

# PARLIAMENT OF KENYA

## THE NATIONAL ASSEMBLY

### THE HANSARD

Thursday, 25<sup>th</sup> February 2021

The House met at 7.00 p.m.

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

#### PRAYERS

#### QUORUM

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Order, Members! The Members who are coming in, please, can you resume your seats? I have confirmed that I do not have the requisite numbers to start business. So, I order the Quorum Bell to be rung for 10 minutes.

*(The Quorum Bell was rung)*

Order! I order the Quorum Bell to stop ringing. Hon. Members, we have the requisite numbers for us to start the business of the Evening Sitting. In Order No.5, we have the Leader of the Majority Party to lay Papers.

#### PAPERS LAID

**Hon. Amos Kimunya** (Kipipiri, JP): Hon. Temporary Deputy Speaker, I beg to lay the following Papers on the Table of the House:

Annexes and protocols at the Economic Partnership Agreement between the Republic of Kenya and United Kingdom being:

- (i) The customs duties on products originating in the East African Community partner States.
- (ii) Customs duties on products originating in the United Kingdom.
- (iii) Joint statements of the parties on the objectives and essential fundamental elements of this agreement.
- (iv) Protocol 1 concerning the definition or the concept of originating products and methods of administrative cooperation.
- (v) Protocol II on mutual administrative assistance in customs matters.

Hon. Temporary Deputy Speaker, this was the subject of our discussion earlier in the afternoon. We undertook to right what was not done when the original agreement came with the assumption that the annexures had already been delivered. Now that we have confirmed that those had not been delivered, we have obtained the official ones coming in with the official

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communication from the Ministry, the Committee will look at them over the weekend and report to us in terms of the impact they have on their report.

Hon. Temporary Deputy Speaker, I believe the most important thing to remember is that in 2016, this very House approved the Economic Partnership Agreement between the Republic of Kenya and the European Union (EU) because it was important for Kenya to go on a bilateral basis with the EU. What had been tried earlier on of going through the East African Community (EAC) route as an economic trading bloc, and in fact, which is the preferred multilateral route, had failed. This is specific because of the five East African countries, or six now, if we add South Sudan. All those countries are referred to as least developed countries (LDCs). The LDCs have unlimited access to the European and the United Kingdom market under the framework called 'Everything But Arms (EBA)'. They can sell everything except ammunitions. Now, Kenya does not have the same because it is not an LDC hence any sale made to Britain would have to suffer the same duties like others. Hence, it is very important we remember that we already did the EU Agreement but Britain then exited the EU. When Britain exited the EU, for us to continue trading with them at the same terms we did when it was under the EU, the same agreement has to be redone, but now specifically for Britain.

There is nothing strange. I want Members to start looking at it from that good faith principle. I can assure you that the same documents are being uploaded as we are talking so that Members will be able to access them online and the Clerk will be communicating to Members.

Hon. Speaker, I beg to lay the Papers.

**Hon. Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Very well. You are just laying the Papers today. Now, procedurally, they are before the House and they are the assets of the House.

Next Order.

## MOTION

### ADOPTION OF REPORT ON OPTIMISATION OF REVENUE IN GRAIN HANDLING SERVICES AT PORT OF MOMBASA

**Hon. (Ms.) Gladys Wanga** (Homa Bay CWR, ODM): Hon. Temporary Deputy Speaker, I beg to move:

THAT, this House adopts the Report of the Departmental Committee on Finance and National Planning on its inquiry into the optimisation of revenue in grain handling services at the Port of Mombasa, laid on the Table of the House on Thursday, 26<sup>th</sup> November 2020.

The issue of optimisation of revenue within Government investments is a very important subject, particularly at this time when our revenue collection is underperforming seriously. When you look at our Government investments and whether we are having return on investment, as a Committee, we feel that it is imperative to look into these institutions and see how we can make money to the Exchequer out of these institutions that are Government investments.

Hon. Temporary Deputy Speaker, it does not make sense that year-in-year-out, the Government is putting money into parastatals that are supposed to be making money. Why do Government investments, for example, such as Kenya Power and Lighting that is a monopoly, reporting losses? Such that taxpayer's money has to be taken again to be invested within Government investments. This is the journey the Committee on Finance and National Planning

want to take, not just with the Kenya Ports Authority (KPA) or any specific parastatal, but with all Government investments that are supposed to be feeding into the Exchequer rather than taking money year in, year out, from the Exchequer.

When it comes to issues of grain handling services at the Port of Mombasa, globally, dried bulk trade has grown because of the need for raw materials in several important industries in this country. If you look at the growth of grain bulk that has come into the country through the Port of Mombasa, in 2015, we had 2 million tonnes coming on 87 ships. In 2016, it dropped to 1.9 million coming on 81 ships. In 2017, it went up to 3 million tonnes because we experienced prolonged drought that resulted in importation of a lot of maize. In 2018, we had 2.4 million tonnes coming in 80 ships. In 2019, we had 2.7 million tonnes coming on 85 ships. In 2020, because of COVID-19, there was a bit of slow down and we had 2.1 million tonnes coming on 79 ships. The KPA has been having one licensed grain bulk handler that is the Grain Bulk Handling Services (GBHS) operating at Berth 3 and 4 at the Port of Mombasa, whose exclusive mandate was to expire in 2008, but has since been renewed.

What we were looking at is how we can make sure that we are not in a situation where there are any losses in revenue through this particular service. As you remember earlier last year, the Government took steps to bring together the rail service, port service and the pipeline service, in order to improve efficiency, together as the Kenya Transport and Logistics Networks (KTLN) now put under the Industrial and Commercial Development Corporation (ICDC).

Previously, grain handling services at the Port of Mombasa was done manually. Essentially, when the ship docks, you would come and offload the grains from the ships. For example, if using wheelbarrows, you would use spades to scoop from the ships into the lorries and then they would be transported. However, since GBHL recognises the need to revolutionise the handling of bulk grain and fertilizer imports at the Port of Mombasa, the ambitious project was conceived at the time when handling of grains had such high inefficiencies that ships would take too many days at the Port incurring huge demurrage charges. So, it is appreciated that with the mechanisation of grain handling services, the time ships spend at the Port of Mombasa has been significantly reduced. That has, therefore, enhanced efficiency and is likely to increase the revenue that the Port of Mombasa has earned from this particular service.

Hon. Temporary Deputy Speaker, we visited the Port to look at how this operation is going on and we made certain observations. We observed that cargo throughout the Port of Mombasa has been rising over the years, driven by corresponding economic growth of countries that use the Port for imports and exports.

We also observed that it would be appropriated that these services are not just for a given number of people. It should be liberalised so that as many people as possible can engage in the services of grain bulk handling at the Mombasa Port.

Our recommendations to this House so that we can optimise revenue through this service are:

(i) In order to optimise revenue collection, should fast-track authorisation, design, development and commissioning of other grain bulk handling facilities to enhance efficiency and effectiveness in grain handling services. Under this, we have recommended that by next year, we should not be in the same situation we are in today. The port has a masterplan. Apart from the Port of Mombasa, there is the major Port of Lamu that has been developed under the Lamu Port-South Sudan-Ethiopia-Transport (LAPSSET) Corridor Project. Once that port is open, they should consider having other grain bulk handling facilities. The same should be done at Kisumu, where the port has also been revamped. There is a special economic zone that has been developed at

Dongo Kundu. There should be consideration for development of other grain bulk handling facilities there.

(ii) In order to ensure that there is no situation where somebody sits somewhere and decides that he or she wants so-and-so to handle certain services, the process of appointing new operators for grain bulk handling services in the country must be fair, open, transparent and adhere to the Public Procurement and Assets Disposal Act of 2015 to ensure non-discrimination and accountability. This is the situation that is going to lead this country to get competitive services so that if you are competitive, you come and compete openly. It is not a boardroom discussion that determines who gets and who does not. It has to be a fair and open process.

(iii) In line with the KPA Master Plan of 2018-2047, the KPA needs to pursue alternative locations to discharge grain vessels, particularly at Dongo Kundu Special Economic Zone as well as at the upcoming Lamu and Kisumu ports, with consideration of space and a business models applicable under the Public Private Partnerships (PPPs). Not everybody has to be at Kilindini Harbour. Some can be there and some can be in other areas as mentioned.

(iv) In order to promote efficiency in grain bulk handling services in the country, there is need for the Government to provide critical infrastructure to continually expand and sustainably gain leverage in technology while maximising return on investment. Such critical infrastructure includes wide berths and state of the art vessel handling equipment. If you visit the Lamu Port, you will see that the Government investment under the LAPSSET Programme is commendable. The three berths that have been completed are huge and provide sufficient space.

The next big thing in this country is going to be the Lamu Port and the LAPSSET Corridor. That is going to be the next big place. A lot of cargo is going to move in that direction. So, investment is already being done there, but we hope and we are happy that similar investment is happening in other ports such as the Kisumu Port. That expansion should continue so that the inland parts of Kenya and the East African region at large can be served adequately through the Port of Kisumu while the Ethiopian Corridor and South Sudan is served through the Lamu Port, and the Mombasa Port continues to perform the critical role that it does. The KPA should continue investing through PPPs framework in expansion of port facilities to accommodate more berths.

What we are saying in other words is that where the Government invests the kind of money that it continues to invest in parastatals, there must be returns. It must be demonstrated that that investment is worth the while of the Kenyan taxpayers that continue to pay taxes. Some State-owned enterprises are not worth their salt. Year in year out, we continue to pump in money and get nothing in return. In fact, the Government continues to make losses while we continue to pump taxpayers' money into them.

At the moment, we have a huge deficit in the budget and a debt ceiling that is bursting. The Government must look for creative ways of raising revenue. We cannot continue to borrow. Why have we not yet thought about divestiture in some of these State-owned enterprises? The last time a Kenyan company was listed at the Nairobi Stock Exchange (NSE) was during President Kibaki's time. Ever since, there has been no listing in the stock exchange, yet we are struggling to raise revenues to fund the budget. If we were to undertake a re-listing of some companies like the Kenya Commercial Bank (KCB) and others, and then do primary listing of a few others such as the ports, we would be able to raise up to Kshs350 billion from those listings to pump into the Exchequer. These are some of the creative ways we should look at for raising revenue so that we do away with borrowing and debt accumulation. The Departmental Committee on Finance and National Planning, together with all stakeholders, are exploring creative ways to optimise revenues from

our investments and at the same time, to think outside the box on how to raise revenue without necessarily going to borrowing as the first point of call.

With those many remarks, I beg to move and request my Vice-Chair, the Member from the royal suburbs, Hon. Isaac Ndirangu Waihenya, to second.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): That is a big name, and of course, appreciation from your Chair.

Yes, Hon. Vice-Chair.

**Isaac Ndirangu** (Roysambu, JP): Thank you, Hon. Temporary Deputy Speaker. I wish to thank my Chair for moving the Motion very competently. I rise to second by saying that the work of the grain bulk handling at the Port of Mombasa is very critical to this country and the entire East Africa including Rwanda, Uganda, Tanzania, Burundi, Sudan, the Democratic Republic of Congo (DRC) and generally the Great Lake Region.

Why was this enquiry and study necessary? I wish to remind Members that Standing Order No.216(5) and (6) mandates this Committee to investigate and enquire into all matters related to the assigned ministries and departments as they deem necessary. Another mandate is to examine treaties, agreements and conventions. So, our assignment was to go to the Port of Mombasa and other related facilities with a view to inquire how useful they are to the country.

In doing so, the background of our tour was necessitated by agitation from other stakeholders who wanted to know, among other things, why there has been monopoly for grain handling at the Port of Mombasa. Some of these stakeholders include the Cereal Millers Association, Kenya Ships Agents Association, Kenya Transporters Association, Kenya Freight and Forwarders Association and the Kenya Ports Authority.

Hon. Temporary Deputy Speaker, we needed to understand the situation before the Grain Bulk Handlers Limited was engaged by the Government. There was a very serious problem of congestion at the port with many ships having docked, but there were no facilities to offload all the cargo that was coming. This congestion led to huge losses in demurrage, delays in discharging cargo and waste as some of the cargo would expire while still on the ship.

Grain bulk handling involves investing in building silos and warehouses which require huge storage facilities and investment. While we were discussing with the stakeholders, it came to our attention that their main complaints were that the Grain Bulk Handlers Limited appeared to have been given special status. Considering that business at the Port of Mombasa has risen to millions of tonnes, we felt it was necessary for an opening to be created for other players. In our recommendation, the Committee has insisted that other players should be licensed to bring competition and fairness in grain bulk handling.

The Committee has also recommended that the Government should invest hugely under the Public Private Partnerships framework in grain bulk handling infrastructure.

Hon. Temporary Deputy Speaker, I wish to second.

*(Question proposed)*

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Leader of the Minority Party, you have the Floor.

**Hon. John Mbadi** (Suba South, ODM): Thank you, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Hon. Mbadi, please, take your seat.

Hon. Members, on your Order Paper, there is a notice of an amendment by the Member for Makeni, Hon. Daniel Maanzo. I would like to communicate to the House that the Member has dropped the amendment and it has been approved by the substantive Speaker.

Leader of the Minority Party, please, proceed.

**Hon. John Mbadi** (Suba South, ODM): Hon. Temporary Deputy Speaker, as I support the Report of the Departmental Committee on Finance and National Planning regarding grain handling services at the Port of Mombasa, I want to speak to a few things. I have not read the Report, but I listened keenly to the Chairperson while moving the Motion and the Vice-Chairperson as he was seconding. I have some background information about grain bulk handling and I cannot agree more with the Committee in their findings.

Even though I agree that before the grain bulk handlers at the Port of Mombasa were engaged, grain handling was manual and there were a lot of challenges. We have since moved and I do not understand why we should continue as a country to have monopoly in handling grains at the Port of Mombasa. There is no justification because this is a service that should be opened up and liberalised. Other players who have capacity should come in to reduce the cost. As a Member of the PIC in the 10<sup>th</sup> Parliament, there was a very heated debate on the monopoly of the Grain Bulk Handlers Limited. During that time, the monopoly was supposed to be renewed and a number of us were opposed to that move. It is surprising that about 13 years down the road, we still have a single business entity monopolising grain handling at the Port of Mombasa. This monopoly is costing Kenyans because he charges what he wants because there is no competition. When there is no competition, the extra cost of handling the grains goes to Kenyans because maize will come to our table in terms of the *ugali* we eat. This is something that must be looked into. I do not support the fact that we are still engaging the Grain Bulk Handlers Limited. If they are efficient, they will defeat the other competitors in an open and competitive environment. I want to agree with the Committee's findings that this is a service that must be opened up for competition.

Hon. Temporary Deputy Speaker, the Committee also made an observation on Government investment. We must call a spade a spade. There is no Government in the world that is efficient and effective in doing business. Business should be left to private players and the Government should provide infrastructure and a business environment. We can only have Government investment in a service that is critical.

We had the Awuondo Commission which came up with very good recommendations but the Government has failed to implement them. This Commission had very good brains that included Hon. Abdikadir, the Chairman of the Committee on Constitutional Review that went to Naivasha and came up with the 2010 Constitution. It is high time we told the Executive to implement the Awuondo Commission Report and have most of these loss-making institutions closed up or we sell them out. I can see my time is up. I want to agree with the Committee that their findings need to be implemented. Let this not be a Report that...

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Very well. Let us have the Hon. Member for Tetu, Hon. Mwangi Gichuhi.

**Hon. James Gichuhi** (Tetu, JP): Thank you, Hon. Temporary Deputy Speaker for giving me this opportunity to contribute to this Motion on optimisation of revenue in grain handling services at the Port of Mombasa. I wish to support what Hon. Members have said. It is important that we appreciate that cargo at the Port of Mombasa has been raising exponentially over the years. What is of utmost importance is to enhance revenue collection at the Port of Mombasa. Since we only have one grain handling service at the Port of Mombasa, we lack competition and so, what we have is a monopoly. We have various disadvantages for having one grain handling facility,

especially price fixing. Since they are the only providers, they can choose to set any price regardless of the demand because they know their customers do not have a choice. They can inflate prices for lack of competition. We can discuss the issue of declining product quality. A monopoly cannot only raise prices, but it can also offer inferior services. It knows that the residents have fewer or no alternatives.

A study was done by the National Bureau of Economic Research in the USA that found out that businesses have invested less than expected since the year 2000 due to decline in competition. So, this may lead to loss of innovation. Monopolies lose any incentive to innovate or provide new or improved products. When other companies are given a facility at the Port of Mombasa, we will have increased collection of revenue. Currently, we know that our economy is doing badly. The Port of Mombasa is one facility that generates a lot of revenue for this country. For that reason, we may say that monopolies cause inflation. They can set prices as they want and raise costs to consumers.

With those few remarks, I support this Motion.

Thank you.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Very well. Let us have the Member for Rarieda, Hon. Otiende Amollo.

**Hon. (Dr.) Otiende Amollo** (Rarieda, ODM): Thank you, Hon. Temporary Deputy Speaker. I rise to support this Motion. I have carefully read the Report of the Committee that is dated 26<sup>th</sup> November, 2020. I have noted that in addition to visiting, the Committee engaged with various stakeholders. The essence of the Report is to recommend a principle against monopoly and that I agree with. The Report essentially in its material part, recommends KPA to authorise other grain bulk handlers. In fact, it says by 2022. I would have suggested that they say “with immediate effect” and not to postpone it.

It is important to know, as the Report recommends, that as we engage other grain bulk handlers, the process should be fair, open, transparent and competitive. Those are the principles that are espoused in Article 10 of our Constitution. At this time and age that we have had the Constitution for 11 years, and it is important to note that Article 10 is not affected by the BBI proposals that will come here soon, we must make sure that such processes are competitive and we guard against monopoly.

I want to note that the Report also recommends alternative locations for discharge of grain vessels including ports like Kisumu. I am sure when that is implemented, as part of that design, it shall include such important bays like Asembo Bay and Luanda Bay in my constituency because they are the gateways to the great lakes region. So, when we talk about grain bulk handling beyond the borders of this country, then such ports like Asembo Bay, Luanda Bay and Kisumu will be important.

Consideration is given to PPPS and that is a good recommendation, especially in the context of the law. I want to note two things. One, we are in times of dwindling resources by the Government. The Government, therefore, cannot regulate everything. It is important that we bring private actors. Two, in instances where private actors are brought in Public-Private Partnerships, there is usually great accountability than in instances where the Government solely or uniquely regulates certain sectors.

With those remarks, I support.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Very well. The Floor is yours, the Member for Kitui Rural, Hon. Mboni Mwalika.

**Hon. David Mboni** (Kitui Rural, CCU): Thank you, Hon. Temporary Deputy Speaker for giving me this opportunity to support this Motion on optimisation of revenue in grain handling services at the Port of Mombasa. The Port of Mombasa handles a lot of dry grains for Kenya, Uganda and all the neighbouring countries. In fact, it should be noted that this country imports 90 per cent of the wheat that we consume. However, we have only one firm that handles dry grain and that is a monopoly. A monopoly is a dangerous operator. It can dictate the price it can pay even to the port. It also dictates the price it charges in handling the grains. Therefore, we should fight monopoly.

This firm, through the wayleave agreement of 1992 and another agreement of 2000, was given 35 years to operate in berths III and IV. We should also commend the firm because it has heavily invested in mechanised facilities, vessel handling, bulk transport terminal, warehousing and transport services. What I am saying is that to put up a bulk handling facility is expensive.

The firm also has another facility in Athi River, which handles non-food products like core and fertiliser. This has resulted in efficiency in terms of handling grains. Before, grains used to be carried by people physically. Now, because of those facilities, handling grains becomes a bit easier.

From the findings in the Report, according to the KPA tally book, the firm is supposed to charge US\$3.85 per metric tonne. However, it charges US\$10.4 per tonne on professional bulk handlers. What this means is that handling is more expensive than before. Because these are conventional bulk handlers, like the maize millers, this cost is transferred to the final consumer. Therefore, we need to open up this sector.

In the recent past, there was Kilindini Terminal Ltd, which was granted a wayleave to operate in Berth V, but we realised that Berth V has a width of 75 metres while the ships that dock in Mombasa are over 200 metres. Therefore, Kilindini Terminal could not operate. The Committee recommends that more bulk handling firms should be licensed to facilitate efficiency and reduce the cost of bulk handling. In the process, this reduction will be transferred to the final consumer. A bulk handling area should be set aside in upcoming ports, like the Port of Mombasa, Dongo Kundu Special Economic Zone, Lamu and Garissa. More importantly, the Government should look for public-private partnerships to construct berths specifically for handling grains. This will reduce pressure from the Exchequer.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Hon. Members, I am sure you are aware of your time limits so you can plan well. Let us hear Hon. David Sankok, the “Member for Kenya”.

**Hon. David ole Sankok** (Nominated, JP): Thank you, Hon. Temporary Deputy Speaker, for giving me this opportunity to also add my voice to this very important Report from the Departmental Committee on Finance and National Planning, led by the Minister for Finance, Hon. Gladys Wanga. The Report is timely and important.

**The Temporary Deputy Speaker** (Hon. Jessica Mbalu): Hon. David Sankok, there is a point of order by the Member for Emurua Dikirr, Hon. Kipyegon Ng’eno.

**Hon. Kipyegon Ng’eno** (Emurua Dikirr, KANU): Hon. Temporary Deputy Speaker, as much as we may be excited about the new political dispensation and new relationships we have in this House, it has to be known that this is a House of records. I do not believe there is any minister in this House. The Member who has just spoken referred to another Member as the Minister for Finance, which is not true.

**The Temporary Deputy Speaker** (Hon. Jessica Mbalu): Hon. Sankok, maybe you can substantiate as you continue with your contribution.



**Hon. David ole Sankok** (Nominated, JP): Thank you very much, Hon. Temporary Deputy Speaker. I just said a representative of the Minister for Finance.

**The Temporary Deputy Speaker** (Hon. Jessica Mbalu): Hon. Sankok, you may withdraw so that we do not keep arguing.

**Hon. David ole Sankok** (Nominated, JP): Thank you very much, Hon. Temporary Deputy Speaker. I do withdraw. In Kiswahili, they say “*mgala muue na haki mpe.*” In terms of infrastructure, which is an enabling requirement for the economy, the Jubilee Government has done quite well in enabling this particular port to operate and in facilitating grain bulk handling. Once we have an enabling environment in terms of infrastructure like the SGR, roads and LAPSSET, our duty is to deal with policies. We are totally against the monopoly that is witnessed now. Monopoly is very dangerous in terms of pricing. When you do not have a competitor, you will price your goods and services the way you want. Sometimes a monopoly can create artificial shortage of grains in the country so as to increase prices. Monopoly is even open to abuse. It can be used as a biological warfare weapon. If the company that monopolises the grains business is used in a biological warfare, all of us may end up with serious illnesses.

I also support the opening up of other ports like the Kisumu Port. Kisumu is blessed to have Lake Victoria, the largest fresh water lake in Africa. It is the biggest city in the Great Lakes region. Those countries will get good services if we make sure that Kisumu Port and other ports around Lake Victoria on our side are efficient so that all that is being transported to neighbouring countries like Uganda, Rwanda, Tanzania and Burundi go through the ports. We must also make sure that the Lamu Port is operational so that once the LAPSSET project is finished, that corridor will not lie idle. Instead, it will handle enough grains to our neighbours like Ethiopia, Sudan and Somalia. We appreciate the company has invested a lot and it has gone digital and mechanised, but we must have competition. We have been having monopoly in the production and distribution of electricity and that is why the price of power is very high and power cannot reach everybody. When Safaricom was the only telecommunications company monopolising the market, we used to pay Kshs56 to talk on the phone for a minute. We used to buy a sim card as if we were buying land. You had to give the name of your chief. The same service that Safaricom was charging Kshs56 per minute ten years ago is now being charged Kshs2 and yet the standard of living has gone up. So, what changed? This is as a result of competition through opening up the telecommunications industry. If we open up grain handling services to other players, I am 100 per cent sure the prices will come down.

I support.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Let us have the Member representing the people of Funyula, Hon. Oundo Ojiambo.

**Hon. (Dr.) Wilberforce Oundo** (Funyula, ODM): Thank you, Hon. Temporary Deputy Speaker for giving me this opportunity to contribute to this Motion.

I support the recommendations of the Committee. However, I wonder why it had to take a parliamentary committee to state the obvious. This is something that even the management of KPA and the Ministry should have handled.

It is important for us to note and appreciate that monopoly of any nature, be it the essential services or utility, is always ineffective, unproductive and does not amount to return to value for money.

We must understand the nature of the subject here. Grain bulk handling is a capital intensive investment and is naturally noted all over the world. In such circumstances, the operators, as we call them, are given sufficient period to recover their investments and are normally given

conventional rates to allow them to recover their investments. In this case, it is understandable that such arrangements exist. If you look at the rates which GBHL is paying KPA compared to the ongoing market rates, it is indeed, a very lopsided arrangement that ends up depriving the people of Kenya their revenue, which they ought to have got.

Based on the Report that we have been given here in Paragraph 47, the Committee notes that GBHL pays USD3.85 while other operators pay USD10.4. The difference is so big and actually rings of unfair business competition.

I would be interested to know because the Committee Chair presenting says there has been a review. Probably, it would have been in the best interest of this House to be told after review, if it has moved closer to the market rates or whatever. Sincerely, having operated since 2009 or thereabout, they should have now moved closer to achieving their return on investment.

When negotiating some of these deals, the interest of the people of Kenya must be paramount and not the interest of a few people who simply do it so that they gain undue advantage to the detriment of the people of Kenya.

As we move forward, and based on the recommendations, I hope either of them – the Departmental Committee on Finance and Planning or the Public Investments Committee (PIC) – will oversee to ensure that when they allow a second operator to come on board, their rates and terms would be more or less the same, instead of having unfair rates on other people. As we speak to this, and as my colleagues have also mentioned, there are many other ports in this country. There are also many places where we do businesses.

I come from the border between Kenya and Uganda and we import a lot of grains from our neighbouring country, Uganda. If only the country can care a little bit and expand the various ports or landing bays in that part of the world, we can generate revenue through such handling. We have sea ports, for example. We have traded with Ugandans for many years and yet, the revenue accrued from that entry is minimal despite the high potential to even recover a lot of revenue for this country.

With those few remarks, I support.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Very well. The Member for Tinderet, Hon. Kibiwott Melly, kindly have the Floor.

**Hon. Julius Melly** (Tinderet, JP): Hon. Temporary Deputy Speaker, I rise to support the Report from the Departmental Committee on Finance and National Planning on the optimisation of revenue in grain handling services at the Port of Mombasa.

Monopolies are discouraged in many jurisdictions the world over. They do not promote trade or competition. In fact, they depress businesses across the world. The GBHL is the main handler of all grain coming through the Port of Mombasa. Kenya is an importer of most grains like wheat and yet, it is not doing good business. As we try to open up ports like that of Lamu and others like the one at Lake Victoria, it is important that we liberalise and give other agencies or handlers room. That way, we can grow business, employ the youth and also grow the economy. By doing so, we will not have allowed one handler to run the businesses of this country by monopolising grain handling operations at KPA. In fact, the records show that the licence for grain handlers was supposed to be valid for eight years. It was supposed to end in February, 2008. However, up to now, they are still operating. If they are still handling grains as of now, then it is illegal. That is because other handlers are supposed to be given room so that they can import and assist.

A lot of grains pass through the Port of Mombasa yearly. As one Hon. Member said, KPA charges around USD3. However, in many jurisdictions, they charge up to USD10. That means we

are still going to lose revenue collection if we are going to still retain one handler of grains. The mandate of the Government or agencies operating at the Port of Mombasa need to be clearly defined and strengthened to avoid overlap of roles, which slows down port operations. The purpose of KPA is to regulate and give room to others. It is not to assist one particular company to monopolise the running of the business at the Port.

I support the Motion.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Very well. The Nominated Member, Hon. Osotsi Godfrey.

**Hon. Godfrey Osotsi** (Nominated, ANC): Thank you, Hon. Temporary Deputy Speaker. I also rise to support this Motion. As many Members have said, the Departmental Committee on Finance and Planning has done a wonderful job. This is a new trend of doing things. We want to encourage the Committee to continue carrying out such tasks to ensure that our public utilities are able to generate revenues that can support the economy.

I also want to agree that for a long time, this particular service has been handled by only one company – Grain Bulk Handlers Limited. It is high time that we had this business liberalised so that we eliminate monopoly and create healthy competition. However, as it has been said by Hon. Oundo, some of those investments are so huge and one requires time to recoup one's investment. As you note in the Report, in February 2018, the exclusivity of GBHL expired. In the same year, around April, KPA started the process of liberalising. Unfortunately, that has not been done to date. We still have a single operator who handles about 98 per cent of grains that are imported into this country. As some of the Members have pointed out, they are only paying USD3.85 per tonne. Other conventional operators pay a tariff of USD10.4. You can now see the kind of loss. If we opened up this business for other operators and more competition, we would see enhanced revenue for KPA and, of course, that money would be injected into the economy.

Hon. Temporary Deputy Speaker, the Committee also looked at the Kenya Ports Authority Master Plan, which runs from 2018 to 2047. It talks about KPA coming up with alternative locations to discharge grain vessels for instance Lamu, Dongo-Kundu and even Kisumu. I think this is progressive and this is something that we would encourage the Government and KPA management to do. Even investment into critical infrastructure, opening up more wide berths, the state of the vessel handling equipment is very critical.

However, considering that this business is capital intensive, I think the suggestion that the PPP framework be used is critical because this will now help new operators to have a new entry into this business. In addition, I am hoping that if these recommendations are implemented, we will see enhanced revenue for KPA and for this country.

With those few remarks, I support.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): You support. Let me have the other gender and, of course, the first on the request list is the Member for Nairobi City County.

**Hon. (Ms.) Esther Passaris** (Nairobi CWR, ODM): Thank you, Hon. Temporary Deputy Speaker. I stand to support the Report by the Committee of Finance and National Planning. The agenda of the Government is food security. Without having processes that are efficient, cost-effective and safe, the country cannot obviously deal with its food security agenda. I have to commend Grain Bulk Handlers for making that investment at the time that they did and giving Kenyans an opportunity to actually re-enforce its position in terms of handling of grain. However, there comes a time that a Government has to look at its own efficiency in terms of revenue collection and fairness in terms of trade.

I agree with Hon. (Dr.) Otiende Amollo that waiting for 2022 to consider other players in the market when we should have actually done this in 2018 would be denying the Government the kind of revenue that it needs right now. In addition, it denies Kenyans, traders and the people that actually work in this area the opportunity to have more profits. It seems like the profits are tilted towards Grain Bulk Handling and not the various players – not even the Government itself.

Moreover, I feel the fact that the small timers who handle the 2 per cent that is not handled by Grain Bulk Handlers have to pay more by over USD7 per metric tonne is also showing unfairness in trade. As a country, we are trying to say that we want to encourage other players to be able to get into some of those playing fields. There is no way they can get into it when they are actually charged more. Therefore, I have to commend the Committee for actually looking at this particular area. Moreover, there are many other areas we could look into and where we can actually improve our efficiency as a country in terms of ensuring that we have food security. Besides the grains, they also handle fertilizer.

For me, I think once we commence... We have actually got ourselves as a country in a place where we are actually making some milestones. However, there comes a time that you also have to look at other players. This is because handling 98 per cent of the country's grain is too huge. It is a monopoly. We have allowed it because of the investment. However, also as a country and as we are trying to license other players, we should look at the cost-benefit analysis and the returns on investment. We cannot allow an investor to make astronomical profits because we want the State to earn income - our neighbouring countries are landlocked and they depend on us – and to be food sufficient.

However, we also have to understand that when we have an efficient mechanism of handling grain, you are also able to ensure that you have safety. Therefore, for that investment that was made by that company, we have to say thank you as a country because we have been able to handle grain in a more efficient and safe manner. However, in terms of price, I believe that the country has actually lost a lot of money in terms of the income that it can earn – that is USD3 as opposed to USD7 from the 2 per cent. There should have been some way to negotiate. As we go forward and looking at licensing other players, I think we should also look at when we are licensing them in terms of PPP, what is in it for the Government? That should be clearly understood. We have the express highway. There are many speculations about how many years it will take to recoup, how much money will be made, and how much Kenyans will be paid.

Therefore, in every public private partnership, the Government has to make sure that the people of Kenya come first in terms of receiving efficient, affordable and accessible service. The next thing is to ensure that the Government itself finds alternative revenue. This is because we know that our debt ceiling is high and it should be rising as well. The only way to bring it down is to actually earn money efficiently. Therefore, I stand here and commend the Committee for the Report they have come up with and I support the Motion.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Very well. Let me have the Member who is not observing the regulations in the House. Hon. Maanzo, you are too close to the Member for Laikipia. Of course, I know it is after 7.00 p.m. and now that you spoke to the Motion, let me have the Member for Laikipia.

**Hon. (Ms.) Catherine Waruguru** (Laikipia CWR, JP): Thank you, Hon. Temporary Deputy Speaker for protecting me from Hon. Daniel Maanzo. I want to confirm that we were deliberating on this Report and he was congratulating the efforts of this Committee. This is because we are living true to the Kenyan dream that a time has come when we have to look for money. I want to thank my Committee for the good job they have done. They have extensively reached out

to stakeholders and particularly the Kenya Ports Authority. I want to confirm to the rest of our colleagues that we are the Committee that bakes the cake and we hand over to the committee on budget to go and share the cake. What we are doing this evening because majority of Kenyans have been complaining that this Government is broke... They have been saying there are not enough resources...

**Hon. (Dr.) Wilberforce Oundo** (Funyula, ODM): On a point of order, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): There is a point of order by the Hon. Member for Funyula.

**Hon. (Dr.) Wilberforce Oundo** (Funyula, ODM): Hon. Temporary Deputy Speaker, we are responsible leaders in this country...

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Order, Hon. Oundo. Order! The Member for Laikipia, when a Member is raising a point of order, you must resume your seat. Yes, Hon. Member for Funyula.

**Hon. (Dr.) Wilberforce Oundo** (Funyula, ODM): We are responsible members of this country and with the COVID-19 pandemic, I think my colleague is out of order to speak on national television without a mask.

Thank you.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Very well. Well guided. Hon. Member, the procedures have not changed. The rules have not changed. It has been observed by your colleague Member. Moreover, I know this came out of the Member for Makueni being...

**Hon. (Ms.) Catherine Waruguru** (Laikipia CWR, JP): I want to agree that you want to protect me and protect my little young ones. However, I do not want my minutes to be carried away by these interventions.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Just carry on Member for Laikipia.

**Hon. (Ms.) Catherine Waruguru** (Laikipia CWR, JP): Therefore, to the point. I was saying that the Committee on Finance and National Planning is like a mother. The Committee bakes the cake. A majority of Kenyans have been saying that this Government is broke. They have been saying there is not enough money. Moreover, we are looking and trying to see how best we can raise resources so that we try to improve and make our numbers look better. Let me break it down for ourselves. If today we would still be having monopoly in majority of our sectors, particularly let me talk about the Ministry of Energy where we have the Kenya Power and Lighting Company (KPLC) today as the only provider, the KPLC has made majority of our people to suffer because they cannot bargain for the best deal.

Therefore, in layman's language, this Report is seeking to liberalise the market and ensure that the Kenya Ports Authority extends an olive branch to Kenyans who are interested in trading or doing business in the grain bulk handling. Therefore, any Kenyan who would be interested to help and decongest the Port and has what it takes to do the job, he or she is free to go and do it. You know we lightly say that this country was once a one party state and this has been the story at the Kenya Ports Authority where, any matter to do with grain was being handled by one agency. This does not make sense because we need to make money and even make our country look a little bit attractive than it is. The Kenya Ports Authority is the reception of this country. The attractiveness, their ability to handle stuff, clear products and matters to do with demurrage is what will attract even neighbouring countries, particularly the East African countries, to use the Mombasa Port as opposed to using our neighbour's port in Dar-es-Salaam.

In the past, we have lost our businesses to Dar-es-Salaam. I can say this without shame. That Tanzania is our biggest competitor and somehow they do not like us. That is okay because we are competing and doing business. However, any person who means well for this country, who wants us to do business in an easy way and is a trader who wants to bring grains in this country whether from Mombasa, Kisumu or Busia border, should rise to the occasion to support this Report. This is so that, moving forward, we say a big “No” to monopolisation and open the liberalisation of the market. We will be extending this even to the Ministry of Energy. I look forward to a day when we will start seeing the KPLC compete with other agencies. That will enable us to enjoy facilities and services at a cheaper price.

Every year, this country has had a deficit of 2 million metric tonnes of wheat which has to be imported. Importation of maize has been scandalised a lot. We have had matters to do with aflatoxin in our grain products. This is particularly contributed by the congestion at the Port of Mombasa. Since we do not want to lose local and international clients but, instead, want to improve our attractiveness, there is need for us to allow more companies to compete and ask the KPA to expedite, upon passage of this Report. Within the shortest time possible we should allow people who are interested to compete and do business at the Kenya Ports of Mombasa as grain handlers.

I support.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Very well. In fact, Hon. Member for Laikipia, you look so beautiful in your mask. I am sure the Members were trying to protect the Majority Whip. Let us have the Majority Whip.

**Hon. Emmanuel Wangwe** (Navakholo, JP): Thank you, Hon. Temporary Deputy Speaker. I rise to support the Report by the Departmental Committee on Finance and National Planning and before I proceed, I appreciate the efforts that have been done by the Committee on its own volition to think outside the box and ensure that the Government of Kenya can work and realise some funds besides taxation.

Conventionally, most governments would like to rely on tax unlike what the Departmental Committee on Finance and National Planning has done. Looking at what is happening with regard to sources of revenue for a country, once you identify a unique source as it is today in this Report, it makes it better that the Government can benefit out of it. It is not only the Port of Mombasa. There are various peculiar sites and centers which we can use to harness revenue, but they have all been left out. Could it be intentional or an omission? Looking at what the Committee has recommended in this Report plus its observations and considering that I, through the Departmental Committee on Agriculture and Livestock, has visited the infrastructure, this is a good infrastructure. It is well set, strategic and supposed to serve this country, but it is doing the opposite.

Looking at the figures that are being quoted, the parity between USD10 and USD3 which they are paying raises questions. We are left wondering if it is going to somebody’s pocket. Why are we being paid very low? It is not just the issue of the service being received, but why is it that this organisation is paying very little amount in taxes? What is happening in the global market? How are other ports being run? It leaves us with unanswered questions.

Looking at the recommendations that the Committee has come up with, the biggest devil in a government or country is to encourage monopolisation. It is too late that we are coming up with such a wonderful Report. I would want the Committee on Implementation to quickly move in immediately we pass this Report such that it is implemented to the letter. We feel that the issue of monopoly must be done away with. This is one thing we must condemn. Now that the

Departmental Committee on Finance and National Planning has thought about it and brought this Report, we must live up to it and ensure that we support this course.

The issue that came up at the beginning of this Parliament was that of mercury. There was mercury in sugar. Whether it was true or false, we know that the Report came to this Floor. This is the organisation that is solely in charge of receiving grains. It is the one that received our sugar. So, it is important to know that it would have been hard to compare given that we just had such a single unit. However, if we open up the infrastructure such that we have competition, we could have used company A, B and C for easy comparison to know what exactly was happening even before going to the laboratory. Therefore, it is important that we adopt the Report which is before the House as it will help the future of this country.

In conclusion, I beg that all my colleagues support this noble Report so that we see a better Kenya after here. I thank you and support.

**Hon. George Gitonga** (Tharaka, DP): On a point of order, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Hon. Member for Tharaka. What is your point of order?

**Hon. George Gitonga** (Tharaka, DP): Hon. Temporary Deputy Speaker, we have listened to the debate and there is a general consensus that we adopt this Report and move to the next Motion. I, therefore, rise under Standing Order 95 to implore the House to agree that the Mover be called upon to reply, and then we proceed.

*(Applause)*

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Very well, Hon. Member for Tharaka but before I prosecute your point of order, let me have the Member for Gatanga.

**Hon. Joseph Nduati** (Gatanga, JP): Thank you, Hon. Temporary Deputy Speaker. If that is the mood of the House, then I do not need to contribute. However, Members, can you allow me to speak for a minute in summary?

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): You have the Floor.

**Hon. Joseph Nduati** (Gatanga, JP): I thank the Committee for the good Report which they have produced. Looking at the contract agreement between GBHL and KPA, in terms of fairness, I can say it is one-sided. In terms of time, the contract period which was given is very lengthy. The price which has been charged compared to what KPA is getting is nothing. The annual licence fees paid by GBHL is very little money amounting to Kshs500,000. This is very little money for that kind of income which they are earning. If you look at the cargo which they are ferrying, you can see we are making billionaires using our public facilities.

This idea of saying that there is only one person who can do a certain job is very unfair. This is a country that has very educated Kenyans who are very creative as we have seen in other sectors. Maybe, we would be having better technology than what is there.

Also, this idea of allowing one company to provide a service without competition is unfair. I have looked at the recommendations and they are very good. I have heard Members talk of PPPs. Members, unless we set a secretariat which is well staffed, even these PPPs are very expensive. Most of these projects are designed in Chinese and priced in Chinese and our people are unable to interpret them.

That is why we complained when the Standard Gauge Railway (SGR) was done. That is why even for the express highway, we do not know how much we will be charged. The price has

not been communicated to us. For PPP, we need to have very clear rules. This particular unit as set at the National Treasury cannot give us projects which are competitively designed and priced. As a country, we will continue implementing expensive projects, our people will continue suffering and we pay money for nothing.

Hon. Temporary Deputy Speaker, with those few remarks, I want to thank the Committee again for a good Report.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Very well. Members, before I make a decision on whether this is an abuse of the proceedings of the House or an infringement of the rights of the Members, let me give Hon. Makali and then I can come back to the list.

**Hon. Makali Mulu** (Kitui Central, WDM-K): Thank you, Hon. Temporary Deputy Speaker. I really appreciate your consideration to add my voice to this important Motion. Let me start by thanking the Committee for this initiative. When you look at our Standing Orders, all committees are required to inquire into matters of national interest.

When we see a committee taking such an initiative, we must commend it. Look at the Motion, the issue of optimisation of revenue cannot be discussed at any other better time than now, when this country is facing challenges raising national revenue. If you look at our current Budget now, the projected revenue this financial year is about 15 per cent of the GDP. It is obvious that we are punching through our weight.

If you do a trend analysis of the national revenue, you will realise that for many years, we have been hitting above 18 per cent of the GDP but now we are around 15 per cent. This means we have a challenge. That is why I am saying this Motion is in the right direction. When the Chairperson was moving, she mentioned this is part of the national investment. Anytime you talk about investment, it can be at personal, corporate or Government levels. An investment must give returns. If it does not, it is not worthy being called an investment.

I think that is the challenge we are facing in this country. The Government has a number of investments and when you look at them, they are not leaning towards the expectations. Instead of supplementing the revenue we are collecting through taxes and giving some money to the Exchequer, they are draining it. We are giving them a lot of money from the Exchequer for support.

This Committee should provide leadership. I think time has come when the so-called appraisal, feasibility and evaluation reports must become very important to all committees so that when these kinds of investments are being undertaken by the Government, proper feasibility and appraisal is done. When the work is ongoing, continuous or regular evaluation reports are brought to this House so that we can know if we are getting value for money.

The recommendation of the Report and more so on procurement brings out the issue of monopoly. Those who have done a basic course in economics, there are a number of different types of markets, monopoly being one of them. It is a fact that monopoly will not give you the best in terms of markets. It is associated with inefficiencies, ineffectiveness and as a result of that, you will never get value for money.

Time has come when this economy and market must be opened so that Kenyans can get value for money. As I conclude, I think the Government should also take the challenge. It is investing so much resource in those investments, but they have a hands-off management style. They put so much in terms of billions but do not care how those institutions are being managed. I think time has come when the Government must also be part of the management of those investments so that we get value for money as Kenyans.



With those remarks, Hon. Temporary Deputy Speaker, I thank you once more. I support this Report.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Very well. Hon. Members, the Member for Tharaka stood under Standing Order No.95 on closure of debate. I rule that this is not an abuse of proceedings of the House. However, I have Members who want to speak to this. I have six requests. So, as the Temporary Deputy Speaker, I will put the Question to the House.

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

The Mover to reply.

**Hon. (Ms.) Gladys Wanga** (Homa Bay CWR, ODM): Thank you, Hon. Temporary Deputy Speaker. I want to thank the Members for their very valued contributions to this Motion. They have pointed out many important matters like, there is appreciation of the investment made by the GBHL in grain handling services but it is time to open it up. In doing so, there must be fairness, transparency and competitiveness. I thank the Members of my Committee for the work they have done. Also, the Members of this House for their support of this Motion.

Hon. Temporary Deputy Speaker, with those few remarks, I beg to reply.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Very well. Hon. Members, I confirm we do not have requisite numbers for me to put the Question to Motion No.8. I have confirmed this from the Clerks. I order that the Question on Motion No.8 be deferred.

*(Putting of the Question deferred)*

Next Order!

## BILL

### *Second Reading*

#### THE COUNTY STATUTORY INSTRUMENTS BILL

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Let us have the Chairperson, Committee on Delegated Legislation to move Order No.9.

**Hon. Kassait Kamket** (Tiaty, KANU): Thank you, Hon. Temporary Deputy Speaker, Sir...

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): I think you should follow the House rules and procedure.

**Hon. Kassait Kamket** (Tiaty, KANU): My apologies. Hon. Temporary Deputy Speaker, I beg to move:

THAT, the County Statutory Instruments Bill...

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Order, Members! Order! We only have a few minutes. I wish we can give the Chairperson, Committee on Delegated Legislation a chance to move his Bill. Yes, carry on.

**Hon. Kassait Kamket** (Tiaty, KANU): Hon. Temporary Deputy Speaker, I beg to move that the County Statutory Instruments Bill (Senate Bill No.21 of 2018) be now read a Second Time.

This Bill was published on 10<sup>th</sup> August 2018, read the First Time on 13<sup>th</sup> September 2018 and passed by the Senate on 10<sup>th</sup> July 2019. The Bill was subsequently submitted to the National Assembly pursuant to Article 110(4) of the Constitution and the provisions of Standing Orders of the National Assembly, seeking concurrence of the National Assembly on the Bill. Pursuant to the provisions of Standing Order 41(4), the Speaker of the National Assembly communicated to the House the Message from the Senate regarding the Bill on 24<sup>th</sup> July 2020. The Bill was read the First Time in this House on 25<sup>th</sup> July 2019.

The object of the Bill is to make provision for the procedure of consideration of Statutory Instruments by county assemblies by providing a legal mechanism by which county assemblies will scrutinise statutory instruments. That is the major object of the Bill. The Bill will also provide a comprehensive framework for the making, scrutiny, publication and operation of statutory instruments by requiring regulation-making authorities in the counties to undertake appropriate consultations before making those instruments. The Bill seeks to promote high standards in the drafting of statutory instruments to ensure their legal effectiveness, clarity and intelligibility to anticipated users.

In terms of meeting the threshold for public participation, the Senate Committee on Justice, Legal Affairs and Human Rights, pursuant to Article 118 of the Constitution and their Standing Order 134 (1), invited submissions from members of the public via an advertisement in the dailies. The Committee also held fora at the Kenyatta International Convention Centre (KICC), Taifa Hall, to receive views from the public. The Committee also got written submissions from the Kenya National Commission on Human Rights (KNCHR) and the Council of Governors. Article 185 of the Constitution mandates county assemblies to carry out the functions of legislation among the other functions of representation and oversight. Therefore, county assemblies have the constitutional mandate of law-making and can enact legislation on devolved functions as set out under the Fourth Schedule of the Constitution. Statutory instruments, therefore, are necessary to operationalise legislation that is passed by county assemblies.

With the promulgation of the 2010 Constitution and the establishment of county governments and county assemblies, it was inevitable that the assemblies would also legislate for their respective counties as provided for in Article 185. Drawing from this mandate, the county assemblies have continued to legislate for their respective devolved governments including to oversee the executives by way of scrutinising subsidiary legislation emanating from the county executives. It is worth noting that the Standing Orders of the county assemblies provide for scrutiny of instruments, a procedure borrowed from both this House and the Senate. The county assemblies have been undertaking this exercise pursuant to the Statutory Instruments Act in the absence of a specific Act governing scrutiny of statutory instruments in the counties. It is for this reason that the Senate saw it fit to enact legislation specifically for this purpose, and that is the County Statutory Instruments Bill, 2018.

Hon. Temporary Deputy Speaker, pursuant to the provisions of Standing Order 41(4), the Speaker communicated to the House the Message from the Senate. As I said earlier, the Bill was read for the First Time. Having been cleared by the Budget and Appropriations Committee, the Bill was referred to the Committee on Delegated Legislation for consideration. The Committee observed that the County Statutory Instruments Bill, 2018 is essential in ensuring that statutory instruments at the county level are reasonable and people-oriented. This Bill will ensure that there is accountability and transparency in the formulation and enactment of statutory instruments by the county governments. The Committee, therefore, agreed with the Bill as passed by the Senate without any amendments and tabled its Report on 11<sup>th</sup> March 2020.

Hon. Temporary Deputy Speaker, with those few remarks, I beg to move and ask my colleague, Hon. Murugara, to second.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Let us have the Member for Tharaka to second.

**Hon. George Gitonga** (Tharaka, DP): Thank you, Hon. Temporary Deputy Speaker. Allow me to second the County Statutory Instruments Bill (Senate Bill No. 21 of 2018), which has been committed to the Committee on Delegated Legislation in which I sit and which we have given due consideration to see whether it meets the threshold of statutory instruments laws which the Committee on Delegated Legislation has been looking at ever since this Parliament came into being.

This is a very important law which comes in to the county assemblies to ensure that they are guided while they are dealing with statutory instruments. Statutory instruments are actually subsidiary legislation away from the main legislation; which instruments must be scrutinised to confirm that they are compliant. It is important to point out that the Committee on Delegated Legislation, which is a select committee of this House, is one of the most active committees and has been dealing with subsidiary legislation, statutory instruments and most of the county assemblies will actually be advised to be visiting the House of Parliament, the National Assembly, to benchmark as regards the implementation of this Bill. Most important, and this is provided for by this Bill, is the element of public participation that, as we continue to pass laws especially subsidiary legislation, it is important to consult the public so that there is input. This is because the public are the consumers of this law and as such, they must be consulted for their input.

Then there is the most important aspect which is also provided in this Bill, that the statutory instruments be examined by the county assemblies committees on delegated legislation. They must also be compliant with the Constitution, with the parent Act and other laws that are made pursuant to the necessary provisions.

It is important to note that those county assemblies will have powers as possessed by this House to approve where those statutory instruments are compliant. Where they do not comply, they will have powers to annul. Once annulled, the process begins afresh. This is a very important law. It is a law that we should support so that the county assemblies can now move away from the Parliamentary Statutory Instruments Act to their own Statutory Instruments Act. Then, they can move on to deal with delegated legislation.

With those remarks, I beg to second.

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

*(Question proposed)*

The first one is the Member for Kirinyaga Central.

**Hon. Munene Wambugu** (Kirinyaga Central, JP): Thank you, Hon. Temporary Deputy Speaker, for giving me this chance to put my voice on this important proposed County Statutory Instruments Bill (Senate Bill No. 21 of 2018). At the outset, this is a very important Bill. It should actually be supported. This Bill is actually a replica of the Statutory Instruments Act. In fact, it is almost word for word. The only issue is that it deals with devolved functions.

We all know how important county assemblies are. We also know that after the 2010 Constitution, quite a number of functions were devolved and the county assemblies have been operating using the Statutory Instruments Act, which the National Assembly uses. It is important

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because they deal with Acts or Bills concerning devolved functions. This proposed County Statutory Instruments Bill is timely because now they will have their own Act on which their committees on delegated legislation and in essence the whole of the county assembly can interrogate most of the legislations, rules or regulations emanating from county executive committees.

Hon. Temporary Deputy Speaker, I am a member of the Committee on Delegated Legislation. Quite a number of regulations which come to us go contrary to the parent Act or even the Constitution. We have been able to arrest them by annulling those regulations. This has been because, at least, there is this enabling Act which we normally use - the Statutory Instruments Act. I believe that since the functions of the county assemblies are similar to the functions of the National Assembly, at the national level, which is oversight, legislation and representation, it is important for them to be looking into what is being passed or proposed by the county executive committees.

The only big departure is an improvement to this proposed Bill, Section 10 (4) of the proposed Bill. Unlike the National Assembly where once a regulation has been published, it continues to have the force of law unless annulled, this Bill proposes that once the regulation is published, if within seven days it is not tabled in the county assembly, it will cease to have the force of law. This is something that we should borrow for the National Assembly going forward, because we have seen a lot of mischief where regulation-making bodies publish, engage in some monkey business and those issues are never tabled. Sometimes, they do not know what is being implemented and yet, it has not been tabled in the National Assembly. With the proposed County Statutory Instruments Bill, that mischief has been cured.

Without belabouring the point, I support and urge all Members to support this Bill. It is timely, especially now, when we are geared towards changing the Constitution and devolving resources further to a minimum of 35 per cent. Further devolution of resources means that there will be more legislation emanating from county assemblies, which will give more power to the counties. This means that the powers of the members of the county executive committees will need to be checked through the committees on delegated legislation of the county assemblies.

With those few remarks, I support the Bill.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Very well, Hon. Munene. Let us have the Member for Funyula, Hon. Oundo Ojiambo.

**Hon. (Dr.) Wilberforce Oundo** (Funyula, ODM): Thank you, Hon. Temporary Deputy Speaker. You are safe enough. I will not call you Madam Speaker Sir.

I stand to support the County Statutory Instruments Bill (Senate Bill No.21 of 2018). As a Member of the Committee that scrutinised the Bill, I fully concur with my Chair and colleagues who have spoken before me. Allow me to make two or three comments.

First, this Bill emanated from the Senate in pursuant to their mandate given under Article 96(2), where they are allowed to participate in law-making functions that affect the counties. This particular Statutory Instruments Bill specifically deals with county issues.

Secondly, allow me to also note that under Article 185(3), county assemblies are empowered to make laws that affect specific counties. Some of the arrays of law are primary laws as well as subsidiary legislation. Under the Statutory Instruments Act No.23 of 2013, a statutory instrument is any rule, order, regulation, direction, form, tariff or cost that has full force of law and places some kind of burden on the people to which it is supposed to be applied. Therefore, as we pass this Bill, I ask county assemblies to specifically ensure that before a statutory instrument is

approved, there has been adequate public participation and an explanatory memorandum to accompany it.

As I conclude, I would like to tell the Senate that the National Assembly expeditiously passes their Bills that come here. They should also reciprocate and pass the laws that we forward there so that we are able to serve Kenyans.

With those few remarks, I support the Bill and urge my colleagues to likewise do the same.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Very well. Let us have Hon. Maanzo.

**Hon. Daniel Maanzo** (Makueni, WDM-K): Thank you, Hon. Temporary Deputy Speaker for giving me an opportunity to contribute to this very important Bill.

I am one of the members of the Committee on Delegated Legislation. Even before we formed the counties, there were city councils. There were some regulations which would help the city councils run, through the Ministry, which used to manage them before. Now with the county governments and an assembly which is a replica of the National Assembly, regulations have previously been made without a law in place and are in operation. For example, there are laws dealing with markets, collection of fees and traffic regulations. If you go to Mombasa County, you will see that there are traffic officers who belong to the county and there are also officers from the National Traffic Police Department. All those emanate from regulations. There are many other regulations. The moment this law goes into force, all those regulations will have to be dealt with by the county assemblies. They will need to have a committee...

#### ADJOURNMENT

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Order, Hon. Maanzo. I wish to interrupt your contribution. Due to procedures of the House, you will have your eight minutes when debate on the Bill resumes.

Hon. Members, the time being 9.00 p.m., this House stands adjourned until Tuesday, 2<sup>nd</sup> March 2021 at 2.30 p.m.

I thank you.

The House rose at 9.00 p.m.