

PARLIAMENT OF KENYA
THE NATIONAL ASSEMBLY

THE HANSARD

Wednesday, 16th February 2022

The House met at 2.30 p.m.

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

PRAYERS

PETITION

Hon. Speaker: Member for Kilifi North. Hauko pahali pako. Unarandaranda tu, Mhe. Baya.

**COMPENSATION OF COASTAL COMMUNITIES FOR
LAND DISPOSSESSED BY COLONIAL GOVERNMENT**

Hon. Owen Baya (Kilifi North, ODM): Sorry, Hon. Speaker. I am grateful for this opportunity to read this Petition regarding compensation for land dispossessed by the British Colonial Government from local communities in Kilifi and the larger coastal region.

I, on behalf of the people of Kilifi County, draw the attention of the House to the following:

THAT, Kenya's independence warfare against the British in the coastal region, as spearheaded by Mekatilili wa Menza and others, was especially an agitation for land from which local residents had been unceremoniously displaced;

THAT, at independence, the colonial government offered 20 million British Pounds, whose equivalent today would be 250 million British Pounds, to the Kenyan Government under the Land Resettlement Fund to facilitate purchase of white highlands from departing white settlers for redistribution to the local people;

THAT, the resultant resettlement undertaken through the Fund was instrumental in defusing political tension and restructuring Kenya's agricultural sector as exemplified through the growth of export crops such as tea and coffee in large quantities by African small-scale holders;

THAT, residents of the coastal region did not benefit from this initiative and could not engage in any meaningful agricultural enterprise on account of the harsh discriminatory policies of the British colonial and post-independence governments that denied them opportunity to own the land on which they lived, unlike their fellow upcountry citizens;

THAT, the dispossession of land from local residents eventually made the coastal region to be one of the poorest regions in this country, which eventually affected education, health and general development of the area;

THAT, the land titles held by Arabs were validated and became indivisible, including the 10 miles strip of land at Mwambao that was given to the Sultan of Zanzibar, which in itself went against the fundamental principle of independence where territorial sovereignty was key;

THAT, the British colonialists altered the national structure of land ownership by formulating the Land Titles Ordinance of 1908, the Swynnerton Plan of 1954 and introduction of complicated English laws, creation of native reserves and other policies which created an unjust and complex land tenure system that infringed on the ancestral rights of the Mijikenda people while opening avenues for irregular distribution of land;

THAT, superficial land mediation efforts by post-independence governments did not salvage the welfare of the Mijikenda people who, by now, became squatters or tenants of large-scale land owners;

THAT, today, endless evictions and destruction of property of the locals continue to ravage coastal populations as courts continue to churn out eviction orders on locals living on their ancestral land on the basis of irregular title deeds held by current landowners;

THAT, Article 68 of the Constitution provides a precursor for the establishment of a new legal regime on land, which the Government ought to refer to in instituting justice for the Mijikenda Community by ensuring that their ancestral land reverts back to them;

THAT, efforts to address this matter with relevant authorities have borne no fruit;

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

Therefore, your humble petitioners pray that the National Assembly, through the Departmental Committee on Justice and Legal Affairs and the Departmental Committee on Lands, with the support of the National Land Commission:

- (a) Investigates the historical injustices and atrocities committed by the British Government and its officials in dispossessing local communities at the Coast of their land and pronounce itself on the matter with a view to securing their compensation.
- (b) Declare the 1908 Land Titles Ordinance as an invalid and unjust piece of legislation that was used to discriminate, deprive and knowingly commit grave atrocities on land matters against the local indigenous people of the coastal region.
- (c) Order an audit of all title deeds issued to foreigners through the 1908 Land Titles Ordinance and secure extraction and valuation of the same.
- (d) Confirm the quantum forwarded to the British Government for the award of a grant of the quantum to settle the market price of the land for subdivision of the land to the local people.
- (e) Petition the British Government, through the House of Lords, to provide funding for the purchase of all land in Kilifi unjustly given to other landowners and non-coastal people.
- (f) Request the British Parliament to revoke with immediate effect all agreements the British Government entered with the Sultan of Zanzibar that awarded land at the Coast.
- (g) Apology from the British Government to the people of the Coast region for unwarranted suffering and agony caused by the poor decisions taken by the British Government.

- (h) Secure appointment of a high-level legal team to sue the British Government for land atrocities committed by the British Government through British Colonial Administration in Kenya with a view to secure due compensation for the victims.
- (i) Make any other recommendations that deem appropriate in the circumstance of the Petition.

Thank you.

Hon. Speaker: Comments limited to two minutes each. First is the Member for Endeless.

Hon. (Dr.) Robert Pukose (Endebess, JP): Thank you, Hon. Speaker.

I stand to support the Petition by Hon. Baya. In August last year, the National Land Commission (NLC) sought reports from various people who were affected by historical land injustices and advertised in the newspapers. It seaked...

(Loud consultations)

I apologise. It is 'sought' not 'seaked'. It sought a report from various parts of the country on historical land injustices. That report is with the NLC. At Bomas, unfortunately, people wanted a Constitution that stated that the NLC should resolve land issues. It, however, ended up saying that the NLC should recommend. When the Committee is looking at this Petition, it should ask the NLC to present its report which it sought from the public, so that the House can look at it. It is not only the people of Kilifi, but everywhere. The people who were in power that time ended up keeping the money themselves. When Europeans left, they acquired their land. That is why some of them have huge tracts of land while the rest of Kenyans are suffering with none. This is a very important Petition and should be looked at in totality.

With those few remarks, I support.

Hon. Speaker: Member for Tharaka.

Hon. George Gitonga (Tharaka, DP): Thank you, Hon. Speaker. I support this Petition because what the British colonialists did to us goes without saying: absolute introduction of new systems of land ownership which were purely capitalist in nature. They gave us some labyrinth of laws which the law courts could not understand. They also made us sign agreements which were skewed to their favour and as a result, communities lost their land. The net effect is that we ended up with families of land owners owning huge chunks of land to the detriment of the local people. That is what this Petition is seeking to address, that, there should be equity in the way our land is distributed. There must also be some understanding in our land laws, especially consolidation of those laws to ensure that there is justice to the people of Kenya. Therefore, this should be investigated and we should be given a report.

Hon. Speaker: Member for Makueni.

Hon. Daniel Maanzo (Makueni, WDM-K): Thank you, Hon. Speaker. I support the Petition by Hon. Baya. Some of his prayers, however, may lack jurisdiction to act upon. They may need some channels which are diplomatic, probably through the Ministry of Foreign Affairs, to be effected. Parliament, for example, may not have the capacity to instruct lawyers on behalf of his constituents to sue the British Parliament. It may be too much to ask. I, however, believe that the NLC has the mandate from the Constitution and whenever it fails, the Kenyan courts can still make appropriate court orders in relation to the land.

The land in question, unfortunately, is in the hands of modern landlords who are Kenyans. A lot of the land has been grabbed by people in power. Part of the actions required to be taken are political. If you have a Government which has political goodwill to assist, repossess and the Directorate of Criminal Investigations prosecutes people, Hon. Baya's community would be served better.

Thank you.

Hon. Speaker: Hon. Maanzo, I appreciate what you said because at one point, Hon. Owen Baya specifically referred to the House of Lords in the United Kingdom (UK) and at another time referred to the UK Parliament, which means the two Houses. He also made reference to a "1908 Ordinance". Even as you read and seek that it be declared to have been invalid and things like those, what may have constituted in the independence Constitution must have addressed those issues. If you read the Sixth Schedule of the current Constitution, any laws that were in existence before 27th August were adopted as being laws made by Parliament notwithstanding that they were made much earlier.

I am not sure we would address those 1908 land ordinances. It is, however, a good thing. Mr. Chebukati, in January, put out a Gazette Notice on what is going to happen on 9th August. I, therefore, did not want to comment, but now that Hon. Maanzo has drawn your attention to it, it is only fair we...

On the other hand, you sought that this Petition be handled by two departmental committees, that is, the Justice and Legal Affairs and the Lands committees. Given the periods, you are almost sure your Petition will never see the light of day. I can imagine bringing the two committees together to come and sit to consider your Petition. It is going to take much longer as opposed to if you would have it directed to one committee. I, however, suspect it is because of those things about ordinances and things like those that you thought so. You grounded well on Article 68 of the Constitution and things like those. We will hear what Members have to say. I can see an intervention. Member for Lamu.

Hon. (Ms.) Ruweida Obo (Lamu CWR, ODM): Asante Mhe. Spika. Ninapinga hili ombi la Mhe. Baya. Nilisema hapa kwamba kuna uhalifu unaopangwa hususan wakati huu wa kutafuta kura nikaambiwa sina ushahidi. Pia, niliambiwa niondoe niliyoyasema. Nilienda nikatafuta ushahidi na nimeupeleka *Table Office*. Kwa sasa, ninafanya *petition*.

Wengine, labda, hawatajua ukweli lakini tunaishi Pwani tunajua. Hii *Petition* iko na walengwa ambao ni Waarabu na Wabajuni. Malengo ni kura. Ukitafuta kura na ukumbuke hujafanya maendeleo yoyote, basi utafanya watu washike mambo ya ardhi ili uonekane shujaa. *Inquiry* iwekwe ili watu wapate haki maanake jamii ya Mijikenda iko Lamu. Tutawapa nafasi ya kukaa na wanahaki. Lakini sisi Wabajuni na Waarabu tukienda kukaa Kilifi, watu wanauawa, wanapigwa na wengine wamemwagiwa *acid*. Ninaweza kuwaleta hapa kwa sababu hawana haki.

(Loud consultations)

Hon. Speaker: Member for Bondo.

Hon. Gideon Ochanda (Bondo, ODM): Thank you, Hon. Speaker. I rise to support the Petition. The issues around land are numerous. There is an administrative problem at the NLC, which I am not sure how it is going to be sorted out in terms of budgetary concerns. Towards the end of last year, the Commission had to look for us, the people who needed services, to pay for it because they were constrained in terms of budget. At this point, we are looking at the country's

budget. The NLC has a lot of work in terms of the Petition that we have here. They cannot handle the numerous petitions, administratively.

If the Chair of the Departmental Committee on Lands and the Chair of the Budget and Appropriations Committee could help, then we could see exactly how to support the NLC so that they can administer the issues that are constantly brought on the Floor of the House.

Hon. Speaker: Member for Nyando.

Hon. Jared Okelo (Nyando, ODM): Thank you, Hon. Speaker. I support this Petition with full belief that there is no mischief beneath it, as is being alluded to by my colleague.

I become bewildered that 60 years down the line after the British exited the scene, we are still wallowing under mysterious claims of the British holding land and the land being passed over to other people who are questionable in nature.

If this Petition will see the light of day, then it is important that we look at how those parcels of land were acquired and transferred. It does not sound very wise to claim that we were short-changed 60 years down the line. If those things happened during the colonial times, I would excuse our ancestors for not having the enlightenment that we have.

Hon. Speaker: I have a feeling that our timer is not right. I noticed that with regard to Hon. Obo. I have just discovered the same. Please, Members are contributing for two minutes, but not one minute. I have just noticed that Hon. Obo was denied one minute. I said that Members should contribute for two minutes. Give Hon. Jared Okelo his one minute.

Hon. Jared Okelo (Nyando, ODM): I thank you very much, Hon. Speaker for extending extra time to me. As you have alluded, this Petition may not see the light of day. However, it gives the Member a lot of *bonga* points towards his political endeavours going forward. It will be important to look at this Petition wholesome. There are many areas, including Central Kenya and other parts of the Rift Valley that also underwent similar challenges. Therefore, we should look at this issue as a whole, but not as part of Kilifi where people want to derive some political *bonga* points that may not serve the interest of the people at this time.

I thank you, Hon. Speaker.

Hon. Speaker: Very well. Member for Kangema.

Hon. Clement Kigano (Kangema, JP): I want to contribute very fast. The amount of money that the Member refers to is not 20 million Pounds, but 18 million Pounds that was advanced when Hon. Ronald Ngala from Kilifi was the Chief Minister. It came on the understanding that it would be willing buyer, willing seller. You and Hon. Ngala did not act.

Mtwapa was founded by President Kenyatta. It settled people. You will be caught by rushes because of all the time that it has taken. The Crown Lands Act, 1908, is already obsolete. We have new laws now. When *Mau Mau* went to the commercial courts in England through Mr. Gitu Kahengeri, the coastal communities did not go. Our colleague is just giving excuses. He has even referred to *watu wa bara*. The Woman Representative for Lamu has talked about Arabs and the Bajunis. She is also talking about the people from upcountry.

(Hon. (Ms.) Ruweida Obo spoke off record)

When you sleep on your rights and others act, nobody can come and wake you up. When the representative of the *Mau Mau*, Mr. Gitu Kahengeri, went to London, he did not use the Government. Why do you want it to come and help you? As a leader, gather your people and take them to commercial courts. I will show you where they are in London. That is where they went and got a lot of money. Please, take a step. Do not come to the Government. Our taxpayers are not

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prepared to assist you. If Hon. Ronald Ngala did not help you, please, do not come to us for every mistake you commit. When you sleep on your rights, do not come to Kenyans to assist you.

Thank you.

(Laughter)

Hon. Speaker: Member for North Imenti.

Hon. Rahim Dawood (North Imenti, JP): Hon. Speaker, I do not want to support this Petition. When you are talking about historical injustices, it should not regard foreigners. Even the local people cause historical injustices. My colleague has talked about non-local people doing it.

If we cannot say that the title deeds which are issued by this Government are legal, then what kind of historical injustice are we talking about? We need to first agree that the title deeds are legal. The Chairman of the Departmental Committee on Justice and Legal Affairs has said that we cannot talk about a law that was enacted in 1908. We have the Constitution of Kenya 2010. We need to know that this is not the time to talk about these things. We do not want to create fear in this country regarding land issues which are very emotive. The title deeds which are issued by the Government should be respected. People should get out of the lands which they occupy and do not have title deeds. If they are squatters, the Government will look for land to settle them.

Thank you, Hon. Speaker.

Hon. Speaker: Member for Mwea.

Hon. Josphat Kabinga (Mwea, JP): Thank you, Hon. Speaker. Land issues are emotive. As a conflict manager, this is not the right time for us to have these issues. If we must have them, then we need to handle them very carefully. We are at a time when anything that is said becomes sensitive. Whereas I support my brother and hope that he will travel to London for public participation in the House of Lords so that he can present his case, we need to be careful.

We need to pay attention to what was said by the Member for Lamu. That is something that cannot be taken lightly. She mentioned that there are some areas where some people cannot stay. That is very serious. I support my brother. However, he needs to relook at whether this Petition comes at the right time and come out clearly on what exactly he wants. Some of the things that are in this Petition are not practical at this time.

Hon. Speaker, I support the Petition.

Hon. Speaker: Member for Rarieda.

Hon. (Dr.) Otiende Amollo (Rarieda, ODM): Hon. Speaker, land is emotive and very sensitive in this country. It is true that there are instances and pockets where land injustice is yet to be remedied. I do not support the Petition in the form in which it was brought. We have to be very careful.

When we were writing the Constitution, forget about even the issues that have been raised, some groups came and told us that the entire City of Nairobi belongs to one particular ethnic group and it wants it back. If we were to get there, you can imagine the kind of situation we can get in. They did not stop there. They then told us of the 43 ethnicities in this country. They told us that some are indigenous and some are not. All the ones that are not indigenous should go back to wherever they came from.

(Laughter)

When we looked at the list, the ones that they claimed were indigenous were only four or five. We must be very careful. If we start going back endlessly in history, we might not have a State. There must come a time when you must draw a line that we move from this point henceforth. Otherwise, even this land issue can be used as an excuse to excite ethnic hatred against others. It can be a situation where you cannot be anywhere else. With due respect, I think whatever solution you want, it cannot lie out there and it does not lie in this House. It would lie within the country through an establishment other than a Petition such as this one.

Hon. Speaker, I submit.

Hon. Speaker: Member for Lamu, why have you put an intervention again? Is it because of your one minute?

Hon. (Ms.) Ruweida Obo (Lamu CWR, JP): Asante, Mhe. Spika. Kuna video ambazo mimi nimeleta hapo *Table Office* na ushahidi mwingi Wabunge hapa wakisema makaratasi ni yenu, ardhi ni yetu. Ardhi hii yafaa iangaliwe kwa kina sana. Haiendi vizuri. Mimi nilipovizungumza Bungeni niliitwa Malindi na wale wote ambao wameathiriwa, ambao walipigwa na kupokonywa ardhi na ambao Wabunge wao wameenda kusimamisha hizo *court order*. Wameniita. Haki ya Mungu nataka kulia. Kuna watu wanadhulumiwa. Hii Ardhi hii ya Mhe. Baya iangaliwe vizuri sana. Njia ya kuchukua ni ile kama Serikali ilivyochukua ya pale Likoni. Wanunue kisha watu wawe pale. Nyingine ni ile ya Mazrui ambayo Rais Uhuru ameifuatilia sio kusema ardhi ni zenu na wale wengine hawana haki. Wana haki kama nyinyi vile mlivyo. Mimi nitasema kisha munataka kuchochea watu kuwa mimi nasema ukweli ndio wasinipe kura. Kuna Mijikenda kwetu Lamu. Mijikenda tunawaheshimu na wewe pia una Wabajuni katika vijiji vyote vya Malindi ambao Kaunti ya Kilifi inafaa kuheshimu. Unafaa kuheshimu Ngomeni, Gongoni, Malindi, Watamu na Kilifi Mnarani. Sisi pia tuna haki kama nyinyi mlivyokuwa na haki. Mhe. Spika, chunguzeni kwa makini sana ardhi hii. Watu wameumia na ukitaka niwalete hapa watakuja muwaone. Ni uongo. Ni wazushi hawa.

Asante, Mhe. Spika.

Hon. Speaker: Mhe. Obo, umesema unaweza kulia. Nimesema huu ni muhula wa hiyo kazi.

Next is the Member for Tinderet.

Hon. Julius Melly (Tinderet, JP): Thank you, Hon. Speaker. I rise to support this Petition. I want this House to realise that there are several communities and individuals who have lost their land not because of anything but because they do not have their rights and they were not given the right to own. My county was actually a white highland area and majority of the people were pushed out and up to today, a number of them do not even have a place to call home. When a Petition like this one is brought to this House... My county government at one time wrote a Petition to the British Government over the issue of settlement of the Nandi people who had actually been displaced during the construction of the railway. Many of them up to today are squatters across the Rift Valley.

When such a Petition is brought to this House, it is intended to right the wrongs that had been done but not to evict other people. It is actually intended to assist those people to settle down inside other communities and have their rights taken into account.

I thank you, Hon. Speaker.

Hon. Speaker: Finally, Member for Nambale.

Hon. Sakwa Bunyasi (Nambale, ANC): Thank you, Hon. Speaker. I was not going to comment on this except that I was touched by the comments of the Chairman of the Justice and Legal Affairs Committee. Essentially, what you are saying might be right. I think there are a

number of pitfalls in this Petition that can ignite conflict and so on but I think we must find an alternative way on how we explain the difficulty of dealing with a Petition of this nature. Remember that we are talking about the year 1908, which is about the British Colonial Government. We had colonial governments before that. We also should know that as we speak today, similar issues arise and continue in this country. We cannot bury them under the carpet. I would have been happier if perhaps Hon. Baya's Petition was not as confrontational as it was that seems to pit one community against another as opposed to dealing with issues that were right and were wrong because of historical processes so that we find a way in which this can be done. I think to dismiss it and say so-and-so was there and did not do anything will not help. I was part of the people who managed this land transfer programme when the NLC used to have the responsibility for it. The way it was done are not things you want to recall here with any pride whatsoever. It was who was in power that made the decisions. So, let us not go there with celebration. That is not something we want to go back to but I think we want to look at the demerits of this particular Petition in respect of its potential for conflict without solution.

Hon. Speaker: Of course, in 1908 we were still under some company, is it not so? We were a protectorate and not yet a colony. We began being a colony in 1921. Some company was still dealing with those issues. You know the Imperial British East Africa (IBEA) Company. Let the Petition go as the owner has declared. We have only 30 minutes for comments on Petitions, and in our rules, we do not have a situation whereby the person presenting the Petition will be given an opportunity to respond. No, unless you want to import some queer procedure. Having read it out, it is not open for him to withdraw now – maybe, at a later date. We do not have that procedure. We do not have it and I do not want to introduce it. Let us just keep within our rules.

Next Order!

PAPERS LAID

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

Reports of the Auditor-General and Financial Statements in respect of the following institutions for the year ended 30th June 2021 and the certificates therein:

- (a) Revenue Statements of the Ministry of Defence;
- (b) Ministry of Environment and Forestry;
- (c) Kenya Space Agency; and,
- (e) Bura Irrigation Development Project.

Reports of the Auditor-General and Financial Statements in respect of the following institutions for the year ended 30th June 2020 and the certificates therein:

- (a) The Communications Authority of Kenya Universal Service Fund;
- (b) The Murang'a University of Technology;
- (c) Assessment of Performance of the Public Financial Management System;
- (d) The Anti-Counterfeit Authority;
- (e) School Equipment Production Unit;
- (f) National Crime Research Centre; and,
- (g) The National Environment Complaints Committee.

Reports of the Auditor-General and Financial Statements in respect of the following constituencies for the year ended 30th June 2020 and the certificates therein:

- (a) Kajiado East;

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- (b) Samburu West;
- (c) Njoro;
- (d) Nakuru Town West;
- (e) Baringo South; and
- (f) Mathioya.

Reports of the Auditor-General and Financial Statements in respect of the following institutions for the year ended 30th June 2019 and the certificates therein:

- (a) The National Museums of Kenya;
- (b) Rift Valley Technical Training Institute;
- (c) Kipipiri Technical and Vocational College;
- (d) Tseikuru Technical and Training Institute;
- (e) Intergovernmental Relations Technical Committee; and,
- (f) Chemelil Sugar Company Limited.

Report of the Auditor-General and Financial Statement of Mutuga Constituency for the year ended 30th June 2019 and the certificates therein.

Thank you, Hon. Speaker.

Hon. Speaker: Next is a Report by the Member for Kitui Rural. You do not have a card or you do not know how to operate the intervention button.

Hon. David Mboni (Kitui Rural, CCU): Hon. Speaker, I beg to lay the following Paper on the Table of this House:

Report of the Departmental Committee on Finance and National Planning on Consideration of His Excellency the Presidents' Memorandum on the Kenya Deposit Insurance (Amendment) Bill (National Assembly Bill No.43 of 2020).

Thank you, Hon. Speaker.

NOTICES OF MOTIONS

Hon. Speaker: Hon. Pukose, on behalf of Hon. Kathuri Murungi.

Hon. (Dr.) Robert Pukose (Endebess, JP): Hon. Speaker, I beg to give notice of the following Motion.

THAT, this House adopts the 11th Report of the Special Funds Accounts Committee on Audited Financial Statements for the National Government Constituencies Development Fund (NG-CDF) for 26 constituencies in the counties of Mombasa, Kilifi, Kwale, Taita Taveta, Lamu and Tana River for the Financial Years 2013/2014, 2014/2015 and 2015/2016, laid on the Table of the House on Thursday, December 2021.

Thank you, Hon. Speaker.

Hon. Speaker: Next Order.

ORDINARY QUESTIONS

Question No.021/2022

ILLEGAL TRANSFER OF LAND IN NORTH IMENTI CONSTITUENCY

Hon. Rahim Dawood (North Imenti, JP): Hon. Speaker, I beg to ask the Cabinet Secretary for Lands and Physical Planning the following Question:

- (i) What is the original and current ownership status of parcel of land L.R. No. Ntima/Igoki/1769 in Gakoromone area in North Imenti Constituency, which was sub-divided into Land Reference Number Ntima/Igoki 5980 and 5999 on 8th April 1999?
- (ii) Could the Cabinet Secretary provide details of the persons who have illegally acquired or occupied the said land?
- (iii) Could the Cabinet Secretary undertake to institute action against the persons who facilitated the illegal transfer of the said land?
- (iv) Are there plans by the Ministry to ensure that the title deeds illegally acquired for the said land are revoked and that the land reverts to the community for public use?

I had asked this Question last year. I received a reply in respect of which the Cabinet Secretary in the Ministry of Lands has promised to do further consultation and respond. That response has not been brought. I, therefore, request the Chair of the Departmental Committee on Lands to follow up this matter, because I have made her aware. We need a proper answer this time round because there were gaps in the answer she brought last time.

Thank you, Hon. Speaker.

Hon. Speaker: That Question is to be replied to before the Departmental Committee on Lands.

The next Question is by the Member for Tharaka.

Question No.035/2022

NON-ADHERENCE TO POLICY ON HUMAN RESOURCE
AND REMUNERATION GUIDELINES BY THE TSC

Hon. George Gitonga (Tharaka, JP): Thank you, Hon. Speaker. I rise to ask Question No. 035 of 2022 to the Teachers Service Commission.

- (i) Could the Chairperson of the Teachers Service Commission explain why Mr. Kithinji John Gituura (TSC No.414517), Ms. Sarah Njeri Kamiri (TSC No.462538), Mr. Murugara Kithinji Leonard (TSC No.463028), Mr. Erugura Godfrey Mwiti (TSC No.492980) and Ms. Lucy Wanjiku Kiriga (TSC No.366144), who were appointed as Deputy Principals and deployed by the Commission in September 2019, have not had their grades and salaries effected as required under the Commission's Policy on Human Resource and Remuneration Guidelines?

*(Hon. Justus Kizito crossed the Floor
without bowing to the Chair)*

Hon. Speaker: Member for Shinyalu, do not attempt to sit. Just be upstanding. Member for Shinyalu, if you want to move from here to that other side, you know what you need to do. So, just go and do it. You cannot walk here, then go and purport to be saying "hi" to somebody and then sit.

Proceed, Hon. Murugara.

Hon. George Gitonga (Tharaka, JP): Hon. Speaker, allow me to start asking the Question afresh so that there is some flow.

I beg to ask the Chairperson of the Teachers Service Commission the following Question:

- (i) Could the Chairperson of the Teachers Service Commission explain why Mr. Kithinji John Gituura (TSC No.414517), Ms. Sarah Njeri Kamiri (TSC No.462538), Mr. Murugara Kithinji Leonard (TSC No.463028), Mr. Erugura Godfrey Mwiti (TSC No.492980) and Ms. Lucy Wanjiku Kiriga (TSC No.366144), who were appointed as Deputy Principals and deployed by the Commission in September 2019, have not had their grades and salaries effected as required under the Commission's Policy on Human Resource and Remuneration Guidelines?
- (ii) Could the Chairperson indicate when their grades and salaries will be effected as required under the provisions of the policy?

Thank you, Hon. Speaker.

Hon. Speaker: For this one, you sought a written Reply. So, the Question will be forwarded to the Chairperson of the Teachers Service Commission to provide a written reply to you.

The next Question is by the Member for Mathioya.

Question No.043/ 2022

COMPENSATION FOR LAND ACQUIRED BY GOVERNMENT

Hon. Peter Kimaru (Mathioya, JP): Hon. Speaker, I beg to ask the Cabinet Secretary for Lands and Physical Planning the following Question:

- (i) Could the Cabinet Secretary explain why persons living along the Kiriaini-Kairo Road in Mathioya Constituency are yet to be compensated for land compulsorily acquired by the Government for the upgrading of the road to bitumen standards?
- (ii) Could the Cabinet Secretary state the timelines when the said residents will be compensated?

Hon. Speaker, I would have wanted to direct Question No. 043 of 2022 to the Ministry of Lands, and in particular the NLC. Earlier last year, I asked this Question and the Departmental Committee on Transport asked the Ministry in charge of transport to give a reply over the matter. We received an answer from the Kenya Rural Roads Authority (KeRRA) almost a year ago to the effect that they had already forwarded the names of those affected by that project for compensation purposes. Unfortunately, to date, the NLC has not contacted the people who were affected by the project on this particular road. I would have wanted this Question to be directed to the Ministry of Lands, and in particular the NLC so that we know when they will come to do what they are required to do.

Hon. Speaker: Hon. Kihara, the best thing for you to do is to withdraw the Question and then direct it to the NLC.

Hon. Peter Kimaru (Mathioya, JP): I stand guided, Hon. Speaker.

(Question withdrawn)

Hon. Speaker: The last Question will be by the Member for Magarini, Hon. Michael Kingi.

Question No.044/2022

ELECTRICITY CONNECTIVITY TO HOMES AND PUBLIC
INSTITUTIONS IN MAGARINI CONSTITUENCY

Hon. Michael Kingi (Magarini, ODM): Thank you, Hon. Speaker. I rise to ask the Cabinet Secretary for Energy the following Question:

- (i) Could the Cabinet Secretary provide a status report regarding electricity connectivity to homes and public institutions in Magarini Constituency?
- (ii) What measures has the Ministry put in place to ensure electricity connectivity in homes and schools, particularly at Adu Secondary School, Kamale, Sogorosa, Kaguguta, Bodoi and Makumba primary schools?

Thank you, Hon. Speaker.

Hon. Speaker: The Question will be replied to before the Departmental Committee on Energy.
Next Order

BILL

Second Reading

THE MENTAL HEALTH BILL

(Hon. Joshua Kutuny on 10.2.2022)

(Debate concluded on 15.2.2022)

Hon. Speaker: Hon. Members, including Prof. Oduol, when an Order is read out for the Question to be put, you know what happens. I know the Member for Homa Bay Town today has come quite early. These days he has developed a habit of coming here after I have left the Chair.

Hon. Members, debate on this Bill was concluded. What remains was for the Question to be put.

(Question put and agreed to)

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

Hon. Speaker: Next Order.

CONSIDERATION OF REPORT AND THIRD READING

THE NATIONAL DISASTER MANAGEMENT AUTHORITY BILL

Hon. Speaker: Hon. Members, there is a Supplementary Order Paper. What we did was to rearrange Order No.9 on the Supplementary Order Paper but it was No.8 in the original Order Paper.

Debate on this Bill was concluded. What remained was for the Question to be put.

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(Question put and agreed to)

Hon. Kimani Ichung'wah (Kikuyu, JP): Hon. Speaker, I beg to move that the National Disaster Management Authority Bill (National Assembly Bill No.10 of 2019) be now read a Third Time.

I request Hon. Kanini Kega to second.

Hon. Speaker: Hon. Kanini Kega.

Hon. Kanini Kega (Kieni, JP): Hon. Speaker, I second.

(Question proposed)

Hon. Members: Put the Question.

Hon. Speaker: Having confirmed that there is sufficient quorum, I proceed to put the Question.

(Question put and agreed to)

(The Bill was accordingly read the Third Time and passed)

Hon. Speaker: Hon. Members, before we proceed to the next Order, you may have noticed that the decision by the House Business Committee on Private Members' Bills began being implemented this morning. Many of you now may be busy cursing the day you decided to be absent or not to look at the Order Paper. That is going to be the route to be followed because if it did not happen like that, I am sure Hon. Sakwa Bunyasi's Bill may not have been reached. It is good that some of you are absent so that those who are more diligent can process their Bills.

Hon. (Dr.) Robert Pukose (Endebess, JP): Do not remind them.

Hon. Speaker: Hon. Pukose suggests that we let sleeping dogs lie. Let us proceed to the next Order.

BILL

Second Reading

THE COMMUNITY HEALTH WORKERS BILL

(Hon. Martin Owino on 2.2.2022)

(Debate concluded on 16.2.2022 – Morning Sitting)

Hon. Speaker: This is a Private Member's Bill by Hon. Martin Owino. It is unusual that he is absent. He is always present. Nevertheless, I proceed to put the Question.

(Question put and agreed to)

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

SPECIAL MOTIONS

APPROVAL OF NOMINEE TO THE EQUALISATION FUND ADVISORY BOARD

THAT, taking into consideration the recommendations of the Departmental Committee on Finance and National Planning in its Report on the Recruitment of the National Assembly's Nominee to the Equalisation Fund Advisory Board, laid on the Table of the House on Wednesday, 9th February 2022 and pursuant to the provisions of Section 8 of the Public Appointments (Parliamentary Approval) Act, 2011 and paragraph 4(1)(d) of the Public Finance Management (Equalization Fund Administration) Regulations, 2021, this House approves the appointment of Mr. Abdullahi Adan Khalif to the Equalisation Fund Advisory Board.

(Hon. David Mboni on 15.2.2021)

(Debate concluded on 15.2.2022)

Hon. Speaker: Hon. Members, debate on this Motion was concluded yesterday. What remained was for the Question to be put, which I hereby do.

(Question put and agreed to)

APPROVAL OF NOMINEES FOR APPOINTMENT TO THE KENYA NATIONAL COMMISSION ON HUMAN RIGHTS

THAT, taking into consideration the findings of the Departmental Committee on Justice and Legal Affairs in its Report on the Vetting of Nominees for Appointment as Chairperson and Members of the Kenya National Commission on Human Rights, laid on the Table of the House on Thursday, 10th February 2022, and pursuant to the provisions of Article 250(2)(b) of the Constitution, Section 11(7) of the Kenya National Commission on Human Rights Act, 2011 and Section 8 (1) of the Public Appointments (Parliamentary Approval Act, 2011), this House approves the appointment of the following persons to the Kenya National Commission on Human Rights:

- | | |
|---|----------------|
| (i) Ms. Roseline Doreen Adhiambo Odhiambo-Odede | - Chairperson; |
| (ii) Prof. Marion Wanjiku Mutugi | - Member; |
| (iii) Dr. Raymond Plal Sangsang Nyeris | - Member; |
| (iv) Ms. Sara Talaso Bonaya | - Member; and, |
| (v) Dr. Dennis Nyongesa Wamalwa | - Member. |

(Hon. Clement Kigano on 15.2.2022)

(Debate concluded on 15.2.2022)

(Several Members walked into the Chamber)

Hon. Speaker: Please, if you are coming in, do so quickly. Member for Taveta, do you wish to continue standing?

(An Hon. Member spoke off record)

She is the Vice-Chairperson of the Commission.

Who is that now? Is that Hon. Malulu Injendi? Hon. Malulu, we have been together in this House long enough. Even if you bend, I can still identify you. I think that is not a bad thing.

Hon. Members, debate on this Motion was concluded. I am left with putting the Question.

(Question put and agreed to)

BILLS

First Readings

THE REGIONAL DEVELOPMENT AUTHORITIES BILL

THE POLITICAL PARTIES (AMENDMENT) BILL

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

MOTIONS

REPORT ON THE BUDGET POLICY STATEMENT FOR THE FY 2022/2023

Hon. Speaker: The Chairperson, Budget and Appropriations Committee.

Hon. Kanini Kega (Kieni, JP): Thank you, Hon. Speaker. I plead with the House to defer this matter for further consultations. Once the consultations are over, I will move the Motion.

Hon. Speaker: Yes, Hon. Ichung'wah; what is your point of order?

Hon. Kimani Ichung'wah (Kikuyu, JP): Hon. Speaker, I do not want to contradict the Chairperson on what he is saying. However, when business is published on the Order Paper, I am certain that it was done with the full knowledge of the Budget and Appropriations Committee. Now he is telling us that he wants to withdraw the Motion to allow for consultations. It will only be kind of him to tell the House who it is that he is going to consult. This is because this Budget Policy Statement (BPS) was tabled in this House in November last year. If consultations had been ongoing for the past two or three months, the Chairperson should have been able to consult whoever he wanted to consult. If it is consultations within the House, maybe he can tell us whether we can consult in the next one hour then we proceed.

I think the Chairperson will agree with me that it is critical that we finalise with this BPS. I am sure that on his desk is a Supplementary Budget that is before the House. If we are to follow our Calendar, we will be proceeding on recess in the next few weeks. Remember, this year because of obvious reasons of elections, the annual estimates will come early. Therefore, we do not want to be bombarded that within a period of two or three weeks, we are forced to consider the BPS, the Supplementary Estimates and also start thinking about the annual estimates. At the same time,

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we need to give those in the Executive time to understand what it is that we have passed in the BPS that will inform the annual estimates.

Therefore, I would like the Chairperson to give us a little bit more information. Who is it that he wants to consult? Is it the Committee, the House or other players in Government?

Hon. Speaker: The Chairperson, Budget and Appropriations Committee, do you wish to respond?

Hon. Kanini Kega (Kieni, JP): Hon. Speaker, it is wide consultations. For sure, when I will be moving, I will make reference to all the consultations that we have done. I do not want to pre-empt the consultations. He has been a chairperson, so he knows that there are Members and stakeholders. It is as simple as that.

Hon. Speaker, I am also aware of the strict timelines; it is a concern to us. We will make sure that, as soon as possible, I will come to you and to the House.

Hon. Kimani Ichung'wah (Kikuyu, JP): Hon. Speaker, I know that Hon. Kanini is being evasive, but since some of us have amendments, some of which are amendments to recommendations in his Report; if we are to debate this report another day, can he confirm to us if the consultations include the rest of the House? Hon. Sossion has an amendment on the Kenya Teacher Education and Professional Development (TEPD) programme to provide resources for the programme. When I consulted with Hon. Sossion, the amendment was to create resources for TEPD to be financed by the Government, because it is the Government and the Teachers Service Commission (TSC) that requires this of teachers.

I also have amendments which would be helping the Chairperson in terms of the equitable share of revenue. This will ensure that we change our shared revenue to counties in line with the President's pledge on the 35 per cent shareable revenue that was to get in through the Building Bridges Initiative (BBI)...

Hon. Speaker: You are going into details.

Hon. Kimani Ichung'wah (Kikuyu, JP): Therefore, Hon. Speaker, I just want the Chairperson to inform us whether we can go back to his Committee and have some of these amendments considered by it. Thus, when he comes back after the consultations with us and others, we can then just pass one report without necessarily having to waste the House's and taxpayers' time moving amendments on the Floor.

Hon. Speaker: So, he has said that widely, you are stakeholders. Let us just agree that you are part of the stakeholders and you will be consulted. So, we take out that business from the Order Paper.

(Motion deferred)

Next Order.

REPORT ON THE MEDIUM-TERM DEBT MANAGEMENT
STRATEGY FOR THE FY 2022/2023

Hon. Speaker: The Chairperson, Budget and Appropriations Committee.

Hon. Kanini Kega (Kieni, JP): Thank you, Hon. Speaker. I request, once again, that we stand down this business because they are intertwined, so that we can do further consultations. I will move it the soonest that I will be ready.

Hon. Speaker: There is no need for debate. If he is not ready and he is the owner of the Motion, we allow it.

(Motion deferred)

Next Order.

COMMITTEE OF THE WHOLE HOUSE

(Order for Committee read)

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

IN THE COMMITTEE

*(The Temporary Deputy Chairman
(Hon. Christopher Omulele) took the Chair)*

THE SACCO SOCIETIES (AMENDMENT) BILL

The Temporary Deputy Chairman (Hon. Christopher Omulele): Order, Members. We are now in the Committee of the whole House to consider the Sacco Societies (Amendment) Bill (National Assembly Bill No. 55 of 2021).

(Clauses 2, 3, 4, 5, 6, 7, 8, and 9 agreed to)

(Title agreed to)

(Clause 1 agreed to)

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Chris Wamalwa, do not worry; we are done. It was a short Bill. We shall now move to reporting. The Mover?

Hon. Amos Kimunya (Kipipiri, JP): Hon. Temporary Deputy Chairman, I beg to move that the Committee do report to the House its consideration of the Sacco Societies (Amendment) Bill (National Assembly Bill No. 55 of 2021) and its approval thereof without amendments.

(Question proposed)

(Question put and agreed to)

(The House resumed)

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

REPORT AND THIRD READING

THE SACCO SOCIETIES (AMENDMENT) BILL

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

Hon. (Dr.) Naomi Shaban (Taveta, JP): Hon. Temporary Deputy Speaker, I beg to report that a Committee of the whole House has considered the Sacco Societies (Amendment) Bill (National Assembly Bill No. 55 of 2021) and approved the same without amendments.

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

Hon. Amos Kimunya (Kipipiri, JP): Hon. Temporary Deputy Speaker, I beg to move that the House does agree with the Report of the Committee of the whole House on its consideration of the Sacco Societies (Amendment) Bill (National Assembly Bill No. 55 of 2021) and I request Hon. Chris Wamalwa to second the Motion.

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

Hon. (Dr.) Chris Wamalwa (Kimini, FORD-K): Thank you, Hon. Temporary Deputy Speaker. I second.

(Question proposed)

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Members, I direct that the next necessary steps in regard to this particular business to be undertaken when the business will be set down next on the Order Paper. So, I direct that we move on to the next business on the Order Paper.

POINT OF ORDERDELAYED DISBURSEMENT OF NATIONAL GOVERNMENT
CONSTITUENCIES DEVELOPMENT FUND

Hon. Jared Okelo (Nyando, ODM): On a point of order, Hon. Temporary Deputy Speaker.

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

Hon. Jared Okelo (Nyando, ODM): Thank you, Hon. Temporary Deputy Speaker. Yesterday, amidst interventions on Petitions, I raised a matter that could not be concluded because it sounded a little misplaced at that moment however relevant it was. It related to the inordinate delay on disbursement of the National Government Constituencies Development Fund (NG-CDF). There was a promise that was made by the Committee and the National Treasury that by January, all accounts will receive Kshs.100 million. We are coming to the end of February and that issue has not been responded to or honoured by the National Treasury. I am very afraid, because most of our children solely rely on bursaries from NG-CDF. It is unfortunate that some of them are now languishing at home and cannot be allowed back in school due to non-payment, and this now puts us in a precarious position as Members of Parliament. If promises are made and we transfer the same to the people that we serve, I think it is only prudent that the National Treasury follows up on those promises.

I am also very afraid that most of the projects are delaying in implementation, some of which also feed into the Competency Based Curriculum (CBC) programme. You will recall that

the Executive made a special request to Members of Parliament to collaborate with the Ministry of Education, Science and Technology so as to increase the number of classrooms that are very much needed at this point in time.

Hon. Temporary Deputy Speaker, I need your direction. This was a promise that was made on the Floor of this House, but now Members of Parliament are stuck and do not know what to do going forward. The accounts are dry, yet they made a promise that by March of 2022, all the monies owed to the NG-CDF would have been remitted. I do not know what we are going to do, but I know that your Chair has always come to the rescue of Members of Parliament in case of such delays. I, therefore, request your pronouncement and direction on this matter so that we can do what needs to be done.

We have already started experiencing quorum challenges, especially in the mornings. I think if we are not going to collectively approach this matter, with the end of this term and *sine die* recess that is coming up in June, we are going into an electoral cycle without money that ought to have been spent on projects that feed directly into the welfare of our people.

As I conclude, everyone will tell you that as little as that money is, if you have to juxtapose it against the shareable revenue to the counties, it is the only money that impacts on the welfare of our people directly. So, the little that we expend on our people is not there. This only means that either the priorities are going somewhere, or the Members of Parliament were not told the actual truth regarding this money.

Hon. Temporary Deputy Speaker, I seek your indulgence and direction on this matter. Thank you.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Member for Nyando, you have expressed yourself that you are very afraid, and I share in your fear. Indeed, this particular Speaker feels the heavy boot of the National Treasury on his neck, and he can hardly breathe from lack of funds at that level. It is important, but I think that there will be a solution to it sooner than later. I am sure that the substantive Speaker will be giving direction. In any event, I am sure that the House, through the Departmental Committee on Finance and National Planning, and the Budget and Appropriations Committee are seized of this matter and they will do what they need to do so that these funds are made available to our children.

Next business.

BILLS

Second Reading

THE WILDLIFE CONSERVATION AND MANAGEMENT (AMENDMENT) BILL

(Hon. (Ms.) Sophia Noor on 15.2.2022)

(Resumption of Debate interrupted on 15.2.2022)

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Sophia Abdi, you had a balance of 35 Minutes. You were moving and so, you may proceed.

Hon (Ms.) Sophia Noor (Ijara, PDR): Thank you, Hon Temporary Deputy Speaker. The Committee also took note of the Report by the Senate Standing Committee on Land, Environment

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and Natural Resources, in which it observed that it had received views in accordance with Article 118 of the Constitution from the Kenya National Commission on Human Rights and National Justice.

The Committee also invited the Ministry of Tourism and Wildlife *vide* a letter dated on 5th October, 2021, for a meeting on the Bill, which was held on Tuesday, 19th October, 2021. The Ministry made submission that the Bill seeks to amend the Wildlife Conservation and Management Act (No. 47 of 2013) in order to make further provision for allocation of adequate facilities to County Wildlife Conservation and Compensation Committees established under the Act.

The Ministry also submitted that the Bill provides for a timeline of 12 months for the compensation of human death, human injuries or crops and property damage caused by the wildlife in accordance with the Act. The Act makes further provision for the payment of compensation and other entitlements due to local communities affected by wildlife in accordance with it.

The Ministry requested for the withdrawal of the Bill as there was already an ongoing comprehensive review of the Wildlife Conservation and Management Act (No. 47 of 2013). The comprehensive review is being done in the interest of the public with a view of repealing the current Act and coming up with new laws that effectively address many of the current issues so as to avoid piecemeal amendments.

The Ministry is doing an overhaul of the Act (No. 47 of 2013) and they requested that since the Senate is doing piecemeal amendments, they will accommodate all the amendments that come from the Senate and will do it in a holistic manner and comprehensively, because they already have a Bill. The Ministry undertook to comprehensively look at the proposed amendments and harmonise them with other submission from various stakeholders, so as to enable it develop comprehensive legal instruments that enable a unified approach in the conservation and management of wildlife.

The Ministry is thoroughly doing a very holistic and comprehensive proposal and they are putting into account the amendments that were forwarded to this House from the Senate. The Ministry will harmonise all the submissions from various stakeholders because there are many stakeholders who are interested in the Wildlife Conservation and Management Act. They feel they will do a very comprehensive legal framework or instruments that will address and unify all the proposals that have been forwarded by many stakeholders in this country.

In considering the Bill and the views of the Senate Standing Committee on Land, Environment and Natural Resources, State Departments and the Parliamentary Budget Office, the Committee observed the following:

- (a) The Bill meets the criteria required to define it as a ‘Money Bill’ pursuant to Article 114 (b) and (c) of the Constitution.

As such, the National Assembly is required to take into consideration recommendations of the Budget and Appropriations Committee when debating the Bill.

Further, a money Bill can only be introduced in the National Assembly pursuant to Article 109(5) of the Constitution. Therefore, the Bill should have first been introduced in the National Assembly and not the Senate. Any money Bill is supposed to be first introduced in this House and not the Senate. Now that the Bill came from the Senate and it is a money Bill, we already have recommendations of the Budget and Appropriations Committee. The Parliamentary Budget Office has thoroughly advised the Committee that since the Bill was generated by the Senate, it has a problem.

The Committee also observed that there is an ongoing comprehensive review of the Wildlife Conservation and Management Act No.47 of 2013 by the Ministry of Tourism and

Wildlife. The Ministry was collecting submissions for inclusion in the new Bill that will replace the current Act. The Committee also noted that the Ministry was willing to incorporate the proposed amendments provided in this Bill.

Having considered the Wildlife Conservation and Management (Amendment) Bill (Senate Bill No.30 of 2020), the Committee recommends that the House rejects the Bill since it is a money Bill pursuant to Article 114 of the Constitution and as such, it can only be introduced in the National Assembly pursuant to Article 109(5) of the Constitution.

After getting thorough views from various stakeholders and State machineries, the Committee looked clearly and found that the Wildlife Conservation and Management (Amendment) Bill (Senate Bill No.30 of 2020) is a money Bill. As such, it is supposed to be generated by the National Assembly. For that reason, we request the House to reject the Bill that was generated and introduced by the Senate.

In conclusion, on behalf of Departmental Committee on Environment and Natural Resources, I am grateful to the Office of the Speaker and that of the Clerk of the National Assembly for the logistical and technical support accorded to it during its sittings to consider this Bill. The Committee further wishes to thank all the stakeholders who participated in consideration of this Bill.

Finally, I express my appreciation to Members of the Committee who made useful contributions towards consideration of this Bill.

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

*[The Temporary Deputy Speaker
(Hon. (Ms.) Soipan Tuya) took the Chair]*

I thank all the interested Members from this House who came before the Committee.

I beg to move. I call upon...

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Is your Seconder lost?

Hon. (Ms.) Sophia Noor (Ijara, PDR): I call upon Hon. Sara to second.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Hon. Korere, are you aware of what you are seconding?

Hon. (Ms.) Sara Korere (Laikipia North, JP): I do not see my card here.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): The Chair seems to have fished you out. You can use the next microphone that is on.

(Loud consultations)

Hon. Sara Korere, it is clear from the Chair's presentation that you cannot second what she is against. You can only decline. Seconding means that you are supporting. So, you can only decline.

Hon. (Ms.) Sara Korere (Laikipia North, JP): Thank you, Hon Temporary Deputy Speaker. As advised, I stand to decline because the Chair has already made pronouncement on rejecting the Bill.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Hon Members, given that the Wildlife Conservation and Management (Amendment) Bill (Senate Bill No.30 of 2020) has in essence been rejected by the Committee of the National Assembly, it stands deferred for mediation.

(Bill deferred)

Next Order!

Second Reading

THE UNIVERSITIES (AMENDMENT) BILL

Hon. Amos Kimunya (Kipipiri, JP): Hon Temporary Deputy Speaker, I beg to move that the Universities (Amendment) Bill (National Assembly Bill No.35 of 2021) be now read a Second Time.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Just a small clarification, Leader of the Majority Party.

Hon Ochanda, I can see you are struggling together with other Members. This is what has happened. The Chair has rejected a Bill that has come from the Senate, and so, in essence, it cannot be seconded because we are not admitting it in the first place. It has to go for mediation.

Proceed, Leader of the Majority Party!

Hon. Amos Kimunya (Kipipiri, JP): Thank you, Hon Temporary Deputy Speaker, for that clarification to the membership. Let me take you back again.

I beg to move that the Universities (Amendment) Bill (National Assembly Bill No. 35 of 2021) be now read a Second Time.

Hon. Temporary Deputy Speaker, Members may be aware that the principal object of this Bill is to amend the Universities' Act of 2012 in respect to a couple of things. First is to address the issue of the process of appointment of members of the University Council, the Vice-Chancellors and Deputy Vice-Chancellors as well as the Principals and Deputy Principals for the constituent colleges of public universities

Secondly, is to address the issue of the utilisation and management of the Universities Fund and thirdly, to recognise the Kenya Universities and Colleges Central Placement Service (KUCCPS) by reducing the number of members of the Placement Board and to provide for additional independent members.

It is common knowledge today that our public universities are facing management challenges. For example, we know Moi University has had quite some challenges since the tail end of last year. There are even fears that they could be facing closure due to certain challenges associated with not just the management, but failure to remunerate staff in time among other things. We have also had challenges which were well documented in Maasai Mara University. Generally, not many universities are doing very well in the financial perspective and this could affect quality control in these institutions.

I have just singled out those two universities and, indeed, in my own time with the Departmental Committee on Education and Research, we made several visits to most universities. It showed there is clear need for revamping not just the management, but also the whole operations of these universities. As you are aware, universities tried to solve some of these issues by enlarging the scope of courses they offered. Some went all the way to offering some certificate courses which should be the subject matter in village polytechnics. Others offered diploma courses which should

be in Technical and Vocational Education Training (TVET) institutions because all they needed is numbers to boost their revenues.

I think this also brought their own challenges because when they started with those huge numbers, they ended up having to employ so many people to take care of them. When the system changed and the number of people who could go to universities reduced, they still had commitments which they could not meet because of lack of money.

It is in this sense that this Bill seeks to alter the manner in which the leadership of these universities come to office. It is basically proposing that the appointment of chairpersons of councils of the universities should be done by the Cabinet Secretary and also empowering the Cabinet Secretary in charge of Education to revoke any appointment made in that regard.

Universities are funded through the national Exchequer. This is the money given by the taxpayers through the Government to fund the universities. It cannot be right that universities will be clamouring for independence in terms of their governance structures yet they are funded by the public. To enhance accountability, the Ministry of Education through the Cabinet Secretary needs to be an integral part in terms of the appointment of chairpersons of the councils who manage the universities. This is because he who pays the piper calls the tune and is also the first one to listen to that tune, through accountability. I am advised this is exactly the rationale and we hope this House will support us on this.

The Bill also seeks to empower the Cabinet Secretary for Education to determine who becomes the vice-chancellor of a university as well as to prescribe the minimum academic professional requirements. It is for the same reasons that if we just leave it out there, we will end up with people campaigning to be in charge of those institutions and their funds, but they do not feel compelled to be accountable to the Ministry. We spend close to 27 per cent of the national budget on education. Quite a big chunk of that goes to university education. In terms of accountability for that money, people should not just say that they want to be appointed by the senate and leave out the main financiers who are Kenyans represented by the Ministry of Education.

The Bill also seeks to introduce the Universities Fund Board which we hope will ensure that there is proper management of the Universities Fund. The Bill empowers this board to ensure proper management of the Fund, including powers to formulate policies, carry out the objects and functions of the Fund, provide direction on the effective coordination of the operations of the Fund and receive any donations or endowments on behalf of the Fund.

I hold the view that some of the proposals are very progressive. I have also reviewed the Committee's Report and seen some proposed amendments. I am sure we will consider this during the Committee of the whole House.

It is a very straightforward Bill. I know the Departmental Committee on Education and Research has put a lot of effort into looking at it. I do not want to pre-empt what the Chair will say, but I urge Members to go through the Bill, contribute and support us in terms of the reforms that are required to get our universities to where they should be so that we can be proud of them.

Perhaps some of us stand accused or guilty of having promoted the clamour for every county to have a university. This ended up in a proliferation of universities across the entire country as every county wanted a university named after them. We have seen the effect in terms of the quality of graduates being produced and even some of the courses being offered.

I have nothing against tourism and hotel management, but I know that graduates from Utalii College are better placed in the job market and have a higher absorption capacity in the job market than people who have spent four years doing a Degree in Tourism and Hospitality Management at

a university. We are wasting the hopes of our children. We give them the impression that they are better off if they have a Degree in Hospitality Management from a university compared to a diploma in the same from Utalii College. The diploma holder from Utalii College gets a better job than this other chap who has to keep tarmacking because nobody understands what a Degree in Tourism Management is.

All this came about because each university had to create something to survive on. It is something that we will need to figure out. Perhaps when we have the right management, they will start thinking of how we eventually consolidate most of the universities. We should only have a maximum of five universities with campuses across the entire country. The brand is very important. I have seen some of my constituents being admitted to some universities and they ask how they can indicate on their curriculum vitae (CV) that they went to a particular university. They want to write that they went to the University of Nairobi.

Some people even feel that if you go to some university and attend a job interview with somebody from a university with a branded name, then you are already disadvantaged, *ab initio*. So, it is something that we probably need to do and I am sure the Departmental Committee on Education and Research and the Ministry of Education may give us some way forward on this at some point in the future, so that we can return our universities to where they should have been. Our universities should get that respect as the towers of knowledge which seem to have gone down *kidogo* in the last 10 years or so.

Hon. Temporary Deputy Speaker, I think I have covered most of the items. I also mentioned something in terms of submission of accounts to the Auditor-General. Under Clause 12, we are proposing that the accounts should be sent to the Auditor-General after the close of the financial year to harmonise it with the Public Finance Management (PFM) Act of 2012. This Bill affects universities, and high education does not have to go to the Senate. The earlier we can dispense with it, the better we can get the approvals and give our universities a new lease of life.

I want to once again thank the Departmental Committee on Education and Research for the time they have put in. As we hear their views, Members will make a decision on how we can fast-track this Bill.

With those few remarks, I beg to move and request Hon. Florence Mutua, the Chair of the Departmental Committee on Education and Research, to second.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Hon Melly, you have to wait for the Bill to be seconded and then you can contribute. I can see you have already put in an intervention.

Proceed, Hon. Chair.

Hon. (Ms.) Florence Mutua (Busia CWR, ODM): Thank you, Hon. Temporary Deputy Speaker. The Universities (Amendment) Bill, 2021 (National Assembly Bill No.35) was read a First Time on 1st September 2021 and committed to the Departmental Committee on Education and Research for consideration and report to the House pursuant to Standing Order No.216(5)(c).

Consequently, in accordance with Article 118 of the Constitution and Standing Order No.127(3), the Committee sought views from the public by way of written memoranda and further conducted public hearings on the Bill. Organisations and institutions that made representations to the Committee on the Bill include the following:

- a) The Cabinet Secretary, Ministry of Education;
- b) Vice-Chancellors Committee;
- c) Chairs of Councils;
- d) Kenya Association of Private Universities;

- e) National Association of Private Universities in Kenya;
- f) University of Nairobi Council;
- g) Technical University of Kenya;
- h) Universities Academic Staff Union;
- i) Ajenda Kenya; and
- j) PAWA Africa.

Other individuals who submitted their proposals to the Committee include Prof. Louis Mumera from Egerton University and Tom Njeru from the University of Nairobi. The Committee noted various comments in support of or against provisions in the Bill and recommends amendments to the Bill as provided in the Report.

Hon. Temporary Deputy Speaker, permit me to highlight important provisions in the Bill. First and foremost, the Bill seeks to allow the Cabinet Secretary to consider and be satisfied of the circumstances of a university before extending a Letter of Interim Authority. Further, the Bill seeks to ensure that the Cabinet Secretary declares an institution of higher learning to be a constituent college of a university only after recommendation by the Commission.

Secondly, the Bill seeks to harmonise the procedure for appointment of Deputy Vice-Chancellors and Principals and Deputy Principals of university colleges and constituent colleges. This is by way of a selection panel to be constituted by the Cabinet Secretary as opposed to appointment by the university councils. The Bill also seeks to limit the number of Deputy Vice-Chancellors to three, empower the Cabinet Secretary to review or vacate a council decision, adjust the qualifications for appointment of chairpersons and members of university councils, and to provide for staggered appointments for purposes of continuity.

Thirdly, the Bill seeks to provide for the establishment of a Universities Fund Board. This is very key because it will be transacting business as a body corporate, and assets and resources will vest in the Fund and not in the Board of Trustees.

Additionally, the Bill also seeks to reduce the number of members of KUCCPS to provide for additional independent members and for the Chief Executive Officer (CEO) to also be a member of the Board of KUCCPS.

Finally, the Departmental Committee on Education and Research proposed amendments to the Bill for consideration in the Committee of the whole House, most notably:

- (i) Clause 11 of the Bill in which the Committee proposes to amend the Bill to ensure that the councils of public universities retain the function of appointing Principals and Deputy Principals of the constituent colleges through an internal mechanism.
- (ii) Clause 13 of the Bill in which the Committee proposes to amend the Bill to ensure that the Cabinet Secretary does not review council decisions recognising that the Cabinet Secretary is ably represented in the council of a university.
- (iii) A new Clause 14(a) which provides for election to the students' council through election by the students' association comprising of all students, that is universal suffrage as opposed to electoral colleges. Further, to ensure that in order for a student to qualify to stand for an election, one must be in good academic standing.

The Fourth Schedule is to ensure it is only applicable to the appointment of Vice-Chancellors and Deputy Vice-Chancellors of public universities, to ensure that the selection panel is constituted by the council of a university and not the Cabinet Secretary who appoints, ensure the chairperson of the selection panel is a scholar with the highest academic rank and also the council is not represented in the selection panel as it constitutes the same.

Finally, there is a new schedule to provide for the procedure for appointment by the council of a university Principal and Deputy Principal of a constituent college.

It is, therefore, my considered view that the enactment of this Bill with the proposed amendments will enhance the performance and management of universities in Kenya. As I invite Members to read the Report of the Committee, I candidly want to ask them to support this Bill to go to the Third Reading, so that they can bring any other amendments they have at that level.

Hon. Temporary Deputy Speaker, I second.

(Question proposed)

Hon. Kibiwott Melly.

QUORUM

Hon. Julius Melly (Tinderet, JP): Thank you, Hon. Temporary Deputy Speaker. I rise on Standing Order No.35 because the issue of quorum is very important. Noting that this is a very important Bill for the House to discuss, I have sat here and realised we do not have enough quorum.

Thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Alright, I think from the face of it, I go on to order for the Quorum Bell to be rung for 10 minutes.

(The Quorum Bell was rung)

Order, Hon. Members. The 10 minutes for the ringing of the Quorum Bell have expired. Clearly, we have not met the threshold. In that case, we shall adjourn.

ADJOURNMENT

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Hon. Members, the time being 4.40 p.m., this House stands adjourned until Thursday, 17th February 2022, at 2.30 p.m.

The House rose at 4.40 p.m.