

**PARLIAMENT OF KENYA****THE NATIONAL ASSEMBLY****THE HANSARD****Wednesday, 2<sup>nd</sup> October 2019**

The House met at 9.30 a.m.

*[The Deputy Speaker (Hon. Moses Cheboi) in the Chair]***PRAYERS****QUORUM**

**Hon. Deputy Speaker:** Hon. Members, we are short of the required quorum. I, therefore, order that the bell be rung for 10 minutes.

*(Quorum Bell was rung)*

Order, Hon. Members! We now have the required quorum. Therefore, business will begin.

**PETITIONS**

**Hon. Deputy Speaker:** Hon. Members, we have two petitions, one by Hon. Doye Nakuleu and the other one by Hon. Caleb Hamisi. We will start with the one of Hon. Nakuleu.

Hon. Kubai, you are on intervention. What is it?

**Hon. Kubai Iringo** (Igembe Central, JP): Thank you, Hon. Deputy Speaker. In as much as work in this august House was made light by these systems, they are usually not up to date. As we are talking, there is no Order Paper in the system.

**Hon. Deputy Speaker:** Well, that is one thing we have also noticed from this end. It will be uploaded shortly. Actually, it should be there now. However, that is to say that Hon. Kubai is a diligent Member. He is techno-savvy. If you check your gadgets, I am sure it is there. If not, it will be there shortly.

As I had said, we will start with the Petition by Hon. Nakuleu.

**RECRUITMENT OF TEACHERS IN TURKANA COUNTY BY TSC**

**Hon. Christopher Nakuleu** (Turkana North, JP): Thank you, Hon. Deputy Speaker. I beg to present a Petition regarding the recruitment of teachers in Turkana County by the Teachers Service Commission (TSC).

I, the undersigned, on behalf of residents of Turkana County, draw the attention of the House to the following:

THAT, the county is classified as arid and semi-arid land (ASAL) and it is among the poorest counties in Kenya with approximately 90 per cent of the population living below a dollar a day.

THAT, the county has high illiteracy levels which stands at 82 per cent, according to the Kenya National Bureau of Statistics (KNBS) and the United Nations Educational, Scientific and Cultural Organisation(UNESCO).

THAT, the teacher to student ratio in public schools within the County is about 1 to 100, which is lower than the recommended Ministry of Education ratio of 1 to 45.

THAT, a majority of teachers in Turkana County are non-locals, whose families reside outside the county.

THAT, following the conclusion of the required five years that the Teachers Service Commission and the Ministry of Education stipulate for a teacher to serve in a particular station, most non-local teachers normally apply for transfers to their home counties.

THAT, on account of this trend, the county has ended up simply serving as a temporary station that teachers use to secure employment, after which they depart to greener pastures in other counties thereby causing serious staffing challenges in Turkana County.

THAT, the situation is further aggravated by the harsh conditions and typical hardships prevailing in the area, which the non-locals find extremely different to adapt to.

THAT, the TSC has in the recent past carried out recruitment of teachers in Turkana County without cognisance of the actual realities on the ground, local interests and affirmative action stipulated in the Constitution.

THAT, TSC does not recognise Turkana as a marginalised county and thus makes inaccurate, misleading and regressive assumptions that the county education status and requirements are similar to those of other counties.

THAT, a report by the National Cohesion and Integration Commission (NCIC) revealed that members of Turkana County constitute less than 1 per cent of the public service, with the Commission recommending equitable representation of Kenyan communities in the public service.

THAT, a substantial proportion of teachers hailing from Turkana County, who complete education is not able to compete with their peers from other counties who complete the training earlier than them. This is oddly enough a criterion that TSC adopted to the detriment of local teachers and which leads to acute and perpetual teacher shortage in the county.

THAT, efforts by teachers in Turkana County to have this critical issue addressed have been futile, and

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

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

(i) inquire into TSC's staffing policy in Turkana County, with a view of proposing affirmative action in the recruitment of teachers in Turkana, giving the local residents priority in the recruitment.

(ii) engage TSC with a view of recommending compliance by TSC to the conventional ratio of 70 to 30 per cent teacher recruitment ratio for locals *vis-à-vis* non-locals.

(iii) cause TSC to issue a special waiver to enable recruitment of graduates from Turkana County into the TSC fraternity irrespective of the year of graduation.

Thank you, Hon. Deputy Speaker.

**Hon. Deputy Speaker:** There seems to be some interest. I will give opportunity to two members to have a take. There are six Members who have placed requests. Let us hear Hon. Omboko Milemba.

**Hon. Omboko Milemba** (Emuhaya, ANC): Thank you, Hon. Deputy Speaker. At the outset, let me support that petition by the Member and tell Parliament that there are two things that are happening continuously and which will lord it over us in future. It is not only Turkana County that lacks teachers and the mode of employment being disturbing. There are two things. One, despite the fact that education is supposed to be free and compulsory, the government has not provided enough schools, especially in the City of Nairobi. So, education is mostly being handled by private school owners. Two, because I know I have to be very brief, schools in Kenya do not have teachers. Most of the teachers are employed by parents using payments from those particular parents. If that trend is allowed to continue, we will end up privatising two things: both the schools and teacher employment. That is dangerous. Therefore, I want to support the Petition. I would wish that it is looked into very seriously.

Thank you.

**Hon. Deputy Speaker:** Hon. Hassan Maalim, you have the Floor.

**Hon. Kulow Maalim** (Banissa, EFP): Thank you, Hon. Deputy Speaker. At the outset, I wish to support the Petition by the Member. It is not only Turkana but all marginalised areas have a serious problem in terms of recruitment of teachers. We remember the former Cabinet Secretary for Education, Madam Amina, had come up with a strategy paper, a formula that could have supported marginalised areas in terms of recruitment of teachers, but it was politicised. That exercise never took place. It is to the detriment of marginalised areas. Eleven counties in this country have serious problems in terms of the teaching fraternity. It is high time the Ministry of Education came up with a strategy, a policy, a plan together with TSC, which is a real problem to the marginalised areas. The TSC has all along been neglecting areas like Turkana, Mandera, Wajir – the 11 counties that I have mentioned.

**Hon. Deputy Speaker:** Please, do not debate. You will have your take if you go to the Committee when the Petition will be heard. I am just giving you opportunity to make one comment, so that I can give opportunity to at least two other Members. So do not debate.

**Hon. Kulow Maalim** (Banissa, EFP): Therefore, Hon. Deputy Speaker, I support the Petition and ask the TSC to take care of the plight of the 11 marginalised counties in this country.

I thank you.

**Hon. Deputy Speaker:** Let us now hear Hon. Sossion. No debate please.

**Hon. Wilson Sossion** (Nominated, ODM): Thank you, Hon. Deputy Speaker. I wish to thank the Petitioner for that timely Petition. What we are talking about here is a structured policy on teacher training and recruitment. This country has a constitutional commission that is given the mandate to access sufficient funding from the Consolidated Fund and so we should not have children without teachers for whatever reason. This country has got over 300,000 teachers who are trained and unemployed. Therefore, it should be a matter of urgency for the Government to reorganise itself, through the TSC, and ensure that teachers are adequately supplied and available in every classroom to deliver teaching to every child.

I support the Petition.

**Hon. Deputy Speaker:** The Member for Tiaty, you have the Floor.

**Hon. Kassait Kamket** (Tiaty, KANU): Thank you, Hon. Deputy Speaker. It is very rare for me to agree with the Member for Turkana North but on this occasion, I fully agree with him

and support this Petition. Those of us who come from pastoralist communities have really suffered in the manner in which teachers are recruited in this country. You find, for example, in Tiaty Constituency we are one of the least staffed in terms of teacher placement, both in primary and secondary schools. Whenever teachers are recruited, for example, secondary school teachers, Kenyans come from all over the country. Tiaty has become an employment bureau for teachers from all over the country. We have no issue with Kenyans getting those jobs, but the problem is the retention even for the primary school teachers who are employed and then posted elsewhere. Those who come from other communities, whenever there are small issues of skirmishes or insecurity, they run away and our children are left unattended to and untaught. So, I fully support this petition and urge that we move forward and change the recruitment policy of teachers in this Republic.

I thank you.

**Hon. Deputy Speaker:** Let me give the chance to Hon. Tong’i.

**Hon. Richard Tong’i** (Nyaribari Chache, JP): Thank you, Hon. Deputy Speaker for this opportunity. I support the Petition because it touches on people’s lives. I have a huge population in my constituency, and the teachers we have are not commensurate to the number of students. I am more concerned with the manner in which the TSC managed the house allowance. Recently, there was an arrangement on how the house allowance would be paid. When you taught in a town school, you were given a hardship allowance but that was scrapped last month. There is a lot of hue and cry in the constituency. I am sure it is not just in my constituency but in the entire country. It is something which needs to be relooked into because the zoning disadvantages some schools in town constituencies. We need to take up this so that such anomalies are rectified.

I support.

**Hon. Deputy Speaker:** Okay. The rest of the Members can speak to it when it comes before the Departmental Committee on Education and Research.

The next Petition is by Hon. Caleb Amisi.

#### GAZETTEMMENT OF KITALALE SETTLEMENT SCHEME

**Hon. Caleb Luyai** (Saboti, ODM): Thank you, Hon. Deputy Speaker.

I, the undersigned, on behalf of the residents of Kitalale Settlement Scheme in Kitale, Saboti Constituency, draw the attention of the House to the following:

THAT, during the advent of colonialism, residents of Kitalale in Trans Nzoia County were displaced from their land, approximately measuring 6,000 acres, which was then occupied by white settler farmers who owned it in the name of EX-Properties Sisal Limited.

THAT, after Independence, the land was zoned into three settlement phases of Kitalale Settlement Scheme in Trans-Nzoia, namely Phase 1, Phase 2 and Phase 3.

THAT, the land was sub-divided into two parcels; LR No. 2065, whose memorandum of transfer was entered on 18<sup>th</sup> November 1973 and LR No.2070/2, measuring approximately 89.32 hectares that was transferred to one Richard Simiyu and Timothy Simasi on 13<sup>th</sup> August 1983.

THAT, in 1973, LR. No.2065 was allocated to Kapsokwony councillors by the Commissioner of Lands who paid to the Government the requisite dues on the freehold tenure and was issued with letters of allotment on 5<sup>th</sup> November 1996.

THAT, LR. No.3023, covering an area of 1,678 hectares, located within the scheme, Kitalale Settlement Scheme Phase 2 was transferred to the Government of Kenya on 8th November 1973, and the Government allocated it to the deserving settlers in 1996.

THAT, LR. No.2996, covering approximately 1,731 hectares located in the Kitalale Settlement Scheme Phase 1, which is the most densely populated of all the phases, was divided into 2½ acres each and transferred to the Government of Kenya in 1994 to settle deserving residents.

THAT, LR. No.2070/3 covering an area of 1,113 hectares, located in the scheme named Kitalale Settlement Phase 3 was also transferred to the Government of Kenya in 1973 which allocated it to residents in 2000 on leasehold basis.

THAT, the residents who were allocated land in this settlement scheme made all due payments to the Government for every piece of land occupied and were issued with letters of allotment.

THAT, the land in question also has public utilities such as Sango Vocational Training Centre, Sango Primary and Secondary Schools, which have allotment letters for the respective parcels of land which they occupy, and

THAT, in spite of the fact that the concerned residents have occupied the said parcels for as long as 30 years, Kenya Forest Service has purportedly been claiming that the land is set aside as forest land and has been attempting to gazette it as such.

Therefore, your humble Petitioners pray that the National Assembly, through its relevant Departmental Committee on Environment and Natural Resources:

(i) Inquires into the matters raised in this Petition regarding ownership of land in Kitalale Settlement Scheme.

(ii) Recommends that pursuant to Section 34 of the Forest Conservation and Management Act, 2016, the responsible Cabinet Secretary initiates the process of de-gazetting LR. No.3023, LR. No.2996 and LR.No.2070/3 in Kitale Settlement Scheme, with a view to allocating the said parcels of land to the residents who are currently living on the land as squatters and Sango Vocational Training Centre, Sango Primary and Secondary Schools situated on the land.

And your Petitioners will ever pray.

I thank you Hon. Deputy Speaker.

**Hon. Deputy Speaker:** I will give a chance to two Hon. Members on this if they are interested. I will start with Hon. Wamalwa, the Member for Kiminini.

**Hon. (Dr.) Chris Wamalwa** (Kiminini, FORD-K): Thank you Hon. Deputy Speaker. I rise to support the Petition by Hon. Amisi. Indeed Kitalale is a place where we have people who have stayed there for many years. The Government has never issued them with title deeds. They only have letters of allotment. As my colleague has clearly put it, these people paid all the due amounts that were required by the Government, and the allocation was done by a legitimate Government. So, it is the responsibility of the current Government to expedite this process of issuing title deeds. This is a matter that we have been following up.

The Cabinet Secretary in charge of Lands, Hon. Farida Karoney is well conversant with this matter. Sometimes back the Petition was brought here on Chebyuk Settlement Scheme which is partly on the Bungoma side. I asked her why she has not done the same on the Trans Nzoia side because it is a similar issue, so that these people can be given title deeds. These title deeds will help some of them to get loans which can help them improve their businesses.

In Trans Nzoia, this issue is not just in Kitalale. We also have a similar problem in Meso, Chepchoina and we are humbly requesting the relevant Government agencies and the CS to move with speed so that these squatters can be issued with title deeds immediately.

The matter that the KFS is coming up with should not arise. The same issue that is happening to Mau and other areas may move to Trans Nzoia and we do not want that to happen.

People settled and later on the Government comes to revoke what is duly theirs. So we are requesting the relevant Committee to move with speed.

**Hon. Deputy Speaker:** That is okay. I see no other interest in this one. There is an intervention. Let us have Hon. Kioni.

**Hon. Jeremiah Kioni** (Ndaragwa, JP): Thank you, Hon. Deputy Speaker. I want to tender my apologies because I pressed the wrong button when I walked in. I even wanted to intervene on the other one.

I just want to support that Petition by saying that one of the problems we have encountered is that, successive governments do not carry on with the work that had been done by the previous governments. What is clear here is that the previous Government undertook some exercise that was left pending and the current one is dragging its feet in finishing that which had been started? This is a case that is also in Ndaragwa. We have the Ndaragwa Township that was partly in a forest. The process had been started by the previous Government and to date it is pending. We have the hardship allowance Petition that is pending before Hon. Koinange. This is something that was started by previous governments and is still pending. The current one looks a bit uneasy in carrying on.

So, as I support, it is important that successive governments finish what had been started by previous regimes.

I thank you, Hon. Deputy Speaker.

**Hon. Deputy Speaker:** That is okay. Let us move on to the next Order.

### PAPERS LAID

**Hon. Ali Adan** (Mandera South, JP): Thank you, Hon. Deputy Speaker. I beg to lay the following Paper on the Table of the House:

Reports of the Departmental Committee on Agriculture and Livestock on its consideration of the Livestock and Livestock Product Marketing Board Bill (National Assembly Bill No.2 of 2019).

Thank you.

**Hon. Deputy Speaker:** Table it please. Let us move on to the next Order.

### ORDINARY QUESTIONS

**Hon. Deputy Speaker:** The first Question is Question No.429/2019 by Hon. Mwadime. He has told me that it was phrased in a different manner from his intentions. Therefore, I would have happily moved it to this afternoon. Unfortunately, the Order Paper is already out so, we are a bit late on this one. So, he does not lose out in terms of time because he has been queuing. This Question should come tomorrow in afternoon. Is that okay Hon. Mwadime?

*Question No.429/2019*

CRITERIA OF IDENTIFYING AND GAZETTING HARDSHIP AREAS

*(Question deferred)*

*Question No.430/2019*

## STATUS OF SEISMIC EXPLORATION

**Hon. Ali Adan** (Mandera South, JP): Thank you, Hon. Deputy Speaker. I rise to ask Question No.430/2019 to the Cabinet Secretary for Petroleum and Mining.

(i) What is the status of seismic exploration being undertaken by M/s. Octant Energy in Kenya Block 1-Mandera North East at Elwak, Dabacity and Garse Sala towns in Mandera South Constituency which commenced in 2017?

(ii) When will M/s. Octant Energy submit the seismic data and exploration findings of the 1,900 km section in Kenya Block 1 to the Ministry?

(iii) When will further exploration of a 300 km stretch of the same block, which was suspended in 2017, resume so as to facilitate data interpretation, well prognosis and drilling?

Thank you, Hon. Deputy Speaker.

**Hon. Deputy Speaker:** Very well. That will be replied to before the Departmental Committee on Energy. The next Question is by Hon. Sossion.

*Question No.431/2019*

## UN-PROCEDURAL TERMINATION OF EMPLOYMENT OF SAFARICOM WORKERS

**Hon. Wilson Sossion** (Nominated, ODM): Thank you, Hon. Deputy Speaker. I rise to ask Question No.431/2019 directed to the Cabinet Secretary for Labour and Social Protection.

(i) Could the Cabinet Secretary explain why Safaricom Plc is discouraging and preventing its employees from joining workers' unions of their choice contrary to the provisions of Article 41 of the Constitution?

(ii) What action does the Ministry intend to take against the said company for unprocedurally terminating employment of several of its workers on account of sickness as a result of working for long hours in unsafe environment at its Call Centres?

Thank you, Hon. Deputy Speaker.

**Hon. Deputy Speaker:** Very well. That one will be replied to before the Departmental Committee on Labour and Social Welfare. Next is the Member for Nyakach, Hon. Aduma Owuor.

*Question No.432/2019*MEASURES TO RESOLVE CONFLICTS BETWEEN RESIDENTS OF NYANDO  
AND NORTH NYAKACH SUB-COUNTIES

**Hon. Aduma Owuor** (Nyakach, ODM): Thank you, Hon. Deputy Speaker. Mine is Question No.432/2019. It is directed to the Cabinet Secretary for Interior and Coordination of National Government.

(i) Could the Ministry consider putting a distinct administrative boundary between Magina Sub-Location in Wawidhi Location, Nyando Sub-County and Wasare, Gem-Rae Sub-Location in North Nyakach Sub-County to bring to an end conflicts among residents of the two Sub-Counties?

Hon. Deputy Speaker, I have been constrained to bring this issue because I noticed that Parliament has just passed new Commissioners to the National Land Commission (NLC). There has been some mischief going on of fraudulent allocation of parcels of land in these two areas without any due regard to the law.

**Hon. Deputy Speaker:** The details you seem to have should go to what you will be presenting before the Committee.

**Hon. Aduma Owuor** (Nyakach, ODM): Hon. Deputy Speaker, my greatest concern is that this issue had been arbitrated in this House way back in 1995, but the Government has not taken any action on it. This matter had been canvassed in this House by my predecessors.

**Hon. Deputy Speaker:** Luckily now, we have Hon. Aduma Owuor in Parliament. You will articulate it like the lawyer you are before the Committee on Administration and National Security. That marks the end of Question Time. So, we will move on to the next Order.

## BILLS

### *First Readings*

KENYA INFORMATION AND COMMUNICATION (AMENDMENT) (No.2) BILL

HEALTH (AMENDMENT) BILL

CANCER PREVENTION AND CONTROL (AMENDMENT) BILL

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

### *Second Readings*

EMPLOYMENT (AMENDMENT) BILL

**Hon. Deputy Speaker:** On this one what remained was for the Question to be put. I confirm that we have the required numbers.

*(Question put and agreed to)*

We must always organise our voice to come in a manner that is parliamentary. Well, I will leave it there for now and pursue it later in the day.

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

ANTI-CORRUPTION AND ECONOMIC CRIMES (AMENDMENT) BILL

*(Hon. Ndindi Nyoro on 24.07.2019)*

*(Resumption of Debate interrupted on*



24.07. 2019 – Morning Sitting)

**Hon. Deputy Speaker:** Hon. Ndindi Nyoro, you had a balance of 20 minutes to move your Bill and hopefully you will be seconded. So, proceed.

**Hon. Ndindi Nyoro** (Kiharu, JP): Thank you, Hon. Deputy Speaker. I started moving this Bill a while back. Thank you for the opportunity to conclude moving it so that it can progress to the final stage. I am seeking to amend the Anti-Corruption and Economic Crimes Bill to have stiffer penalties for those convicted of such kinds of crimes.

Hon. Deputy Speaker, there is a lot of echo. I am seeking to amend this Bill to increase the penalties in terms of fines. Currently, anyone convicted with these kinds of crimes is given a fine of not more than Kshs1 million. This Bill, is seeking to open that discretion and have the fine prescribed to not less than Kshs1 million.

Also, when it comes to jail term currently, anyone convicted with corruption and economic crimes is given a jail term of not more than 10 years. My Bill seeks to remove that discretion from our Judiciary and have a jail term of not less than 10 years. Basically, my Bill is seeking to punish those people who continue to steal public money for their own personal benefit. I will give a background.

The fabric of our country is torn apart because currently people are stealing public resources in an unprecedented manner. Our country is very rich. We have so many resources and we are blessed with resources that can take our country to greater heights. However, these resources end up in the pockets of just a few people. Currently, we have a country with very few rich people and a majority poor who toil hard, but have remained very poor at the bottom of the ladder. We have to avert this situation and we have a chance to do it in this House.

In South Korea, currently, there are two former presidents who are serving jail terms. That serves as a deterrence. Countries with stiffer penalties have recorded a drastic decline in these kinds of crimes. China has stiffer penalties than the ones that...

*(Loud consultations)*

**Hon. Deputy Speaker:** Order, Hon. Members! I see there is a group led by Hon. Mishi Mboko consulting extremely loudly. Is that Hon. Aduma? Please, take your seats and give an opportunity to Hon. Ndindi to have his day in the august House.

Proceed, Hon. Ndindi.

**Hon. Ndindi Nyoro** (Kiharu, JP): Thank you, Hon. Deputy Speaker, for protecting me from the friends of the corrupt. A country...

*(Loud consultations)*

**Hon. Deputy Speaker:** Hon. Ndindi, that was obviously unnecessary. You know when you cast aspersions against your own colleagues it raises unnecessary excitement in the House. Let us manage it at that point. Let us not allow any points of order. That is what I actually would ask you. Now, do you see where the problem is? What is it, Hon. Mbadi?

**Hon. John Mbadi** (Suba South, ODM): Thank you, Hon. Deputy Speaker. Remember you have just asked Hon. Osotsi and others to consult in low tones. I was in that team and we respected your instructions and guidance. Then this immature boy comes to say that you are

protecting him from the corrupt. Who is corrupt? Does he mean that we are more corrupt than him who goes to Ruto to pick money every day?

**Hon. Deputy Speaker:** Let us leave it at that.

**Hon. John Mbadi** (Suba South, ODM): He is picking money from the face of corruption and then he calls others corrupt. That is something we cannot accept. He has to withdraw that. Otherwise, we are not... Stop being stupid.

**Hon. Deputy Speaker:** Order! Order! Hon. Mbadi, you are a very serious and seasoned politician serving your third term. We cannot right a wrong with another wrong. I agree with you to the extent that actually what he said initially was completely unnecessary and I want him to withdraw. However, on the other hand, you have also put me in another situation whereby I am very uncomfortable imagining that I am presiding over a House of boys and girls. These are mature Members of Parliament in their own right elected by their own people. So, Hon. Ndindi Nyoro, surely you will have to withdraw that one. It was unnecessary because the Members whom I had asked to consult in lower tones actually accepted to do that. So, please, just withdraw that before we go to the next point. You must withdraw that.

**Hon. Ndindi Nyoro** (Kiharu, JP): Thank you, Hon. Deputy Speaker, even for ordering Hon. Mbadi to withdraw.

**Hon. Deputy Speaker:** No! You must withdraw your remarks. This is on a very serious note.

**Hon. Ndindi Nyoro** (Kiharu, JP): Hon. Deputy Speaker, I withdraw.

**Hon. Deputy Speaker:** And apologise because it is not necessary.

**Hon. Ndindi Nyoro** (Kiharu, JP): I apologise, Hon. Deputy Speaker.

**Hon. Deputy Speaker:** Thank you very much. We will stop it there. I do not even want to revisit the issue of Hon. Mbadi, but it was also out of order.

So, proceed.

**Hon. Ndindi Nyoro** (Kiharu, JP): Hon. Deputy Speaker, for the record, he also ought to withdraw because boys in this country are known and there are no boys in this House. Therefore, for the record, I urge and plead that he also withdraws.

**Hon. Deputy Speaker:** Hon. Mbadi, so that we balance the whole thing, the issue of boys is really not right. Just withdraw that one. I know you, Hon. Mbadi.

**Hon. John Mbadi** (Suba South, ODM): Hon. Deputy Speaker, now that Hon. Ndindi Nyoro has accepted to behave well, I will withdraw but he should know there are big boys and small boys in every organisation. Certainly, he is a small boy and I am a big boy when we are in this Parliament.

*(Laughter)*

He must take that into consideration. However, I withdraw if he felt scandalised.

**Hon. Deputy Speaker:** What you are saying now is a bit more realistic. If you are making it an issue of big and small boys and then you are a boy yourself and he is also a boy. Then that makes me a little more comfortable. So, we can now proceed with business. Let us avoid any other side-tracks.

**Hon. Ndindi Nyoro** (Kiharu, JP): Thank you, Hon. Deputy Speaker. I hope I will not get more distractions from the small and big boys like Hon. Mbadi.

Corruption is a huge cost in this country and you have seen it when it comes to the growth in our infrastructure and delivering service to the Kenyan people. The biggest obstacle

that we have is corruption. I was in a process of giving examples of a few countries that have been able to institute stiffer penalties against corruption and economic crimes and most of them have succeeded. China and South Korea are doing very well in combating corruption.

I want to cite something that happened in Singapore in 1984 when the then Minister for Housing was seen to have been corrupted by the contractors who were doing the housing project in Singapore. When this gentleman learnt that the equivalent of EACC of Singapore was looking for him, he started looking for help from the then Prime Minister Lee Kuan Yew, who advised the gentleman – who was actually his friend – to first of all finish up with their equivalent of EACC and then he could look for him. In a matter of two weeks, the then Minister for Housing in Singapore committed suicide. He left a suicide note stating that he could not face the shame of putting the Government in such kind of a circumstance.

In our country, we need to have that kind of spirit where public officers and contractors are, at stage one, ashamed of even engaging in corruption. Penalties are also good so that we have deterrent measures in place for people who might think of profiting from public resources. Corruption is just not about bribes. It comes in many ways. One form of the modern-era corruption is “clientelism” and patronage where people use the positions they hold to advance their personal agenda.

If you look at Africa, you will find that there are too many talented and brilliant young people engaging in politics. However, if you visit the Houses in the US, UK and other mature democracies, what you find there are fairly old people because there are alternatives for young people. For example, in the USA, instead of joining... The youth realise that, in terms of self-interest, they can advance their personal lives better either in Wall Street or Silicon Valley where they do not do any patronage. Rather they only need to write on their intelligence, innovation and ingenuity. The reason we see brilliant people in Africa engaging in politics, especially beyond service to humanity, is that they can ride on the patronage that comes with the positions occupied.

Therefore, even as we talk about corruption, we have to demystify the fact that it is not purely about bribes. There is also a new era kind of corruption especially embedded on clientelism, patronage and tokenism.

There is also a problem, especially in developing economies like Kenya. We have a lot of red tape. There is over-regulation when it comes to the Government. Those layers and layers of bureaucracy only breed corruption. One of the ways for us to holistically address this issue of corruption is by having a lean Government where the ratio of the public budget to the gross domestic product (GDP) should be below 30. When you have a lean Government, most of the economy shifts from being in public or Government hands and goes to the private sector. There is more corruption in the Government than in the private sector. One of the things that I will be seeking to do even beyond this Bill is for us, as a country, to start realising that a lean Government will deliver better services to Kenyans.

One way to deal with this matter and menace is to first of all have laws that prohibit the Government from doing business that is not consequential to the Kenyan people. We have seen proliferation in our Government and a burgeoning appetite of the Government wanting to do business in almost all sectors. One area is the banking sector. There are private banks making supernormal profits. If you look again at the banks that are owned by the public or the Government - who are based in a very profitable sector - most of them are making losses. We have to delineate the two. The Government should concentrate on regulation and creating an

enabling environment for the private sector and leave the private sector to do the bulk of the work, in so far as the growth of the economy is concerned.

I know there are too many people who want to contribute to this Bill. I do not want to talk much because I had many minutes before. I know that this Bill will go a long way in delivering our country from where we are now and put it on the path of growth if we deal with the corrupt in the crude manner we ought to.

I call upon Hon. Sankok, *mtoto wa Mungu*, to second.

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

**Hon. David ole Sankok** (Nominated, JP): Thank you very much, Hon. Deputy Speaker.

From the outset, I second this very important Bill that will rid our country of massive corruption which is a cancer that is eating us. The import of this Bill is to make sure that those who steal from the public are not fined only less than Kshs1 million. It should be more than that. The jail term should increase from at least 10 years to more than that.

The issue of corruption in our country cannot be overemphasised. It is a cancer that has made sure that we do not have drugs in our hospitals. Getting salaries in our county governments is a problem because of corruption. Access to Government procurement opportunities was a very well-intended policy that was supposed to hold the hands of the weaker members of our society. Access to Government procurement opportunities by women, youth and persons with disabilities has failed due to corruption. That very nice policy and law is not jumpstarting the economy of the poorest members of our society simply because of corruption.

It is through corruption that we do not have divers at the coast. The coast guards do not have equipment to save the two lives that were lost at the coast because of corruption. A car that rolled off the Likoni Ferry at the coast floated for almost more than five minutes but because of corruption, there were no divers around. The Coast Guard Service that was just launched the other day was not around. Even the Managing Director or the CEO of the Kenya Ferry Service had the audacity to address the media because corruption in our country is part of day-to-day life. That is why it is important for us to amend this law as a House to deter people from corruption.

Because of corruption, the Government has become the greatest encroacher of our forests. There are schools and roads built by the Government in Mau Forest. There is electricity connected by the Government inside the Forest because corruption is inbuilt in our own Government systems. Title deeds to Government forests have been issued because to us corruption is a lifestyle and people can get away with it. If you fine someone who has stolen billions Kshs1 million, they already have the money. They have already stolen. We have not been able to deter corrupt individuals in our country because our laws are not a deterrent to corrupt individuals.

We have fought corruption on many fronts. We have fought it through social media and lifestyle audits and failed. We have fought it through banning *harambees*. We have not succeeded because we have been fighting a losing battle. The best way is to enact and amend relevant laws that will deter those corrupt individuals.

We have witnessed a popularity spree in the media which claims that people are carrying money in sacks to churches. If your faith allows you to carry money in paper bags, the churches have not denied you that opportunity. We have gone to certain levels. The churches have not refused to accept your money if you carry it in paper bags or wallets. This popularity spree in the media of saying that people are carrying bags and sacks of money...

**Hon. Deputy Speaker:** Order! Just a minute. What is it, Hon. Tonui?

**Hon. Ronald Tonui** (Bomet Central, JP): Maybe you can guide the Hon. Member who is seconding that when we are fundraising, it does not mean that we are engaging in corruption. I do not know the relevance of his contribution to this Bill when he only talks about penalties while imputing improper motives on the issues of fundraising. When people - out of goodwill - contribute, that should not be seen as corruption. How is he relating the two?

**Hon. Deputy Speaker:** Maybe he will have to clarify that. I am not so sure he was imputing improper motives. Who was he imputing them against? Let us hear. The issue that I get from Hon. Tonui is that of relevance. Proceed.

**Hon. David ole Sankok** (Nominated, JP): Hon. Deputy Speaker, I think Hon. Tonui was asleep when I was describing this issue. I have just said we are fighting a losing battle by fighting corruption through social media and lifestyle audits, yet the proper way to do so is to enact the relevant laws in this House to deter corrupt individuals.

We have gone into a popularity spree of saying that people are taking sacks of bags to churches and yet those who are claiming so should carry theirs in paper bags or wallets because the church cannot refuse to take it. The way to fight corruption is through this Bill. Even if we have fought corruption through social media avenues, media avenues and lifestyle audit, we still had the Goldenberg Scandal, the Anglo-Leasing Scandal, the National Youth Service (NYS) Scandals 1 and 2, and the National Hospital Insurance Fund (NHIF) Scandal. There is still a lot of corruption which is going on in our country. We have not succeeded in fighting corruption. That is why I am saying that it is good for this House to enact this proper legislative framework for us to deter those who are involved in corruption. That is why I am saying Hon. Tonui got me wrong. I am not saying it is not wrong to fundraise. I said that fighting it by banning fundraising will not assist us to fight corruption. Claiming that people carry money in sacks does not assist us in fighting corruption. What will assist us in fighting corruption is to enact and amend this law.

**Hon. (Dr.) Robert Pukose** (Endebess, JP): On a point of order, Hon. Deputy Speaker.

**Hon. Deputy Speaker:** I do not understand you. You are saying that people who carry money in sacks do not assist in fighting corruption. It becomes a bit difficult. I am tempted to think that Hon. Tonui was right. Anyway, you were about to conclude. What is it Hon. Pukose?

**Hon. (Dr.) Robert Pukose** (Endebess, JP): Hon. Deputy Speaker, it is important that you guide the Hon. Member in his contribution because we do not fight corruption through the social media. That is one of the ways of passing news. The issue that has been raised by Hon. Tonui is that of relevance. All the methods of fighting corruption that he is giving are in the principal Act. Hon. Ndindi's Bill is an amendment of the Anti-Corruption and Economic Crimes Act, which he seeks to improve. The Member should be relevant in his contribution and stick to the Bill.

**Hon. Deputy Speaker:** Whereas I agree with you Hon. Pukose, Hon. Sankok has been fairly relevant with a few areas of side-shows, which is understood. You were building a very good case for your amendment, together with Hon. Ndindi. So, we can pursue that particular direction without getting into side-shows. You are doing well. You can now finalise your contribution.

**Hon. David ole Sankok** (Nominated, JP): Thank you very much, Hon. Deputy Speaker. Hon. Pukose is a ranking Member who should understand that when we argue and debate in this House, we should build up our cases.

I support the Anti-Corruption and Economic Crimes (Amendment) Bill. If somebody is convicted of corruption crime, that particular individual should be jailed for not less than 10 years. At the moment, the Anti-Corruption and Economic Crimes Act says that an individual should be jailed for not more than 10 years. We want people to be jailed for more than 10 years,

so that they can stay in prison as we develop our country. If they stay out of prison, they will destabilise our country. When they go to prison for 10 years, some of them get more experience on how to steal. Kamiti Prison inmates commit cybercrimes using phones. Sometimes they even get more tactics on how to steal. We want them to stay there for some time as we try to put in place relevant laws to deter them from engaging in corruption. If you fine someone less than Kshs1 million and he has stolen Kshs700 million, you already know that he has the money. They will just walk to court, pay the fine and proceed to steal more because they know that they will be fined less than what they have stolen. So, it is business. That is what we do in business. You invest some money because you know you will make more than that. It will become a business between the courts and corrupt individuals. They can invest less, which is Kshs1 million, and steal Kshs700 million.

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

**Hon. Deputy Speaker:** Now that Hon. Sankok has seconded successfully, I will propose the Question.

*(Question proposed)*

I see that Hon. King'ola Makau wants to contribute to the Bill.

**Hon. Patrick Makau** (Mavoko, WDM-K): Thank you, Hon. Deputy Speaker.

**Hon. Deputy Speaker:** Order, Hon. Rasso. You have to log into the system again. Do it again at the intervention slot so that you do not lose your ranking.

**Hon. Patrick Makau** (Mavoko, WDM-K): Hon. Deputy Speaker, I agree with the Bill. It is this National Assembly that will save Kenya. Unless we introduce a legislation that will curb corruption in this country, there is no way we will win the fight.

I must start by saying that the way corruption has spread in this country beats me. Principals and heads of schools chase students from school nowadays because of lunch money. During our days, every child, pupil or student went to school with a lunch box. Because of the Kshs3000 that has been introduced in schools, children are chased away from school nowadays because of lunch money. This shows how corruption has spread. If you go to Level 3, 4 and 5 Hospitals, you will find that there are no drugs, yet all the chemists surrounding those hospitals belong to the officers or workers of that hospital. It is high time we implemented this Bill so that people who are found culpable can face the law accordingly. Fining them more than Kshs1 million is, indeed, one of the ways to curb it. We should jail them for 10 years and more. I cannot support Hon. Nyoro more than this. Look at our roads and the state of our rivers. They have been contaminated or polluted by institutions and organisations which are checked by the regulation authorities. We cannot have regulation bodies which cannot implement their mandate just because of corruption.

If you go around Nairobi and all the major towns, you will see flats and housing units springing up. When you ask the owners of those houses, you cannot know who it is. Finally, if you are lucky, you will find that they belong to civil servants. If you ask whether there is any business they do, you are told there is none. I do not know what happened to lifestyle audit. It was something that we, as a nation, should have pursued. We pass a Budget of Kshs3.2 trillion in this House and yet what is implemented and what is on the ground is less than Kshs600 billion. If we allow the managers of this Budget to keep on looting, we will not have any development and our citizens will be affected socially because they will not have good healthcare and education system.

Our universities and colleges have debts amounting to Kshs6 billion or Kshs10 billion through corruption. The regular education of our universities cannot be administered properly because all the chancellors and administrators of universities are more inclined to parallel education because that is where money is coming from. Let us fight corruption by introducing such legislations in this House.

I propose that the total income of any accounting officer in this country must be screened thoroughly before he gets into office and after he leaves. I am going to introduce a Motion to investigate contractors who are mentioned in oversight committees. It has come to my attention that once you comment on a contractor who has been awarded a contract illegally, they go to court. You can see now how corruption is fighting back. Therefore, this august House must stand on its feet and enact legislation that is going to fight corruption. The future generations of this country will not benefit from the fruits that they are fighting for. When we were in school, we used to be told: "You are the future leaders of tomorrow." The future is here and I am sure some of those people who used to be told that are now going to be 50 years old. Kenya's Independence is going to 56 years, but we are yet to enjoy the fruits of that future and leadership of tomorrow. If we do not sit squarely and be firm on the laws we pass in this House, everything will pass through backdoors and all the money we are appropriating in the Budget is going to be stolen left, right and centre and we will be facing calamities.

Climate change is real. The bodies which have been charged with conserving the environment, through planting trees, have instead stolen money meant for this exercise. Yesterday, everybody saw the windstorms. I am sure Prof. Maathai, wherever she is, is telling Kenyans: "I told you." This has been contributed mostly by corruption. We failed to conserve our water sources. We have always been debating the Mau Forest and whether to evict people or not. Sometimes back, nobody used to build or dwell on hills or mountains. Nowadays, you can see houses on top of mountains, which used to be protected. What is that? What happened to the foresters and district officers who used to protect Government property and public utilities? Nowadays, we have seen, through the Ministry of Lands, people with legitimate title deeds having their land stolen by a few individuals from the Ministry just because they have the rights or have been given the duty to register land. Unless stringent measures are introduced, we are going to have civil servants and persons with a lot of appetite for everything through corruption, taking over.

It is important for us to implement this amendment, so that, at least, future corrupt persons can fear. As we are, we are exposed. Today, anybody will steal and tomorrow he is taken to court. We have heard the Director of Public Prosecutions (DPP) and the Directorate of Criminal Investigations (DCI) taking what we are being told is the "big fish", to court, but we are yet to hear people being jailed, their properties frozen and passports withdrawn. When someone steals money meant for education and his children are in Europe studying, then that person is not mindful of our children. If you go to the Ministry of Education, scholarships are not going to the right people. There are needy brilliant children in this country who qualify for the scholarships, but because of corruption, the scholarships end up not being given to the deserving people. Even the persons who are given the scholarships sometimes do not utilise them. They are not utilised.

It is important for us to check and scrutinise all our ministries. I am not afraid to say that most of the corruption is being championed by the people we have given the mandate to look after the welfare and development funds in this country. It is important for this House to pass this Bill with the amendments as proposed by Hon. Ndindi Nyoro to help this country to curb corruption. Then, development will come as we have appropriated in our budgets in the House.

With those few remarks, I support. Thank you.

**Hon Ali Rasso** (Saku, JP): I rise to contribute to this Bill by Hon. Nyoro. Hon. Nyoro in his Bill, is asking for stiffer penalties in the fight against corruption.

Hon. Members who have contributed before me have emphasised how corruption has become a bane in Kenya. It has affected the economy, trade, business and welfare of the nation to the extent that we are told that almost 30 per cent of this country's budget goes into this dark hole called corruption. We see the fight against corruption as the domain of the EACC, but this is far from the truth. If we must fight corruption, the Kenyan nation must address itself to the whole issue that this is a problem that affects all of us in all facets of life and there must be some collectivism on how we address it.

Since we have had the new CEO, Major Mbarak, and the Bishop as the Chairman of the Commission, there is some element of sanity particularly in the EACC where we do not hear the infighting that used to be there before. It is strange to have a good combination between a former soldier and a former churchman. Maybe the combination is good. We need to understand the chemistry in the fullness of time. Importantly, whereas they can do a good job, it calls for national effort. The laws and courts will not define the character of this nation in the fight against corruption. In the Kenyan culture, you must get rich quickly and have a lot of money to be recognised. Nobody really cares sometimes how you make that money. If you do not have enough money or if you are not a rich person, you will not sit at the table. This is the character that we must begin to deconstruct. If all our lives are about money, then there is something wrong in the psyche of our country.

Hon. Nyoro's thrust in this is in the area of punishment and legislation. Whereas I agree with that point to an extent, that in itself will not be a solution to the fight against corruption. We must begin to tie it down from the ground with what a young child in primary school, a boy or girl in college or university, understand in terms of hard work and gainful employment. You get what you work for. You earn from your sweat. The idea of people getting money whose sources are suspect is in itself the reason we have runaway corruption.

We have also gone into uncharted waters in the fight against corruption in the recent months. We have governors who have been legitimately elected by the people of this country and told by the courts to step aside. The courts in their wisdom feel that those individuals should stay aside. The important thing that we must ask ourselves in this House is whether that would be the best way to move this nation forward. Would that be the best way to fight corruption? We live in a country of tribes - the big tribes and the small tribes - and there are tribes which are unknown because they have few people. We must move away from the idea of putting a face to a tribe when it comes to fight against corruption. Corruption is corruption. It does not matter who is involved in it.

Hon. Nyoro suggested penalties and incarceration. That is in itself good to an extent, but what happens to that entire asset that has been looted in hundreds and billions? We must also look at how we can recover the assets. We must force the individuals who have stolen to have their properties sold and bring back the loot, with severe penalties, including putting certain stringent charges on them. What happens in Asia, and it is a region we must borrow from, is that whereas the courts do their jobs, because of noninterference, individuals who are caught in corruption and economic crimes face the full wrath of the law without undue interference from the State, whether the Executive or politicians. That is one thing we must learn. Hon. Nyoro alluded to that fact.



We have also seen in the recent months that the fight against corruption is tinted with politics. When one is caught in a situation and they are mentioned, they appear before court. From there, there is a lot of politics that is witnessed through social media, the print and electronic media. This has made it so difficult for the fight to be moved forward.

Finally, people are not doing their jobs. That is why it is always a postmortem rather than prevention. We must put more resources in the Ethics and Anti-Corruption Commission to fight against corruption in terms of forensic material, more budgetary support and training the human resource that we deploy there. It should be more efficient and effective.

With these few remarks, I thank you.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Before I give a chance to the next speaker, I will recognise students from Muthetheni Primary School from Mwala Constituency of Machakos County. They are in the Public Gallery. They are welcome to follow the proceedings of the National Assembly this morning.

*(Applause)*

Hon. Wamalwa, Member for Kiminini.

**Hon. (Dr.) Chris Wamalwa** (Kiminini, FORD-K): Thank you Hon. Temporary Deputy Speaker for giving me this opportunity.

First and foremost, I salute Hon. Nyoro for this Bill. Research has shown that 30 per cent of the Budget in this country goes down the drain through corruption. When you look at the entire process, this is where I am asking myself whether the problem is with the stiffness of penalties. Where is the problem when it comes to the fight against corruption? We have laws that govern the fight against corruption. They are very good laws. The problem has been in investigation. How I had wished that the law was touching more on matters of investigation. We have seen His Excellency the President lamenting in many quarters that the problem has been with investigation. I think the investigative arm has been doing a shoddy job. We have seen the Chief Justice (CJ) saying that a matter coming before them in court is based on evidence. Who brings the evidence? It is the investigators. If the investigation does not bring evidence, there is no way the people can be convicted. That is where the problem has been. How I wish an empirical study had been done based on the laws and how many people have been convicted. If you amend based on penalties, the rule of the thumb says that, maybe, convictions have been there, yes, but people have found Kshs1 million to be so little that they have been paying and getting out. That has not been the case. When we talk of 10 years, that somebody should not be convicted for less than 10 years, it beats logic. How many people have been convicted for 10 years? We have not seen this in an empirical study. Suppose somebody has stolen Kshs1,000, should he be convicted for 10 years? Should he be given a fine of not more than Kshs1 million? I do not think the problem is with the penalties. There are three arms of the Government. The Legislature enacts laws. Parliament has put laws in place. When you amend a law, it is said that the shoe wearer knows where it pinches. Maybe a law is in place, and out of empirical study, it shows that the penalty was so lenient and was not stiff enough. That is not the case. We have not seen people get convicted in this country. Why? This is because of poor investigations. The fight against corruption has been operationalised. It has been institutionalised. That is where the problem is. Maybe we need to change the culture of this country.

I was at the academy of anti-corruption for a two-week training, and I wanted to exchange money. In China, FOREX bureaus cannot be done by any commercial bank. You must

go to the equivalent of the Central Bank of Kenya (CBK). Then, one gentleman helped me by showing me the direction. As a Kenyan, after he has done some good work for me, I offered him USD10 but he said: “No, I cannot take it”. In the fight against corruption, we must start with the change of culture. When you go to a hotel nowadays, and a waiter serves you, they want *kitu kidogo*. This culture is coming even to this Parliament. At times when you are in our dining, you are served and people want *kitu kidogo*. We must look at the institutions. Corruption is institutionalised. I had a female Member of Parliament complaining that she went to the restaurant and she was not served tea. Why? It was because she has not been giving *kitu kidogo*. So, when we talk of corruption, it is not just an issue of penalties. It is a culture that we must fight against. The issue of *toa kitu kidogo* is now everywhere. There is a song by Erick Wainaina that talks about *Nchi ya Kitu Kidogo*. This *toa kitu kidogo* is where the problem is. The fight against corruption has more to do with culture. It is not about penalties. That is what we should look at. Why are investigators doing shoddy work? When you appear before a court, the magistrate or the judge will make a determination based on the evidence that is before him. If the evidence is weak, then the case is lost. We should remember that corrupt people also get lawyers to defend them. That is a fundamental right in the Bill of rights. The accused shall also be represented in court. So, we must look at the entire process and establish where the problem is. Corruption is a big problem in this country. Thirty per cent of our budget goes down the drain because of corruption. How should we look at it? Is it an issue of leadership?

The leadership must be at the forefront in the fight against corruption. We have seen a lot of corruption cases on big projects. A project like the Galana-Kulalu is supposed to help this country to be food secure. The leadership is on the frontline advocating for corruption. Two weeks ago, I visited the Galana-Kulalu Project and the cost has been exaggerated four to five times. That is the corruption I am talking about. It is coming from the leadership. The culture of this county is more of the problem than the issue of penalties. If you want to get a birth certificate in Government offices, nothing will be done unless you have signed something. Therefore, the problem is with our culture. How will we change that culture? If we change it, courts will have little to do. They will determine the issue of penalties. That is where there is a big problem. We agree that, indeed, corruption is a big problem in this country.

When Lee Kuan Yew took over Singapore, he changed the culture of that country. You will agree with me that he came up with a housing project. So, we need to do more on culture change and not on penalties. On investigations, there is also a problem. We are calling upon the EACC to act. We changed its leadership. The Chief Executive officer is Major Twalib Mbarak. We want to see how much he has done. We were told that as far as asset recovery is concerned, they have done much. However, when it comes to investigations, the people who are doing it need to be trained more instead of having talks without action. If an investigation is done well and the evidence presented in court, there will not be a problem. We need an empirical study to tell us how many people have been convicted. In this country, we have enough laws that can govern and help us to fight against corruption. There is the issue of enforcement. Where is the problem? However, I know the problem is culture.

Recently, the President closed shop for the Kimwarer Dam Project. We were told that the project is not viable and the cost was exaggerated. Who did the exaggeration? It is people in leadership who did it. That is where the problem is. It is not with “wanjiku” down there. “Wanjiku” does not do the costing. When the National Youth Service was supplying pens, a pen worth kshs10 would cost Kshs1,000. That is where corruption is. It is institutionalised. For us to fight corruption, we must look for ways of de-institutionalising it. It has already been

operationalised. When students are joining Form One and Two, people want *kitu kidogo* everywhere. It is high time the church came in. This is its responsibility.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Order, Hon. Wamalwa! Hon. Rono, you are on intervention. What is it?

**Hon. Daniel Rono** (Keiyo South, JP): Hon. Temporary Deputy Speaker, I want to caution my brother, Hon. Wamalwa.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): You do not need to caution him. What is out of order?

**Hon. Daniel Rono** (Keiyo South, JP): Hon. Temporary Deputy Speaker, Kimwarer Dam Project should not be brought here because it is a matter currently in court. The people I represent in Keiyo South are at the moment preparing an appeal to the President. We still feel it was irregular for him to cancel the project. We are still hurting. We are in pain for the cancellation of that project.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Order, Hon. Rono! You cautioned Hon. Wamalwa not to speak to it because it is in court, but you went ahead to some significant length to speak on it as well. We do not want to get into the sentiments around that. Hon. Wamalwa is sufficiently informed.

Proceed, Hon. Wamalwa.

**Hon. (Dr.) Chris Wamalwa** (Kimini, FORD-K): Thank you, Hon. Temporary Deputy Speaker. The Member is my friend. On a matter *sub judice*, it is in our Standing Orders. It will be good if he familiarises with it, so that he understands what it means. In my pronouncement, I did not go into issues of merits and demerits. That is what *sub judice* is all about. He is a first timer. He has a long way to learn. Next time he will know what it is. The Kimwarer Dam Project is in public domain. A taskforce was put in place by His Excellency the President and from its findings, the President cancelled the Kimwarer Dam Project. The reason that was given is that the pricing was exaggerated. I empathise with the people of Elgeyo Marakwet, who are my neighbours, on this matter. However, that is the reason we are talking about corruption and how it has been institutionalised. It is in institutions even here in Parliament. So, what I am trying to put across is that the issue is not the penalties.

When this Bill by Hon. Ndindi Nyoro will be before the Committee of the whole House, we will see how we will do amendments. I do not think the problem is with the penalties. The problem is in investigations. I support the Bill and we are together in it. Corruption is everywhere including in the counties. The challenge is not in the penalties.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Let us have Hon. Gitonga.

**Hon. George Gitonga** (Tharaka, DP): Thank you, Hon. Temporary Deputy Speaker. I rise to contribute to this Bill with a reservation on the proposed penalties. In as much as the Bill is timely, it is one that we need to debate and improve on, and where necessary, make amendments that will suite our circumstances. We must ensure that this House will pass a law that is in consonance with our legislative system in the country and what happens in other countries, especially those that subscribe to the Commonwealth form of legislation.

The principles in sentencing are such that the court is given discretion. That is the reason we have mitigation before sentencing. You must always plead to the court to say what exactly made you to commit the offence for which you have been convicted and what you have to say in terms of seeking leniency to that particular offence. The problem I have here is that we are amending what was considered to be a good law in terms of stiffer sentence which may actually not be in conformity with our laws. It has been argued that there must be room to the trial court

to exercise discretion depending on circumstances and gravity of the offence, so that the sentence that is meted out is commensurate with the offence that has been committed. We seem to be taking away that discretion and that is why I will oppose this law unless we amend it at the Committee of the whole House stage to come up with what we will consider to be stiffer penalties, but anchored in our laws.

Hon. Ndindi Nyoro is right to argue passionately that we must combat corruption at all costs. I agree with that 100 per cent. Corruption is a vice that has permeated into our country. It affects both levels of government, namely, the county and the national governments, and it needs to be fought at all costs. The President is right to embark on a war of fighting corruption, so that we do not have any avenue where any corruption culprit would survive.

Having said so, we have got to re-examine, and I agree with Hon. Wamalwa, whether the problem is actually in sentencing or the problem is in the way we go about fighting corruption right from the stages of investigations to an efficient prosecution. We have known it this way: Corruption may actually be investigated properly but not prosecuted well and eventually the judge may be compromised, which means we would not succeed. In countries that have been cited, including China and other oriental countries, we have been informed that in fact corruption carries capital punishment. That is deterrence. Capital punishment is a one-stop punishment that has no avenue out. You cannot wriggle out of it. It is just there. And once it is pronounced, it is pronounced unless set aside by an appellate court.

To fight corruption, we need deterrence measures and deterrence sentences like we are proposing. We need prohibitive sentences that are going to prohibit one from ever thinking of committing an offence. The problem is the magnitude. I go to hospital with a sick patient and I am told time is out I cannot come in. I find a gatekeeper whom I am able to compromise with Kshs100. I am allowed to go in and that life is saved. Unfortunately, the gatekeeper is arrested on matters corruption, taken before court and sentenced to not less than 10 years imprisonment. Is that sentence commensurate to the offence? There existed such a sentence in one statute known as the Narcotic Drugs and Psychotropic Substances Act. We were combating drugs vehemently towards the late 1990s and beginning of 2000. We had a sentence whereby if you were convicted of an offence under that particular Act, you would not get less than 10 years in prison. A lady in Kawangware was arrested with rolls of *bhanga*, taken to court and she pleaded guilty because she had the drug. The magistrate gave her 10 years in prison. There was hue and cry in the country as to whether the magistrate had exercised his mind properly. His answer to the hue and cry was this: "I am sorry, my hands are tied. I cannot give you anything less than 10 years." The Law Society of Kenya (LSK) took the matter to the High Court. Judges of the High Court sat over it, revised the sentence with a declaration that the penalty was illegal and unconstitutional because it had taken away the discretion of the magistrate.

For that reason, I opposed the bit that said it has to be a minimum of Kshs1 million and a minimum of whatever number of years you have to go to prison. Let us amend this and have stiffer penalties. But we must always leave room for the judge, magistrate or trial court that is hearing the matter to exercise that discretion. We must also leave room for mitigation. I have always wondered in the capital offences crimes in Kenya, which include murder, treason and robbery with violence, is there room for mitigation? Once you are convicted of murder, do you ever mitigate so that you get a lesser sentence? The mandatory sentence is death and you cannot mitigate on that. You cannot get anything lesser. You cannot get it commuted unless through parole or the presidential clemency avenue. I do not think we want to go that way. I think the right way for us to go is to make the penalty stiffer. We may say the fine will not be more than

Kshs1 billion, which means we have accommodated everybody including a police officer who takes Kshs50 on the road and is convicted and fined Kshs100 or Kshs1,000. For that other fellow convicted of corruption of Kshs500 million, we still have room to tell him to pay a fine of Kshs1 billion.

With those reasons, my position is that this Bill is very timely. It is one that we must all agree to. However, I oppose the process of sentencing. That is where we go wrong. We must give our courts discretion. We must always allow the courts to listen to mitigation because no offence in this world is incapable of mitigation of one form or another. There are possibly compelling reasons why the crime is committed and the reasons why the judge should exercise the discretion and be lenient in the circumstances of the case.

With those remarks, I state my position. Thank you, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): We shall have Hon. Mwashako, Member for Wundanyi.

**Hon. Danson Mwashako** (Wundanyi, WDM-K): Mhe. Naibu Spika wa Muda, nashukuru kwa nafasi hii. Nasimama kuunga mkono Mswada huu ulioletwa na mwenzetu Mhe. Nyoro kuwa hukumu na faini inayotolewa kwa wafisadi ipate kuongezeka maradufu. Kila mara tunapokaa katika Bunge hili na kuongea juu ya masuala ya ufisadi, nafikiri nchi nzima huwa inatungazia sana kama viongozi. Ni jambo la kusikitisha sana kuwa nchi hii ambayo inajulikana katika Afrika na ulimwengu mzima kuwa ni nchi ambayo inastawi, tunajulikana kwa masuala ya ufisadi. Tumewekwa katika jedwali katika nchi za Afrika na inaonekana kuwa Kenya imestawi sana na mambo ya ufisadi. Leo hii wanariadha wetu kule Doha wanaleta sifa nyingi kwa nchi yetu. Lakini vilevile, mara nyingine wakati tunapeleka wanariadha kule kushindana duniani bado masuala ya ufisadi yanaingia ndani. Tunakumbuka yale yaliyotendeka miaka miwili au mitatu iliyopita, wakati tulipeleka timu ya nchi lakini ufisadi ukaingia sana.

Leo Wakenya wanalia. Wengi wao wako katika hali ya umaskini kwa sababu wale waliopewa nyadhifa za uongozi miaka ya mbele, wengine hata walipewa urais, kila mmoja kutoka juu mpaka chini kwa yule askari anayechunga mlango wa hospitali, wanajitafutia mafanikio kupitia njia ya ufisadi.

Rais alitangaza vita vikali sana dhidi ya ufisadi. Aliwapa nyadhifa za kazi Mawaziri na tukadhani kwamba kipindi hiki tutaona kweli watu wakihukumiwa. Tulidhani kwamba tutaona watu wakipigwa faini kubwa ili Wakenya wazidi kuwa na imani kuwa ufisadi kweli tunapigana nao. Nadhani kuwa Bunge hili sasa limepata nafasi ya kutoa maoni yake kwa uzito kabisa. Maoni yetu tutatoa kiviipi? Kupitia sheria kama hii. Sheria hii ni nzuri. Lazima sauti yetu ya kupigana na ufisadi izidi kuenda juu. Itaenda juu wakati tunasema kwamba ukiiba pesa ya umma... Hesabu inafanywa na Mkaguzi wa Vitabu Vya Serikali na inakuja katika kamati yetu ya masuala ya pesa na tunajadili. Tunajua kwamba kwa kaunti fulani, gavana fulani, eneo Bunge fulani au wizara fulani pesa zimepotea lakini hakuna atakayepoleka mahakamani.

Wakati Mkaguzi wa Vitabu vya Serikali amesema pesa fulani imepotea katika eneo Bunge langu ama katika ofisi fulani ya Serikali, wacha yule atakayepatikana na makosa yale arudishe ile pesa mara mbili inavyoandikwa katika sheria hii. Tukifanya hivyo, huenda tukapunguza tamaa ambayo watu wengi wanaopata nafasi za Serikali wako nayo. Ni vibaya sana kwamba wale wanaolala korokoroni, wale waliohukumiwa, wengi ni kwa makosa madogo madogo ambayo yanadhuru mtu mmoja ama wawili. Lakini makosa makubwa hufanyika wakati watu wanakufa mahospitalini, kwa mfano, katika Hospitali Kuu ya Kenyatta. Watu wanakufa hospitalini lakini wale waliopora pesa ya madawa wanapopeleka kortini, mara nyingi kesi haina ushahidi ama hata ikiwa na ushahidi, wale wanaohukumiwa ni watu wa chini tu kuliko

wale waliotia sahihi stakabadhi fulani. Lakini wale mabwenyenye ambao wanafaidika kutoka na ile pesa ya ufisadi, wengi wako huru, hata wengi wako katika hili Bunge. Ni jambo la kusikitisha sana.

Kwa hivyo, wakati tunapojadili suala hili kama Waheshimiwa, ni vizuri itoke wazi. Hata kama nakubaliana na Mheshimiwa aliyesema kuwa tupatie mahakama uhuru wa kuamua ni vipi, kesi iko namna gani, hili ni jambo zuri katika sheria. Lakini mahali nchi hii imefika, tunajua ufisadi unatendeka hata ndani ya mahakama. Kwa hivyo, tukizidi kupatia wahukumu wetu uhuru wa kuamua ni nani atafungwa miaka kumi au mmoja, bado ufisadi utaingia maeneo yale. Ndiposa nakubaliana na Hoja hii kwamba tuwache mambo ya ufisadi... Maanake hata kwa mahakama upo. Wacha tutoe huo uamuzi kama Bunge, na tuseme kuwa ukipatikana umeiba pesa za umma, utarudisha mara mbili na ufungwe miaka isiopungua kumi kwa sababu vizazi vinavyokua vitatuhukumu vibaya sana kwa maana hawatapata kitu katika nchi hii.

Juzi kulitendeka kisa kibaya sana pale Mombasa *Ferry*. Kwa kusema ukweli, kama si ufisadi, hakuna vile wananchi maelfu na maelfu wanavuka katika kivuko kile lakini kunakosekana hata mpiga mbizi mmoja ndani ya *Ferry*. Mpiga mbizi ambaye angalau anatakikana aangalie wakati kumetendeka jambo kama lile. Mama yule na mtoto wake wamepoteza maisha yao kwa sababu ya ufisadi. Kama si ufisadi, yule mama hangekufa, maanake wale wanaosimamia *Ferry* wamejitwika jukumu la kuangalia makandarasi pekee - Kutafuta njia ya kula pesa. Mara wanatengeneza *Ferry* lakini haitengenezwi vizuri. *Ferry* inakosa vitu muhimu vya msingi vya kulinda maisha ya wanadamu kwa sababu watu waliamua kufuja pesa ya Serikali.

Jambo hili ni nzito. Hili ni jambo ambalo kama viongozi tukuchukue nafasi yetu tupitische Mswada kwa sababu Wakenya wanaumia. Wanapoteza maisha kila kukicha.

Asante kwa fursa hii na ninasimama kwa vikali sana kuunga mkono sheria hii ambayo imependekezwa na Mheshimiwa Ndindi Nyoro. Asante

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Hon. Obo Mohamed.

**Hon. (Ms.) Ruweida Obo** (Lamu CWR, JP): Asante, Mheshimiwa Naibu Spika wa Muda kwa kunipatia nafasi hii. Naunga mkono Mheshimiwa Nyoro kwa Mswada huu. Ni kweli kwamba ufisadi unamaliza nchi yetu. Unasababisha maendeleo mengi yasifanyike katika nchi yetu ya Kenya. Maendeleo mengi ambayo yaweza kufanyika na ikasaidia walalahoi hayafanyiki kwa sababu ya ufisadi.

Nchi yetu ya Kenya inaonyesha ina nguvu maana waporaji wanapora kwelikweli na nchi bado imesimama. Lakini njia hii tunayoenda kama hatutachukua mikakati mizuri ya kuondoa ufisadi, basi nchi itasambaratika.

Ninataka niongee kidogo kuhusu ufisadi Lamu. Ni muhimu Serikali au vitengo vinavyoangalia ufisadi viangalie Kaunti ya Lamu vizuri. Hii ni kwa sababu kaunti yetu imetengwa na hatutaki iwe imetengwa siku zote au tujiite kaunti iliyotengwa siku zote. Tunataka ifike wakati tuseme na sisi kaunti zingine zije zianguka Lamu kimaendeleo.

Nawaomba wanaohusika waimulike Lamu vizuri maanake pesa zinangia kama vile za *National Government Constituencies Development Fund (NG-CDF)*, *National Government Affirmative Action Fund (NGAAF)* na *Equalisation Fund*. Pesa hizo kama hazitachungwa vizuri, basi hizi kaunti ambazo tunahesabu kwamba zimetengwa zitakuwa tena hakuna hilo jina la kusema tumetengwa.

Matatizo mengi tunayopata Lamu ni kwa sababu ya ufisadi. Kila tatizo unalolitaja Kenya, halikosekani Lamu. Kama shirika linalohusika au wale wanaohusika wataangalia ufisadi, tutasonga mbele sana. Utashangaa na inashangaza, sisi tuna pesa ya *bursaries* ambayo inapitia

mikononi mwa Wabunge lakini pesa hizi wale wanyonge hawapati. Mtoto akimaliza shule ya msingi na awe anaenda shule ya upili inafaa apata pesa za kumwezesha kuendelea na elimu yake. Akipata alama ya C+, anapata nafasi ya kuingia chuo kikuu na hapo tunafanya michango ilhali pesa zipo, kisha tunakaa hapa tukizungumzia ufisadi. Najua hapa tukisema itauma lakini ukweli ni mchungu. Sisi pia hapa lazima tuwaangalie wale wanyonge maanake saa nyingine mtindo huu wa Kenya unafanya sisi Wabunge tuangalie mahali kuna kura nyingi. Pengine huyu mnyonge hana kura nyingi kwao na hapo anakosa ile nafasi ya kupata *bursary*.

Tumefanya michango mingi na hadi sasa tunaendelea kuchanga pesa. Michango hii inasababisha hata wengine wetu kutafuta njia ambazo sio za kawaida kutafuta pesa. Michango hufanyika kwa sababu ya ugonjwa, elimu na kadhalika. Ingekuwa vizuri kama pesa za *bursaries* zingetumwa kwa shule za upili ili wanafunzi wote wanasome bure. Lakini wengi wetu tukiambiwa jambo kama hilo tutakataa. Shida ziko na zinasababishwa na mienendo hii.

Utashangaa katika Bunge hili, kuna Wabunge wa sehemu zingine ambapo mambo yanafanyika. Unashangaa kwa mwaka mmoja mtu amejenga madarasa arobaini na sehemu zingine madarasa yakizidi ni manne. Wengine bado wanasoma chini ya miti au wanakalia mawe.

Tunawaomba Mkaguzi wa Vitabu vya Serikali na EACC wapitie kila sehemu na wawe na bidii zaidi ndio waokoe Kenya kwa maana pesa zinafika na zipo lakini shida ziko pale pale miaka nenda miaka rudi. Kwa mfano, tutasikia pesa za barabara zimetoka. Pengine kama kwetu Lamu East, Ksh98 milioni zitatolewa kujenga barabara. Hiyo barabara baada ya mvua kidogo itaharibika. Sasa tutamlaumu Rais Uhuru? Maanake hapa nchini Kenya kila pahali tunaenda wanamlaumu Rais Uhuru. Kwa nini viongozi wengine wasichukue hayo majukumu ama wahusika wa EACC? Hao ndio wanasababisha Rais kulaumiwa. Wakifanya kazi nzuri na kila mahali kunga're, Rais hatalaumiwa.

Huko Lamu tatizo kubwa ni mihadarati kwa sababu ufisadi ndio unachangia pakubwa. Ukiangalia *roadblocks* kutoka Malindi mpaka Lamu ni zaidi ya kumi. Pia kuna zingine nyingi lakini mihadarati hupita na watoto wanatumia. Hii yote imesababishwa na ufisadi.

Ardhi pia iko na changamoto sana lakini ni matumaini yetu kwamba, tume tuliyochagua itafanya kazi nzuri. Tamaa ikizidi ndiyo inaleta haya matatizo. Hivi sasa, huko Lamu kunapimwa na utasikia watu wametoka kaunti zingine ili wapatiwe ardhi. Ile ardhi ya Lamu iko na wenyewe. Kabila zote zilizoko Lamu zina haki kwa sababu ni ardhi yao. Lakini wanaotiririka kutoka kaunti zote hadi Lamu wajue Kaunti yetu ya Lamu ina wenyewe. Hiyo itachangia ufisadi na hatutakubali.

Kuhusu elimu, kila nikizugumza sitakosa kuitaja wadi ya Basuba. Hii pia imeguzwa na ufisadi. Shule ilipoporomoka Dagoretti, Serikali yote ilienda hapo. Lakini Lamu mpaka sasa miaka mitano imepita na shule za Basuba Wadi zimefungwa na hatujaona Serikali ikishuka na kusema huko ni muhimu. Waziri ameenda huko na kuona zimefungwa. Nani ataamini kama hapa Kenya kuna shule ambayo miaka mitano imepita na bado haijafunguliwa? Sio kwamba hatufanyi bidii. Nimeuliza Swali hapa Bungeni na saa hii ninaandika *petition*. Ufisadi ukiangaliwa vizuri, elimu itakuwa nzuri Kenya nzima.

Tukizungumza mambo ya Likoni *Ferry* na matatizo yanaonekana, dunia nzima imeona udhaifu wetu. Tatizo hili pia linasababishwa na ufisadi. Kwa mfano, huko Kizingitini, kuna vijana hodari wa kuzamia baharini lakini hawachukuliwi. Sisi tunajua mahodari ni akina nani lakini wataulizwa stakabathi na hawana. Kuna vijana kama Captain Bady. Ikitokea tatizo, mimi nawapongeza sana watu wa Lamu kwa sababu sisi hatungoji wengine. Mambo mengi yametokea na wao wenyewe wanazamia hawaogopi wanaenda kusaidia. Lakini vibali ndivyo hawana. Athuman Bady anajulikana. Ukitaja *divers*, kunajulikana Kizingitini kuna *divers* wazuri lakini

Serikali inahitaji stakabathi na hawana. Napongeza Wizara ya Elimu kwa jambo moja ambalo ni kuwa wanataka kutumia *skills* ambazo zitasaidia watu.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Very well. Your time is up.

**Hon. Yusuf Hassan** (Kamukunji, JP): On a point of order, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): What is your intervention, Hon. Abdi Yusuf?

**Hon. Yusuf Hassan** (Kamukunji, JP): On a point of order, Hon. Temporary Deputy Speaker. I just want to get your attention.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): No! Hon. Abdi, you will not get my attention that way. You will catch the Speaker's eye through registering interest. I can tell your position in the rota. Hon. Jaldesa, are you trying to catch the Speaker's attention again through the intervention?

**Hon. (Ms.) Rehema Jaldesa** (Isiolo CWR, JP): Hon. Temporary Deputy Speaker, I want to contribute to this Bill.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Please, you will not use the intervention route, but the normal one. I shall follow this rota that I have here. Now, it is the space and time for Hon. Mutua Barasa.

**Hon. Didmus Barasa** (Kimilili, JP): Thank you, Hon. Temporary Deputy Speaker for giving me an opportunity to contribute to this Bill. I want to thank Hon. Ndindi Nyoro for coming up with it because the intention is very good. This country is losing a lot of money in the form of corruption.

We should ask ourselves one question. The amount of money which this country is losing is always increasing despite the efforts by Government agencies to fight corruption. Instead of corruption going down, it is increasing every day. Is it that the penalties are very low? I do not think so. They say that prevention is better than cure. What the police and the EACC do is just to implement one of the elements of fighting corruption being taking the people involved to court. But I have every reason to believe that the overall fight against corruption lies in the hands of accounting officers. What accounting officers should do is that after investigations are carried out and it is clear the route the corrupt used to syphon money, they should go back to the offices and review their systems to close down the loopholes the corrupt people used to syphon the money. I am a believer that people used the same ways to steal money in the NYS 1 and the NYS 2. If we had NYS 3, I still believe people would use the same formula.

It is important for accounting officers to do system audit assisted by investigative reports to identify loopholes and risk areas. This should be mitigated by way of improving procurement and audit procedures. Arresting people and taking them to court will not stop corruption in this country. What will stop corruption are penalties. The system is sabotaging me.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Yes, the system seems to have a problem.

**Hon. Didmus Barasa** (Kimilili, JP): Hon. Temporary Deputy Speaker, you should add me some minutes.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): You will get your space, Hon. Mutua. Your minutes will be reserved.

**Hon. Didmus Barasa** (Kimilili, JP): Thank you, Hon. Temporary Deputy Speaker. There must be two reports that come after corruption related cases are reported. We have one report to clearly show who is to blame and who is taken to court. We must have another report, which I



want to call a root cause analysis report that will identify the areas where the pilferage took place, and the loopholes in the system that these people are using to siphon money. That way, you will be in a position to come up with corrective action. We want to see a scenario where this House is engaged in reviewing policies and procedures that emanate from investigation reports in order to block the loopholes that people are using to siphon money.

As I said when I was beginning my contribution to this Bill, we must look into our Integrated Financial Management Information System (IFMIS), procurement and audit procedures. There are situations and scenarios where the Auditor-General has given a particular State corporation a clean bill of health as far as audit is concerned but later on, after some time, you realise that the same people are under EACC investigations. So, when pilferage happens and when this country loses money, as a country, we must come up with a report that will assist this country prevent recurrence of such vices. This can only be possible if the identified loopholes are closed. If we have flaws in the procurement system, those flaws should be mitigated against the review of the procurement system. If we have flaws in our IFMIS, then we must review and reprogram the IFMIS in order to seal the loopholes. If somebody breaks into my house and steals, I will move around to check. If there is any loophole in my fence or if the fence is not very high, I will review the situation and, say, increase the height of my fence. If the doors are made of materials that can easily be broken or cut into, then I should reinforce those particular materials that were used to make my doors and windows. This is exactly what should happen whenever this country loses money.

We also need to give the EACC powers to prosecute because it is a body that has a responsibility to fight corruption in this country. They need to be convinced that a particular government officer is corrupt but, as it is, they rely on another agency to review their reports and take people to court. We should give them powers to prosecute. If they are convinced that a particular individual is corrupt or has siphoned taxpayers' money, they should be able to take that person to court. I know that their efforts to fight corruption have been fought by the corruption cartels. I do not think the fine of Kshs1 million that this Bill proposes is going to deter corrupt individuals in this country. We know very well that we have people who have stolen millions of shillings even up to Kshs300 million. This proposal makes it very easy for culprits; they will be required to pay Kshs1 million only. That is not enough to deter people from stealing from Government. What is important is a complete audit system which will identify areas with risks and loopholes. We also need to review our systems to provide early warning signs so that immediately money is lost, the system is able to detect. People who are in charge of various sections should also be able to detect, say, invoices being falsified or people planning to pay for services that were never rendered. That way, it will be easy to prevent the loss of money.

This country must invest in the prevention of corruption as opposed to spending too much money in prosecuting those who are found to have stolen money. We have been told every time that the Director of Public Prosecutions is pursuing money that particular individuals in particular institutions have stolen, but at the end of the day it is never clear as to whether the money that was stolen is recovered or not. We must also be able to know the amount of money or assets that are recovered in a particular period of time. We must also know how the money that has been recovered is spent. If we do that, we will avoid a scenario where some agencies recover money and assets which are then embezzled. Such recovery ends up not assisting the people of this country.

With this, I support but I am waiting for the Committee of the whole House to bring in amendments to make this Bill better than it is. I thank you.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Shall we have Hon. Tum?

**Hon. (Dr.) Tecla Tum** (Nandi CWR, JP): Thank you, Hon. Temporary Deputy Speaker. I take this opportunity to thank Hon. Nyoro for bringing this Motion. Corruption is a cancer which is eating the fabric of this society. At Independence, we said we were going to kill illiteracy, poverty and disease, but because of corruption we do not have medicines in our hospitals. Schools are in a pathetic condition. Children do not have books. At Independence, we were at par with Singapore and Malaysia. So, it beats logic why we are not a middle-income country. In Kenya, we have intelligent and innovative men and women. We are hardworking, but money is stolen anyhow in our institutions. There is a lot of misuse of resources in our institutions. Some of the employees do not go to their places of work and that is a form of corruption because you earn what you did not sweat for. The needy in our country are denied services. That is why in hospitals, you are told to buy medicines and yet here we budget for every department and institution. Sometimes, you find medicine labelled “Government of Kenya” being sold in the corridors. We have to kill corruption in this nation.

Our farmers are about to get their bonuses. I come from a tea-growing county. In Rift Valley, we are told that we will get Kshs14 per kilogramme and in other areas like Central farmers will get Kshs36 per kilogramme. We do not know what is happening. There are people who are benefiting from farmers. A farmer uses a lot of money but they end up with peanuts. We have to kill this menace which is corruption.

Many people are dying because of sicknesses and diseases. Members of Parliament are everyday being invited for 20 or more *Harambees*. We cannot make it. The Government has budgeted for the hospitals. We have impassable roads and yet the Government has released money. We have to kill this cancer in our nation so that we move to a middle-income country. There is no reason we are not like South Africa and other countries because there is a lot of money in Kenya. We know that Kenyans wake up at 5.00 a.m. and they sleep at 11.00 p.m. but there is nothing to show for that. Kenyans are crying, dying and praying for a nation which will be free of corruption.

Thank you, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Let us have Hon. Otiende Amollo.

**Hon. (Dr.) Otiende Amollo** (Rarieda, ODM): Thank you, Hon. Temporary Deputy Speaker. I rise to oppose this proposed Bill that is amending the Anti-Corruption and Economic Crimes Act.

I have perused and read the report by the Departmental Committee on Justice and Legal Affairs on this proposal. I note the observation that the proposal would be a violation of the rights of an accused person. On page 13, they cited a decision of the Supreme Court. That is the correct position. If this Bill is passed, it would be a violation of the Constitution. Article 50(2)(p) gives every accused person the benefit of the least severe of the prescribed punishments. The idea of prescribing mandatory minimum sentences as proposed in the Bill would not only violate Article 50(2) but also Article 25(c) of the Constitution.

Secondly, the Bill proposes to remove judicial discretion. Every judicial official, after considering the facts and circumstances, is entitled to determine the appropriate sentence. If you prescribe a mandatory minimum sentence as this Bill proposes, it takes away that discretion and yet, that is a constitutional discretion under Article 159 of the Constitution. Under that Article, judicial authority resides only in the Judiciary.

Thirdly, it must be noted that there is also space for what we call plea bargaining. That space derives directly from the Constitution in Article 159(2)(c), which allows alternative dispute resolution methods. This is an avenue that has been used, not just in this country, but in many others. Sometimes, when you find yourself in the situation we are in where corruption is so severe and a lot of money is out there, you come to a reasonable term and say that if someone has stolen Kshs100 million, he should bring Kshs95 million and be allowed to keep Kshs5 million only. That has been done in other countries. It can be done in this country. With this kind of prescription, you take away that avenue of plea bargaining. Plea bargaining is sometimes necessary. It is one we cannot purport to take away as this Bill wants to do.

Beyond that, we need to caution ourselves as Members of Parliament. When amending this part, we must look at the parent Act. What does it deal with? It is not just Article 48. The parent Act starts from Section 32 to Section 47. We must remember that when you look at Section 42 of the parent Act, conflict of interest is punishable under this section. We must ask ourselves if we want to prescribe a minimum sentence of Kshs1 million and 10 years for conflict of interest. How many of us have suffered that conflict of interest? How many of us have dealt with our NG-CDF in situations of conflict of interest? Even when we vote in this House and Members says that we will vote for so-and-so because he or she is a former MP, is that not conflict of interest? If you were to look carefully, you might find that many of us in this House would be guilty under Section 42 for conflict of interest. We must remember that this is the sentence that we will be recommending for ourselves, including in recent discussions we have had in this House, even yesterday.

We must also caution ourselves in terms of how we want to deal with corruption. Is the problem of corruption one of law or social ills? Our problem is that we have made peace with corruption as a country. We tolerate corruption. It is a social ill and yet, we think that we can solve it by law. Every time issues of corruption are brought, even issues of integrity, we sweep them under the carpet. We are guilty of that even in this House. When reports are tabled and they have questions of integrity, we say that we do not have to speak to them. When it comes to the law of corruption, we say that there is so much corruption and hence the law. This is not a question of the law. This is a question of our own heart, approach and our tolerance of corruption. As long as we tolerate corruption, we can change this sentence to 100 years, but it will continue. We must focus on how to address our tolerance of corruption and how to enforce the law as it is. Right now, the law prescribes a sentence of up to 10 years. How many people have been convicted and even sentenced to five, six and nine or 10 years before we make 10 years mandatory? You will count so many people who have been called to record statements. Some have been presented in court but those who are convicted are very few. Our issue is enforcement. There are many countries that do not even have specialised legislation on corruption. Their tolerance of corruption is zero per cent. The issue is not the law.

*[The Temporary Deputy Speaker  
(Hon. Patrick Mariru) left the Chair]*

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

There is also a conceptual problem in terms of how we handle corruption. We started by establishing an anti-corruption body by administrative fiat. We then moved to a statutory body

and a constitutional body which is what the EACC is now. We abandoned that constitutional body because we decided it was not working. We have now focused the war on corruption through the Directorate of Criminal Investigations (DCI), which is not even constitutional or statutory. We are in this dilemma of having a whole regime of anti-corruption laws and bodies, but going back to where we started from of traditionally enforcing anti-corruption laws through the police. Even those who we have appointed to the EACC, we have conceptually been unclear on their role. Initially, they were full-time, and then they were made part-time and are now full-time again. We have been unclear on the number of commissioners. Should they be seven, nine or three? We are unsure of the role of the Chief Executive Officer (CEO). Is it the chairman who controls the body or the CEO? We have conceptual confusion around that area.

I suggest that we focus on eradicating corruption at two levels. First, is at the stage of elections. As long as the system of elections we have invites the usage of a lot of money, it will always invite corruption on the part of those who are elected. Every election cycle is a cycle of usage of lots of money. We must examine that system that requires you to have a lot of money in order to be elected.

Secondly, I suggest that the reduction of corruption will not depend on appointed officers or how severe the sentences are in the books. It must depend on the intolerance of corruption by the appointing authority. When the President has a whiff that any Cabinet Secretary, Principal Secretary or high-ranking official who is appointed through his office is corrupt, he does not need to wait for the court to convict that person to remove them from office. He has the ability to remove them for any or no reason. As long as we have situations where we are waiting for people to be taken to court and convicted before they can be removed from office, we will only have appointed officers who become smarter but remain corrupt. I submit that we do not need to change the law in order not to tolerate corruption. This is not a matter of preaching about how much you abhor corruption. This is a matter of law. As a matter of law, this Bill would be unconstitutional.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. (Dr.) Amollo, very well spoken. I take note of the recent Supreme Court's decision in matters where mandatory sentences were enforced on robbery with violence convicts. That has been reversed. We will now have a situation where the sentences of those who were convicted mandatorily to death must be re-thought in court. You have spoken very well. I hope that when this Bill comes to the Committee of the whole House, you will have an opportunity to sit with Hon. Ndindi who has put in a lot of work in this Bill. You can see what he is trying to do so that we can come up with a law that will stand up to the test of the constitutional court.

We shall have Hon. Mwirigi Paul, Member for Igembe South.

**Hon. John Paul Mwirigi** (Igembe South, Independent): Thank you, Hon. Temporary Deputy Speaker, for giving me this opportunity to contribute to this Bill. Corruption has contributed to a lot of negative impact to Kenyan citizens. The work that is being done by the Government in this country is propelled by corruption. You cannot get any service from any public entity without giving a bribe. Some of the doctors who operate people in our hospitals are recruited through corruption. You bribe without any qualification and you are recruited to do that job.

Secondly, there is an issue in our education sector with the way our teachers work. In much of the work that is being done there, you have to pay something so that your kin or child can be retained in school. There is a lot of laxity when you require a service from a certain public office. The service that you are given is not as fast as you would like it to be. You have to give

something so that you can get the attention of the officer who will give you that service which you require. It is the right time for us to be serious when we execute this Bill. It will help many Kenyans of good will. It will also assist us to get genuine people who will be working in public offices. It is good for us to be serious when we are executing this rule. The people or officers who are caught engaging in corruption in their various places of work... I have in mind traffic officers because they are the ones who normally exercise this in broad daylight without fearing anything. That is because no action is taken against them. When this law will be put in place, it will help us to curb corruption.

At the same time, it is good for us to improve the system. For us to end impunity, we must have a strong legal framework which cannot be compromised. Most of our courts which we expect to be independent when they are executing their mandate are compromised by people who engage in corruption. It is good for the Government to make it clear for those bodies so that they can have their independence when they are exercising their mandate. When a court or a judge is compromised, we do not expect any positive result when he or she is giving justice or when they are executing the verdict of the person who has engaged in corruption.

Secondly, there should be transparency so that Kenyans can have clear access to information. This will be achieved through empowering the auditing agencies. Citizens will have clear information of what is happening, the way the Budget is made and the Auditor-General or the audit agencies will work alongside the citizens by updating them on how that process takes place. If that is done, citizens will be in a good position to hold the Government accountable.

The freedom of the Press cannot be avoided. They are the people who are in the limelight. They update citizens on what is happening. When we are fighting corruption, it is important to give the Press opportunity to inform people about the activities which are being carried out by the Government.

We need to reform administration. For many years, people who are charged with corruption are the same people we promote to hold high offices. It is good for reforms to be introduced in those offices. The people who are involved in corruption should not be allowed to hold any public office until they are cleared to do so.

With those remarks, Hon. Temporary Deputy Speaker, I beg to support this Bill.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Mwirigi, very well spoken. What happens in the case where some of those people with very clear cases come to the House and we, as a House, think that they should hold those positions?

Hon. Menza Mbogo.

**Hon. Mbogo Ali** (Kisauni, WDM-K): Thank you, Hon. Temporary Deputy Speaker for giving me this opportunity to echo the sentiments on this important Anti-Corruption and Economic Crimes (Amendment) Bill. Corruption is not new. It has been there and it will be there. We need to ask ourselves where it starts. We, as parents, are fully responsible because today, when you send your kid to a shop, when he or she is hesitant, you always bribe him or her. You tell your kid to buy something for you and Kshs20 is his or her. Already, we are poisoning the mind of that child because he or she knows that to deliver or do anything, he or she must be paid something. We need a paradigm shift or a culture change and this should be introduced from the ECD level to all the way up. Otherwise, whatever we do here, whatever laws we want to change, will still not help this country.

The other day, we witnessed many arrests in this country after the President became so vocal. The DCI was given the mandate to arrest people on Fridays, take them to police cells to spend two nights there and on Mondays, they are taken to court. But Kenyans are so smart. We

adapt to these situations. If I know that I will be picked on a Friday, I prepare my lawyers with the money that I have and on Monday, when I am presented before a court of law, my lawyers are there to bail me out. So many arrests were done. Governors, Principal Secretaries and Cabinet Secretaries were arrested and told to step aside. But what has happened to them? We have not seen serious convictions happening in this country. If I recall very well, there is only one conviction that was done – that of the former Managing Director of Kenya Tourism Board. I do not remember his name, but he was sentenced for one or two years. That is the only major conviction that was done.

Corruption has to be fought from all angles. We support the President fully. We are behind him but it is...

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Mbogo, you must be speaking about Dr. Ong'ong'a Ochieng.

**Hon. Mbogo Ali** (Kisauni, ODM): Yes. I forgot the name but that is the only serious arrest of a State officer that was done. I do not remember any other. There are many cases pending before the courts of law, but no major convictions have been done.

We have heard all the Members here say that about 30 per cent of our Budget is stolen, so if our Budget is around Kshs2 trillion, 30 per cent of it is about Kshs600 billion per year. For the number of years that you will be in this Parliament, you are looking at Kshs3 trillion that will have disappeared through thin air and yet that money is within this country. That money is here. I fully support what our legal expert, Dr. Amollo, has said. He said we need to adopt alternative dispute resolution mechanisms. It is high time we gave a grace period or amnesty to those who have stolen the money to return it and develop this country. That is because the money that is stashed all over the world is not helping this country. If that money was here, it would have done wonders. There should be a mechanism. It has been done in many jurisdictions in the world. People are adopting that mechanism whereby you agree on whatever has been stolen, what needs to be returned to the country and what will be left to whoever has stolen the money. It is an option that needs to be considered seriously. Otherwise, this route of going to courts or amending laws every day, we will come up with whatever laws we want to come up with but, at the end of the day, if investigations are not effective, no convictions will happen.

We were told by Hon. Chief Justice that they will determine a case based on the evidence that has been put forward by the investigating arm. If the evidence is weak, what do you expect from the courts? The culprits will just be released and nothing will happen to them. Whatever has been stolen will disappear for good.

We need a paradigm shift from the way we approach these issues. I fully support what Hon. Nyoro is proposing. It is a very good proposal but, at the end of the day, even if we say a minimum of 10 years, going by what we have now, we have not seen those convictions. That is what pains me. The other day, we were told *kila mtu atabeba msalaba wake mwenyewe*. Today, Kenyans are saying: "Bring that *msalaba* since I am ready to carry it." That is because they know they will be taken to court and they will use the same money to bail themselves out. We need to prepare ourselves and we need a serious civic education all the way from ECD level upwards. Without that, this country is doomed.

This country is very rich. We have been talking about corruption for the last 20 years. If it was a shop, today it would have been closed down because of bankruptcy. But look at this country! We are getting stronger by the day. We just need to get our act right. A good example is when you are doing roads, and this is one thing that pains me. We are Members of Parliament. We have roads that are being done by the Kenya Rural Roads Authority (KeRRA). We as

Members of the Parliament are the patrons of the KeRRA roads that are being done in our constituencies. Just ask yourself why it costs Kshs5 million to upgrade a 200 metre road from murrum to tarmac. When you do it yourself, because I have done the numbers, it costs you Kshs1.5 million. When you ask the experts, they tell you they are using the Japanese costing of doing roads. Where on earth does that happen? We are not in Japan! We are in Kenya and we have to do things the Kenyan way. With the Kshs5 million that they allocate for a 200 metre road, we can get 400 metres of roads. But, at the end of the day, there is that serious collusion between the officials, engineers and contractors. At the end of the day, we end up with very shoddy work. They do very small sections of roads and there is no value for money.

With those few remarks, I support the Bill. Thank you.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Pukose.

**Hon. (Dr.) Robert Pukose** (Endebess, JP): Thank you, Hon. Temporary Deputy Speaker, for allowing me to contribute to this very important Bill. At the outset, Hon. (Dr.) Otiende Amollo has indicated that if we pass this Bill the way it is, it is unconstitutional. Hon. Speaker, you have gone further and given an advisory opinion on the recent ruling by the Supreme Court on the same issue. I can see the desperation of Hon. Ndindi Nyoro in terms of how to address the issue of corruption in this country. It is important that we do some amendments during the Committee of the whole House to align this Bill with the Constitution so that the efforts that have been put by the honourable Member are not in futility. The courts are independent. Like any other arm of the Government, they must be seen to be doing the right thing. I hope Hon. Ndindi Nyoro is in the House to listen to those important pieces of advice that both you, Hon. Speaker, and Hon. Otiende Amollo who is a senior lawyer, are giving. I hope he is in the list of the members to be appointed as senior counsels in this country. For some of us who are ardent listeners and debaters in this House, we listen to very important opinions that can shape our law-making process in this House.

Those are very critical contributions that will enable us align this law with the Constitution. I remember in the last Parliament there were attempts by some hon. Members to bring an amendment that a person should be hanged when he or she is involved in corruption. But because of the laws that we have made in this country, it was declared unconstitutional. The House rejected that amendment on that ground.

Moving forward, issues of corruption must be dealt with according to the law. We must be able to look at how best we can handle them. Our own institutions –DCI, DPP and EACC must be seen to fight corruption without discrimination. When we see the DCI, DPP and the EACC being selective in the application of the law, then we will be failing in the fight against corruption. When you see some other governors being told that they cannot step into their offices when they are being charged while others continue doing their duties as if nothing has happened, then that becomes selective application of the law. For the DCI, EACC and DPP to assist the President in the fight against corruption, they must apply the law impartially. They must not just look at few files and say: “This is what we can attend to. This one can be hidden under the desk and wait for another time.” Any file that appears before the DPP or the DCI must be acted upon. We see so many cases of corruption. We see them in the counties and every sector in this country. You can actually state what is happening in each county. It is common knowledge that corruption cases are rampant, especially in the counties although some Governors are walking scot-free. Some county executive members and other officers engage in corruption activities and are walking scot-free. We want to make sure that every Kenyan understands that the law is applicable equally among all its citizens.

There was a Petition that was presented in the morning by the Member for Saboti, Hon. Caleb Amisi. I want to also join him, because I was not able to contribute at that time. I support that Petition by Hon. Amisi on the degazettement of Kitalale Settlement Scheme. It is occupied 100 per cent by the people of Kitalale. Those people have stayed on that land since the early 1990s up to today. It is an example of land where people are living and yet, it is a forest. People live there. I hope the Petition will be supported when it appears before the Departmental Committee on Lands. The House should also support Hon. Caleb Amisi by making sure his constituents get title deeds and that they are resettled.

With those few remarks, I support.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Very well spoken, Hon. Pukose. There must be certainty in the application of the law. If one governor is asked to step aside from his office, then the next one who is charged with similar offences must be asked to step aside. We cannot have two applications of the law.

Hon. Mishra, you will speak next. Hon. Yusuf, Member for Kamukunji, you seem to be interested in speaking to this, but I cannot find your request. Have you keyed in? I will give you an opportunity though your name is not here. I think our machines have a problem. I will see you at an appropriate time. Just hold on.

Proceed, Hon. Mishra.

**Hon. Swarup Mishra** (Kesses, JP): Thank you, Hon. Temporary Deputy Speaker. I support the Bill by Hon. Ndindi Nyoro. We have to see the broader picture of this Bill. First of all...

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Tonui, you seem to want to force the hand of the Speaker. However, proceed. What is your point of order?

**Hon. Joseph Kipkosgei** (Kuresoi South, JP): It is the unfairness which we are facing here. We have been seated here. Many have joined us and spoken. I think 10 Members or so have spoken while those of us seated here have...

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Tonui, you are out of order. Proceed, Hon. Mishra.

**Hon. Swarup Mishra** (Kesses, JP): We should see the broader picture of this Bill. First of all, we should find out why there is corruption. Kenya has a great history and heritage in this world. Kenya is growing every day. It has great people. It is a very mature democracy with advanced technology and infrastructure. It is the only country which has shown mature democracy in Africa today. It has moved from a single party rule to multi-party politics; from autocracy to democracy. It is the only Third World country in the world which allowed the re-run of the presidential vote. We have the potential to be one of the most developed countries very soon.

We should also sit down and examine why there is corruption. Who is engaged in corruption and why is it not stopping? I will give an example. If the police, army, security agencies and the National Intelligence Service (NIS) are not paid well, corruption cannot be eradicated from them. Two, when there is a crisis like corruption; we do not have to play blame game. We have to manage the crisis. After that, we have to sit down and see, retrospectively, what the problem was. Then, we can be an example.

We remember the then President of Russia, the great Stalin. We remember that he went to a railway station in Moscow and together with security agencies, pointed out 10 people who were travelling without tickets. He ordered that they be shot and all the 10 people were shot dead. Since that time, Russia has never experienced any one passenger travelling without a



ticket. I am not saying we gun down our people, but we have to make strong and stiff rules to streamline rules and regulations. Rules and regulations are not meant to punish people but rather, they are meant to save and protect the good people in the nation as a whole.

We must have a strong foreign policy. There is international funding for our country. People come to our country. There is a country I will not name here, but if it gives out, say, Kshs100, Kshs50 will be gone. The same country will take part in tender and there will be no competition. Those are the terms and conditions before funding. Out of that Kshs50, Kshs30 is already taken by the people engaged in that contract. What Kenya gets is, I guess, Kshs20 out of that Kshs100. The interest rates are very high too. So, Kenya is suffering a lot. We have to see what we are going to do when somebody who is corrupt is caught. I was told he or she is not bothered. Why? It is fashionable to be corrupt. It gives one high status to be caught due to corruption. Somebody is caught or arrested on Friday, he sleeps in the cell on Saturday and Sunday and he is out on Monday. I was told that the ladies who are caught also go to salons to make their hair because they will appear on television. Men who are caught are also allowed to buy and dress in suits so that they can appear smart on television. During the next election, they will be contesting. That is because they will have been in the limelight.

If we do not set rules and regulations, or we do not monitor or implement them, we will be unable to control corruption. People say politicians are engaged in corruption. My colleagues and friends, the MPs are here. Which corruption are we engaged in? Nothing! We are doing no corruption. It is the Executive which is doing corruption. We have to change the Constitution because we are voted by the people of Kenya and we have to work. The Executive, today, is in power but it is not implementing anything. They are engaging in corruption and there is nothing that is happening. The same Executive is going to implement rules and regulations. So, we are done. We have to be self-sufficient as Kenyans to make our youth and future self-sufficient. We do not want to give all the construction work, for example. Kenyans are doctors, pilots and engineers. What is preventing us from participating in big tenders? We have to make our own laws and rules. We have to prevent the foreigners who are coming for mega corruption. Every foreign company working in Kenya should have a minimum of 40 per cent ownership by indigenous Kenyans or Africans as a rule.

I am telling you corruption started long ago but now, it has reached a point where everybody is corrupt. Everybody is dreaming to be president. They think if they make billions of shillings, they will be the president. There is a difference between a leader and a politician. A leader thinks about the next generation. A politician thinks about the next election. So, can we think about the next generation? Look at the NYS Scandal I and II. I interviewed one or two of the youth and they said they had lost 10 kilogrammes after joining the NYS! No food, no transport, nothing! One day I told you, ask the children of those who engage in corruption and listen to what they say. I support this Bill strongly and it should be implemented as soon as possible.

Thank you very much.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Tonui, it is noteworthy that the system was a little jumbled up. But I am aware of Members whose names were on the list. I will reach you. So, do not feel that I am ignoring you. I know the Members whose requests were registered before the system got jumbled up. The reason why I mention Hon. Yusuf is this: He usually gets sympathy from me because of where he has come from, if you know him. It is an effort for him to get to this House. When he comes, it is only fair that he receives some sympathy from the Chair, if possible. If I can get to him, I will give him an

opportunity also. Hon. Tonui, I will give you an opportunity, but the opportunity now goes to Hon. Ochieng'. Then we shall come back to you.

**Hon. Josphat Kabinga** (Mwea, JP): On a point of order!

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): There is no point of order, Hon. Kabinga. These are Members of Parliament. They have been here. Let them speak. It is not only you who can speak. They are Members of Parliament just like you. And there is only one microphone that each one of us can contribute through at a time. Hon. Kabinga, be kind to other Members of Parliament. Hon. Ochieng', proceed.

**Hon. David Ochieng'** (Ugenya, MDG): Thank you, Hon. Temporary Deputy Speaker. I wish to oppose this Bill. For your information, this Bill does not deal with punishment for corruption *per se*. It deals with inducements, abuse of office, conflict of interest, bid rigging and conspiracies. Any insinuation that this Bill deals with the omnibus punishment for all offences in the world is not true.

I want to start by saying that it has been proven that punishment, however severe or less severe, does not deter corruption. Corruption has to be fought using different tools. Whereas criminalising corruption and providing for punishment is good, evidence does not show that the higher the punishment the lower the corruption gets. Evidence does not show that if you put punishment at Kshs100 million, then there will be no corruption. Corruption happens because of a couple of things. So, being a lawyer and based on what the Supreme Court has said, I will advise my friend, Hon. Ndindi Nyoro, to consider revising his Bill to probably say: "Not exceeding Kshs10 million", because the wording "not less than" is not legal language allowed by the courts. It will definitely be shot down. There is no point in us making a law in vain. As it is, this will definitely not go anywhere.

The same Section 48 that Hon. Nyoro seeks to amend provides, at sections 48(1)(b) and 48(2), how else the punishment can be meted out. If the money or value of the property lost through that offense is Kshs10 million or Kshs20 million, the law allows the courts to give a punishment that is beyond Kshs1 million. Section 48(2) states that the punishment thereof could also be based on calculating how much was lost and doubling it. So, if Kshs10 million was lost, the courts can order Kshs20 million in terms of punishment. That is what is in the law. So, purporting to say "not less than Kshs1 million" limits the decision of the courts.

Secondly, Kshs1 million is not magic. It is a very small amount of money. If you asked me, the best way of punishing crime would be basing it on the quantum of money lost, which Clause 48(1)(ii) talks about.

Today, the weakest link in the fight against corruption is Parliament. That is because from the time we start budgeting, if you are to go through the Budget, you will find some hidden provisions almost everywhere – in the Ministry of Education, the Ministry of Agriculture or the Ministry for Roads. There are people putting monies there hopping that it will come back to them. So, the solution, in my opinion, does not lie in punishment in terms of paying a million shilling. It lies in ensuring that all of us live by the law, and saying what we mean and meaning what we say. If you get to know the kind of pushing that goes on when we prepare the Budget, as a House, you will be shocked. People follow up: "*Ile imepita? Have they left what we said on the Ministry of Health budget?*"

Members follow up on monies they have allocated in the Budget as to how much they can tender for and how much they can receive. We cannot fight corruption by creating the perception that we are committed to that cause. Without casting aspersions, this is what seems to be happening so as to be seen to be fighting corruption. This cannot be the way to go and hope to

be seen to be fighting corruption. Corruption will be fought based on very solid grounds. I propose the following:

First, we must ensure that the bodies that we have charged with the responsibility of fighting corruption are not doing so for show-off purposes or for television cameras and accolades. We must ensure that they do so because that is their role. If the Ethics and Anti-Corruption Commission (EACC) or the Director of Public Prosecutions (DPP) arrests somebody, we should not hail it. It is their job to do so. They should do it better and not expect to be clapped for. If the EACC arrests anybody for corruption, we should not be clapping for it. That is their job. I hear people say that there is no political will. We do not need the Deputy President, the former Prime Minister or any leader to say: "We should now fight corruption."

We should have the bodies we have charged with those responsibilities and given budgets to fight corruption do their work. You hear people say: "By now, somebody has called so-and-so." The day we will understand our roles, as Kenyans, we will be well off. Teachers teach because it is their role to do so. A police officer plays his role. We should not be expecting to be ululated for because we did our job.

Secondly, we should ensure that we have zero tolerance to corruption. When we get to the budget of the PSC, you hear Hon. Members saying: "Oh! They only stole Kshs2 million. Others have stolen Kshs7 billion." Corruption is corruption, irrespective of whether a million shillings or a billion shillings has been lost. We are normalising corruption by saying that somebody has stolen too little while others have stolen more. We are making it very easy for everyone else to steal because we base it on quantum. We must push for zero tolerance to corruption so that anything small you do that is against the law is punished.

A report came out three years ago on what the young people think about leaders in Parliament and life in general. The reason you hear people use the words 'hustler nation' and feeling nice about it, is because it does not matter how you made it. If you are driving a Range Rover or a Mercedes Benz, the young people say it does not matter how you got it. What matters to them is that you are driving a classy car. The values we have passed on to our children and society are wrong. So, hoping, like Hon. Ndindi Nyoro that, by putting a higher punishment this will go, is wrong.

We need to put our feet down and say anything bad is wrong, however much the concept. We must run an open Government. The way the Government operates is so opaque. We borrow money from the Eurobond and spend four to five years to explain how it was used. Even on our budgets, no MP can tell you how the money we appropriate in Parliament is used. This is because of a lot of red tape, opaqueness and secrecy that is not warranted. As we budget in Parliament, we know about Kshs1.8 trillion was approved to be used. So, we should know how much is used to the last cent because we deserve it and it is our right as Kenyans. So, we will fight corruption by running an open Government.

We have too many ways of fighting corruption but, every time we take one step forward, we take seven backwards. I am not casting aspersions, but how do you explain a situation where we go out there and say the election has been rigged or stolen. Then, two or three days later, we hear those who were saying elections had been stolen are shaking hands with those they are claiming to have stolen. Anything goes.

So, what are we teaching our children? You claim someone has stolen and the following day, you are shaking hands like nothing wrong has happened and move on. We cannot work that way. We cannot hope to build the values and principles in our Constitution by probating and reprobating; by abusing today and blessing tomorrow. It is wrong. We should fight corruption by

saying what we mean and meaning what we say and being disciplined and living according to the law. I oppose and will bring amendments to ensure that this Bill proposed by Hon. Ndindi Nyoro reflects what this country needs.

Thank you, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Before Hon. Tonui takes the microphone Hon. Members, allow me to recognise the presence, in the Public Gallery, of Gilgil Constituency Development Fund Committee members from Gilgil, Nakuru County. They are welcome to observe the proceedings of the House.

Hon Ochieng', you have spoken to people who have stolen Kshs1,000, Kshs100,000 and Kshs1 million and all of them being weighed differently by different hands. But you are a lawyer and you know very well that, the only way you can call a person a thief is if they have been convicted by a court of law and exhausted all the appeal channels. So, Hon. Ochieng', you should be well informed on that.

Hon. Kabinga, I have noted your concern that your microphone went off three times. I wish to apologise and inform Members that the system does not seem to be working very well today. So, your concern is correct. But I am fairly aware of the Members who are here and I think we are taking care of them. Hon. Tonui, proceed. The Hon. Member for Baringo, I also take note you are here, but Hon. Tonui was here before you.

**Hon. Ronald Tonui** (Bomet Central, JP): Thank you, Hon. Temporary Deputy Speaker for giving me this opportunity to make my contribution to this Bill. I support the fight against corruption, but I do not support this Bill. I do not believe we have shortage of pieces of legislation in fighting corruption. I believe we have adequate legislation and so, this one may not add anything much. This is especially when it is addressing the jail term that we need to increase to go beyond 10 years.

Why do we not even jail people for that maximum of 10 years first before we adjust it? The issue is simply at the implementation and processing stage in the courts. Otherwise, the legislation which we have certainly addresses most of those issues. I know when Hon. Sankok seconded, he mentioned the issue of the Mau Trust Land which he called Mau Forest as a form of corruption; that connecting power to the people living there and building roads and schools there is a form of corruption. However, he did not address the issue that those people have title deeds from the same Government and the same title deeds are also possessed by those others who have tea plantations in forests. In Mau Forest, there are several tea plantations. They are owned by Finlays and Unilever, which are part of that Mau Forest. Kiptagich Tea Estate is part of that forest. If you go through Aberdare Forest, you will find that there is a big tea estate inside the forest. Who are its owners?

We normally discuss quietly when we are taking tea and we say the mighty in this country cannot be tried. They can grab land anywhere, but we will always concentrate on the small people in the Mau and such. But those ones will never be touched because they are the mighty. They are the people who had the power to allocate land and they allocated it to themselves. That is why they allocated themselves land even in places which look very awkward. When you curve a tea plantation in the middle of a forest and when we google and see it, we normally laugh as we enjoy tea; that those people are too brave to do such a thing. I believe if we are to fight corruption, there should be no discrimination. Those sacred cows should not be there. We should be able to fight it conclusively by dealing with them.

The tendering process is a major activity which contributes to corruption. As long as we do not standardise the works which we do, then there will always be corruption. For example,

when we are constructing classrooms... Personally under NG-CDF, the maximum I can allocate for a classroom is Kshs500,000 and it always completes it. This is because I do not do tendering personally. We do tendering in the school and we tell people to count the number of lorries delivering sand, if they are full and all those details. That way, I am able to control the cost to Kshs500,000. When it comes to the county governments, they spend Kshs1.2 million. When it comes to the Ministry of Education, it is a minimum of Kshs1.5 million. We have the Auditor-General who normally audits all those projects. Why does he not give a report that such and such institutions are implementing similar projects at this cost and others are implementing them at other costs so that we can manage issues of corruption at that level? I do not know why, when we follow the tendering process as required, the cost of doing every project escalates. That is because there are too many people in that process. There should be a standardised price per kilometre even for gravelling of roads. That way, we will be able to control the costs.

Because we are always talking about the corrupt, the imagined and the truly corrupt, I believe it is unfair to say we allow the courts to freeze the accounts of those who have been accused. This is because people also need to access their resources to defend themselves as they go through the justice system. When you do not have resources, you can never get justice in this country. So, I do not support that idea of freezing the resources of those people. Also, the major contributors of corruption in this country are those who make policies. For example, we discuss the issue of affordable housing casually, but it has vested interests. Of the major problems which our people are facing in this country, affordable housing is not one of them. We need to upgrade our slums. Other Kenyans can simply build their own houses as long as we subsidise the cost of building materials and such. We want to centralise housing and create a fund. Everyone knows that there are vested interests. There are people who want to make huge profits out of it. We are quiet because it may not be politically correct to deal with it. Some of this comes from the policy level. How do we make policies? That also contributes to corruption.

There is also a big issue in my constituency in Bomet and other tea-growing areas. There is massive drop in tea prices. The Government should be involved in the auditing of systems at the Kenya Tea Development Agency (KTDA) to ensure there is no corruption. Farmers need better service. We can only achieve that if the Government steps in to assist farmers. It should audit the processes in the tea factories. It should check the marketing processes so that we reduce the cost of doing business at KTDA.

The Government should also address the issue of variation. I do not know whether the tea brokers in Mombasa are highly partisan. Tea bonuses for farmers in the western side of this country are as low as Kshs11 per kg while those in the eastern regions are as high as Kshs40 per kg. That is a difference of Kshs30. Surely, the marketing process also needs to be addressed so that there is fairness. Even in a factory like the one in Olenguruone, the tea bonus is Kshs18 per kg and yet that region lies in the highest altitude of the country. If the issue of quality of tea is based on altitude, then such a region should attract better prices.

I conclude by repeating that I do not support this piece of legislation. The existing pieces of legislation are adequate to address the issues of corruption.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Let us have Hon. Mizighi Mnene, the Member for Taita Taveta.

**Hon. (Ms.) Haika Mizighi** (Taita Taveta CWR, JP): Ahsante sana, Mhe. Naibu Spika wa Muda kwa kunipa fursa ili niweze kujadili Mswada huu.

Ninaunga mkono Mswada huu kwa sababu ufasidi katika nchi yetu ya Kenya umekithiri sana. Hivyo basi, mambo mengi yamekuwa hayaendi ipasavyo. Mambo mengi hayaendi vizuri

kwa sababu ya suala hili la ufisadi. Mahospitali hayana madawa na watu wanakufa ovyo ovyo. Ukifuatilia sana, unapata ni kwa sababu ya ufisadi. Kuna kisa kimoja cha ufisadi kilichonishangaza sana. Kilinisababisha kutambua ufisadi umefanya watu kupenda mali zaidi, hata utu umewatoka. Dereva wa *ambulance* alienda kuchukua mgonjwa ambaye alikua ni mama mja mzito aliyekuwa karibu kujifungua. Lakini kufika pale, akasema kwanza anataka afungiwe kitu chake kidogo ambacho hakina risiti wala hakijulikani mahali popote akiweke mfukoni ndiposa waende. Ni huzuni kwa maana tulimpoteza huyo mama. Nilimshughulikia yule dereva vilivyo kwa sababu nilivyofahamishwa hali hiyo sikufurahi. Hiki ni mojawapo ya visa vya ufisadi nchini. Visa kama hivi vinawafanya sisi viongozi kudharauliwa. Tazama kisa kilichotokea pale Likoni Ferry, Mombasa. Ni siku tatu sasa na hali haieleweki. Kumekuwa na mauti pale na mpaka sasa watu wanakaa katika hali wasiyoifahamu. Kuna utepetevu ambao haieleweki. Tukiangalia kwa mtazamo, tunaona ni kwamba kuna ufisadi ambao unaendelea pale. Kenya nzima hakuna watu wa kuokoa hali kama hiyo? Mhe. Naibu Spika wa Muda, ndio maana ninaunga mkono suala hili kwamba kuwe na hukumu kali kwa mambo ya ufisadi.

Tumeona watu wengi, na majina tajika, yakihusishwa na ufisadi.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Mizighi, just hold on. Hon. Nkatha, what is out of order?

**Hon. (Ms.) Beatrice Nyaga** (Tharaka-Nithi CWR, JP): Hon. Temporary Deputy Speaker, I stand under the provisions of Standing Order No.95. If you listen to all the Members, you will find that they support the Bill. We are repeating what we have said. I am requesting you to close the debate on the Bill.

Thank you.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Nkatha, are you saying that we should now call upon the Mover to reply?

**Hon. (Ms.) Beatrice Nyaga** (Tharaka-Nithi CWR, JP): Yes, Hon. Temporary Deputy Speaker. That is what I am requesting.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Very well.

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

Proceed Hon. Mizighi.

*(Laughter)*

**Hon. (Ms.) Haika Mizighi** (Taita Taveta CWR, JP): Ahsante sana, Mhe. Naibu Spika wa Muda. Nilikuwa ninasema kwamba tumeona watu wengi ambao wamehusishwa na masuala ya ufisadi katika nchi hii ya Kenya lakini kufikia sasa, ni kama hatua inayofaa kuchukuliwa haijachukuliwa kwa sababu wengi wao wako huru. Wengi wao ni majina tajika na viongozi ambao tunaweza kuwaita kwa kiingereza *role models*. Hii inasababisha hali hii ya ufisadi kuonekana kama ni hali ya kawaida. Hakuna hofu kabisa ya mtu kutotaka kufanya ufisadi wa hali yoyote kwa sababu wale ambao wamehusishwa wako huru na wanaendelea kuishi maisha yao ya kawaida. Basi watu wanaona kwamba ufisadi umekuwa ni jambo la kawaida.

Kwa hivyo, ninaunga mkono hukumu iongezwe na ifuatiliwe. Watu wanapopatikana kwa ufisadi, wahukumiwe ipasvyo.

Ahsante sana, Mhe. Naibu Spika wa Muda, kwa kunipatia fursa hii.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Let us now hear Hon. Kipyegon.

**Hon. Kipyegon Ng'eno** (Emurua Dikirr, KANU): Thank you, Hon. Temporary Deputy Speaker. I know that time is not on our side. I wish to make a simple contribution on this matter. I wish to state categorically that I oppose this Bill. The major reason is that we have enough laws in this country, including the Constitution that allows corruption to be fought in all corners. I say that because if you look at Chapter Six of the Constitution, it talks about integrity and holders of offices who are either State officers or public officers. This is a clear indication that the drafters of the Constitution wanted us to fight corruption in the manner that it is supposed to be fought. Seemingly, nobody is paying serious attention to the fight against corruption in this country. I say so because corruption has become a disease or culture. Anybody who assumes office believes that it is his or her time to make money and make good use of the opportunity. That culture cannot stop until...

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Kipyegon, I have to call you to order to stop at that point because it is now 1.00 p.m. You will have eight minutes when this matter comes up again for debate. The Motion has a balance of 28 minutes. You will have priority when it comes up for debate next time. There has been a lot of interest in this Motion. Hon. Kabinga, Hon. Jerusha, Hon. Members for Kisumu East, Funyula, Baringo and of course, Hon. Yusuf, who always has favour from the Speaker, could not get a favour. But I trust that the next time the matter is set down for consideration, you may have an opportunity.

#### ADJOURNMENT

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Members, the time being 1.00 p.m., the House stands adjourned until this afternoon at 2.30 p.m.

The House rose at 1.00 p.m.