to show that the land belongs to them. Unscrupulous land grabbers move in, grab the land and quickly acquire title deeds. We need to streamline that area and make sure that the NLC puts order in the management of land.

I support this report.

Hon. Deputy Speaker: Since there is no more interest in this Motion, I call upon the Mover to reply.

Hon. Mwiru: Thank you, Hon. Deputy Speaker. First of all, I want to thank my colleagues for pouring those kinds of accolades to the Mediation Committee. I also thank you, most sincerely, because you have been very patient with these particular Bills. You have also been giving this Committee enough time to continue consulting and come up with what we have today. One thing I am happy about is the comment by the Member for Saboti, which was responded to by Hon. Kenta. If you have stayed in a piece of land for 12 years and there is eviction, the people who are doing it must be humane. Even if there are evictions, there must be a procedure to do it. It should not be done in the night like it has always been done. People wake up one morning one night and chase away people who have been occupying some land.

There was a comment on the maximum and the minimum land holding. This particular Bill has taken care of that aspect. I hope that this time round, Kenya will achieve the reforms it intended to achieve when we passed the Constitution of Kenya, 2010. I want to thank all the Members, even those who are not in the Chamber right now, because we have walked together in preparing this Bill.

With those remarks, I beg to reply.

Hon. Deputy Speaker: Hon. Members, we will postpone putting the Question until we have the requisite numbers.

Next Order!

(Putting of the Question deferred)

APPROVAL OF THE MEDIATED VERSION OF
THE COMMUNITY LAND BILL

Hon. Mwiru: Hon. Deputy Speaker, I beg to move the following Motion:-

THAT, pursuant to the provisions of Article 113(2) of the Constitution and Standing Order No.150, this House adopts the Report of the Mediation Committee on the Consideration of the Community Land Bill (National Assembly Bill No.45 of 2015), laid on the Table of the House on Thursday, 28th July 2016, and approves the mediated version of the Community Land Bill (National Assembly Bill No.45 of 2015).

This is one of the Bills which this House ventilated on before we went to the Mediation Committee of the two Houses of Parliament. When we passed this Bill as the National Assembly, it was rejected by the Senate, necessitating the constitution of the Mediation Committee. Most of the clauses that have been suggested for amendment were not controversial, but it was about language and definitions. I will give an example of Clause 2, where unfortunately, we had not defined the words, “community assembly”. Therefore, as a Mediation Committee, we resolved that we define term because it is already used in the Bill. It is necessary for us to define it for purposes of clarity.

I am happy because we had Members and Senators who have vast experience in the Mediation Committee who live in areas where community land affects them. It is important that I put on record that most of the community land occupies two-thirds of our land mass. Therefore, it affects the greatest part of our country. That is why we involved Members from the pastoralists’ areas, with Hon. ole Kenta being one of them. We also had Hon. Chachu and Senator Hargura.

Without understanding the dynamics of what happens in those areas, especially in northern Kenya, North Eastern Kenya and part of Upper Eastern, some of us may not get the gist of exactly what happens. That is why we agreed to amend 13 clauses of the main Bill, so that they can reflect the practices on the ground in those areas where community land is available. That is why I have mentioned Clause 2.

In Clause 4 of the Bill, we had referred to the words “owning or owned”. However, Article 63 of the Constitution has used a different word. It has used the words “vested in, or vest in”. Therefore, we agreed that we use the words used in the Constitution instead of the words we had introduced in our Bill. We amended Clause 6(4) of the Bill and added (4)(a). In the earlier Bill, it was referring to only the Cabinet Secretary (CS). Therefore, we have introduced the county government. When there are consultations, the county government is also involved, other than the CS alone.

The CS is supposed to be involved because we have noted that there are some tracts of land that transcend counties. For example, you have community land transcending from Wajir to Mandera. Therefore, the national Government should bring together the two communities or counties for purposes of registration of that land.

We discussed Clause 7 of this particular Bill for many hours. We were looking at how members of a community are supposed to constitute a community assembly. Some of us were of the idea of involving the whole community in decision making. Others were of the opinion that it should be three-quarters of that registered community, while others were of the two-thirds proposal. We, therefore, agreed that we require about two-thirds to constitute community assemblies for purposes of serious decision-making.

We had to introduce a new amendment to include not only through newspapers or radio of national circulation, but also to include vernacular or a particular language they understand in terms of giving notice as to when meetings are supposed to be held. In Clause 8, we amended (2) by inserting new words “in consultation with the county government”. Again, it is also good to note that in the Constitution, survey and mapping is a devolved function. Therefore, the national Government cannot purport to take the role of registration of any community land because survey and mapping will be needed. Therefore, the county government must be consulted for purposes of registration. That is why we amended that, so that the two levels of Government can consult and move together because one function is a subset of the other. Adjudication cannot be done without serious survey and mapping. Therefore being a devolved function, county governments are supposed to be involved.

In the same clause, we are seeking to ensure that the inventory of community land is shared within the counties for ease of access by the community members. This is where community land has transcended two counties. Therefore, that information must be shared between those particular counties. Besides, the national Government, having the information or the inventory, the two counties must still share for purposes of cross-checking on what could be happening and what is the membership.

We are amending Clause 17 in sub-clause (1) by deleting the words “not to require noting of the register” appearing in paragraph (d). Those words are not necessary because under Section 28 of the Land Registration Act, all overrunning interests are not noted on the register. Therefore, this was a repetition and it is not a requirement in the Land Registration Act. Therefore, it was not necessary to have it in the Community Land Bill because after registration, the title deed has to be issued to the community just like it is issued to individuals. Registration is registration. The title has to be issued to the community just as it is issued to individuals.

The other affected clause is Clause 23, which has been amended in paragraph (b) by deleting the phrase “Section 22(2)” and substituting therefor the phrase “Section 21(2)”. There is always some human error when we do some things. This was a typing error. Therefore, we want to do some cross-referencing, so that we can refer to the right section of that particular Bill.

Hon. Deputy Speaker, I am very grateful to your office. This Committee was very grateful to your office, the Office of the Speaker of the Senate and the Clerks of both Houses because the facilitation was super. We did not require any retreat.

Hon. Mwaura: On a point of order, Hon. Deputy Speaker.

Hon. Deputy Speaker: Hon. Mwaura, have you even heard what has been said? Let us hear your point of order. You have just walked in.

Hon. Mwiru: Maybe it is because he is my brother. I need to proceed and ignore that because he has just walked in. We are dealing with very serious issues here.

Hon. Deputy Speaker, I thank your office and the Office of the Speaker of the Senate. I thank my Committee and the Mediation Committee. If it were not for them and this House, we could not have reached where we did. This being a constitutional Bill, we do not need to belabour too much. At the end of the day, we might require to also give other authorities some

time to read through the Bill before the assent, so that we can have it enacted into law before 27th August, 2016. I thank the Kenyans who participated in this especially during the early stages when it was very emotive. At least, we have narrowed down the issue to where we can understand and walk together.

I beg to move and call upon Hon. ole Kenta to second.

Hon. ole Kenta: Thank you, Hon. Deputy Speaker. I would like to second the Motion.

This is one of the most complex Bills that we have come across. It needed a lot of input from not only Parliament, but also the various stakeholders. It was handled admirably. I do not need to belabour what the Chairman has told the House. He did what everybody expected. There was a lot of suspicion in the beginning. Most community land is in pastoralist areas and covers two-thirds of our land mass, and there was fear that this Bill would deny them their rights. As the National Assembly, the Senate and the Mediation Committee, we ensured that the fear was put to rest. This made us believe that we can do something as a Parliament.

The issue of the involvement of county governments was paramount. Community lands are held in trust by county governments. Their involvement was very important especially when it came to benefits to the communities. In some instances, land can be acquired compulsorily. If we do not protect the interests of the communities, then the proceeds might go into the wrong hands. The issue of safeguarding and ensuring that these proceeds go to the community was something important and was done by the Mediation Committee.

With regard to records, whereas the national Government is the custodian of land records, the fact that those records are accessible to county governments and the NLC will ease the process of land transactions in the country. This has been ensured and this is commendable.

Most of these things are normally done in the dark. The Mediation Committee ensured that we not only do announce these things in newspapers, but we also put them on vernacular radio stations to ensure that the information reaches all members of the community and nothing is done without their consent. The fact that two-thirds of the community members are needed to pass any resolution that affects their land is very important. This requirement will ensure that we do not have a few busy bodies alienating community land without the consent of the owners.

There is also the issue of having community members elected or appointed through the efforts of both the national Government and county governments. We have heard of good branches in communities like mine. A few people would sell community land to outsiders and deprive the rest of the members of the community their right to that land. The fact that the national Government will be involved in the selection of these people means that credible, knowledgeable and reliable people will be included in the committee. I do not need to go into details because the Chairman has ably explained. I can only second it and I believe the Members will pass it and fast-track its' implementation.

I would request that we do not waste more time. I would also like to request the President to ensure that these Bills are signed into law. The only important thing that I should not forget is the issue of adjudication. Having a timeline is very important. We have heard that in some places, the adjudication process has been going on for more than 20 years. This has caused a lot of problems such that the register is always updated and a lot of conflicts arise. So, three years is reasonable. It is very important that the law that is currently applicable is carried forward and should come to an end after three years.

With those remarks, I beg to second.

(Question proposed)

Hon. Deputy Speaker: Hon. Ayub Savula

Hon. Angatia: Thank you, Hon. Deputy Speaker, for giving me the opportunity to contribute to this debate.

First of all, I would like to thank the Committee for having done a good job. They have aligned the provisions of the mediated version to Article 63(1) of the Constitution. The amendment should ensure that once community land has been registered, the respective county governments should release the community money payable to the communities, including interest earned on community land that had been utilised for county government projects. The county governments are authorised by this law to ensure that the money and interest payable for the land they have acquired is paid to the communities or they compensate the community for the land they are utilising. For instance, county council lands which do not have title deeds, but which are now going to be covered by an Act of Parliament.

Secondly, this amendment seeks to ensure that as many community members as possible receive notification on matters related to community land. They have clearly indicated that they can use electronic media to reach community members and ensure that there is adequate participation in decisions relating to land belonging to communities. I also insist that in future, such forums like chiefs' *barazas* should be included in such a law for effective coordination in matters related to community affairs like land issues. I am also happy with the mediated version of the Bill because it provides for job description. Clause 8 says that a county government is responsible for surveying and mapping. So, surveying and mapping is a devolved function. They have recognised that county governments are responsible and that is in Clause 8. I would like to thank the Chair for having done a good job. When it goes to the Senate, they will not have a problem because these were part of the hitches. They had said that surveying and mapping are devolved functions hence the need for county governments to be consulted. This is so important.

Lastly, the amendment also seeks to ensure that an inventory is carried out on land shared within the communities for easy access by the community members. This will give transparency. In areas like Kajiado, community land has been allocated to members of the community and to non-existing members. When you have an inventory to ensure that land is allocated to real community members and that there are no ghost members, you will ensure that we have transparency in matters pertaining to the division and allocation of community land.

I wish you well as you vie for governorship in Bomet County.

Hon. Deputy Speaker: You were all congratulating Hon. Omulele. I do not think the position is the same. Let us have Hon. Ferdinand Wanyonyi.

Hon. F.K. Wanyonyi: Thank you, Hon. Deputy Speaker. I also wish you well in your endeavours. I hope I will benefit in the long run.

I want to again thank the Departmental Committee on Lands for having mediated with the Senate on community land. I have noticed that the submissions on this matter are very broad. It is, therefore, very exhaustive. I have no doubt that the issues were ironed out. I am happy to note from the records that the Council of Governors was involved. The NLC was automatically there. More importantly, other special interest groups like human rights groups, FIDA, Action Aid and the Kenya Wildlife Service (KWS) were involved. This is quite explosive and it is very clear what they have done. I want to take this opportunity to thank them for having done what they did.

Community land is important and the fact that it has been recognised is good. Areas like Lodwar have expansive land and there is exploitation of natural resources, especially oil. We

hope that as they do this, they will be compensating the communities that were exploring and exploiting the natural resources. Priority should be given to the communities that own the natural resources in those areas given the fact that there has been a big problem in areas where there are scarce resources like water and pastures. With recognition and management of the same, this is an action in the right direction.

I want to come back to what I had mentioned earlier on. Communities are expanding and land is becoming scarce. This has become a source of conflict in the pastoral areas. We should take it upon ourselves to legislate and get a way forward in areas where we know there is bound to be some conflict because of population explosion.

I want to put it on record that we may end up having echo villages where people live in one area and share social amenities like hospitals, water and schools in a centralised place. The other land can be used for agricultural purposes. At the end of the day, if we continue working in a haphazard way as we are doing, we will have problems feeding our population. In the next 20 years or so, it will be very difficult to manage the population. Therefore, putting the land together for general farming is the way forward.

I take this opportunity to thank the Departmental Committee on Lands for having mediated on this issue. It is a straight forward issue. I do not think there is anything major for us to debate.

I support the Mediated Version of the Land Laws (Amendment) Bill.

Hon. Deputy Speaker: Hon. Dennis Waweru. Can I have more Members requesting to speak? Usually, the quarrel is that we are not giving Members chances to speak. Can I have Members indicating their support of the Mediated Version of the Land Laws (Amendment) Bill?

Hon. Waweru: Thank you, Hon. Deputy Speaker. From the outset, I want to state that I fully support the Mediated Version of the Land Laws (Amendment) Bill. I have gone through the law and I am comfortable with it apart from one or two issues of concern that I have identified.

This is a good Bill as it addresses issues of ownership. It is very important to have clarity on ownership and tenure of land holding. We have had land issues in this country and we know how emotive they are. We have fought because of land. We have been on that journey before. I am happy that land issues are clearly spelt out in the law. We have had issue especially in our neighbouring counties of Kajiado and Narok, where there have been serious concerns on how community land has been handled. It is important to ensure that people who live on their ancestral land are not robbed of their ancestral rights. It is important to clarify that.

A matter of concern is the issue of the committee that will be formed to manage the land issue. It is important to recognise that in our rural areas, there are people who are not necessarily very conversant with land issues. Some are semi-literate. We should be very careful and vigilant to ensure that they are not robbed of their rights. I would like to tell the Chairman of the Departmental Committee on Lands that we need to look at how well we can protect the rights of those people. We know there are a few people here and there who are looking for opportunities to rob others of their land.

The other very important thing that I have seen is defining the roles of the county government on land issues clearly. As you are aware, and I was hoping some of these things in urban areas can be captured, we are going to relook at the laws and ensure that the loopholes that are being used on the roles of county governments, like in Nairobi, are sealed. In counties like Nairobi, you will find county government officials taking advantage of the powers given to them by the law to take away land belonging to others. I have in mind issues of expiry of leases in this

country where we have heard of county government officials colluding with others and taking away land, especially in prime areas.

In Upper Hill, the price of an acre of land is in excess of Kshs400 million and this has been attracting criminals to rob people of their land. So, it is important for this to be clearly defined in the Community Land Act for the protection of communities in the rural areas.

Another very important issue that I have noticed in the Bill is ensuring that community land is freehold. You can imagine a situation where you are born in a land and later you are told that you have to renew your lease yet that is your rural home. It is important to streamline this. I have seen the spirit of this Bill, which has captured and defined community land as free lease. I urge the Ministry of Lands, Housing and Urban Development that once the Bill is passed into law, to implement it and ensure that we sort out the issue of land once and for all.

As you are aware, land is a means of production. It is important to give people title deeds because titles are used to access credit, buy farm inputs and as security in hospitals. It is important that as soon as possible, the Government ensures that the issue of land is addressed once and for all.

I urge the Ministry to ensure that we protect the sanctity of title deeds. We have had issues in this country and we need to have a proper digitised register. It is about time we looked for ways of ensuring that we sort out the issue of having two or three title deeds for one piece of land. Imagine even financial institutions in this country rely entirely to secure their financing on land. It is important that the Ministry, if it is concerned about the welfare of this country, ensures that we sort out the mess at the Lands Registry, so that even if you are sitting on securities in a financial institution, you are comfortable that the title deeds you hold as securities for credit are genuine. We do not want a situation where people go to the back streets of Nairobi, like River Road, and manufacture title deeds which they use to get money from banks. You will find that most of the banks are holding fake title deeds. If we want people to have confidence and have cheaper credit, we also need to look at the Registry and sort it out once and for all. That can also help in easing the cost of doing business and financial institutions will reduce their risk factor.

In conclusion, the assignment of the Committee is to look at the issue of digitisation in the Ministry. I know the Committee is just doing registration, but it is good to have an engagement with the Ministry, so that we can sort this embarrassment of multiple title deeds once and for all.

With those few remarks, I support.

Hon. Deputy Speaker: I want Hon. Ogalo to have a minute then the Chairman can reply. We had debated the Land Laws. It is a comment that is required on the mediated version, so that we pass it. Remember this is a constitutional Bill. Take a minute.

Hon. Ogalo: Thank you, Hon. Deputy Speaker. I sit in the Departmental Committee on Lands and we did a lot of work in coming up with the final version of the Community Land Bill. I was a bit perplexed when I heard that the Senate had voted out the entire Bill. I wondered where we would go. But I am happy that today we have a mediated version which does not deviate so much from what we agreed in this House. I am sure this law is going to be a beautiful law. It is going to deal with issues of community land, which have been thorny in Kenya. But I have to warn that this Bill is a stop gap measure.

No communities will continue to hold their land as communities. Under this law, you own nothing and everything. People will want their title deeds one way or the other. So, in future, the Land Adjudication Act will still apply on community land to get every member of that community to own his or her piece of land.

Hon. Deputy Speaker: Hon. Mwiru, give a minute to Hon. Gikaria.

Hon. Mwiru: Let me give a minute to my neighbour because he can chase me away from Nakuru, if I do not.

Hon. Gikaria: Thank you, Hon. Deputy Speaker, for giving me this opportunity. As you have just said, this is a constitutional Bill. I happen to have sat in a meeting of the Committee on the Implementation of the Constitution (CIOC) and this is part of the constitutional laws that we needed to have passed by 27th August 2016. It was a big worry for us when we heard that it went to the Senate and they kicked out the whole Bill and even said that they were not going to look at it. It is high time the Senate became a little bit serious with their work. They should have started the Bill themselves, so that it comes to us because it is a vital piece of legislation that we needed to have passed. It was very unfortunate that the Senate threw out the Bill. We were very worried that they were going on recess. However, I appreciate the fact that the Committee Chairman and the Members from the Senate sat and agreed.

When you talk of a youth, who is a youth? A youth is a person of some age. Sometimes these are not very serious people when they talk about land matters, which are serious matters. So, we need to be a little bit careful.

Hon. Deputy Speaker: Can you reply, Committee Chair?

Hon. Mwiru: Thank you, Hon. Deputy Speaker. Again, I thank my colleagues for supporting this mediated version of the Community Land Bill. I am really overwhelmed by happiness. At least, we have set a benchmark on the journey we have been walking for purposes of our future legislations in terms of community land. I thank your office and that of the Clerk. I am grateful to all of us in this House. I also thank the country.

I beg to reply.

Hon. Deputy Speaker: Hon. Members, the Question will be put when we next have the requisite quorum in the House.

(Putting of the Question deferred)

ADJOURNMENT

Hon. Deputy Speaker: The time being 6.30 p.m., the House stands adjourned until Thursday, 4th August 2016 at 2.30 p.m.

The House rose at 6.30 p.m.