

**PARLIAMENT OF KENYA**  
**THE NATIONAL ASSEMBLY**

**THE HANSARD**

**Thursday, 6<sup>th</sup> July 2021**

The House met at 7.00 p.m.

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

**PRAYERS**

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Members, we have the requisite quorum. We shall transact business.

**BILL**

*Second Reading*

THE IMPEACHMENT PROCEDURE BILL

*(Hon. (Ms.) Jennifer Shamalla on 30.6.2021)*

*(Debate concluded on 30.6.2021 - Evening Sitting)*

**Hon. Peter Kaluma** (Homa Bay Town, ODM): On a point of order, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Kaluma, what is out of order?

**Hon. Peter Kaluma** (Homa Bay Town, ODM): I thank you, Hon. Temporary Deputy Speaker. I have a matter which I was craving your indulgence to raise regarding the Bill which has just been read, namely, the Impeachment Procedure Bill, coming from the Senate. It is a constitutional issue that I wanted to raise for your directions at the stage where we are, so that there can be a ruling before the Question is put on that particular Bill, with your indulgence, if you permit.

Hon. Temporary Deputy Speaker, I have looked at that Bill, which has come from our sister House, provision by provision, and punctuation by punctuation, including commas and full stops, and it ploughs from the Constitution addressing relevant provisions and nothing more. Where it is leaving the Constitution, it is ploughing from the County Governments Act, for members of the county executive committee. I am raising this because I have seen it in several other laws coming from the Senate. The question I am asking is whether, as a House, we can be

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siting to transact and even make decisions on purported Bills merely repeating constitutional provisions at all force. There is nothing other than the title which is not in the Constitution in terms of the mentioned provisions. I was asking the necessity of this Bill and my position is that in terms of our not acting in vain and in keeping with our proper time, a Bill such as this should be rejected by our Speaker before it costs us time here. There is nothing this Bill is bringing in. There is no gap in law. In fact, it is repeating those provisions of the Constitution word for word and punctuation by punctuation.

Hon. Temporary Deputy Speaker, I request you to rule. If you decide you are not ruling, I would request Members to reject this Bill, so that this House is meaningfully engaged in future.

I thank you, Hon. Temporary Deputy Speaker.

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

**Hon. Aden Duale** (Garissa Township, JP): Hon. Temporary Deputy Speaker, with a lot of respect to my very good friend, Hon. Kaluma, I think he is raising this matter too late. Basically, Hon. Kaluma is trying to just lobby Members for the rejection of this Bill. I agree with him. He can raise any constitutional matter at any time, but not when the Question is about to be put. He had the opportunity during the First Reading of this Bill. When we were doing the Second Reading, he had the opportunity to speak to it. Now you are about to put the Question. I am not questioning the constitutional issues that he is going to raise and I agree with him. However, how this House transacts Bills from either House, particularly from the Senate, is well documented in the Constitution from Articles 109 to 112 and even Article 114 on money Bills. I think the timing and the sentiments are very suspect. By allowing Hon. Kaluma, Member for Homa Bay Town... If this Bill is rejected this evening, then he had the opportunity to lobby. I think he is out of order.

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

**Hon. Amos Kimunya** (Kipipiri, JP): Hon. Temporary Deputy Speaker, first of all, I agree with my predecessor in terms of the process and procedure. Yes, any Member can raise a constitutional matter at any one point, but what Hon. Kaluma has raised is not a constitutional matter. It is a process matter in terms of the style and the wording of the Bill. A Bill can be in this House with two, three or four words written in whatever format. This House will make a decision. This is the Second Reading. I would like to encourage Hon. Kaluma and other people who feel that there are some provisions that are not in this Bill, that between now and when we come for Third Reading, to prefer those amendments. I am sure the Departmental Committee on Justice and Legal Affairs will be bringing some amendments to enrich the Bill. So, we are not at that point. We are not doing the Third Reading. We are doing completely what came from the Senate and the Members are at liberty to bring amendments to enrich the Bill, so that it becomes not just a replica of the provisions of the Constitution, but also includes provisions that Hon. Kaluma and others would like to see in the Bill.

However, at this point, there is really no matter for your determination in terms of a constitutional matter. I think we need to make progress and continue with the business of the House knowing that Members have that opportunity between now and the Third Reading to bring amendments.

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

**Hon. Emmanuel Wangwe** (Navakholo, JP): Thank you, Hon. Temporary Deputy Speaker. I just wanted to maybe find out from Hon. Kaluma how genuine he is placing his argument. He is a Member of the Committee that dealt with this Bill. For him to come at the tail

end of the whole process is not fair. Therefore, I would request that if Hon. Kaluma has reservations, instead of saying before it goes to the Speaker - he has moved the allegations to even your office - I feel he is not being honest in the whole argument as much as what he is saying is fundamental. So, my take is when we get to the Committee of the whole House, let him come back so that he can prosecute the matter to the level he feels it is supposed to be.

Thank you, Hon. Temporary Deputy Speaker.

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

**Hon. (Dr.) Chris Wamalwa** (Kimini, FORD-K): Thank you, Hon. Temporary Deputy Speaker. This is a House of records and procedure. From the sentiments of Hon. Duale and the rest, it shows clearly there is no value addition. We cannot debate for the sake of it. You cannot go to the Committee of the whole House to anticipate that somebody goes for a fishing expedition to come up with something which has not been outlined in the object of the Bill. Whatever Hon. Peter Kaluma has raised is a very fundamental matter. We cannot go on to waste Parliament's time with repetition of a matter that is provided for in the Constitution. We cannot legislate for the sake of it. So, I highly recommend that we reject this Bill if at all it cannot be withdrawn.

We have a provision in the Constitution on why you should come up with a static law for purposes of operationalisation and filling the gaps that are there. It is not about repeating clause by clause. About the referendum, why are we having issues in court? Of course, matters of referendum have been provided in the Constitution, but there were many issues which were not adding up like who should initiate the process. The referendum law, for that matter, should add value by defining. You cannot just pick up the provisions of the Constitution, a repetition of word after word to waste the time of this House. I urge Members to reject it.

I thank you.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. (Dr.) Chris Wamalwa and Hon. Peter Kaluma, I think what the Members are trying to do is to extend the debate which they missed. Hon. Kaluma has not cited any Article of the Constitution that has been obviated. I do not know of any precedent that requires that the format of a Bill before this House must not adhere to the Constitution this way or the other way. It is the business of the House.

Hon. Kaluma and Members of this House, this Bill was brought to this House, it was approved by our Speaker, our committees have spent time on it and seen fit to bring it for this plenary to deal with it. It is the business of this plenary, therefore, to deal with it one way or the other, which is provided for in that same Constitution that Hon. Kaluma now quotes.

Therefore, my business now, and the only business that I must now conduct, is to proceed to put the Question, which I will do in this manner right away.

*(Question put and agreed to)*

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

## MOTIONS

STATUS OF THE REPORT ON DEPLORABLE WORKING CONDITIONS  
AT THE KWALE INTERNATIONAL SUGAR COMPANY LIMITED

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THAT, this House adopts the Report of the Committee on Implementation on the Implementation Status of the Report of the Departmental Committee on Labour and Social Welfare on a Petition regarding deplorable working conditions of workers at the Kwale International Sugar Company Limited, laid on the Table of the House on Thursday, 26<sup>th</sup> November 2020.

*(Hon. Godfrey Osotsi on 30.6.2021)*

*(Debate concluded on 30.6.2021)*

*(Question put and agreed to)*

APPROVAL OF PUBLIC FINANCE MANAGEMENT (EQUALISATION FUND  
ADMINISTRATION) REGULATIONS

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Chairman, Committee on Delegated Legislation.

**Hon. Kassait Kamket** (Tiaty, KANU): Hon. Temporary Deputy Speaker, I beg to move the following Motion:

THAT, this House adopts the Report of the Committee on Delegated Legislation on its consideration of the Public Finance Management (Equalisation Fund Administration) Regulations, 2021, laid on the Table of the House on Thursday, 1<sup>st</sup> July 2021, and pursuant to the provisions of Section 205(1) of the Public Finance Management (PFM) Act, 2012, approves that Public Finance Management (Equalisation Fund Administration) Regulations, 2021, published as Legal Notice No. 54 of 2021.

The Equalisation Fund was established under Article 204(1) of the Constitution which requires that 0.5 per cent of all revenue collected by the national Government each year, calculated based on the most recent audited revenues as approved by the National Assembly, is paid to the Fund. As a pre-condition on the utilisation of the Equalisation Fund, Article 216(4) of the Constitution requires the Commission on Revenue Allocation to determine, publish and regularly review a policy in which it sets out the criteria by which to identify the marginalised areas to benefit from this Fund.

Hon. Temporary Deputy Speaker, this Fund has had so many issues from the beginning. There was no allocation to the Equalisation Fund at the outset in the 2011/2012, 2012/2013 and 2013/2014 financial years because the Commission on Revenue Allocation had not yet released the first policy. However, when the Commission on Revenue Allocation released its first policy, Kshs12.4 billion was appropriated in accordance with the first policy to finance projects in 14 counties that were identified as marginalised for administrative expenses. However, this Fund has faced a lot of legal challenges. As soon as the first disbursements were made, there were legal petitions in court and the first Regulations were declared null and void. The National Treasury was directed by the court to go and make new Regulations. This is where we are now.

If you look at the second policy for the Equalisation Fund - remember the first policy came and the people who went to court made it difficult for the utilisation of the funds - the counties that are supposed to benefit from the recommendation of the Commission on Revenue Allocation have increased from 14 originally to 34 counties. That makes it, if you look at Page 9

of the Report, 134 constituencies that shall benefit from this Fund. The improvement that has come from the new Regulations is something that Members will want to take note of.

As a way of addressing the issues that were raised in court, the new Regulations, apart from meeting all the legal statutory requirements including the timelines and other provisions of the Statutory Instruments Act, the Ministry has tried to create a hybrid to take care of all the interests, namely, interests of the county governments, the national Government through what was formerly called the Provincial Administration and interests of the representatives of the people through the National Assembly as well as the county assemblies. For instance, in establishing an advisory board for the Equalisation Fund Regulations, it says that there is established an advisory board to be known as the Equalisation Fund Advisory Board under Regulation No.4(1). Regulation 4(1)(b) provides for a chairperson who shall be appointed by the Cabinet Secretary, Principal Secretary for the National Treasury, Principal Secretary for Devolution, one person from pastoralist communities nominated by the National Assembly, one person from the Senate and one person from the Council of Governors. This is an attempt to create a hybrid, so that all interests are taken care of in terms of implementation of this Fund.

The establishment of the County Technical Committee takes care of the interests of Members of Parliament. For instance, the Regulations propose that each County Commissioner of an eligible county shall establish and convene an all-inclusive committee to be known as County Technical Committee comprising of a chairperson who shall be the County Commissioner, a county executive committee (CEC) member for finance, constituency development fund managers – this is where Members of Parliament come in - a representative of a county assembly and the chairperson of the National Government Constituencies Development Fund (NG-CDF). In essence, the interests of Hon. Members as representatives of the people at the national level and at the county level is taken care of and a neutral person is put in to chair instead of having it chaired by the governor.

In these Regulations, there is the establishment of the sub-county technical committee, under Regulation No.16. The interest of Members is taken care of. There is also the establishment of the Project Identification Committee under Regulation No.18. This committee that identifies projects has a representative of women, a representative of the NG-CDF Committee and a representative of religious groups. Everybody is taken care of in representation.

At the beginning, if Members remember, this House approved a Bill that I brought on the Equalisation Fund. We approved it and it is at the Senate. We are saying that matters provided for in the Equalisation Fund are better addressed in a comprehensive way. But as it is, and given that the Equalisation Fund has timelines, it behoves us the Members to work with what we have because time is not on our side. As representatives of the people, we must ensure that we use this opportunity that we have with the hybrid Regulations to ensure that our people get the funds before time elapses. We are not very sure, Hon. Members, about this. The Constitution has provided for extension of time, but how sure are we the House will grant that?

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Kamket, I do not want to disrupt your flow, but you can see the Member seated directly in front of you seems to be uncomfortable. Could you wear your mask?

*(Hon. Kassait Kamket spoke off-record)*

*(Laughter)*

**Hon. Kassait Kamket** (Tiaty, KANU): Hon. Temporary Deputy Speaker, I was speaking to her heart. She was admiring what I was saying because I was speaking to her heart and was speaking directly to her constituents. What I was saying is music to her ears.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Kamket, everything that is spoken in this House speaks to the hearts of Kenyans. Proceed.

**Hon. Kassait Kamket** (Tiaty, KANU): Hon. Temporary Deputy Speaker, I was to conclude that there are those of the misguided view that marginalisation is a birth right. I beg to differ. We cannot say that the marginalised are only the pastoralists. That is not true. I want to convince or persuade Members to agree with what the Commission on Revenue Allocation has done in coming up with the second policy. The Commission on Revenue Allocation went up to my constituency. The first Commission never visited Tiaty. They went to Kabarnet and said that Baringo is not marginalised and we were excluded in the first policy. But the second Commission went into deep parts of Tiaty Constituency, to places I cannot even access and came up with genuine reports, honest and serious from the ground. Therefore, we cannot demean what we do not have. I urge Hon. Members that first of all, let us implement these Regulations and have the funds paid. Let us expend what is there even as we try to come up with a comprehensive legislation or any other proposal to ensure that our people come up to speed with the rest of the Republic of Kenya in terms of development.

With those many remarks, I beg to move. I ask the Vice-Chair, Hon. Muriuki Njagagua, to second. Thank you.

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

**Hon. Charles Njagagua** (Mbeere North, JP) Thank you very much, Hon. Temporary Deputy Speaker.

The legislative framework for the Equalisation Fund is established under Article 204 of the Constitution which requires that 0.5 per cent of all revenue collected by the national Government each year, calculated on the most recent audited revenues as approved by the National Assembly, be paid into the Fund. Unfortunately, the Fund has not been operationalised. Money has been expended by the National Treasury, but it has not gone strictly to the marginalised areas for purposes of utilisation. The purpose of the Regulations is to establish a legal framework for implementation of Article 204 of the Constitution. This entails establishment of an advisory board. The funds for marginalised areas should be used for purposes of providing water, roads, health and electricity to the marginalised areas. By virtue of that explanation, it means that the Equalisation Fund will be used to assist constituents and Kenyans to attain the very basic good living standards, provision of water and health facilities.

I urge the Members of this House to appreciate the fact that the Equalisation Fund having been established, has a time frame of 20 years. What remains since the Fund was established is a paltry nine years. About half of the period is spent, but money has not been used by constituencies. As my Chairman stated, this Parliament has power to seek for extension of time by a further six years. However, that is a matter that will be dealt with by the Members when we get to the finalisation of the 20 years.

There is a small bit that I wish to comment on this Equalisation Fund in as much as I am seconding it and seeking Members to support this Report. When the first Chairman of the Commission on Revenue Allocation, namely, Mr. Cheserem, visited some area in Kitui, he shed tears because that particular area was lagging behind. It was a marginalised area in Kenya where students and pupils were sitting on stones and they had mud classes. He shed tears because that was part of Kenya. Unfortunately, when the team of CRA went round again, they never even

considered that part of Kitui worthy to get the Equalisation Fund. My own area in Mbeere, which is a marginalised area has not been considered to receive the Equalisation Fund. So, I would seek that this Commission, as they go round again when they come for review, to get to the bottom of the marginalised areas, so that each part of Kenya gets the fund.

Regulation No.10 states the expenses of the board and says that three per cent of the funds shall go to meeting the expenses of running the board. There is a saving grace clause which states that all funds which are not utilised by the end of each financial year will not be remitted back to the Treasury. This money will still be retained in the Fund and will be used for the purposes they were intended for. What it means is that there will not be a mad rush at the end of each financial year to have money expended so that we are not caught up by lapse of time. What happens in the ministries is that at the end of each financial year, they are on a spending spree to make sure they have spent the money.

Fourteen counties are going to benefit from the Equalisation Fund, but like I said earlier, we need the Commission to go down to real areas that have not benefited. When the regulation-making authority appeared before us, they explained the issues to us and we questioned them on what they have done. We established that there was, indeed, public participation. We were convinced that they talked to the new stakeholders. Explanatory memorandum was attached to their Regulations and we were also convinced that it touched on the issues that were before us.

With those few remarks, I beg to second the Report.

*(Hon. (Dr.) Christine Ombaka walked along the aisle)*

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Order, Hon. Member for Siaya. Even as you walk, you must keep your senses about you, especially the hearing.

*(Question proposed)*

The first opportunity will go to Hon. Duale, Member for Garissa Township.

**Hon. Aden Duale** (Garissa Township, JP): Thank you, Hon. Temporary Deputy Speaker. We are on the 11<sup>th</sup> year of the implementation of the Equalisation Fund. This Fund has a lifeline of 20 years as provided in Article 204 of the Constitution. I want the Chairperson of the Committee on Delegated Legislation to listen to me. The framers of the Constitution of Kenya, 2010, said it in subsection (2) that the national Government shall use the Equalisation Fund to provide basic services like water. However, the most important words that the framers of the Constitution used were “to provide basic services, including water, roads, health facilities and electricity to marginalised areas to the extent necessary to bring quality of those services in those areas to the level generally enjoyed by the rest of the nation, so far as possible”.

So, the framers of the Constitution were deliberate in putting Article 204 and providing the Equalisation Fund to 14 counties. By changing it to 34 counties, it is contrary to the Constitution. As the CRA is going round, we agree that there are certain pockets even within Nairobi that are marginalised. However, you cannot compare a person living in Nairobi to a person living in Kitui when it comes to water.

*(An Hon. Member spoke off-record)*

Garissa is different.

Anyway, this is a system that has been designed since Independence to marginalise the marginalised 14 counties, which are mainly pastoralists. Our day will come when we shall put in place a Government that will be concerned with pastoralists.

*(Applause)*

A Government that understands that every region of this country must develop at the same pace as the region where the leader of that Government comes from. This Fund is very critical for the provision of basic services in marginalised areas. Utilisation has not been very effective because, one, the National Treasury dragged their feet. Two, there was a court case in 2019 that delayed the implementation of this Fund. We are only remaining with nine years. Forget about the shenanigans and the story that was put in the Building Bridges Initiative (BBI) which by the grace of the Almighty Allah, its fate is somewhere.

We were denied constituencies and everything else in that animal called BBI, then we were told: “We will extend for you the Equalisation Fund.” You cannot extend our lifeline in the Intensive Care Unit (ICU) so that we live longer. However, now that the BBI is nowhere to be seen, we only have nine years before the Equalisation Fund sees its sunset days.

The approval of these Regulations is very critical. It will set the ball rolling in terms of the administration of the Fund. We hope that with the approval of these Regulations, the Cabinet Secretary for the National Treasury, and I want to look at him, who is a pastoralist physically and also in terms of his origin, will behave like a pastoralist. He must be a pastoralist both at heart and soul. It is the first time a pastoralist has occupied that office, and he must implement these Regulations.

This Report is important because there is Kshs1.2 billion pending bills. There are about 352 projects that are laying idle in counties. The approval of these Regulations is good news that we shall use even the Kshs6.8 billion that has been allocated in this financial year. I assure the House, as the representative of the people of Garissa Township and even my sisters and brothers from Mandera, Fafi, Dadaab, Ijara and Balambala, that we will use that money in accordance with the wishes of our people. However, we will have our day with our Government.

*(Applause)*

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Very well. Hon. Members, note that contributions on Committee Reports is five minutes.

Hon. Waruguru, what is out of order?

*(Hon. T.J. Kajwang' spoke off-record)*

Just hold on, Hon. T.J. Hon. Waruguru, proceed with your point of order.

**Hon. (Ms.) Catherine Waruguru** (Laikipia CWR, JP): Hon. Temporary Deputy Speaker, Hon. Aden Duale is a senior Member whom I respect a lot. I am just concerned because he made an allegation on the Floor of the House that the BBI is no longer there. He seems to know its fate and he is saying that it is dead. I want him, probably, to furnish this House with further information because this is a House of rules and order. We cannot operate with hearsays. We want him to tell us where he met with the Court of Appeal judges and he has, with no



uncertain terms, condemned or declared the BBI dead. With all love and honesty, I know he is a gentleman and a true one for this matter, a very religious and strict one.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. T.J. Kajwang', what is out of order?

**Hon. T.J. Kajwang'** (Ruaraka, ODM): Hon. Temporary Deputy Speaker, today it looks like the Member for Garissa Township is in problems because mine also relates to him. I am not worried about the BBI. The BBI is in safe hands. I am worried about the last sentence that the Member for Garissa Township made, that they will have their Government. If it is not explained properly, is it in order that the Member for Garissa Township can imply what sounds seditious or, in fact, treasonable, that he intends to have his Government in a Republic of Kenya which is united under one President or under one presidency and united under one Legislature, which is the National Assembly and the Senate? Is it not seditious or treasonous for the Member for Garissa Township to have spoken those words?

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Members, there is nothing out of order. Hon. Duale expressed his opinion, probably his wishes about the BBI. But everybody in this House knows that the BBI is under consideration by the Court of Appeal and there will be a decision made on the BBI. Hon. T.J., Hon. Duale is in order to desire to have a Government. He is part of this Government. I am sure all these Members have some leanings and they are in their hearts praying that they make the next Government. That is the business of politicians. I am sure all the politicians here are aspiring to be in some form of Government or the other. So, he cannot be out of order.

**Hon. Aden Duale** (Garissa Township, JP): *(Off-record)*.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Duale, you are done. I will move on. You are not out of order. I have not ruled that you are out of order.

*(Loud consultations)*

Hon. Members, we will have Hon. Arbelles Marselino, Member for Laisamis, to contribute. Hon. Members, this is a very serious matter. I think we should give as many Members as possible an opportunity to speak. Proceed, Member for Laisamis.

**Hon. Marselino Arbelles** (Laisamis, JP): Thank you, Hon. Temporary Deputy Speaker, for giving me this opportunity. Indeed, I stand here to support the passage of the Equalisation Fund.

Unfortunately, from the time the Constitution of Kenya, 2010, was enacted, the Equalisation Fund has never been operationalised. Now that the National Treasury has come up with a framework, a statutory requirement to have the Fund operational, I support the idea that the Equalisation Fund should be under the supervision of the Members of Parliament just like the NG-CDF is doing today.

As much as devolution is being appreciated by Kenyans, there are a lot of complaints at the county and constituency levels. The only Fund which is being appreciated today, that is actually doing a lot of construction of schools, including security buildings for our officers and taking care of sports, is the NG-CDF.

*(Applause)*

The Equalisation Fund is putting many people on board. We are going to have a board at the county, and another board at the national level. So, you are trying to make this process cumbersome. It would have been better if we just came up with one committee at the national level that will deal with all this. The fact that we have Members of Parliament from the affected regions, which are the pastoral dominated areas which have been lagging behind in terms of development, it will be prudent if this Fund is managed at the national level and to involve Members of Parliament, for the areas to come up to speed to the level where other Kenyans are.

With those few remarks, I support.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Oduol Adhiambo, Nominated Member.

**Hon. (Prof.) Jacqueline Oduol** (Nominated, ODM): Thank you, Hon. Temporary Deputy Speaker.

At the outset, I support the Report. As I do so as it, indeed, seems to be reflected as you read through the Report and even from what the Vice-Chairperson indicated as he was seconding, I believe we need to look into how we can implement Article 204 that was specifically ensuring that we could bring to the same level those areas that were identified as the 14 counties. It is important that we recognise that to come to the level where in terms of concern, I see in this Report as well as the observations that the Committee has raised, we are facing an issue that we might need to take a little more time to internalise and reflect on. In particular, I am thinking of the word “marginalisation” because at the heart of the Equalisation Fund, there is recognition or manner in which as we came up with the Constitution, we knew there might be some areas that would not be treated equally or some factions or some groups of people that would not be treated equally. Therefore, when we think of marginalisation, we are seeing that there is treatment of a group of people as insignificant.

As I read through the Report, which presents not just the context but helps us to see that it is important to get this framework, we need to undertake the completion of 352 projects that were spread across the four counties. My concern, and what I would like us as a House of representatives to take note of is that when we are looking at equalisation, it is different from equity. I am saying this by looking at what we can see as different factors that could define people, persons or groups to be marginalised. When we want to address the issue, we can either do it by equalisation where, in a way, we will be looking for equal involvement, equal participation and equal decision-making. Therefore, we could look, as seems to be the case, at basic services.

But we also need to take note that when we consider that marginalisation is really seeking to see that we do not treat any group as insignificant, it is also useful to look at the issue of equity. Equity deals with fairness. Equity will not necessarily begin from the point of view of equalisation by saying that you must treat what you had determined in equal measure, but you would want to look at the context and, perhaps, the changes that might have taken place. As I read through this report, it seems to me that the reflection and growth that we see from the first policy to the second policy, which gives us 34 counties, is something that we should not ignore.

As I conclude, I want to speak as a member of the Committee on National Cohesion and Equal Opportunity. It is my experience as we go around the country that it is necessary to acknowledge that there might be areas where certain groups of people could be seen to be marginalised, but there might be other similar areas that would not be placed in such a category. So, I do support this report. I believe we need to keep rethinking issues of marginalisation. We

should particularly recognise the difference between equalisation and equity in addressing the issues.

Thank you, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Thank you, Professor. We shall have Hon. Muturi King'ang'i, the Member for Mbeere South. He is not in the House. The next person on my list is Hon. ole Kenta Moitalel, the Member for Narok North.

**Hon. Richard ole Kenta** (Narok North, ODM): Thank you, Hon. Temporary Deputy Speaker. I also support the report except that I think the committees are too many. I would suggest that we have a national committee and constituency committees. This will make it easier, as far as implementation of these projects are concerned, a case study that should be used is the NG-CDF format.

This Fund was set to ensure that at least there is some development in areas that had been left out since Independence. The irony is, as we speak now, there is still inequality in the distribution of resources in this country. In fact, the most developed areas still get more resources as far as budgetary allocations are concerned. It is even more disheartening to note that even the little that was allocated through the Equalisation Fund has not been disbursed to the benefit of the 14 counties that were supposed to benefit. Indeed, when another 20 counties were added to the lists, I do not think somebody really thought seriously about it, because you are spreading the resources thinly that they will have no development impact as was envisaged. That was the first mistake. And it was still an element of trying to undermine development in marginalised communities. Some of our districts were called closed districts.

**Hon. Charles Kilonzo** (Yatta, Independent): On a point of order.

**Hon. Richard ole Kenta** (Narok North, ODM): I hope my colleagues would just listen. They will get a chance to contribute. Maybe they do not realise how much we are left behind.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Kenta, there seems to be a point of order from Hon. Kilonzo, Member for Yatta.

**Hon. Charles Kilonzo** (Yatta, Independent): Hon. Temporary Deputy Speaker, is the Member in order to misinform the House that 20 counties were added to the list? Yet it is very clear that in Machakos it is not the county that was added; it was only one constituency, which neighbours the marginalised areas. In Nakuru, it is only Rongai Constituency which was added to the list. When you assume all these counties were added to the list, that is misinformation. Is he in order?

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Kilonzo, you are a seasoned Member. That is argumentative. Proceed Hon. Kenta to make your contribution.

**Hon. Richard ole Kenta** (Narok North, ODM): I would like to advise my colleague. I believe the Constitution set out 14 counties. The additional counties, I would say, are unconstitutional. They are not provided in the Constitution. The addition was actually meant to frustrate the benefits that the 14 counties were supposed to get.

There is also the issue of stalled projects. Some of the reasons for stalling of projects are intentional. For example, in my constituency there were projects which were to be carried out, including construction of bridges, but they stalled. Contractors are not doing their work. There is something that is happening that is not satisfactory. Treasury has been unfair to these marginalised counties. If Treasury itself is the one that is supposed to identify projects and allocate money and there is no will to do so, then the regulations that seek to form committees at the constituency level are of great use. But with less than nine years to go and considering the worrying status of this country's economy, even if you say you are going to carry out some of

these projects and you do not have the necessary financial might to do, you will just be playing academic games which will never materialise to anything. So, I support the Committee.

The most important thing is enforcement. In fact, we have called some of these Cabinet Secretaries to our Committee to ask them the level of implementation. The argument is 'money has not been allocated.' But I know this is money that has been set aside by the Constitution. Where has it gone? That is the question. Why are there big projects in developed areas as far as water, electricity, infrastructure and health are concerned? Why are they getting this money and we do not get the little money that is supposed to benefit pastoralist communities? There is a very unsatisfactory way of distributing resources in this country. I would like to request the Chairman of the Committee to ensure that the Cabinet Secretary for Treasury accounts for what is happening to us. The Cabinet Secretary is one of us but we are suffering more than anybody else. As Hon. Duale has said, the Cabinet Secretary must come out and tell the people what he has been doing for them, because they are really suffering, including his own county.

Thank you, Hon. Temporary Deputy Speaker.

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

**Hon. George Gitonga** (Tharaka, DP): Thank you, Hon. Temporary Deputy Speaker. I rise to support the recommendation that we adopt this report. From the outset, let me thank my Chairman, Hon. Kamket. He has eloquently moved the Motion. When I look at the beneficiaries, I notice that his county is the first one, and his constituency Tiaty is actually expressly named. So, I see the person.

When I came to Parliament in 2017, my first task was to ask why Tharaka was not benefitting from the Equalisation Fund. The authority informed me that only one sub-location in Tharaka North Sub-County did benefit while it is on record and it is known in the entire country that one of the most marginalised areas is Tharaka Constituency. This aggrieved me. I was advised by the board that since the regulations were likely to be thrown out by the courts, it would endeavour to ensure that my constituency is included. I am proud to note that Tharaka Nithi County is now number 30 and my constituency of Tharaka is named. I am able to proudly inform the people of Tharaka that through the effort of their Member of Parliament, they are now included in the Equalisation Fund. I say this without batting an eyelid or winking because I started this in 2017.

The importance of Equalisation Fund cannot be overemphasised, especially now that we are running out of time. This Fund was to last for 20 years to try and bring up areas of the country that had been left behind, so that they can equalise with the areas that were developed intentionally, accidentally or circumstantially. It is important that we continue to support areas that were left behind. This is why you find regions such as north-eastern Kenya and northern Kenya passionate about this matter. It also goes to the Eastern Region formerly known as the Eastern Province. Embu is the only region which does not appear here. The rest of the districts, as they were called, which are now counties, are included here.

It is also important to point out that as a Committee we were able to ensure that constituencies are recognised while implementing this Fund. This is why your chairpersons of NG-CDF will be sitting with county governments, other stakeholders and the county commissioners to ensure that these funds are properly disbursed and are of benefit to the people we represent.

It is well known that when counties are left on their own, they can turn out to be rogue. They can misuse money through dubious contracts, conflict of interest and anything that they

think will benefit their own pockets. We must sit in there and bring the exemplification of NG-CDF into this Fund. Any Government will say that we have offered development to all constituencies through NG-CDF. If you go to every constituency, you will see what this money has done. There may be a few with audit queries. We want this Equalisation Fund replicated in the format of NG-CDF so that people at the grassroots, especially those marginalised in terms of electricity supply, roads, water and school infrastructure, can benefit to the maximum. These regulations are timely and welcome.

I urge the House to adopt the Report so that we can move with speed to implement it within the remaining 12 months or so before we go to meet the electorate. It is so that we also add another feather to our campaigns.

I support.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Senior is campaigning. I wish you the best. You have done extremely well. We shall have contributions from Hon. Mulyungi Mutemi, the Member for Mwingi Central. Kindly, have the Floor.

**Hon. (Dr.) Chris Wamalwa** (Kimini, FORD-K): (*Off-record*) Are you also in the list?

**Hon. Gideon Mulyungi** (Mwingi Central, WDM-K): Which list?

**Hon. (Dr.) Chris Wamalwa** (Kimini, FORD-K): (*Off-record*) Of the marginalised?

**Hon. Gideon Mulyungi** (Mwingi Central, WDM-K): Sorry, Hon. Temporary Deputy Speaker, you may need to protect me from my colleague, Hon. Wamalwa, because he is interrupting me.

I rise to support this Motion. Where I come from, this Equalisation Fund is not equal as per the term "Equalisation." The selection of the marginalised areas is not fair at all. The way it was done before was not fair at all. There are areas which have become more marginalised than they were before.

The criteria used in identifying areas to benefit from the Equalisation Fund is biased. The decision makers are also biased. Who said marginalised areas are where pastoralists come from? There are people in Kenya who are not pastoralists but are marginalised and do not feel like they are part of Kenya. They do not herd animals but live in poverty.

There are dry areas in Kenya which have no water and food. Sometimes, they rely on relief food which never comes because it is not reliable. It is called relief food but it is not reliable and people continue to suffer.

There are also areas with no basic infrastructure. They have no water, electricity and they are not pastoralists. I agree with the Motion on the following basic grounds: It is considering the areas that were left out before; it is also changing the mode of operation by creating committees which in my view create more transparency and equality in the division of revenue of Equalisation Fund and it is also including constituencies. Chairman of (*inaudible*) and these are representatives of the people. They listen and hear what the people say.

I, therefore, support the Motion on those basic grounds.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Jaldesa, kindly, have the Floor.

**Hon. (Ms.) Rehema Jaldesa** (CWR, Isiolo, JP): Thank you, Hon. Temporary Deputy Speaker for giving me an opportunity to also contribute. As I do that, I would like to take this opportunity to thank the Committee for doing a very good report.

The report seeks to establish the Equalisation Board that will help the CS in managing the Fund. I listened to Members talk about other areas being left out or marginalised. The fact that this Fund has taken over 13 years to be implemented, in itself, is marginalisation. I do not want

to complain. The fact that the initial marginalisation pocket was increased from 14 to 34, I just want to take whatever small that we are given and make a difference in the lives of our people. We need this Fund to build more roads, hospitals and to make sure that our people access water.

I specifically, want to agree with the Committee where they said there is need for the Commission on Revenue Allocation to further review the policy and criteria for sharing revenue among marginalised areas. They need to allow for marginalised areas which were left out of the first and second policies to benefit from this Fund.

The Senate took very many months to agree on the revenue sharing formula. To this day, we have a lot of problems to accept those formulas as they are. I do not know whether this House had an opportunity to critically, look at it.

It is a policy which gives a flat rate to the parameters across the counties without giving consideration that the counties are at different levels in terms of development. They propose to give 18 per cent to health. They also give the same percentage to Kiambu and Isiolo counties whereas, in Isiolo, dispensaries are 200 kilometers apart on a rough road. It also gives equal percentage of water for example in Nairobi and Isiolo County where 80 per cent of the population of people from Isiolo County do not have access to water. As I am speaking here, I know water is a devolved function. I have two children who are admitted in a hospital because of lack of drinking water in a location called Sericho Modogashe.

Therefore, Hon. Temporary Deputy Speaker, it is my hope and prayer that this regulation is passed so that those young people's lives are saved.

Thank you and I support.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Let us have Hon. Abdullahi Sheikh from Mandera North.

**Hon. Major (Rtd.) Bashir Sheikh** (Mandera North, JP): Hon. Temporary Deputy Speaker, I stand under Standing Order 95. Looking at the mood of the House and the contributions made, everybody is in support of the regulations. Since we only have regulations that were passed here, I request that the Mover be called upon to reply.

I thank you.

*(Loud consultations)*

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Members, you know the rules of the House. The Hon. Member has stood in his place and he is perfectly within the rules of the House. If he does what he has done, the Hon. Speakers' rule is merely to put the Question as to whether the House agrees with him. If you do not agree with him, you will continue. However, if you agree with him then the Mover will be called to reply.

Therefore, I will put the Question.

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

The Noes have it, and so we shall continue.

The next Member here is Hon. Lochakapong Peter, the Member for Sigor.

**Hon. Peter Lochakapong** (Sigor, JP): Thank you, Hon. Temporary Deputy Speaker for this opportunity. I support this Report on the Consideration of the Public Finance Management (Equalisation Fund Administration) Regulations 2021.

These regulations ought to have been passed like yesterday. This is because, the rationale for the Equalisation Fund was to provide basic services in marginalised areas so that those areas come as close as possible to the rest of this country. So, since this Fund has a sunset clause of 20 years and we are left with about nine, it would be very good if we passed these regulations so that we get projects that are funded through this Fund completed. Already from this Report, we have 352 projects out of which about 112 have been completed and 240 have stalled simply because we do not have regulations to ensure that funds are released for their completion. So, these regulations will go a long way to ensure that those projects get completed.

Secondly, these regulations will ensure the creation of an advisory board. However, on the composition of this advisory board and especially the aspect of one person being nominated by the Senate, I suggest that should be a person from the marginalised areas just like in (b) where it says: “one person from pastoralist community nominated by the National Assembly, and in (f) one person nominated by the Council of Governors (COG) from areas defined as marginalised. So, in the same way, even the person nominated by the Senate should also be from a marginalised region.

I propose that the Chief Executive Officer should be identified from those areas. I also suggest that the approval like I said before, should ensure... For example, in Sigor Constituency we have a stalled project called Kopro Water Project. The community is always asking what is happening. They think that money has been lost which is not the case.

The committees suggested in this report are too many. This will add to bureaucracy and delay of project identification and implementation. This is because, it will take time for all these committees to agree; we have a national board, a county, a sub county and an identification and implementation committee. All this amounts to bureaucracy and will cause delays. So, I suggest that probably as we move on we could adopt the NG-CDF model, where you have a national board followed directly by the constituencies. That would be good.

I support this report so that we can have the Equalisation Fund, so that stalled projects can be completed.

I thank you.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Let us have the Hon. Hulufu Oda, the Member for Isiolo North.

**Hon. Hassan Hulufu** (Isiolo North, KPP): Thank you, Hon. Temporary Deputy Speaker for the opportunity to speak to this report and the regulations.

I support it on the basis that it is one of the reasons why operationalisation of this Fund has not taken place. Unfortunately, there are things we are not comfortable with. Listening to some of our colleagues, there is need for us to travel widely in the country to appreciate the difficulties some Kenyans living in the Arid and Semi-Arid Lands (ASAL) have. This Fund is a constitutional Fund, and it is unfortunate that nothing much has been done nine years after the promulgation of the Constitution 2010.

There is the court action and that ruling has kind of shaped what has been included in these regulations, and we need to appreciate that. The Cabinet Secretary has tried within the constraints of the ruling of that case to ensure that there is broad participation of stakeholders particularly in terms of project identification.

This Fund was meant to help the marginalised areas enjoy quality of service which is as close as those enjoyed in other parts of the country. Specifically, it was meant to look at service provision in terms of water, electricity and health among others. To help my colleagues appreciate the difficulties some of the people we are representing in this House are going

through... In my constituency, I have seven wards and out of that four of the wards 80 per cent of the residents have no access to any form of water.

Women take the whole day to access water that is not fit for human consumption. At Cherab, the entire division has no single borehole providing clean water. We only have pans which are impounded when it rains. The kind of water, we consume I think none of us in this House will dare drink it, however thirsty one may be. If you look at electricity, we only hear about it. My constituents only get to enjoy electricity when they visit either county or sub-county headquarters, and yet we are part of this Republic.

I am surprised that instead of looking at how to devolve resources like infrastructure because resources for road construction and other major projects are distributed across the country, we are so much focused on this small fund which is 0.5 per cent meant to help us catch up with the rest of Kenya. Everybody wants to have a share of this small resource. I think we need to be open minded, and as a House with a critical role in the budget look at what the national Government allocates to other development projects to see how it is distributed across the regions.

The Commission on Revenue Allocation has a responsibility of identifying areas which will benefit. Originally, only 14 counties were identified as marginalised but another 20 were added. This is because instead of looking at the counties, they started looking at locations and sub-locations. It is very interesting that a whole county could benefit from this resource because of a single sub-county classified as marginalised. If you look at the few sub-locations or locations in developed counties added as beneficiaries of the Equalisation Fund, the kind of services they have access to are incomparable to what we have in the arid regions.

My time is up and with those few remarks, I support the adoption of this Report and by extension the regulations.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Let us now have the Member for Rabai.

**Hon. William Mwamkale** (Rabai, ODM): Thank you, Hon. Temporary Deputy Chairman. I rise to support the approval of this Report which by extension is supporting the regulations therein.

I am a Member of the Committee on Delegated Legislation and would like to tell Members that we are here today because the Council of Governors (CoG) went to court and stopped the Equalisation Fund. In as much as we might not be comfortable with most of the provisions appearing in these regulations, they were actually dictated by the judgment of the court which indicated this should happen for the Equalisation Fund to continue. We examined these regulations and found they were in line with Article 204 of the Constitution. They also complied with the Statutory Instruments Act and public participation which is a requirement and was overwhelming. I did public participation and members of the public supported these changes so that stalled projects which are an eye sore in our Republic can be revived.

Indeed, the stalled projects are giving MPs a bad name. This is because not everybody can understand that an order of the court stopped these projects but mostly blame MPs. For example, in Rabai we have the Rabai Technical Institute which stalled when this judgment was delivered by the court. We have been going to offices of the Ministry of Education and the National Treasury and they could not move an inch because of these regulations. If we approve the Report, we will be approving the regulations being awaited by the National Treasury so that they can release funds to complete these projects. Mine is to urge Members, if they really want to have a clout in the forthcoming battle, they need to approve this Report and regulations so that



money can be released to finish these projects. Otherwise, if they are not finished, they might come back to finish us instead.

Hon. Temporary Deputy Speaker, I support and urge the House to support so that our people can benefit. Thank you.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Chachu, Member for North Horr, you have the Floor.

**Hon. Chachu Ganya** (North Horr, FAP): Thank you, Hon. Temporary Deputy Speaker for giving me this opportunity to support the Equalisation Fund Regulations Report. I have a very special history with this Fund. As a framer of the Constitution in 2010, I participated in Naivasha as a Member of the Constitutional Implementation Oversight Committee (CIOC) chaired by Hon. Abdikadir, Hon. Ekwe Ethuro, the late Hon. Nkaissery, Hon. Sophia Abdi and others, we fought for this Fund to come into existence. That is how Article 204 of the Constitution which established the Equalisation Fund came into being.

In the 11<sup>th</sup> Parliament as the Secretary-General of the Pastoralists Parliamentary Group, I worked very hard to ensure the first policy of this Fund was operationalised. We were able to get money for the 14 counties. Unfortunately, the CoG went to court and as a result for the last three or four years nothing has been happening but the Fund is secured by the Constitution and nothing can be lost except, we have lost a lot of time.

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

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

These regulations enable us to come up with a hybrid of some sort so that the counties and county governments are taken care of, the civil society and all other stakeholders in development are brought on board so that we can move as per the court ruling. I personally participated in drafting these regulations with some people from the National Treasury. I am the one who came up with the idea that the NG-CDF Chairpersons and Fund Managers at the county level be part of the technical team. At the constituency level our NG-CDF Secretary will also be part of the technical team. At the ward level our NG-CDF committee members who are gazetted on the Floor of this House will be members. We are doing this because we are the ones who will be identifying the projects. The money will be disbursed from here. In terms of project identification, if MPs are strategic enough and work with their structures on the ground, which are part of these regulations, they will surely identify projects in their constituencies. I strongly urge them to do so and take lead because the CEC at the county level will not take the lead.

In the first policy, we were able to get funds and constructed major facilities in our constituencies. Marsabit County got between Kshs80 and 90 million, and we shared it equally among the four constituencies. From this we were able to build hospitals, major roads and other infrastructure. Due to the court case the facilities which were incomplete we were unable to use them. They are just lying idle because the contractors have not been paid and as a result our people are not accessing these services. They will be unlocked once paid and the facilities will be released to the county governments or other government authorities to make use of them. So, it is very important that we pass these regulations.

There are contractors who invested so much in these projects and have not been paid to date. As a result, some of them have closed shop and gone out of business because they have not been paid due to this court case which called the first regulations null and void. I am also convinced there is poverty in many parts of this country, and not just among the marginalised communities. There is the urban poor here in Nairobi and when you go to Kibera you see a lot of poverty. I do not oppose the extension from 14 to 34 counties and from 100 constituencies to 134 constituencies. I think this is fair because all Kenyans should be taken care of. It is really my hope that, unlike the first policy where the national Government through the National Treasury and Members of Parliament had a major role, the CECM for finance in our counties is the one who is going to consolidate all the reports, submit them to Nairobi and do the necessary follow-up. As we all know, these counties have not been doing that. I really hope they will not waste this opportunity. I hope they will collaborate with the Members of Parliament and other structures in our constituencies and ensure that these funds are actually well utilised. I strongly urge my colleagues to really not use these funds like NG-CDF. Go for major projects that can make a difference. Do not use these funds to build classrooms. Go for a hospital. Go for a technical school because you only have it for few years. So, please do not split it so thin that it will not have any impact. In Marsabit, we did that...

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Let me have the Member for Kirinyaga Central, Hon. Wambugu Munene.

**Hon. Munene Wambugu** (Kirinyaga Central, JP): Thank you, Hon. Temporary Deputy Speaker, for giving me this chance to add my voice in support of this Report by a Committee which I belong to, the Committee on Delegated Legislation. I would want to assure the House and the Members that we first of all looked at the Constitution and the Statutory Instruments Act and confirmed that these regulations are done pursuant to Article 204 of the Constitution of this Republic. We also ensured that the requirements of Statutory Instruments Act were followed to the letter more so about public participation. There was extensive public participation actually across the whole of the Republic. It was done during this pandemic. The Treasury assured us that they did virtual public participation within the entire country.

We also confirmed that these regulations were published within the requisite timelines and the Committee was completely satisfied that the regulations were brought properly before the House and the Committee. We also looked at these regulations and more importantly what we considered is that since the nullification of previous guidelines, the disbursement of the Equalisation Fund has stalled and currently we have some bills amounting to Ksh1.2 billion which are yet to be paid. Also, in the Financial Years 2020/2021 and 2021/2021, this Parliament has allocated a whopping Ksh13.6 billion which, because of lack of this regulatory framework, it is yet to be disbursed. Having considered that, we felt that the regulations are timely and the regulations should be passed without further delay.

However, during our consideration of these regulations, we found that the Commission on Revenue Allocation in the first and second policies, there are areas which have still been left out. Much as the Constitution talked about 14 counties and currently there are 34 counties, even in the remaining counties, there are some few areas which still we thought they have been left out and we have a view that in the third policy maybe those areas should also be considered. Also, more important is that let this Fund achieve what the framers of the Constitution 2010 had thought of, that all Kenyans can be brought to a level where they are proud to be Kenyans because they are more equal. Once this money goes to the deserving areas, we would want to see it having the impact which it is intended for. We leaders be it MPs, Senators, Governors and

even the MCAs, once money comes to our areas, let us ensure that it improves the quality of life in those areas so that Kenyans can be as equal as possible. That is the whole intention and that is why the framers of the Constitution came up with a maximum number of years when this Fund can be in place, which is 20 years. There are about nine years remaining but because the framers of the Constitution gave a leeway that Parliament may extend the period by a further six years, because of the impediments we have had in the implementation of this Fund, when the time expires, I plead that the Members of Parliament who will be in Parliament then may rise to occasion and at least add those six years so that we can achieve what the initial framers of the Constitution had in mind that we want an equal Kenya where everybody is proud to be a Kenyan.

With those few remarks, I beg to support.

**Hon. Ahmed Kolosh** (Wajir West, JP): On a point of order, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): No! What is out of order? There is no way there can be a point of order when the Member has finished contributing. Let me hear what is out of order. Hon. Kolosh, is there anything out of order?

**Hon. Ahmed Kolosh** (Wajir West, JP): Hon. Temporary Deputy Speaker, thank you. There is nothing that is out of order really. I rise on Standing Order No. 95, taking into account the mood of the House, that the Mover be called to reply. Thank you, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Of course, it is procedural. The honourable Member has risen on a point of order, that is, Standing Order No. 95. He has his rights to do it.

*(Loud consultations)*

Order, Hon. Members! You know when I am here I am nonpartisan and I must follow the procedures of the House informed by our own Standing Orders. The honourable Member has stood on a point of order under Standing Order No. 95 to call upon the Mover to reply. From where I am, I cannot make a decision. It is you, Hon. Members. Therefore, I put the Question.

*(Loud consultations)*

Order! Order! Whip, the Speaker must give a direction. The Member stood on a point of order under Standing Order No. 95 that the Mover be called upon to reply.

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

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): I have 22 requests from Members who wish to speak to this. Hon. David Sankok, you are next on my request list.

**Hon. David ole Sankok** (Nominated, JP): Thank you very much, Hon. Temporary Deputy Speaker. Hon. Kolosh could have just cut me out in such a very important report that I need to inject my voice. I support not because I support in principle but because this Fund has delayed in implementation. We want to kick it up so that we can start. However, in this Report, we have increased from 14 counties to 34 counties that will benefit from the Equalisation Fund. This beats all human understanding because I do not see the difference between the Equalisation

Fund and the devolution funds. The devolution funds benefit 47 counties and this one is benefiting 34. I think we could have as well given it to all the counties in this country. I do not see the difference between this Equalisation Fund, the National Government Constituencies Development Fund and the National Government Affirmative Action Fund because it is still benefitting old areas.

Hon. Temporary Deputy Speaker, we have increased 20 more counties because those who thought of increasing them thought that there is...

*(Hon. Mohamed Abdikhaim consulted loudly)*

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Order! The Members who are consulting loudly! The Member for Fafi, please protect Hon. David ole Sankok.

**Hon. David ole Sankok** (Nominated, JP): Yes. Hon. Temporary Deputy Speaker, marginalisation is totally different from poverty levels. We have used the issue of poverty levels to increase the number of counties that were benefitting from the Equalisation Fund. However, marginalisation does not mean poverty. Marginalisation means that because of continuous deprivation of infrastructure to an extent that a school is 40 kilometres away, that is when we really need the Equalisation Fund to bring those counties up to speed with other parts of the region.

In 1965, there was Sessional Paper No. 10 that is the cause of all this marginalisation...

*(Hon. Gideon Koske sat on the floor of the House)*

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Order! Hon. David ole Sankok, we have points of order. I give the opportunity to the Member for Ganze, Hon. Teddy Mwambire. What is out of order?

**Hon. Teddy Mwambire** (Ganze, ODM): Hon. Temporary Deputy Speaker, is it in order for a dignified Member of the House to sit on the floor of the House? As Hon. Members, we need to be in order. There is a Member who is seated on the floor of the House, the Member for Chepalungu.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Has he sat on the carpet of the House?

**Hon. Teddy Mwambire** (Ganze, ODM): Yes. Is that a dignified way for Members of Parliament to behave in this House?

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): That is a good concern. Let me get the Serjeant-at-Arms to... Where is he? Serjeant-at-Arms, is the Member unwell?

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

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Order! Let me find out. Is he squatting, consulting or sitting? He could be unwell. I can see he is respecting the House and he has taken a seat. Now I can see where he is. He is consulting the Member for Mandera.

Then I have the Majority Chief Whip who has a point of order.

**Hon. Emmanuel Wangwe** (Navakholo, JP): Thank you, Hon. Temporary Deputy Speaker. This is a House of records and a House of rules. I would want through you... Hon. David ole Sankok was contributing to this Report and he mentioned that there is a devolution fund. He compared the devolution fund to the Equalisation Fund. From where I sit, I do not

know any fund called devolution fund. For the purposes of records, he may educate us on this devolution fund.

I thank you.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Very well. You may also wish to consult so that the Member would advise you accordingly. He may be aware of the Equalisation Fund. I do not know how devolution fund, if it is there, is married to the Equalisation Fund. Hon. David ole Sankok.

*(Loud consultations)*

Order! Members, let us not make it a debate or appear to want to be heard. Let us be serious on the debate we have. It is not a fun day. The public is watching and they know that at this hour of the day, the serious Members of Parliament are in the House. So, please, even as you contribute, let us avoid these sideshows because other Members want to make very serious contributions. Of course, I will be able to handle you and make a ruling on... So, Hon. David ole Sankok, the Member would have informed you about the Equalisation Fund. It is not devolution fund. You can just clarify yourself as you move on. Contribute.

**Hon. David ole Sankok** (Nominated, JP): Thank you, Hon. Temporary Deputy Speaker. I was comparing the money that we send to the counties and the money that we have in the National Government Affirmative Action Fund and NG-CDF. It covers the 47 counties. The Equalisation Fund was supposed to cover only 14 counties but now, it is covering 34 counties. We do not know where they will release the money to. It is now almost covering the whole country.

Before I was rudely interrupted by my leader, Hon. Emmanuel Wangwe, I was saying that there is a difference between poverty and equalisation. We are now using pockets of poverty in our different constituencies and counties to equate them with marginalisation. Marginalisation of the 14 counties that the drafters of our Constitution thought had lagged behind came as a result of Sessional Paper No. 10 of 1965, where all our resources were invested in high potential areas. Those who were in Government that time thought that agriculture is our potential. They never thought that livestock is our potential, wind power is our potential and tourism is also our potential. That is why we have been marginalised for a long time. In our regions, a school is 40 kilometres away and a hospital is 100 kilometres away.

Hon. Temporary Deputy Speaker, because you are learned, I heard that you have done your PhD and you have done finance. I perused through your curriculum vitae and it is very difficult to get beauty and knowledge in the same person. What I was saying is that in those counties, it is in Sessional Paper No. 10 of 1965 that was supposed to bring on board the other counties. With your knowledge, you know that it is population that follows development. It is not development that follows population.

We are here in Nairobi not because of underground resources but because of infrastructure, because of good roads, because of good schools and even because Parliament is here. If Equalisation Fund can build and develop other parts of this country, the population will be offloaded from our Central Kenya and pockets of Western Kenya which are almost becoming very large slums because of constrains of infrastructure in those other areas. That is why I am supporting so that we can start implementing this Equalisation Fund not because I agree with the increase, not because I agree in principle on what they thought in bringing other 20 counties, but because we are 11 years late.

Again, I also support that the administrative cost be reduced from having so many committees in counties and so on. We can simply say, because there are constituencies now that are involving the elected Members of Parliament, let our constituencies be the lowest administrative units because the infrastructure and the personnel are already in place. We can manage it the way we have managed NG-CDF because we have seen NG-CDF being managed very well.

Hon. Temporary Deputy Speaker, we have heard that Kshs500 million has already been spent without any projects. Administrative costs in Kenya take a big chunk of money because those who are sitting on that money want to use it to benefit and enrich themselves. That is where corruption comes in. So, I plead with this House that we support and pass this Equalisation Fund and we start implementing it. As we go along, we will understand and start reviewing why there was need for the Equalisation Fund. Most of the 14 counties that the drafters of our Constitution thought that were marginalised, were actually marginalised because of the consecutive governments, the White Government and the African Government, that did not think that our underground resources and our other resources have potential.

I support.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Let me have the Member for Samburu North, Hon. Alois Lentoimaga.

**Hon. Alois Lentoimaga** (Samburu North, JP): Thank you, Hon. Temporary Deputy Speaker, for giving me this opportunity. I support the regulations of the Equalisation Fund and it should have happened two years ago. The Fund is an affirmative action, just as my colleagues have said, because of marginalisation. This country was divided into two - the high potential and the low potential. Like my colleague has said, it is a result of Sessional Paper No.10 of 1965. It marginalised very many Kenyans and parts of the country accepted that they are not part of Kenya. Whenever people from Baragoi went to Nairobi, they would say they were going to Kenya A from Kenya B. Everything that happened there was low in terms of development. In fact, there are no tarmac roads, no electricity, no healthcare and no education too. The framers of the Constitution deliberately introduced the Equalisation Fund to bring some level of development closer to our brothers in the marginalised parts of the country.

I urge Members to pass the Regulations because we have stayed for almost 13 years without the release of the funds. Even the little that was released was not utilised fully. In Samburu North, eight projects have stalled out of the 352 that were initiated. Eight are from Samburu North and it is because of non-utilisation of the Fund. These Regulations will unlock the unutilised funds and put a new working implementation framework for the funds to be utilised. Initially, the previous policy had put utilisation from top to bottom. Disbursement and projects were done from the top to the bottom and not bottom-up. Why was it so? It is because it was the Principal Secretaries who were in charge of the board and so they selected the projects. I remember the money we were to use last time, the PSs used to come to the county headquarters and would sit with us to select the projects in only one day. The result of coming in choppers was that they used over Kshs400 million for just two days. Even though we are not very happy about the bureaucracy in the selection of the committees, at least, it is something better than what we had before. That is why the governors went to court.

Now that the Regulations bring all the stakeholders on board, and because of the timelines - we have only nine years remaining - we better accept this and wait until we get another Chairman's Bill in the Senate. It has hit a snag because of the Senators. We better use this one in the interim because it will unlock Kshs1.2 billion that is meant for the stalled projects

and Kshs698 billion for the other projects. We are not complaining about the other 20 counties, but we are saying that the money was meant for a purpose. It was not meant for people because they could be poor. If people lack services in Nairobi, it is not because they are marginalised but, rather, it is because of leadership in the county. It can be magnanimous enough to ensure that everybody gets development in the county.

With those remarks, Hon. Temporary Deputy Speaker, I support.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Let me have the Member for Laikipia.

**Hon. (Ms.) Catherine Waruguru** (Laikipia CWR, JP): Hon. Temporary Deputy Speaker, thank you. I will be brief because a number of us are interested to contribute on the Regulations. I thank Hon. Kamket and the Committee on Delegated Legislation for a job well done and for being on record to fast-track the process of releasing monies from the Equalisation Fund.

I have heard a number of Members say that they want to use the NG-CDF model in the implementation of this Fund. I notice in the Committee Report that they are talking about a Cabinet Secretary saying that NG-CDF in itself has had its share of issues in our courts and, therefore, it would bring us another huddle and delay the process of disbursement of the resources. I urge Members, for purposes of those of us who come from marginalised communities...

I stand here candidly to speak for the people of Laikipia North and part of Laikipia West, which experience problems and which have been neglected by Government in the previous regimes. Some of them do not have road networks. They do not have clean water and are still struggling, in the present regime, with insecurity. Other than the issues in county governments, the revenue share has been delayed because the Equalisation Fund has had a hitch given the technical knockout the courts handed the Regulations. But now that we have these Regulations before us, I ask Members of our communities and those of us who do not come from marginalised regions to come out strongly to support us to pass the Regulations. This will allow us to start experiencing and enjoying the fruits of the 2010 Constitution. It is unfair that the Government allows part of this country to solely depend on NG-CDF and other resources that go to our governors.

In instances where our Members are not able to lobby for development projects from various ministries, it always ends up looking as if nothing is going on in their regions. Members who receive NG-CDF will agree with me that it is not enough to construct roads, especially to bitumen standards. It is not even enough to build universities or colleges. Constituencies have been lucky to get the Technical and Vocational Education Training (TVET) institutions.

I thank the Commission for adding extra constituencies in the 14 counties which used to receive those funds, to 34 counties. This will enable the people of Laikipia West and Laikipia North to benefit in the second policy of the Equalisation Fund. I am very grateful. I look forward to seeing more regions, which are perceived to be rich and developed, but are lagging behind, being included.

Our girls continue lacking basic and essential things like sanitary towels and shelter. For those of us who come from regions which require boarding facilities...

Hon. Temporary Deputy Speaker, you bear me witness that if I were to put to task the Ministry of Education with regard to what monkey business has been going on as far as distribution of resources in marginalised areas is concerned, you will realise that the majority of our areas have been left behind.

For the first time, we have had a woman in Laikipia North as a Member of Parliament. Before Hon. Sarah Korere came on board, we only had one boarding secondary school. But now with the little we get and the priorities that have been set, we are going to be in a position to do extra beyond what NG-CDF can do.

I support and congratulate the Committee. Thank you.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): I hear Hon. Nyikal, but you will have your time to contribute. The Member for Central Imenti.

**Hon. Moses Kirima** (Central Imenti, JP): Hon. Temporary Deputy Speaker, I stand here to support this Report. The Report looks good because it considers areas which have been said to be marginalised. When you read Article 204 of the Constitution, we talk of 14 counties but as it is today it talks of 34 counties. Covering 14 counties means Meru and Tharaka Nithi are included. However, when it comes to Meru, in the regions which I mentioned, you will be surprised that those are the most remote areas with marginalised people. Tharaka is one of them which is mentioned there. In my constituency, Central Imenti, which borders Tharaka, there are places which are inaccessible and people have been marginalised completely. I am unable to access the places because they have no roads. They have been marginalised and they have no water. There are 15 schools there which are not accessible by motor vehicles in respect of all other things which one can try to do. There are places called Tonya, Githioro, Ithumula, Mbeti and many other places. You cannot access the places.

So, the Committee headed by its Chairperson, Hon. Kamket, that went to assess those places which are referred to as marginalised places, I believe when they went to Meru, they just sat in a hotel and they got somebody just to inform them that certain places are supposed to be included. They did not do their work properly. I support what my friend, the Member from Kitui, has said. There is some biasness about these reports. How do you come and include the richest and developed constituency in Meru and forget the poorest ones, that is, Central Imenti and Tigania West? What happened to this Committee?

So, what I am saying is that I support the Report as it is, but it is biased.

*(Loud consultations)*

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Those Hon. Members who are shouting “point of order” and you know how to do it, you are all out of order. You know what to do when you want to make an intervention.

**Hon. Moses Kirima** (Central Imenti, JP): Anyway, I support the Report with those sentiments because we have been ignored. The most marginalised places have been ignored. We do not know the criteria which was used.

With that, I support.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Some of the Members are shouting “point of order”, but your cards are not on.

*(An Hon. Member spoke off- record)*

You are raising a point of information. Who are you informing now? He has already completed his contribution.

Let me have the Member for Gatanga.



**Hon. Joseph Nduati** (Gatanga, JP): Thank you, Hon. Temporary Deputy Speaker, for giving me a chance to also make my contribution. At the outset, I support the implementation of these Regulations. I am very happy with the inclusion of Gatanga which is only about 80 kilometres from Nairobi. From Central region, I can say that we are the only constituency which has been included.

I want to say that it is not only pastoralists who are marginalised, as Hon. Duale was saying. Even some of us who come from nearby constituencies, if you visit them, you will be surprised. Gatanga, despite supplying Nairobi with water as well as the Government building a new dam to bring water to Nairobi there, we do not have water. Even at Ndakaini where water comes from, our people who live next to Ndakaini do not have water.

If you go to lower Gatanga, that is, Ithanga and Kakuzi, the services are very poor. Those people do not have water, roads are impassable, power connectivity is very poor, there is lack of hospitals, food is a problem, no job opportunities, *et cetera*. That is why I am saying that it is important, when we talk about this fund, not to think about North Eastern alone. I am very happy that even my neighbours from Masinga who are also marginalised have also been included.

The inclusion of the additional counties is important. When it comes to selection of projects, I would like the Commission to be very thorough because looking at the original 14 counties, you can see the number of projects which stalled - that is 352 projects. If you divide those projects among the 14 counties, it is approximately 25 projects per county with a pending bill of Kshs1.2 billion. This is unfair to Kenyans. When we start selecting new projects, we should be careful. We do not need to do very many projects. There is no need of initiating projects which will have pending bills which will not benefit the constituencies.

I also want to ask the commission which will come into place to manage resources properly, like we do with the NG-CDF. I have seen the Report is saying that we should not adopt the NG-CDF model. The NG-CDF model is the best. I have even talked about it here previously saying that even the central Government, if they were to adopt this model, we would not be having problems. It is because the NG-CDF model gives confidence to the contractor. It gives confidence to the community in which the project will be implemented in. Currently, most of us are suffering. The Government has allocated funds to do roads and 90 per cent of the roads in Kenya have stalled, which is unfair. Why start projects which are not completed?

With those few remarks, I support 100 per cent.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): The Member for Wajir South, Mohamed Sheikh.

**Hon. Mohamed Mohamud** (Wajir South, JP): Thank you, Hon. Temporary Deputy Speaker. I stand to support this Report. I promise that I will be swift enough because many of my colleagues want to speak, and we have only a few minutes.

The Equalisation Fund is a Fund that we have been waiting for quite a lengthy time. It is very unfortunate that this has taken this considerable amount of time during our tenure of the 12<sup>th</sup> Parliament. It has taken too long unnecessarily. Let me say that. It is because the resources that were kept away for over three to four years would have been used by the communities long enough. Therefore, it is an opportunity at this time that this Report has been brought. We congratulate the Committee. It has found out that this is an important Report to bring forward and ensure that those funds are expended accordingly, within the shortest period of time.

It is also important that we must acknowledge what the Equalisation Fund has done in the past. It has put more resources to constituencies. At constituency levels, we were able to see that the funds have reached the villages - the far-flung villages. It is also important to note that it is

working as good as the NG-CDF. It is important to note also that MPs will be involved in identification of projects in those rural areas in the constituencies.

Thank you, Hon. Temporary Deputy Speaker. I support this Report.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Let us now have the Member for Samburu East, Hon. Lekumontare Jackson.

**Hon. Jackson Lekumontare** (Samburu East, KANU): Thank you, Hon. Temporary Deputy Speaker. I want to say I support this Report. As my colleagues have said, the Equalisation Fund is provided for by the Constitution.

This is a Fund that has never served the purpose it was intended for. I think time has come for these regulations to be implemented so that the areas in this country which are marginalised can start using the money. There are parts of this country where tarmac roads are just history. There is no electricity, water and dispensaries. I think poverty is not the same as marginalisation. This Equalisation Fund will bring up the marginalised areas which lack very many services. Although some Members have cited the existence of too many committees, maybe, that will be looked into in later stages. It is the right time that this Fund should start helping our people. It seems some people do not live in this country. In some areas, there are massive road constructions while other areas have impassable roads. If this Fund is implemented, it will help us. The Government is really unfair to some parts of this country and yet, it serves the whole population. All places in this country need to be served. This money will help us, although we have wasted 11 years. The Committee should bring a Motion for extension so that we recover the time which has been lost. There is so much funds that have not been used. Even for the disbursed funds, projects are not complete. We will complete these projects when these regulations come into effect.

With that, Hon. Temporary Deputy Speaker, I support.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Hon. Members, by 9.20 p.m., I will call upon the Mover to reply. So, as you contribute, be considerate of your colleagues. I do not want to use my discretion to limit your time to two minutes.

The Member for Chepalungu, you have the Floor.

**Hon. Gideon Koske** (Chepalungu, CCM): Thank you, Hon. Temporary Deputy Speaker. I will use only two minutes because of the time and demand from my colleagues. I want to thank the team that came up with these regulations, led by my good friend Hon. Kamket. These are good regulations that will bring balance to the national cake for many of the constituencies that have been left out for many years. This Fund was meant to balance the key sectors of human life that is roads, water, health facilities and electricity.

I come from one of the hardship areas to live in. In Chepalungu, we fall in the category of constituencies that should benefit from this kitty. In the last financial year, the Fund was allocated Kshs26 billion, out of which we got nothing. I hope this time round, by raising the number of beneficiaries from 14 counties to 34, Chepalungu will be among the beneficiaries. From the parameters being considered in selecting the benefitting areas, my constituency fully falls under this kitty. I lost the hardship allowance for teachers and yet all surrounding constituencies like Emurua Dikirr and Narok West get the same. That has been a big problem. The challenges that we face in Chepalungu are the same ones faced by the two neighbouring constituencies. On this kitty, we should look at the poverty index, development record and Government institutions like primary and secondary schools and tertiary institutions.

In my constituency, we are leading in the number of such institutions. NG-CDF can do minimal work as expected because the number of schools are too many compared to what was received in the NG-CDF kitty.

The term “pastoralist” needs a better definition. If we use it to mean northern Kenya, then, I find it not to be the right term to consider. For us who practise pastoralism and dairy farming, we get minimal returns from it. We, therefore, expect this kitty to come and balance the health sector in my constituency, power connectivity and road networks.

Thank you, Hon. Temporary Deputy Speaker. I support this regulation.

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

**Hon. (Ms.) Naisula Lesuuda** (Samburu West, KANU): Thank you, Hon. Temporary Deputy Speaker.

At the outset, I want to congratulate the able Chairman, Hon. Kamket and the Committee on Delegated Legislation for expediting and bringing these Regulations to this House that we now put in force in the Equalisation Fund.

One of the key reasons the pastoralists communities and areas that have been marginalised for a long time in this country supported the 2010 Constitution is because of the Equalisation Fund. It is interesting to see and watch many of our colleagues talk and think we just trivialise the matter of marginalisation in the areas that we come from. It is something that we should all take seriously and think why it was seen important to be put in our Constitution. It is unfortunate that years have passed, time has lapsed and the funds have not been put to use as they should.

It is important to note that in this Budget, there is money meant for the Equalisation Fund. Once we pass these Regulations, I hope the Minister in charge of the National Treasury will see it fit and deem it right that it becomes a priority once they start disbursing the allocations of this financial year.

Most of the projects that were put under the first policy were the big projects that were going to stir economic growth, open up and give service to these areas. For example, we have huge dams, roads, issues of electricity connectivity and, for the time that has been lost we pray that the National Treasury gives the Equalisation Fund priority.

I had some reservations on the matter of the committees. There is a lot of bureaucracy and with the time that has lapsed, it might even impede this process further. However, looking at it, we will let it go for now and we hope that it will help us identify the projects that will have a big impact in those areas.

With those many remarks, I support.

**The Temporary Deputy Speaker** (Hon. (Ms.) (Jessica Mbalu): Very well, you support. It is time to now call upon the Mover to reply as indicated. Hon. Kamket, kindly, have the Floor.

**Hon. Kassait Kamket** (Tiaty, KANU): Hon. Temporary Deputy Speaker, before I reply, I want to be magnanimous to two of my colleagues who have requested to say one word. So, I will donate two minutes each to Hon. Nyikal and the Hon. Member for Kacheliba, and then I finish.

**The Temporary Deputy Speaker** (Hon. (Ms.) (Jessica Mbalu): Very well. Thank you. It is official that the time that has been allocated is over...

*(Hon. (Dr.) James Nyikal interjected)*

Hon. (Dr.) Nyikal, when the Hon. Temporary Deputy Speaker is speaking, you wait for further clarifications. Yes, it is true that officially the time that had been allocated for the Committee Reports is over and he has a right to dedicate some of his minutes. The beneficiaries are only two. Hon. (Dr.) Nyikal, use your two minutes. The other one is the Hon. Member for Kacheliba.

**Hon. (Dr.) James Nyikal** (Seme, ODM): Thank you, Hon. Temporary Deputy Speaker and Hon. Kamket.

As I rise to support this, I want to say two things. We have many provisions in our Constitution that we have not put structures for. It has taken us 10 years to put a structure for a Fund that came with the new Constitution and where we had put a lot of money, up to Kshs15 billion. That is unacceptable. The next thing, as we pass the Regulations, is for the Committee to look at more structures and clearly define them. We have too many committees. What is the criterion used to define marginalised areas and those others that need support? If policies, guidelines, structures and procedures are put in place, we could even extend this to other pockets all over the country. They would all be at the same level.

I thank you.

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

**Hon. Mark Lomunokol** (Kacheliba, PDR): Hon. Temporary Deputy Speaker, as I rise to support these Regulations, I would like to thank my colleague Hon. Kamket for donating part of his time to me.

These Regulations have come at a time when the country is facing a lot of challenges starting with the COVID-19 that has molested us. We are facing bad economic times. There is food insecurity occasioned by below average rains.

These Regulations will help enhance the completion of very many stalled projects in the entire country. In my constituency of Kacheliba, for example, we have 11 stalled boreholes that have been drilled but not fitted with the right equipment to serve the people. Apart from the stalled boreholes, we also have stalled roads and dispensaries. Therefore, the operationalisation of this Fund has lagged behind. It is now 11 years since the promulgation of the Constitution where it was mandated that such marginalised areas be equalised through the Fund.

Much as I declared my interest to support these Regulations, I also question the expansion of the beneficiaries list from 14 to 34 counties. This will dilute the impact of those funds and hence a slow pace in terms of equalisation. With that kind of slow pace, we may not equalise the areas as intended.

Lastly, I support the sentiments by my colleagues who raised concerns about the bureaucratic orders created by the proposed committees in various Government levels. That will cause unnecessary delays. The best model to borrow from is that of the NG-CDF.

I thank you.

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

**Hon. Kassait Kamket** (Tiaty, KANU): Thank you, Hon. Temporary Deputy Speaker. I beg to reply.

At the outset, I would like to appreciate the immense support this Report has received from my colleagues. I want to appreciate each and every one of them without mentioning names. There are fears which the Members have raised like the change of policy, increase from 14 to 34 counties, misinformation and mixing up of issues. I would like to erase their fears as I said in the

beginning about the importance of implementing these Regulations and their significance to the people we represent. They are lacking services and need those monies so that services can be provided. For instance, the Member for Kacheliba, one sub-location in Murang'a that is considered to be marginalised by the CRA gets Kshs10 million for a project and you get almost Kshs5 or Kshs6 billion for projects in your constituency. You cannot be mean to your neighbour or brother.

There is an African proverb that says that, if you want to run fast, run alone. But if you want to run far, run with others. This is what these Regulations have tried to do. We have tried to have everybody in the category of marginalised. The CRA went round counties when formulating the second policy and realised there is intra-county marginalisation. For instance, I come from Baringo County, and in the first policy, it was not identified as marginalised. Can you imagine Tiaty Constituency which is half of Baringo County, and one of the most arid constituencies in the Republic was left out? What would the people of Tiaty do were it not for the second marginalisation policy which CRA came up with?

A major source of conflict in the regions we come from and especially the pastoralists' communities is scarcity of water. Our people converge in one watering hole. For instance, in Kapedo, one of the major conflicts in Suguta Valley is the convergence of pastoralists in very few watering holes like the Suguta River in Kapedo. If we get enough resources from this Fund, we can build pans and dams across the entire Suguta Valley region. So, conflicts which happen because of scarcity of water will be a thing of the past. These are some of the things that we believe this Fund will unlock and we shall have peace moving forward.

This is the happiest day of my life as a first time MP for Tiaty Constituency. I am happy that history has placed me in this position and time as the Chair of the Committee on Delegated Legislation. I have come to Parliament and moved these Regulations which have been supported by this House unanimously. I pray to God that the implementers move with speed so that we get those monies. Projects will be done to save our people and bring them up to speed with the rest of the Republic of Kenya as contemplated by the framers of our Constitution.

I beg to reply.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Hon. Members with that, and from where I sit, I am not in a position to put the Question for the approval of the Public Finance Management (Equalisation Fund Administration) Regulations 2021. So, I order the Question on the same will be put in the next sitting allocated in the Order Paper by the House Business Committee.

*(Putting of the Question deferred)*

## ADJOURNMENT

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Order Members! The time being 9.30 p.m., this House stands adjourned until Wednesday, 7<sup>th</sup> July 2021 at 2.30 p.m. I thank you all.

The House rose at 9.30 p.m.

