

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Tuesday, 16<sup>th</sup> October 2018

The House met at 2.30 p.m.

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

### PRAYERS

**Hon. Speaker:** We quorate now. We may begin.

### COMMUNICATION FROM THE CHAIR

#### DELEGATION FROM THE NATIONAL ASSEMBLY OF THE REPUBLIC OF MOZAMBIQUE

**Hon. Speaker:** Hon. Members, I wish to introduce to you a delegation from the National Assembly of the Republic of Mozambique. The delegation, seated at the Speaker's Row comprises of members of the Commission of Public Administration and Local Government of the National Assembly. They are:

- |   |   |            |
|---|---|------------|
| i. Hon. Lucas Chomera Jeremias, MP          | - | President  |
| ii. Hon. Antonio Pedro Muchanga, MP         | - | Rapporteur |
| iii. Hon. Martinha Januario Benfica, MP     | - | Member     |
| iv. Hon. Gonçalves Maceda, MP               | - | Member     |
| v. Hon. Elisa Silvestre Isabel Cipriano, MP | - | Member     |
| vi. Hon. Manuel Jozi De Souza, MP           | - | Member     |
| vii. Hon. Alberto Jumulate, MP              | - | Member     |

The delegation is also accompanied by Mr. Emidio Constantino Guambe, the Chief of Staff of the Commission, Mr. Dercio Alfazema, Ms. Lorena Mazive from the Institute of Multiparty Democracy and Mr. Armenio Machiana who is a translator.

Hon. Members, the delegation is in the country to engage and share experiences with their counterparts on matters of decentralisation, as Mozambique considers a review of their current model of governance. During their visit, they had a sitting with me, the Departmental Committee on Administration and National Security, as well as the Senate Committee on Devolved Government, among other agencies.

On my own behalf and that of the House, I wish to welcome them to the National Assembly and wish them fruitful engagement during their stay in the country.

I thank you.

### MESSAGE

PASSAGE OF THE COUNTY BOUNDARIES BILL  
AND THE OFFICE OF THE COUNTY ATTORNEY BILL

*(Hon. Khatib Mwashetani walked in while the Speaker was on his feet)*

**Hon. Speaker:** Member for Lungalunga, you have been missing in action. Take your seat now.

Hon. Members, this is Message No. 9 of 2018 from the Senate. It relates to the passage of the County Boundaries Bill (Senate Bill No. 6 of 2017) and the Office of the County Attorney Bill (Senate Bill No. 3 of 2018).

Hon. Members, Standing Order No. 41(4) requires the Speaker to report to the House any message or messages which are received from the Senate at the first convenient opportunity. In this regard, I wish to report to the House that on Thursday, 11<sup>th</sup> October 2018, I received two Messages from the Senate regarding the passage of two Bills on Wednesday, 3<sup>rd</sup> October 2018.

The first Message relates to the passage of the County Boundaries Bill, (Senate Bill No.6 of 2017). Among other objectives, the Bill seeks “to provide a mechanism for the resolution of county boundaries to give effect to Article 188 of the Constitution by providing for the procedure for alteration of county boundaries; and to provide for the establishment of an independent county boundaries commission.”

Hon. Members, the second Message conveys the passage of the County Attorney Bill, (Senate Bill No.3 of 2018). The Bill seeks to “provide for the functions and powers of the County Attorney; and the discharge of duties and the exercise of powers of the County Attorney.”

Standing Order No.143(1) requires the Speaker to cause a Bill received from the Senate to be read a First Time upon conveyance of a Message from the Senate referring Bills to the National Assembly. Accordingly, I direct that the two Bills be read a First Time at the next Sitting of the House.

Paragraph (2) of Standing Order No.143 of our Standing Orders provides as follows:

“Following First Reading, the Speaker shall, within reasonable time, pronounce his or her opinion contemplated under Article 114(2) of the Constitution.”

The opinion envisioned under Standing Order No.143(2) is a pronouncement by the Speaker, as to whether a Bill originating in the Senate is a Money Bill in terms of Article 114 of the Constitution. In this regard, I have requested the Clerk of the National Assembly to refer the two Bills to the Parliamentary Budget Office to offer advice that will enable the Speaker to form the opinion contemplated in the aforementioned Standing Order No 143(2). Thereafter, I shall guide the House accordingly on how to proceed with the consideration of the said two Bills from the Senate.

Thank you, Hon. Members.

## PETITIONS

ENACTMENT OF LEGISLATION TO  
IMPLEMENT AFRICAN UNION RESOLUTIONS

**Hon. Speaker:** Hon. Members, this is Petition No.119 of 2018. It relates to conveyance regarding enactment of legislation for implementation of African Union resolutions.

Standing Order No.225(2)(b) of the Standing Orders requires the Speaker to report to the House any Petition other than those presented through a Member. I, therefore, wish to convey to the House that my office has received a petition signed by one David Gesicho, a Kenyan citizen regarding enactment of legislation to provide for implementation of the resolutions of the African Union.

The petitioner contends that over the years there has been emphasis by successive regimes in power in the Republic of Kenya on economic development at the expense of human development as exemplified in recent times by the inordinately high allocation of resources to infrastructure and energy development as compared to allocation to health, education and agriculture sectors that have a direct bearing on human development. The petitioner, therefore, prays that the National Assembly initiates the process of enacting legislation with regard to implementation of resolutions of the African Union in the Republic of Kenya and in particular concerning the proposed formula for division and allocation of revenue towards the realisation of the Sustainable Development Goals. The proposed allocations are as follows:

1. Fifteen per cent to the health sector;
2. Twenty per cent to agriculture including water, sanitation and irrigation;
3. Twenty per cent to the education sector.
4. Ten per cent to shelter/ housing sector; and
5. Ten per cent to the security sector.

Pursuant to the provisions of Standing Order No.227, this Petition, therefore, stands committed to the Departmental Committee on Defence and Foreign Relations for consideration. I wish to inform the House that the Petition was submitted in the 11<sup>th</sup> Parliament, but the Committee had not concluded its consideration by the time the House adjourned *sine die*. The Committee is, therefore, requested to consider the Petition and report its findings to the House and the petitioner in accordance with Standing Order No.227(2).

Thank you, Hon. Members.

There is a Petition by the Member for Embakasi West. You must use your card.

REALIGNMENT AND REORGANISATION OF SERVICE DELIVERY IN  
EMBAKASI WEST CONSTITUENCY

**Hon. George Theuri** (Embakasi West, JP): Thank you, Hon. Speaker.

This is a public Petition regarding regularisation of various Government offices for efficient service delivery in Embakasi West Constitution.

I, the undersigned on behalf of residents of Embakasi West Constituency, draw the attention of the House to the following:

THAT, Embakasi West Constitution is made up four wards; namely, Mowlem, Kariobangi South, Uhuru, Umoja One and Umoja Two;

THAT, Embakasi West was hived off the main Embakasi Constituency in which it covered a massive area of 208 km<sup>2</sup> and split into Embakasi South, Embakasi North and Embakasi West constituencies;

THAT, offices of the Ministry of Education, Science and Technology and that of Interior and Coordination of National Government still use the pre-2010 Constitution boundaries to manage and coordinate their affairs in Embakasi West Constituency,

THAT, sections of Embakasi West Constituency fall under the jurisdiction of different sub-counties, namely, Kariobangi South/Uhuru Ward which has sections of Uhuru and Kamukunji Sub-County; and Kariobangi South/Mowlem Ward falls under Njiru Sub-County;

THAT, conflict of jurisdictions and poor coordination of various offices in Embakasi West Constituency have negatively impacted on delivery of key services to the residents of Embakasi West Constituency, for instance, education and cash transfers for orphans and vulnerable children, persons with severe disabilities and older persons cash transfers are administered and provided from Njiru, Kasarani and Kamukunji sub-counties while coordination of regular and Administration Police is done from Embakasi, Kamukunji and Kasarani constituencies, respectively;

THAT, this state of affairs has denied provision of these key services to thousands of residents of Embakasi West Constituency;

THAT, efforts to resolve this matter with the relevant Government bodies have been futile; and

THAT, issues in respect to why this Petition is made are not pending before any court of law, constitutional or statutory body.

Therefore, your humble Petitioners pray that the National Assembly, through the Departmental Committee on Administration and National Security:

- (i) causes the Government to regularise various offices for effective service delivery in Embakasi West Constituency;
- (ii) recommend proper administration and coordination of service delivery in line with the Constitution or sub-county units rather than the old administrative structures; and
- (iii) makes any other order or direction that is deemed fit in the circumstance of this Petition.

Thank you.

**Hon. Speaker:** I see some Members want to comment on either Petition. Member for Ugunja.

**Hon. Opiyo Wandayi** (Ugunja, ODM): Thank you, Hon. Speaker. The Petition that has been presented by the Member for Embakasi West Constituency is very important.

As we speak, there is a lot of confusion. Indeed, we need to know who is in charge of the review of administrative boundaries. In the advent of the new Constitution, we have sub-counties as units at the grassroots and yet, we also have constituencies which fall within the sub-county jurisdictions. As we speak, there are sections of certain constituencies which fall in different sub-counties. A case in point is my constituency. I have a whole sub-location that falls in a different jurisdiction – Ugenya Sub-County - whereas my constituency is Ugunja. This is a matter that the Committee should take up with a lot of seriousness and try to look at it holistically rather than dwelling on Embakasi West only. You could find a mechanism of addressing this issue countrywide so that we do not have this confusion. Our people require services and those services can only be assured if the boundaries are clear and there is no ambiguity whatsoever.

Thank you.

**Hon. Speaker:** Before I allow other Members to comment, allow me to recognise the presence, in the Public Gallery, of students and pupils from the following institutions:

Karatina University, Mathira Constituency, Nyeri County and Bigpen Academy, Ruaraka Constituency, Nairobi County. They are all welcome to observe the proceedings of the National Assembly this afternoon. Member for Igembe Central.

**Hon. Kubai Iringo** (Igembe Central, JP): Thank you, Hon. Speaker, for allowing me to comment on the Petition by Hon. Theuri. These problems cut across the country. As the previous contributor has said, when the new Constitution came into force, some sub-counties were merged with others. Therefore, administratively, they became confusing where people do not know where to get services. My constituency, Igembe Central, was chopped from Igembe South and Igembe North. Therefore, the two beds were put together. As we speak, in my constituency, we do not have a police station; we do not have an Officer Commanding Police Division (OCPD). We are getting services from the north. This Petition is timely. When the Committee sits down, let us look at this thing holistically. I wrote a letter to the Chair of the Committee where we have committed the Petition. He told us he is going to look into it, but to date, I have not got an answer. We need to look at the whole thing holistically across the country. Thank you.

**Hon. Speaker:** Member for Makueni.

**Hon. Daniel Maanzo** (Makueni, WDM-K): Thank you, Hon. Speaker, for giving me this opportunity to comment on this very important Petition. This problem is recurring. In fact, I had occasion to discuss it with the Independent Electoral and Boundaries Commission (IEBC), who I thought would be responsible in terms of boundaries. It turned out that we, as a House, need to make a law which addresses the particular problem that could come out when the Committee investigates this matter. I will also ask as many Members as possible with a similar problem to approach the Committee when it is being prosecuted so that we can come out with data and we can know the best way forward. Most probably, we will have to propose a law to be able to settle this once and for all. I thank you.

**Hon. Speaker:** That is why one of the Bills that have come from the Senate is dealing with county boundaries, unless you people were not listening carefully to my Communication. Finally, let us hear the Member for Kilifi North.

**Hon. Owen Baya** (Kilifi North, ODM): Thank you, Hon. Speaker. I would like to support this Petition. This is a big problem in the country. In my constituency, two wards belong

to another sub-county and yet, they are the core of my constituency. Recently, I read in the newspapers that they have a new sub-county within my constituency that derives boundaries from my constituency and another constituency where even the Member of Parliament is not involved in the process. I read in newspapers that Kauma Sub-county has been created. I say congratulations to the sub-tribe but why would it be done without consultations? One of the fundamental pillars of the Constitution is public participation where everybody is involved and leaders are involved in such key decisions. If we continue that way, even delivery of services will deteriorate. Watamu and Dabaso wards in my constituency belong to Malindi Sub-county where there is an MP. To find services of the Deputy County Commissioner (DCC), I have to go to another constituency to attend a meeting to discuss an issue that is in my constituency. The police boss of those two wards also sits in Malindi Sub-county, thus making it very difficult to have to sit in two constituencies; my constituency and Malindi Constituency.

Some of the development projects like roads and all that now start cutting across because I have to consult with the other Member. This is a fundamental issue that needs to be sorted out. If the Provincial Administration is reviewing the boundaries or the Ministry of Interior and Coordination of National Government is doing these things, let them consult leaders so that we do not end up with a situation where service delivery is interfered with at the grassroots.

Thank you.

**Hon. Speaker:** Hon. Members, the opportunity granted at this point is to make comments and seek clarification. When I hear every Member rising in their place to lament about the principle of public participation, quite apart from the requirements under Article 118... Why is it that instead of all Members lamenting, you do not seek the enforcement of that requirement through other mechanisms from those that are involved in making those decisions? This Petition relates to Embakasi West. It is unlikely that the Departmental Committee is going to start seeing Kilifi North, Makueni, Ugunja, Igembe Central and I am sure several other places. They are unlikely to address those issues in this one except to make general observations. Looking at the HANSARD, there was general lamentation by several Members who spoke. Therefore, the people concerned should look into the matter.

The point I am making, Hon. Owen Baya, is that we have seen people enforcing public participation only on the legislature such that legislature in both Houses, and, indeed, even at the country levels, cannot fail to observe that governance aspect of our Constitution involving the public. If we do not, there are busybodies who are always out there in the streets. They will be in court. Some of the decisions like these ones are very critical. Even the public ends up getting confused. On one side, they are told Hon. Owen Baya is their Member or Hon. Wandayi is their Member, then they are dealing with some other funny people; administrators. You are calling them assistant chiefs, those kinds of fellows. The public gets confused.

Again, Members, it is within you to seek to enforce some of these things. In the meantime, the Petition stands committed to the Departmental Committee on Administration and National Security to consider it in terms of ...

*(Hon. Owen Baya raised his hand)*

Hon. Baya, having spoken, there is no way you can speak again. As I keep reminding you, this is not a high school where people have to raise hands. Not in relation to this. It does not happen like that here! Not in Parliament. That happens in those other institutions.

Let us go to the next Order.

### PAPERS LAID

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

The Annual Public Debt Management Report for the Financial Year 2017/2018 from the National Treasury and Planning.

The Reports of the Auditor-General and Financial Statements in respect of the following institutions for the year ended 30<sup>th</sup> June 2017, and the certificates therein:

- (a) Kenyatta University;
- (b) Agricultural Sector Development Support Programme;
- (c) Bukura Agricultural College;
- (d) Kenya Dairy Board;
- (e) Agricultural Information Resource Centre Revolving Fund Account;
- (f) Small-Scale Irrigation and Value Addition Project;
- (g) Kenya National Shipping Line Limited;
- (h) Information Communication Technology Authority;
- (i) Revenue Statement from the State Department of Agriculture;
- (j) Regional Pastoral Livelihood Resilience Project;
- (k) Kaimosi Friends University College;
- (l) State Department of Fisheries and the Blue Economy Revenue Statements;
- (m) Kenya Universities and Colleges Central Placement Service; and,
- (n) Kenya Institute of Curriculum Development.

Thank you, Hon. Speaker.

**Hon. Speaker:** The Annual Public Debt Management Report for the Financial Year 2017/2018 is referred to the Budget and Appropriations Committee.

Let us have the Chairperson 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 Consideration on the County Governments (Amendment) (No.2) Bill (Senate Bill No.7 of 2017).

Thank you, Hon. Speaker.

**Hon. Speaker:** Next Order.

### QUESTIONS

**Hon. Speaker:** Question by the Member for Rabai Constituency. Hon. Members, I want to encourage you to always remember to carry your cards. If you know you have a Question, please make your request be seen.

Hon. Kamoti.

**Hon. William Mwamkale** (Rabai, ODM): Thank you Hon. Speaker. My card is on. I am wondering why it is not reflected on your screen.

*Question No.044/2018*

NON-COMPLIANCE WITH LAW ON EMPLOYEE WAGES

**Hon. William Mwamkale** (Rabai, ODM): Hon. Speaker, could the Cabinet Secretary for Labour and Social Protection:

(a) Confirm whether the Labour Institutions Act, 2007 and the Statutory Instruments Act, 2013 were complied with while making the regulations relating to wages published vide Legal Notice No.112 of 2017 of 16<sup>th</sup> May 2017?

(b) Explain why there are discrepancies in basic salaries for employees in similar job grades but working in different locations?

Thank you, Hon, Speaker.

**Hon. Speaker:** It is referred to the Departmental Committee on Labour and Social Welfare. It is to be responded to after prioritisation. Next is the Question by the Member for Ol Jorok. He is somebody by the name Muchira. Is it that Members do not know how to use the machines?

*Question No.045/2018*

PROGRAMMES TO ENSURE YOUTH ACCESS EMPLOYMENT

**Hon. Michael Muchira** (Ol Jorok, JP): Hon. Speaker, I beg to ask the Cabinet Secretary for Public Service, Youth and Gender Affairs the following Questions:

(a) What programmes and plans are being put in place by the Ministry, if any, to ensure youth access employment?

(b) What measures are in place to ensure succession planning in all Government Ministries and agencies?

Thank you, Hon. Speaker.

**Hon. Speaker:** The Question is referred to the same Committee for prioritisation. Next Question, Member for Loima Constituency.

*Question No.046/2018*

MEASURES TO ENSURE PEACEFUL CO-EXISTENCE AMONG COMMUNITIES IN TURKANA

**Hon. Jeremiah Lomorukai** (Loima, ODM): Hon. Speaker, I beg to ask the Cabinet Secretary for Interior and Coordination of National Government the following Question:

(a) What measures are being undertaken by the Ministry to ensure a lasting security and peaceful co-existence among the communities in Turkana, West Pokot, Baringo and Samburu counties?

Thank you, Hon. Speaker.



**Hon. Speaker:** It is referred to the Departmental Committee on Administration and National Security to prioritise it. I am happy to report that I am now aware that several Committees have sat and prioritised responses by the various Cabinet Secretaries. So, Committee on Administration and National Security, please, do the same. I know you have several other Questions coming up next week.

The next Question is by the Member for Ikolomani.

*Question No.048/2018*

CRITERIA FOR ALLOCATION OF INFRASTRUCTURE DEVELOPMENT  
FUNDS TO EDUCATIONAL INSTITUTIONS

**Hon. Bernard Shinali** (Ikolomani, JP): Hon. Speaker, I direct my Question to the Cabinet Secretary for Education:

What criterion is used by the Ministry to allocate and distribute infrastructure development funds to secondary schools, colleges and universities in the country?

**Hon. Speaker:** It is referred to the Departmental Committee on Energy to prioritise. Committee on Energy, please prioritise this matter. Do not visit the place where it was reported to have had a fire. You do not have the expertise to investigate a fire. Ask the organisation to bring you the report showing what the cause of the fire was. Even if you go as politicians with your naked eyes, you are unlikely to bring anything worthy discussion in the House. Departmental Committee on Energy, I am sure you can deal with this Question.

Hon. Shinali, ask your second Question. The other one was for education.

*Question No.049/2018*

ACTIVITIES UNDERTAKEN BY ACACIA MINING COMPANY IN IKOLOMANI CONSTITUENCY

**Hon. Bernard Shinali** (Ikolomani, JP): Hon. Speaker, the first Question was directed to the Cabinet Secretary for Education. My second Question goes to the Cabinet Secretary for Petroleum and Mining. Could the Cabinet Secretary:

(a) Explain the activities being undertaken by Acacia Mining Company in Ikolomani Constituency and, in particular, the company's role in environmental degradation?

b) What benefits, if any, are the residents of Ikolomani Constituency gaining from the said company?

**Hon. Speaker:** That one goes to the Departmental Committee on Energy. Member for Loima again, ask your Question.

*Question No.050/2018*

PALM TREE FARMING IN TURKANA COUNTY

**Hon. Jeremiah Lomorukai** (Loima, ODM): Hon. Speaker, my Question goes to the Cabinet Secretary for Agriculture and Livestock:

(a) What is the role of the Government in supporting palm tree farming in Turkana County?

(b) What initiatives have been put in place to ensure that Turkwel Irrigation Scheme fully supports palm tree farming in Turkana County?

Thank you, Hon. Speaker.

**Hon. Speaker:** When you file a Question, style it this way. If you look at the Fourth Schedule to the Constitution, you need to specify which level of Government is to tackle your issue. If you look at the distribution of functions under the Fourth Schedule, you may notice that there may be some functions that are devolved within agriculture. I suppose that you meant the national Government, Hon. Lomurukai.

Very well!

**Hon. (Dr.) Robert Pukose** (Endebess, JP): On a point of order, Hon. Speaker. Thank you, Hon. Speaker. There was a Question by the Member for Ikolomani on the activities of Acacia Mining Company in Ikolomani. You directed it to the Departmental Committee on Energy. The Ministry of Petroleum is involved in two committees of this House; the Departmental Committee on Energy, which I am a member and the Departmental Committee on Environment and Natural Resources. The issues of mining are dealt with in the Departmental Committee on Environment and Natural Resources, while issues of petroleum are dealt with in Departmental Committee on Energy. I, therefore, request that you re-direct that Question to the Committee on Environment and Natural Resources.

**Hon. Speaker:** Very good correction. I think the staff is accordingly advised. The Question by Hon. Shinali is redirected to the Departmental Committee on Environment and Natural Resources. The one by Hon. Loima is directed to the Departmental Committee on Agriculture and Livestock. The Member for Loima, you have another Question?

**Hon. Jeremiah Lomurukai** (Loima, ODM): Yes, Hon. Speaker.

**Hon. Speaker:** Proceed, but you should have asked all of them together. There is nothing out of order though.

**Hon. Member:** On a point of order, Hon. Speaker.

**Hon. Speaker:** There is nothing out of order. You may be the one on the verge of being out of order.

#### *Question No.051/2018*

#### STATUS OF IMPLEMENTATION OF FREE AND COMPULSORY BASIC EDUCATION IN ASAL AREAS

**Hon. Jeremiah Lomurukai** (Loima, ODM): Hon. Speaker, my last Question goes to the Cabinet Secretary, Ministry of Education. He needs to tell us the implementation status of:

(a) Section 28(1) of the Basic Education Act that gives every child the right to free and compulsory basic education amongst pastoralist communities with specific reference to Loima Constituency.

(b) sections 2(a) and 2(b) on the number of mobile schools and on the appropriate boarding primary schools in arid and semi-arid areas, respectively.

Thank you, Hon. Speaker.

**Hon. Speaker:** Very well. That Question is referred to the Departmental Committee on Education and Research. Member for Ikolomani ask the third Question. I am hoping that these Questions are not coming like this because they may have been deferred. This is not the intention

of this session. One Member asking three questions is an unfair allocation of time. We wanted to hear Questions from all of us. I do not know how many Questions have been filed. It may be that the ones who are relaxing have not filed any Questions.

Proceed, Hon. Shinali.

*Question No.052/2018*

GAZETTMENT OF REGULATIONS ON HUMAN TRAFFICKING

**Hon. Bernard Shinali** (Ikolomani, JP): Thank you, Hon. Speaker. My Questions have been there for some time. I would like to direct my Question to the Cabinet Secretary in charge of Labour and Social Services as follows:

Why has it taken long for the Ministry to gazette the regulations on human trafficking?

**Hon. Speaker:** This Question is referred to the Departmental Committee on Labour and Social Welfare.

The next Question is from the Member from Nakuru Town East, but he is absent. He is away on official duty. However, the staff records must be clear. Hon. Gikaria is Member for Nakuru Town East, not Nakuru West. It means that the people in Room 8 are not paying attention to some of these details. So, the Question is deferred until the Member is back in the country.

*Question No. 053/2018*

DELAYED PAYMENT OF RETIREMENT AND GRATUITY BENEFITS  
TO MR. DAVID GICHERU KINUTHIA

*(Question deferred)*

Hon. Members, I hope that everybody is in possession of today's Supplementary Order Paper.

Before we proceed to the next Order, I wish to make this Communication for the guidance of the House during voting on the Constitution of Kenya (Amendment) (No.2) Bill (National Assembly Bill No. 5 of 2018).

**COMMUNICATION FROM THE CHAIR**

GUIDANCE REGARDING VOTING ON THE CONSTITUTION OF KENYA (AMENDMENT) BILL)

**Hon. Speaker:** Hon. Members, I wish to give guidance relating to the voting anticipated tomorrow afternoon on the Constitution of Kenya (Amendment) (No. 2) Bill (National Assembly Bill No. 5 of 2018) sponsored by Hon. Chris Wamalwa, Member for Kiminini Constituency.

At his request, voting for this Bill was postponed to tomorrow afternoon. Hon. Wamalwa has indicated to the Chair that he is mobilising Members. As you may recall from my Communication last week, the Second Reading of the Bill requires two-thirds of Members in the National Assembly voting in the affirmative, as contemplated under Article 256 of the Constitution.

In this regard, may I remind you that Standing Order 70(1) provides, and I quote: “Unless the Speaker, for the convenience of the House otherwise directs, voting on a division in the House shall be by electronic voting.”

I, therefore, wish to remind all those desiring to vote on the Bill tomorrow to carry their cards with them to facilitate this process.

The Chair will look with disfavour any Member claiming to have misplaced and/or forgotten their cards. This is for general information, Hon. Members. Before the Question is put, we will have to ascertain the numbers.

As you all know, Hon. Members, where the Constitution requires a two-thirds threshold or any specific threshold, it is not possible for the Speaker to determine the number of those who vote one way or the other, by a voice vote. Some former politician - and we wish that the almighty God rests his soul in eternal peace - once referred to it as, *kura ya makelele*. So, tomorrow there will be no such *kura ya makelele*. It will be by electronic voting. You may be singing if you desire to, but in low levels, but we will have to get the numbers. Those of you who have problems, like I can see with the Member for Lungalunga wanting to draw the attention of the Chair to something that suggests that his fingers are not recognised by the machines, please go and register that kind of disability with the officer who deals with the machines. Certainly not with Hon. Sankok; he cannot register that disability. I am aware that there are about two or three Members who cannot be recognised by the machines easily. Please, register and let that be brought forward before we begin voting tomorrow. Hon. Wamalwa, continue with lobbying but only within the confines of the House.

Next Order.

## BILLS

### *First Readings*

THE COUNTY GOVERNMENTS (REVENUE RAISING PROCESS) BILL

THE SPORTS (AMENDMENT) BILL

*(Orders for First Readings read – read the First Time, and ordered to be referred to the relevant Departmental Committees)*

**Hon. Speaker:** Next Order.

## MOTION

NOTING OF REPORT ON THE ANNUAL WORLD BANK  
CONFERENCE ON LAND AND POVERTY

**Hon. Speaker:** Member for Lungalunga and Vice-Chair of the Lands Committee, I am informed that you were the leader of the delegation. But do you have a card? Are you one of the few who are not recognisable by the machines?

*(Hon. Khatib Mwashetani spoke off record)*

Misplaced? So tomorrow you will not vote. For now, I will allow you to move the Report.

**Hon. Khatib Mwashetani** (Lungalunga, JP): Hon. Speaker, I beg to move the following Motion:

THAT, this House notes the Report of the Delegation of the Departmental Committee on Lands to the 2018 Annual World Bank Conference on Land and Poverty held in Washington, DC, United States of America, from 19<sup>th</sup> to 23<sup>rd</sup> March 2018, laid on the Table of the House on Thursday, 7<sup>th</sup> June 2018.

The World Bank Conference on Land and Poverty is an annual event organised by the World Bank Development Economic Research Group. It normally attracts several countries, almost 128 in the world. This august House was represented by Members of the Departmental Committee on Lands of which I was the leader of the delegation. We were with Hon. Caleb Kositany, Hon. Catherine Waruguru and Hon. Teddy Mwambire. The Committee wishes to register its appreciation to the offices of the Speaker and Clerk of the National Assembly for the support accorded to it while undertaking this important activity.

The conference was conducted in different ways through sessions and round-tables comprising selected papers, debates on important innovations and policy issues. There were several speakers, some of them researchers. We had one researcher from Kenya, Prof. Swazuri, who did a presentation touching on different land issues, most of them related to the ones we face in Kenya. Amongst the issues which were discussed were land administration systems that rarely improve tenure security for the poor. This is an issue that we know as Kenyans that there is room for improvement. The ability to control and manage land use and how to dispose of its products and engage in transaction is important.

Participants deliberated upon the benefits and challenges of large scale agricultural investments. There were several general values of land management, amongst them economic benefits such as increase in income, improved economic growth and export of earnings and additional food crops for local consumption and new sources of Government revenue from land leases. We further noted that the risks associated with commercial land investment are not limited to those endured by affected communities, but there was mounting evidence across Africa demonstrating that land acquisition and tenure related risks can threaten viability of commercial land investment for investors.

We shared so many practices that have mostly been influenced by globalisation. We know for sure that if we implement some of the areas that we covered, we are going to ease management of land. Technology which encompasses digitisation of land management is helping

to document rights to family and community land held by traditional disenfranchised people such as forest communities, slum dwellers and pastoralists, by enabling participatory mapping and local negotiations over rights, including with investors. Amongst the areas that we covered also were participatory processes, supply chain monitoring, administrative data and data revolution.

In conclusion, the conference was a forum for participants to discuss findings from new research, examine ways to integrate these findings into policies and country strategies. We learnt from one another that, at times, land rights for the poor are increasing on a global scale. We showcased what different countries are doing as well as learning from one another. These included best practices in land registration systems, land management systems and processing time for establishing land ownership.

There are so many areas that were touched. Talking about land issues, it is high time that we digitised our management system. This is a problem that cuts across so many countries in Africa and beyond. I believe with formulation of proper policies, the ease of accessing land on transfer and acquisition will be achieved.

Thank you, Hon. Speaker, for giving me this opportunity. I move and ask my colleague, Hon. Teddy Mwambire to second.

**Hon. Speaker:** Hon. Teddy.

**Hon. Teddy Mwambire** (Ganze, ODM): Thank you very much, Hon. Speaker. I take this opportunity to second the Motion.

**Hon. Speaker:** Is that the Member for Ganze?

**Hon. Teddy Mwambire** (Ganze, ODM): Yes, Hon. Speaker.

**Hon. Speaker:** Proceed.

**Hon. Teddy Mwambire** (Ganze, ODM): We got an opportunity to ventilate on a number of issues as shared by the Mover. Among the issues that we shared was digitisation which has been a very big problem in this country. During the budgeting process, we had some issues. The National Land Commission (NLC) and the Ministry had the same proposals and we thought it wise to let the Ministry handle this concept.

The challenges that we face in this country appear to be very heavy, but with reasoning and what we have learnt from other countries, we have discovered that, at least, in this country, we have managed to move in a better position. The biggest challenge which ought to be looked into... The new technologies that we learnt will help in documentation. Family and community lands held traditionally by people such as forest, communities, slum dwellers and pastoralists will be taken care of by enabling participatory mapping and local negotiations.

We also got an opportunity to get clear documentation on improved land management systems. These are some of the things that we learnt. This will improve tenure security and reduce disputes, assist planning and help in collection of the tax to bridge the tax gap.

Hon. Speaker, the participatory process is very important even in the Constitution. This can help when incorporated into the country's land governance compared to global best practice. This assessment then fits into the country's strategies which allow monitoring using administrative data and provide a basis for field experiments and new ways of combining special administrative and household data, to put into practice policies to reduce spatial and increase density.

Hon. Speaker, we also got an opportunity to get an overview of the supply chain monitoring. This enhanced ability to monitor throughout the supply chain, allows agribusiness traders, processors, consumers of goods and firms to make better sourcing decisions and disclose information in compliance with global goals such as pledges for zero deforestation. This was an eye opener for the Committee and I believe, if this Report is adopted, it will bring a lot of sanity and will reduce the challenges that we are facing as a country.

With those few points, I beg to second. Thank you.

*(Hon. Joseph Limo stood up while the Speaker was on his feet)*

**Hon. Speaker:** Member for Kipkelion East, you do not do that.

*(Laughter)*

*(Question proposed)*

Hon. Members, I can almost tell, especially those who come after we have started. I can tell you who came in at what time. The Member for Makadara came in at 3.29 p.m., and at 3.30 p.m., he had already walked out. The Member for Kiharu just walked in. He was walking slowly. It is not time to contribute yet. You see...

**Hon. Ndindi Nyoro** (Kiharu, JP): *(Inaudible)*

*(Laughter)*

**Hon. Speaker:** Let me hear the Member for Kitui Central because, in any event, his name is at the top. The Member for Kitui Central.

**Hon. Makali Mulu** (Kitui Central, WDM-K): Thank you, Hon. Speaker. You know your deputy keeps on throwing... Anyway, let me make a few comments on this Report. The House is being urged to note the Report. I congratulate the Members who travelled to Washington DC to attend that important conference.

However, we all know that land is one of the many factors of production. The reason this workshop was discussing land and poverty matters is because land can contribute to poverty or reduction of poverty. However, listening to the Report, maybe, what would have helped us is to see which gaps exist in terms of the way we manage our land. Listening to the Report, you realise that the way we manage our land in terms of land administration, we are on the right track. If it is digitisation, we are already implementing it. If it is a matter of improving the way we do our things and ensuring that the poor access land, we are also trying. However, I have about three important issues which I want to raise.

First, the thing that is causing problems to us in this country and actually contributing to poverty is people not being able to access land because of absentee land ownership. This is very common at the Coast where many Kenyans have huge tracks of land which they are not using. We are a country that wants to move forward and so, I would have wanted to hear what other countries are doing in terms of addressing absentee ownership of land, that is, where someone

owns land but they are not using it for farming or investing in it. That is an issue that would have helped us in terms of improving the management of land in this country.

Second is the issue of speculative ownership of land. This is where people buy land for purposes of selling it at a future date to make profit. This is very common in the country. So many Kenyans have bought land which they do not utilise and, as a result of that, they do not make productive use of the land. Over time, people remain poor.

The other thing which is important is implementation. We have heard from the people who went to the USA confirming that digitisation is slow in this country. The question is: Why are we slow and what lessons were learnt through the exchange of experiences and sharing of lessons learnt? How are the other countries going about it? Kenyans would benefit from answers to those questions.

To me, the issue is the implementation of our policies and strategies. Kenya is one of the countries with very well documented policies and strategies, but we have a challenge when it comes to implementation. Even as we go out there to interact with our colleagues from other countries, one of the things we should look for is how other countries fast-track the implementation of important policies and strategies. That would have been addressed very well in the Report. But as we move forward, these are some of the issues we would be looking into. The whole idea of land and poverty being the title of the conference is very important.

My last point will be on our systems. When we go out there to interact with our colleagues, where can we add value? What are the gaps that we need to address so that we get to the level of other countries? I had an opportunity to go to Indonesia. In fact, in some countries, there is nothing called individual land ownership. All land is owned by the Government. If you have a project you want to implement and you require land, you apply to the Government and convince it that you are going to add value and also benefit the citizens of that country. So, at the end of the day, land is not individually owned and the issues of land speculation and absentee ownership are automatically done away. It is because you only apply for land when you need it.

With regard to the Standard Gauge Railway (SGR), the kind of money that this country paid to individuals to compensate them for the land taken would have done another parallel SGR line all the way from Naivasha to Mombasa. Those, to me, are the critical issues. As we discuss, it may be difficult to say land should be taken from an individual. However, as we move forward, we need to some extent discuss the value for land because we have inflated its cost in this country to an extent it is almost becoming impossible to implement programmes which are for public good. If we move in that direction, then reports like this one will make a lot of sense, add value to our deliberations and help Kenyans in general.

Thank you, Hon. Speaker. With those remarks, I beg to support.

**Hon. Speaker:** Except, of course, we have what we call our land tenure systems. If you look at Chapter Five of the Constitution, it seems to entrench some of these issues. So, as we admire certain things happening in other countries, we have to think of what we are doing to change the mindsets of our people. The next one on the list, because we agreed to follow it ...



Member for Kiharu do not worry, you are not too far away. The next one is nominee 001, the member who wants to register Hon. Mwashetani for tomorrow's voting.

**Hon. David ole Sankok** (Nominated, JP): Thank you, Hon. Speaker. I will gladly register him.

The issue of land in Kenya, apart from being emotive, we have not capitalised on its use. A high percentage of our land mass is not being used for production. A large chunk of our land is owned by absentee landlords. When a big chunk of land is owned by a few individuals, the rest of the people work as slaves in that land. Therefore, you will find poverty will always be predominant in our country. I have gone through this Report and it is nice. When we liberalise land like what South Africa and China did, production and the economy grows. That is why I support this Report.

Today, I read a statement about what happened three days ago in Isiolo, where seven governors and several Cabinet Secretaries were racing in wheel chairs to create awareness about persons living with disabilities and the economic part...

**Hon. Speaker:** Relevance as per Standing Order No.95.

**Hon. David ole Sankok** (Nominated, JP): Hon. Speaker, I support this Report.

**Hon. Speaker:** Next is the Member for Kiminini.

**Hon. (Dr.) Chris Wamalwa** (Kiminini, FORD-K): Thank you, Hon. Speaker for giving me an opportunity. I want to thank Hon. Mwashetani and the rest though their Report was very brief. I wished to hear something more for purposes of benchmarking. In this country, land is very critical because it is a factor of production and contributes heavily when it comes to poverty reduction.

We know very well that we have the housing agenda. You can only build houses if there is land. Right now, when you go to many urban cities, people have put up block apartments for purposes of ownership. As we speak, we have an issue with the Seefar Apartments. We have had this issue of people building on riparian land. I wished to hear what other jurisdictions have done when it comes to riparian land. A lot of property is being destroyed in this country because of the element of riparian. An example is a property along Lang'ata Road with many flats and apartments near Nairobi River. The definition of riparian land is that which is between six meters and 22 meters from the river bank and that property is 34 meters away.

I wanted to know according to international standards what the definition of riparian land is because some people are abusing it. The National Environment Management Authority (NEMA) and Water Resources Management Authority (WARMA) for instance are using it for purposes of corruption. People bought property and they were told it was owned by the National Housing Corporation (NHC), who sold it to a private developer, who built the houses and sold them. The late Hon. Soita Shitanda who was by then the Minister for Housing officially launched the project. Therefore, we need to benchmark and see what riparian land is. I have seen some governors saying rivers should be moved. So, did you ask about riparian land according to international standards? We need to know more about this issue. So as you benchmark, you must paint a picture of the local scenario and how land is used.

In this country, land has become very expensive. In fact, many investors are running away because of the cost of land and absentee landlords. There are huge chunks of land which are not used for productive purposes. I think we should put a policy in place that if you have land in a city which lies fallow for purposes of speculation, then the Government should compulsorily acquire it. So, they can go into production and it can help in Public Private Partnership (PPP) for purposes of reduction of poverty. These are some of the issues we wanted to hear.

We have been told there was a presenter called Swazuri. Is this Prof. Swazuri, the Chairman of NLC? We should borrow something from there so that the NLC which has been a problem in this country can advise the Ministry of Lands to increase productivity. These are some of the issues we wanted to hear about other cities. As Hon. Makali has said... I was in Germany and the Government owns the entire land in the urban cities and it is the one that develops and sells to individuals. Maybe, it is high time we borrowed this idea particularly for Nairobi City. The idle land which is all over, the Government should acquire it in a compulsory manner so that we can develop it as a way of advancing the Agenda Four of housing for purposes of productivity and reducing poverty.

Thank you, Hon. Speaker. I support the Report.

**Hon. Speaker:** Hon. Wamalwa, again compulsory acquisition demands that there must be reasonable and fair compensation. I am sure you have also heard Hon. Mwashetani, as he moved, saying that the said gentleman you have referred to as Swazuri was making a presentation. You have said he should have learnt something which will help the Ministry. If this is the same person who is the Chairman of NLC who went to share that knowledge in Washington, then, it must be in abundance in our Ministry of Lands. I suspect the Member for Ruaraka Constituency knows a lot more about this. Member for Kiharu.

**Hon. Ndindi Nyoro** (Kiharu, JP): Thank you, Hon. Speaker. I rise to support this Report. Land is a very important factor of production and, according to me; it is the second most important factor of production apart from labour, which is human beings.

I have gone through the entire Report and I wish I was in that Committee so that I could have listened to the person who gave the key note speech, a gentleman called James Robison. I want to recommend a book he has written to all Members called: *Why States Fail*. It is a very important book especially to any leader in a growing economy like Kenya. Historically, there is a very clear correlation between land policy and economy growth. I say this because there are so many areas to borrow from. Economic growth is realised when land is liberalised. Any time land is governed in a command system, there seems to be a lot of chocking of the economy. This is because it is a very important factor of production to any private investor.

An example is the 1950s growth of southern America. Then, land was owned by a few people and, of course, they hired slaves. There is a correlation of Gross Domestic Product growth especially between northern and southern America. In northern America, where land was a bit liberalised, there was a clear growth of the economy in that area. We can also borrow about land policy and its importance to the growth of any economy by the trends in China. During the reign of Mao Zedong in China, the famous Chairman of the Communist Party, there was a policy he

came up with that was called: “The Great Leap Forward.” Another one that followed closely was the “Cultural Revolution.” The government was forcing farmers to work like slaves in China in the land that was more or largely owned by the Government. There is a very clear difference between the reign of Mao Zedong then and the time of the great leap forward and the reign of a person like Deng Xiaoping. When Deng Xiaoping became the Chair of the Communist Party, one of the things they did with the entire leadership of the Communist Party is to kind of liberalise agriculture. This unlocked productivity of agricultural products in China and within less than 10 years, agricultural productivity in China had increased by over 30 per cent. Therefore, all I am trying to say is even historically, as it is true now, there is a clear correlation between the land regime or the land policy and the growth of any economy.

Even as we start the economy itself because that policy is more important than all the other things, there is a reason why industrialisation came just after majority of countries in the world started liberalising land. If you compare the regimes of feudalism, where a few landlords used to own land and then all the other people would work and take some amount of commodity to the land owners, and the agrarian revolution, there is a reason why industrialisation had to wait until we had the Agrarian Revolution when you liberalise land and give a person land to maximise on its productivity by the mix of the factors of the land owner.

Even as we talk about land, we also have to talk about the commodities that are found within that land. One of the clear commodities, and I am not talking about this because I am from Murang’a – as you know we are demanding to be paid for our water by all these Nairobians and even those seated here in this House – I want to talk about is minerals. There is a very clear correlation of how we manage the mineral resources that are found in land in so far as the growth of the economy is concerned. Even as we debate this Report about land, I urge that we also think about minerals in those countries because they are found in this land. In my opinion, we ought to go the same way or the same path that Botswana travelled in around 1960s when even the small miners in Migori can be liberalised to be actually authentic miners and not be branded as people who are engaging in a criminal activity. When we create this kind of notion that some of these economic activities like mining can only be done by big companies, we will only be promoting extractive institutions whereas we can also promote our small miners and the so-called small people to engage in those economic activities.

I have gone through the lessons learnt in the Report and it is very important that we start moving towards the regime as was mentioned clearly by the Chair when he was moving the Motion on digitising our land. Currently, within the land transaction is a den of conmen. It is all about the issue of ownership that you can get five people owning the same piece of land. That sends a very bad warning to any person who would want to invest in Kenya because, as you know, every investment is based on land. If you are not even sure; if there is no sanctity of the documentation of the ownership of land, that sends a very bad signal to us and even to other investors who would want to invest in this country. We can borrow a lot from geospatial technology. We can borrow from the Global Positioning System (GPS) where a person at the Ministry of Lands can just go to the system and go to a piece of land, for example, in Migori or

Murang'a and they can be able to trace the history of that land like the first owner up to the current owner. That will eliminate a lot of conmanship that is now bedevilling our land sector and actually give a lot of warmth to the investors who would want to invest in this country, but are not sure about our land transactions and how we deal with land.

Hon. Speaker, allow me to be a little off the topic to comment about something else. This is about malapportionment especially when we come to dividing land in terms of political jurisdictions like constituencies. The entire country is founded on land and, therefore, I believe this is a point that is associated with the Report before us. I believe one of the things that make us keep on chasing after land as Kenyans is because that is the only thing with value. When you make some money, for example, instead of taking it to the capital markets, we find solace in investing in land. Then when we do that, we create a lot of demand for land - even unused land - in comparison with other countries like America where the richest are those in technology. Here in Kenya, the richest are the people who own large tracts of land.

Going back to malapportionment, I come from a constituency that is vast in square kilometres. When I compare the place that I represent - that is, Kiharu - to other areas, I represent a place of around 120,000 voters with a relatively huge land mass. When I compare the same to other constituencies of Members - some of whom are seated here - I represent 120,000 people from Kiharu and there is a person representing 10,000 people in another constituency with many more times the landmass of Kiharu. I think there are things we need to align so that a person will always be treated not in terms of the number of kilometres...

**Hon. Speaker:** On the issue of miners, you just need to look at the nitty gritty in the Mining Act which was passed by this House and you will be happy to note that the small miners were very well catered for as you suggested, Hon. Nyoro.

Of course, many Members should be asking: With all these you are noting as being in this Report... You said that the "House notes". So what do you do after you have noted? What will you do with the Report after you have noted it? I hope Hon. Mwashetani that, even after the House notes it, your Committee will take it up and try to see what is in the Report that can even be developed into legislation or what can be given, in a better way, to the Ministry.

Let us have the Member for Mandera North. That is where he was. Obviously, he does not look like that one. The next one is the Member for Emuhaya.

**Hon. Omboko Milemba** (Emuhaya, ANC): Thank you, Hon. Speaker. I just have a few comments to make about that Report. I would like to thank the delegation, under the leadership of Hon. Mwashetani, that went to the USA and came up with the Report.

When we go for such tours, we come back and table reports. Can we develop this Report into something that will assist the country instead of just going to the USA, coming back and tabling a report and then taking a bit more time to discuss it? How does it benefit us? It must be turned into some form of law, regulation or statute that will then affect the way we manage land. If that happens, we shall benefit. The conference was held in America, which is one area where land ownership was influenced by the First Occupancy Theory.

In Kenya, land ownership is a challenge. To date, there are people still being moved from their pieces of land. It is good that this Committee went to America where the First Occupancy Theory has been used properly and has influenced property ownership there. I hope the

Committee can apply the First Occupancy Theory and what they learned in America so that we do not have squatters when we know very well that they should own the particular pieces of land. We should not have the problem of squatters in Kenya if we took those things a bit more seriously.

Secondly, as we discuss the land issue and the land Report in this House, most Kenyans do not have title deeds. Even in Emuhaya Constituency, where I come from, and in many other constituencies, title deeds remain a challenge for Kenyans. How I wish we could also borrow from that particular area and enable Kenyans to get title deeds easily without too many complications. We can then digitalise the title deed records at the Ministry of Lands, so that Kenyans can then use them as collateral to get loans and benefit themselves. Whereas a few Kenyans benefit from land because they have title deeds, majority of Kenyans have no access to title deeds.

I support the Motion.

**Hon. Speaker:** I only hope that we do not advise our constituents to go for loans once they get title deeds. You only go for a loan if you have a plan of what you want to do. It should not be that you get a title then you go for a loan. The land will be sold off because banks will want to realise their money. Again, that could multiply the poverty levels. Let them get titles to utilise the land.

Let us have the Member for Ruiru.

**Hon. Simon King'ara** (Ruiru, JP): Asante sana, Bwana Spika kwa kunipa nafasi ya kuchangia Hoja hii. Niko katika Kamati ya Ardhi and ni vizuri niunge mkono Hoja hii kwa sababu ina uzito kimaendeleo.

Kama vile wananchi wanajua, chochote kinachotendeka katika nchi yetu huwa kinahusiana na ardhi. Ardhi ni muhimu. Hoja iliyo mbele yetu inahusu ardhi na umaskini. Ardhi ndio huleta umaskini au utajiri. Kama vile imechangiwa hapa, duniani, utaratibu na upangaji wa ardhi uko wa hali ya juu sana. Wakenya wanastahili kusoma Ripoti hii. Tumeiangalia vizuri na tukaona kuna uzembe kidogo. Hata katika yale maeneo yaliyo karibu sana na Jiji la Nairobi, cheti na utaratibu wa upangaji wa ardhi bado uko nyuma kidogo. Kama vile Ripoti imeonyesha, yale maeneo ambayo yameendelea, haswa maeneo ya Ulaya, unapata kuwa kama eneo limetengwa kuwa la kilimo, linakuwa la kilimo. Kama eneo limetengwa la viwanda, linakuwa la viwanda. Huo ndio utaratibu tunaopaswa kuiga kama Wakenya ili tuone kama nchi yetu itaendelea.

Kuna changamoto kubwa sana. Wakati una shamba na huna cheti, huwezi kujenga nyumba ya kudumu kwa sababu hujui kesho itakuwa vipi. Ni jambo la busara kwetu sisi kuchukua hatua kutumia teknolojia kupata cheti au mpango mwafaka wa ardhi ili watu waweze kufanya kazi ya kufaa katika mashamba yao.

Uzembe mwingine ulio katika nchi yetu - na nimejaribu kuleta Mswada kuhusu jambo hili - ni maeneo yaliyotengewa mambo maalum, haswa shule na hospitali. Maeneo haya hayana vyeti na yanatumika kiholela. Ndio maana Mbunge mwenzangu akasema kuwa wakati Serikali inataka kuendeleza miradi, inakuta lile shamba lilinyakuliwa na inaigharimu Serikali pesa nyingi sana kurudisha lile shamba mikononi mwake. Kwa hivyo, tukitumia hii Ripoti kama kielelezo cha kutumia ardhi kupunguza umasikini na haswa kuendeleza nchi, Kenya itakomaa na kuendelea kama nchi zingine duniani.

Ni jambo la kuhoofisha sana ukiangalia yale maeneo yametuzingira. Hawana shida ya ardhi kama Kenya. Ingawa Kenya inajaribu, bado tuko nyuma. Kuna swali umeuliza hapa. Tumesoma Ripoti hii, lakini, sasa tutafanya nini? Ni jukumu letu sisi Wanakamati na Wabunge

wote kuchukua hatua mwafaka tukitumia sera zitakazotupigisha hatua kimaendeleo. Ni changamoto kwa sisi wote Wakenya - moja kwa mwingine - kuchukua hatua na kusukuma mambo ya ardhi, kupunguza umasikini, tukitumia masomo katika Ripoti ambayo imewekwa mbele yetu siku ya leo.

Naunga mkono Ripoti hii.

**Hon. Speaker:** Let us have the Member for Karachuonyo.

**Hon. Adipo Okuome** (Karachuonyo, ODM): Thank you, Hon. Speaker. The land issue is very important. I support the Report.

Much as I support it, like my colleague mentioned, land in most parts of our country is not registered. The disadvantages with not registering land are numerous, and you cannot count them all. In addition to this, we have seen something very disheartening. We have seen on television a beautiful building that is earmarked for demolition. Somebody can spend as much as what that building must have cost and then he is later told that the building must come down because it is on riparian land. The issue of riparian land needs some action. What is riparian land? We think of rivers when we talk of riparian land. Does that include streams? We do not have a river in Nairobi. We have streams feeding into rivers. If I am right - and maybe land experts can prove me right or wrong - is it right for those buildings to be demolished?

When I was in Mombasa, I saw a wonderful hotel and part of it was on the ocean. Can that qualify to be riparian land which is being misused? If you go to London, houses are built on rivers, even near River Thames. This kind of thing goes on in many other countries. Are we not developed enough to use land which is near rivers and protect them as well? These are the kinds of questions we need to address instead of discouraging the building industry by pulling down beautiful houses. Officers who issue certificates and tell people to build are very senior Government officers. They give you the go ahead to construct, but another Government officer comes later and says that the building must be demolished. Who are we going to believe? What authorisation will we trust, if we cannot rely on what Government officers give us? We need to take some very drastic action and define a river in relation to a stream, so that in Nairobi City, we can know when and where one can build a house. If we do not do this, we are killing people's initiatives. When you want to calculate the Gross Domestic Product of your country, the building industry plays a very important role. So, if we are going to interfere with it to this extent, this country will go down in development and not progress towards the desired goal.

In addition, it is time we made sure that all our land is registered. In a number of cases, you find that a piece of land is owned by two different people. That means that the title deed you hold is not trustworthy. You may think that you have a piece of land, but it is not yours because somebody else owns a similar certificate. We still have many things which we need to get right so that our land and buildings are safe, valuable and one can rely on them for whatever purpose.

With those few remarks, Hon. Speaker, I support the Report.

**Hon. Speaker:** Member for Mosop.

**Hon. Vincent Tuwei** (Mosop, JP): Thank you, Hon. Speaker. Let me thank the Committee for the wonderful and well-done Report, which is as a result of the visit they made. It is an eye opener.

Land in this country has become a source of conflict. It has become a curse instead of a blessing. Relatives, brothers and sisters kill one another every time because of land. Issues of land are historical. If we go to the Bible, the source of conflict that is profound is on land matters. The major issue which we have in this country is that our courts are chocked with many cases on land disputes. Most Kenyans do not understand how to go about land matters. The laws,

provisions and regulations on land matters have also become an impediment, especially on succession, land buying, transfers and conveyancing.

The third issue of concern is the subdivision of land in Kenya. Land that is highly productive for food is now being turned into land for dwellings. If we do not check it early enough, we will have a problem on where and what is viable on land use. It is now being turned the other way round. Land for food production is being turned into real estates. The challenge in this country is planning activities on our farms, countryside as well as urban areas. If we do not plan our land, cities and municipalities, we will have a challenge in land use. We must borrow from what other developed countries did to overcome the challenge that we are going through today. The Ministry of Lands is overwhelmed by cartels, *mafia*, malpractices, corruption and officers who have been appointed to the National Land Commission have also become conduits of the same problem that they were entrusted to solve. That is the reason the NLC has its challenges. They are losing a lot of litigations and investigations. One wonders who has the right or power to unlock the current challenge. Regimes come and allocate land. Every successive regime tends to outdo the other by saying that the former issued land illegally. It is high time we sorted out this matter. If one has a title deed, it should be valued and considered as security. People who have been given certificates refer to them as mere paper or toilet paper. This has to stop. We must give title deeds the sanctity the Constitution and the laws provide.

As I conclude, I urge Kenyans with land disputes to look for different ways of resolving them. The courts may not be the right place to resolve some of the land issues. It is better to consider other mechanisms of sorting out land disputes because it will make the process faster and will also bring harmony. I prefer those who live in a particular area and understand the history of a given land to be given the full mandate to arbitrate, especially on matters to do with community land, trust land and land sales that have become an issue. For example, if you go to Eldoret courts today, you will be surprised because 90 per cent of the cases are related to succession, land sales and conmanship. They are being addressed. However, this challenge is as a result of people who have perfected the art of manipulating records and being at the centre stage, yet they are the custodians of the said records.

Let me thank the Committee for this Report. However, I expect more to be done by sensitising our communities and Government officers to be more responsible and respect the sanctity of title deeds. They should honour all the processes that may have been done. Any land that may have been given out unprocedurally should be repossessed in a proper and humane way.

Thank you, Hon. Speaker.

**Hon. Speaker:** Member for West Mugirango

**Hon. Vincent Kemosi** (West Mugirango, FORD-K): Thank you, Hon. Speaker for giving me this opportunity. I also rise to support the Report. Land is an emotional issue in Kenya. Before we promulgated the new Constitution, we had over 20 statutes governing land administration in Kenya. However, after the promulgation of the Constitution and after 2014, these statutes were reduced tremendously.

With the current laws, the problem of land has not been solved, particularly on land ownership in Kenya. The process of acquiring land is still cumbersome. As a country, we have been unable to adopt new technologies so that people can own land as fast as it is required compared to western countries. The Ministry of Lands, over the years, has come up with a policy saying that it is going to digitise or adopt new technologies in land registration. This has not been realised to date.

It is a cumbersome and tedious process of owning land in Kenya particularly in registration. This Report has come at a time when as a House, we need to evaluate ourselves and come up with laws so that we can adopt new technologies in land registration.

Land, as the main economic factor through which our economy grows, needs to be looked at. In Kisii, where I come from, a person who owns one acre of land is rich. Currently, people own a quarter of an acre and we are unable to sustain lives. However, if you go to other parts of the country, like the Coast Region, you will find absentee landlords with land that has been idle for years. It is, therefore, upon this House to come up with some guidelines or laws so that idle land can be repossessed by the Government and given to the landless people, for example, those from Kisii who are ready to farm, but have no land. So, if we come up with policies, we will be able to get the idle land and give it to the landless. Our economy relies purely on land. Our livelihoods depend on land.

I support the Report. It is high time the House came up with regulations for land management and administration in this country.

Thank you, Hon. Speaker.

**Hon. Speaker:** Member for Kitui East.

**Hon. Nimrod Mbai** (Kitui East, JP): Thank you for giving me this opportunity to air my voice in supporting this Report. First of all, I would like to highlight the patriotic duty of every Kenyan. But it is very difficult for anybody to claim to be patriotic when they do not own any part of this country. This then brings me to the issue of land ownership. The only way to own land legally is through a title deed. In the spirit of liberalising land, we need to conduct massive land adjudication so that every Kenyan can have a title deed to show ownership of land. As we speak, we have much community land out there which is called trust land. This land is Government owned and is basically ancestral land. I have no right to land owned by my great grandfather until I have a title deed to show ownership of the same land. I know the Government, through its machinery, can introduce in the House, and in the wisdom of the House, create a special fund to fast-track land adjudication so that every Kenyan can have a title deed in the next one year in the spirit of liberalisation of land.

On the same note, there are areas we have exploration of minerals in rural areas where people do not own land. An example is coal exploration in the Mui Basin. The people living at that basin in Zombe/Mwitika Ward, Mutitu/Kaliku Ward and Mui Ward have no title deeds. Nobody has a title deed. The county government is planning to explore and mine coal. Discussion on moving people who have no title deeds from their land to pave way for coal mining is very difficult. Somebody cannot negotiate and show interest that his land is being repossessed when they do not have ownership. Through the liberalisation programme, we should look for a simpler way of owning land like a chief writing a note that indicates ownership and it is valid showing that someone owns a particular piece of land. In the same spirit, we can set aside enough money to fast-track land ownership in the country.

In many areas, especially at the Coast, you find absentee landlords. For example, you may find a Sheikh Seyyid in Oman owning land in Mombasa while Kenyans around him do not or do not have title deeds for any piece of land. They even do not know how a title deed looks like. We need to highlight the first bullet on liberalisation of land that every Kenyan in a measurable timeline should be given a title deed to show land ownership.

We should also look at areas where the Government or county governments own huge chunks of land. We should look for ways for the Government, through the Ministry of Agriculture and Livestock and county governments, to help people who live on specific pieces of



land to till them. I am thinking about establishment of irrigation schemes and water points for pastoralists. Huge chunks of land are not utilised because they lack social amenities and infrastructure like electricity, roads and security in parts of the North Rift, North Eastern and parts of the Eastern Region in Ukambani. The Government should come in and provide basic infrastructure to enable farmers and livestock keepers to utilise the land properly. Although a certain piece of land may be owned by the Government, a farmer adjacent to the farm can use it to plant crops or keep livestock. This will grow our economy and provide jobs in the villages.

In the recent years, there has been a decline in livestock in our country. In another 20 years, Kenya may import meat from our neighbours like Sudan because the number of cattle in Kajiado, Garissa, Wajir and other areas has declined. Areas where we have large herds of cattle have declined drastically in the last 10 years because people cannot manage because of the various challenges. We have huge chunks of land where livestock farmers can take advantage of. These huge chunks of land lack the necessary facilities like water and infrastructure. As part of this Report, I would request Hon. Mwashetani - coming from the Coast where people are mostly affected by this issue - to look for a way of fast-tracking the issue of land ownership and title deeds. There is also the issue of providing basic facilities like water, security and roads. People bordering public land should be allowed to take advantage of the land and engage in basic farming.

With those few remarks, I beg to support.

**Hon. Speaker:** Now, Hon. Members, we may begin winding up the debate. Member for Suba North.

**Hon. (Ms.) Odhiambo-Mabona** (Suba North, ODM): Thank you, Hon. Speaker, for giving me this opportunity. First of all, I support the Motion. In supporting the Motion, I want to give a different angle which is looking at the role of land and the feminisation of poverty. Again, from what the Members have said, ownership or access to land opens doors for wealth creation and acquisition. Some of the ways in which it will enable one to access or acquire wealth is that when you own land or have access to land, you can sell it, use it to acquire loans or use it productively by farming. Occasionally, you may be lucky enough that there are minerals in your land and in such a case, many people have benefited because they have a lot of compensation by the Government.

Land also provides one of the most basic needs for human beings, which is the need for shelter. The reason I want to link the issue of ownership of land to feminisation of poverty is because traditionally, most communities did not allow women to either own or use land. If you are speaking from your ancestral homes, almost all communities did not recognise the rights of women to own land. When you go to where you are married, they also do not recognise your right to own land. If you remember, when we were doing the constitutional review, one of the most contested areas was women's rights to own land. Indeed, we almost lost the Constitution because of that alone. When you look at it, because of that, you actually discover what many men do over the years. Whenever a resource becomes beneficial, then they are willing to change the traditions to suit them. Examples of some of the names of clans in Luoland that show you what original traditions of the Luo were include *Kanyaluo*, which means it was the home of the Luo woman; *Kanyamwa*, which is the home of the woman who was not a Luo; *Kanyadoto* and many others. This means that traditionally, even amongst the Luo Community, the person in whom the right to land resided was the woman. But over the years, when we saw the beneficial aspects of land, then suddenly, it became an issue of gender discrimination. Because of that aspect of gender discrimination, many women are not able to own land, use land or transact in

land. Because women are the ones who play mainly the nurturing and caring roles, this has led to the feminisation of poverty. You find that in Kenya, and in Africa as a whole, majority of the most poor are women because they do not have access to ownership or control of land. Even though the Constitution provides for the ownership of land by women, many communities have not yet adopted that constitutional provision.

Hon. Speaker, I know you have challenged us as a House that it is not enough for us to pass or note this Report and challenge the Departmental Committee on Lands, but we need to go further. I would want to encourage the Departmental Committee on Lands that one of the ways that they can go further in ensuring that we give effect to this is to come up with a law that specifically deals with the issue of feminisation of poverty through disenfranchisement of women in land ownership, in acquisition of land and in the utilisation of land. One way of doing that is to have a paradigm shift through civic education and through enhanced litigation especially in succession matters so that even where women have been disinherited by communities, the Government will forcefully return them and enable them to acquire land so that poverty does not bear a female face.

I thank you.

**Hon. Speaker:** Of course, you noticed recently that the Supreme Court is also expanding the jurisdiction on matters to do with property ownership and more particularly land. The way they have gone about expanding jurisdiction in that area is welcome. Well-spoken, Hon. Odhiambo Akoth. I have to keep looking at the name that appears here.

Let us have the Member for Nandi.

**Hon. (Dr.) Tecla Tum** (Nandi CWR, JP): Hon. Speaker, I stand to support this Motion. Land is a factor in production. There is high correlation between land ownership and property. If land is not managed, there will be a low correlation and the poverty index will be high. One of our pillars of Jubilee is food security. If we manage our land and use it the right way, we will have enough food in our nation. It is a factor of production. If we manage it, there will be economic growth, increased production, poverty reduction and food security.

When we talk about land management, we are talking about our forests. There is the issue of deforestation in our country. Hon. Chepkut brought a Motion here that was passed on the need to plant trees in our farms and public facilities. We need to do that as a way of managing our land. Also, we have to manage our dry areas like North Eastern, Turkana and others. We need to do irrigation like Israel so that our people will have food.

Another issue is deforestation. We have talked about climate change here. We know there is ozone depletion. We know the issue of diseases. So, we need to manage our land. There is the issue of title deeds. I know something good is being done in the Ministry of Lands, but for those who have not got their title deeds, there is need to speed up so that people can access loans in banks and develop their land.

Also, there is the issue of land which is owned by foreigners. A case in point is the tea estates in Nandi County. We need to revert them to the original owners when leases expire. This should not just be for free, but they should pay, so that they can utilise their land properly and reduce the high index of poverty in our land.

I support this Motion. We need to manage our land well because land is life. Land is a source of life. It is everything to us. For us to realise Vision 2030, we need to protect our land. We need to digitise the management of our land, so that siblings do not kill one another when parents are no longer there. Everyone will own their small piece of land.

I support the Report.

**Hon. Speaker:** Member for Westlands.

**Hon. Tim Wanyonyi** (Westlands, ODM): Thank you, Hon. Speaker for giving me a chance to contribute to this Report.

The problem we have in this country is to do with land management systems. This mess was brought about by the colonial government. Succeeding governments have not succeeded in solving this problem. An example are the communities that reside in urban areas like Kibera and other informal settlements. I have a case in mind of a community residing in a village called Kibagare in my constituency, who are being hounded out of their land because the management systems do not recognise ownership by the poor. Poor people are just grouped together and never allowed to own the land on which they reside. This has brought a lot of mess and confusion. We sometimes see people being evicted in ways that are not humane. We must find a way of dealing with land ownership issues. We need to review our land tenure system. We find this to be a recurring problem especially in urban areas.

The other thing is how to use land economically. You will find land sub-divided in very small uneconomical pieces that do not add value. The Indian Government has a system where they move people to urban areas called 'model towns' and then improve the size of land, which is cultivated in large-scale using the cooperative system or large company system, which are mostly owned by cooperative societies. Food production improves. India is one of the countries that have the highest population in the world, but we do not hear of Indians starving yet countries like ours, which have very small populations, have challenges with food security. So, if land is well managed and properly utilised, communities and countries will benefit in their economic operations. When it is not well done, there is a lot of wastage and people do not benefit.

The other thing is that there is always conflict between communities. Some communities are very aggressive on land. The Government, especially during election times, sometimes promises communities that it will settle them on land that is not properly theirs. We forget about it after elections. This is something we must address and find a lasting solution.

Lastly, the NLC is an 'animal' that we created in our Constitution yet it is not helping much. In fact, they are creating more problems than solving the existing problems. The NLC was expected to initiate a system to properly manage the land management systems. That has not been the case. Instead, we now find more grabbers. People are speculating and taking ownership of land whose leases have expired especially in Nairobi. They try to sell such land at exorbitant prices. This has brought a lot of tension. People are sometimes robbed of their property. They are not even given a chance to renew their leases. Therefore, we must find a way of improving the land management systems in our country.

Thank you, Hon. Speaker, for giving me a chance to contribute to this Motion.

**Hon. Speaker:** Hon. Kimunya.

**Hon. Amos Kimunya** (Kipipiri, JP): Thank you, Hon. Speaker. I rise pursuant to Standing Order No.95. Yes, there has been quite some interest in this debate although the Motion is just for noting the Report of the departmental committee. Listening to the debate, you notice that we veered off from the Report to a general discussion. Perhaps it might be a good point to ask the Mover to respond.

**Hon. Speaker:** Yes. It looks like it is a duplication because this is a general debate for noting. We do not want to spend a whole afternoon noting. I think I should put the Question that the Mover be now called upon to reply.

*(Question, that the Mover be called*

*upon to reply, put and agreed to)*

Mover?

**Hon. Khatib Mwashetani** (Lungalunga, JP): Thank you, Hon. Speaker. If it is possible, allow me to donate a few minutes to some Members. There is Hon. Waruguru, whom we were with during the Committee's deliberations.

**Hon. Speaker:** It is never done that way. Spend a little more time in the House even as you travel to Washington DC. It is never done that way. Just reply. This is not like in a political rally where you say you want to speak for two minutes, with every villager and MCA saying the same. It is not done that way here.

**Hon. Khatib Mwashetani** (Lungalunga, JP): It is noted, Hon. Speaker. Thank you so much. Let me first of all take this opportunity to thank all the Members who contributed to this Motion. There is so much that has been said. Let me assure you that we are going to sit down and look at ways of reviewing our land policies. It is true that land has become an issue. As we speak, we have a lot of issues touching on land ownership on our table.

To react on the issues that have been talked about, there is what we call duplication of responsibilities. As you know, community land is managed by county governments, private land is managed by the Ministry and public land is managed by the NLC. It is somehow difficult to digitise the management of land because the actors at all these levels are working in isolation.

Our suggestion is that, since everything that is strategic has to be followed by resources, all these departments should come together so that we can utilise the available resources to digitise the management of land. There are issues to do with riparian land. Before one constructs a building, he or she is supposed to undergo very many processes. There are many authorities which are supposed to approve any construction. When it comes to environmental issues, there is NEMA. When it comes to land issues, there is the Ministry. When it comes to construction of buildings, there is the National Construction Authority (NCA). All these agencies are supposed to contribute for one to be given approval to construct. It is sad for one to be given approval to construct and subsequently be told that whatever he has invested his money in is supposed to be demolished. This happens long after officials of the regulating agencies have been changed. The best way of dealing with this situation is to come up with a policy of ensuring that every person who gives approval to an investor to construct a building on riparian land takes responsibility. It is sad for investors and many investors are moving away because there is no guarantee when it comes to investments in Kenya.

I beg to reply.

Thank you, Hon. Speaker.

**Hon. Speaker:** For obvious reasons, the Question will not be put now.  
Next Order.

## COMMITTEE OF THE WHOLE HOUSE

*(Order for Committee read)*

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

## IN THE COMMITTEE

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

## THE COUNTY GOVERNMENTS RETIREMENT SCHEME BILL

**Hon. Chairman:** Order Members. We are now on the County Government Retirement Scheme Bill, National Assembly Bill No.10 of 2018. Members will be attentive because we will be moving pretty fast.

*(Clause 3 agreed to)*

*Clause 4*

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

THAT, Clause 4(2) of the Bill be amended by deleting the word “lending” appearing in paragraph (d) and substituting the word “investing”.

The justification for this is that lending is contrary to the Retirement Benefits Act and, therefore, it is not allowed.

*(Question of the amendment proposed)*

**Hon. Chairman:** I will give the opportunity to two Members. I see Hon. Nyikal, as usual.

**Hon. (Dr.) James Nyikal** (Seme, ODM): Hon. Chair, I support this amendment. If you left the word ‘lending’, it would sound like it is an institution that takes the form of banks. I think this amendment will put it where it belongs.

*(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*

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

THAT, Clause 5 of the Bill be amended by inserting the word “county” immediately before the words “public officer.”

This is meant to make clarifications that this particular Bill seeks to establish a scheme for county government public officers and not any other. It will, therefore, make it more clear.

*(Question of the amendment proposed)*

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

*(Clause 5 as amended agreed to)*

*Clause 6*

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

THAT, the Bill be amended in Clause 6 by—

(a) deleting sub clause (2) and substituting therefor the following new sub clause—

(2) The Board shall consist of the following members—

(a) the Chairperson appointed by the Cabinet Secretary from amongst the Trustees appointed under paragraph (d), (e), (f) and (g);

(b) the Principal Secretary responsible for matters relating to finance or his representative;

(c) the Principal Secretary responsible for matters relating to devolution;

(d) a representative of the Council of County Governors;

(e) two representatives of the County Public Service Boards one of whom shall be of the opposite gender;

(f) a representative of the County Assembly Service Boards;

(g) three persons nominated by the trade unions representing county public servants Boards one of whom shall be of the opposite gender; and

(h) the chief executive officer appointed under section 18, who shall be the secretary.

(b) deleting sub clause (3) and substituting therefor the following new sub clause—

(3) The vice-chairperson of the Board shall be elected by the Trustees from among their number.

(c) Inserting the following new clause immediately after sub clause (4)—

(4a) The Cabinet Secretary shall ensure that not more than two-thirds of the members of the Board is of the same gender.

We also have a further amendment to subclause 2f.

**Hon. Chairman:** Move Clause 6 first, then you move the further amendment so that there will be clarity in the further amendment.

**Hon. Joseph Limo** (Kipkelion East, JP): This amendment is meant to give a list of the board of trustees, which is a representation of the Ministry of Devolution together with the Council of Governors and county assemblies. The justification for this is to have a more representative board of trustees as listed on the Order Paper.

**Hon. Chairman:** I am wondering whether to treat this as a further amendment because you are the same person who is moving the amendment. It looks like it will just be an amendment since you are the one adding something. So, it is only for the Members to be up to speed with this other new amendment that you are adding so that we can deal with both of them at one go. I think that will be fine. Are you through, Hon. Limo, so that I can propose the Question?

**Hon. Joseph Limo** (Kipkelion East, JP): I am, but I do not get it. Should I now move the addition? You know I am not moving as per the Order Paper, but in an amended form.

**Hon. Chairman:** I know it is not in the Order Paper, but I am looking at it as an amendment by you. A further amendment would be by someone else in my thinking, but

because it is yours, I will assume that that is the amendment and then dispense with it as one. Maybe you can justify the issue of what you were calling a further amendment, which I think you did because you said you were bringing in the issue of Council of Governors and the Ministry of Devolution.

**Hon. Joseph Limo** (Kipkelion East, JP): Also, we were looking at the representatives of county assembly service boards, because they were fewer than the Executive. At the same time, the way of appointing the representatives of county assembly service boards was not clear. Therefore, if you look at the further amendment, it provides for a way where the Council of Governors will call a first meeting where they will elect representatives. Also, for county assemblies, we are providing that the Speaker of the Senate shall convene a first meeting so that they can have a way of choosing their representatives.

**Hon. Chairman:** Hon. Limo, this is not a further amendment at all. You had another amendment. Probably just drop your amendment which you have and deal with your further amendment as the amendment which you have done and justified. On record, say that you have dropped this one and substitute it with your further amendment that is in circulation. I think that should be the position.

**Hon. Joseph Limo** (Kipkelion East, JP): We are, therefore, dropping the amendment to Clause 6 and replacing with the new amendment to Clause 6.

Hon. Chairman, I beg to move:

THAT, the Bill be amended in Clause 6 by—

(a) deleting sub clause (2) and substituting therefor the following new sub clauses—

(2) The Board shall consist of the following members—

(a) the Chairperson appointed by the Cabinet Secretary from amongst the Trustees appointed under paragraph (d), (e), (f) and (g);

(b) the Principal Secretary responsible for matters relating to finance or his representative;

(c) the Principal Secretary responsible for matters relating to devolution or his representative;

(d) a representative of the Council of County Governors;

(e) a representative of the County Public Service Boards;

(f) three representatives of the County Assembly Service Boards, one of who shall be of the opposite gender;

(g) two persons nominated by the trade unions representing county public servants Boards one of whom shall be of the opposite gender; and,

(h) the chief executive officer appointed under section 18, who shall be the secretary.

2(a) The Council of Governors shall convene a meeting of the representative of the respective nominating bodies for the purpose of nominating the representatives under subsection 2(e) and (g)

2(b) The Speaker of the Senate shall convene a meeting of the County Assembly Service Boards for the purpose of nominating the representatives under subsection 2(f).

(b) deleting sub clause (3) and substituting therefor the following new sub clause—

(3) The vice-chairperson of the Board shall be elected by the Trustees from among their number.

(c) inserting the following new clause immediately after sub clause (4)—

(4a) The Cabinet Secretary shall ensure that not more than two-thirds of the members of the Board is of the same gender.

This amendment provides a more representative county assembly service board. It also clarifies how they will be nominated through the guidance of the Speaker of the Senate and the Council of Governors and how they will be calling the first meetings.

*(Question of the amendment proposed)*

**Hon. Chairman:** I see a few Members who want to speak to it. I will start with Hon. Kimunya.

**Hon. Amos Kimunya** (Kipipiri, JP): Hon. Chairman, I support the amendment, but for neatness sake, I notice that in the Order Paper, there are three amendments: (a), (b) and (c). The substitution relates only to (a). So, perhaps for clarity, can we dispose of (a), then move to (b) and (c) separately?

**Hon. Chairman:** Why would we need to do that, Hon. Kimunya? He has substituted that specific one on (a). The rest of the things remain the same. So, if you contribute, you do so on the whole. He is simply dropping the first bit.

**Hon. Amos Kimunya** (Kipipiri, JP): That is what I wanted for the record that in fact (a) is substituted and (b) and (c) remain as per the Order Paper.

**Hon. Chairman:** You are absolutely right. So, Members, just for clarity sake, what is being substituted is on (a). The rest are the same. So, as you take your vote, you will vote on all of them as (a) being substituted and the remaining two.

Hon. Kibunguchy, do you want to speak to this?

**Hon. (Dr.) Wamalwa Kibunguchy** (Likuyani, FORD-K): Yes, Hon. Chairman. First, I support the amendment. Secondly, I think it makes it much clearer as to who will be the nominating bodies for the representatives of the Council of Governors and the boards. So, I support the amendment.

**Hon. Chairman:** Probably we will modify the rules that say we normally give opportunity to only two Members and give an additional two, namely, Hon. Nyenze and Hon. Dennitah Ghati, in that order. Quickly, please.

**Hon. (Ms.) Edith Nyenze** (Kitui West, WDM-K): Thank you, Hon. Chairman. I start by supporting the amendment, but I have just one question on the constitution of the board of trustees. I can see the last sentence includes the CEO who should be appointed as the secretary, but if I count the number of members of the board of trustees, it comes to 10 instead of nine. There are supposed to be a maximum of nine members of boards of trustees.

Thank you.

**Hon. Chairman:** Hon. Ghati.

**Hon. (Ms.) Dennitah Ghati** (Nominated, ODM): Thank you very much, Hon. Chairman. I support the amendment. I remember during the First Reading, I felt that it is extremely representative. I think I had also expressed a desire to bring in an amendment at this stage to basically look at the issue of representation, especially looking at a representative of the community of persons with disabilities (PWDs) simply because with the advent of devolution, obviously we are talking about counties. Therefore, we realise that even with a composition like



this, we have so many PWDs who basically come from the counties. I had suggested to have a representation of PWDs; even one. I do not know why the Committee...

**Hon. Chairman:** You know I am at a loss, Hon. Ghati. Probably we would be very sympathetic to your situation and your argument. The only problem is that in the absence of any amendment, it becomes a problem. Let us hear from the Leader of the Majority Party then we dispose of it.

**Hon. Aden Duale** (Garissa Township, JP): Hon. Chairman, I want to ask my good sister that we are not anchoring it in law. We are only saying representatives. So, once this law comes into force, the various bodies can now look at it. There might even be two PWDs. So, she should not worry. The law will take care of it.

**Hon. Chairman:** Obviously, the Leader of the Majority Party, it would have been neater if it was specified, but still you indicated and probably those representatives can include diverse categories of people including the youth and the rest.

Hon. Members, as I put the Question, I hope you understand that there is nothing that we are considering as a further amendment. What is in circulation is just an amendment that has been used to modify what would have been (a). The rest remain 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)*

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

*(Clause 6 as amended agreed to)*

*(Clauses 7, 8, 9, 10, 11, 12 and 13 agreed to)*

#### Clause 14

**Hon. Chairman:** Hon. Limo.

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

THAT, Clause 14(1) of the Bill be amended by deleting the word “Fund” and substituting the word “Scheme.”

The justification is that this is an establishment of a scheme and not a fund. Therefore, we are only cleaning up the language.

*(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 14 as amended agreed to)*

*(Clauses 15, 16 and 17 agreed to)*

*Clause 18*

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

THAT, Clause 18(3) of the Bill be amended by—

- (a) deleting the word “Master’s” appearing in paragraph (b); and
- (b) deleting paragraph (d).

The justification for this is that the requirement for a master’s degree is so high. We require only a first degree. If we do not do this, it goes contrary to the *Mwongozo* guidelines which require only a first degree for one to qualify as a CEO. Therefore, we propose to delete the master’s degree requirement.

*(Question of the amendment proposed)*

**Hon. Chairman:** Hon. Wamalwa.

**Hon. (Dr.) Chris Wamalwa** (Kimini, FORD-K): Thank you, Hon. Chairman. Of course, I agree, in line with the *Mwongozo* guidelines, but it was a ‘master’s degree’. So, you are leaving ‘degree’. I wish you had replaced with ‘bachelor’s degree’. When you say a degree, it must be specified. Hon. Limo, you did not give the justification for deleting paragraph (d). You only explained part (a). Why can you not give the justification for deleting paragraph (d), please?

Thank you.

**Hon. Chairman:** I think yours is very confusing. I am just wondering aloud entering into the foray of your argument. You are a PhD holder, Hon. Wamalwa. What would you call the PhD? Is it not a degree? How do you get it other than having got a degree somewhere first? You have three degrees and you cannot get the other ones without having the first one, is it not so? Anyway, I will finalise with the Leader of the Majority Party. Let me give opportunity to Hon. Seroney. Do you want to speak to this?

**Hon. Sammy Seroney** (Nominated, WDM-K): No.

**Hon. Chairman:** Okay. The Leader of the Majority Party.

**Hon. Aden Duale** (Garissa Township, JP): Hon. Chairman, I totally agree with Hon. Wamalwa, because part (b) says one should hold a master’s degree from a university recognised in Kenya. So, we delete that. What are we remaining with? If you go to paragraph (d), it says ‘...is a member of a professional body regulating the relevant profession’. So, we should state that it is a bachelor’s degree because there are people who have master’s degrees, but have never had a bachelor’s degree. This is a new law. We are not saying there is an existing law that had talked of a bachelor’s degree. So, if we remove ‘master’s’, then we have a vacuum. So, the Chair can substitute that.

**Hon. Chairman:** First, as you argue this case, if you say: ‘holds a bachelor’s degree’, then you close out master’s and PhD. I am just trying to ask you Members to think aloud. Is it that if you want to make an amendment, you must be specific such as a bachelor’s degree or otherwise, you end up locking? But let us hear the Leader of the Minority Party? Members,

please, as the Leader of the Minority Party speaks, kindly, read that bit so that you look at any amendment whether you are going to prejudice.

**Hon. John Mbadi** (Suba South, ODM): If you delete ‘master’s’, it reads: “Holds a degree from a university recognised in Kenya”, and I think that is perfect.

**Hon. Chairman:** Yes, if you specify bachelor’s degree, you probably lock out the rest. So, I do not think Hon. Limo would want to... Once you remove it, a degree will be fine. I am also trying to imagine what a bachelor’s degree is. Otherwise, it would just be an undergraduate. What is it, Hon. Nyikal, as you finalise on this? You have several degrees.

**Hon. (Dr.) James Nyikal** (Seme, ODM): I am just agreeing vehemently. If you say a degree, you have opened it up to anybody who has any degree and that is what we want. If you put a bachelor’s degree, you close out all others. It is important that we remove (d) because once you say ‘with a degree’, it may not be in a profession that is regulated. So, I do not see why you need to bring that one in.

So, I support the amendments.

**Hon. Chairman:** Hon. Members, unless there is an amendment on the Floor, I will only be handling one. I only deal with that which you bring. So, you are free to vote one way or the other. I will put the Question. So, there is no amendment.

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

*(Clause 18 as amended agreed to)*

*(Clauses 19, 20, 21 and 22 agreed to)*

### *Clause 23*

**Hon. Chairman:** Hon. Limo, we are doing Clause 23. My record shows that there is an amendment unless there is something which is not clear. Can you check Page 1,211, please? We have to be very meticulous and so, we will not rush. We must determine whether or not there was any amendment. There is an amendment as far as we are concerned unless the Chair wants to drop it.

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

THAT, the Bill be amended by inserting the following new subsection immediately after subsection 1-

(1A) The administrator shall be an employee of the Board.

This will provide for the opportunity that the scheme will only be administered by an internal administrator so that there will be no room for external administration of the Fund, which is more expensive.

**Hon. Chairman:** Well, then the Leader of the Minority Party, which one is this that you were saying there was no amendment on? I can ask the orderlies to supply you with one. You are a critical member of the House.

**Hon. John Mbadi** (Suba South, ODM): I apologise profusely, but I think you can still do me a favour by asking the orderlies to give me the Supplementary Order Paper, because what I have is a historical Order Paper.

**Hon. Chairman:** That one is ordered because you cannot be the Leader of the Minority Party and you do not have it.

**Hon. John Mbadi** (Suba South, ODM): With fake news.

*(Question of the amendment proposed)*

**Hon. Chairman:** I see two Members want to speak to it. Hon. Mwambire Ngumbao.

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

*(Clause 23 as amended agreed to)*

Clause 24

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

THAT, Clause 24 of the Bill be amended by—

(a) deleting sub clause (3) and substituting therefor the following new sub clause—

(3) Subject to such guidelines as the Board may issue, in consultation with the members and sponsors of the Scheme, a member of the Scheme may make additional contributions to the Scheme; and

(b) deleting sub clause (4)

The justification is to allow the board to consult with the members and sponsors when issuing guidelines. In a case where members wish to make additional contributions, they are free to do so. This is giving some flexibility so that if members want to contribute more, they will be free to do so.

**Hon. Chairman:** Very well.

*(Question of the amendment proposed)*

**Hon. (Dr.) Chris Wamalwa** (Kimini, FORD-K): Can you justify the deletion of sub clause (b)? What are you deleting and what is the importance of that?

**Hon. Chairman:** Okay, proceed, Hon. Limo and justify (b). I can see Members are interested in it and so, it is good that they get some clarity from you.

**Hon. Joseph Limo** (Kipkelion East, JP): Sub clause 4 says that all contributions to the scheme by members and sponsors shall be reduced by the amounts of the contribution to the National Social Security Fund (NSSF) in respect to the members. This particular sub clause indicates that when you are contributing, the amount you contribute to the NSSF is going to be considered when you are contributing to this scheme. We thought that was going to be a disadvantage to the members. When you are a member, what you are contributing to the scheme is for your benefit. Therefore, when you refer to the NSSF again, it disadvantages the members and we saw like it was unnecessary.

**Hon. Chairman:** Okay, since I had proposed the Question, I will give Hon. Nyikal the Floor. I will remove Hon. Ngumbao because he does not seem to be in the House. Are you in the House because I had given you an opportunity a few minutes ago?

**Hon. Teddy Mwambire** (Ganze, ODM): *(Inaudible)*

**Hon. Chairman:** Probably, I did not see you from where I sit. I understand you are... That is why Hon. T.J. says that you are very visible from where you are. So, let us proceed. I will give you an opportunity, Hon. Mwambire, if you want to speak. Let us start with Hon. Nyikal and then I go to Hon. Mwambire.

**Hon. (Dr.) James Nyikal** (Seme, ODM): Hon. Chairman, I want further explanation because this intends to reduce the amount of contribution by a member. It assumes that a member is making contribution to the NSSF and then to this scheme. What (4) was meant to do, in my understanding, was to lessen contributions made by the members. Let me be guided on what is happening in other schemes. Are they also reducing their contributions to the NSSF? If this is not the case, then we should leave this out so that we can have uniformity.

**Hon. Chairman:** Hon. Mwambire, I think you have a problem with your microphone.

**Hon. Teddy Mwambire** (Ganze, ODM): Thank you, Hon. Chairman. In as much as we want members to contribute, it should not be a burden. I think it would be prudent for members to contribute to the scheme and not others. I think this is what has been happening because this scheme has been there since time immemorial. I served as a councillor in 2013 and I was contributing to this scheme and not others. I think it is good to note this because there was a similar scheme.

**Hon. Chairman:** Hon. Members, I think it is proper for you to make your decision one way or another. I will try as much as possible to take your decisions seriously.

**Hon. (Dr.) James Nyikal** (Seme, ODM): On a point of order, Hon. Chairman.

**Hon. Chairman:** Yes.

**Hon. (Dr.) James Nyikal** (Seme, ODM): On a point of order, Hon. Chairman. I do not support 24(b). So, I think you should put the Question on the two sub-clauses differently.

**Hon. Chairman:** That would be a bit difficult for me to do. Hon. Nyikal, I think you should make a decision and if you have a problem with one sub-clause, then you vote against it.

**Hon. (Dr.) James Nyikal** (Seme, ODM): Hon. Chairman, the two are very distinct. I think 24(a) is good, but 24(b) is where I have a problem. I should be given the chance to pick the one I like and vote against the other one. But if it is all done at once...

**Hon. Chairman:** Hon. Nyikal, you had an option of proposing an amendment to 24(b) if you had an issue. You still have an avenue, if you think you have a major problem. You vote against it. Without an amendment, it is difficult for me to separate the two. Let me put the Question. Hon. Nyikal, you heard the explanation by the Chair and if it is not convincing to you, then, you have the vote.

*(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 24 as amended agreed to)*

**Hon. Chairman:** Hon. Nyikal, you seem to have voted twice on this particular one. You voted Ayes and Noe. I was keenly looking at you. Okay, let us proceed.

*(Clause 25 agreed to)*

*Clause 26*

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

THAT, Clause 26 Bill be amended—

(a) by renumbering Clause 26 as 26(1); and

(b) in sub clause (3)(b) by deleting the words “fifty per cent of his or her sponsor’s contribution” and substituting therefor the words “the sponsor’s contribution as may be prescribed by the Retirement Benefits Authority”.

This is just housekeeping on numbering because we have Clause 26 and then 26(2). Therefore, we should introduce 26(1) so that we can move in sequence. This will be reasonable. This particular amendment is to be in compliance with the requirements of the Retirement Benefits Act. It says that where a member leaves employment within one year, they should be refunded all their contributions together with the sponsor’s contribution. However, the Bill states they should be refunded plus 50 per cent of the sponsor’s contribution. Then the balance should be invested until later when it is paid. Therefore, the Act does not allow this, but says within one year after leaving employment, the employee should be refunded everything.

**Hon. Aden Duale** (Garissa Township, JP): On a point of order, Hon. Chairman.

**Hon. Chairman:** Yes, the Leader of the Majority Party.

**Hon. Aden Duale** (Garissa Township, JP): On a point of order, Hon. Chairman. For tidiness, if we remove Clause 26(2) and have Clause 26(1), then we should go further and renumber Clause 26(3) as 26(2) in the Bill. We have Clause 26(3) in the Bill. We have Clause 26(2), which the Chair has said was a typographical error and changed it to 26(1). Then we should go ahead and have 26(3) changed to 26(2).

**Hon. Chairman:** Look at it, and the one which was hanging was only Clause 26(1) because we have clauses 26(2) and 26(3). Actually, the problem was that there was reference to Clause 26(1), which did not exist.

*(Question of the amendment proposed)*

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

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

*(Clause 26 as amended agreed to)*

*Clause 27*

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

THAT, Clause 27(2) of the Bill be amended by deleting paragraph (d).

This particular paragraph is about approving the age. We did not want the board to have discretion of approving the age of an individual because it is clear on the identification documents. Therefore, the discretion of the board to accept a written declaration of the date of birth by the member on first appointment is not necessary.

*(Question of the amendment proposed)*

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

*(Clause 27 as amended agreed to)*

The Members who are moving out of the Chamber, please, do not interfere with my view.

**Hon. Aden Duale** (Garissa Township, JP): On a point of order, Hon. Chairman.

**Hon. Chairman:** No! You are out of order.

*Clause 28*

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

THAT, Clause 28(2) of the Bill be amended by deleting paragraph (d).

This is the same as the one before where we are removing the discretion of the board in proving the age of a member.

*(Question of the amendment proposed)*

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

*(Clause 28 as amended agreed to)*

*(Clauses 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39,  
40, 41, 42, 43, 44, 45, 46, 47 and 48 agreed to)*

*Clause 49*

**Hon. Chairman:** Let us have Hon. Limo.

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

THAT, Clause 49(4) of the Bill be amended by deleting the words “five hundred thousand shillings, or in the case of a natural person, to imprisonment for a term not exceeding three years, or to both” and substituting therefor the words “five million shillings, or in the case of a natural person, to imprisonment for a term not exceeding two years, or to both”

This is for the purpose of harmonisation of penalties because elsewhere in the Bill it is providing for Kshs5 million and now it is contradicting itself by changing on Clause 49 to Kshs500,000.

*(Question of the amendment proposed)*

**Hon. Chairman:** What is it, Hon. TJ of Ruaraka?

**Hon. T.J. Kajwang'** (Ruaraka, ODM): I have got my voice when Hon. Limo is now talking about sentencing. I can be sentenced any time. I may be sentenced by virtue of this legislation. I think we need to have some type of order in sentencing in Kenya. The thinking of the Committee looks like Kshs5 million is as punitive a sentence as two years but, before, Kshs500,000 was being equated to three years. There is need for some policy on proportional harmonisation. Whereas it is too late now to start going back, perhaps the Chair should think of Kshs5 million going to Kshs1 million and then for a term not exceeding two years, or both. This is because the principal of law is that, if you are in doubt, you would rather go for the lesser sentence than to go for the higher sentence which, in the view of legislators, may not be harmonisation that we want in terms of punitive measures in this country.

**Hon. Chairman:** Okay, Hon. Limo.

**Hon. Joseph Limo** (Kipkelion East, JP): Just to clarify, Hon. Chairman, you know we were not actually comparing Kshs500,000 with three years, or Kshs5 million with two years. Rather, we were harmonising with Clause 48 where it is...

In Clause 48, the offence is actually being fined Kshs5 million or imprisonment for a term not exceeding two years or both. It is actually the same Bill. So, we are harmonising Clause 49 with Clause 48. We were actually saying we cannot... Now, when we reach Clause 49, it goes to Kshs500,000 and three years.

**Hon. Chairman:** Hon. Limo, let us clarify. At Clause 48, which we have already passed, what is it indicating? This is because that is good for Members to understand. It is talking about Kshs5 million or imprisonment for a term not exceeding two years or both. What is this proposal you are now making?

**Hon. Joseph Limo** (Kipkelion East, JP): We are proposing to do the same on Clause 49 because Clause 49 was proposing Kshs500,000 and/or three years. So, we are putting five years and two years to be in line with Clause 48.

**Hon. Chairman:** You are talking about Kshs5 million and two years. Is that what the amendment is about?

**Hon. Joseph Limo** (Kipkelion East, JP): Yes.

**Hon. Chairman:** I believe the Hon. Members are clear on that. Let us have the Leader of the Minority Party.

**Hon. John Mbadi** (Suba South, ODM): Hon. Chairman, I just want to support his argument. This is because if we have passed Clause 48 and for almost similar offences, if you are going to either sentence someone to Kshs5 million fine or two years imprisonment or both, then it should follow under Clause 49 that the same sentence of Kshs5 million and two years imprisonment should apply. So, we do away with Kshs500,000 and three years imprisonment.

**Hon. Chairman:** What is it, Hon. Kajwang'?

**Hon. T.J. Kajwang'** (Ruaraka, ODM): I still think that at some point this Bill must have passed me. It is one of those Bills that we should have put amendments on. I think at some point, Leader of the Majority Party, it will be good to have a Bill which tries to harmonise as much of these sentences as possible. What will happen here is, in the case of a person who is not a natural person, meaning like a company, it will be fined Kshs5 million. What will happen to a natural person? He must go to prison for a term. There is no opportunity for a fine. This is what this legislation is saying. In other words, it is punitive. You must suffer custodial sentence. There is no opportunity for a fine. See how punitive it is. It looks like water which has passed down the bridge. I think there is necessity to harmonise this legislation.



**Hon. Chairman:** I am sure the leader has heard that. There are many other avenues to do that, Hon. T.J. I will put the Question and then we will sort out the rest later.

*(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, put and agreed to)*

*(Clause 49 as amended agreed to)*

*(Clauses 50 and 51 agreed to)*

*Clause 52*

**Hon. Chairman:** Hon. Limo, proceed and justify.

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

THAT, the Bill be amended by deleting clause 52.

Clause 52 was providing the phasing out of contribution by members of staff who were previously working for the national Government and were transferred to the county government. Therefore, it was phasing out to give them some advantage. We found that this was discriminatory and we are proposing to delete it so that everyone contributes in the same manner regardless of whether you were transferred from the national Government, you were newly employed or you were in the county council.

*(Question of the amendment proposed)*

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

*(Clause 52 deleted)*

*Clause 53*

**Hon. Chairman:** Chair, let me ask. Is that a proposed deletion? Check it properly. Is it a deletion? From my records here it looks like a deletion. It seems it is not.

Proceed, Hon. Limo.

**Hon. Joseph Limo** (Kipkelion East, JP): We are making a further amendment. Hon. Chairman, I beg to move:

THAT, the Bill be amended in Clause 53 by inserting the following sub-section immediately after subsection (2)-

(3) The LAPTRUST (Umbrella) Retirement Fund Trust Deed and Rules registered under the Retirement Benefits Authority Act are revoked.

The amendment proposes to repeal the Local Authorities Provident Fund (LAPFUND) and revoke the Local Authorities Pension Trust (LAPTRUST), which was a different fund. We are now adding this one. The reasoning is that at the commencement of this Bill, without

anticipating debate, those old funds will be closed on transition after five years. Therefore, Clause 53 will come into effect then because they will either be repealed or revoked.

*(Question of the amendment proposed)*

**Hon. Chairman:** Let us have the Leader of the Majority Party.

**Hon. Aden Duale** (Garissa Township, JP): Hon. Chairman, I agree with what the Departmental Committee on Finance and Planning is trying to tell us. Clause 53 of the Bill repeals the LAPFUND and revokes the LAPTRUST. Those institutions carry the resources, assets and liabilities of workers. I hope that as we move forward, he will create a transitional period. In his amendment, he has suggested five years. Within five years, the restructuring process must begin. The moment it is assented to by the President, the restructuring and combining of these two different funds must take place within a certain transitional period.

**Hon. Chairman:** Let us have Hon. Kibunguchy.

**Hon. (Dr.) Wamalwa Kibunguchy** (Likuyani, FORD-K): Mine was just a worry. We have deleted Clauses 52 and 53. The next one is Clause 54. Are we then moving everything upwards so that Clause 54 becomes Clause 53? I am just concerned. We have repealed Clauses 52 and 53. In the Bill, the next one is Clause 54. I am talking about re-numbering.

**Hon. Chairman:** Clause 53 has not been deleted.

**Hon. (Dr.) Wamalwa Kibunguchy** (Likuyani, FORD- K): Clause 53 has been deleted.

**Hon. Chairman:** Clause 53 was amended. Clause 52 was deleted.

**Hon. (Dr.) Wamalwa Kibunguchy** (Likuyani, FORD-K): I have the wrong Order Paper.

**Hon. Chairman:** That is where the problem is. There is a Supplementary Order Paper. Hon. Kibunguchy, you are a seasoned politician. Rather, you are a seasoned legislator. The term “politician” is used outside there. As a legislator, you know that if you delete a particular clause, the re-numbering is automatic. If you delete Clause 52, Clause 53 will become Clause 52. It will have to be re-numbered. What is it, Hon. Nyikal?

**Hon. (Dr.) James Nyikal** (Seme, ODM): I just want to be educated. I did not take part in the earlier discussions. Clause 53 has revoked and repealed those funds and there is a transition. Can I be assured that the transition involves the assets as well? That is all I want to know. Does the transition involve assets as well because we will just go through them?

**Hon. Chairman:** Maybe you can make a short clarification on that particular question by Hon. Nyikal, then we will be through with that.

**Hon. Joseph Limo** (Kipkelion East, JP): Hon. Chairman, without anticipating debate, Hon. Nyikal is asking about the transition, which is a very elaborate process that touches on liabilities and assets. It will be covered later. There will be another clause which will deal with how the transition will happen. Therefore, there is no worry because all those assets will be taken care of.

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

*(Clause 53 as amended agreed to)*

Clause 54

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

THAT, Clause 54 of the Bill be amended by deleting the word “shall” and substituting therefor the word “may.”

The justification for this is to allow Members to have leeway to either contribute to tier 1 of NSSF or even go to tier 2. When we use the word “shall”, it is a must. We are removing the word “shall” and replacing it with the word “may” to create some discretion and options.

*(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 54 as amended agreed to)*

*(Clause 55 agreed to)*

#### Clause 56

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

THAT, the Bill be amended in Clause 56 by –

(a) deleting subsection (2) and substituting therefor the following new paragraphs –

(2) The Local Authorities Provident Fund, the Local Authorities Pension Trust, the Local Authorities Pension Trust (Defined Benefits) Scheme and the Local Authorities Pension Trust (Umbrella) Retirement Fund shall, on the commencement date remain closed Funds to new entrants and shall ensure the preservation of all accrued rights of members.

(3) Subject to subsection (2), the closed funds shall continue paying any pensions and benefits as and when they fall due for a maximum period of five years from the commencement date.

(4) The provisions of section 54A shall apply to any pension and benefits which shall not have been paid out of the closed Funds at the end of the fifth year from the date of commencement date.

(b) renumbering the existing subsection (3) to subsection (5).

(c) inserting the following new sub clause immediately after sub clause (5)

—

(6) The State Corporations Advisory Committee shall, within five years from the commencement of this Act, ensure the implementation of this section.

Currently, we have pension funds being managed differently. They cover employees in the county assembly and the county governments. At the commencement of this Bill, we suggest that those funds continue running during the transition period but to a maximum of five years. During that period, they shall be paying the people who will be exiting but they will not be

allowed to recruit new members. Any new employees employed by county governments will join the new scheme directly. The new scheme will be the only one running but after five years, all of them will be closed and they will be managed by the transition clause, which we will look at later when we consider New Clause 54A.

*(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)*

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

*(Clause 56 as amended agreed to)*

#### Clause 57

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

THAT, Clause 57 of the Bill be amended—

(a) by inserting the words “Subject to section 55” immediately before the words “Any Eligible employee”; and

(b) renumbering sub clause (4) as (2).

This is a clean-up because this particular clause is dependent on Clause 55. Hence, there is need to mention it in Clause 57.

**Hon. Chairman:** That is straightforward.

*(Question of the amendment proposed)*

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

*(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 57 as amended agreed to)*

#### New Clause 54A

**Hon. Chairman** (Hon. Moses Cheboi): Hon. Chairman, move the new Clause.

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

Clause 54-  
Transition of  
closed funds to  
the Scheme.

THAT the Bill be amended by inserting the following clause immediately after

54A. (1) The members of the Local Authorities Provident Fund and the Laptrust (Umbrella) Retirement Fund shall be transitioned into the Scheme.

(2) The funds, assets and other property, movable and immovable which immediately before the commencement date were held by or on behalf of the Local Authorities Provident Fund and the Laptrust (Umbrella) Retirement Fund shall vest in the Scheme.

(3) All the records of the Local Authorities Provident Fund and the Laptrust (Umbrella) Retirement Fund shall be transferred to the Scheme administrator.

(4) All rights, liabilities and duties whether arising under any written law or otherwise, which immediately before the commencement date were accruing, imposed or enforceable by or against the Local Authorities Provident Fund and the Laptrust (Umbrella) Retirement Fund shall vest in, be imposed on, or be enforceable against the Scheme.

(5) Any suit or legal proceedings by or against the Local Authorities Provident Fund and the Laptrust (Umbrella) Retirement Fund shall continue as if they were instituted by the Scheme and no such suit, action or legal proceedings shall abate or be terminated by the virtue of the transition of the schemes.

(6) Subject to section 40, the annual estimates approved for the Local Authorities Provident Fund and the Laptrust (Umbrella) Retirement Fund for the financial year in which this Act comes into operation shall be considered to be the annual estimates of the Scheme for the remainder of that financial year but those estimates may be varied by the Cabinet Secretary.

Hon. Chairman, this new clause is the transitional clause which you were talking about when Hon. Nyikal was worried on how the funds, assets and liabilities of these existing funds will be transitioned. It will be implemented within five years when the transition will take effect. It will indicate how it will help in operationalisation of the new scheme and closing the old one.

*(Question of the new clause proposed)*

*(New clause read the First Time)*

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

**Hon. Chairman:** Hon. Maanzo, do you want to contribute to this new clause?

**Hon. Daniel Maanzo** (Makueni, WDM-K): Sorry, Hon. Chairman. I have just come in. I am waiting for the next new clause.

**Hon. Chairman:** Why did you log in your card when you were not ready to contribute? It is okay. Let us have Hon. Kathuri Murungi.

**Hon. Kathuri Murungi** (South Imenti, Independent): Thank you, Hon. Chairman. These are good transitional clauses but I hope the transition will be run smoothly. People will move from this trust fund which has a lot of liabilities and assets and go to the new scheme. Whoever will implement this clause should be very careful because a lot of funds get lost and very funny deals happen during transition. I want to support this clause because it is well put. However, caution should be taken when the transition is done.

**Hon. Chairman:** The Leader of the Minority Party.

**Hon. John Mbadi** (Suba South, ODM): Hon. Chairman, I also want to argue on the same line. The biggest problem that we will have is where the amounts are still owed to these schemes, especially by the sponsors. A strategy needs to be developed, so that we do not transfer to this new scheme what is considered as assets in the books but may not be realised. I do not know how this will be addressed but it is a very serious concern. When you get the facts from these schemes, you realise that many sponsors owe money to these schemes. That needs to be addressed within the five years window or even earlier. I am happy because there is severe penalty in future for those who will default in remitting the funds.

**Hon. Chairman:** At this point, I will give opportunity to one or two Members to contribute. Hon. Nyikal.

**Hon. (Dr.) James Nyikal** (Seme, ODM): Hon. Chairman. I support this new clause. It was my concern. The Leader of the Minority Party has also raised the same issue. A lot of losses occur when you are moving from an old organisation that has assets and liabilities to a new one. Unless you have a transitional arrangement, a lot of things get lost. Liabilities can be used to kill the new organisation and assets can be lost. I support this clause without anticipating debate on what new Clause 58 will bring in three or four years. We must put very clear structures, so that we do not get ourselves into the situation we got into with the Transition Authority (TA).

**Hon. (Ms.) Dennitah Ghati** (Nominated, ODM): Thank you very much, Hon. Chairman. I also want to quickly thank the Chair of the Departmental Committee on Finance and National Planning. He has worked hard on this Bill. My quick concern is that as we transition, we should quickly look at the issue of the former councillors. I am still bringing in their issue because they have a lot of money which is pending. We are quickly transitioning to this new scheme that is about to take effect. We should move in quickly and settle their wars, so that they stop complaining. That will be extremely good.

I want to thank the Member for taking up this Bill that we have followed keenly. I thank you, Hon. Chairman.

**Hon. Chairman:** You should not thank the Chair, unless it is specific to this clause. Thanking the Chair should be reserved during the Third Reading, Hon. Ghati. You should not thank the Chair, unless you are anticipating that you will get an opportunity to contribute.

*(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 58*

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

THAT, the Bill be amended by inserting the following new clause immediately after Clause 57-

Date of

Transition. 58. The provisions of sections 53 and 54A shall come into effect at the end of five years from the commencement date.

This clause specifies that the provisions of Sections of 53 and 54A shall come into effect at the end of five years from the commencement date. That means that this will give effect to the transitional clauses. That is the purpose of this clause.

*(Question of the new clause proposed)*

*(New clause read the First Time)*

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

**Hon. T. J. Kajwang'** (Ruaraka, ODM): On a point of order, Hon. Chairman.

**Hon. Chairman:** What is it, Hon. T. J.?

**Hon. T.J. Kajwang'** (Ruaraka, ODM): Hon. Chairman, let us know when the commencement date begins. I am sorry because I do not have the Bill. When is the commencement date? Is it proposed?

**Hon. Chairman:** I have proposed. I was about to put the Question.

**Hon. T.J. Kajwang'** (Ruaraka, ODM): Can the Chair tell us the commencement date?

**Hon. Chairman:** What is the commencement date, Hon. Limo? Why is it very important at this point in time, Hon. Kajwang'?

**Hon. T.J. Kajwang'**(Ruaraka, ODM): It is because this amendment depends on the commencement date. We must be conscientious when we are activating it. Commencement date can be on assent, but it can also be prescribed by legislation or by gazette. That is the kind of contribution we want from the Chairman of the Committee so that we know we are dealing with the President's assent. That way, we can decide on the five years from the date of President's assent.

**Hon. Chairman:** So, your record is on assent.

**Hon. Joseph Limo** (Kipkelion East, JP): Yes, I confirm that the commencement date is on assent.

**Hon. Chairman:** Okay. I am sure Hon. T. J. Kajwang is satisfied with that.

*(Question, that new Clause 58 be read a Second Time, put and agreed to)*

*(The new Clause 58 was read a Second Time)*

*(Question, that new Clause 58 be added to the Bill, put and agreed to)*

**Hon. T. J. Kajwang'** (Ruaraka, ODM): On a on a point of order, Hon. Chairman.

**Hon. Chairman:** Hon. T. J, what is your point of order?

**Hon. T.J. Kajwang'** (Ruaraka, ODM): There must have been an oversight on legislation. Even when commencement is on assent, the Bill should say so just after the enactment formula. Clause 2 is about interpretation. It cannot be in Clause 2. It must be after the enactment formula.

**Hon. Chairman:** I appreciate the fact that you are very meticulous in your work. The interpretation clause says that commencement date means the date of coming into force of this Act. But it does not give a specific date really. Even on assent. It justifies the fact that it will commence on assent.

**Hon. T.J. Kajwang'** (Ruaraka, ODM): We are still there. We have not ....

**Hon. Chairman:** Hon. T. J. I have known you for a long time and I did not know you did not serve in the Attorney-General's Chamber as a draftsman. I know what you served as.

**Hon. T.J. Kajwang'** (Ruaraka, ODM): I am loyal. We can still make it because we have not come to the Title. When we come to the short Title, the Chair of the Committee should pronounce himself on commencement. It is a very important thing in legislation. He can consult with the Clerks so that commencement is pronounced upon and that we say upon assent.

**Hon. Chairman:** That makes a lot of sense. On the other hand an assumption can be made. We are assuming that way because the Constitution says in absence of a specific date, it is on assent. Let me leave that because I do not want to get engaged in the debate.

We have finished the new clauses, so we proceed to the Schedule.

### *Schedule*

**Hon. Chairman:** The Chair of the Committee has a proposed amendment.

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

THAT, the Schedule to the Bill be amended—

(a) by deleting section 2 and substituting therefor the following new paragraph-

(1) The quorum of a meeting of the Board shall be five trustees present and voting provided that at least two trustees appointed under section 6(b), (c), (d), (e) or (f) and at least two trustees appointed under section 6 (g)are present.

(2) For special meetings, the quorum shall be six trustees present and voting provided that at least two trustees appointed under Section 6(b), (c), (d), (e) or (f) and at least two trustees appointed under Section 6(g) are present.



(b) in Section 5(4) by deleting the word “seven” and substituting therefor the word “two.”

The justification for this is to ensure that all meetings are conducted and are representative. For special meetings, that they are also conducted in a manner that is representative so that one group of trustees does not conduct a meeting. We must ensure that every sector where membership is drawn from is represented before a meeting starts.

*(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)*

*(Schedule as amended agreed to)*

**Hon. Chairman:** Hon. Members, in the meantime, as we proceed, because of the issue Hon. T.J. raised very strongly, we can refer to Article 116 of the Constitution. You realise that once the assent is done, publication must be in the gazette, unless there is a different date stipulated. It will be upon assent and seven days on publishing in the gazette. So, that has solved our problem. So, we do not need to create anything else.

#### *Clause 2*

**Hon. Chairman:** Hon. Limo.

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

THAT, Clause 2 of the Bill be amended by deleting the definition of “existing scheme” and substituting therefor the following new definition—

“existing scheme” means the Local Authorities Provident Fund, the Local Authorities Pension Trust, the Local Authorities Pension Trust (Defined Benefits) Scheme and the Local Authorities Pension Trust (Umbrella) Retirement Fund.

The justification is to ensure that the definition includes all the schemes that exist as far as managing the pension for county pensions is concerned.

*(Question of the amendment proposed)*

**Hon. Chairman:** Hon. Mbadi.

**Hon. John Mbadi** (Suba South, ODM): Hon. Chairman, I am wondering about the Local Authorities Pension Trust (Defined Benefits) whether it still exists. As far as I am concerned the defined benefits had been done away with in 2010. They were closed literally. They are winding up. So, in law they were closed. It does not exist. They were done away with through a circular. We are trying to glorify a non-existent scheme which should have been left out.

**Hon. Chairman:** Are you suggesting that we are giving them a further five-year lease of life when they had been done away with?

**Hon. John Mbadi** (Suba South, ODM): We are resurrecting a body that is dead already.

**Hon. Chairman:** Let us hear Hon. Nyikal. I hope the Chair of the Committee is listening to that and will tell us something.

**Hon. (Dr.) James Nyikal** (Seme, ODM): Hon. Chairman I support this because it is exact. The other one was a circular while this one is specific and somebody can drag it out. So, it is better to include it here. That is my view.

In the definitions, I do not know whether the Chair of the Committee will agree with me. Now, “Under eligible employee” on Page 175 it means an employee of a County Public Service.

That second word “employee” between “service” and “employee” is redundant. He can remove that and then it will read properly. But I support this.

**Hon. Chairman:** Which one are you calling redundant?

**Hon. (Dr.) James Nyikal** (Seme, ODM): On the amendment made by the Chairman, I support.

**Hon. Chairman:** But which is this that is redundant?

**Hon. (Dr.) James Nyikal** (Seme, ODM): If you look at Clause 2, there is another definition of “eligible employee”. If you read that, it means an employee of the county public service employee. That is repetitive. If you say “employee of the county public service or”, that “employee” before “or” need not be there.

**Hon. Chairman:** What Hon. Nyikal has done is perfectly in order. He is behaving like the surgeon he is, trying to make sure that everything is in order. It is something that needs to be noted. Just in a sentence respond to what the Leader of the Minority Party asked about this one that we are intending to revive. Of course, Hon. Nyikal has proceeded to argue that it might have been removed by some notice. So, they want to kill it by law. What is it that you would say?

**Hon. Joseph Limo** (Kipkelion East): Hon. Chairman, the Leader of the Minority Party is right that it was closed but it is not dead; it is still operating and paying Members. It has management. So, what is happening now is that we are bringing all of them together so that after five years we fold them up once and for all.

**Hon. Chairman:** I hear what Hon. Nyikal is saying. He is saying that the pulse is still there. He wants to completely euthanise it. Hon. Maanzo, I am not giving you a chance because I was still expecting you to tell me which clause you wanted to contribute to. So, I will give you a chance in the next one. Okay, just speak on this one.

**Hon. Daniel Maanzo** (Makueni, WDM-K): Hon. Chairman, I just wanted to agree with Hon. Limo. What happened is that these are the people who used to work for the local authorities. There are pensioners who are still alive, most probably for a long time. Therefore, it

is good to remain as it is because it still exists. This particular Fund is still being dispensed. It used to be under the Local Authorities Act.

*(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 2 as amended agreed to)*

*(Schedule agreed to)*

*(Title agreed to)*

*(Clause 1 agreed to)*

**Hon. Chairman:** Now, let us have the Mover to move reporting.

**Hon. T.J. Kajwang'** (Ruaraka, ODM): On a point of order, Hon. Chairman.

**Hon. Chairman:** What is it Hon. T.J.? This afternoon you have a real mood to speak.

**Hon. T.J. Kajwang'** (Ruaraka, ODM): This is not corrigenda. Permit me to bring to your notice that we need to recommit Clause 49. When we go to the House, I will persuade you to consider it. We are here to make good laws. We are not in a hurry. When I picked, I only saw this thing about the natural person getting custodial sentence. But now just read the whole of it.

**Hon. Chairman:** Let us do this because you will propose a re-committal...

*(Hon. Aden Duale consulted Hon. T.J. Kajwang')*

The proposal by the Leader of the Majority Party makes a lot of sense especially when this is not contentious.

**Hon. T.J. Kajwang'** (Ruaraka, ODM): I hear you. I am in agreement. Let it go on record for the Clerk to understand where I am coming from. When you say, "Kshs5 million or in the case of a natural person, to imprisonment for a term not exceeding two years..." What has messed it up is the other words "or to both." What it means is that Kshs5 million was for non-natural person. A term was for the natural person. If you say "or to both", it means that the whole sentencing is confused and the magistrate will let that person off the hook because there is neither sentence prescribed nor constitutional sentence prescribed by law. That is what I wanted to raise.

**Hon. Chairman:** Leader of the Majority Party, let us hear you, but what Hon. T.J. has suggested is very fair.

**Hon. Aden Duale** (Garissa Township, JP): I totally agree with Hon. T.J. Our legal team has picked it and we will share it with Hon. Sakaja. His committee is the one that is going to receive this Bill in the Senate. I commit myself. If it was not going to the Senate, then we would have done re-committal.

**Hon. Chairman:** That attests to bettering of relationship between the Senate and the National Assembly, especially because we have T.J. Kajwang' in the National Assembly, another Kajwang' in the Senate and another Kajwang' in Nakuru County. This is the unfairness of life. Let us proceed to ask the Mover to move reporting.

**Hon. Aden Duale** (Garissa Township, JP): Hon. Chairman, I beg to move that the Committee does report to the House its consideration of the County Governments Retirement Scheme Bill (National Assembly Bill No. 10 of 2018) and its approval thereof with amendments.

*(Question put and agreed to)*

*(The House resumed)*

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

## REPORT

### COUNTY GOVERNMENTS RETIREMENT SCHEME BILL

**Hon. Moses Cheboi** (Kuresoi North, JP): Hon. Temporary Deputy Speaker, I beg to report that the Committee of the whole House has considered the County Governments Retirement Scheme Bill (National Assembly Bill No. 10 of 2018) and approved the same with amendments.

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

**Hon. Aden Duale** (Garissa Township, JP): Hon. Temporary Deputy Speaker, I beg to move that the House does agree with the Committee in the said report.

I request Hon. Limo, the Chair of Departmental Committee on Finance and National Planning, to second.

**Hon. Joseph Limo** (Kipkelion East, JP): I second.

*(Question proposed)*

*(Question put and agreed to)*

*(Consideration of Report of Bill ordered for tomorrow)*

## MOTION

REPORT ON AUDITED FINANCIAL STATEMENTS FOR  
CONSTITUENCIES IN NAIROBI COUNTY

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Where is the Chairperson of the Special Funds Account Committee (SFAC)? Hon. Maanzo, what is out of order? Is the Clerk-at-the-Table out of order?

**Hon. Daniel Maanzo** (Makueni, WDM-K): I think hon. Members have read my mind. I want to give a good reason. This is a very important matter.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Hon. Maanzo, nothing is out of order. There is totally nothing out of order. We did the reporting very well.

Yes, Leader of the Majority Party?

**Hon. Aden Duale** (Garissa Township, JP): Hon. Temporary Deputy Speaker, Hon. Mbadi, Hon. Kimunya and I are Members of the House Business Committee (HBC). Every business in the Order Paper is important to this House and the country. We cannot have a time where we have a choice that this business must come at 2.30 p.m. and this at 6.30 p.m. I think we should move the way you have directed.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Thank you, Leader of the Majority Party. Hon. Maanzo may not be a beneficiary of the HBC but, he is serving his second term. He knows how important business in the Order Paper is. I direct that we do the business as per the Order Paper because every business is important to this House. So, where is the Chairperson of the SFAC?

**Hon. Kathuri Murungi** (South Imenti, Independent): Hon. Temporary Deputy Speaker, I beg to move the following Motion:

THAT, this House adopts the Second Report of the Special Funds Accounts Committee on Audited Financial Statements for the National Government Constituencies Development Fund for Constituencies in Nairobi City County for the Financial Years 2013/14, 2014/15 and 2015/16, laid on the Table of the House on Wednesday, 3<sup>rd</sup> October 2018.

As I move this Motion, I wish we could have even a quarter of the Members of this National Assembly present because this Report is really touching on the constituencies. It touches on the money that we oversee directly as Members of Parliament. Therefore, as I move the Motion, it is important to note that most of the Members will miss most of the critical points.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Hon. Chairperson, please move the Motion. I have made a ruling on this matter.

**Hon. Kathuri Murungi** (South Imenti, Independent): I have already moved. Now I am on high drive.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): How did you move it?

**Hon. Kathuri Murungi** (South Imenti, Independent): I said:

I beg to move that this House adopts the Second Report of the Special Funds Accounts Committee on Audited Financial Statements for the National Government Constituencies Development Fund for Constituencies in Nairobi City County for the Financial Years 2013/14, 2014/15 and 2015/16, laid on the Table of the House on Wednesday, 3<sup>rd</sup> October 2018.

Before I stopped, I was explaining the basis of this Report as part of my moving notes.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Okay.

**Hon. Kathuri Murungi** (South Imenti, Independent): So, the SFAC is a Select Committee which was established pursuant to the National Assembly Standing Order No.205A. It is one of the three watchdog Committees of this House, the other two being the Public Accounts Committee (PAC) and the Public Investments Committee (PAC).

I want to be very brief on some of these points and cut some of the issues. At a broader level, the Committee principally relied on the following laws to come up with this Report... Let me go on record to mention that this Report is comprised of 51 audited accounts. Nairobi City County has 17 constituencies. So, we have worked on the Financial Year 2013-2014, which is covered in one Report, the accounts for 2014-2015 and 2015-2016 financial years are covered by one Report each. So, we have accumulated three Reports for every constituency in Nairobi City County. That is what we will be moving to do across the country. We have agreed as a Committee to handle these Reports county by county. We have now done away with Nairobi. Kisumu County will come in the next two weeks. We will then move to the other counties. As I move this Report, notice that my Committee has worked tirelessly to come up with these 51 audited Reports which we are presenting today. This is a very sensitive Report because people out there think that the responsibility to manage the NG-CDF rests on the MPs. I want to tell the nation that MPs are nowhere in the NG-CDF. Members of Parliament just provide oversight. The people who have been appearing before the Committee are the Fund Account Managers because they hold the Authority to Incur Expenditure (AIE). Therefore, MPs just provide oversight to what the Fund Account Managers do.

We relied on the Constitution of Kenya, the National Government-Constituencies Development Fund Act (No.30 of 2015), the Public Finance Management (PFM) Act (No.18 of 2012), the Public Procurement and Asset Disposal Act (No.33 of 2015), the Public Audit Act (No.34 of 2015), the Parliamentary Powers and Privileges Act, 2017, the National Assembly Standing Orders, the National Government Constituencies Development Fund Act, 2016 and the Public Finance Management Regulations, 2015.

My Committee expresses its appreciation to the Office of the Speaker and the Office of the Clerk of the National Assembly for the support extended to us during consideration of the audit reports. The Committee also extends its appreciation to the Office of the Auditor General, who is our agent. That office is an agent of this House. Therefore, we really extend our appreciation to his office and the Office of the National Treasury for the technical support they gave us. I also want to thank MPs from Nairobi City County, who also came in to listen to how their Fund Account Managers responded to the queries from the Auditor General. They are now up to speed on whatever issues came up.

The Reports of the Auditor General for the NG-CDF for the 290 constituencies in Kenya had not been examined prior to the establishment of this Committee, which goes back to the year 2013-2014.

This Report contains observations, findings and recommendations derived from Committee's examination of the 51 Reports that I talked about. That is what is contained in the big Report that we have with us.

Article 226(5) of the Constitution of Kenya 2010 provides that if the holder of any public office, including a political office, directs or approves the use of public funds contrary to the law or instructions, the person is liable for any loss arising from that use and shall make good the loss, whether the person remains the holder of the office or not. This formed the basis that the Committee used to hold each Fund Account Manager and any other public officer directly and

personally liable for any loss of public funds entrusted to him. In the course of our work, where we found that a certain Fund Account Manager worked in a certain constituency in 2013, for example, the Report touches on that particular financial year. Even if he moved to another constituency, he or she was forced to appear before the Committee because he was the accounting officer in the year under review. Even if some of them were moved to other destinations, they were called back by the board to answer to the audit queries because they were the accounting officers during the years under review.

Further, Section 68(1) of the Public Finance Management (PFM) Act, 2012 provides, *inter alia*; that, an accounting officer for a national Government entity, the Parliamentary Service Commission (PSC) and the Judiciary shall be accountable to the National Assembly for ensuring that the resources of the respective entity for which he or she is the accounting officer are used in a way that is lawful, authorised, effective, efficient, economical and transparent. The above legal provisions as read together with others not expressly cited obligated the Fund Account Managers to appear before the Committee.

Section 12(3) of the National Government Constituencies Development Fund (NG-CDF) Act No. 30 of 2015 provides that the Fund Account Manager shall own the authority to incur expenditure of the funds at the constituency. The Fund Account Managers were, therefore, invited to answer all the queries.

There are key critical issues we came up with and we also received during our deliberations. Some of the key areas of concern which was of interest to the Members include:

**Late disbursement of funds:** The Committee observed that some projects which had been budgeted and approved by the NG-CDF Board were not implemented during the financial years, due to late disbursement of funds by the National Treasury. With funds being released in the second and third quarters, this greatly compromised efficiency in procurement of goods and services, leading to under absorption of funds.

After every financial year, the Auditor-General looks at the accounts and he is informed by the budget which was appropriated for that particular project. If that money has not been used, the Auditor-General is very generous in his Report to indicate that Kenyans did not get value for money. The reason why this happens in the NG-CDF is that, the money is not released the way it should. Therefore, you would realise that maybe money is released during the fourth quarter. By the time the Fund Account Managers undergo the procurement process these projects are carried forward to the next financial year. The Committee has therefore recommended that the National Treasury expedites the process of quarterly disbursement of funds to the NG-CDF for timely release to the constituencies.

The National Treasury factors an amount of Kshs 4.976 billion which is carried over from every financial year because there is some money from 2012 to 2015 which was not released by the board. This money still affects the projects every financial year. So, we recommend that this money is given to the board so that the allocation can progress as scheduled per financial years.

The other critical issue is failure to submit audit information. The Committee noted widespread instances of failure or refusal by the Fund Account Managers to submit the requisite audit information. This obstructed the work of the Office of the Auditor-General. The Fund Account Managers introduce information later on when summoned to appear before the Committee. This observation remains because the Office of the Auditor-General is not receiving all the documentation they need when they go for the audits. Therefore, due to this failure from the Fund Account Managers, this delay is always occasioned.

The Committee on this matter recommends that the Fund Account Managers must strictly comply with the provisions of the Public Audit Act No. 34 of 2015; the NG-CDF Board issues an administrative circular that directs Fund Account Managers to comply with the provisions of the Constitution of Kenya 2010, the Public Audit Act No. 34 of 2015, the Public Finance Management Act No. 18 of 2012 and the Public Procurement and Asset Disposal Act No. 33 of 2015. The Fund Account Manager maintains the original PMC files at the NG-CDF constituency office and the duplicate can be maintained by the PMC.

The NG-CDF Board should also implement these recommendations within three months of adoption of this Report by the House.

Another issue which we found cross-cutting is delays in allocation and disbursement of bursaries. The Committee observed there are many incidents of delays in disbursement of bursaries to beneficiary institutions, non-presentation of issued bursary cheques to the institutions and cancellation of issued bursary cheques. We realised that sometimes cheques are written to institutions when students are in session. The board has not up to date given guidelines on how bursaries should be distributed to schools. My Committee has very good recommendations:

1. The Board should review guidelines on issuance of bursaries to enhance efficiency.
2. The NG-CDF should fast-track adoption of electronic funds transfer in disbursement of bursaries.
3. The Fund Account Manager should ensure that beneficiary institutions issue acknowledgment documents upon receipt of the bursaries.

The board should implement these recommendations within three months of adoption of the Report by the House.

Another cross-cutting issue is accuracy of financial statements. The Committee observed that Fund Account Managers were experiencing challenges in complying with the International Public Sector Accounting Standards of Reporting, commonly known as IPSAS Reporting Framework. The Public Sector Accounting Standards Board should review the standards periodically to align them with the emerging accounting standards and practices. The Committee recommended that:

1. The Fund Account Managers should comply with the IPSAS Framework in preparation of financial statements.
2. The board, in consultation with the PSAS Board, should conduct continuous capacity building on financial reporting standards for constituency staff, that is, the Fund Account Managers.

Another cross-cutting issue is unapproved implementation of projects and reallocation of funds. The Committee observed instances where Fund Account Managers implemented projects and reallocated funds without seeking prior approval of the board. This is contrary to Section 6(2) of the NG-CDF Act (No. 30 of 2015) which expressly provides that once funds are allocated to a particular project, they shall remain allocated for that project and may only be reallocated for any other purpose during the financial year with the approval of the board. Additionally,



Regulation 54 of the Public Finance Management (National Government) Regulations, 2015 also provides that:

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

Further, the Committee observed that some projects initiated by CDF committees prior to the enactment of NG-CDF Act, 2015 and which are now categorised as devolved functions remain stalled to date. The reason is that NG-CDF was supporting devolved functions such as provision of dispensaries and construction of roads in the counties. Some of the constituencies have stalled those projects they had initiated before this Act. After the enactment of the NG-CDF Act, 2016, it has not been possible to allocate money to those projects again because they are devolved. That is what the Committee observed. We came up with suggestions on what should be done to that effect. It was further observed that there was poor monitoring and evaluation of projects in some instances which occasioned a rise in project implementation costs.

The NG-CDF Board had not put to level information communication technology in management of projects. Therefore, the Committee recommends that the NG-CDF Board takes administrative action against anybody who contravenes the Act and the fund managers should ensure compliance with Section 6(2) of the NG-CDF Act 2015.

The NG-CDF Board should publish the list of all incomplete projects. I earlier on mentioned that there are some projects out there in constituencies which are yet to be completed and now they have been devolved. Also, the county governments are very reluctant to allocate money to complete these projects. We have, therefore, recommended that the NG-CDF Board publishes the list of all incomplete and/or stalled projects initiated by the former NG-CDF Board before the enactment of NG-CDF Fund 2015.

The Board, in consultation with the National Treasury and Ministry of Planning and other relevant authorities should expedite completion of all incomplete or stalled projects.

The NG-CDF Board should adopt and implement electronic monitoring and evaluation systems and tools to monitor all projects in the constituencies and have them linked to the electronic national Government monitoring and evaluation system. That is not a big thing to do. The board should have an electronic system that can synchronise all the projects across the country from wherever they are. Once they are complete, the system will be indicating that a project is complete and it can be linked to the electronic national government monitoring and evaluation system which will deal with all projects of the national Government across the country.

Because of the urgency of this issue, we recommended that there be implementation within three months after the adoption of this Report that we are now discussing.

Another cross-cutting issue that we identified as the Committee is failure to surrender imprest. The Committee observed that recovery of outstanding imprest was low and that some imprest remained outstanding since 2015/2016, which is in contravention of Regulation 94 of the Public Finance Management Regulation Act, 2015.

The Committee recommends that the NG-CDF Board recovers all outstanding imprest from defaulting officers with interest at the prevailing Central Bank of Kenya (CBK) rate as provided for under Article 226(5) of the Constitution of Kenya 2010.

Another cross-cutting issue is stated in part (g). It is on transfer of assets and liabilities following the splitting of constituencies. The Committee noted that constituencies were facing challenges relating to the transfer of assets and liabilities occasioned by the delimiting of constituency boundaries.

The Committee further observed that following the split of constituencies Fund Account Managers opened new accounts with nil balances for audit, despite a directive issued by the board requiring that financial transactions for new accounts be conducted through the old constituency accounts. Actually, Nairobi County is the leading county in Kenya with many new constituencies. For example, when Ruaraka was hived off from... I wanted to catch the attention of Hon. Kajwang' the Member for Ruaraka because the constituency was hived off Kasarani.

*(Loud consultations)*

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Yes, Hon. Kajwang' has your attention. Hon. Murungi is simply saying that the consultations are too loud while talking about your constituency. Therefore, he wants you to lend him your ear.

**Hon. Kathuri Murungi** (South Imenti, Independent): His fund manager has done very well and I want to commend him. Therefore, when these constituencies were split the liabilities and assets... You know the original constituency was supposed to take over the assets and any money left so, it could be shared among the projects falling in other constituencies. This did not go smoothly according to what we got during our interaction with the fund managers.

Therefore, we have recommended that the board provides a status report to the National Assembly on transfer of assets and liabilities among all constituencies, following the delimitation of constituency boundaries which resulted into creation of 290 constituencies. The NG-CDF Board should implement this recommendation within six months of adoption of this Report by the House.

Another cross-cutting issue is inadequate support from the national Government sub-county treasury in Nairobi City County. The Committee observed that the 17 constituencies in Nairobi City County are served by one district accountant domiciled in the Ministry of Interior and Coordination of National Government. Therefore, it was very difficult for the fund managers to get the statements of accounts to adequately prepare for auditors.

The Fund Account Managers cited challenges in accessing services of this office, particularly approval of payments and access to documents under the custody of the district accountant. These are usually subject for verification by the Auditor-General during auditing period.

Therefore, my Committee recommends that the Cabinet Secretary under the National Treasury and Planning and the Ministry of Planning establishes the office of the regional accountant to support Fund Account Managers within Nairobi City County.

Another key issue is about engagement of Fund Account Managers by the NG-CDF Board. The Committee observed that some Fund Account Managers were deployed to more than

one constituency with others doubling as regional coordinators. This creates inefficiencies in execution of their functions. Therefore, the Committee recommends that the board reviews its policy on renewal of contracts for Fund Account Managers to provide for clearance of outstanding audit queries based on reports from the Auditor-General on constituencies' engagements prior to effecting any transfers and deployment.

The NG-CDF Board should fill existing vacancies of Fund Account Managers and regional coordinators and it should adhere to this deployment policy on the maximum number of years that Fund Account Managers should be engaged in a constituency. On this one, we recommended that it should be implemented within three months of the adoption of this Report by the House. Members will agree with me that as we do the oversight role, sometimes it is hard to trace the fund manager serving your constituency. When he has two or three constituencies, his or her efficiency becomes zero. Therefore, the constituents are not served well. So, we have recommended that all the vacant positions should be filled within the three months that we have given so that every constituency can have an independent Fund Account Manager. By so doing, the fund will be effectively managed by the fund managers.

Issue number (j) is operations of the NG-CDF Board. The Committee observed that the NG-CDF Board was not fully constituted as provided under Section 15 (1) (e) of the NG-CDF Act 2015 which has created challenges in raising quorum to transact business. This has occasioned delays in project approvals and ultimately then to non- implementation of projects, which is subject to audit query and reported low absorption of funds, that constituents did not get value for money. We also observed the current Chief Executive Officer (CEO) of the board was appointed in acting capacity in 2011 and remains acting to date. That is a cool seven years while the CEO is working in an acting capacity.

The NG-CDF Board secretariat was constrained in its human resource capacity to offer the requisite technical support to the 290 constituencies. The secretariat did not have the capacity to prepare Fund Account Managers for audits and did not offer support to ensure that issues raised in the Auditor-General's reports are resolved before the next audit cycle.

We also observed that the board's resolution to withhold release of funds to constituencies that had a balance of Kshs10 million and above in their accounts affected implementation of projects. This policy was meant to mitigate against cash flow by creating allowable administrative balances prior to release of funds to constituencies. This is actually a very common issue because the board has a regulation that once the Fund Account Manager in the constituency has more than Kshs10 million in the constituency account, there is no more money given to the constituency before that amount is reduced to less than Kshs10 million.

This policy has affected so many projects. Maybe you might realise that some of the money which is getting to Kshs10 million and above is money given as bursaries and the institutions actually have not been able to bank the cheques during the previous system. Therefore, the Committee recommends that the Cabinet Secretary for National Treasury and Planning appoints seven other persons to the NG-CDF Board as provided under Section 15 (1) (e) of the NG-CDF Act 2015 so that the board can be fully operational to make decisions pertaining the funds. The NG-CDF Board fills the position of the CEO who has remained in

acting capacity since 2011. The NG-CDF Board restructures its operations to decentralise its services in the regions. In this one, our recommendation was that we should have an officer of the board in that county, in every county. This is because all the fund managers have somebody called a coordinator, but that coordinator is also a Fund a

Account Manager in a constituency. Our recommendation is that for ease of implantation of projects and to ease the problem of travelling all the way to come to the board in Nairobi, because you have now devolved services to the counties, every county should have an officer of the board working for that constituency to help the fund managers be very effective.

The last recommendation is that the NG-CDF Board reviews its policy on withholding funds for constituencies with a balance of Kshs10 million and above in their account. We have proposed that these recommendations should be implemented within three months of adoption of this Report by the House.

One of the other cross-cutting issues that we came up with is investigations by the Ethics and Anti-Corruption Commission (EACC) and active matters in court which lawyers refer to as matters *sub-judice*.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Hon. T.J. Kajwang', the Member for Ruaraka, seems to have an intervention.

**Hon. T.J. Kajwang'** (Ruaraka, ODM): Hon. Temporary Deputy Speaker, we need to put some "sugar" into this debate. If we go this way, we will all sleep. Looking at the time, does the Chair wish that this Motion is seconded and becomes a property of the House? If it is not seconded, this Motion will fall. Is he looking at the clock? Does he have a strategy for this Motion to be seconded so that it becomes a property of the House?

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Hon. T.J. Kajwang', there is a lot of "sugar" in the Motion, as you call it. The Chair is still moving the Report.

**Hon. Kathuri Murungi** (South Imenti, Independent): Hon. Temporary Deputy Speaker, my information is that even if I do not finish moving, I will continue moving it next time this debate resumes.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Hon. T.J. Kajwang', I know you even sat where I am sitting now. Even if he does not finish moving, he will still continue. I know he mentioned Ruaraka and we must appreciate that Ruaraka is one of the...

He has his six minutes to move. Please allow him to do so. Do not confuse him.

**Hon. Kathuri Murungi** (South Imenti, Independent): Mentioning Ruaraka is more than honey, Hon. Kajwang'. It is not only sugar but honey. I will continue moving this Motion.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Hon. Chair, for me to clear the doubts by the Member of Ruaraka, Hon. Kajwang', even after 7.00 p.m., which is the time for closure of the House, you will still have 20 minutes to move. I know the Members really wanted to contribute but it is important for the Chair to move. It is a very important Report.

Carry on, Chair.

**Hon. Kathuri Murungi** (South Imenti, Independent): Thank you, Hon. Temporary Deputy Speaker for coming to my rescue.

The Committee observed that a number of audit queries raised in the Report of the Auditor-General in some constituencies outlined here were either subject to active proceedings as provided under Standing Order No.89(2) or under investigations by the EACC. In Lang'ata, Embakasi North, Embakasi South and Kamukunji constituencies, the Committee recommended that the EACC expedites investigations into these matters and furnishes a status report on the investigations to the National Assembly so that, that report can also be adopted. The National

Government-Constituencies Development Fund (NG-CDF) Board should suspend Fund Account Managers and any other officers of the board who are under investigations by the EACC until those investigations are completed. That is the normal practice across the Government.

Another issue is the ineffectiveness of the Constituency Oversight Committees (COCs). The Committee noted that the COCs were largely ineffective as a result of underfunding. Regulation 34 (4) of the NG-CDF Fund Regulations, 2016 provides that the COC shall be facilitated in performance of its activities by the funds allocated for monitoring and evaluation, provided that not more than 1 per cent of the allocated funds shall be used for that purpose. The budgetary allocation of 1 per cent cut-off cannot facilitate effective operations by the COC.

The Committee, therefore, recommends that the NG-CDF Board expedites the process of amending the NG-CDF Regulations 2016 to remedy the apparent facilitation shortfall.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Order, Hon. Chairman. The time for moving your Reports is being interrupted by the procedures of the House. You will move your Report at the most appropriate time in the next sitting. You have a balance of 20 minutes.

#### ADJOURNMENT

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Hon. Members, the time being 7.00 pm, this House stands adjourned until Wednesday, 17<sup>th</sup> October 2018, at 9.30 a.m.

The House rose at 7.00 p.m.