

NATIONAL ASSEMBLY

OFFICIAL REPORT

Tuesday, 4th December 2018

The House met at 2.30 p.m.

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

PRAYERS

Hon. Speaker: You can ring the bell.*(Quorum Bell was rung)*

We can now commence.

MESSAGE

PASSAGE OF THE COUNTY ALLOCATION OF REVENUE (AMENDMENT) BILL

Hon. Speaker: Hon. Members, pursuant to the provisions of Standing Order No.41, I wish to report to the House, that I have received a Message from the Senate regarding its passage of the County Allocation of Revenue (Amendment) Bill (Senate Bill No. 29 of 2018). The Message reads in part, and I quote, “On Wednesday, 21st November 2018, the Senate considered and passed the said Bill without amendments.” The Senate now, seeks the concurrence of the National Assembly on the said Bill, in accordance, with the provisions of Article 111 of the Constitution.

Hon. Members, the County Allocation of Revenue Bill is an annual legislation introduced in accordance with the provisions of Article 218 of the Constitution, with the objective of equitably allocating, the share of national revenue amongst the 47 counties. The said Bill, therefore, seeks to amend the County Allocation of Revenue Act, No. 8 of 2018 to replace the Third Schedule of the Act, on conditional allocations to county governments from loans and grants, from development partners in the Financial Year 2018/2019.

Hon. Members, the Bill stands committed to the Budget and Appropriations Committee for consideration. Standing Order No.234 requires this House to consider the County Allocation of Revenue Bill within 10 days. However, given that the House is scheduled to proceed on a long

recess later this week, I encourage the Committee to endeavor to table its Report on the said Bill to enable the House to consider and conclude the Bill at all stages.

PETITION

INADEQUATE MEDICAL COVER TO TEACHERS BY MINET GROUP LIMITED

Hon. Speaker: Hon. Members, there is a Petition to be presented by Hon. Patrick Munene Ntwiga, Member for Chuka/Igambang'ombe. I wonder, whether he is present.

Hon. Patrick Ntwiga (Chuka/Igambang'ombe, JP): I, the undersigned, on behalf of Kenya Union of Post Primary Teachers (KUPPET) in Tharaka Nithi County draw the attention of the House to the following:

THAT, Kenya Union of Post Primary Teachers is a registered union that represents all the post primary teachers in Kenya with a current membership of 70,000 teachers;

THAT, in January 2015, the Teachers Service Commission (TSC) entered into agreement with Minet Group Limited to underwrite health insurance for all teacher employment under the Teachers Service Commission;

THAT, the Commission was obliged to satisfy the terms of the contract by taking away medical allowance from all teachers;

THAT, the entire process was allegedly handled secretly as teachers being the main stakeholders as well as the beneficiaries were not consulted;

THAT, due to conflict of interest amongst the parties and the procurement entity, TSC terminated the tender awarded to Minet Group Limited, who petitioned the Public Procurement and Administrative Review Board;

THAT, the review board ruled in favour of the applicant and subsequently Minet was awarded the tender;

THAT, most credible health facilities have withdrawn from Minet Group of healthcare providers, the insurer has moved to private clinics that lack capacity to offer proper medical attention

THAT, teachers lack confidence in such facilities and therefore majority of teachers end up paying for medical services in well-equipped hospitals, which are among the Minet Insurance Brokers health providers;

THAT, the outpatient services as per the contract are supposed to be limitless, however some of the health facilities offering outpatient services require patient to pay for services rendered;

THAT, efforts have been made to have TSC address the above issues to no avail; and

THAT, the issues in respect of which this petition is made are not pending before any court, constitutional or legal body.

Therefore, your humble petitioners pray that the National Assembly, through the Departmental Committee on Education and Research:

- i) Investigates whether Minet Group Limited pool of health services providers have the capacity to handle or cover the over 70,000 families;
- ii) Recommends procurement of medical cover for teachers with other reputable insurance providers amongst them the National Health Insurance Fund (NHIF);

- iii) Causes an audit of the teachers' medical fund and ensures that the funds which might have been diverted from the medical fund by the underwriter are recovered; and
- iv) Makes any other order or direction that it deems fit in the circumstances of the matter.

And your petitioners will ever pray.

Hon. Speaker: Seeing nobody is desirous of making a comment... You cannot just start putting requests now. You are becoming wiser after the facts. Member for Kiminini, what is your comment, clarification or observation?

Hon. (Dr.) Chris Wamalwa (Kiminini, FORD-K): Thank you, Hon. Speaker. The former President of this country, President Mwai Kibaki, used to say a healthy nation is a working nation. Indeed, matters of healthcare are very critical. This Petition that the honourable Member from Tharaka Nithi has brought is actually very critical. It is such a coincidence because the National Assembly is facing a similar problem. In matters of healthcare, particularly when it comes to insurance firms, before any customer enters into an agreement, it is important, indeed, for them to understand the nitty-gritties. This is because at times, you sign an insurance contract but when it comes to provision of services, it becomes a challenge. Maybe it is high time people like Hon. Kimari, who are professionals in the insurance industry, told us more about agency and brokership so that we understand this benefit. We request the Committee to move with speed.

Hon. Speaker, as they move to do that, we also request you as the Chairman of our Parliamentary Service Commission (PSC) to also move with speed because some of us have suffered under the current regime of insurance. The last time I went to Nairobi Hospital I had forgotten my medical card. Even after giving them my identification, I was told, "liaison". I do not know if they told me, "liaison" or "lison". So, matters of healthcare should be taken seriously. Let the Committee move with speed and finish this within the timeframe of 60 days. I thank you, Hon. Speaker.

Hon. Speaker: Hon. Members, even as you make those comments, I just wish to caution that you should not discuss matters that could be pending before court, particularly with regard to what you have said. This is because the matter is pending before court. Next is Member for Kimilili.

Hon. Didmus Barasa (Kimilili, JP): Thank you, Hon. Speaker, for giving me this opportunity. Even as I support this Petition, I also want to decry that every time this Parliament sits such petitions are presented before it, but I have never seen a report tabled here. I know for a fact that a petition needs to be looked into within a specified period of 60 days, but I know for a fact that we have very many petitions that have lapsed and this is completely not acceptable. The only seriousness that we can give to these petitions as a House is to expeditiously look into them. We have been blaming Cabinet Secretaries for delaying to respond to Questions raised by this House but again as Members of Parliament, we should not allow such petitions to die in our hands. It will be assumed that the House is colluding with those that are against those petitions to kill them. I have brought about two petitions but I know they have died. We need to really move with speed. We should also propose sanctions to committee chairpersons who will fail to expeditiously look into such petitions.

Hon. Speaker: I would encourage you to pay more attention to the proceedings of the House. For instance, you understand what Standing Order No.227 provides with regard to petitions. As to whether they die or not, that is up to you. You can decide to sanction the chairpersons. You can propose sanctions. That is within your powers and rights. However, of course, just to caution that you would need to carry everybody on board in the proposed sanctions. There is no debate on petitions. This House operates on the basis of rules. A report on

a petition is merely tabled in the House but the main petitioner is the one to whom the report is directed. So, the Committee writes to the petitioner. Even when you present, the Committee should just write to you. The rest could just be tabled here and there is no debate. This House, unlike some other places, does not debate reports on petitions. That is why at this stage, that Standing Order provides for comments, observations and clarifications for a maximum of 30 minutes. It is comments, observations and clarifications and not debate.

Next is Member for Kisumu West.

Hon. Olago Aluoch (Kisumu West, FORD-K): Hon. Speaker, I was quite concerned with the remarks by Hon. Barasa because apart from the fact that he appears not to understand what you have now explained to him, the other fact is he appears to be under the impression that there are committees of this House that do not act the way they should. I know as a fact that the Committee on Delegated Legislation and the Committee on Justice and Legal Affairs do not have any pending petitions and they should be commended for this. However, he is creating the wrong impression that all the committees do not work. It is not in order.

Hon. Speaker: Member for Marakwet East.

Hon. Kangogo Bowen (Marakwet East, JP): Thank you, Hon. Speaker. I support the Petition. The issue of health insurance has become a big concern. We have seen it not only in TSC but even in many other organisations, including ourselves here. Regarding insurance, you will find that when you go to, say, two hospitals to be attended to for the same ailment, you will be charged differently. As the Committee also looks into the matters of insurance and health, there is also need to streamline the entire general health issues when it comes to performing tests and the various treatments.

Also, sometimes the contributors of the scheme are not involved in the process of procuring this health insurance because it has been commercialised so much. I urge the Committee to call all the relevant contributors so that they can give their input. That way, they will benefit from their contribution. I support.

Hon. Speaker: The Petition is referred to the Departmental Committee on Education, Research and Technology to act within the stipulated timelines and report to the petitioner as appropriate.

Next Order!

PAPERS LAID

Hon. Aden Duale (Garissa Township, JP): Hon. Speaker, I beg to lay the following Papers on the Table of the House:

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

- (1) Borabu;
- (2) Gem;
- (3) Kasipul;
- (4) Luanda;
- (5) Lugari;
- (6) Malava;
- (7) Navakholo;
- (8) Ugunja; and,
- (9) Webuye West.

Hon. Speaker: Let us have the Member of the Special Funds Accounts Committee, Hon. Erastus Kivasu Nzioka.

Hon. Erastus Nzioka (Mbooni, Independent): Hon. Speaker, I beg to lay the following Paper on the Table of the House:

The Fourth Report of the Special Funds Accounts Committee on Audited Financial Statements for the Kenya Roads Board Fund for the year ended 30th June 2017.

Hon. Speaker: Let us have the Chair of the Departmental Committee on Administration and National Security.

Hon. Paul Koinange (Kiambaa, JP): Hon. Speaker, I beg to lay the following Paper on the Table of the House:

The Report of the Departmental Committee on Administration and National Security on Vetting of Nominees for Appointment as Vice-Chairperson and Members of the Public Service Commission (PSC).

Hon. Speaker: Very well. Let us move to the next Order.

NOTICES OF MOTION

ADOPTION OF REPORT ON AUDITED FINANCIAL STATEMENTS OF KENYA ROADS BOARD FUND

Hon. Erastus Nzioka (Mbooni, Independent): Hon. Speaker, I beg to give notices of the following Motions:

THAT, this House adopts the Fourth Report of the Special Funds Accounts Committee on Audited Financial Statements of the Kenya Roads Board Fund for the year ended 30th June 2017, laid on the Table of the House on Tuesday, December 4th 2018.

Hon. Speaker: Very well. Let us have the Chair of the Departmental Committee on Administration and National Security.

APPROVAL FOR APPOINTMENT OF VICE CHAIRPERSON AND MEMBERS OF PUBLIC SERVICE COMMISSION

THAT, taking into consideration the findings of the Departmental Committee on Administration and National Security in the Report on Vetting of Nominees for Appointment as Vice-Chairperson and Members of the Public Service Commission, laid on the Table of the House on Tuesday, 4th December 2018, and pursuant to the provisions of Article 233(2) of the Constitution and Sections 3 and 5 of the Public Appointments (Parliamentary Approval) Act, 2011, this House approves the appointment of the following to the Public Service Commission:

- | | | |
|--------------------------------|---|-------------------|
| (1) Ms. Charity Seleina Kisotu | – | Vice-Chairperson; |
| (2) Dr. Joyce K. Nyambuti | – | Member; |
| (3) Dr. Mary C. Mwiandi | – | Member; |
| (4) Dr. Reuben K. Chirchir | – | Member; |
| (5) Amb. Patrick S. Wamoto | – | Member; |
| (6) Amb. Salma A. Ahmed | – | Member; |
| (7) Mr. Andrew N. Muriuki | – | Member; and, |
| (8) Ms. Joan Odhiambo Otieno | – | Member. |

Hon. Speaker: Very well. Let us move to the next Order. First Question is by the Member for Lafey Constituency, Abdi Mude Ibrahim.

QUESTIONS

Question No.106/2018

WATER PROJECTS IN LAFEY CONSTITUENCY

Hon. Ibrahim Abdi (Lafey, EFP): Hon. Speaker, I beg to ask Question No.106/2018 directed to the Cabinet Secretary for Water and Sanitation.

(a) Could the Cabinet Secretary provide a list and details of water projects, including cost of each project, in Lafey Constituency?

(b) When will the Ministry provide water to all schools in Lafey Constituency?

Hon. Speaker: The Question is referred to the Departmental Committee on Environment and Natural Resources.

The next Question is by the Member for Alego-Usonga, Hon. Atandi.

Question No.108/2018

DONOR-FUNDED PROJECTS IN ALEGO-USONGA CONSTITUENCY

Hon. Samuel Atandi (Alego-Usonga, ODM): Hon. Speaker, I rise to ask Question No.108/2018 in the Order Paper. My Question is addressed to the Cabinet Secretary for Treasury and National Planning.

Could the Cabinet Secretary provide a list of all donor-funded projects, including name, location and cost, in Alego-Usonga Constituency since the year 2013 to date and state whether the projects are funded through loans or grants?

Hon. Speaker: Very well. It is referred to the Departmental Committee on Finance and Planning.

The next Question is by Member for Mwatate Constituency who has written to say that he is on Committee business in Uasin Gishu and requests that the Question be put in the Order Paper tomorrow afternoon. The request has been acceded to so the Question is deferred to tomorrow afternoon.

Question No.186/2018

WATER PROJECTS IN MWATATE CONSTITUENCY

(Question deferred)

Next is the Question by Member for Keiyo North, Hon. James Kipkosgei Murgor. You removed your card, Hon. Murgor. It was showing. You had placed your card very well but you fumbled with the buttons.

*Question No.191/2018*PAYMENT OF RETIREMENT BENEFITS TO MRS. PHILOMENA
CHEBIWOT CHEMITEI

Hon. James Murgor (Keiyo North, JP): Hon. Speaker, I would like to ask Question No.191/2018 to the Cabinet Secretary for Agriculture, Livestock and Fisheries.

When will the Ministry pay Mrs. Philomena Chebiwot Chemitei, of Personal Number 21617 her retirement and gratuity, having worked in the Ministry since 1971 until her retirement in February 1990?

Hon. Speaker: The Question is referred to the Departmental Committee on Agriculture and Livestock.

Next Question is by Member for Homa Bay Town, Hon. Peter Opondo Kaluma. He is not in, in the first round.

The next Question is by Member for Konoin Constituency, Hon. Brighton Leonard Yegon. The Member has requested that the Question be deferred. He is out of the country. His request has been acceded to and the Question is accordingly deferred not to any specific date.

*Question No.236/2018*NUMBER OF REGISTERED AND UNREGISTERED SUBSCRIBER IDENTIFICATION
MODULE CARDS IN KENYA

(Question deferred)

For the second time, let us have the Question by Member for Homa Bay Town, but I have received information that Hon. Kaluma is similarly out of the country. His Question, therefore, is deferred not to a specific date.

Question No.212/2018

MEASURES TO SECURE INTEGRITY OF NATIONAL EXAMINATIONS

(Question deferred)

Hon. Speaker: Hon. Members, before we proceed, allow me to recognise the presence of Cooperative University of Kenya, Youth Leadership Empowerment Initiative who are in the Speaker's Gallery. They are students from Lang'ata Constituency, Nairobi County. There are also Members of Welfare, Catering and Library Services Committee from Elgeyo Marakwet County Assembly who are in the Public Gallery, led by their Chairman Mr. Kipketer David. They are seated in the Public Gallery. They are all welcome to observe the proceedings of the House this afternoon.

(Applause)

Hon. (Dr.) Makali Mulu.

POINTS OF ORDER

MANDATES OF BUDGET AND APPROPRIATIONS COMMITTEE AND DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING

Hon. Makali Mulu (Kitui Central, WDM-K): Thank you, Hon. Speaker. I stand to seek clarification on a matter which is captured in our Standing Orders. I am seeking clarification regarding the mandates of the Budget and Appropriations Committee and the Departmental Committee on Finance and National Planning in the coordination and processing of key Budget aspects.

The Second Schedule of the National Assembly's Standing Orders provides the functions of the Departmental Committee on Finance and National Planning. It makes revenue policies including taxation, public finance, monetary policies, banking, insurance and public debt. It also makes investment and divestiture policies, and pricing policies. It is also in charge of financial institutions, excluding those in the securities exchange. It is also in charge of population, national planning and development, among others. This is a Committee that is charged with the responsibility of, among others, scrutinising and reviewing the annual Finance Bill and guiding the National Assembly in discussions and then to approval. Ideally, the Finance Bill contains revenue raising measures to finance the already approved Budget and also some tax incentives meant to encourage some actions in the economy to spur growth. It also proposes amendments to some statutes in the financial sector to streamline their administrative operations.

At the same time, in accordance with the National Assembly Standing Order No. 207, the Budget and Appropriations Committee is charged with the following mandate:

- (i) Evaluation of tax estimates, economic and budgetary policies and programmes with direct Budget outlays;
- (ii) Investigate, inquire into and report on all matters related to the national Budget such as coordination, control and monitoring;
- (iii) Scrutiny and examination of the Budget Policy Statement submitted to the National Assembly;
- iv) Discussing and reviewing the estimates and making recommendations to the House;
- (v) Examining Bills related to the national Budget, including the Appropriations Bills.

The Constitution in Article 221 details the processing of the Budget Estimates through the relevant Committee of the National Assembly which is the Budget and Appropriations Committee. Indeed, Section 39 of the Public Finance Management (PFM) Act, 2012 provides that the National Assembly shall consider the estimates of revenue and expenditure guided by the Budget and Appropriations Committee. This implies that the Budget and Appropriations Committee guides the National Assembly in scrutinising and approving the fiscal framework. This entails projected revenue, including anticipated revenue raising measures that shall be introduced through annual Finance Bill loans and grants, and the total expenditure. Consequently, at the time of the consideration of the Finance Bill which is after passing of the Appropriations Bill, it is expected that the proposed revenue raising measures and tax incentives have been approved in the fiscal framework. Therefore, an introduction of any additional revenue raising measures or tax incentive should be deemed to be distorting the fiscal framework

which is already approved. Hence, assessment of the likely implication to the approved Budget Estimates should be conducted by the relevant committee of the National Assembly.

There are matters which I seek your clarification on. They are:

(i) What aspects of taxation and revenue are shared between the Budget and Appropriations Committee and the Departmental Committee on Finance and National Planning? How can those aspects be processed in an efficient, effective and amicable manner to ensure the fiscal framework is shielded from distortion?

(ii) According to the Standing Orders, the Public Finance Management Act, 2012 and the Constitution, when we are processing the Finance Bill and it emerges that a Member intends to introduce amendments, which of the two Committees should be charged with the responsibility of assessing the implication of such proposals, in view of Article 114 of the Constitution 2010?

(iii) Is there a distinction between tax policy and tax revenue raising measures in the Finance Bill? If so, which Committee is charged with the mandate and responsibility of addressing them, in view of the provisions of the Standing Orders and PFM Act?

Thank you, Hon. Speaker.

Hon. Speaker: Thank you, Hon. Makali Mulu. You had already given me your request. What remains is for me to make the Communication detailing specifically all those areas that you have raised. That may not be done now but we will do that Communication. We are working on it.

Hon. Junet.

MISREPRESENTATION OF FACTS CONCERNING THE PARLIAMENTARY SERVICE BILL BY THE MEDIA

Hon. Junet Nuh (Suna East, ODM): Thank you, Hon. Speaker. There is a matter which I wanted to draw your attention and that of the House to. I may not get an opportunity to raise it because we are approaching the long recess. Thank you for giving me this opportunity to contribute now.

This House has discussed the Second Reading of the Parliamentary Service Commission Bill. There is a lie outside there that the Bill is about increasing the salaries and allowances of Members of this House. That matter has been reported sensationally to the extent where it is almost damaging the reputation of the House and Members of this House. As far as I am concerned and what I know, that Bill has nothing to do with our salaries. It is meant to operationalise the Parliamentary Service Commission. That is one of the last Bills on the matter of the implementation of the Constitution 2010. The Judicial Service Commission (JSC) has its statute and all other commissions have theirs. It is only the Parliamentary Service Commission which does not have its own statute up to now. Let us stop politicking on this matter. I am aware that members of staff who are between PSC15 and 17 will be on contract basis. That is what is all over in all developed jurisdictions but not in Parliament. If you do not agree with that, there are other avenues you can use to object to it but not to malign the names of Members and the name of the House. My party leader issued a statement. I told him in the morning today that the Bill has nothing to do with our salaries. It is about operationalising the Parliamentary Service Commission.

This topic of talking about the allowances, remuneration and salaries of Members of Parliament has been a juicy topic in this country for long. Nobody discusses what the Government officers in the Executive earn. You will never hear people discussing what Cabinet

Secretaries earn, the number of vehicles they use and the number of staff they have. You will never see a Principal Secretary being discussed but when it comes to a Member of Parliament, that topic is juicy.

You know what we went through when we joined Parliament under your leadership, Hon. Speaker, as the Chairman of the Parliamentary Service Commission and when you engaged the Salaries and Remuneration Commission. You agreed on the terms that we are supposed to serve under in this House. For the last six to seven years I have served as a Member of Parliament, not a shilling has been added to my salary; nothing completely. It has even been reduced because when I came to this House, other Members of Parliament never used to pay taxes. But we now pay taxes in full to the Kenya Revenue Authority (KRA).

I am speaking about this matter to defend the integrity of this House and name. I am a Member of Parliament and the most difficult job to get today in Kenya is to be elected. Many people want to come to this House but they cannot make it because it is the decision of the people; people decide who comes here. So, it is painful to come here and we are told that we are not earning what we deserve and that we are robbing the country or stealing in form of allowances and salaries. There are members of this society who do lesser jobs than us, but earn more than what we do. They are in Government.

In conclusion, I would like to tell the nation that we are not increasing our salaries, we are not increasing our allowances and we are not increasing anything. We are only passing the Parliamentary Service Bill so that the Parliamentary Service Commission can work properly and do their functions as required by the Constitution.

With those few remarks, thank you, Hon. Speaker.

Hon. Speaker: Hon. Members, do you want to weigh in this? Leader of the Majority Party.

Hon Aden Duale (Garissa Township, JP): Thank you Hon. Speaker for giving me an opportunity. I want to speak to the Fourth Estate, to our party leaders and to the citizens.

(Applause)

It does not cost anybody anything to pick a copy of the Parliamentary Service Bill, look at it and see what it talks about. It is very sad that senior editors - I have a lot of respect for journalists who have worked in Parliament for a long time – but the term “greed” can misinform the nation on the Parliamentary Service Bill. In Chapter Fifteen of the Constitution, there are 13 commissions and two independent office holders. This House, from the 10th, 11th and now the 12th Parliament has completed the actualisation or legislated all the commissions and today they have an Act of Parliament that they use in their day to day operations. The National Land Commission, Kenya Human Rights Commission, Equality Commission, Teachers Service Commission, Public Service Commission, Judicial Service Commission and the Law Society of Kenya have Acts of Parliament. But it is very sad that this House has not legislated Article 127 that creates the Parliamentary Service Commission. The salary of a Member of Parliament as per the Constitution is decided by the Salaries and Remuneration Commission. In fact, to put it in the Parliamentary Service Bill is unconstitutional and even the Speaker would not allow it.

I also blame the Leader of the Minority Party, my good friend, Hon. Junet and Hon. Chris Wamalwa. They have briefed *Baba*. When I saw his Press statement the other day, I said that he should have been briefed by that leadership. I was in the President’s function in Mombasa and he only commented on what was in a newspaper. But if you look at the Press statement by the

former Prime Minister, the guy who drafted it should be fired because he has put the former Prime Minister in bad light. The Bill does not talk about salaries, house allowances and mileage. I challenge the media house to get a copy of the Bill and tell Kenyans the truth.

It is not a secret that I got access, and do not ask me how, to a forum of discussion of Senators and got to know what they are saying about the Bill. The highest-ranking staff members of Parliament are the Clerks who are accounting officers. A Clerk or anybody cannot fight a Bill before the House. Staff cannot fight a Bill. If a Member brings an amendment saying that we will put certain grades of staff of Parliament on performance contract, which are at similar level in the Executive and the Judiciary... They have signed them. They are saying that when the Bill goes to the Senate, the Bill belongs to the National Assembly and they will fight it. In the first place, if I were asked for my legal opinion and I have read it, this Bill ought not go to the Senate.

(Applause)

The Judicial Service Commission Bill was not taken to the Senate and the National Land Commission Bill was not taken there either. It has nothing to do with counties. I saw a Bill that will be brought to this House by Hon. Mutula Kilonzo Jr. and Hon. Sakaja to put into law how the two Speakers can make a determination on where Bills should belong. That determination is already decided in the Constitution. Articles 109, 110, 111, and 112 talk about where Bills should originate from. Because we are a House that respects the Constitution, let me quote Article 109(3). I am not reading something from planet Mars. It says, "A Bill not concerning county government is considered only in the National Assembly and passed in accordance with Article 122 and the Standing Orders of the Assembly." Article 109(2) says that any Bill may originate in the National Assembly. In fact, the only House that has a blank cheque that can deal with any Bill or matter under the sun is the National Assembly.

(Applause)

I am not the one saying that. Article 109(2) of the Constitution says that any Bill may originate in the National Assembly. Further, Article 109(4) of the Constitution says: "A Bill concerning county government may originate in the National Assembly or the Senate and is passed in accordance with Article 110..." So, we are too magnanimous because our colleagues, some Senators, also sit in the Parliamentary Service Commission and the Secretary of the Commission is the Clerk of the Senate. We were magnanimous and wanted to bend the law. Ideally, someone must convince me like the renowned lawyers Hon. Olago Aluoch, Hon. Cheptumo and Members of the Departmental Committee on Justice and Legal Affairs.

Today, the whole country has been misinformed that the Parliamentary Service Bill is about greed.

Hon. Junet made a very good statement. Why can this country not, for a minute, let us have a discussion on the salaries of everybody? Let us discuss what a judge, Cabinet Secretary or Principal Secretary earns and what their allowances are. I want to implore the Members of the Senate that this is something which we are going to amend. A car grant is a right of a Member of Parliament and we have been getting it from the 10th Parliament. Today, there are people in the Executive who get mortgage to buy a house and every month they earn house allowance. People are saying that Members are saying that if the President will not sign, we will raise the two-thirds majority for the Constitution (Amendment) Bill on the two-thirds gender rule. As I had said last

week, when we, as Members of Parliament, go for television shows, we do research. I have watched the media personalities who cover the United States of America Congress and the House of Commons. We expect media personalities who cover Parliament to do proper research. We want the House to be critiqued. We have no problem. Parliament and its committees must be critiqued. Our personalities and activities as Members of Parliament must be critiqued, but it must be done with facts and evidence. Where did we say that this Bill will not be signed? If by chance the 12th Parliament will not pass this Bill.... People are saying that we are not actualizing the implementation of the Constitution by not passing the Constitution (Amendment) Bill on the two-thirds gender rule. The Parliamentary Commission Service Bill also has a constitutional timeline. There is no way we can have a commission led by our Speaker with no laws to operate it. How do we run Parliamentary Service Commission? The Parliamentary Service Commission is not a kiosk. It runs the welfare and the affairs of an arm of Government. I do not get intimidated by what is our right. When I walk about people's offices, they ask me what we are trying to do.

Hon. Speaker, I want to tell you as the Chair of the Parliamentary Service Communication that the communication team in our Parliament has failed. They were to do a media briefing. We should have done a media briefing and taken the media through this Bill. The media must be given a copy of the Bill with all the rationale. This Bill is being interpreted differently. In fact, they are discussing a Bill which is not before this House. We are the first Parliament that pays taxes through Pay as You Earn (PAYE), income taxes and our allowance are also taxed. The mortgage we get is not a favour. We pay after five years. In fact, a number of Members of Parliament who have taken mortgage have no salaries because it is committed. After five years, you take your title deed. You have no choice but within five years, you should have completed your mortgage. So, nobody is giving us free money for mortgage. You need to protect us Hon. Speaker, but it is good that we kept quiet for some time until *Baba* spoke. Today we discussed this with Hon. Junet. We said, if these people can misinform *Baba* and the President, they are going to misinform Jesus and Mohamed, so we better save the situation.

Thank you, Hon. Speaker, I agree with Hon. Junet.

Hon. Speaker: Hon. John Mbadi, then we consider others. You notice that I have refrained from commenting on that because I doubt that anybody could legislate on hotel size, five stars, and things like those. Maybe somebody is trying to entertain themselves. Hon. John Mbadi, proceed.

Hon. John Mbadi (Suba South, ODM): Hon. Speaker, in 2010 immediately after the promulgation of the current Constitution, there was very heated debate in this country about the perks of the Members of Parliament and whether we were supposed to pay taxes or not. I remember that time we had made a trip to the United Kingdom in the House of Commons and I asked them how the public perceives their perks. They told us that Members of Parliament are never loved anywhere. In fact, there is no country in the world where salaries of Members of Parliament will be supported by the public. That is from the House of Commons. Therefore, I just want to tell my colleagues that what we are seeing is global trend. It is not just unique to this country. Hon. Junet is saying it is not a Suba affair, neither is it a Garissa affair.

Hon. Speaker we are here because I think there is quite a bit of misinformation out there. I have heard Hon. Duale say that my party leader was misinformed or misadvised. I do not know who has misadvised my party leader. The President also spoke about the Bill out of context. We do not expect our party leaders to read the details of Bills. That is our work, and that is why we are here. They also do not ignore what is out there in the public because when the media

captures and brings a debate, you ordinarily expect these leaders to speak because they are concerned about the welfare and the progress of this country. I want to confess that I have shared this with my party leader and he has told me that this debate has come at a very wrong time. It is a wrong time because we have just been fighting over the issues of the cost of living and the runaway debts in this country. I just remembered the other day that we had to accept the Presidents memorandum on the Finance Bill which was increasing the VAT on fuel because of the hard times we are living in. That is why you will find these leaders commenting the way they did. I do not think that they are to blame. In my view, we need to blame two people. The first ones are those who were distorting the facts of the Bill.

Looking at this Bill, there is nowhere this Bills provides or suggests any salary increment. If there is anyone who has spotted this kind of provision in the Bill, he should alert me so that I am aware, and we can educate each other. The media may have decided to bring this as a debate because of the committee reports. There are some provisions in the committee reports that have observed how Members of Parliament need to address their issues concerning welfare. That committee report can only find its way to the Bill through amendments at the Committee of the whole House which is constitutionally provided for, that the Bill has to go through all the three stages. Trying to talk about Members of Parliament increasing their salaries and allowances... I have been given a house allowance in public discussion in that Bill yet I have not seen it. We have also been given a lot of perks which I have not personally seen. I want to blame the House. As the Leader of the Majority Party has put it, our communication department is failing this Parliament. If there is distortion of facts, it is important that we make those facts known. Why would we pay staff working in the department of communication if they cannot communicate on behalf of Parliament?

If Mbadi stands to speak, obviously, it is seen as if I am defending a position because I have a pecuniary interest. So, it would be important if it comes out clearly from our staff that this is the correct position of the Bill, so that the public can know. We are accountable to the public. We cannot ignore the fact that the public is not happy with what it is being told. Actually, almost the entire narrative out there is not true. I really do not want to belabour the point. It is really disheartening. I can see Hon. Kimani Ichung'wah here as the Chairman of the Budget and Appropriations Committee (BAC). I am also here. It is high time, as the BAC, we tabulated the salaries and allowances of all State officers in this country and make it public so that debate can start there.

(Applause)

If we are earning too much then our earnings should be reduced, but let us reduce the salaries of all State officers. Let us take that decision as a country that we are reducing the salaries and allowances of all State officers. When you scandalise, you dehumanise Parliament and make us look bad. In fact, all the time we see, "House of Greed". Sometimes I am told I am a member of "House of Greed" for receiving mortgage and yet I may not even have taken that mortgage; it is optional. You cannot force me to take a loan if I do not want it. Mortgage is a loan; I can take it or opt not to take it. In fact, this is one of the worst mortgage schemes in this country apart from the interest rate because it is repaid in five years. That is not even a mortgage! It is a serious loan that you have to repay within your term limit.

Hon. Speaker, go to the parastatals in this country. Go to Kenya Power Company (KPC), the National Social Security Fund (NSSF), Kenya Pipeline Corporation and others and ask the

staff or even directors about the limit of their in-patient medical cover, it is more than Kshs10 million. I have shared with many of them. Our out-patient is Kshs300,000 which many of us cleared by September and we have to pay our medical bills on our own.

There is one thing I would like to advise the media about. When Mbadi stands in the House and expresses himself, that should not be taken as having been agreed on. When Hon. Wanjala, for example, speaks about his interest in seeing his 10 wives or so covered medically, that is not the position of this Parliament. It is his personal opinion. I may not need it. That is his right. I have only one wife, unless you want to give me more. I have only one wife at the moment. The opinion about two wives...

Hon. Member: Official?

Hon. John Mbadi (Suba South, ODM): My colleague is asking whether official or not. That is a private debate we can engage in later.

My final comment, because I know my colleagues also want to contribute, is that what some of us speak are personal opinions. We give personal opinions but, please, analyse the Bill based on its contents. I know my friends in the media might think I am being very unfriendly and unkind to them. However, the truth is this: Sometimes I wonder if we have professional journalists covering Parliament. What one needs to do is just to read the Bill. In the 10th Parliament, the media used to analyse Bills. Journalists could run to our offices to seek clarifications about contents of Bills. With regard to budgetary matters, they used to come to my office to ask me whatever they had not understood. That way, whenever they put such matters in their weekend analysis, they were sure of the content because it was well researched and well thought out. You could read the analyses and see facts. Nowadays, we read rumours, propaganda and sensationalised stories about “House of Greed”. They even get facts wrong, for example, concerning the mortgage scheme. They say that besides the Kshs20 million mortgage, MPs now want houses rented for them and on top of it get house allowances as well. How on earth would you get a house allowance and a house rented for you? They have been saying that we want Government vehicles. I think those were just comments coming from us. That if you feel an MP should not get mileage, then why do you not provide facilitation for them to reach their respective constituencies? This is because judges, who basically work from their work stations the whole day, are facilitated and given vehicles to do their work. An MP who should on every weekend, ordinarily, visit his or her constituency to get opinions... Women representatives who are supposed to move around constituencies in a county have no vehicles and yet when we ask for mileage, we are considered to be asking for too much. How do you want these MPs to deliver?

The people of Kenya decided under Article 127 of the Constitution to create a Commission that will facilitate Hon. Members to perform their duties. How do you facilitate Members without offering facilities? So, when you ask for facilities you become a “House of Greed”. Kenyans should be fair to Parliament and discuss the amounts but not engage in general discussions that we are overpaid. They have been using very unkind words.

Thank you, Hon. Speaker. I know I have taken too much time, but that is my contribution. I want the Leader of the Majority Party to know that *Baba* is properly briefed. *Baba* knows what he is saying and is concerned like any other Kenyan.

Hon. Speaker: Hon. Members, Hon. Junet just raised this issue to draw the attention of Members. Indeed, all of you debated this Bill during the Second Reading. I am sure those of you that have cared to read through the Bill know the details. If those who are charged with the responsibility and higher calling of informing the public have chosen to, instead, entertain, then

it becomes absolutely tricky. It is for that reason that I have allowed these comments. It is good that the brutal truth be known. Anybody who cares to know what it is that the House has discussed can just get a copy of the Bill. It is even available online. Go through the various suggestions and also ask yourself whether eight years since the promulgation of the new Constitution it is right that we have an Act of Parliament enacted in the year 2000 when Kenya was unicameral, catering for a bicameral legislature, which is in the new Constitution.

They will understand why some of these things have to be the way they are. We have the Constitution providing even for the composition of the Commission but the parent Act, does not reflect that. The Parliamentary Service Act of 2000, has no reference to the Senate. So, the crime that both the 11th and 12th Parliaments are accused of doing is to try and actualise some of those obvious positions.

This Bill was there in the last Parliament but was shelved for some other reason. It looks like every time it is brought there will always be some people who will look at it negatively and would want Parliament to continue operating in a lacuna. The Constitution talks about the composition, that is, four Members from the National Assembly and the Speaker of the National Assembly to Chair; three Members from the Senate; and the Clerk of the Senate to be the Secretary of the Commission. That is not there in the current Parliamentary Service Act of 2000.

In fact, the current Act talks about the Leader of Official Opposition as a Member of the Commission.

So, when we are trying to correct this so as to be in sync with constitutional provisions, it becomes a crime. Obviously, I do not see Hon. Anthony Oluoch here but I may wish to thank him because he has taken head on everybody who has tried to argue about this Bill. He has clearly explained that there is no provision about... I have seen people talking about a five-star hotel and I do not know about it. Members do not eat for free, they pay.

So, if Members want to pay more for better service is that a crime? Hon. Members, perhaps, some of them are also picking from the small posts you do on social media, like the one you did last Friday. That, he was surprised there are so many Members, and he claimed that 320 Members had left. Some of those things reflect negatively but they come from some of us. Hon. Ichung'wah.

Hon. Kimani Ichung'wah (Kikuyu, JP): Thank you, Hon. Speaker. I want to fully conquer especially with your last statement. That those who are charged with that higher calling of informing members of the public have now taken it upon themselves to misinform them. Not just them but also including senior people in this country like His Excellency the President and *Baba*. The Leader of the Minority Party has just affirmed that he has been given the correct position.

Hon. Speaker, on matters that touch on the two Houses, I think the Constitution is very clear. Article 95(2) states:

“(2) The National Assembly deliberates on and resolves issues of concern to the people.

(3) The National Assembly enacts legislation in accordance with Part 4 of this Chapter.”

If you go to the role of the Senate and I say this in relation to the question that has been raised by the Leader of the Majority Party whether this Bill in fact, needs to go to the other House, Article 96(2) states:

“(2) The Senate participates in the law-making function of Parliament by considering, debating and approving Bills concerning counties, as provided in Articles 109 and 113.”

Therefore, to enact laws, we only need the National Assembly. The other House simply participates. Hon. Speaker, this morning I was privileged to join the Executive at Kenyatta International Conference Centre (KICC) in a public participation exercise on the budget for 2019/2020 and the medium-term expenditure. Therefore, we held public participation and indeed, a member from the civil society stood up and directed a question to me, on whether the Parliamentary Service Bill that purportedly we are using to increase our salaries and perks went through public participation.

I challenged any member of the public or any person in that auditorium who had facts on the particular provision of that Bill that touches on Hon. Members’ salaries, perks or any allowances to point it out. Even the person who had raised that question could not point out to a particular provision. I am saying this because it was a public participation forum. I want to encourage our colleagues in the other House to participate in enactment of laws which is done by the National Assembly either at county hall or elsewhere. Otherwise, this is very immoral.

I heard one of the Senators speaking in a public rally, purporting to say what is popular with the public against this Bill, that we are increasing our salaries and perks. I asked the Senator whether she has had an opportunity to look at the Bill, and unfortunately, she confessed that she was just reacting to what has been reported in the media.

After His Excellency the President spoke in Malindi, the following day I met a member of one of the media houses responsible for publishing the story and I challenged him on the issue. He laughed it off and told me, “You know, we have even managed and succeeded to mislead His Excellency the President to comment on something that does not exist.”

Therefore, it is imperative for Kenyans to know the kind of journalists and media houses we are dealing with today. As the Leader of the Minority Party has said, there are people who dwell on what is sensational so as to sell their newspapers. I am tempted to believe what President Uhuru Kenyatta said, that some of these newspapers are just good enough for wrapping meat, *ile ya kufunga nyama*. It is just unfortunate that he also commented on something that was also reported by these newspapers.

I think it is important for members of public to understand the import of this Parliamentary Service Bill. It has absolutely nothing to do with our salaries, perks and allowances. Lastly, I think it is common sense to anybody who has little understanding of the law or English to read our statutes, that in this 12th Parliament, if we are to vary our salaries, perks and allowances in any way, we shall not benefit from that variance. It will only benefit the next Parliament after 2022. That is what I said at KICC this morning. That even if the variance was there, we cannot be beneficiaries.

Again, since we invite the public to participate in the appropriation of resources, it would have been very easy for the public to see if Parliament had appropriated any resources towards payment of salaries, allowances and perks as has been reported by the media. Therefore, I want to support all Hon. Members who have spoken and thank Hon. June for raising this issue. I also want to thank the Leader of the Minority Party for pointing this out to *Baba*. I want to encourage Hon. Junet to ask *Baba* to fire whoever wrote that statement for him and subjected him to signing statements that have nothing to do with what is before this House.

Thank you, Hon. Speaker.

Hon. Speaker: Yes, Member for Makueni, you also want to say something.

Hon. Daniel Maanzo (Makueni, WDM-K): Thank you, Hon. Speaker for giving me an opportunity to comment on this very important issue. First and foremost, it is clear that the so-called mortgage as has been perceived by many Kenyans is salaries in advance. It is not something extra for any Member of this House.

Again, as Hon. Ichung'wah has said, it is impossible for this House even if it passes this legislation to benefit from it. It will go to the next House. This Bill has been brought so that we can tidy up the law, comply with the Constitution and fix issues relating to Parliament because right now they are not fixed to any law. The law is for posterity, and not for this House. It is for Kenyans and everyone is allowed to make amendments during the Third Reading. Finally, it is good for the country to know that the President of the Republic of Kenya is the one who signs any Bill into law. I am sure at that point he will be properly advised.

Thank you, Hon. Speaker.

Hon. Speaker: Hon. Angwenyi Ondieki.

Hon. Jimmy Angwenyi (Kitutu Chache North, JP): Thank you, Hon. Speaker for giving me a chance to contribute on this very important matter. First, I want to thank Hon. Junet for bringing it up.

I am a very worried man. I am a founding Member of the Parliamentary Service Commission and I paid for it. I wonder why the media wants to degrade MPs and the institution of Parliament. This Parliament is not wicked as the media wants to portray us. They should remember that they would not operate in this country if there was no Parliament. Let them research on those countries where there is a very weak Parliament or no Parliament at all. Do the media in those countries effectively operate? They do not. They are effective in this country because we have an effective Parliament.

They can try to defile and weaken us but I urge all Members of Parliament to stand up and defend our position and integrity. That is what we had to go through in the year 2000. We had to stand up against a very strong Executive for us to enact a law to change the Constitution to establish the Parliamentary Service Commission. The Constitution is very clear. It states the mandate of the Parliamentary Service Commission. It is to make sure that they provide facilitation for Members of Parliament so that they can be effective and efficient in the provision of services. We have all been sworn in to protect the Constitution of Kenya and now we must demonstrate that we are surely following our oath to protect the Constitution of Kenya by defending and passing this Bill and making sure that it operates.

Hon. Speaker, as you said, right now the Parliamentary Service Commission is operating illegally. There is no Act which provides for Members of the Parliamentary Service Commission to come from the Senate. There is no Act like that. In fact, if they are opposed to this Bill, we should remove those Members and reappoint me back there.

(Laughter)

The Leader of the Majority Party has said we sympathised with them and, therefore, we must include them in the discussion of this Bill. We have no sympathy for anybody who wants to destroy us. We do not have any sympathy. I have been in the army. I was in the army when I was a young person and you never ever have sympathy for your opponent or the person who wants to destroy you. So, we should have no sympathy for those people who are saying they want to destroy us. We should forgive the Head of State, the President, and *Baba* because they were misinformed and misguided. Two evenings ago, I met *Baba*, the Right Honourable former Prime

Minister, at Marani in Nairobi - not in Kisii - and he was in a very foul mood. I asked him in dholuo words... I speak a little dholuo.

(Laughter)

Hon. Speaker: Hon. Angwenyi, you may not discuss a conversation you had with a person who is not going to confirm whether it is true you discussed that.

Hon. Jimmy Angwenyi (Kitutu Chache North, JP): Okay. I withdraw, Hon. Speaker. He told me he had been misinformed and that is why he gave a statement attacking the Bill which, in fact, he would support. He said he will tell Members of his party to support the Bill. I am sure it has been testified here by Hon. Junet and Hon. Mbadi that actually he has now told them he is regretting having given that statement which was misguided.

(Laughter)

I do not want to take too much time.

Hon. Speaker: Please wind up. Hon. Members, I can see many of you who wish to comment on this but remember I also have to look at the Order Paper. We need to dispose of certain businesses. You can see many of you have already taken leave.

Hon. Jimmy Angwenyi (Kitutu Chache North, JP): Let me wind up by telling our Members who all agree to support this Bill and make sure it passes to say aye.

Hon. Members: Aye.

Hon. Speaker: Hon. Angwenyi, what are you doing now?

Hon. Jimmy Angwenyi (Kitutu Chache North, JP): Hon. Speaker, with those few remarks, I beg to support.

Hon. Speaker: Hon. Onyonka.

Hon. Richard Onyonka (Kitutu Chache South, FORD-K): Asante sana, Mhe. Spika. Ni heshima kusikiza Mzee Angwenyi akizungumza katika Bunge hili kwa sababu ni mzee tunayemheshimu sana. Mimi binafsi, ni mzee ambaye nimemjua na nimefanya kazi naye. Ningependa kusema kuwa ametupatia busara na masuala ambayo ameyazungumzia ni ya kiheshima.

Jambo la kwanza ningependa kusema ni kwamba waandishi wa magazeti nchini Kenya wamechukua liwe jukumu lao kila wakati kuzungumzia mambo ya Bunge hili lakini wakiandika habari kuhusu Bunge hili zinakuwa za kupotosha kila wakati. Nafurahi kwa sababu ndugu zangu ambao wamezungumza wamesema kuwa tungependa waandishi wa magazeti wakiandika kama ni hela ambazo tunapewa kununua nyumba waseme kuwa nyumba hiyo ni lazima tulipie kwa miaka mitano na ni pesa ambazo zinachukuliwa kutoka kwa mshahara wangu. Mshahara wangu ni Kshs640,000 lakini pesa za kulipia nyumba hii ni Kshs600,000. Kila Mbunge lazima atoe mshahara wake wote ndio anunue nyumba. Sisi tunasema tungependa tulipiwe mahali ambapo tunaishi. Kwa kizungu tunaita *house allowance*. Kama mfanyakazi wa serikali yoyote, sisi tuwe na uwezo wa kuishi.

Jambo la pili nitakalosema ni ukiangalia Tume ya Huduma za Mahakama (JSC), jaji anapewa nyumba, gari na bima. Tungependa kusihhi kuwa nasi pia masuala haya yaangaliwe. Kumalizia, ningependa kumsifu ndugu yangu, Mhe Junet Mohamed, ambaye ameleta jambo hili tunalolizungumzia. Ningependa kumsifu ndugu yangu, Mhe. John Mbadi, ambaye amelizungumzia jambo hili. Ningependa kusema kuwa sisi tungependa kufanya kazi nzuri hapa

Bungeni na tungependa kutimiza kazi kuhakikisha kuwa tumefanyia Wakenya kazi nzuri. Inatuhitaji tubadilishe sheria ili Bunge letu liwe na nguvu ya kufanya kazi.

Kwa hayo machache, nasema asante sana.

Hon. Speaker: Hon. Members, I had received a request from the Chair of the Justice and Legal Affairs Committee to speak for a few minutes.

Hon. William Cheptumo (Baringo North, JP): Thank you, Hon. Speaker. This is a very important debate in the House. I serve as the Chair of the Justice and Legal Affairs Committee. You referred this Bill before this Committee. We spent substantial time. We invited the public pursuant to Article 118 of the Constitution. It is now mandatory that we should subject all our legislation to the public to participate. Every Kenyan and institution in this country had the right to appear before the Committee and raise concerns on this Bill. It is very sad that Kenyans are being misinformed about the essence of this Bill. I want to speak to the country as I address this House. This House, through this Bill, has never and will never take the responsibility or the constitutional mandate given to Salaries and Remuneration Commission.

Because Kenyans are listening to me, let me refer to the relevant Article of the Constitution. Article 127 (6) (a) of the Constitution on the Parliamentary Service Commission (PSC) states – and this is relevant in this matter -

“127 (6) (a) The Commission is responsible for providing services and facilities to ensure the efficient and effective functioning of Parliament.”

Kenyans passed the Constitution in 2010. What are the services and facilities alluded to? Why was this function not assigned to the Salaries and Remunerations Commission (SRC)? If Kenyans wanted the provision of services and facilities to be assigned to the SRC, it would have clearly been done so in the Constitution of Kenya, 2010. It was not done. It was given to the PSC.

I want to be very clear that every constitutional commission under Chapter 15 of the Constitution has been assigned its responsibilities under the respective acts of Parliament. This Bill is trying to realign the functions of the Commission with the new Constitution. One of those functions is to deal with the issues of facilities and services for Members. The purpose is to ensure efficient and effective functioning of Parliament, which is this House and the Senate.

We had three whole days to debate this Bill. From the first paragraph up to the last Clause, there is no provision where this House justifies an increase in the number of wives Members are supposed to marry, or enhances the entitlement of their medical cover or provides vehicles. It is a creation of the Media to mislead the public and, therefore, set this House and Members against the public.

I am now serving my third term. If this House was as selfish as they say, we would have passed this Bill a long time ago. We have passed all the other legislations for the other commissions. This is the last one. It confirms that this House is not there to pass laws to benefit itself; otherwise, we would have done so in the 11th Parliament. We chose not to do so. As we move to the Third Reading of this Bill, let us not be ashamed. We are not doing anything unconstitutional. We are realigning the Bill with the Constitution. The current PSC Act is not consistent with the Constitution. We are realigning it with the Constitution.

The Press is a critical stakeholder in passing information from this House to the public. I urge them to be truthful. They should tell Kenyans the truth. I am happy that we have this chance to share our position on this matter. I agree with what was raised by Hon. Junet and other Members that, we are not here to pass laws to benefit ourselves. We are here to pass laws to realign the Parliamentary Service Commission Act with the Constitution.

Hon. Speaker: Hon. Members, I can see that many of you want to speak. I do not want us to speak to the exclusion of the business that is on the Order Paper; some of which requires not less than 50 Members present. I hope representatives of the various media houses have read Article 122 of the Constitution. It states clearly that there must be not less than 50 of us in order to transact the other businesses appearing as Order Nos.8, 9 and 10.

Hon. Members, many of you have had occasion to discuss this matter, both on the Floor and in other fora that you appear in, particularly early in the mornings, as I normally see many of you appear. Everybody is informed that there is nothing untoward about this Bill. Obviously, if anybody has any challenges, they should read the Constitution to know the processes that a Bill goes through before it becomes law. Those writing opinion pieces purporting to enlighten Kenyans should understand the processes. I have seen some opinion pieces which belong to the gutter discussing that Bill. It is not a material worth referring to. You get ashamed when you read some of the stuff. It clearly shows that this person has not looked at the Bill. There is no clause in the Bill being criticized. People are just talking about general stories.

I am sure Hon. Jimmy Angwenyi would recall that even when there was no commission under the previous constitutional dispensation, committees of inquiry would be appointed to look into the welfare of Members, if they tabled a report. This happened at the tail-end of the 11th Parliament. I am sure if Hon. Jimmy Angwenyi and Hon. Keynan will recall, Members thought that the recommendations appearing therein looked so attractive that they assumed they would begin to enjoy what was provided. Even then, the law was clear. You could not benefit. Being the ones to approve that report which came from a commission of inquiry, we could not benefit, just like it is today under Article 116 of the Constitution. Even those stories about Members doing this for their own benefit are outlandish ideas which have no foundations at all.

The House will continue with its legislative work as provided in Article 95 (3) of the Constitution and enact laws. We also welcome those who are supposed to participate to do so. That includes everybody who wishes to participate.

Hon. Member for Busia County, I am sure today you are willing to sit for a few hours.

MESSAGE

APPROVAL OF APPOINTMENT OF MR. TWALIB MBARAK AS SECRETARY/CEO OF EAACC

Hon. Speaker: Hon. Members, allow me to make this Communication, which is by way of a Message. It is on the nomination of a person for appointment as Secretary/Chief Executive Officer of the Ethics and Anti-Corruption Commission (EACC).

Pursuant to the provisions of Section 16 (1) of the Ethics and Anti-Corruption Commission Act, 2011 and Section 5 (1) of the Public Appointments (Parliamentary Approval) Act, 2011, I wish to convey to the House that I have received a request from the Chairman of the Ethics and Anti-Corruption Commission asking the House to approve the appointment of Mr. Twalib Abdallah Mbarak as the Secretary/Chief Executive Officer of the Ethics and Anti-Corruption Commission.

The Principal Act requires the Ethics and Anti-Corruption Commission to forward a name of a selected candidate recruited competitively to the National Assembly for approval. The Public Appointments (Parliamentary Approval) Act, 2011 requires the nominee for appointment as the Secretary/Chief Executive Officer to be vetted and approved by the National Assembly

before appointment. In this regard, I hereby refer the name of the nominee, Mr. Twalib Abdallah Mbarak, to the Departmental Committee on Justice and Legal Affairs to undertake the necessary approval hearings. Thereafter, the House shall consider the nominee in accordance with the Public Appointments (Parliamentary Approval) Act, 2011.

Hon. Members, Section 8(1) of the said Act requires the National Assembly to either approve or reject the nominee within 14 days from the date on which the notification of nomination was given. However, given that the House is expected to adjourn for a long recess on Thursday, 6th December 2018, I wish to guide the Committee and the House as follows:

(i) That the Committee should notify the nominee and the general public of the time and place for holding the approval hearings in good time. The notification should therefore be made immediately; and,

(ii) That the Committee thereafter commences the approval hearings and subsequently submits its report to the House within the set timelines.

The Leader of the Majority Party is aware of what transpires since the House will be on recess.

I thank you, Hon. Members.

Next Order.

BILLS

Second Readings

THE CAPITAL MARKETS (AMENDMENT) BILL

(Hon. Aden Duale on 28.11.2018)

(Debate concluded on 29.11.2018)

Hon. Speaker: Hon. Members, I have confirmed that the House has quorum. We are going to lose one more Member. Debate on this Bill was concluded. Therefore, what remained was the Question to be put.

(Question put and agreed to)

THE SACCO SOCIETIES (AMENDMENT) BILL

(Hon. Joseph Limo on 29.11.2018)

(Debate concluded on 29.11.2018)

Hon. Speaker: Hon. Members, debate on this Bill was concluded last week.

(Question put and agreed to)

THE ASSUMPTION OF OFFICE OF THE COUNTY GOVERNOR BILL

(Hon. Paul Koinange on 29.11.2018)

(Debate concluded on 29.11.2018)

(Question put and agreed to)

First Readings

THE OFFICE OF THE COUNTY PRINTER BILL

THE DISASTER RISK MANAGEMENT BILL

THE NUCLEAR REGULATORY BILL

COMMITTEE OF THE WHOLE HOUSE

(Order for Committee read)

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

IN THE COMMITTEE

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

THE GOVERNMENT CONTRACTS BILL

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Members, we are now in the Committee of the whole House. Those who are retreating, kindly do so and let those who are transacting this business to do so. We shall consider the Government Contracts Bill (National Assembly Bill No. 9 of 2018).

(Clause 3 agreed to)

Clause 4

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Limo, Chair of the Departmental Committee on Finance and National Planning.

Hon. Joseph Limo (Kipkelion East, JP): Hon. Temporary Deputy Chairman, which clause are we on? I was in the process of moving closer to you.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Limo, we are looking at Clause 4.

Hon. Joseph Limo (Kipkelion East, JP): Hon. Temporary Deputy Chairman, I propose that Clause 4 of the Bill be amended by deleting the word “interim” wherever it appears and substituting therefor the word “emergency”.

The reason for this is to make it clear. The Clause talks about allowing the defence in the country to proceed in one way or the other without following normal laid down procedure in case of an emergency. The word “interim” was confusing a bit. It was the view of the Committee that we should be clear by changing it to the word “emergency”.

The Temporary Deputy Chairman (Hon. Christopher Omulele): You need to move that clause to be amended as proposed in the Order Paper and then you give the explanation.

Hon. Joseph Limo (Kipkelion East, JP): Hon. Temporary Deputy Chairman, I stand guided. I beg to move:

THAT, Clause 4 of the Bill be amended by deleting the word “interim” wherever it appears and substituting therefor the word “emergency”;

The reason for this is that we are replacing the word “interim” with the word “emergency” to make it clear. The word “interim” would create confusion.

(Question of the amendment proposed)

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

Hon. (Dr.) Chris Wamalwa (Kimini, FORD-K): Hon. Temporary Deputy Chairman, I respect Hon. Limo very much, but the justification he has given does not make sense. It needs to be contextualised as it is in the Bill to bring Members to speed as they debate. The justification must be in the context of the Bill. By saying that it was bringing confusion and he is substituting the word, “interim” with the word “emergency”, I had expected him, as a very good Chair of the Departmental Committee on Finance and National Planning, to give further clarification for purposes of easier understanding and in the context of the Bill.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Wamalwa, you are a very good debater, but you could have been of assistance to Hon. Limo and the House, if you had given the House the context in which the Chair is proposing to replace the word, “interim” in the Bill and substitute it with the word, “emergency”. If you look at it, it makes a lot of sense because it says that they will be looking at emergency defence requirements rather than interim defence requirement for the defence supplies. So, you are right. Hon. Limo would have given a better explanation.

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

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

(Clause 4 as amended agreed to)

(Clause 5 agreed to)

Clause 6

The Temporary Deputy Chairman (Hon. Christopher Omulele): There is a proposed amendment by the Chair of the Committee.

Hon. Joseph Limo (Kipkelion East, JP): Hon. Temporary Deputy Chairman, I beg to Move:

THAT, Clause 6 of the Bill be amended in sub-clause (1) by deleting the words “All contracts made for” and substituting therefor the words “Every contract made by”;

I wonder why Hon. Wamalwa, who is a serious legislator, was not listening. I actually explained the justification of the proposed amendment to Clause 4.

Clause 6 does not require a lot of explanation. What we are basically ensuring that the Bill is properly crafted by the House rules. Clause 6 talks about all contracts made of. But, according to house drafting rules, instead of saying, “all contracts made for” we replace that with the words, “every contract made by” so that it conforms to the house drafting style.

(Question of the amendment proposed)

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

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

(Clause 6 as amended agreed to)

Clause 7

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

Hon. Joseph Limo (Kipkelion East, JP): Hon. Temporary Deputy Chairman, I beg to Move:

THAT, Clause 7 of the Bill be amended—

(a) in sub-clause (1), by deleting the words “All contracts made for” and substituting therefor the words “Every contract made by”;

(b) in sub-clause (2), by inserting the word “that” immediately after the words “contracts made on behalf of”;

The reason of the proposed amendment is the same as what I had explained under Clause 6. We are cleaning up and making it conform to the house drafting rules by correcting grammatical errors.

(Question of the amendment proposed)

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

Hon. (Dr.) Chris Wamalwa (Kimini, FORD-K): Thank you, Hon. Temporary Deputy Chairman. Indeed, the Chair of the Committee has explained well for purposes of consistency. But, Clause 7 has (a) and (b). His explanation refers to Clause 7(a). He has not said anything as far as justification of Clause 7(b) is concerned. Please, Chair, could you provide an explanation?

The Temporary Deputy Chairman (Hon. Christopher Omulele): The Chair Departmental Committee on Finance and National Planning.

Hon. Joseph Limo (Kipkelion East, JP): Hon. Temporary Deputy Chairman, I invite Hon. Chris Wamalwa to re-look at it again because it is the same.

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

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

(Clause 7 as amended agreed to)

(Clause 8 agreed to)

(Clause 9)

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

Hon. Joseph Limo (Kipkelion East, JP): Hon. Temporary Deputy Chairman, I beg to Move:

THAT, Clause 9 of the Bill be amended in sub-clause (2) by deleting the word “authorities” and substituting therefor the word “authority”
Basically, this is still a grammatical issue. We are deleting the word, “authorities” and replacing it with the word, “authority” to make the statement flow.

(Question of the amendment proposed)

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

Hon Aden Duale (Garissa Township, JP): Hon. Temporary Deputy Chairman, the Chairman is trying to amend in sub-clause (2). Oh, he is right. The word, “authorities” is present in sub-clause (2). I am sorry.

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

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

Clause 9 as amended agreed to)

Clause 10

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Tonui, Member for Bomet Central, has a proposed amendment.

Hon. Ronald Tonui (Bomet Central, JP): Hon. Temporary Deputy Chairman, I beg to Move:

THAT, Clause 10 be amended by-

- (a) renumbering the existing provision as subsection (1);
- (b) by inserting the following new sub clause (2) immediately after the renumbered sub clause (1)—

“(2) An accounting officer shall, before any contract is commenced, confirm in writing to a supplier of goods, services or works that sufficient funds are available to meet the obligations of the contract whenever payment is due.”

This is very critical because there are many contractors who have engaged in contracts awarded by the Government, both nationally and in the devolved units; borrow money from banks. They then have to pay interests and it takes forever for them to be paid. Therefore, it is important to confirm there is money. We never award tenders in CDF before we confirm that there are funds in our accounts. That is what we want to do so that we safeguard the members of the public from suffering over undue delays before they are paid. Many people have witnessed their business collapsing. Some of them have had their properties auctioned because of this clause. I, therefore, request my colleagues to support this amendment.

Thank you, Hon. Temporary Deputy Chairman.

(Question of the amendment proposed)

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

Hon. Aden Duale (Garissa Township, JP): Hon. Temporary Deputy Chairman, I have spoken to Hon. Tonui and I have a document from the legal department.

The main objective of the Government Contracts Bill is to provide for the making of contracts on behalf of two levels of Government. First, this Bill does not provide substantial constructional obligations regarding the procurement of goods and services. The Public Procurement and Disposal Act 2015, Section 44 provides for the responsibility of an accounting officer. Section 44 (1) of Public Procurement and Disposal Act says:

“An accounting officer of a public entity shall primarily be responsible for ensuring that the public entity complies with this Act.”

In the performance of responsibility under Section 1, an accounting officer shall ensure that the procurement of goods and services of a public entity are within the approved budget of this House. That is exactly what Hon. Tonui wants. We cannot legislate twice. Already there is a law. I have looked at this amendment and what I am reading is the guidance of the head of the legal department in Parliament. If you look at the Public Finance Management Act, it establishes its own Regulations of 2015. Section 50 (3) of the Public Finance Regulations 2015 says:

“An accounting officer of a Government entity shall make an expenditure commitment only against the procurement plan approved for that entity in accordance with the Public Procurement and Asset Disposal Act and the Regulations made.”

Therefore, no public procurement can make a commitment without a budget and without a procurement plan.

Section 54 (1) of the of the Public Procurement and Disposal Act of 2015 says:

“Except as provided for in these regulations, accounting officer of an entity may not authorise payment to be made out of funds earmarked for specific activities for the purpose other than those activities.”

With this provision in place, we wish to notify the House – this is a legal opinion - that the amendment by the Hon. Member has efficiently been catered for under Public Procurement and Disposal Act of 2015. I am ready to table it. This is a legal opinion.

In essence, the legal department is saying that we cannot over legislate. It is already provided for in the Public Procurement and Disposal Act, Section 44 (1) and (2) and it is also provided for in the same Act in Regulations 50(1) and 54(1). That is why we had issues with the Finance Bill. This House cannot make a budget which is hanging. Every budget must balance. Everybody is aware that the Government will not advertise for the procurement of goods and services, if it is not in the plan and if it is not in the budget.

Of course, Tonui's amendment further says that within 30 days they must pay. That is not practical in the real sense. Even the project that goes on in our constituencies, they go over a number of years. One can pay for services of goods in one financial year, and then in the next financial year they will pay for others and so on. So, a project can take a period of about six years. So, you cannot make a commitment and say that goods and services procured must be paid within 30 days. I wanted to indulge him after sharing with him the opinion of the legal department on that amendment. I really want us as a House to respect our technical team. Why should we legislate the Government contracts? The Government contract is only about contracts, it does not deal with procurement of goods and services. That is a separate law for the Procurement and Asset Disposal Act.

I oppose.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Members, if you want to speak to this. I will advise that you press the intervention slot. Firstly, I will give this opportunity to Hon. Chachu Ganya.

Hon. Chachu Ganya (North Horr, FAP): Thank you, Hon. Temporary Deputy Chairman. Initially, I was supporting the mover of this amendment, Hon. Tunoi, but I have substantially been convinced by the Leader of the Majority Party that this issue has been catered for within our existing laws. I, therefore, do not see the need to over-legislate as the Leader of the Majority Party clearly stated. In light of this, I oppose this amendment.

The Temporary Deputy Chairman (Hon. Christopher Omulele): The Hon. Oundo Ojiambo.

Hon. (Dr.) Wilberforce Oundo (Funyula, ODM): Thank you, Hon. Temporary Deputy Chairman. I have looked at this proposed amendment, I have a discussion with Hon. Tonui and I have listened to the Leader of the Majority Party. While what the Leader of the Majority Party might make sense, the reality on the ground paints a completely different picture. It is difficult for the Leader of the Majority Party to fall back to what is stated in the law, yet the reality on the ground is completely different. There is obviously a disconnect between the law, the two Acts he has mentioned, and the implementation of the contracts arising out of the procurement process. This informs the decisions by Hon. Tonui to literally tighten the matter. I may not have gone to the Law school, but I hold this view and I believe it could be correct; a contract overwrites any invitation to bid or any other information that was given before the contract was entered into. I, therefore, do not believe that the legal team is being honest with us by telling us that the matter is already legislated, yet we know very well that a contract supersedes any other matter that had been disclosed in the tendering process. We need guidance on this matter because I do not believe that what we are being told is in relation to what we are talking about.

Thank you.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Oundo, you must have brazed yourself with the specific provision of Clause 10. This is what it says:

“Before any contract is entered into, the contracting authority shall comply with the provisions of the Public Procurement and Asset Disposal Act 2015 and the regulations there under, the Public Private Partnership Act 2013 and any other applicable law.”

If you have a law, you cannot have a contract that supersedes the law.

If there is a provision in the Public Procurement and Asset Disposal Act, that is the law and you cannot contract outside that. I think that is what the Leader of the Majority Party is speaking to. Anyway, it is business of the House; let us have Hon. Musimba.

Hon. (Dr.) Patrick Musimba (Kibwezi West, Independent): Thank you. I listened to the Leader of the Majority Party and the contributions made. It is very important and this is what the Member is trying to bring out as to the order of first in, first out basis. It is possible to budget in one financial year and that is why we have a rush towards the end of financial years for accounting officers to make payments because they do not want reversals to go on for future considerations by the Departmental Committee on Finance and National Planning.

As such, being able to put a safe guard to say that if a contract is being carried over from one financial year to the next, those are the people who are getting first priority in terms of payments, we have to be clear especially now when we have austerity measures and have been cutting down budgets. We have not known from those entities to what extent are they being affected. This is where there is materiality in the question which was raised earlier for Hon. Speaker to rule on. To what extent are the proposals being brought out by the Budget and Appropriations; Finance and National Planning Committees in terms of revenue raising measures? This is where we have a *lacuna*. It is a question where both entities are right: where the Leader of the Majority Party is standing from the legal point and saying regulations guide but, there exists a *lacuna*. Even when we are considering the Finance Bill within this House, a report is supposed to come from the National Treasury to say to what extent these revenue raising measures affect the continued budgets and programs which have already been put in place. I leave it to the wisdom of the Chair as at now because I do not support these proposals which are being brought in by Hon. Tonui because there is a gap and we must be alive to it. That is why it is worrying when counties are publishing astronomical figures in terms of pending bills. We need further clarifications.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Members, you do not have to lift up our hands. Member for Tigania, I cannot see you from the screen here. Have you logged in with your card? I cannot seem to find it. Meanwhile we will give the Floor to Hon. Barasa.

Hon. Didmus Barasa (Kimilili, JP): Thank you, Hon. Temporary Deputy Chairman, for giving me this opportunity. I am also opposing the amendment by Hon Tonui because...

Hon. John Mutunga (Tigania West, JP): On a point of information.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Just a second. Member for Tigania try another slot because we cannot seem to find you. You have been trying but we will give you an opportunity. You want to inform Hon. Barasa? He has not said anything yet.

Hon. John Mutunga (Tigania West, JP): I want to inform the other Member. These amendments are from Hon. Tonui and I wish to bring to the attention of Members that they are two. I realised when Hon. Simba was talking, he was contributing to the new clause and so it is

important that we contribute to clause 10 so that we do not confuse with the new one. We will deal with the new one later.

The Temporary Deputy Chairman (Hon. Christopher Omulele): I think that information and clarification is clear. Hon. Tonui has two proposals on clause 10 and he wishes to have a New clause 11 A. So, we are dealing with Clause 10 for now that he wishes to have an amendment to. Hon. Barasa, proceed.

Hon. Didmus Barasa (Kimilili, JP): Thank you. I am also opposing the amendments by Hon. Tonui on Clause 10. I agree with the Leader of the Majority Party that we have sufficient legislations that cure his fears. The fact that we have contractors who have not been paid for lack of money does not mean that the law is insufficient and, therefore, we enact another law to cure that. That is something that can be addressed administratively by the contracting parties or even the courts specifically.

So, I oppose this amendment by Hon. Tonui.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Member for Tigania, you have been trying to catch the eye of the Chair for long. I seem not to find you in the system, but have your say.

Hon. John Mutunga (Tigania West, JP): Thank you very much. I do not why I am not getting through.

(A cat was spotted in the Chamber)

The Temporary Deputy Chairman (Hon. Christopher Omulele): There is a stranger in the House. Hon. Member for Tigania, proceed.

Hon. John Mutunga (Tigania West, JP): Thank you. There is no order in the House. Hon. Tonui has brought an amendment which tries to prevent people from procuring when there is no money. We know there is always a budget and a procurement plan, but that does not mean money. We have to wait for the money to be there and the reason why we have so much of the pending bills is because people procure in anticipation. County governments know that they have a listing of what they are likely to get. I am not talking about counties only, even parastatals and ministries. So, there is anticipatory procurement before the money lands in the account. This assurance that there is money to pay will empower contractors to bid for what they know they will be paid and so there will be no stories of waiting for another allocation.

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

Hon. Ali Sharif, Athman (Lamu East, JP): Asante Mhe. Naibu Spika wa Muda. Nataka nikubaliane na Kiongozi Wa Wengi Bungeni kwamba hili jambo tayari liko kwenye Katiba yetu. Vile nakubaliana na yule aliyeleta kutaka kurekebisha haya.

Ukweli ni kwamba, matatizo juu ya maswala haya yapo. Pesa zinatengwa na Bunge; zina kwenda kwa wizara; kandarasi inatangazwa; anayefanya kandarasi ile inatia sahihi makubaliano ya kandarasi. Lakini ajabu ni kwamba, ikifika wakati wa malipo, linakuja swala lile kwamba hakuna pesa. Si serikali ya kaunti, ama Serikali ya uma. Kuna mkandarasi anadai pesa. Amefanya kazi takriban miaka miwili na alitia sahihi maafikiano na hajalipwa pesa: Anaambiwa hakuna pesa.

Kuna mwongozo wa kwamba wakati mkandarasi amefeli kufanya kazi yake, kuna utaratibu wa kujadili swala hili ili kuliweka sawa. Ningependa hata ikiwa ni Serikali kuu ama ile ya kaunti, wakati mkandarasi amefanya kazi ayke, amepeana lile cheti la malipo na ikiwa umepita muda fulani na hajalipwa pesa yake, kuwe na njia ya kuhakikisha kwamba mkandarasi

huyu amepewa uwezo wa kulipwa fidia katika swala hilo ama iandaliwe namna ya kuhifadhi kandarasi hiyo. Tatizo hilo lipo na ni lazima Bunge hili liangazie vizuri tatizo hilo kwa sababu wanakandarasi wengi wanateseka kwa kufanya kazi katika kaunti zetu na Serikali kuu. Tunajua kwamba pesa hizi ziko kwenye bajeti na zimepelekwa kwenyewe wizara lakini sijui ni njia gani wanaotumia hawa kuhakikisha wamewadhalilisha wanakandarasi hawa. Mwishowe yafaa tutafute mbinu ya kuwasaidia hawa wakandarasi.

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

Hon. Tom Odege (Nyatike, ODM): Thank you, Hon. Temporary Deputy Chairman. As much as the Leader of the Majority Party is somehow right, I would like to go back to what Hon. Tonui has said. This is a life experience in our country and we need not wish it away. Majority of Kenyans who attempted and took loans to do business in the county governments are all out of business. If you are in this House truly to protect Kenyans, let us support Hon. Tonui. It is going to heal a big wound in this country and shall restore the confidence of Kenyans in doing business with the county governments and national Government.

Currently, no one is willing to do business with the Government because we end up doing tenders for which there is no money. Instead, we take loans which are not serviceable and people have been auctioned because of that. I support the amendment proposed by Hon. Tonui.

The Temporary Deputy Chairman (Hon. Patrick Omulele): Let us have Hon. Kioni. Hon. Chris Wamalwa, you have had a bite of this. Let those who have not spoken speak.

Hon. Jeremiah Kioni (Ndaragwa, JP): Thank you, Hon. Temporary Deputy Chairman. Hon. Chris Wamalwa contributes more while seated than standing. You need to intervene between the Leader of the Majority Party and the mover.

I think what my colleagues have said it is true. The reality on the ground is that contractors are having difficulties and there are many who have been auctioned. We know those of us who are in the contracting business and I am not one of them. However, I know they will be very happy with this kind of an amendment, although it is very dangerous. One, I think, it should be in the Regulations so as to allow some latitude with the person effecting it. So as to know when it should be applied or not applied.

When this amendment is put in law and it states work cannot continue until there is money in the account. I want to give an example of what is happening in my own constituency. We have received a loan from the Government to construct a road however the amount of money available is just enough to commence the works. If the accounting officer has to confirm there is enough money in the account, before we commence the construction of that road, that may not happen until the next three or four years.

However, we started and even the contract was happy because he has secured some money. As he continues the money will be availed either through collection of taxes and other sources. Also, in our own constituencies, we have contracts which require emergency attention. Not unless you have a contractor who can come on board because you know money will come from the National Government Constituencies Development Fund (NG-CDF) at a given time.

If you are told that until money is available for you to pay and you cannot replace a roof that has been blown off by the wind or remove a child who has fallen in a pit latrine. You know emergencies in terms of saving lives can become difficulties with this kind of legislation. I appreciate where Mhe. Rono is coming from but it is very dangerous to do this kind of legislation. We will have over done it.

The Temporary Deputy Chairman (Hon. Patrick Omulele): Hon. Leader of the Majority Party, you have already spoken to it. The orders of the House are that once you have spoken to it... I will give this opportunity to Hon. Mbalu.

Hon. (Ms.) Jessica Mbalu (Kibwezi East, WDM-K): Thank you, Hon. Temporary Deputy Chairman. I want to inform the House that there is not contract that can be given without following the Public Finance Management (PFM) Act and the Public Procurement and Assets Disposal Act. I want to call upon the Members to read the Public Accounts Committee (PAC) report.

The elephant in the House is to ensure that accounting officers follow these laws. The issues of pending Bills and disbursement of funds from the National Treasury have been addressed. So, I think this amendment, in as much as I respect Hon. Tonui, may not be well placed.

The Temporary Deputy Chairman (Hon. Patrick Omulele): Leader of the Majority Party, it is true that in Committee of the whole House, you can speak more than once.

Hon. Aden Duale (Garissa Township, JP): Thank you, Hon. Temporary Deputy Chairman. Let me read Section 10 of the Bill which states:

“10. Besides any contract is entered into the contracting authority shall comply with the provisions of the Public Procurement and Assets Disposal Act of 2015. The Regulations made thereafter, the Public Private Partnership Act of 2013 and any other applicable law.”

Already section 10 is referring us to the Public Procurement and Assets Disposal Act and section 44(1) is referring us to section 53 and 54(1) of the same Regulation. I am also a victim. There are many people out there who have pending Bills. That is administrative and that is why the National Treasury has asked each county and Government entity to review and analyse whether those pending Bills need to be paid or not. We cannot put that in law.

Finally, the main objective of the Government Contract Bill which is before this House today is to provide for contracts on behalf of the two levels of Government. It is saying, there will be no contract entered by the national Government without the concurrence of the Attorney-General and same for the county atoner generals. That is what this Bills objective is. This Bill is not providing how goods and services are procured. Those are provided for in the Public Procurement and Assets Disposal Act, 2015.

Hon. Tonui's amendment is well placed in the Public Procurement and Assets Disposal Act, 2015. It is foreign in this Bill. You know maybe, my own brothers have pending Bills, but I should not use the Floor of this House to fix this. The pending Bills are a huge thing. When the former governors were leaving office, they just dished out money. So, this House will morally go wrong if we are giving a blank cheque and saying we must pay the pending Bills. I rest my case. The rest is for the House.

The Temporary Deputy Chairman (Hon. Patrick Omulele): Hon. Lomenen.

Hon. James Lomenen (Turkana South, JP): Thank you, Hon. Temporary Deputy Chairman. I have listened to the Leader of the Majority Party and I have also read the amendment by Hon. Tonui. As far as it is for the common good of the contractors, we should place it in the right place and not leave it.

We always make laws here and they are not respected neither implemented. Our concerns represent the people. We have lost many contractors because these laws are not followed others are mistreated yet, there are laws. The issue here is not a sin because there are many scriptures, but others that back-up each other. When you read the book of Matthew, you may find scriptures

in the book of Kings supporting what is written in Matthew. So, there is no problem, if this amendment will strengthen another Act. This is not a sin and does not affect anyone.

I want to ask my able Leader of the Majority Party not to be agitated. We are here to make as many laws as possible. However, he should put his power towards the implementation of this law. I seek your indulgence of the Chair on this. To be sincere, I have two cases. I want to mention them because that is why I have sat here up to this time. For Government contracts, there are some contractors who have devolved from Nairobi to Lodwar. They are given big contracts, they do shoddy work and finish the money without finishing the work and we expect them to be paid. Where do we place such problems, should we report them to the Ethics and Anti-Corruption Commission (EACC)?

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Lomenen, we are speaking to the amendment.

Hon. James Lomenen (Turkana South, JP): I support the amendment, but as the Leader of the Majority Party has advised, it should be placed at the right place. That is what I am saying.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Finally, we will have Hon. Shabbir.

Hon. Mark Nyamita (Uriri, ODM): On a point of order, Hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Member for Uriri, what is out of order?

Hon. Mark Nyamita (Uriri, ODM): Thank you, Hon. Temporary Deputy Chairman. I think we are getting a bit confused. I think it is up to the Speaker to rule on whether the amendment is rightfully placed in what we are discussing so that if it is wrongfully placed, then there is no need for us canvassing further on it.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Nyamita, these particular amendments have been placed in the Order Paper. They are they are the property of the House. You will make a determination one way or the other. That is why I am giving opportunity to as many Members as possible.

Hon. Mark Nyamita (Uriri, ODM): If it is in the Order Paper, you are saying it cannot be put here. If it is not supposed to be here, then the Leader of the Majority Party would be misguiding us to say that it is wrongfully placed here so that we should not talk about it. If you will allow me to make my contribution, I will appreciate.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Nyamita, my determination of your point of order is that the proposed amendment by Hon. Tonui is properly placed in the Order Paper and the House will make a determination on it.

Hon. Shabbir, proceed.

Hon. Shakeel Shabbir (Kisumu East, Independent): Thank you, Hon. Temporary Deputy Chairman. I stand to support the amendment basically because sometimes we forget and we start addressing the consequences and not the causes. I have just heard one of my honourable colleagues talking about anticipatory awarding of contracts. That is basically the problem that we have. This particular amendment would ensure that no contract which does not have the funds available for it is entered into. If you wish to enter a contract which is beyond the funds that you have in your budget, you would have a supplementary contract thereafter.

You can have three contracts for one project. You can have a contract for the beginning of the project where you have Kshs10 million and you split the contract into three. The second time you offer a tender, you also offer it to other contractors. It is quite easy to do. I agree with

Hon. Tonui that this thing should be put in. As much as I appreciate what the Leader of the Majority Party is saying – he is absolutely right in saying that there are other laws – sometimes we have to stress and put it in a way that accounting officers understand it very clearly. I sit in the Special Funds Accounts Committee (SFAC). We find so many problems of anticipatory contracts, where contractors start charging interest at exorbitant rates. So, I see no reason why we cannot accept this amendment.

Thank you.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Let us have Hon. Wamalwa. I need to put the Question.

Hon. (Dr.) Chris Wamalwa (Kimini, FORD-K): Thank you, Hon. Temporary Deputy Chairman. Hon. Nyamita needs to understand the Standing Orders. He has been in this House for long. When a matter is on the Order Paper, it is actually the property of the Committee.

I want to salute Hon. Tonui for what he has put in place. It is indeed true that we have a lot of pending bills at the national and county levels of the Government. The questions we normally ask the governors are why we have pending bills and whether the money was given as per the Division of Revenue Bill. We are told that the money was given but they received it a bit late. The question then is why they did not pay. I understand what Hon. Tonui is trying to put in place. We have been discussing with my neighbour here. It makes a lot of sense but in matters of law, the Constitution takes precedence. It is followed by the statutes and then the regulations. That is the order. Let us look at the Public Finance Management (PFM) Act. You know, I speak with authority because I sit in the Public Investments Committee (PIC). These are some of the critical issues that the Auditor-General raises if he comes upon auditing the accounts of a given parastatal or any Government entity if there was procurement that was done and yet money had not been provided for. It raises an audit query.

After the Division of Revenue Act, where the national Government and the county governments know their share, it is the responsibility of the county government, after the money has been provided, to develop something called “procurement plan”. You can only have a procurement plan if the money has been budgeted for. So, as much as what Hon. Tonui is bringing in place is making sense, when you look at the PFM Act, you will see that it is provided for therein.

Secondly, when you look at the Public Procurement and Asset Disposal Act, it is also provided for therein. So, the issue here is to see how we can do the delicate balance. This is because in the PIC, where I sit and where your clerks sit, if the Auditor-General comes and finds that you have pending bills and that money was not provided for, it brings an audit query. So, it is an assumption that you can only procure goods in the procurement plan after the money has been provided for or the budget is there. After the budget, you come to the procurement plan. From the procurement plan, you procure and you pay. It follows that sequence. However, when it comes to implementation, the process is not followed. That is why there are audit queries. Anybody who sits in the oversight committees – PAC, PIC and SFAC – will actually agree with me. Whatever we are doing is good. We are cleaning up, but it is already provided for.

However, now that it has been allowed and it has come here, it is upon the House to decide on the way forward.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Finally, let us have Hon. Nyamita. You seem to have a burning issue.

Hon. Mark Nyamita (Uriri, ODM): Thank you, Hon. Temporary Deputy Chairman. I just want to register my voice on the proposed amendment.

It is not the role of citizens to fund government activities, especially after they have paid tax. However, what we have seen happening, which continues to happen - I also sit in the Budget and Appropriations Committee - is the same thing that the Auditor-General has reported on. He has presented reports on pending bills. I can tell you that the bulk of pending bills are bills that are actually payable but probably the projects were abandoned midway because the contractors were not paid.

Lack of clear regulations also gives room for corruption to take place in this country. What happens is that a road will be provided for in the Budget...

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Nyamita, this is not debate. Just speak on the amendment.

Hon. Mark Nyamita (Uriri, ODM): I am with you, Hon. Temporary Deputy Chairman. If you allow 10 per cent for the road contract, they will be in a hurry to get a contractor to move to the site. Probably, the contractor will talk to a few people. He is moved to the site and then there is no money. The project is abandoned and then they move on. So, I think it is incumbent upon us, as a House, to protect Kenyans. Today many people have been auctioned because there is no harm if we retain it there. If it is elsewhere, what is the harm? If people do not have a problem with this legislation in itself, if you do not have a problem with the proposal, and it is elsewhere, why are you refusing that it is here? Is there something that the Members who are opposing know that we do not know? I support this proposal so that it protects our people. By the time you enter into a contract, you must have confirmed that the money is there. There are contracts that are actually happening...

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Members, allow me to put the Question.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Members, it was too close to call. I will have a second go at it.

(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 10 as amended agreed to)

(Clause 11 agreed to)

Clause 12

Hon. Joseph Limo (Kipkelion East, JP): Hon. Temporary Deputy Chairman, it is good for Members to listen because Clause 11 was well-done and we voted on it.

Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 12 of the Bill be amended in sub-clause (2) –

(a) by renumbering the current paragraph (c) as paragraph (d); and

(b) by inserting the following new paragraph immediately after paragraph

(b)–

“(c) the bidder consents to public disclosure of basic information other than information limited by the provisions of section 6 (1) (e) of the Access to Information Act relating to the commercial interests;”

Hon. Shakeel Shabbir (Kisumu East, Independent): *(Off-record)*

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Shabbir, there cannot be anything out of order when he is still moving the amendment. You will raise your point of order after he finishes moving.

I propose the Question.

Hon. Shakeel Shabbir (Kisumu East, Independent): *(Off-record)*

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Shabbir, I will explain to you. We have dealt with Clause 11. I know where you are coming from. You are looking at New Clause 11A which is on the Order Paper. We have not dealt with it. We will deal with it when we come to the new clauses.

Hon. Limo, please, proceed.

Hon. Joseph Limo (Kipkelion East, JP): Hon. Temporary Deputy Chairman, the worries about Clause 10 are well understood. Hon. Tonui has a New Clause 11A which will come later. There is no worry.

Clause 12 deals with provisions relating to deemed terms in the contract. Clause 12 has subclauses 1 and 2. The amendment to sub-clause 2 is to do with renumbering. In sub-clause 2, there is subsection (c) which was left out. Therefore, we are introducing sub-clause 2 (c) which deals with the bidder’s consent to public disclosure of information. Sub-clause 1 deals with the all the contracts. Sub-clause 2 deals with bid contracts. Therefore, to make sub-clause 2 consistent with subclause 1, we are introducing subsection (c) to deal with disclosure of information. Because of that introduction, we will renumber it to introduce sub-clause 2 (c) and make the existing (c) a (d). That is what we are doing. It is just the introduction of a new subsection as well as renumbering.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Christopher Omulele): Let us have Hon. Oundo.

Hon. (Dr.) Wilberforce Oundo (Funyula, ODM): Hon. Temporary Deputy Chairman, I support the amendment. This is in line with a statement made by His Excellency the President sometime back that there is nothing to hide. Once you are dealing with public resources or engaging in public work, you must be ready for the members of the public to know who you are and what the particulars of the contract are.

I support the amendment by the Chair of the Committee.

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

(Clause 12 as amended agreed to)

(Clauses 13, 14, 15 and 16 agreed to)

New Clause 11A

Hon. Ronald Tonui (Bomet Central, JP): Hon. Temporary Deputy Chairman, I beg to move:

THAT the Bill be amended by inserting the following New Clause immediately after Clause 11—

“11A.(1) Any payment that is due arising out of a contract under this Act shall be paid within the terms of the contract or shall be made within thirty days upon completion.

(2) All payments of contracts due shall be made according to the sequence of date of completion.”

(Question of the new clause proposed)

(New clause read the First Time)

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

Hon. Aden Duale (Garissa Township, JP): Hon. Temporary Deputy Chairman, Hon. Tonui has not explained the amendment before us.

I want to go on record that the Director of Legal Services in the National Assembly cannot write to me on an amendment by a Member where the amendment was crafted by members of the Directorate of Legal Services. That is an issue I will pick with the Clerk and the Director of Legal Services. Her staff have approved for the amendment to be on the Order Paper.

In Parliament, we make laws and learn how to make laws. We are not interested in whether you are a contractor. What Hon. Tonui is doing is not related to contracts. It is in the public procurement and asset disposal sector.

Secondly, which entity, both in the private and public sector, will pay you within 30 days? It is impractical. We do not make laws that cannot be implemented. The Vice-Chair of the Public Accounts Committee (PAC) is here. The Auditor-General gives the Government management letters, six months in advance for them to provide information and receipts. If they do not provide that information, that is when PAC uses its discretion in Parliament to summon that accounting officer. Hon. Musimba, you are a businessman. You cannot put the 30 days in law. We are supposed to be a very responsible House. Law-making is not about populism. We make laws for posterity.

I oppose the amendment even if I will be the only one.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Let us have Hon. Kioni.

Hon. Jeremiah Kioni (Ndaragwa, JP): Thank you, Hon. Temporary Deputy Chairman. I want to bring to your attention that for good reason, those who supported the earlier amendment all left immediately it went through. At times, it is good to conceal your interest.

There is another provision which when you read it, is very good. It makes a lot of sense for us who contract with the Government. I want to draw to your attention and the attention of Members that in the event that the Government is not able to pay within those 30 days, it is the taxpayers who will be penalised. The penalties will bankrupt the country.

When you are legislating, do not do it like there is an enemy on the other side. This country belongs to all of us. All the money that is collected belongs to all of us. We have the responsibility of protecting the contractors and also ensuring that as a country, we do not get into trouble. Hon. Temporary Deputy Chairman, we were told by the Attorney-General the other day that the amount of money the Government is required to pay in compensation and awards made by the courts is now in the tune of Kshs2 or 3 trillion. It is higher than the debt that we have from outside. This is one of the other provisions that will continue growing that amount of debt that we owe to the public. It does not help us. It will help only to kill the country and eventually where you can go and contract, there will be nothing. We do business because we have hope of being paid and the payment eventually comes. It does not help when you make this kind of a straight jacket legislation. Legislation is not just appealing to one side of the divide but it is about making it good for all of us. We want to create an environment that the contractors can thrive and the country can continue growing. We need development to go in our constituencies and areas. We need Kenyans to receive services from the Government, in terms of the provisions that we have made. I appreciate what *Mheshimiwa* has done but this is a provision that can be very bad for this country. I ask him to withdraw it.

I beg to oppose.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Osotsi, a nominated Member. He is not in the House. Hon. Tuwei Kipkurui, Member for Mosop. Hon. Tonui, hold your horses. I have called Hon. Tuwei Kipkurui, Member for Mosop.

Hon. Vincent Tuwei (Mosop, JP): Thank you, Hon. Temporary Deputy Chairman. I know that this amendment is very unpopular but I support it. To make the Government or any contracting authority to know the seriousness of what they are contracting, one has to be given a provision that gives the limit of when to pay. The National Treasury is a factor here. Contracts are signed and you do the work using your own money, you complete it and then you get into other expenses which were not in the contract.

I support this amendment because it will make some of us to be efficient in paying. I know we should not be sympathising and saying it is difficult to pay within a short period of time because the bureaucratic aspects of payments must be shortened.

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

Hon. (Dr.) Wilberforce Oundo (Funyula, ODM): Thank you, Hon. Temporary Deputy Chairman. I want to be on record that as we legislate, we need to do it for the betterment of this country. We should not be soft or lenient simply because there are lazy people who do not do their job well. I support to some measure the amendment by Hon. Tonui. We need your guidance to make some amendments to this particular Clause and omit all section after the word “or” so that we only have “Any payment that is due arising out of a contract under this Act shall be paid within the terms of the contract.” I want to humbly request him to delete that remaining part and withdraw that amendment. We are responsible people. We know the challenges and the circumstances we normally find ourselves in. However, if it is within the terms of the contract, let it be.

Thank you, Hon. Temporary Deputy Chairman.

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

(The new clause was read a Second Time)

The Temporary Deputy Chairman (Hon. Christopher Omulele): What is out of order, Hon. Oundo.

Hon. (Dr.) Wilberforce Oundo (Funyula, ODM): Hon. Temporary Deputy Chairman, I believe there was a challenge. We discussed with Hon. Tonui that he would make that amendment.

Hon. Aden Duale (Garissa Township, JP): There is still time.

Hon. (Dr.) Wilberforce Oundo (Funyula, ODM): There is still time. We should recommit the Clause. We cannot let it go the way it is.

Hon. Aden Duale (Garissa Township, JP): Point of order, Hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Christopher Omulele): What is out of order, Leader of the Majority Party?

Hon. Aden Duale (Garissa Township, JP): Hon. Temporary Deputy Chairman, you need to guide the House. We have taken a vote on this Clause. Can we move to the next part?

The Temporary Deputy Chairman (Hon. Christopher Omulele): Yes. We must move. That is correct. Hon. Oundo, you are out of order for going back to what we have done.

This is where you can debate, amend or do anything that you want to do with this proposed new Clause 11A. This is the Third Reading in this particular new Clause 11A. This is the business of the House now. I see interest from Hon. Tuitoek Kamuren, Member for Mogotio.

Hon. Daniel Tuitoek (Mogotio, JP): Thank you, Hon. Temporary Deputy Chairman. When you look at Clause 10 which we made part of the Bill, we said that before a contract is given, we must confirm that the funds are available. If that was passed, it means that there are funds in this other new Clause 11A. However, I want to also agree that we should not commit a Government to strictly pay after 30 days. We should make an amendment. We remove the part “shall be paid within 30 days upon completion” and leave the contract to be paid within the terms of the contract, so that it can give the Government the leeway to insert whatever number of days which they feel comfortable to pay the contractors.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Are you proposing an amendment or you are asking somebody else to do it?

Hon. Daniel Tuitoek (Mogotio, JP): We can amend at this point in the House.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Tonui, this is no longer your amendment. This is House property now.

Hon. Daniel Tuitoek (Mogotio, JP): I am proposing an amendment that we delete the words “shall be paid within 30 days upon completion” and we leave the other part that says the contract shall be paid within the terms of the contract. It will depend on the Government to decide on how many days they want to pay the contract.

Thank you.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Tuitoek, I need you to be clear on what you are proposing to amend. Do not be in a hurry. We need to move in a neat way. You need to approach the Clerks-at-the-Table, so that the further amendment is written down, so that we do not legislate in an ambiguous way. I will give you another opportunity.

Hon. Gumini.

Hon. Charles Gimose (Hamisi, FORD-K): Hon. Temporary Deputy Chairman, I have something to say about the amendment. Since you have made a direction now, let him do it first and then I will make my contribution.

Thank you.

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

Hon. Shakeel Shabbir (Kisumu East, Independent): I need your guidance, Hon. Temporary Deputy Chairman. We are now on proposed new Clause 11A(1). Until it is sorted out, my comment is on Clause 11A(2). Do I now proceed to make my comment or wait for new Clause 11A(1) to be moved before I comment?

The Temporary Deputy Chairman (Hon. Christopher Omulele): It is prudent for you to hold your horses.

Hon. Mutua Barasa is not in the House. Hon. Tonui.

Hon. Ronald Tonui (Bomet Central, JP): Hon. Temporary Deputy Chairman, if we find the 30 days to be an extremely short period, I am agreeable to move a further amendment on this so that we have the words, “shall be met within 30 days upon completion” hoping that my colleagues will support the second amendment which is more critical to me.

I discussed it with the Legal Department who thought it good to have new Clause 11A(1) to build on to new Clause 11A(2). That is the legal advice I was given. I did not draft it alone. I sat with two good lawyers of the House and drafted it with them. I have discovered lawyers do not agree on any single point. If you listen to one of them and take his opinion to be the golden rule, you will be misguided.

I am agreeable to move a further amendment on new Clause 11A(1). But New Clause 11A(2) is more critical because we want to kill cronyism whereby the people in charge pay their friends and leave out others.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Tonui, we are speaking to new Clause 11A(1).

Hon. Ronald Tonui (Bomet Central, JP): I am saying that I am agreeable to move a further amendment on it, if you allow me to.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Allow me to let Hon. Tuitoek move his proposals. They may take care of what you intend to do. Hon. Tuitoek, proceed.

Hon. Daniel Tuitoek (Mogotio, JP): Hon. Temporary Deputy Chairman, I beg to move:

THAT, the proposed new Clause 11A(1) be amended by deleting all words appearing immediately after the word “contract”

I request Hon. Oundo to support it.

The Temporary Deputy Chairman (Hon. Christopher Omulele): You do not need a seconder. This is Committee of the whole House. Hon. Oundo hold your horses. I will give you an opportunity to speak to it.

(Question of the amendment proposed)

(New Clause 11A(1) as amended agreed to)

New Clause 11A(2)

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

Hon. Ronald Tonui (Bomet Central, JP): Hon. Temporary Deputy Chairman, I beg to move:

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

(2) All payments of contracts due shall be made according to the sequence of date of completion.”

I propose this amendment because of practices in Government offices. Those in charge of payments normally pay their friends and leave out other contractors. This amendment provides that the date someone is issued with a completion certificate matters; that one is paid based on the date of completion of a contract. If one completes a contract first, he or she will be the first to be paid so that people in Government offices do not pay selectively. Currently, what happens is that they only pay their friends and others are left out to frustrate them so that they do not apply for the tenders. To take care of that, the sequence of dates provides that first come, first serve.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Tonui, you have made yourself clear.

(Question of the new clause proposed)

(New clause read the First Time)

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

Hon. Shakeel Shabbir (Kisumu East, Independent): Hon. Temporary Deputy Chairman, I support the proposed amendment the way it is. Thank you.

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

Hon Aden Duale (Garissa Township, JP): Hon. Temporary Deputy Chairman, I oppose the proposed amendment. I want to go on record. Let me give the example of the maize story. There are 52 people who supplied maize and have certificates of delivery. Ethics and Anti-Corruption Commission (EACC) has said that they should not be paid.

Hon. Members, the laws we make are going to haunt us. There are people who will go and collude with engineers and get certificates of completion for works which have not been done in our constituencies. We are now proposing to put it in law that anybody who has a certificate of completion must be paid. We know engineers. Someone can be given a certificate of completion of a road when it is substandard.

If I have a certificate of completion, and EACC has stopped payment What we trying to do contravenes the Anti-Corruption and Economic Crimes Act. The amendment says that anybody who gets a certificate of completion, whether the certificate is fake and dubious, must be paid. That is what it says. It says that, “all payments of contracts due shall be made according to the sequence of date of completion.” So, the integrity aspect is not there.

(An Hon. Member spoke off record)

Allow me to speak because I have the Floor and talk through the Chair. I will oppose the amendment. The amendment says all payment of contracts due shall be made according to the

sequence of date of completion. However, you must ascertain whether there is value for money before you pay. The certificate of completion is not equivalent to the value for money. Value for money is determined by other agencies. I have a feeling that this proposed amendment is related to the maize scandal. Let me go on record on that. This amendment is related to the maize scandal. Somebody is trying to make sure that the 62 people who are under investigation because they supplied their...

Hon. Ronald Tonui (Bomet Central, JP): On a point of order, Hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Tonui, what is out of order?

Hon. Ronald Tonui (Bomet Central, JP): Hon. Temporary Deputy Chairman, the Member is imputing improper motives on me. I sit and go through the Bills and propose amendments based on what I have seen and experienced.

The Leader of the Majority Party is imputing improper motives. I sit and go through the Bill and propose amendments based on what I have seen and experienced. Then now someone wants to link it to the issue of maize. I have never grown or traded in maize.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Tonui, there is nothing out of order. Everybody knows that you have never traded in maize, so, why are you worried?

Hon. Aden Duale (Garissa Township, JP): Hon. Temporary Deputy Chairman, in this House you enjoy free thought, free conscience and freedom of speech. So, we will say it. This amendment, in my opinion, is connected to the 62 people whose payments have been stopped by the EACC. The moment the President signs this into law, somebody whether it is the Mover or anybody will use this law to pay the 62 people. I rest my case, I oppose.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Nkatha, Member for Tharaka Nithi.

Hon. (Ms.) Beatrice Nyaga (Tharaka-Nithi CWR, JP): Thank you, Hon. Temporary Deputy Chairman. I think we have rules and regulations that govern contracts in this country. Hon. Tonui is saying that whatever contract that has been valid and has been checked according to the Public Procurement and Disposal Act should be paid. These are rules that are supposed to be checking this context. I support.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Oduol Adhiambo.

Hon. (Prof.) Jacqueline Oduol (Nominated, ODM): Thank you, Hon. Temporary Deputy Chairman. I also rise to support the amendment in particular in reference to the Memorandum of Objects that we have. If you look at Part III, I believe that the concerns and the fears of the Leader of the Majority Party will be taken care of. We indicated that we would want to ensure that there would be a deliberate effort in terms of negotiation or obtaining of contract that would not go contrary to anti-corruption crimes or any other behavior that is not in line with the law. I support this because it will help us to ensure that when payments are being done, we will use the dates of completion, whether or not the dates of completion are done in accordance with the law are handled in a different clause.

I therefore support this amendment.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Jeremiah, what is burning?

Hon. Jeremiah Kioni (Ndaragwa, JP): Just a quick one, Hon. Temporary Deputy Chairman. One, we do not want to support because of our thinking of what the Mover intends to achieve. It is not the feelings that we come to legislate for, it is what is provided for. Even when one has a court case going on, their contract is still due. There is no court injunction stopping them from paying. Immediately one's contract becomes due, they will rush to court and say that they have not been paid. I am talking of issues we have in our constituencies. I know where *Mheshimiwa* is coming from. There is a lot of cry from contractors out there. But if we come to legislate with the feeling, fears and the concerns that are out there, we are likely to get into more trouble. That is what is happening with all the amendments that we have done. When we say "all contract due", they become due immediately one has a completion certificate. It does not matter whether there is a court case pending. Unless there is a court injunction stopping you, that contract becomes due. You as the person who issued that contract or as a Member of Parliament who may want to see what is being done by engineers in your constituency may realise that the contract is not up to date. Once that is done, you are finished. You will use this to get all payments done, and you will then suffer the consequences of your voters.

Disclosure
of contract
information.
No. 31 of
2016

*(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 Clause 14A

Hon. Aden Duale (Garissa Township, JP): Hon. Temporary Deputy Chairman, I beg to move

THAT the Bill be amended by inserting the following new clause immediately after clause 14 –

14A. Nothing in this Act shall limit the obligation of a public entity to disclose any contract-related information pursuant to the provisions of Access to Information Act, 2016 and such other guidelines as may be issued by the Government from time to time.

This amendment is from the National Treasury and it is very good. This New Clause will ensure consistency with the Government policy and law on disclosure of information relating to public projects. Never again will somebody hide information. The moment a contract is made, that entity cannot hide it. It must be put to the public, the way it is provided for in the Access to Information Act, 2016. I support the National Treasury because there are times when people want to hide, they do not want to make full disclosure of a project. If a project is being built in my constituency, we must be told if it has been built with the budget, grants, or loans. We must know the amount of money used and the interest of the Government. All these must be made clear. Full disclosure is important.

(Question of the new clause proposed)

(New clause read the First Time)

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

Hon. (Dr.) Patrick Musimba (Kibwezi West, Independent): Hon. Temporary Deputy Chairman, I have read this and we were clear earlier in our contributions. We said the order of precedence is the Constitution, written statutes, and regulations and nothing else. The formative part of this particular amendment moved by the Leader of the Majority Party on behalf of the Treasury sounds fine which is, “Nothing in this Act shall limit the obligation of the public entity to disclose any contract-related information pursuant to the provisions of Access to Information Act 2016.” Thereafter is where things go wrong. It further says “and such other guidelines as may be issued by the Government from time to time”. The only guidelines which are issued by Government are Regulations. You cannot demean an Act of Parliament. The Access to Information Act is very clear as to how each Government entity gives information.

(Hon. Aden Duale spoke off record)

I am very clear in what I am saying. You said that we are here to legislate with free will. The Leader of the Majority Party gave you time and you were heard.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Members, allow Hon. Musimba to prosecute his case.

Hon. (Dr.) Patrick Musimba (Kibwezi West, Independent): I want to urge Members in line with the amendments in New Clauses 10 and 11 that we passed, it is going to negate what we are trying to do. To say that any particular public entity can by measure of guidelines have no force in law... You cannot have any other statement after the Access to Information Act, 2016. That is my contribution and I oppose.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Musimba, if you are not happy with the way it is framed, you have an opportunity to bring an amendment if you so wish.

What is out of order, the Leader of the Majority Party?

Hon. Aden Duale (Garissa Township, JP): Hon. Temporary Deputy Chairman, Hon. Musimba is misleading the House. This amendment is saying that it is providing for any Government entity not to disclose. They must follow Access to Information, that even the guidance you are talking about cannot be used. That is what it means. The policy cannot be used not to disclose a project. The most important thing is the Constitution. Access to Information is in Article 34 of the Constitution. The Act has legislated Article 34 of the Constitution and that is why it presupposes that no Government entity can use any guidelines or policy to deny people access to information.

In fact, this amendment is so good. That is why I agree with it. There is so much secrecy. Parliament and Kenyans generally must know the projects taking place in our constituencies.

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

Hon. (Ms.) Shamalla Jennifer (Nominated, JP): Thank you. I support the amendment. If we are going to legislate in an atmosphere of fear and suspicion, our work is going to be very difficult. We can only anticipate what may possibly happen under fear and suspicion. We must

understand the basic principles of legislative drafting. The first one is that the Constitution is superior to any guideline or legislation. Any society that is governed by the rule of law, access to information is a core anchor of society. The Constitution is very clear; it does not say access to information held by the State. Saying that we shall provide guidelines is like saying that we are providing subsidiary legislation or regulations. That is exactly what happens. Guidelines and regulations are subsidiary to the main Act.

With those few remarks, I support the amendment.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Member for Ndaragwa.

Hon. Jeremiah Kioni (Ndaragwa, JP): Thank you. The reason why we have the Committee on Delegated Legislation is to deal with all delegated legislations and guidelines.

Before the 10th Parliament, we had the fears that you have. However, any guidelines or regulations done by any of the persons who have the mandate of implementing this Act must be brought to Parliament. So, even those guidelines will have an opportunity to engage them and see whether they meet what is intended in this Constitution. But you cannot pass a law in this House and not allow the persons who are supposed to implement to look for ways of implementing it. You will have killed the law. So, you must allow guidelines and regulations but, again, our laws require that every regulation that is done out there must be brought here. So, you still have an opportunity to see whether the guidelines that are passed by the Cabinet Secretary who will be implementing this will be intending to defeat what we have just legislated on. You cannot leave it out.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Very well put, Hon. Kioni. Let us have Hon. Oundo.

Hon. (Dr.) Wilberforce Oundo (Funyula, ODM): On the matter that has been discussed by Hon. Jennifer and my senior, who knows himself, I dare not mention his name as it is not allowed in our tradition.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Oundo, the only traditions we know here are those of this House. If there are any other traditions from where you worship or where you congregate in other places, they do not apply here.

Proceed.

Hon. (Dr.) Wilberforce Oundo (Funyula, ODM): They are not village traditions but professional code of ethics. I support but I also want to share on the misgivings raised by Hon. Musimba on the last part of the sentence. I want to be persuaded and take the advice given by Hon. Shamalla that, guidelines are regulations. So, they will only be made under the provisions of the Statutory Instruments Act. If that is the case, I will stand to support.

Thank you.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Oundo, you can take it from the advice of yours truly sitting here that guidelines are part of regulations that must be passed by this House. So, you are under good care in terms of advice.

*(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)*

(Schedule agreed to)

Clause 2

Hon. Joseph Limo (Kipkelion East, JP): Hon. Temporary Deputy Chairman, I beg to move:

THAT, clause 2 of the Bill be amended in the definition of the term “contracting authority” by deleting the word “and” wherever it appears in paragraph (b) and substituting therefor the word “or”;

This amendment seeks to ensure that the provisions contained in the paragraph are referred to as alternatives and not collectively. Therefore, we are dealing with the word “and” and “or”. It is the rephrase of the drafting so that it is clear that these are alternatives and not collectively.

(Question of the amendment proposed)

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

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

(Clause 2 as amended agreed to)

(Title agreed to)

(Clause 1 agreed to)

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

Hon. Aden Duale (Garissa Township, JP): Hon. Temporary Deputy Chairman, I beg to move that the Committee do report to the House its consideration of the Government Contracts Bill (National Assembly Bill No.9 of 2016) and its approval thereof with amendments.

(Question proposed)

(Question put and agreed to)

(The House resumed)

[The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu) in the Chair]

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Can we have the Chairperson to report to the House?

REPORT AND THIRD READING

THE GOVERNMENT CONTRACTS BILL

Hon. Christopher Omulele (Luanda, ODM): Hon. Temporary Deputy Speaker, I beg to report to the House that a Committee of the whole House has considered the Government Contracts Bill (National Assembly Bill No.9 of 2018) and approved the same with amendments.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): The Mover to move agreement with the said Report.

Hon. Aden Duale (Garissa Township, JP): Hon. Temporary Deputy Speaker, I beg to move that the House do agree with the Committee in the said Report. I request Hon. Limo, the Chair of Departmental Committee on Finance and National Planning to second the Motion for agreement with the Report of the Committee of the whole House.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Hon. Limo to second.

Hon. Joseph Limo (Kipkelion East, JP): Hon. Temporary Deputy Speaker, I stand to second.

(Question proposed)

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Members guided by our Standing Orders, I do order that putting of the Question to the Government Contracts Bill, (National Assembly Bill No.9 of 2018) be put next time it is indicated on the Order Paper.

(Putting of the Question deferred).

Next Order!

MOTIONSRATIFICATION OF EAST AFRICAN COMMUNITY PROTOCOL
ON INFORMATION AND COMMUNICATION TECHNOLOGY NETWORKS

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): The Chairperson Committee on Regional Integration. The Leader of the Majority Party, maybe you have some information about this Motion.

Hon. Aden Duale (Garissa Township, JP): Hon. Temporary Deputy Speaker, with a lot of respect, this is a Committee whose Chair and Vice-Chair are from the female gender. It is very sad that women in this House do not take their work seriously. We have been forced to ensure that they come in numbers.

This is the second time this is happening. I think the Clerk's Office should ensure as it used to happen in the 10th and 11th Parliament, that when there was a Motion or Report of a Committee, they look for the Chair, Vice-Chair or any other Member. We have only two days remaining to the close of the Session, but this depicts very badly on the leadership. Hon. Mwangaza, the substantive Speaker and Hon. Shamalla should take my message that if you want to come in numbers, you must earn in terms of leadership.

Hon. (Prof.) Jacqueline Oduol (Nominated, ODM): On a point of order, Hon. Temporary Deputy Speaker.

Hon. Aden Duale (Garissa Township, JP): Hon. Nyikal is here. Hon. Temporary Deputy Speaker, I really want to indulge you that we step down this Motion and I will brief the House Business Committee (HBC). Hon. Prof. a nominated Member of Parliament instead of raising a point of order, I will take this matter to the HBC. We will put this Order tomorrow afternoon and you should look for those ladies to come and move the Motion.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Let us hear what the Prof. has to say.

Hon. (Prof.) Jacqueline Oduol (Nominated, ODM): On a point of order, Hon. Temporary Deputy Speaker. Is it in order, in a parliamentary House where we have order not only of business but also of engaging, to refer to Hon. Members who are chairing a Committee as women? Is it also in order for the Leader of the Majority of Party to refer to me while talking on the Floor as a nominated Member? When I was swearing, I was guided that there is only one code. When I was sworn, I did not say, "I, Prof. Jacqueline Oduol, Nominated Member." Is this in order, because I do not think this is appropriate?

Hon. Aden Duale (Garissa Township, JP): If you allow me, I am the Member for Garissa Township, Hon. Nyikal is the Member for Seme and Hon. Pastor Lodope is the Member for Turkana Central. Can the Hon. Member tell us which constituency she was elected to represent? Being nominated is in books and law. We cannot run away from it. You become a Member of a constituency or county when you face the electorate. For now, you are a choice of a party.

Hon. (Prof.) Jacqueline Oduol (Nominated, ODM): That is not the issue, Hon. Temporary Deputy Speaker.

Hon. Aden Duale (Garissa Township, JP): You are a choice of a party and we can go to the next Order. Hon. Prof. Oduol, you are a nominated Member of ODM and you represent the party here.

Hon. (Prof.) Jacqueline Oduol (Nominated, ODM): That is intimidation.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Hon. Members, I confirm that Prof. is a full Member of the House, through nomination which also gives her a chance to serve the people of the country. Again, the Chairperson together with the Vice-Chair, Committee on Regional Integration are in a Committee meeting. So, I order that Order No.15 be stood down. This is not the first time and it is not because they are women. I am woman and of course, I can see there are members of the opposite gender in the House. Hon. Members, let us take our work seriously.

Next Order!

(Motion deferred)

REPORT ON KENYATTA UNIVERSITY TEACHING
AND REFERRAL HOSPITAL PROJECT

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): The Departmental Committee on Health.

Hon. (Dr.) Nyikal (Seme, ODM): Thank you, Hon. Temporary Deputy Speaker. On behalf of the Chair of the Committee, I rise to move that this House adopts the Report of the

Departmental Committee on Health on Kenyatta University Teaching and Referral Hospital Project, laid on the Table of the House on Wednesday, 17th October 2018.

The Departmental Committee on Health is putting its weight towards efforts to see that the country attains 100 per cent universal health coverage by 2022. It is against this backdrop that the Committee on its own motion pursued operationalisation of the Kenyatta University Teaching and Referral Hospital. An investment totaling Kshs.8,756,025,600 but is now at the brink of being labeled a white elephant project because the funds have not been allocated towards its dry land and opening while the project is complete.

Under the universal health coverage agenda, the Government intends to ensure that all Kenyans receive quality health services without suffering financial hardships. Starting November 2017, the Ministry of Health drew up a road map towards achieving 100 per cent universal health coverage in the next four years. The Ministry outlined the key priority areas as well as targets towards achieving this commitment. Universal health coverage means that all people and communities can access promotive, preventive, curative, rehabilitative and palliative health services they need of sufficient quality to be effective without suffering any financial hardships.

There are three key dimensions of universal health coverage which is population coverage, access to quality care and financial protection. The Kenyatta University Teaching and Referral Hospital therefore squarely sits central to the pursuit of universal healthcare. The hospital will primarily achieve the triplet objects of providing access to public health, a platform for health professionals training and to ease pressure on the two national hospitals, that is Moi Referral and Teaching Hospital (MRTH) and Kenyatta National Hospital (KNH).

Three weeks ago, when we tabled the Report on the Petition on alleged fraudulent billing of a patient admitted for barely 12 hours in a private hospital, you will recall that the Committee's focus was firmly on the cost of health care *vis-à-vis* access. The Committee is well aware of the multifaceted nature of healthcare. Even as we seek to combat fee charges in hospital, we will also seek to improve access to quality healthcare for the general public. Further to that, in the beginning of the year, the Committee tabled a report on operations of the largest referral hospital in the country, Kenyatta National Hospital, and you may recall, amongst other challenges KNH faces is the broken referral system.

The Kenyatta University Hospital project is a move towards easing pressure on Kenyatta National Hospital (KNH) by matching services offered at KNH and other large private hospitals in the country. Moreover, availability of adequate medical personnel will be addressed by the operation of the hospital as it will be a teaching and research centre. The College of Health Sciences, which was started in 2004, will be housed at the hospital. The college has four existing Schools of Medicine, Nursing, Pharmacy and Public Health. The college seeks to add the School of Dental Sciences and Biomedical Engineering under School of Engineering. The Hospital will also facilitate related services and disciplines like laboratories and biochemistry.

The Committee visited the project at the university's main campus along Thika Road on 6th July 2018 and was impressed by the progress made and the capacity which the hospital will create in the health sector. The hospital is designed to be a teaching and referral hospital with a bed capacity of 600. The project was financed through a concessional loan agreement between the Government of Kenya and the Exim Bank of China amounting to Kshs8.7 billion. So far 85 per cent of the loan has been disbursed and utilised.

The design, infrastructure development and equipping of the hospital has been completed and is ready for use. However, the personnel and capacity building component of the loan totalling to Kshs1.37 billion or 15 per cent of the total loan remains outstanding as it is a

condition precedent pegged on training of personnel who are yet to be recruited by the university as per the loan agreement. The university has not done the recruitment due to budgetary constraints. The release of the Ksh1.37 billion will enable the hospital to do a dry run and start soft operations beginning with a 160-bed capacity. The dry run means testing the equipment that is there and testing whether the personnel are adequate and then the soft run will mean running outpatient and seeing if the facilities are working as they should.

The budget for the dry run is Kshs891 million and will cover staffing and operational costs and the university will provide the hospital with Kshs234 million, which to a large extent will be incurred by offering the staff that is required. The university has engaged with the National Treasury requesting funding of the remaining Kshs656 million to start the process. The soft opening services will include specialised outpatient services, pharmacy, imaging, diagnostic laboratory services, doctor's plaza, public restaurant and oncology among others. Personnel hired at this phase will familiarise themselves with their areas of expertise which will be critical for seamless handover of the facility later. Their roles will include the following, among others:

1. Conduct room to room inspection for compliance. Hon. Temporary Deputy Speaker, I can tell you the hospital is magnificent but lying fallow.

2. Prepare snagging schedule, checking for minor defects and organise logistics.

3. Prepare room to room inventory of all equipment and supplies. We actually did see this equipment.

4 Work on the preparations for the facility's dry-run.

5. Receive equipment.

6. Ensure all necessary registrations as required by law are completed.

7. Prepare forward budgets.

8. Prepare for recruitment and placement of staff in other phases.

9. Facilitate commissioning of hospital equipment.

10. Continue testing the equipment and conducting dry run culminating into the soft opening with the 160 beds as I said.

The Committee held subsequent deliberations with both the Kenyatta University management and the National Treasury regarding this flagship project and agreed in principle on the need to immediately operationalize the hospital. It is really distressing to see a huge hospital with a bed capacity of 600 completed spick and span with equipment lying there. Nothing is happening with a lot of departmental buildings. The university is in consultations with the Treasury and the Ministries of Health and Education on the best approach to pursue in running the hospital, be it through private-public partnership as an arm of the university or otherwise. The Committee calls for an approach that is in the best interest of Kenyans. This, however, should be expedited as already the hospital is behind schedule. The following timelines were originally envisaged but with the delays, the university will have to adjust. Availability of funds was expected in September this year. Recruitment of personnel was expected in December this year and it has not even started. Commencement of dry run is to start in January next year and as things stand, it may not start. Training was to start in January as we open and operationalisation by October next year. Unless things are speeded up, I do not see those happening. As regards the Committee's comment that we have the best way forward, the Committee really feels that for the first time, we should have a hospital that is run by the university and not a hospital that is part is the university and part is a statutory body on its own right.

The Committee reemphasises that all stakeholders in the health sector must play their patriotic and active role. County governments must build capacity in hospitals run and managed

by them, including supportive infrastructure and allocating enough resources towards the same. Professionals in the sector must also accept that Universal Health Care will not be attained unless services are within reach to the common *mwananchi*. It is in this spirit that we recommended a review of professional fees charged by medical personnel. I think that is already in progress.

In the foregoing, the Committee made the following recommendations:

- (1) That the National Treasury immediately allocates Kshs656,682,207 for the dry run budget and Kshs1,060,490,567.19 for the soft run to the hospital, that is, the opening. The allocation should be factored in the next Supplementary Budget for National Assembly's ratification. This would trigger release of an undisbursed loan of Kshs1.37 billion for personnel and capacity building. That is part of the loan that has actually not been released because there are no personnel to be trained. So that is still lying as part of the loan.
- (2) That KU and Treasury to re-look into the PPP approach and consider the original plan of the university running the hospital. If the model settled upon is PPP, then Treasury should give clear guidelines on competitive identification of the private partner. The Committee is actually of the view that Kenyatta University should be supported as much as possible. Even if there is PPP, the facility should be run as part of the university and not as a parastatal or part of a different ministry.
- (3) That the Ministries of Health and Education, Science and Technology be actively involved in these discussions and take a leading role in matters of health policy and teaching respectively.
- (4) That National Treasury amends the On-Lending Agreement with Kenyatta University to allow it adequate time to reorganise its finances to enable it meet its loan repayment obligations under the On-Lending arrangement.

Even though the loan is from the Exim Bank in China, Kenyatta University is to pay it back to the National Treasury. This is also due. The National Treasury should make arrangements so that Kenyatta University is given time to organise itself once it gets the money.

As I conclude, it is fair for the people of this country if the Members can take time to go and visit the facility, to look at the large, expansive facility, many new buildings, sparkling clean wards, equipment and a 24-bed Intensive Care Unit (ICU). I think it will be the largest. One would feel sad that that facility is lying there and is not operational. We ask that those funds are made available so that this facility operates and relieves Kenyatta National Hospital of its work load.

With that, I beg to move and call upon Hon. Murgor to second.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Whom did you say was to second? Very well, the Member for Keiyo South to second the Report. It is the Member for Keiyo North to second. Give him the microphone. What is wrong with your card, Member for Keiyo North? You can use whatever you can see. Use the microphone right beside you.

Hon. James Murgor (Keiyo North, JP): Thank you, Hon. Temporary Deputy Speaker. I stand to second this Motion on the Report of the Departmental Committee on Health on the Kenyatta University Teaching and Referral Hospital.

As it has been said, we went to Kenyatta University at the invitation of the Vice-Chancellor to see and assess the progress of this hospital. On our arrival, just after entering the hospital, we were very impressed as a Committee. This was a complete hospital. The workmanship was very impressive. In terms of infrastructure, you cannot compare it with any other hospital around. As a matter of fact, if somebody who does not know Kenya comes and

sees the Kenyatta University Teaching and Referral Hospital and the Nairobi Hospital, he would think that the Nairobi Hospital is a nursing home. It is a beautiful hospital. When we went inside to various areas and toured the hospital fully, we saw a hospital which is fully-equipped. The wards and clinics are fully equipped. Other departments like radiology, the laboratories, the renal unit and the ICU are all fully-equipped. This is a fully-equipped hospital.

The cost was just Kshs8.7 billion. If other departments were given an opportunity to do that, knowing Kenya, that hospital would have cost over Kshs100 billion. We must congratulate the University management for doing a good job. As Kenyans, we have got value for money.

After touring the hospital, we found a hospital which is complete. It is about a year or two years since it was completed. It is lying idle. It is a well-built and fully-equipped hospital with the latest technology. What is the problem? The problem is the issue of funding. The university told us that they require approximately Kshs600 million to start operations. If they get Kshs600 million, they will be able to unlock a Kshs1.3 billion loan to initiate their operations. Those operations will include hiring of staff and capacity building. The university itself was ready to inject in Kshs200 million in terms of the staff such as the lecturers within the university who are doctors and their auxiliaries.

In conclusion, I urge this House to adopt this Report and appropriate the funding of Kshs600 million for the dry run of the hospital and also the Kshs1.3 billion for the soft run. Let us not forget something which I feel very deeply. What model will we use in this hospital? This hospital should be run purely as a university hospital. Let us not go the Semi-Autonomous Government Agencies (SAGAs) way. Let us not go the KNH or the Moi Teaching and Referral Hospital (MTRH) way. We know the challenges and the problems they are undergoing. Therefore, we have to use this worldwide model of a university hospital. Worldwide universities have their hospitals. They are doing very well.

I will stop there. I second the Motion.

(Question proposed)

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): The first opportunity goes to the Member for Wajir South, Hon. Mohamed Sheikh.

Hon. Mohamed Mohamud (Wajir South, JP): Thank you, Hon. Temporary Deputy Speaker. I stand to support the adoption of the Report on the Kenyatta University Teaching and Referral Hospital project. As a Member of the Committee, I witnessed that this is a very important institution which is of value to our country and society. Therefore, this institution must be supported at all times. It is a great value for money, investment and as an institution.

Being a 160-bed capacity modern hospital definitely means that it is an addition to our health institutions so that we can achieve universal healthcare. I will add the word "coverage" in that sense. Universal healthcare and coverage can only succeed if we invest in such institutions for service and training. It will not only provide services to the sick and those who seek help and medical examinations but it will also train our young future medical personnel. It will provide knowledge that will be imparted to the next generation of healthcare professionals. Healthcare professionals require institutions that have state-of-the-art facilities, machineries and equipment.

This is a precursor for such trainings. Therefore, I support that this institution be given the amount of money that it requires to operate: Kshs600million is little amount of money compared to what is spent on other services. It is value for money that can enhance the training capacity of the institution. The Kshs1.1billion can ensure there is continuity of this institution.

This institution will be the precursor for achieving the President's Big Four Agenda in health. We can achieve the Big Four Agenda in health by expanding our institutions further. This will be a state-of-the art model that can not only be used in Kenya but also across the continent. Very few hospitals in this Continent have such equipment that we have seen in this institution. Given that we have already started, we do not need to turn off the engine of the locomotive of healthcare services that will be provided in this institution. They will ensure that our society has insurance to access healthcare services. We need a scholarly institution that fills the gap of human resource for health. It is none other than Kenyatta University Teaching and Referral Hospital. Therefore, it is my very much humble request that we support the budget and financial requirements of this institution.

A modern health service in Kenya means a sustainable health for our community that can be taken forward, so that we can reach the level of the developed countries that have already been in a situation that we are in currently. When they look back, they will see that Kenya is not in the place that it was 200 years ago. We want to be fast enough, so that our society can get the best health services. I ask this House to support this institution in budget and many other ways.

Thank you very much. I support this Report.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Member for Kinangop.

Hon. Zachary Thuku (Kinangop, JP): Thank you, Hon. Temporary Deputy Speaker, for giving me this opportunity to contribute to this Report by the Departmental Committee on Health. At the outset, I wish to support it. I am a Member of the Committee. Having visited the Kenyatta University Teaching and Referral Hospital, I must say that it is a worthy investment. However, it can also be described as a shame to our country. We have put all that money in such an investment and then towards the tail end, we are not able to finance the same to be operationalised. With an investment of Kshs8.7 billion, we have come up with a hospital that is one of the best in East and Central Africa. We do not have a hospital of that calibre in Sub-Saharan Africa.

As much as it is the state-of-the art hospital, it has been lying there for the last two years. It is complete and waiting for some budgetary allocation of Kshs600million which it has not been given. The equipment in that hospital has a warranty. We are getting to the expiry of the warranty before the equipment has been put into use. It is a shame. We are talking of a hospital that cost an equivalent of the same money that we allocated to procure scanners that have turned out to be a scandal. We allocated Kshs8 billion for 37 scanners. We have constructed a fully-fledged hospital at a cost of Kshs8.7 billion. This is paradoxical in terms of how much money is lying there, how much money goes to waste and the balance of the money that we need to put into this Hospital, so that it can be operationalised. I, therefore, wish to urge this House, as a matter of urgency, that if there is any budgetary allocation that we will do or any request that is going to come forth from Kenyatta University Teaching and Referral Hospital, then we should make sure that we make it as a priority, so that then we can stop medical tourism to India. If this hospital is operationalised, then we will deal with such cases.

The hospital has 600 bed capacity. The only thing that we lack is Kshs600million. The next question that we should ask ourselves is the issue of management, so that we do not come up with another Kenyatta National Hospital which is a den of death. Once you take your patient there, you are not sure whether he will ever be treated or come out alive. We must think of the management of Kenyatta University Teaching and Referral Hospital, so that we can have an efficient management that will look into the details of whatever is required.

Because much has been said by the Mover and Seconder of this Motion, I wish to urge this House to be kind enough to support this Motion without amendments. This will be the game changer within this region. We can also be the next destination of medical tourism from the countries that are within the region. They will be coming to Kenya to seek treatment at Kenyatta University Teaching and Referral Hospital. I can tell you that this is a hospital of its kind. I urge Members of this House to go and familiarise themselves with the kind of facility that we have. You do not need to go to Apollo Hospital in India, United States of America (USA) or anywhere else once that Hospital is done. I can assure that it will be the game changer.

Thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Member for Lugari, Hon. Angatia Savula.

Hon. Ayub Angatia (Lugari, ANC): Thank you, Hon. Temporary Deputy Speaker, for giving the opportunity to contribute to this important Motion. At the outset, I declare that I support the Report on Kenyatta University Teaching and Referral Hospital. Kenya is facing a population increase every year but we do not expand the existing facilities at the same rate. This is a very good initiative. I congratulate Kenyatta University for starting this noble project. We only have two main referral hospitals in Kenya. Let us not talk about the Coast Referral Hospital and Nakuru Referral Hospital because they are government hospitals that do not function efficiently. We only talk about KNH and the new Kenyatta University Teaching and Referral Hospital. The other hospital that runs efficiently is based in Eldoret; Moi Teaching and Referral Hospital. That is all we have in this country.

This country has a population of 40 million Kenyans. We are on the verge of collapse in terms of provision of medical services. This hospital will supplement the Moi Teaching and Referral Hospital and KNH in provision of medical services. I want to give an example. My driver and bodyguard had an accident last year. I almost lost my driver because all the hospitals in this country mainly in Nairobi and its neighbourhood did not have even a single vacant ICU bed. From the time they had an accident at about 9.30 p.m., we managed to get a single unit of ICU facility at MP Shah Hospital at 1.30 a.m. He was lying at Karen Hospital in a normal ward while the doctors and nurses were trying to look for an ICU bed. We called Nairobi Hospital and KNH but the ICU beds were full. We managed to get one ICU bed at MP Shah Hospital. It is a shame to this country. If I was not a Member of Parliament with the financial capacity from my salary, I would have lost my driver. The bodyguard died on the spot.

When we arrived at the MP Shah Hospital, we were told to give a down payment of Kshs600,000 at midnight. Where would a common man get that kind of money? We need to change the system in this country so that we do not require any deposit for emergency treatment in health facilities. Let us put enough resources in Government facilities and enact laws to protect the *mwananchi* who goes there for emergency services to be treated. A patient should be treated first and then the hospital can follow up for payments later. The Big Four Agenda by President Kenyatta is a good initiative. So, let us deal with health because without a healthy nation, we are wasting time. We cannot be productive in any sector. I am wondering why the National Treasury has not considered this as a main project under the budget. We cannot sit here to debate an obvious thing. Are the people in the National Treasury not sleeping on the job? This is not related to wheat or maize; it is a matter related to healthcare, which should be given first priority. We should not be wasting time here debating this Motion. The National Treasury should have done their work. President Uhuru Kenyatta has already indicated that no new projects will

be started. Why did they not allocate money to this noble project that saves lives? It is a pending project.

Under the NG-CDF provisions - the Members here can concur with me - the NG-CDF Board does not approve any new projects. They are directing all finances to complete the already existing projects. Where was the National Treasury? There are circulars to the effect that projects in progress should be completed first. They are not thinking about life. I am just wondering why a whole Parliament should sit to debate a report on how to give money to a noble project like this one. Somebody must be sleeping on the job. Finish this thing quickly. Commission the facilities at the Kenyatta University Technical Referral Hospital to save lives.

We cannot attain 100 per cent universal healthcare coverage in this country when we have only three referral hospitals. We are joking. We are not serious. We also need to increase the NG-CDF allocation. We amended the NG-CDF Act and allowed some money to cater for the NHIF cards. We need to increase the allocation at the constituency level to cover the poor. Counties are not as efficient as the NG-CDF when it comes to dealing with matters at the grassroots level. We need to increase the allocation so that we cover more vulnerable people under the NIHF so that they can access hospitals.

We also need to amend some laws on issues regarding medical facilities. We cannot leave this noble venture to governors alone because they concentrate on feeder roads. You will find a clinic managed by a county government has no medicines. Let us classify hospitals. Let us return Level 5 Hospitals and above to the national Government. Let the county governments handle dispensaries and clinics. Let us also ensure that we have one centre to supply medicines to those hospitals. Let us not allow county governments to start importing drugs on their own. Let us guard lives.

Quality training is also a matter of concern. You find universities offering degrees in medicine yet they do not have a referral hospital nearby to help in practical teaching for students to qualify well to provide quality services. My colleague mentioned India, where each hospital is attached to a university or is a teaching and referral hospital of a university. Let us embrace such practice as policy in Kenya. Let us make Kenya Medical Training Colleges (KMTCs) operate under a certain level of a hospital. Let us not just establish KMTCs in every constituency, where the main hospital is a dispensary. By so doing we will be training half-baked nurses and creating a health services provision disaster in the country.

Hon. Temporary Deputy Speaker, with those many remarks, I support and thank the Government for establishing Lugari Medical Training College at Mautuma Hospital.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Member for Tigania West, Hon. Mutunga.

Hon. John Mutunga (Tigania West, JP): Thank you Hon. Temporary Deputy Speaker for giving me this opportunity to contribute to this Motion. I support adoption of the Report for very good reasons. This Report suggests that we shall increase the possibility of moving towards universal healthcare, which I do not doubt. The possibility for us to have better treatment in a 600-bed hospital that has good infrastructure and equipment has been articulated in the Report.

I would like to highlight that this is a hospital that has been put up in the most efficient way. If you look at the way projects are done in Kenya, and the way they are costed, this Hospital has spent Kshs8.76 billion to be where it is now. All we need is about Kshs656 million to do a dry run and after that, it will need Kshs1.1 billion to run throughout. There is a possibility to create a sustainable healthcare facility for this country.

The hospital is complete and equipped but we are forgetting that the equipment has a warranty. We are going to lose the warranty period. Therefore, we will not gain from that provision when we start using the equipment. There is also a provision for staff. The university promises to use an equivalent of Kshs234 million worth of staff time in terms of placing staff in the Hospital.

If we give the hospital the Kshs656 million, then we shall have another referral hospital to add to the two that we have. We need to improve on the possibility of Kenyans getting better medical healthcare. The medical care or services we have at Kenyatta National Hospital and Moi Teaching and Referral Hospital are not adequate. Patients are moved from one part of the country to another in order to access affordable healthcare services. Therefore, opening this facility will basically increase the possibility of people getting quality treatment at affordable cost. We are talking about the reliability of that hospital in terms of rendering the required services.

I wonder what the Ministry of Health presented as its priority budget in line with completing existing projects if they did not incorporate this particular project in their budget. I wonder what they called their priority projects because we are looking at the implementation of the Big Four Agenda, in line with providing universal healthcare services. I would have expected the Ministry to prioritise this project as one of the areas they want to put money. Therefore, we would not be discussing appropriation of more funds from the National Treasury for the facility. The facility is ready. The Committee visited it. The Committee said it has fantastic infrastructure and a fantastic environment. It is ready to receive patients. We need to operationalize it. Once it is open, it will not only provide opportunity for patients to be treated, but will also provide opportunities for more Kenyans to be employed in a quality facility. It will also provide opportunities for more Kenyans to feel that they have better options for healthcare. We need good, reliable and affordable health facilities. This is an opportunity that has come.

I would like to exercise caution on a few issues related to this provision. One of them is that the Report says and we believe it is a fantastic facility, but we look at other facilities that have been funded separately as semi-autonomous Government agencies to provide healthcare services in the country. Looking at the decay at Kenyatta National Hospital, and at other government hospitals, even though medical services have been fully devolved, we realise that they have not come up of age.

However, we have several examples we can give and we need to laud them because when people do well, it is good to tell them. As the Budget and Appropriations Committee, we went to several hospitals on supervisory activities. I want to single out two hospitals that are doing a good job. One of them is Kirinyaga Hospital. Kirinyaga Hospital is clean, it is performing and has efficient systems of checking in and out and it has methods of admitting patients, which is a requisite to private hospital operations.

The Coast General Hospital is another one that is coming up. They have modernized their equipment, furniture and buildings. This is the direction that we want to take. I would like to propose that we borrow from the private hospitals of this country such as Nairobi Hospital, Aga Khan Hospital, and MP Shah Hospital among others. I would like to propose that Kenyatta University being a training institution, could get into a private public partnership so that it can generate some revenue for the Government and be there as a teaching and referral facility for this country. It will oversee the management of this facility and also ensure that as Parliament, we do not lose sight of what is happening in this hospital. We need this hospital today, not tomorrow.

So, I strongly propose that we get the Kshs656 million that they need. After that, we can provide for the Kshs1.1 billion.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Very well. There is a Member who does not have a card. Member for Dadaab, you do not have a card?

(Hon. Mohamed Duale spoke off record)

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Please use the Dispatch Box but make sure next time you take your card to the right place.

Hon. Mohamed Duale (Dadaab, KANU): Thank you very much, Hon. Temporary Deputy Speaker for giving me this chance. At the outset I want to support the adoption of this Report together with the recommendations. This is a model hospital of its kind. It was a hospital built with funds from Exim Bank of China at a cost of Kshs8 billion which is a loan and we are supposed to start paying it from 2019. Unfortunately, the hospital is not yet operational. In fact, it is important for Members to note that the loan repayment will not be done by Treasury but by Kenyatta University or whoever will run the hospital. Currently, Kenyatta University has a faculty of medicine with students. The students currently are going to Thika, Machakos, Kiambu and other places for training. This facility should have been operational. We have met with the university, National Treasury, Ministry of Health and World Bank and this is what we got; the hospital is fully equipped and they require about Kshs656 million to test run. The university was also going to give Kshs230 million. They requested that these monies be factored in the Supplementary Budget for 2018/2019. The adoption of this Report will aid that.

This hospital will also reduce the pressure on Kenyatta Hospital because Kiambu and other counties to the east of Nairobi will have another point where they can take their patients.

I would like to say that even in my county, many people would have benefited from this facility. This facility should have been operational by now. The other thing that we have recommended as a Committee is that running this hospital should not be done like the models of KNH and Moi Teaching and Referral Hospital (MTRH). This one being in the university should be run by the university management and not by the ministry or parastatal. This is because from the history of this country, the KNH and MTRH have not been very remarkable in terms of providing services.

We have also recommended that this hospital should be run by the university just like in any other place in the world. That way they can give quality services. Everywhere in the world such as Europe, North America and other parts, university teaching hospitals are where the great people in the country including ministers, presidents and senior Government civil servants go. We would like to use this facility as a model, to be a teaching and referral hospital. We are supposed to pay this loan from the funds that will be generated from the hospital totalling to Kshs88.7 billion and we are supposed to start paying from 2019 in two instalments of Kshs400 million per year. If this hospital is not yet operational, how while we pay this money? The guarantee of this money is the National Treasury but the payments should have come from the hospital. So, the adoption of this Report and its recommendations will help in the repayment of the loans which ultimately will be paid by the Government of Kenya. It will also provide training facilities for the students who are currently moving from one hospital to another. It will be a referral hospital for many patients of the east of Nairobi.

With those many remarks, I support the Report and the recommendations therein. Thank you.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Let us have Hon. Millie Odhiambo.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Thank you, Hon. Temporary Deputy Speaker, perhaps, I could get inkling as to how much time we have before closure. The clocks are giving two different timelines. This is so that I know what speed to move at.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Hon. Millie, dictation of the same will be done from where I am.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Thank you for giving me this opportunity to contribute to this Report. I thank the Committee and support the Report. If you look at the SDG No. 3, it says:

“Ensure healthy lives and promote wellbeing for all at all ages.”

If you look at the International Covenant on Economic Social and Cultural Rights that Kenya has ratified, it says under Article 12:

“The enjoyment of the highest attainable standards of physical and mental health as a right.”

The issue of the right to health is one of the Big Four Agenda of the President and this is one of the most significant areas that affect the lives of women, children, young people, persons with disabilities and vulnerable groups especially the reproductive rights and health. It is only this weekend when I was in my constituency of Suba North and a woman who had a very big problem with her breast came to me. It is even not clear what it is just because she could not afford Kshs3,000 to go for a test. In the same small hall where I was in a place called Got Nyasumbi in Lambwe where I was meeting people, there was also a very sick girl who had been in hospital and the bill was Kshs25, 000 and the father’s title deed had been withheld. This is the kind of story that replicates itself all over the country.

It is very disheartening when you see these kinds of scenarios and you have a serious healthcare and facility that has taken money from taxpayers lying idle. In my constituency, the life expectancy is 37 years. It is embarrassing for a country that we can at this age and time consider a situation such as KNH facility. This is why I am saying it is embarrassing because the amount of money that goes into corruption alone far much outweighs what can be put into that facility.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Thank you. Hon. Millie, your concerns are valid. You will have seven minutes in the next sitting as the Report will be debated.

ADJOURNMENT

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Hon. Members, the time being 7.00p.m., this House stands adjourned until Wednesday 5th December 2018 at 9.30 a.m.

The House rose at 7.00 p.m.

