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Wednesday, 6th December 2023

The House met at 2.30 p.m.

[The Speaker (Hon. Moses Wetang'ula) in the Chair]

PRAYERS

QUORUM

Hon. Speaker: Serjeant-at-Arms, continue ringing the Quorum Bell.

(The Quorum Bell was rung)

Order, Members. We now have Quorum to transact business. Clerk-at-the-Table.

PETITIONS

(Several Hon. Members walked in the Chamber)

Hon. Members at the back, take your seats. Take the nearest seat. Thank you.

DELAY IN RELEASE OF DAY SECONDARY EDUCATION
CAPITATION BY THE NATIONAL TREASURY

Hon. Speaker: Hon. Members, I have a Petition regarding the release of the Free Day Secondary Education (FDSE) capitation deficit from the academic year 2019 and the financial years 2020/2021 and 2022/2023 by the National Treasury.

Hon. Members, Article 119 of the Constitution accords any person the right to petition Parliament to consider any matter within its authority. Further, Standing Order 225(2)(b) requires the Speaker to report to the House any petition other than those presented by a Member.

In this regard, I wish to report to the House that my Office has received a Petition from one Mr Indimuli Kahi, OGW of P.O. Box 20658-00200 Nairobi, the National Chairperson, Kenya Secondary Schools Heads Association (KeSSHA), a professional organization comprising over 10,000 head teachers drawn from public secondary schools in Kenya.

The Petitioner states that the Association appreciates the continued support the Government has accorded schools through the FDSE Programme since its inception in 2008 by granting capitation per learner. The programme has greatly enhanced secondary school access, retention and completion rates.

The Petitioner explains that in 2008, the rate per learner was Ksh10,625. This was increased to Ksh12,870 in 2015 and then to Ksh22,244 in 2018. In addition, public secondary schools were only allowed to charge boarding fees as set by the Ministry of Education.

The Petitioner is concerned that, despite the increase in capitation per learner, the Government of Kenya (GOK) subsidy for the FDSE has consistently been lower than the actual enrolment. Among the reasons that have caused this worrying trend include an increase in enrolment in January while utilising the budgetary allocations made in November/December

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of the previous year; the fact that a number of students have experienced challenges in obtaining birth certificates and are, therefore, not captured on the National Education Management Information System (NEMIS) platform, which the Ministry of Education utilises to disburse capitation to schools based on the number of students captured; and, partial disbursement of the approved budgeted capitation since 2018.

The Petitioner, therefore, prays that the National Assembly compels the National Treasury to release capitation at the approved rate of Ksh22,244 per learner for the Financial Year 2023/2024, and release the deficit from 2019 amounting to Ksh54,220,185,855 to enable schools to pay the ever-rising pending bills.

Having established that the matter raised in the Petition is well within the authority of this House; and, further, that the matters raised in this Petition are not pending before any court of law, constitutional or legal body, I hereby commit the Petition to the Public Petitions Committee for consideration pursuant to Standing Order 208A.

The Committee is required to consider the Petition and report its findings to the House and the Petitioner in accordance with Standing Order 227(2).

I thank you.

Yes, Hon. Leader of the Minority Party. Do you want to speak to the Petition?

Hon. Opiyo Wandayi (Ugunja, ODM): Yes.

Hon. Speaker: Two minutes.

Hon. Opiyo Wandayi (Ugunja, ODM): I have listened keenly to the Petition. It raises very grave issues. Let me thank KeSSHA. KeSSHA is an established association of head teachers of secondary schools. They have been very instrumental in the management of our schools across the country. I am saying the Petition is raising grave issues because the Government must have done some costing for it to have arrived at the figures you have just referred to from 2008.

It is true, even as we speak, even though schools are now closed, several schools are struggling to make ends meet. On the other hand, head teachers are not allowed to charge extra fees. Additionally, the Government has consistently failed to remit the capitation money. How, then, do you expect those heads to run their schools? That is the question that needs to be answered. How does the Government expect secondary schools to run without money if the head teachers cannot charge extra fees and yet, the money that is supposed to come from the National Treasury is not coming? How, then, do you want our secondary schools to be run? This issue calls for serious introspection not only on the part of the Government but, indeed, on the part of the citizenry.

This House has a duty to address this matter with finality. It must address this matter with finality. Leave alone even the issue of the arrears. The figures you are talking about are monumental in tens of billions of shillings. I can see the Chairman of the Committee on Education, my friend Hon. Melly, looking at me. He is my neighbour in Kisumu. Unless you want us to continue burying our heads in the sand, we must either say that the Government is unable to support secondary education by way of capitation or allow the head teachers to charge extra fees with clarifications.

In a nutshell, this Petition is timely and needs to be processed expeditiously. In addition to the Committee on Education headed by my friend Hon. Melly, we may also need to incorporate more people so that we can deal with this issue holistically.

Thank you.

Hon. Speaker: Hon. K.J.

Hon. John Kiarie (Dagoretti South, UDA): Hon. Speaker, thank you. This is an important Petition. It goes beyond the disbursements and the delays in disbursements. As a country, we will not be able to finance the students whose numbers are not known. That is why the drive towards digital identification and student registration becomes extremely important.

Previously, the Government has been disbursing monies to schools without even ascertaining the exact number of students in any given institution. It has been guesswork.

If the Government was able to identify an individual at birth, it should be able to plan for them through schools, even as they become workers and contributors to this country. As the Public Petitions Committee and the Committee on Education look at this, they also ought to come up with a system that establishes the exact number of learners in our institutions.

Thank you very much, Hon. Speaker, for giving me this opportunity.

Hon. Speaker: Hon. Oyula Joseph. Is that Joseph Oyula? Give him the microphone.

Hon. Maero Oyula (Butula, ODM): Sorry, Hon. Speaker. I am not prepared to contribute to this Petition.

Hon. Speaker: You are on the screen. Hon. Beatrice Kemei, are you on the screen to contribute to this Petition? Those who are not interested in this Petition, log off the screen.

Hon. David Pkosing. Where is he?

Hon. David Pkosing (Pokot South, KUP): Hon. Speaker, I am here. I am prepared to lay a Paper, but I can say something.

As Members have said, this is a very important Petition. However, does this matter require a Petition? It does not require it. It is common knowledge. Where is the Cabinet Secretary for Education?

Hon. Speaker: Order, Hon. Pkosing. Any Kenyan has the right to petition this House, whether it is common knowledge or not.

Hon. David Pkosing (Pokot South, KUP): I thank you, Hon. Speaker. It is an indictment on the Cabinet Secretary for Education. It does not require a Kenyan to think, write a petition, send it to you, and then read it on the Floor of the House. This Petition should go to the Leader of the Majority Party but not the Public Petitions Committee or the Departmental Committee on Education. The Government spokesman in the House should pick up this issue and implement it faster than the Public Petitions Committee. I wish you could direct this Petition to the Leader of the Majority Party for quick intervention.

I thank you.

Hon. Speaker: Hon. Didmus.

Hon. Didmus Barasa (Kimilili, UDA): Thank you, Hon. Speaker. I rise to support these very important and grave issues that the Petitioner has raised. I feel that the Departmental Committee on Education should urgently and expeditiously engage the National Treasury in liaison with the relevant committee. As the Public Petitions Committee proceeds with this Petition, they should ensure that the Ministry fixes this very important matter so that our children are not disenfranchised and can continue to enjoy free secondary education.

Hon. Speaker, I support the Petition.

Hon. Speaker: Hon. Gitonga Murugara.

Hon. George Murugara (Tharaka, UDA): Thank you very much, Hon. Speaker. This is a timely Petition that raises several issues. Firstly, the issuance of birth certificates to our pupils is a problem countrywide. We need to continue decentralising the service into every sub-county so that they are issued.

From there, we move to the NEMIS, which is the registration of students so that they can get capitation. There should be no issues with this. From there, we can move to the Government which is supposed to issue the actual money to the schools by the number of students in the NEMIS. There should be no hindrance here. If we do this, our education system will be seamless. We will not have such petitions that tell us to go back to the Financial Year 2018/2019 to pay arrears.

I urge the Public Petitions Committee to move with speed and resolve this issue. Thank you.

Hon. Speaker: Leader of the Majority Party.

Hon. Kimani Ichung'wah (Kikuyu, UDA): Thank you, Hon. Speaker.

Hon. Speaker: This teacher has raised several things. The most important one, apart from the arrears, is that NEMIS cannot capture children without birth certificates. The Public Petitions Committee may not resolve that. So, you have to give direction.

Hon. Kimani Ichung'wah (Kikuyu, UDA): Thank you, Hon. Speaker. It is, indeed, one of the issues I have noted. The Public Petitions Committee should involve the Office of the Registrar of Persons in their deliberations.

It is pretty clear that the Government should know how many students are in classrooms from Grade 1 to Form IV at every turn of the year. There should be no reason why, even at the turn of the year in January, someone should claim what Mr Indimuli has said in the Petition. Because the data that was used was from November and December, there are more students admitted into secondary schools. They are not admitted from the blues. They sat for the Kenya Certificate of Primary Education (KCPE) the previous year. The Government knows how many students sat for KCPE, for instance, in this financial year and should plan for them.

Parliament also has a role to play. I am sure you will give the Departmental Committee on Education Chairman a chance to contribute. He will tell you that there is always a financial gap of about Ksh22 billion in secondary school education funding. This occasions the deficits that come in. The Budget and Appropriations Committee must ensure that we appropriate adequate resources not only to day secondary schools, but also to our boarding schools.

There are also cases of fraud. Across all our constituencies, some teachers escalate the actual number of students that they have in NEMIS vis-à-vis the ones in classrooms. This causes a great disservice to others who are not captured in NEMIS. The Ministry should leverage Information and Communications Technology (ICT). I like what the Member for Dagoretti South has said. In this day and age, we can capture all those students, from Grade 1 to Form IV and leverage ICT to ensure that everyone has funds.

When the Leader of the Minority Party contributed, he proposed that the Government should say that they are unable to pay the capitation and allow headteachers to increase school fees. Under these strenuous economic times, we must never allow headteachers to raise school fees anywhere. The Government of Kenya should pay them for all our children. I want to advise my good friend, Hon. Opiyo Wandayi. The Members of the Minority Party claim that school fees and fuel costs have gone up. You cannot say here that we allow school fees to go up. It must not go up at all. We also have bursaries. He is the same person who raised the issue of bursaries yesterday.

The multiplicity of bursary funds in this country is an issue. Whether we like it or not, we must look into it at one point or the other. The National Government Constituencies Development Fund (NG-CDF), the Ministry of Education and the county governments, against the Constitution, have bursary kitties. If we do not confront this multiplicity of those bursaries today and in the near future, it will become a big problem for us. The money being taken to bursaries should be re-directed to the capitation of secondary schools. If all our public secondary schools are fully catered for, including those who are boarders, we may not need to give bursaries to anybody.

I hope the Public Petitions Committee will interrogate the Ministry to ascertain the cost of maintaining a child in a day secondary school or boarding school, whether an extra county, county or national school. If we pool all our resources in the county governments, NG-CDF, and the Ministry of Education to secondary school capitation, we will not need to give people those handouts as bursaries.

I beg to support the Petition. I hope that the Public Petitions Committee will look into all those issues. I hope that the Chair of the Departmental Committee on Education will speak to the actual budgetary deficits that occasion some of those deficits in financing.

Thank you, Hon. Speaker.

Hon. Speaker: Hon. Robert Mbui. You have two minutes.

Hon. Robert Mbui (Kathiani, WDM): I thank you, Hon. Speaker. I rise to support this Petition. Capitation is always delayed, and it is never enough.

The Petitioner has raised a matter here on whether the Government knows the number of children. Let us be honest with ourselves. The Government knows the number of children in every school. Every classroom teacher must sign a class register every single day, morning and afternoon, confirming the number of children in the school. It is not rocket science. Every principal knows the number of children. The problem we face is when we are told the children must have birth certificates to be put in the NEMIS. Unfortunately, it is also the Government that controls their production and delivery. Parents are unable to get them unless they queue for long hours. Many children do not have birth certificates and are not put in the system.

There was a time when we were supporting examinations. The amount of money allocated for examinations and sports is too little that it cannot run the education system. How do we increase the capitation to make it enough for our children?

Thank you, Hon. Speaker.

Hon. Speaker: Thank you. The last Member to contribute to this Petition is Hon. Melly. You have two minutes.

Hon. Julius Melly (Tinderet, UDA): Thank you, Hon. Speaker. I rise to support this Petition. I want to bring to the attention of the House that the funding gap exists due to the decision of this House. Out of Ksh630 billion, secondary school education is allocated around Ksh60 billion. It should have more than Ksh80 billion. We have a funding gap of Ksh22 billion every year. I ask this House to let us ensure the amount of money is put into the budget in the next budget cycle.

The Leader of the Majority Party has made it very clear that we have various sources of funding in this country. We discussed with some experts the other day that there is a lot of money out there with the local banks, NG-CDF, county governments and other institutions, amounting to over Ksh30 billion. If trimmed off well, it can do an excellent job of funding education.

There is an issue of birth certificates. I want to address the Ministry of Interior and National Administration. It has become a serious problem in schools. The Ministry of Education and the Ministry of Interior and National Administration need to work together to digitise and know the number of students. Every student needs to have a number so that we can avoid fraud. As Hon. K.J. has said, we need a clear school digital system to fund every child. We have registers in schools. The Public Petitions Committee and Departmental Committee on Education will have an input in this Petition to solve this issue. It should not give principals an excuse to raise school fees. These are challenging economic times. We need to lessen the burden that we are giving to the parents of this country. Let the Government pay the capitation. The principals should not raise school fees at this particular time. We need to streamline the process to ensure that our money reaches schools on time.

Lastly, the budget cycle and school calendar start at different times. We need to sit down and align them so that disbursement is in tandem with what is happening.

I thank you. I support the Petition.

Hon. Speaker: Thank you. The Petition is committed to the Public Petitions Committee. Should they find any requirement to consult with the Departmental Committee on Administration and Internal Affairs and Departmental Committee on Education, they are free to do so.

Hon. Ruweida Obo, present your Petition.

DEGAZETTEMMENT OF BONI-LUNGI
FOREST IN LAMU EAST CONSTITUENCY

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Hon. Ruweida Mohamed (Lamu East, JP): Hon. Speaker, I, the undersigned, on behalf of the residents of Lamu East Constituency, draw the attention of the House to the following:

THAT, Boni-Lungi is an area of land between Dodori and Boni National Reserves in Lamu East Constituency measuring approximately 39,925.7 hectares, and is inhabited by over 480 households of the Aweer Community;

THAT, Article 56 of the Constitution obliges the Government to put in place affirmative action programmes for minorities and marginalised groups. Further, the National Land Policy calls for protection of land rights from unjust and illegal dispossession of both vulnerable and minority communities;

THAT, vide Gazette Notice No.1447 of 2016 published on 4th March 2016, the Cabinet Secretary for Environment, Natural Resources and Regional Development Authorities declared Boni-Lungi as a State forest;

THAT, the gazettelement was done without consulting the people and leaders of the affected region contrary to Article 10(2)(a) of the Constitution, which provides for public participation in making and implementing public policy, and in applying the law. Further, the gazettelement was in breach of the provisions of Article 69(1)(d), which requires the State to encourage public participation in environmental management;

THAT, the land in question is community land that the local people have been farming and depending on resources for collecting natural fruits, honey, plants for traditional medicine and building materials;

THAT, being one of the most marginalised indigenous cultures in the country, the gazettelement further threatened the Aweer Community with loss of their land, livelihoods, way of life and, perhaps, their very lives;

THAT, sustained efforts to solve the issue and attain a workable solution to this concern have been futile; and,

THAT, the matter presented in this Petition is not pending before any court of law, constitutional or legal body.

Therefore, your humble Petitioners pray that the National Assembly, through the Public Petitions Committee:

1. Investigate the matter and compels the Ministry of Environment, Climate Change and Forestry to degazette Boni-Lungi as a State forest.
2. Recommend that the Cabinet Secretary for Lands, Public Works, Housing and Urban Development in consultation with the County Government of Lamu to facilitate registration of Boni-Lungi as community land pursuant to Article 63(5) of the Constitution and other applicable laws.
3. Make any other order and/or direction that it deems fit in the circumstances of the matter.

And your Petitioners will ever pray.

Thank you, Hon. Speaker.

Hon. Speaker: Thank you, Hon. Ruweida. Your Petition is committed to the Public Petitions Committee to report back to you and the House within 60 days.

Next Order.

PAPERS

Hon. Speaker: Leader of the Majority Party.

Hon. Naomi Waqo (Marsabit County, UDA): Hon. Speaker, I beg to lay the following Papers on the Table:

Reports of the Auditor-General and Financial Statements in respect of the following projects for the year ended 30th June 2023, and certificates therein–

1. Global Fund to contribute to achieving Vision 2030 through Universal access to Comprehensive HIV Prevention, Treatment and Care Programme KEN-H- TNT 2065 – Ministry of Health.
2. Promotion of Youth Employment and Vocational Trainings in Kenya (Phase I) Reference: Loan No. BMZ 201667,211 and No. 2016 65 298 and Project Grant Reference No. 1930 05 527 – State Department for Technical, Vocational Education and Training.
3. Nairobi Outering Road Improvement Project – Kenya Urban Roads Authority.
4. Capacity Development Project for Enhancement of Rice Production in Irrigation Schemes in Kenya (Project Number 1161001009) – Ministry of Agriculture and Livestock Development, State Department for Crop Development.
5. South Sudan Link Road Project (Ref: No. 2020 62 065 and BMZ NO. 2020 83 939 – Kenya National Highways Authority.
6. National Agricultural and Rural Inclusive Growth Project (IDA CREDIT No. 5900-KE) – State Department for Crop Development.
7. Emergency Locust Response Project (IDA CREDIT No. 6648 and No. 70530- KE) – State Department for Crop Development.
8. Kenya Primary Education Equity in Learning Programme Credit No. 7067 –KE – Teachers Service Commission.
9. Support to the State Department for Technical, Vocational Education and Training for Relevant Skills Development Project – TVET Project Phase II (ADF Loans No. 2100150033295) – State Department for Technical, Vocational Education and Training.
10. Secondary Education Quality Improvement Project (Credit No. 61380-KE) – State Department for Basic Education.
11. Support to Technical and Vocational Education Training and Entrepreneurship (TVETE Project Phase III) (Loans No. 2100150012254) – State Department for Technical, Vocational Education and Training.
12. Establishment of Kenya Advanced Institute of Science and Technology Project No. KEN –4 – State Department for Higher Education and Research.
13. East Africa Skills Transformation and Regional Integration Project (EASTRIP) Grant /Credit No IDA 6334 –KE) – Kisumu National Polytechnic.
14. Lake Victoria Environmental Management Project Phase III (LVEMP) Project Preparatory Advance No. V 1570 – Ministry of Environment and Forestry.
15. Kenya Social and Economic Inclusion Project Credit Number 6348 – KE – State Department for Social Protection and Senior Citizen Affairs.
16. Kenya Youth Employment Opportunities Project -58120–KE - State Department for Labour and Skills Development.
17. Kenya Youth Employment and Opportunities Project (Credit No. IDA 5812-KE) – Micro and Small Enterprises Authority (MSEA).

18. Eastern and Southern Higher Education Centres of Excellence (ACE II) (Credit No. 5798-KE) – State Department for Higher Education and Research.

Hon. Speaker: Thank you, Hon. Naomi Waqo. Leader of the Majority Party, when you lay Papers on the Table, for purposes of the *Hansard*, read exactly as it is written. I could tell that you were skipping some words. For example, if you read out Report No.10 on the Secondary Education Quality Improvement Project, you must also read out (Credit No. 61380-KE) before you move to the next Paper. From what you have read out, there will be gaps in the *Hansard*. You better follow up with the Clerks-at-the-Table to correct that. Avoid *njia ya mkato* in future.

Next is the Chairperson of the Public Investments Committee (PIC) on Commercial Affairs and Energy. Who is the Chairperson of PIC? Go ahead, Hon. Pkosing.

Hon. David Pkosing (Pokot South, KUP): Hon. Speaker, I beg to lay the following Paper on the Table:

First Report of the Public Investments Committee on Commercial Affairs and Energy on the Examination of the Reports of the Auditor-General on the Financial Statements of Selected State Corporations.

Thank you, Hon. Speaker.

Hon. Speaker: Thank you. Next is the Chairperson of the Public Investments Committee on Governance and Education.

Hon. Wanami Wamboka (Bumula, DAP-K): Hon. Speaker, I beg to lay the following Paper on the Table:

Third Report of the Public Investments Committee on Governance and Education on its Consideration of the Reports of the Auditor-General on the Financial Statements of State Corporations (Central Region) for the Financial Years 2018/2019, 2019/2020 and 2020/2021.

Thank you, Hon. Speaker.

Hon. Speaker: Thank you. Next Order.

NOTICES OF MOTIONS

ADOPTION OF REPORT ON FINANCIAL STATEMENTS OF SELECTED STATE CORPORATIONS

Hon. Speaker: Chairperson of the Public Investments Committee on Commercial Affairs and Energy.

Hon. David Pkosing (Pokot South, KUP): Hon. Speaker, I beg to give notice of the following Motion:

THAT, this House adopts the Report of the Public Investments Committee on Commercial Affairs and Energy on its consideration of the Reports of the Auditor-General on the Financial Statements of selected State corporations, laid on the Table of the House on Wednesday, 6th December 2023.

Hon. Speaker: Chairperson of the PIC on Governance and Education.

ADOPTION OF REPORT ON FINANCIAL STATEMENTS OF STATE CORPORATIONS (CENTRAL REGION) FOR FINANCIAL YEARS 2018/2019, 2019/2020 AND 2020/2021

Hon. Wanami Wamboka (Bumula, DAP-K): Hon. Speaker, I beg to give notice of the following Motion:

THAT, this House adopts the Report of the Public Investments Committee on Governance and Education on its examination of the Reports of the Auditor-General on the Financial Statements of State Corporations (Central Region) for the financial years 2018/2019, 2019/2020 and 2020/2021, laid on the Table of the House on Wednesday, 6th December 2023.

Hon. Speaker: Member for Kabuchai.

REVIEW OF ELIGIBILITY AGE FOR ENROLMENT TO
THE INUA JAMII CASH TRANSFER PROGRAMME

Hon. Majimbo Kalasinga (Kabuchai, FORD-K): Hon. Speaker, I beg to give notice of the following Motion:

THAT, aware that Article 57 of the Constitution provides that the State shall take measures to secure the rights of older persons to live in dignity and to receive reasonable care and assistance from the State; noting that to actualise the provisions of Article 57 of the Constitution, the Government rolled out the *Inua Jamii* Cash Transfer Programme in 2015 to provide regular and predictable cash transfers to older persons aged 70 years and above and who are not in receipt of a civil service pension; appreciating the success that the programme has recorded in alleviating poverty and suffering among older members of the society since its inception; noting that the Government intends to progressively net more vulnerable and under-privileged members of the society with a view to reaching 2.5 million beneficiaries in the next three years; concerned that, with respect to eligibility to the programme for older members of society, the guidelines requires them to have attained the age of 70 years; noting that, Article 260 of the Constitution defines an “older member of society” as one who has attained the age of 60 years; concerned that capping the eligibility for enrolment to the *Inua Jamii* Programme at the age of 70 years is discriminatory to the older members of society and negates the spirit of the Constitution entitling support to older members of the society; now therefore, this House urges the national Government, through the Ministry of Labour and Social Protection, to revise the age requirement for eligibility of elderly members to be enrolled to the *Inua Jamii* Programme from 70 years to 60 years in line with the Constitution.

Hon. Speaker: Next Order.

QUESTIONS AND STATEMENTS

Hon. Speaker: We will first have a Statement from Hon. Johana Ng’eno, the Chairperson of the Departmental Committee on Housing, Urban Planning and Public Works.

Is Hon. Omar Mwinyi here?

Go ahead, Johana Ng’eno. Clerk, give the microphone to Ng’eno. You have turned on the microphone behind him.

STATEMENT

MANAGEMENT OF HOUSES AND TREATMENT OF TENANTS
IN ESTATES OWNED BY NHC IN MOMBASA COUNTY.

Hon. Johana Kipyegon (Emurua Dikirr, UDA): Thank you, Hon. Speaker.

Hon. Speaker: How long is your Statement?

Hon. Johana Kipyegon (Emurua Dikirr, UDA): I beg your pardon, Hon. Speaker?

Hon. Speaker: How long is your Statement?

Hon. Johana Kipyegon (Emurua Dikirr, UDA): Just a few minutes.

Hon. Speaker: Pardon?

Hon. Johana Kipyegon (Emurua Dikirr, UDA): Three minutes.

Hon. Speaker: Okay.

Hon. Johana Kipyegon (Emurua Dikirr, UDA): Two minutes will be enough.

Hon. Speaker, pursuant to the provision of Standing Order 44(2)(c), Hon. Omar Mwinyi requested a Statement from the Chairperson of the Departmental Committee on Housing, Urban Planning and Public Works regarding the management of houses and treatment of tenants in estates in Mombasa County, owned by the National Housing Corporation (NHC).

On 25th October 2023, the Committee wrote to the Cabinet Secretary, Ministry of Lands and Housing vide a letter reference No. NADDC HUP 2023 031 on 27th October, 2023 inviting them to submit the response on the matter raised by the Statement. The response was forwarded to the Committee by the Cabinet Secretary on 27th November 2023. I beg to table it.

The Cabinet Secretary has fairly answered the issues that Mheshimiwa Omar raised. Question one was on the essential amenities and facilities that the developers of affordable housing and building on spaces must provide to tenants. The Cabinet Secretary replied that it is the responsibility of the NHC and the State Department to ensure that all the houses that tenants occupy have all the amenities and facilities that are meant to be accorded to the tenants.

Question two was on the steps taken by the Government to ensure that all waste water and effluent from the sewerage system of an estate in Mombasa owned by the National Housing Corporation in Changamwe Constituency are addressed. In his reply to that Question, the Cabinet Secretary enumerated the co-operation between the State Department, the NHC, and the Mombasa Water and Sewerage Company (MOWASSCO). They are co-operating to ensure that all those amenities and facilities are provided for in those housing projects.

Question three sought clarification on whether the National Environment Management Authority of Kenya (NEMA) has developed regulations on managing toxic and hazardous sewage flow from broken systems and how they are implemented. The Cabinet Secretary replied to this Question, and I believe his answer is fairly clear. Unless the Member has other issues that he wants to raise, the answer is fairly clear.

On Question four on the actions that may have been taken against NHC for poor management of the estate, I felt that whatever the Member raised needed serious and deep investigation, specifically on the constant harassment of residents living in the area or the estates, including threats of eviction; sexual harassment; corruption, allegations; rental areas; disputes; harmonization; access to purchase houses; ongoing projects without approval; debts and injuries; security lights; social amenities and lack of public participation.

I have read the response by the Cabinet Secretary. One of the responses was that no action is preferred against the NHC by anyone. Therefore, the NHC would have responded if there were any formal complaints by anyone or any other matter. However, on that issue, my Committee visited the housing project in Changamwe on 24th June 2023. We took time to listen to the Member of Parliament representing Changamwe and the tenants living in those houses. There were too many issues that were raised.

In conclusion, I agree that some issues need further investigation, especially on the issue of tenants who have been living in those houses, and we can understand that. Some of the original tenants passed on and left their children behind. Their children could be unemployed and unable to continuously pay for those services or the rent of the houses. We need to have a further discussion on this to ensure that those people are not unfairly evicted from those homes. I will end by saying that the answers to some of the issues that the Member raised are what the State Department is trying to do. It is building affordable housing and doing tenant purchase

programmes where, instead of renting a house upon retirement, you leave the House to its owners. The tenant purchase programme means that you pay rent but towards the purchase of that particular House so that when you retire or die, whichever comes first, the House remains your children's property. That is a programme that the State Department is working on to ensure that it is not just about renting those houses so that when you retire, you leave nothing behind for your siblings. I submit.

Hon. Speaker: Hon. Omar Mwinyi, are you satisfied?

Hon. Omar Mwinyi (Changamwe, ODM): Thank you, Hon. Speaker. The Chairman, Hon. Ngeno, is a good friend of mine. We have been together in this House for the last three terms, and I respect him as my colleague. However, there is more to the issue of the National Housing Corporation in Changamwe than what the Chair has alluded to. The last time the Committee visited – about four months ago – in the presence of the Cabinet Secretary, they saw that the new houses that had been constructed were five-storied and yet, there was no provision of water for the new units. The tenants upstairs have to go to the ground floor to fetch water and manually take it upstairs to the fifth floor. The Committee saw all that. The sewage was also wanting. The Committee also heard and verified that the National Housing Corporation is not co-operating with its tenants. It is behaving in a rogue manner. I have videos showing the National Housing Corporation passing bulldozers between houses while constructing new units without involving the tenants. That is precisely what is happening in Palestine. They claim they involved the Changamwe people whenever they wanted to do anything. That is false.

Hon. Speaker: Ask for clarification on the Statement.

Hon. Omar Mwinyi (Changamwe, ODM): I want to ask the Chairman, through the Speaker, if it is true that the NHC has no proper roads. Is it true it has no proper lighting? Is it true that it has no wall fence to keep off robbers and burglars? Is it true that the facility lacks water? I would also like to ask the Chairman – as he was present during the meeting – is it true that the NHC grabbed land belonging to Magongo and Gome Primary Schools and through my intervention, we managed to reclaim those pieces of land in what the NHC calls political interference? NHC should know that our work is to represent our people. Representing our people does not mean that we are interfering with their work. We are doing our work. I wish that you direct the Committee to conduct proper investigation. This is because some time back, there was a full Board chaired by the former Member for Ndia Constituency. They brought up two lists of debts.

Hon. Speaker: Hon. Omar Mwinyi, you are debating your issue.

(Hon. Omar Mwinyi spoke off the record)

Hon. Speaker: Give him the microphone.

Hon. Omar Mwinyi (Changamwe, ODM): Hon. Speaker, I represent the people of Changamwe well. That is why they have elected me three times. I want NHC to be investigated because it has no capacity to collect rent. Furthermore, it is not its duty to collect rent. It is supposed to build and sell the property, and then develop more for people to occupy. They have even forgotten their roles. I would go on and on but we have a schedule in this House and so, I rest my case. Further, I seek your indulgence that this Committee conducts thorough investigation and brings a full report to the House. I know three managing directors who were fired because of mismanagement of rent collection.

Hon. Speaker, I rest my case.

Hon. Speaker: Hon. Johana Ng'eno, you have heard what the Member has said. He is not happy with your Statement.

Hon. Johana Kipyegon (Emurua Dikirr, UDA): Hon. Speaker, statements are statements. The requests are sent to the Ministry for answers. Whichever answer the Ministry gives me, there is no opportunity to subject it to thorough or further questioning. It is the same thing with Question Time, although Question Time is better because there is one-on-one interaction with the Cabinet Secretary. I agree with the Member that we must thoroughly investigate this matter through your indulgence.

Hon. Speaker: Hon. Ng'eno, you seem to agree that your Statement is inadequate. Liaise with the Member and, if possible, call the concerned Cabinet Secretary to your Committee, invite the Member and interrogate the matter further.

Hon. Johana Kipyegon (Emurua Dikirr, UDA): That is correct, Hon. Speaker

Hon. Speaker: Thank you. Hon. Members, I will give some directions as follows. Under Order No. 7, I promised to give Hon. Bashir Sheikh Abdullahi and Hon. Alice Ng'ang'a an opportunity to make 15-minute statements on proposed amendments to the Constitution. I will do that after putting the question at Order No.8 and taking the all-encompassing Question by Hon. Robert Mbui to the Cabinet Secretary for Roads and Transport. Thereafter, Hon. Alice Ng'ang'a and Hon. Bashir Sheikh should be available for their statements. Clerk-at-the-Table, call out Order No.8.

(Hon. Beatrice Kemei rose up in her place)

Hon. Speaker: Hold on, Clerk-at-the-Table. What is the problem, Member for Kericho County?

Hon. Beatrice Kemei (Kericho County, UDA): Thank you, Hon. Speaker. Last week, I presented a request for a statement on the Floor of the House, and you directed that I get the report today.

Hon. Speaker: Is it about the two Kenyans who drowned?

Hon. Beatrice Kemei (Kericho County, UDA): Yes. As I wait for the report, I am happy to report that one of the bodies was retrieved, and the funeral was conducted yesterday. The other body is still missing. The family and friends are still waiting. I was there on Sunday, and the people were anxious. They are suffering.

Hon. Speaker: Hon. Deputy Speaker, if you will be in the Chair tomorrow morning, let the Chairman of the concerned Committee issue the Statement. Order, Hon. Members.

(Hon. Owen Baya walked along the gangways)

Hon. Owen Baya, take your seat. Hon. Members who are still on their feet, take your seats. Clerk-at-the-Table, call out Order No.8.

(Loud consultations)

Order, Hon. Members. Take your seats. I will propose the Question at Order No.8.

BILL

Third Reading

THE GAMBLING CONTROL BILL (National Assembly Bill No.70 of 2023)

(Moved by Hon. Kimani Ichung'wah on 6.12.2023 – Morning Sitting)

(Resumption of debate interrupted on 6.12.2023 – Morning Sitting)

(Question proposed)

Hon. Members: Put the Question.

Hon. Speaker: I will now put the Question. I confirm that we have enough numbers to vote on the Question.

(Question put and agreed to)

*(The Bill was accordingly read
a Third Time and passed)*

Hon. Speaker: Clerk-at-the-Table, we go back to Order No.7.

QUESTIONS AND STATEMENTS

Hon. Speaker: Hon. Members, remember we directed that the Cabinet Secretary for Roads and Transport comes to the House today to answer a Question framed by the Member for Kathiani, Hon. Robert Mbui. The Cabinet Secretary is already in the Chamber. Cabinet Secretary, welcome to the House. I invite the Member for Kathiani to ask the Question.

QUESTION BY PRIVATE NOTICE

QPN 019/2023

CRITERIA FOR ALLOCATION OF FUNDS FOR IMPROVEMENT OF ROADS AND CONSTRUCTION OF DRAINAGE

Hon. Robert Mbui (Kathiani, WDM): Thank you, Hon. Speaker, for giving me this opportunity. I beg to ask the Cabinet Secretary for Roads and Transport the following Question:

Could the Cabinet Secretary—

- (a) Clarify on the criteria utilised for allocating funds to the improvement of roads and construction of drainage structures through the Road Maintenance Levy Fund and Development Vote, as outlined in the Tender Notice published by the Kenya Rural Roads Authority (KeRRA) on 29th September 2023?
- (b) Explain the reasons, including the factors influencing the discrepancies in the allocation of funds in road improvement projects, specifically noting the omission of certain counties?
- (c) Outline the immediate steps the Ministry is undertaking to ensure the equitable and fair allocation of funds for the improvement of roads and construction of drainage structures, considering the current weather circumstances experienced across the country, which are contributing to the deterioration of roads in various regions?

Hon. Speaker: Thank you. Cabinet Secretary.

The Cabinet Secretary for Roads and Transport (Hon. Kipchumba Murkomen): Thank you very much, Hon. Speaker. It is my privilege to appear before the plenary of the National Assembly this afternoon, in compliance with a letter from the Clerk dated 28th November 2023. The aforementioned invitation required me to respond to a Question by Private Notice No.19/ 2023. Also, it extended leave to provide policy positions appropriately. In the section below, I have responded to the Question.

Hon. Speaker: Cabinet Secretary, please deal with this Question in the next 45 minutes because of the heavy calendar I have.

The Cabinet Secretary for Roads and Transport (Hon. Kipchumba Murkomen): Thank you, Hon. Speaker.

Hon. Speaker: That will include a myriad of supplementary questions and joyriding.

(Laughter)

The Cabinet Secretary for Roads and Transport (Hon. Kipchumba Murkomen): Thank you, Hon. Speaker. I beg to respond as follows.

In Part 1, the maintenance of public roads is funded by the Roads Maintenance Levy Fund (RMLF), commonly known as the Fuel Levy. The allocation of funds collected from this Levy is implemented in accordance with legislation that is enacted by this august House. In particular, the Kenya Roads Act, 1999, Section 6(2)(d) and (e) stipulates percentage allocation out of the funds as follows: 22 per cent is allocated equally to all constituencies in the country to be administered by the Kenya Rural Roads Authority (KeRRA). Ten per cent of the funds is allocated for the maintenance or development of link roads between constituencies and serves as Government counterpart funding for rural roads, to be administered by KeRRA. The said percentum shall be equally distributed to the constituencies where KeRRA has a mandate.

Forty per cent of the funds are allocated for national roads to be administered by the Kenya National Highway Authorities (KeNHA). Fifteen per cent of the funds are allocated for the urban roads to be administered by the Kenya Urban Roads Authority (KURA). One per cent of the funds are allocated for roads in the national parks and reserves to be administered by the Kenya Wildlife Service (KWS). A maximum of 2 per cent of the funds are allocated with respect to the recurrent expenditure of the board, and the administration of the balance of 10 per cent is in accordance with the Road Sector Investment Programme (RSIP) as approved by the Ministry of Roads.

Concerning KeRRA, which was the subject of the Question, Members will note that the allocation of 32 per cent of the Fuel Levy earmarked for rural roads is distributed. Hon. Speaker, I want to emphasise that it is distributed equally to the concerned constituencies. The 10 per cent Fuel Levy Fund mentioned under Section 6 of the Kenya Roads Act is allocated to address other emergencies and the security of roads. The Constituency Roads Committee (CRC), which has appointees of the National Government Constituency Development Fund (NG-CDF) under the patronage of Hon. Members, is valuable instrument in ensuring equity and optimal use of Fuel Levy at the constituency level.

Hon. Speaker, it is clear that the RMLF is distributed equally. This means that every Hon. Member in this financial year will superintend and oversee an amount herein provided, which is 22 per cent in all the 290 constituencies, which is Ksh44,522,070. In the 10 per cent, they have Ksh20,237,305. As a matter of fact, and for this House's record, every constituency in the Republic of Kenya, without any discrimination, received Ksh64,759,375 this financial year.

Let me turn to the Development Vote. Budget allocation towards various projects is processed through the annual budgetary cycle, culminating in appropriation by the National Assembly. This budget preparation cycle includes a detailed scrutiny by the Budget and

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Appropriations Committee of the National Assembly. Notably, appropriations under the development vote are project-specific. Once Parliament approves, the Ministry stands guided and instructed to implement the same.

The initial budget allocation proposal for the development vote is generated by agencies of the Ministry, taking into account the following parameters: top priority is given to the completion of on-going projects, which is a requirement under the Public Finance Management (PFM) Act, 2012; availability of physical space for new projects; government policies and strategic directions concerning infrastructure development, taken together with technical and economic feasibility and equity and regional balance.

I wish Hon. Members can help me appreciate this point. This is because it is the cause of too many questions that come to my office privately, are generated by Members of Parliament in this Chamber, or addressed by Members in the public square. This is another category of projects that come about as a result of constitutional imperatives and public participation as guided by Parliament. Those projects are implemented by KeRRA, largely without modification to the priorities selected and approved by Parliament.

Through this distinguished House, I hope to make it clear to the public that such projects are entirely consistent with fairness and due process. They should not be ascribed to any deficit of equitable allocation of projects by KeRRA. Turning to the tender notice published by KeRRA...

Hon. Speaker, later I will speak on the issue of public participation projects that are appropriated every year by Parliament, including how much was appropriated this financial year and how this has become a matter of immense contention despite the fact that Hon. Members of this House approve those resources.

Turning to the tender notice published by KeRRA on 29th September 2023, serious misunderstanding and misinterpretation appeared in various fora. I am grateful for this opportunity to set the record straight for this distinguished House. Let me mention five key points that misled the public when the tender notice was taken in isolation as evidence of iniquity.

First, the tender contained projects based on termination and re-tendering. In implementing various development vote projects, KeRRA encountered a number of non-performing contractors. After repeated attempts to revive the affected projects, it failed. So, it was found necessary to terminate the said projects. Permission was obtained from the Attorney-General to wind up the projects and conduct fresh tendering to enable the continuation. For the avoidance of doubt, there are other similar terminated projects for which replacement of contractors will be sought through open tenders in the future.

Second is the inclusion of public participation projects identified and approved by Parliament. Before, they were handed over to KeRRA for implementation, at which point the tenders were advertised. Extraction of public participation projects from the procurement notice without the background and origin being made clear and using the same in comparison with projects that are funded by other sources leads to invalid conclusions. The projects are distributed across the country in line with the principle of public participation and other constitutional imperatives that are considered and determined by this House.

The question as to whether this is just, fair, or equitable is not better answered by the Cabinet Secretary. Indeed, it is better answered by this House. Hon. Mbuyi is a distinguished leader of two terms in this House. He has a better answer than me or any other person. In fact, since the Budget is itemised to specific roads, the Ministry or its agencies cannot for sure establish where the roads are located through Question Time.

Hon. Speaker, for the last five years, the funds distributed by this House through those mechanisms are in the knowledge of this House. Therefore, I would like to say for this Financial Year, this very Chamber, this very House, budgeted a total of Ksh21 billion, which is far higher

than the money allocated to KeRRA under the Road Maintenance Levy through the (RMLF). If the distribution of those resources to various agencies as budgeted is unfair, then neither KeRRA nor the Ministry will be blamed because we are constitutionally bound to implement the decisions of this House without injecting a scintilla of doubt.

The third indicator of the advertised projects is where we have emergency cases, like the situation with *El Nino*. The Ministry allocated resources from the emergency fund or other sources to address those emergencies. The emergencies arise as works are tendered by any road agency for the purpose of repair. Those activities are specific to network reinstatement and the geographical location in question; therefore, generalised comparisons with other counties, for example, are invalid. Such projects also include security roads aimed at improving security operations where we have cases of emergencies, such as in the case of *El Nino*, where the Ministry will allocate resources either from the Contingency Fund or from other sources, including those budgeted by this House. Such allocation should not be misconstrued as an unfair distribution of resources because they will be addressing what in law is called *force majeure*, otherwise known as the act of God.

Fourth is the aggregated funding towards constituency roads identified by the CRC. A number, and this is important for emphasis, of the Constituency Roads Committees have gained experience and have found that combining various approved budgetary allocations into one bigger project tendered as one package is best. The consequence of this approach was that the project size tends to exceed the regional threshold of Ksh10 million, necessitating KeRRA to conduct the procurement at a national level. If those aggregated initiatives are extracted in isolation from their procurement notice and used in general comparison with CRCs that have not adopted the same approach, errors will result. The notorious constituencies for this type of cost are those in urban and peri-urban areas, such as Kikuyu Constituency, where the Leader of the Majority Leader comes from.

When adverts appear nationally, people tend to question why those areas have been considered with big projects when, in reality, they have aggregated their resources into one project, unlike many other constituents, especially in rural areas, which receive equal amounts to the same constituencies but choose to allocate them to projects of less than Ksh10 million and, therefore, advertised at the regional level.

Some of the Members of Parliament here guiding their CRCs decide that instead of funding roads of less than Ksh10 million, they aggregate their money to Ksh20 million, Ksh30 million, or Ksh40 million and decide that it be advertised at the national level by KeRRA because of the constitutional and legal imperatives for advertisement. As a result, you will find, for example, Kikuyu Constituency in the advert that Hon. Mbui shared; they are there advertising a project, but the other constituencies across the country where they advertise their roads below Ksh10 million cannot appear in the national advert because they will appear in the regions where advertisements occur. Again, taking it in isolation would appear as though one constituency is getting more than the other and yet, it is just about how the constituency is utilising those resources.

Hon. Speaker, 50 is a misinterpretation of project costs as an annual budget. This is where, again, the question of Hon. Mbui is extremely important. Part of the misinformation associated with the KeRRA notice of 29th September 2023 is insinuation that the multi-year global cost estimate for various projects was, in fact, a budget allocation for a single year and, thus, an indication of a skewed allocation of scarce resources. While this incorrect interpretation is easily detected and corrected through cross-reference to approved budgets by this House and approved annual road work plans, I take this opportunity to assure the House once, again, that the allegations of skewed resource allocation were utterly without basis. In fact, I have been baffled by the utterances both inside and outside these Chambers by elected representatives of the people who have been given enormous mandate and responsibility to do

this sacred duty of distributing the public resources to turn around the whole world, either feign ignorance on the public or...

(Loud consultations)

Hon. Robert Mbui (Kathiani, WDM): On a point of order.

Hon. Speaker: Order! Order, Hon. Members. Yes, Hon. Robert Mbui, what is out of order?

Hon. Robert Mbui (Kathiani, WDM): Thank you, Hon. Speaker...

Hon. Speaker: He is answering your question, remember.

Hon. Robert Mbui (Kathiani, WDM): Hon. Speaker, I do agree. You know that this is a question that I raised in the House Business Committee that you chair, and we agreed that instead of talking about it even in this Chamber in the form of an Adjournment Motion, we ask the Cabinet Secretary to come and clarify. Is the Cabinet Secretary in order to lecture Members of Parliament? He has said that he is baffled by utterances both inside and outside these Chambers by elected representatives of the people who have been given a mandate to turn around the whole world and either feigned ignorance or deliberately mislead the public. Is the Cabinet Secretary allowed to say such words in this House? The Cabinet Secretary has to withdraw that statement and apologise to this House.

Hon. Speaker: He is answering your question. Let him finish. You will interrogate him.

Order, Hon. Members. I have brought the Cabinet Secretary for you to grill him on whatever you want. That grilling and questioning excludes shouting at him. Listen to him, and when he finishes, everybody will have an opportunity to ask questions, which I shall compel him to answer.

Let us have some decorum in the House. Hon. Cabinet Secretary, try and paraphrase your answers.

The Cabinet Secretary for Roads and Transport (Hon. Kipchumba Murkomen): Thank you, Hon. Speaker. The reason I have to go this length to answer in detail is that there is a misconstrued position in public that certain constituencies, certain counties or certain communities are getting projects more than the others.

(Loud consultations)

I have over-emphasized that should there be an unfair distribution of those resources, the problem squarely lies in the House that allocates the resources.

(Loud consultations)

I will be willing to be educated where else budget takes place in the Republic of Kenya. The only supreme august House in the Republic of Kenya which allocates resources and ...

Hon. Speaker: Order, Hon. Cabinet Secretary. Take your seat.

Hon. Members, let us take the answer. Hon. Cabinet Secretary, try and paraphrase. You have made your policy statement. Avoid the temptation to appear as if you are lecturing Members.

Hon. Members: Yes!

Hon. Speaker: Order! I need no assistance.

(Laughter)

I need no assistance from any one of you. Avoid the temptation to appear as if you are lecturing Members. Answer the question. Indeed, many of these Members keep coming to my Chamber to raise the same questions, and that is why you have been called here.

Hon. Members, when he finishes, I will give you time to ask questions. I had allocated 45 minutes. I will even allocate more time for you to ask questions and be satisfied with what the Cabinet Secretary is doing in your constituencies and elsewhere in the country. We will allocate more time for you to ask questions and be satisfied with what the Cabinet Secretary is doing in your constituencies and elsewhere in the country.

The Cabinet Secretary for Roads, Transport and Public Works (Hon. Kipchumba Murkomen): Hon. Speaker, for the assurance of the House, I will be tabling an itemised budget by this House passed in this financial year, clear with indication of the money for every road, county and constituency so that it becomes clear that there is no other entity in this country or in the world that budgets for roads for our country except this august House.

It is, therefore, unfortunate that these projects were misconstrued as an introduction of new projects. I am just giving a summary, as you guided, Hon. Speaker. For the avoidance of doubt, the replacement of non-performing contractors, some of whom have abandoned site, is continuous. After termination of a contract, the replacement is done through an open tender as provided in an annex that I have here, which is part of the advertisement just after the one Hon. Mbuï spoke about. The annex we have provided indicates the number of projects that were re-tendered by the Kenya Rural Roads Authority (KeRRA). Anyone looking at the advertisements in isolation would be forgiven to think that they are new projects or the process is giving advantage to seven counties against the others. Some of the re-advertised projects were initially tendered in 2015, 2016 and 2017, but the contractors have not been able to deliver to date. It was only in the interest of justice in these counties that the KeRRA re-advertises those as approved by the Attorney-General. Some of the counties in the annexure include Homa Bay, Kisii, Nandi, Baringo, Kakamega and Makeni.

As indicated earlier, each year, Parliament, in its wisdom, allocates resources to various projects across the country. The tenders for those projects are subsequently advertised by the three road agencies, including KeRRA. A large portion of the projects is implemented by KeRRA. Therefore, conducting public participation on these projects without the benefit of their background can easily mislead the public to think that some of the projects are being funded afresh when in reality Parliament, in its wisdom, is using the budget process to add resources to address inequality.

As I said earlier, there is no better institution that can understand the origin of these projects than the National Assembly itself. There are no greater public officers to explain the wisdom behind the allocations than the Members of this august House. In summary, the notice published on 29th September, 2023 by KeRRA was not a budget or an instrument of allocating resources. Instead of KeRRA waiting until other approved projects across the country were ready to commence procurement thus delaying those which were ready, KeRRA moved this batch towards procurement in the expectation that subsequent batches would follow.

As a matter of fact, the notice was followed by subsequent notices and others will still follow. I believe that by moving with speed on procurement matters at all times, KeRRA is fulfilling its mandate and meeting the expectation of this House.

Hon. Speaker, the final part of the response is in relation to the question about the factors influencing allocation of funds to projects. It is seen in this response to Part One above that the initial budget allocation proposal for Development Vote are generated by agencies of the Ministry, considering the following, which I repeat for purposes of clarity: completion of the ongoing projects, availability of fiscal space for new projects, Government policies and strategic direction concerning infrastructure development taken together with technical and economic feasibility, equity and regional balance. The initial budget proposal is then subjected

to extensive review before eventually being enacted by Parliament on one project per line basis. I submit for consideration of this august House that there are no unexplained discrepancies in allocation of project funds. There are no counties that have been omitted.

Concerning the published KeRRA Notice of 29 September 2023, where a batch of ready tenders were submitted for procurement, it seems that subsequent publication of ready tenders will address the remainder of the projects that are captured in the budget approved by Parliament. Indeed, there was the risk that future publication batches of tenders that are not part of those published on 29th September 2023 would generate another wave of concerns of inequity in the reverse direction, were it not for this House granting me an opportunity to explain this issue during this session.

The Ministry has taken measures to ensure equitable and fair allocation of funds for the improvement of roads and drainage structures...

Hon. Speaker: You have 10 minutes, Cabinet Secretary.

The Cabinet Secretary for Roads, Transport and Public Works (Hon. Kipchumba Murkomen): Hon. Speaker, the Ministry has taken measures to ensure equitable and fair allocation of funds for improvement of roads and drainage structures in light of the prevailing weather condition, as follows:

1. The Ministry has played an active role as part and parcel of the National Disaster Response Team being coordinated by the Ministry of Interior and National Administration to ensure that we respond to the *El Nino* situation.
2. Under the Equalisation Fund, this House approves a budget that deals with marginalised areas and the Ministry, through its agencies, implements the same.
3. The Ministry has also ensured prompt simultaneous and adequate disbursement of RMLF funds to all constituencies to enable timely tendering and commencement of works. The Ministry, through the Kenya Roads Board, continues to review applications from county governments on roads that have matured enough to be moved to national level for reconsideration, considering the resources that are available.
4. Equal allocation of RMLF to KeRRA under 22 and 10 per cent are usually advertised in two ways, which I have explained. If it is less than Ksh10 million in the region, and if it is above that amount, it is advertised at the national level.
5. As a matter of fact, the notice that is in the public domain contains only engineers' estimates; it is not the actual cost. The actual cost will be determined after advertisement and when the tender is awarded.

Hon. Speaker, utilising the remaining seven minutes, let me say that we are in danger when it comes to the Fuel levy Fund (FLF). This is where this discussion is coming from. The primary source of the FLF is a levy that is applied to petroleum products, which is Ksh18 per litre. A challenge has emerged in recent years in terms of the revenue collected under the FLF. In Financial Year 2021/2022, it was Ksh87 billion. In the Financial Year 2022/2023, it was Ksh86 billion. In this financial year, it is still Ksh86 billion.

In short, the collection of Fuel Levy has stopped increasing and in the worst case scenario may reduce going forward. This situation will not improve if electric mobility picks up quickly as anticipated. While the rate of fuel levy has remained static for about seven years, inflation has continued to chip away the purchasing power of the amount collected. It is notable that in 2016 the price of a litre of petrol was Ksh95 while the levy was Ksh18. Seven years later, the price of petrol is Ksh218 while the Fuel Levy is still Ksh18. While the Fuel Levy collection trend has flattened, the length of primarily rural roads that have been upgraded to bitumen standard in the last 10 years has increased by 4,000 kilometres. These newly upgraded roads need to be maintained.

There is a comprehensive and modern approach to road maintenance known as performance best maintenance. Under this approach, a service provider is engaged competitively to provide maintenance, which is measured in terms of specified output indicators such as whether surface damage has been repaired promptly, drainages are cleared and vegetation is always trimmed below a given height.

The performance-based approach gives strong incentives to serve providers to do quality works at all times since it is the most efficient way to avoid repeat jobs and associated costs. In the ideal scenario, a road should be placed under active performance-based maintenance immediately it is constructed. The arrangement should continue throughout its lifetime until a major upgrade is undertaken. Unfortunately, the KeNHA, whose heavily trafficked roads are well placed to benefit from performance-based maintenance, is currently not able to roll out this approach due to insufficient funds despite getting 40 per cent of the Fuel Levy. The backlog of the road maintenance for the national highways is increasing, meaning that we may start to see potholes on major arteries due to delayed interventions.

The KURA is not fairing any better. Whereas the mandate of KURA is to maintain roads classified as urban national roads, in practice, KURA has had to intervene massively in cities, major towns and county headquarters across the country. The KURA is suffering from lack of resources to discharge its mandate. However, the most alarming situation is rural roads. The KeRRA does not have a robust mechanism to secure funds for any kind of regular maintenance of paved rural roads, let alone performance-based maintenance. The sad truth is that the paved roads under KeRRA are orphans in the financial sense. As a matter of fact, Members of Parliament, through the constituency roads committees, are opposed to any attempt to allocate any money under 22 per cent or 10 per cent on maintenance of tarmac roads. Therefore, it is true to say that this is a catastrophe in waiting. No wonder many Kenyans are complaining of potholes in many rural roads across the country, especially the low-volume seal roads.

The implications of non-availability of funds for maintenance of rural roads are clear. If a solution is not found for rural roads, the recently paved rural roads will deteriorate rapidly. Both the Ministry and the distinguished Members of this House will face difficult questions from the public, to which we will not have immediate answers. A significant portion of rural roads which were upgraded to paved standard were constructed in the expectation that the traffic volumes would be relatively light. In practice, economic activities have promptly picked up as new roads were opened to traffic for specific loading and overloading has caused distress on several pavements. This makes effective maintenance even more urgent and necessary.

In this context, the part in the report by the National Dialogue Committee that mentions a reduction of Ksh5 per litre in the Fuel Levy, should give us a pause of reflection concerning the consequence of the road sector. Going forward, we anticipate that the Government will revert to this distinguished House for assistance and support concerning securing adequate funds for the maintenance of the various classes of national roads.

Hon. Speaker, please, allow me three minutes for me to conclude. I only need three minutes to conclude and then I will get the necessary guidance from this House.

Hon. Speaker: You have three minutes.

The Cabinet Secretary for Roads, Transport and Public Works (Hon. Kipchumba Murkomen): Thank you, Hon. Speaker.

Having outlined the basic principle of funds allocation under the Development Vote, allow me to go to specific details regarding the challenges of road financing, which have a bearing on project implementation and equitable allocation of funds.

In summary, it is not true that the Ministry of Roads and Transport and its agencies are in any way marginalising any part of our country. Instead, the Ministry works hand in hand with this august House to ensure that resources are distributed fairly across the country. The

State Department for Roads has a significant budget deficit, leading to inadequate allocation for road projects. The implementation of the Kenya Road 10,000 Kilometres Programme, from the 2013/2014 Financial Year, took place in the absence of anticipated progressive rise in budget ceilings by the National Treasury. This led to a portfolio of projects not being adequately funded. This programme rollout ended a full cycle in the 2017/2018 Financial Year when the budget stress started being witnessed.

In the first and second years of the Kenya Road 10,000 Kilometre programme, an average allocation of Ksh20 billion was provided. It was expected that this allocation would progress upwards. However, over time, ceiling allocations for roads started diminishing to an average of Ksh55 billion from the 2017/2018 Financial Year.

In the 2021/2022 Financial Year, the State Department had an allocation of Ksh55 billion for contracts against an outstanding project portfolio of Ksh900 billion as at 1st July 2022. To address the issue of the outstanding portfolio *vis-à-vis* the resources available, the State Department embarked on a reduction of the portfolio, which currently stands at Ksh700 billion. The reduction entailed dropping some planned but not yet awarded projects.

With an average of Ksh55 billion, the Government of Kenya component for contracted works and land compensation, the outstanding portfolio will take a minimum of 15 years to complete, assuming that all factors like inflation, claims and interest remain constant. The limited allocation *vis-à-vis* the outstanding project portfolio result in thinly spread allocation for projects. Most of the projects that the current Government is implementing were awarded prior to the 2020/2021 Financial Year. To address the issue of marginalised counties, in terms of roadworks, the State Department would have to increase the portfolio projects to address the disparity. This would, however, mean even thinner spread of allocation and more years to complete any of these projects.

The thin spread of the Government's available funds means that the road projects take longer to complete. They become more expensive due to the passage of time and they attract interest and more claims. In the current financial year, this House allocated Ksh76 billion to the State Department for Roads against a request of Ksh250 billion by the National Treasury. Therefore, the State Department started this financial year with a budget shortfall of 70 per cent.

In the First Supplementary Budget, the Ksh76 billion was reduced to Ksh61 billion. Out of the allocated Ksh61 billion, the amount for road development is Ksh46 billion. This inadequate budget provision compared to the huge portfolio of road projects has led to stalling of road projects everywhere in the country. I insist that this is affecting every part of the country. One part of the country thinks that another part is being considered and vice versa.

Out of the outstanding Government's portfolio, there is Ksh155 billion on pending bills as at 30th October 2023. The money available to service these pending bills is Ksh46 billion, which is less than one-third of the provision required to pay outstanding bills on road projects in addition to more work that will be certified within the remaining portion of the financial year. In associating with the large stock of pending bills...

Hon. Speaker: Your time is up, Cabinet Secretary.

The Cabinet Secretary for Roads, Transport and Public Works (Hon. Kipchumba Murkomen): Hon. Speaker, I need to make this last point on development.

Hon. Speaker: How many more minutes do you need?

The Cabinet Secretary for Roads, Transport and Public Works (Hon. Kipchumba Murkomen): Give me three minutes to conclude. I am remaining with two pages, so it may be less than three minutes.

In association with the large stock of pending bills is the requirement to pay interest on the same - the resources to be claimed by contractors to recover the cost. The Ministry is considering to propose new legislation to this House, to cap the potential liabilities from

inadequate funded projects in a manner similar to the *in duplum* rule. We now have a situation where a road is awarded Ksh1 billion but the claims and interests are about Ksh3 billion or Ksh4 billion on the same road because it has been abandoned.

Delayed release of budgeted funds by the Exchequer also impacts the development of roads. It is expected that once the budget has been approved, Exchequers would optimally be released in tranches as the year progresses. In this financial year, out of the Ksh76 billion estimates, we have only received Ksh6 billion meant to service pending bills of Ksh155 billion and a budget of Ksh76 billion.

As the Cabinet Secretary, I always wonder how to distribute Ksh6 billion against pending bills of Ksh155 billion to the contractors. It becomes a challenge to choose who to pay or not. If you pay Ksh100 million to contractors who are claiming Ksh2 billion or Ksh3 billion, they are unable to mobilise to go on-site. That is the true situation on the ground.

As I conclude, I have already touched on the matter of public participation on projects while answering the questions asked by Members earlier. However, conducting public participation on these and other projects to satisfy the constitutional requirements could be perceived to contribute to skewness of allocation unless...

You see, Members are angry here. They come to my office the way they come to your office. Many of the questions are about the public participation funded roads allocated by this House every year. Unless there is proper sensitisation and full discussion in this chamber in an honest manner about the appropriation of these public participation funds, the feeling of marginalisation will continue. Most of these maintenance roads under the public participation initiative are implemented by KeRRA. Notably, all roads under the development budget are itemised and approved by this House.

Once Parliament appropriates and approves a specific project to be implemented, the road agencies will implement it. I can only make a suggestion to this House because it is supreme to all of us. Instead of this House allocating Ksh21 billion to new projects, projects that are below Ksh10 million or for maintenance of roads, these funds should be available to support the pending bills. If this is done, most of our contractors will go back to site to make sure that these roads progress. This is a suggestion. I have no control over what this House decides. I am only suggesting that if you can consider supporting the pending bills, it will be great. The Ministry is committed to equity. It is worth noting that we are considering some of the discussions on inequity.

Therefore, I conclude by saying that not all is gloom. The Government has been working extremely hard for the last year to speak to our bilateral and multilateral development partners. I speak with experience. I have apprised you on this issue. I have travelled to different parts of this world, particularly to one of our bilateral partner countries, to try and request them to consider supporting us. The conversations are in advanced stage. I believe that in another two or so months, if I am invited again, I will come back to this chamber to give the good news to Hon. Members. Some of our critical number of roads will resume. We thank the efforts we have put in, to make sure that development partners support us.

With utmost respect, I thank them for listening to the Republic of Kenya and His Excellency the President. I have been a member of his delegation to many of these countries to deal with this issue. I also thank them for helping us deal with the Eurobond question because this is where the devil lies. It is the Eurobond payment of US2 billion that is due that has made it impossible for us to borrow money for infrastructure or allocate other resources. It has also constricted our budget.

As I sit down, many Hon. Members here may feel that I am a bit hard on the question of public resources. I have been a victim of harassment and berating on something that I have zero control over. If I had a chance to sit where my colleagues are seated - I have sat with them in this House before - I would use the Floor of this House to correct injustice and

marginalisation. If you take this punishment to an innocent Cabinet Secretary who does not have a role in allocating money or budgeting, it would be unfair in the Republic of Kenya.

I say this with all my heart. I do not want to praise myself. I am the only Cabinet Secretary who has invited as many counties as possible, without considering their political side. I am now in County No.26. They come for an open discussion. We ask ourselves how we shall deliver on this very difficult road function in the absence of the budget that we have been given.

(Applause)

I speak to my friends here. We feel the pain of our voters when they tell us that they are stuck in mud and the roads are not progressing. This pain is a collective responsibility of leadership at a time like this. I promise this House that I will not sleep until we succeed to return all the contractors on site. There is light at the end of the tunnel.

I thank you, Hon. Speaker.

(Applause)

Hon. Jared Okello (Nyando, ODM): On a point of order, Hon. Speaker.

(Applause)

Hon. Speaker: Order, Hon. Members. This was Hon. Robert Mbui's Question. Hold on, Hon. Jared Okello. The Cabinet Secretary is no longer on the Floor of the House. So, there is nothing out of order.

The Question belongs to Hon. Robert Mbui. However, the Cabinet Secretary has wandered far and wide on the issue. I will give the first shot to the Questioner, Hon. Robert Mbui. Then I will give opportunity to five joyriders to ask supplementary questions. Cabinet Secretary, note the questions and then you will answer them. I will then give opportunity to five Members after the first ones. Depending on the interest, I will see what to do.

Let me start with Hon. Robert Mbui, the Questioner.

Hon. Robert Mbui (Kathiani, WDM): Thank you, Hon. Speaker. The Cabinet Secretary has just said that he would not sleep until all pending roads are completed. I have one in my constituency, but I do not know whether I will wait for three months. He has said that he would get money in three months' time. From the response of the Cabinet Secretary, one of the things that I noted, which he needs to address, is when he said the Ministry could not identify where the roads are located.

The Cabinet Secretary for Roads, Transport and Public Works (Hon. Kipchumba Murkomen): Correct.

Hon. Speaker: Cabinet Secretary, you are not allowed to engage Hon. Members on the Floor of the House.

Hon. Robert Mbui (Kathiani, WDM): Hon. Speaker, he was a Member of this House.

(Laughter)

Hon. Speaker: Listen, take notes and then you will answer the questions.

Hon. Robert Mbui (Kathiani, WDM): Hon. Speaker, on the issues that he has responded to, what comes up is the 10 per cent of the money. He has spent a lot of time explaining how it is distributed under the Kenya Roads Act. My question was very specific on the tender notice which he handled properly.

In the allocation of money, there is 10 per cent that is administered in accordance with the road sector projects approved by the Cabinet Secretary for Roads, Transport and Public Works and the Cabinet Secretary for the National Treasury and Economic Planning. This is meant for emergencies like *El Nino* which we are experiencing currently.

The hard-hit counties are in North Eastern, Eastern and Coast regions. I would like to understand from the Cabinet Secretary whether that 10 per cent has been spent more in the areas that I have mentioned. You are aware that one of our Members from eastern lost a brother because of floods. Two of our Hon. Members were marooned a whole night the other day in Tana River. I want to know whether the 10 per cent is allocated fairly to the areas that are experiencing *El Nino*.

Hon. Speaker: Thank you.

Hon. Robert Mbui (Kathiani, WDM): Give me a chance to finish, Hon. Speaker.

One of the problems that he has pointed out is that this was an advertisement by the KeRRA. However, it was not exhaustive. The KeRRA should allow each constituency or county to advertise its roads, so that we stop seeing one advert and then all of us are convinced that it is the national cake being distributed. Is it fair and possible for every county or constituency to advertise its roads, even when they go beyond Ksh10 million?

Thank you, Hon. Speaker.

Hon. Speaker: Thank you. Hon. Musa Sirma. Joyriders will ask one question only.

Hon. Musa Sirma (Eldama Ravine, UDA): Thank you, Hon. Speaker. I want to confirm that Baringo County is one of the counties that has visited the Cabinet Secretary in his office. I was there. Marginalisation is real.

(Applause)

I want to take this opportunity to talk about my constituency. We have three roads which pass through it. One was constructed by the colonial government and the second one was constructed by President Kenyatta's Government. The third one was constructed by President Moi to go to his house.

(Laughter)

In other words, all other Governments have never...

Hon. Speaker: Ask him a question.

Hon. Musa Sirma (Eldama Ravine, UDA): Can you consider these constituencies where a road has not been constructed for a long time, as they were not considered in the past Governments? Can I be a beneficiary of this Government?

Hon. Speaker: Hon. Rozaah Buyu.

Hon. Rozaah Buyu (Kisumu West, ODM): Hon. Speaker, I thank you for giving me this opportunity to ask a question.

I am surprised because the Cabinet secretary has said that his office is open to everybody and he sees very many people from other counties. I would like to ask him if this is for all the counties in this country or it is only for the shareholding counties. I have tried to get to the Cabinet Secretary time and again, but it is impossible.

Hon. Members: Yes.

Hon. Speaker: Thank you. Who is the Member at the end? Is that the Member for Turkana? I cannot see that far. Go ahead.

(Laughter)

Hon. Joseph Emathe (Turkana Central, UDA): Thank you, Hon. Speaker. My name is Hon. Emathe Namuar.

Hon. Speaker: Yes, Hon. Namuar. I cannot see you clearly.

Hon. Joseph Emathe (Turkana Central, UDA): I am the Member for Turkana Central which is the Headquarters of Turkana County.

Hon. Speaker: I know you, Hon. Namuar, and I know Turkana as well. Please, ask your question.

Hon. Joseph Emathe (Turkana Central, UDA): Thank you, Hon. Speaker. Thank you for coming today, Cabinet Secretary. They say that the arrow is not afraid of shooting from the bow but it is afraid to reach the target. I say this because I have heard the Cabinet Secretary say that the problem lies in this House. That is where the rubber meets the road.

Why do Turkana, Samburu and other marginalised counties get zero allocation while others like Murang'a and Kiambu get the lion's share? About 15 counties get zero allocation. He went ahead to say that every budget proposal he receives is itemised. How can the Cabinet Secretary prevent such kind of cannibalism and marginalisation of some areas that get zero allocation? I know there are people who sit in committees which are responsible...

Hon. Speaker: Hon. Emathe, you have asked your question. Hon. Member for Likuyani, please, just ask one question.

Hon. Innocent Mugabe (Likuyani, ODM): Thank you very much, Hon. Speaker. Yes, I will only ask one question. The Cabinet Secretary alluded in his submission that there are some constituencies like Kikuyu that consolidate their funds to advertise for roads. I want the Cabinet Secretary to tell us the particular road and the amount of funds that were consolidated. We know that we get a 22 per cent allocation.

Hon. Speaker: Cabinet Secretary, those are five questions. You can now go ahead and answer them. Hon. Members, hold your horses. I will give you a chance.

The Cabinet Secretary for Roads, Transport and Public Works (Mr Kipchumba Murkomen): Thank you, Hon. Speaker. I will be very quick in answering because I can see that there is a lot of interest.

I thank Hon. Mbui, who asked the question of how a Cabinet Secretary is unable to identify roads that are funded by specific counties or constituencies, and those that are funded through the allocation by Parliament through public participation. This is where the problem lies. When Parliament allocates those funds, they do so to a particular road and not a constituency or county. The itemised budgets by Parliament allocates funds to specific roads. The only time the KeRRA will discover where that road is when they issue the Authority to Incur Expenditure (AIE) to the Regional Manager, or when they advertise the road. The advertisement indicates that the road is in Kakamega, Kisumu, Mombasa or any other county. Once the budget process is complete, one cannot tell exactly where the road is because it is just named as Road X or Road Y. Once funds are released by the National Treasury and the road is advertised, you realise where the road is located.

In regard to the 10 per cent allocation by the Ministry and the National Treasury, when I assumed office, I found out that my predecessor had used the same amount of money to fund multi-year projects. We will still support those projects in this financial year and the next one to ensure that they are completed. Those projects include Mfangano Island and others. They reduce the amount of money which remains under the Cabinet Secretary allocation.

The emergency funds for this year have not yet been spent. When it was predicted that the *El Nino* rains would fall, we sat down as a Government and agreed that if we spent that money, we would have none left to restore roads that will be affected by the *El Nino* rains. You are right, Hon. Mbui. We will do an assessment after the *El Nino* rains, which have been predicted to end by January or February. Agencies like the KeNHA and the KURA, which control their procurement processes, will determine which roads will be restored. As Members

of Parliament, you will help us to decide which roads can be constructed under the 10 per cent and 22 per cent allocations. The Ministry will cover the difference for the period through the emergency funds.

For the benefit of the House, the National Treasury released Ksh1 billion Contingency Fund this week to enable us to deal with the massive destruction caused by the *El Nino* rains. We have told our agencies that we will only use that money to restore structures. We will use our resources to cater for the usual maintenance works. I need to emphasise that we will have a problem with maintenance funds. Most of the orphaned KeRRA roads of about 5,000 kilometres will have potholes due to the current rains, especially the Low Volume Seal Standard (LVSR) roads. There are many potholes on many roads in the country. Some contractors have not left the sites of some road construction projects and they have not finished constructing the roads, but they have potholes. Unlike KeNHA and KURA, KeRRA does not have any other allocation set aside to maintain tarmac roads. Hon. Members, I know that you do not want the 22 per cent and the 10 per cent allocation to be transferred to the maintenance of tarmac roads. That is why we are in a catch 22 situation.

The third question was why KeRRA cannot allow each county to advertise their tenders for roads. It is allowed. If Parliament amends the Public Procurement and Asset Disposal Act to allow the advertisement of tenders for roads worth more than Ksh10 million outside the county, KeRRA will win very few bids. As a matter of fact, very few constituencies consolidate funds because many of them support roads worth Ksh5 million, Ksh6 million or Ksh7 million. Nearly 95 per cent of all advertisements are done within the region. A few that exceed Ksh10 million are advertised at the national level.

Member for Likuyani, I will answer your question later because I do not have the information with me right now. The only information that I have is about one road in Kikuyu Constituency worth about Ksh20 million which was advertised by KeRRA because they consolidated their resources.

Hon. Musa Sirma mentioned that his constituency is marginalised. Whereas Eldama Ravine Constituency is marginalised, it is not the worst. Lamu East Constituency does not have an inch of tarmac!

(Several Members spoke off the record)

Even Lugari Constituency? No. I know Lugari very well. We have tried to tarmac some roads in Lamu East Constituency. The President directed that we use emergency funds to tarmac 15 kilometres of road in Lamu East, which we launched two months ago. Other marginalised counties include Tana River...

Hon. Speaker: If Hon. Sirma's constituency is not sufficiently marginalised, please, go to the next question.

The Cabinet Secretary for Roads, Transport and Public Works (Mr Kipchumba Murkomen): Hon. Sirma was in the meeting. I know that roads in Eldama Ravine and Mogotio constituencies are interlinked up to Rongai. We are in the process of designing them to see how they can be supported. We are also looking to get a development partner willing to support that project. That is the case for many roads proposed by Members of this House.

Hon. Speaker: Hon. Rozaah Buyu just made a statement. If you want to give her an appointment, please, go ahead and do so.

The Cabinet Secretary for Roads, Transport and Public Works (Hon. Kipchumba Murkomen): I am shocked that I have been unable to meet her because I have not even seen any missed call from her.

Hon. Speaker: She did not say that you are unable to meet her, but that you are unreachable.

The Cabinet Secretary for Roads, Transport and Public Works (Hon. Kipchumba Murkomen): Hon. Speaker, I am shocked because Hon. Rozaah Buyu and I have a long history that dates back to 2004. To ensure that I correct this unfortunate mistake, I will give her an appointment as soon as I leave this Chamber and invite her for a conversation. I know some colleagues from your constituency came, but at that time the political climate was not great. Therefore, people feared coming to visit me. Homa Bay did not have a problem. Several leaders from Homa Bay came to my office. That is on a lighter note. I will correct that issue.

On the matter raised by Hon. Emaase, I cannot overemphasise the importance of this House having a conversation on how best to handle the question of public participation resources so that it not only helps us to sort the pending roads, but also correct any possibilities of marginalisation. The Ministry, through development partners, has done its best to provide infrastructure in Turkana County and we will continue to do more to make sure that those roads are addressed.

I thank you.

Hon. Speaker: Good. We will take the second batch. Hon. Julius Sunkuli. Only ask one question.

Hon. Julius Sunkuli (Kilgoris, JP): Hon. Speaker, my question will be very brief. I am interested in the Cabinet Secretary's answer regarding low-volume seal roads. He has given us very bad news except for the good news at the end where he says that the Government is working hard. In reality, what is the plan for maintaining those roads, because the contractors abandoned some of the roads before the three-year period of maintenance? I am particularly referring to the road from Kilgoris to Emurua Dikirr and the road from Chebole to Siongiroi, which are currently terribly dilapidated. What is the plan, Cabinet Secretary?

Hon. Speaker: Thank you. Hon. Tonkei.

Hon. Rebecca Tonkei (Narok County, UDA): Hon. Speaker, the Cabinet Secretary has spoken about marginalisation. For very many years, Narok has been among the counties that have been marginalised in the roads sector. While other counties are being allocated funds for roads, some have never seen a tarmacked road. What is the Cabinet Secretary going to do to address this issue?

Hon. Speaker: Hon. Wamboka. One question.

Hon. Wanami Wamboka (Bumula, DAP-K): Thank you, Hon. Speaker. For the record, I hail from Bungoma County. I want the Cabinet Secretary to be aware that all road construction works have stalled, starting with the Mateka-Bumula-Myanga Road to the Misikhu-Brigadier-Sirisia Road and others. How do taxpayers feel when their roads have stalled for more than three years while Murang'a gets new roads every other day?

Thank you. Hon. Speaker.

Hon. Speaker: Hon. Hilary.

Hon. Hilary Kosgei (Kipkelion West, UDA): Thank you, Hon. Speaker. Most of the roads that stalled were designed through marginalisation. The road cases the Cabinet Secretary is trying to solve are those that were constructed...

Hon. Speaker: Hon. Hillary, you are not the Cabinet Secretary. Hon. Murkomen has the capacity to answer questions. Therefore, ask him.

Hon. Hilary Kosgei (Kipkelion West, UDA): I am sorry. In Kipkelion West Constituency, where I hail from, there is a security road. When there are demonstrations and supporters of the Orange Democratic Movement (ODM) decide to close Awasi, we lose a lot of patients being transferred to referral hospitals. We have asked the Government to construct a security road that will link us with Eldoret without necessarily having to go through Awasi. Kericho County has not had a single tarmac road in the last five years. It was the most marginalised county in the previous regime. What is the Cabinet Secretary doing to help the situation in Kericho?

Hon. Speaker: Hon. Umulkher.

Hon. Umulkher Harun (Nominated, ODM): Thank you, Hon. Speaker. On the issue of marginalisation, I would like to understand the criteria used to allocate resources. The Cabinet Secretary is aware of the challenges. When he recently came to Garissa, the roads were inaccessible and he had to fly in. Maybe next year when he comes, that issue will have been resolved and he can drive down. That has to come from the efforts and goodwill from his side but I want to understand why a particular county is allocated 1.8 and yet...

Hon. Speaker: 1.8 what?

Hon. Umulkher Harun (Nominated, ODM): My concern is, if the need is there, why can they not allocate as per the needs? This creates issues of insecurity because Improvised Explosive Devices (IEDs) are usually planted in murrum and not tarmac roads. Let us look at this issue holistically to secure our borders.

Thank you.

Hon. Speaker: Thank you. Next is Hon. Owen Baya. Cabinet Secretary, those are short questions. I will take a few more. Be precise and concise in your responses.

Hon. Owen Baya (Kilifi North, UDA): Thank you very much, Hon. Speaker. I was in the same school as the Cabinet Secretary. He is, therefore, aware of where we both come from. I appreciate his responses but he has been accused by Members of being arrogant. Some of those Members may not be in this House. In fact, one recently alleged on live radio broadcast that you are 'Mr 10 per cent'. What do you have to say about such accusations?

Hon. Speaker: I will give the next chance to Hon. Bady Twalib.

Mhe. Rashid Bedzimba (Kisauni, ODM): Mhe. Spika, mimi ninaitwa Mhe. Bedzimba, Mbunge wa Kisauni, wala sio Mhe. Bady Twalib, ambaye ni Mbunge wa Jomvu.

Hon. Speaker: Hon. Bedzimba, I am sorry my good friend. You always wear a turban on your head.

Mhe. Rashid Bedzimba (Kisauni, ODM): Mhe. Bady havai kofia. Mimi ndiye huvaa kofia.

Swali langu kwa Waziri ni kwamba, Mheshimiwa Rais alikuja Kisauni akaanzisha rasmi ujenzi wa barabara ya kutoka Kiembeni kuelekea Mwakirunge hadi Bondora lakini alipoondoka mahali pale, tingatinga zote zilimfuata.

(Kicheko)

Hakuna kitu kinachoendelea. Leo atueleze ana mipango gani na ni nini kinachoendelea.

Asante.

Hon. Speaker: Thank you. Hon. Murugara.

Hon. George Murugara (Tharaka, UDA): *Bwana* Cabinet Secretary, Tharaka Nithi is one of the counties that did not get an allocation in those tenders. You have given us an explanation. Tharaka Nithi is also notorious for having stalled roads in the three constituencies, namely; Chuka/Igambang'ombe, Chuka-Kaareni; Maara Constituency, Keeria-Magutuni; and in Tharaka Constituency, Marimanti Chiakariga. Can you kindly give an assurance that there is an allocation for those stalled roads that have been outstanding for more than 10 years?

Thank you.

Hon. Speaker: Cabinet Secretary, those are eight questions. They are very short. Therefore, proceed to answer.

The Cabinet Secretary for Roads, Transport and Public Works (Hon. Kipchumba Murkomen): Hon. Speaker, I will be brief in responding to Hon. Sunkuli's question. As I said earlier, I do not have that answer. We should all have an honest conversation. In fact, at the beginning of next year, you could organise a retreat or session between the House and our Ministry to ask ourselves whether the Kenya Roads Act should remain as it is. What will we

do with KeRRA? Many roads have annual maintenance requirements. So, should they continue using 10 per cent or 22 per cent of their budget to maintain murrum roads while most of them have been upgraded to tarmac? Should KeRRA be abandoned completely and left without resources being allocated?

Sometimes KeRRA ends up advertising roads through the support of the public participation budget. They stage improvements and this is how the Chebole Road got money for maintenance. One of the reasons why I was excited to respond to this question is for us to find ways of addressing the 5,000 kilometres of roads, which I have christened abandoned or orphaned. It is because they do not have resources allocated for their maintenance.

Secondly, after KeRRA discovered that the low volume seal was counterproductive, on their own motion, they stopped all roads. Even if they had advertised under low volume seal, they instructed the contractors to deliver high standards. It is better to deliver one-quarter or three-quarters instead of delivering a road with low standards. The road from Kilgoris to Emurua Dikirr is facing this challenge, but we are thinking of how to handle it.

Hon. Rebecca Tonkei was straightforward and reminded me to remember marginalised counties. For example, Narok is a very vast county, if you look at the records, they have a good number of tarmacked roads. The Sekenani and Mau Narok roads are complete. Vast counties like Narok, Marsabit or Kajiado do not have enough roads to serve people because they have very vast land. So, we tarmac roads and people still say they are marginalised because of the vastness of land compared to smaller counties. This is a problem.

Hon. Wamboka of Bumula Constituency is right that all roads have stalled. These roads were allocated about Ksh10 billion and they are not the only ones. Road construction has stalled in almost every county. As I said earlier, it will be the beneficiary if the ministry with the direction and guidance of the President looks for resources.

Hon. Hilary Kosgei of Kipkelion West also asked a question on roads. We will not construct roads to address political issues. The Ministry is blind to political sides. As the Government of Kenya, we equally serve both sides of the political divide. For over 10 years, there has been a plan to tarmac the Ainamoi-Mbogo Valley-Nandi Hills road. The design was completed this year. We have future plans to award resources to ensure connectivity and access to Nandi, Kericho, Narok, West Pokot and Turkana counties.

Hon. Owen Baya asked about a matter which did not happen in this House. I am sorry, I will come back to Garissa. On the accusation of impropriety, let me say that sometimes when I become a little bit tough, people think that I am being arrogant. In this situation, a Member who is not from this House, stood in public and told me to ensure that contracts are not given to people who are not from his community. He also said that his community is full of witches. Therefore, if I award tender to a contractor from another community, we will not hold him accountable. Despite being called arrogant, I told him off. I have never told a Member of Parliament off. If I had kept quiet upon hearing that contractors cannot work in certain communities or those from certain communities cannot be given work, I would have abdicated my responsibility as a public servant. I expected the National Cohesion and Integration Commission (NCIC) to take stern action against that Member.

The question about Ksh10 billion to Ksh100 billion contract, I have left my lawyers to address it. Any Member with an issue should inform the relevant institution so they can deal with it. I want to inform everyone that I will continue serving. I will not instruct any Government agency to deny people contracts based on the communities they come from. Also, I will not superintend over a ministry that denies any community roads by virtue of how they voted or their tribe. I will not allow this.

A question was asked about Garissa which is a marginalised county. They are beneficiaries of a major programme being done in collaboration with development partners. The road from Lamu to Ijara was badly delivered. When the President was elected, this was

the first project where the contractor was told to redo and tarmac the road. I believe once we support him, he will tarmac it. The road from Garissa to Isiolo is also ongoing.

Regarding the Modogashe-Isiolo-Kulamawe Road, the contractor is on site and has done almost 10 per cent of the project. If a good number of projects in the northern part of our country are delivered, this will help us deal with insecurity and marginalisation. The construct of this road will cost not less than Ksh60 billion. I invite Hon. Members to continue implementing projects like building hospitals, fibre optic and schools. I came in this House for vetting one year ago and I promised to do everything possible to ensure marginalised counties become part and parcel of this country. Especially, the northern part where *Al Shabab* characters have turned into a playground. Tarmacking roads ensures that no IEDs are hidden on a road to cause injuries to our people. I am confident that in the next five years, the road infrastructure in the North Eastern Region will be better.

Regarding the question asked by the Member for Kisauni, it is not true. The contractor is struggling. He is an elder from that region. He is on site and is always calling KeRRA and coming to my office for support. He is struggling like many other contractors. We will do everything possible to help him remain on site. On the question by Hon. George Murugara, it is true Tharaka Nithi is marginalised. I visited that area between 2013 and 2014, and I know Chiakariga-Marimanti Road has not been delivered. At least, you have a road portfolio of about Ksh7 billion. We will do our best to have it completed as I discussed with you. I do not want to say much about tarmacking of other roads, but Tharaka Nithi County is facing challenges.

Lastly, a Member said that roads in his county are not progressing, but those in Murang'a are progressing. If you watched the news, you saw Hon. Peter Kihungi who is my friend since he was a councillor, complaining that roads in his county have stalled. As I said earlier, everybody thinks the neighbour is eating. So, those in Murang'a think that those in Nandi are benefiting. Those in Nandi think that those in Homa Bay are benefiting while those in Homa Bay think that those in Kisumu are benefiting. So, let us not blame each other. Roads shall be delivered if we work together.

Hon. Speaker: You know for a cow the grass is always greener across the fence. Hon. Members, seeing the interest and the time available - we have already done one hour and fifteen minutes on this question - I promise upon resumption from recess, I will call a *Kamukunji* so that the Cabinet Secretary can respond to your issues. Even if I give him five more minutes, the whole House wants to ask something. I have seen your hands in the air.

Proceed, Hon. Millie Odhiambo.

Hon. Millie Odhiambo-Mabona (Suba North, ODM): Thank you, Hon. Speaker, for giving me this chance. I want to...

Hon. Speaker: The last five is the last batch. If you are unlucky, the rain does not drop on everybody standing.

Hon. Millie Odhiambo-Mabona (Suba North, ODM): Thank you, Hon. Speaker, for giving me this chance. I want to thank the Cabinet Secretary for his response. I also want to just thank him for mentioning and acknowledging that the Ksh300 million that was put in Mfangano Island was done by the previous administration. I am hoping this administration will, therefore, ensure that it is tarmacked.

I have listened to the Cabinet Secretary very carefully. He is putting the blame back to Parliament. He is also saying that the grass may look greener to somebody in Homa Bay maybe because I do not know what is happening in Murang'a. I sit in the Budget and Appropriations Committee. So, I look at the grass from the Committee. I know from the Committee there is inequity.

What I would like to ask is, that time when he will be coming for the *Kamukunji*, can he come with the amounts that have been allocated for public participation? Because I am shocked at the amounts that you are talking about, things that are not even in the Budget and

Appropriations Committee. Can you come with the amounts that you are talking about being in public participation, the discretionary Ksh7 billion that you have and the rest of the budget so that we know whether there is equity in those allocations? Otherwise, we will just be cheating each other here. Can he, please, avail that information to us? I know he cannot avail it now, but can he avail all that information during the *Kamukunji*?

Hon. Speaker: Hon. Osoro.

Hon. Silvanus Osoro (South Mugirango, UDA): Thank you very much, Hon. Speaker. I also want to appreciate the Cabinet Secretary for coming to the defense of a community that has been a subject of attacks across. However, that is not the question.

The question to the Cabinet Secretary is, while we appreciate and empathise with the economic status of the country and the challenges that the Ministry faces in regard to balancing and reinstating the contractors back to site, there are regions that construction of stalled projects has resumed because of the change of their priority from the Government of Kenya (GoK) to Fuel Levy.

What criteria does the Ministry use to allocate particular roads to Fuel Levy, which is almost available and let others remain under GoK and then wait to engage with development partners abroad so that they can resume duty? What criteria do they use?

Hon. Speaker: Hon. Sarah Korere.

Hon. Sarah Korere (Laikipia North, JP): Thank You. I want to put a question to the Cabinet Secretary. I know he understands very well the issue of marginalisation and insecurity. He has mentioned the issue of security roads that are under the budget that directly come from his office.

Waziri, yesterday there was an attack in my constituency by bandits coming from Tiaty and a National Police Reservist (NPR) was injured. He had to be carried by others on their backs for 15 kilometers, because no car could access the road between Mugie to Churo to bring that fellow to Mowarak for first-aid. *Waziri*, as we talk, I had to organise this morning for the airlifting of that person who lost a lot of blood. Right now, he is in Intensive Care Unit (ICU) because a security road I have talked about for the last more than 10 years has never been done.

I want to plead with you, if for nothing else in Laikipia North, to build the road between Mugie and Churo, please *Waziri*. Otherwise, these fellows will finish us.

Finally, the road...

Hon. Speaker: One question at a time, Hon. Korere.

Hon. Sarah Korere (Laikipia North, JP): The road from Nanyuki, Naibor to Doldol... *Waziri*, you know when you talk about marginalisation, I think Laikipia North will qualify to be the marginalised of marginalised. That road is 65 kilometers long and it has been awarded and cancelled for the last 10 years.

As we speak, *Waziri*, coming from Nanyuki to Doldol will take you four hours because that road is completely unmotorable.

(Hon. Kassait Kamket stood up in his place)

Hon. Speaker: Hon. Milemba.

Hon. Omboko Milemba (Emuhaya, ANC): Thank you, Hon. Speaker.

Hon. Speaker: What is it Hon. Kamket? I am not going to give you any... Tiaty is not Kamket and Kamket is not Tiaty. Take your seat. And we are not holding you responsible for the attacks from Tiaty. It is just a place. Go on.

Hon. Omboko Milemba (Emuhaya, ANC): Thank you, Hon. Speaker. In a House of rules and records, the Cabinet Secretary and Members could be forgetting that he said that the imbalance in distribution of roads was courtesy of the House.

He did not withdraw and he did not table the list of imbalances that have been caused by this House. It is very important that for us to also reprieve and vindicate ourselves, the Cabinet Secretary tables the list of imbalances that we caused in the so-called public participation roads.

Finally, in the same spirit of imbalance, a road was built five years between Kombewa and Maseno. The road just stopped on the side of Nyanza, and the part that remains in Emuhaya and Luanda, has remained so for the last six years. Could the Cabinet Secretary speak on this?

Hon. Speaker: Thank you. Hon. Member for Wajir South.

Hon. Mohammed Adow (Wajir South, ODM): Thank you very much Hon. Speaker.

Hon. Speaker: This is the last batch *Waziri*.

Hon. Mohammed Adow (Wajir South, ODM): It is baffling to hear the pampered parts of the country complaining about marginalisation. What are we supposed to say those of us from North Eastern Kenya, which is a monument for marginalisation?

Hon. Speaker: Ask your question.

Hon. Mohammed Adow (Wajir South, ODM): Hon. Speaker, there is a difference between bad roads and no roads. What we have in North Eastern Kenya is 'no roads.' We cannot even describe them as roads. As we speak, for the last three and a half weeks, no vehicle has entered my constituency and we keep hearing from the Government promises that they will deliver the Horn of Africa Gateway Development Project, which many people in north eastern today believe is a hoax.

Hon. Speaker: Ask him a question, Hon. Member.

Hon. Mohammed Adow (Wajir South, ODM): The road is 50 kilometres away from Wajir. When are we going to see contractors on the ground building that road, which the people of North Eastern Kenya have been waiting for the past 60 years?

Hon. Speaker: Next is the Member for Nandi County, Hon. Cynthia Muge. Give her the microphone.

Hon. Cynthia Muge (Nandi County, UDA): Thank you, Hon. Speaker. I want to appreciate you and the President of the Republic of Kenya for making it possible for cabinet secretaries to appear before this House to answer serious and pertinent questions.

I was one of the people who went to the office of the Cabinet Secretary. He talked of having held talks with representatives of 26 counties, but he was not generous with information and data. I want to appreciate him for being fair today.

My question is: What exactly is emergency? When I look at the road that was considered under emergency in Nandi County, I fail to understand what emergency is. On that question again, I want to ask the Cabinet Secretary whether the measures he is putting in place to ensure that the emergency criterion, or whatever it means, is not used to perpetuate inequity in allocation of road funds.

Hon. Speaker: You are Hon. Kimilu? Give him a chance.

Hon. Joshua Kimilu (Kaiti, WDM): Thank you, Hon. Speaker, for giving me the opportunity. I would like to tell the Cabinet Secretary that I wrote eight letters to him. He has never answered any of them. This concerns the road from Sultan Hamud which connects Kajiado and Makueni through Kilungu. That road was started in 2016 and only three kilometres is what has not been done up to date. I would like to know why the Cabinet Secretary has not been responding to my letters and the measures he is taking because as at now, the road is completely cut off at a place called 'Kikoko'. It is impassable.

Thank you.

Hon. Speaker: Thank you. Hon. Members, we must have a cut off. Cabinet Secretary, can you answer those eight interventions. Order Hon. Ruku, take your seat.

(Hon. Ruku GK stood in his place)

The general questions, Hon. Cabinet Secretary, are marginalisation, inadequate resources and equitable distribution.

The Cabinet Secretary for Roads, Transport and Public Works (Hon. Kipchumba Murkomen): Hon. Speaker, as a matter of fact, the question asked by my friend Hon. Millie regarding the roads that we supported in Mfangano Island through the emergency funding... Mfangano Island is one of the marginalised places with no single road and no access to the island. We thought it is one of the places that should have emergency support.

The plans were done in the previous administration but were not supported. When I got into office, I had the choice to sign for allocation of those resources or to go back to the political cocoons of saying that the Member of Parliament for that area is from this political party and withdraw signing of those resources. Instead, being a public servant, I did what is right by making sure that Mfangano Island gets its rightful share. It is not Mfangano Island only. Hon. Millie knows that there are further resources supporting roads in Homa Bay County.

I agree that the report which was a question from Hon. Omboko Milemba and Hon. Millie Odhiambo is that the information is with the Budget and Appropriations Committee where Hon. Millie sits but I do not want to say that. In fact, they passed that budget themselves. If the Budget Policy Office was to be asked today to bring it and print for every Member of Parliament, we would have it in this House. I would struggle more to get that report than yourselves but nevertheless, and since I respect the orders of this House and has been requested by Members of Parliament, I will table that report to the House based on the directives.

The Whip of the Majority Party has said that some roads in some places are ongoing under the RMLF. It is not allowed for RMLF to fully support development. What happens is that there is a process called 'stage improvement' that we try to support and sometimes it is for the roads that are worn out that are being maintained. It rarely happens that you start from zero using RMLF. There are cases like the one I said of Lamu where, because of outright marginalisation, we end up doing it. We want to make sure that those people and areas which have security problems are at par with the rest of us in other areas.

On the question of Hon. Sarah Korere, it is true. I am very aware about the road from Churo-Mukie-Amaya-Tangulbei up to Chemalingot-Loruk requested by Hon. Sarah Korere and Hon. Kamket. This is a very strategic road. Between that road and the one that goes to Kapedo then Lokichar, we should ask our development partners to support us. If we do those two roads, we would have dealt a big blow to banditry and bandits in this Republic. I will be submitting this proposal to our development partners to try and support us in the same project that I have been doing on the roads in the northern part of the country.

On the question of Dol Dol Road, it is true. We will do everything as I have explained to the Member elsewhere to see how we can support. Hon. Kiunjuri was also one of the Members who asked this question in my office earlier on.

On the question of Kombere-Maseno Road, there was no deliberate decision to separate the people of Nyanza and western by doing only Kisumu and supporting the other side. It is just that the contractors stopped somewhere near the border to Emuhaya. As soon as we get the resources, it is part of the rubric of the roads we support. He will continue to complete the road to its logical end.

Regarding Wajir Constituency, I assure the Member that the contractors for most of the Horn of Africa projects have been identified and they are going to the site. For the remaining, one we re-advertise and the one that is about to be advertised, will change the north eastern parts of the country.

Hon. Cynthia Muge has raised a very important issue as far as emergency funds are concerned. It is true that in one of the projects in her county, we supported through emergency funding particularly in a place where there is a Teachers Training College (TTC) and a Medical

Training College (MTC). Things were problematic in Mosoriot. I will make sure that this is not going to happen in other parts of the country, that funds will not be disbursed marginally. What we did in Mosoriot is exactly what we did in Mfangano Island to support places. Particularly in Nandi County, when I realised that they had not had any new projects for many years, we had to support Mosoriot Township roads to make sure we address the issue of marginalisation.

For avoidance of doubt, since this debate has been going on for long, on Nandi County roads that have stalled since 2014 which are in Tinderet, Mosop and Chesumei Constituency, we have re-advertised them. We thank the Attorney-General for cooperating with my office to allow us to re-advertise those roads so as to get a good contractor who is going to deliver. Some of the leaders from those areas have said they do not want some contractors from certain countries. My business is to make sure that we get a contractor that has the capacity to deliver roads for the people of Nandi. I am not in the business of knowing or facilitating friends of politicians or individuals to get contracts. My business is to tell the agency to use proper tendering process and get us contractors who can get the people of Nandi from the morass and problems they have had from 2014, not to please certain individuals who are in certain contractors' pockets.

Finally, on the Sultan Hamud Road, I am reliably informed that this is also one of those roads that have waited for far too long to get the support of the Government. Let me inform Hon. Kimilu that all the letters from Members of Parliament are marked to the relevant office of the Principal Secretary and we put all the requests on a dashboard to make sure we track and implement. The only problem is that I get about 200 to 300 letters. Sometimes, a Member of Parliament writes a letter and writes a reminder. Maybe the mistake on our side is not replying back to the Members of Parliament. However, every single letter that comes from an Hon. Member, whether from this House, the Senate or other leaders in the country, are documented. It informs the prioritisation of the roads.

Regarding Sultan Hamud, we are now assessing it for purposes of restoration because of this *El Nino* situation. As you know, *El Nino* is affecting North Eastern, Coast, Upper and Lower Eastern Kenya. The initial assessment of all those places is that we need about Ksh15 billion to restore the roads. That is why we got Ksh1 billion from the Contingency Fund that was used to ensure we connect counties like the Habaswein-Kutulo Road to Mandera. I was in Garissa the other day.

If you watch the news today or get information from the social media, the road that connects Lamu to Mombasa has been destroyed by the rains. We will continue assessing it. Eventually, we will sit down and look at what is in the emergency fund, and what we can come back to this House to try and allocate for restoration of our roads.

I thank you, Hon. Speaker.

Hon. Speaker: Hon. Members, I am afraid we have to end here. I am sorry to all those Members who have burning questions. I have assured you I will give you a *Kamukunji* with this Cabinet Secretary. I will give you time to ask each and every conceivable question. Some Members have come here with very burning issues, genuine and legitimate concerns. Time is not on our side now. We have spent almost one-and-a-half hours on one question.

Let us move to the next Order.

*(The Cabinet Secretary for Roads, Transport
and Public Works spoke off the record)*

Yes, Cabinet Secretary.

The Cabinet Secretary for Roads, Transport and Public Works (Hon. Kipchumba Murkomen): Hon. Speaker, I thank you for giving me the opportunity to come here. I know

there was a specific question sent to me regarding Mau Mau roads which fall within all these roads that are pending across the country. We do not discriminate on any road, be it Mau Mau or any other. We will support all these roads as soon as we get the resources. No part of the country has received more consideration than the other.

Hon. Mukunji has been pushing me. We will make sure that we compensate those who need to be compensated. We will also check on some counties like Embu. Although neighbouring counties have Mau Mau roads, it is one of the marginalised counties in that region.

Hon. Speaker, I thank you for giving me this opportunity. I seriously beg you, because this is a formal setting, if you can set aside a day for an informal set up to discuss the future of our roads with Hon. Members next year. The Ministry will be very grateful.

Hon. Speaker: Get in touch with my office and then we will agree on the programme and time.

Hon. Jared Okello (Nyando, ODM): Hon. Speaker, I have a suggestion.

Hon. Speaker: Can I hear your suggestion, Hon. Jared?

Hon. Jared Okello (Nyando, ODM): Hon. Speaker, I have a very quick comment. When I first saw the list which has generated debate here, I thought it was fake. I believed that at worst the Cabinet Secretary would distance himself from it. However, he has owned it.

Hon. Speaker: What is the suggestion?

Hon. Jared Okello (Nyando, ODM): Hon. Speaker, it has been demonstrated here beyond doubt that there were a lot of inequalities in the distribution of these roads. The Cabinet Secretary should go back and cancel everything, so that we begin on a new slate.

Just like the NG-CDF which cuts across all constituencies within the Republic of Kenya, we should adopt this model. With the upsurge of *El Nino* flooding now, I was shocked because Bungoma County— where the third in command comes from—was left out of this scheme.

Hon. Speaker: What is your proposal, apart from naming Bungoma County?

Hon. Jared Okello (Nyando, ODM): Why not start afresh and cancel all the tenders, so that we have equal distribution of these monies? With *El Nino*, each and every place in this country is now under a lot of attack on those roads.

As I finish, Hon. Speaker, Nyando Constituency is known for flooding.

Hon. Speaker: Thank you. We will prosecute all this in the *Kamukunji*. Thank you, Hon. Jared, for mentioning my county.

(Laughter)

The Cabinet Secretary for Roads, Transport and Public Works (Hon. Kipchumba Murkomen): Hon. Jared is my friend. I ably prosecuted part of the question. Members have agreed that we need to sit together and conduct public participation on resources.

On the question of floods, we will not distribute resources equally. It will be based on the damage because it is a restoration fund. The roads that will be affected most must receive the highest resources. As you can see now, the North Eastern part, parts of Nyanza, Upper and Lower Eastern and the Coast are the most affected in the country. We hope that we will not have the highest damage on our roads in the western part of the country in the next one month. As I have told you, we cannot carry the burdens that come with this *El Nino* any further with the little resources that we have.

Hon. Speaker: Thank you, Cabinet Secretary. You may now take your leave.

PERSONAL STATEMENTS

Hon. Speaker: Hon. Members, you remember I informed the House that Hon. Alice Ng'ang'a and Hon. Sheikh will be given 15 minutes each to address the House. We will go to that which is still at Statements' level. Between the two of you, who goes first? Hon. Alice can go first. Go ahead.

LEGISLATIVE PROPOSALS TO AMEND THE
CONSTITUTION UNDER STANDING ORDER 114(7A)

Hon. Alice Ng'ang'a (Thika Town, UDA): Hon. Speaker, I rise to make a Statement on legislative proposal on the Constitution of Kenya (Amendment) Bill, 2023. It seeks to amend Article 89 of the Constitution to provide that the Independent Electoral and Boundaries Commission (IEBC) shall ensure that the second review of the constituencies shall not result in the loss of a constituency.

As you are aware, the first review was undertaken in March, 2012 by Andrew Ligale's Team which is now the defunct Interim Independent Boundary Review Commission.

[The Speaker (Hon. Moses Wetang'ula) left the Chair]

[The Deputy Speaker (Hon. Gladys Boss) took the Chair]

Hon. Deputy Speaker, the 2012 boundary review did not result in the loss of any constituency, despite the constituencies not complying with the population quota requirement. This was due to the provision in the Constitution which is found in the Sixth Schedule of the Constitution, in particular Paragraph 27 (4) which provides:

“The Interim Independent Boundaries Commission shall ensure that the first review of constituencies undertaken in terms of the Constitution shall not result in the loss of a constituency existing on the effective date.”

This provision, being a transitional one, is now spent. Therefore, the constituencies that were protected in the first review now face being scrapped. The 27 constituencies that were protected during the first review were as follows: Voi, Wundanyi, Mwatate, Bura, Isiolo South, Samburu East, Laisamis, North Horr, Saku, Kilome, Makueni, Mbeere North, Mathioya, Ndaragwa, Budalang'i, Vihiga, Othaya, Kangema, Marakwet East, Keiyo North, Tetu, Mogotio, Lamu East, Lamu West and Mvita.

Hon. Joshua Kimilu (Kaiti, WDM): On a point of order, Hon. Deputy Speaker.

Hon. Deputy Speaker: What is your point of order? You have been given the wrong microphone.

Hon. Joshua Kimilu (Kaiti, WDM): Thank you, Hon. Deputy Speaker. Is the Member in order to mislead this House by saying that Makueni is protected, yet it has more than 200,000 registered voters?

Hon. Deputy Speaker: Proceed, Hon. Member. That is a point of information.

Hon. Alice Ng'ang'a (Thika Town, UDA): Thank you, Hon. Deputy Speaker. Let me proceed.

You will agree with me that the people of the 27 constituencies have a right to be represented. If the second review of the constituencies boundaries takes place, which is due to be undertaken by March next year 2024, then the people in the 27 constituencies may lose representation in this House.

From the list that I have just read, the constituencies host significant cultural and development for the people. Merging them will result in a loss of identity and control of the people, in terms of local development in their constituencies. Further, should the next review result to the loss of any constituency, we will deny the great people of all the 27 constituencies

the much needed social and economic development, particularly which has been achieved through the allocation of NG-CDF.

Hon. Deputy Speaker, you will agree with me that review of constituency boundaries is an emotive issue that can cause unnecessary disharmony and conflict, especially to the great people of Kenya who are peace-loving and have been operating peacefully in their existing constituencies. In this regard, I dare ask, why merge the constituencies? It is as a result of the foregoing grave concern that I took up the initiative to amend the Constitution to further protect constituencies from the second review of constituency boundaries. It is worth noting that protection of constituencies also featured heavily in the National Dialogue Committee stakeholders' engagement, and the public expressed concern on the need to ensure that their right to representation is upheld.

That is the basis of my legislative proposal, which seeks to amend Article 89 of the Constitution to ensure that the second review of constituency boundaries will not result in the loss of any of the 27 constituencies, in recognition of the right to representation of the people in the 27 constituencies.

As I conclude, I urge Members of this House to support the legislative proposal. As a House that is established under Article 95 of the Constitution to represent the people in these constituencies, we are here to do exactly that by legislating to ensure that the right to representation of the people of Kenya is upheld.

With those few remarks, allow me to quote the words of the 16th President of the United States of America (USA), Abraham Lincoln, who once said that he had never had a feeling politically that did not spring from the sentiments embodied in the Declaration of Independence. In the case of these 27 constituencies, allow me to go on record and state that I have never had a conviction that does not spring from the guiding principle, which is the welfare of the people of Kenya. That is what I stand for and I am here on behalf of the people in these 27 constituencies to ensure that their right to representation is not taken away by the second review of constituency boundaries.

Once upon a time, there were 210 constituencies in Kenya. When the first review of constituency boundaries was done, it did not take away the 210 constituencies, rather it added 80 more constituencies, which is why we have 290 constituencies today. The IEBC should look into the matter so that instead of taking away the 27 constituencies that are already represented by Members of this House, it should look for a way to increase the number of constituencies.

Thika Town Constituency is not one of the constituencies under threat, but once you come to this House, you no longer only represent your constituency; you represent all constituencies in this Republic. That is why I took the initiative to ensure that the 27 constituencies continue existing even after March 2024. I brought this Statement to the House today to ask Members to protect the 27 constituencies. Even if we increase the number of constituencies, the 27 should continue existing.

Thank you, Hon. Deputy Speaker.

(Applause)

Hon. Deputy Speaker: Hon. Bashir.

LEGISLATIVE PROPOSAL TO AMEND ARTICLE 88 OF THE CONSTITUTION

Hon. Major (Rtd) Abdullahi Sheikh (Mandera North, UDM): Thank you, Hon. Deputy Speaker. This is a Personal Statement on the Constitution of Kenya (Amendment) Bill, 2023 specifically, Article 88 of the Constitution of Kenya.

Pursuant to Standing Order 114(7A), with your permission, I wish to make the following Statement on this important piece of legislation.

The principal object of my Bill is to amend the Constitution to ensure a continuation of the functions of the IEBC as per Sections 4, 7(1) and 7(2) of the Act. Further, this Bill seeks to ensure that in cases where the Commission is not constituted and can, therefore, not gazette a constituency returning officer to conduct a by-election, there is an officer, most probably the Chief Executive Officer (CEO) of the IEBC, who can gazette a constituency returning officer. This is also provided for under Article 101(2) of the Constitution. Currently, the Commission is bereft of a Chairperson, Vice-Chairperson, and members of the Commission. Sections 7(1) and 7(2) of the IEBC Act, 2011 cannot be applied to resolve the vacancies of the Chairperson and members of the Commission. This has resulted in some constituencies and county assembly wards that were scheduled to have by-elections to go without representation, contrary to the provisions of Chapter Seven of the Constitution.

My amendment Bill proposes amendments to Article 88 of the Constitution to provide that when the Commission is not fully constituted, the Secretary of the Commission, who is also the CEO, can perform functions of the Commission that are only limited to conducting by-elections, pursuant to Article 101(4)(b) of the Constitution. Currently, the IEBC has no commissioners. The terms of the Chairperson and two other members have expired, and the rest have been removed and/or resigned from office. Therefore, the IEBC is not properly constituted and lacks quorum to conduct its business and execute its mandate.

Two vacancies in the offices of Members of Parliament for Banissa and Magarini constituencies have been announced. It is against this background that I propose a legislative proposal seeking to amend the law to ensure that in cases where the Commission is not constituted and can, therefore, not gazette a constituency returning officer to conduct a by-election, there be an officer, preferably the CEO of the IEBC, who can, in an acting capacity, gazette a returning officer to conduct a by-election.

The Constitution and the law did not contemplate a situation where there are vacancies in the offices of all commissioners. Strict compliance with the law would have ensured that the vacancies are filled since the law contemplates that recruitment of new commissioners should commence six months before the expiry of the term of a member of the IEBC.

Constitutionally speaking, the IEBC has the mandate to conduct and supervise elections and referenda in Kenya. This function is solely the mandate of the Commission. It cannot be performed by any other body, person, or authority unless the provisions of Article 88 of the Constitution are amended. Therefore, this amendment seeks to empower the CEO, who is the Secretary to the Commission, to perform functions ordinarily performed by the Commission. The IEBC Act clearly distinguishes the responsibilities of the Commission from those of the Secretariat. The Act provides that the Commission is responsible for policy formulation, strategy and oversight, whereas the Secretariat is charged with the responsibility of day-to-day administration of the activities of the Commission, as well as implementation of policies and strategies.

The Constitution contemplates that upon the issuance of writs, by-elections are conducted within 90 days. This underscores the urgency of this matter and we shall be in violation of the same Constitution if we do not act.

Hon. Deputy Speaker, you are aware that every Kenyan has to be represented in the august House, either in the National Assembly or the Senate. We never contemplated that we would ever find ourselves in a situation where there are no commissioners of the IEBC in office. I am fully aware that there is a National Dialogue Committee, of which you are a member, and I am aware of the Co-Chairperson of the Committee, who is sitting here. However, we are not aware of the timelines. What will happen to the IEBC commissioners? Will we have them in place in time? Will they be in office next week, next month, or in two or

three months? As a Member of the National Dialogue Committee, you do not have answers, and neither does this House. All I am proposing is that for a by-election to be conducted, a returning officer has to be gazetted. Maybe the drafters of the Constitution made a mistake by giving this small task of gazetting a returning officer to the Chairperson of the Commission. We do not have the Commission now. Nobody else is supposed to gazette unless we amend this Act.

Amending this Act is only for the conduct of a by-election in case of absence of a commissioner. If commissioners are in place, the CEO will not have these powers. Some people might say IEBC is the commissioners. They might be right or wrong, but IEBC as we speak now is a body constituted and working. This House has even appropriated funds to it. Why did we not withhold funds for IEBC if we are saying without commissioners nothing can work? The same persons who are supposed to conduct by-elections are staff working for IEBC. They are paid salaries and allowances. What is missing is that gazette notice by the Chairman of IEBC. We do not have him in office now. Will the people of Banissa and Magarini suffer because of issues that are not of their making? I do not think so. It is time that we made amendments to this Act. It is for posterity. I am sure, probably in 2027 after elections, the commissioners will also go away for whatever reasons. If this Act is in place, however, and there is a by-election in a constituency or county assembly, the CEO will gazette a returning officer. I want to make it very clear that this only works if the commissioners are not in office. This House can do that.

Hon. Deputy Speaker, this country has people represented in this House. Unfortunately, this House only represents 288 constituencies now. We cannot just look at that and say nothing is happening. No, it is wrong. The Speaker issued the writs eight months ago for a by-election. The Constitution says after issuance of writs, a by-election shall be conducted within 90 days. We are already in contempt of the same Constitution. Has this House asked itself why IEBC is in contempt of the Constitution that says 90 days after issuing of writs there must be a by-election? They have found themselves in this situation. What do we do? We must fix the problem. How deep is the problem? Let us amend this IEBC Act to cover by-elections in the absence of commissioners. That is why I am coming before this honourable House to appeal on behalf of the people of Kenya in Banissa, Magarini and the over 20 county assemblies due for by-elections.

Many people act in positions. Saying that the CEO who is currently running IEBC can act on behalf of the chairman is not a big deal. We have offices here in the country where people are acting, and they perform. Yesterday, I was in the office of the Director-General of Immigration. I found a lady there, who is a career officer from immigration. She is acting and doing her job, yet she is not confirmed. What we are saying is that the CEO can perform this special task which is limited only to timings. If commissioners are in place, and we hope that your dialogue team will do it, then this task cannot be done by the CEO. He will have to relinquish to the chairman and commissioners. It is unfortunate that almost nine months down the line a constituency does not have a Member of Parliament. It is not fair. Let us make this amendment. I know amendments are done in two ways, through popular and parliamentary initiatives. I am bringing this as a parliamentary initiative. It can work.

My plea to this House is to support these amendments. When commissioners come to office, the CEO relinquishes the task. I do not want to say much. I have already spoken much and I know Members have listened to me. With or without the report of the dialogue team, this IEBC amendment Bill can be used for posterity in 2027 and beyond. Let us not say that commissioners will be in place probably next week, one month or so. If we amend this Act, it will be used for posterity. I do not want to take much of your time.

It is against this background that I seek the support of this honourable House and colleagues to support this proposal and correct the lacuna in the law and afford the people the

right to franchise and representation, especially the two constituencies that are now not represented very well in this House.

Thank you, Hon. Deputy Speaker. I submit.

Hon. Deputy Speaker: Thank you very much. The Speaker has directed that he will appoint a later time at which he will allow Members to make general comments on these legislative proposals.

Before we move to the next order, I wish to recognise visitors seated in the Speaker's Gallery: Mr David Sang and Mrs Janet Sang, from North Carolina, United States of America. They are here to familiarise themselves with the proceedings of Parliament on the invitation of the Member for Mosop, Hon. Kirwa. Thank you.

Next Order.

BILL

Second Reading

THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) (NO. 2) BILL (National Assembly Bill No.68 of 2023)

(Moved by Hon. Kimani Ichung'wah on 6.12.2023 – Morning Sitting)

(Resumption of debate interrupted on 6.12.2023 – Morning Sitting)

Hon. Deputy Speaker: Hon. Baya, you were to second?

Hon. Owen Baya (Kilifi North, UDA): Yes.

Hon. Deputy Speaker: Alright.

Hon. Owen Baya (Kilifi North, UDA): Thank you very much, Hon. Deputy Speaker. I stand to second the Bill. This Bill is being read for the Second Time. As is normal with miscellaneous or statutory law amendments, it contains several pieces of legislation that would like to amend certain provisions that are just specific for a short item within it. That is why we may move the Bill. In this Bill, the Oath and Statutory Declarations Act is being amended. The reason for amending it is to provide that an advocate who has been appointed as a commissioner of oaths shall sign the roll kept by the Chief Registrar of the Judiciary and that the registrar or deputy registrar of a superior or subordinate court may administer an oath or affirmation under the Act. That is what this Bill seeks to do.

This Bill seeks to amend the Advocates Act to provide that the person responsible for keeping the roll of advocates shall be the Chief Registrar of the Judiciary. Also, the Bill proposes to amend that Act to provide that the Council of the Law Society may, with the approval of the Chief Justice, make rules for admission of advocates.

In the same Bill, there is the Notaries Public Act. The Bill proposes to amend the Notaries Public Act, to provide that the Registrar of the Judiciary, shall be responsible for enrolling notaries public in the book kept for the purpose, granting new certificates to newly enrolled notaries public and removing from the roll any person whose appointment as a notary public has been revoked under the Act.

The Bill proposes to amend the Civil Procedures Act (Cap.21) to provide that the members nominated by the Law Society of Kenya (LSK) and appointed by the Chief Justice shall be three in number. This is intended to improve decision making within the Rules Committee and reduce the cost of facilitating its work.

In this Bill, the Public Holidays Act (Cap 110) is being amended to delete the provision for Utamaduni Day, as a public holiday. The Bill also proposes to amend the Trustees

(Perpetual Succession) Act (Cap.164). This is to provide that the Registrar of Companies as defined under Section 2 of the Companies Act, 2015, shall be responsible for: the registration of trusts and issuance of certificates of incorporation; processing of applications for incorporations; form of an application; keeping and maintaining of a register; conduct of searches in the registry; and making of regulations.

The Bill proposes to amend the Industrial Training Act (Cap.237) to provide that the date for remitting the training levy shall be the ninth day of the month. In order, to harmonise it with the period within which Pay As You Earn (PAYE) is remitted to the Kenya Revenue Authority (KRA). The Bill proposes to amend the Traffic Act (Cap. 403) to incorporate the use of technology in the management of minor traffic offences. The Bill proposes to amend the Sexual Offences Act, 2006 (No.3 of 2006) to provide, that the register of convicted sexual offenders shall be kept and maintained by the Chief Registrar of the Judiciary. We need to have a register of sexual offenders in this country and this amendment speaks to that.

The Bill proposes to amend the Employment Act, 2007 (No.11 of 2007) to exempt the National Intelligence Service (NIS) from the application of the Act, in the same manner as other national security organs are exempted. It also proposes to amend the Veterinary Surgeons and Veterinary Paraprofessionals Act, 2011 to make minor corrections, to the provisions relating to the definition of the words ‘animal’, ‘animal resource industry’, ‘annual licence’, ‘private practise’, ‘register’, ‘veterinary medicine’ and grammatical errors occurring in other provisions of this Act. This is the Act that you see very many people posting that, if you keep a cow, you should have a licence of Ksh5,000. This is neither here nor there and is a creation of some busy bodies out there. We have certain definitions we need to make in this Bill.

The Public Finance Management Act, 2012 (No.18 of 2012) will be amended to cure inconsistencies in the provisions of the Act, on the submission of the Finance Bill. We have amendments to the Universities Act, 2012 (No.42 of 2012) to provide for the declaration of technical universities under Section 25 (1) of the Act in respect to public institutions that were national polytechnics.

The Office of the Attorney-General Act, 2012 (No. 49 of 2012) is going to be amended to remove inconsistencies in the operation framework of the Office of the Attorney-General in line with Article 156 of the Constitution that establishes the Office of the Attorney-General as an independent office. As I close, we also have amendments in the Civil Aviation Act, 2013. The Bill also proposes to amend the Value Added Tax, 2013, to reclassify the supply of gas metres of tariff number 9028.10.00 and the supply of denatured ethanol of tariff number 2207.20.00 as exempt and zero rated, respectively. Lastly, the Bill proposes to amend the Privatization Act, 2023 (No.11 of 2023) to cure inconsistencies between the role of the Authority and the Cabinet Secretary.

Hon. Deputy Speaker, as I second this Bill, I request Members of this House to go through the many clauses that are changing. At times, people call this the guillotining of law and sometimes very many laws can pass without catching the eyes of Members. Therefore, we can pass bad laws because Members did not go through this thoroughly to ensure they understand the provisions given.

During the Third Reading, we do not just pass Bills but sift through, understand the laws and amendments made, so that we end up with good laws. We have seen a flurry of court cases on some amendments and laws we have passed. The courts have been ahead of us in many things. I think as we process this Bill, we shall be wide-awake to the fact that we need to do due diligence and pass good laws.

Hon. Deputy Speaker, I second.

Thank you.

(Question proposed)

Hon. Deputy Speaker: Hon. George Murugara.

Hon. George Murugara (Tharaka, UDA): Thank you very much, Hon. Deputy Speaker. I rise to support the Statute Law (Miscellaneous Amendments) (No.2) Bill (National Assembly Bill No.68 of 2023). The Leader of the Majority Party and the Deputy Leader of the Majority Party have elaborated on the proposals being made. It is important to note that a Miscellaneous Amendment Bill does not make substantive amendments to Acts of Parliament. It brings routine amendments which do not have a lot of impact on the proposed law or Act of Parliament being amended. This is the case here, having gone through the various laws proposed for amendment.

Most important is to confirm that when this Bill was read a First Time, the various laws were committed to committees of this House, which had instructions to conduct public participation. Therefore, it does not behove on anyone to say this law was passed by Parliament without public participation. My Committee - the Departmental Committee on Justice and Legal Affairs - conducted public participation yesterday. We made an elaborate report which is available for Members to study, as soon as it is tabled in the House, together with the reports of other committees that looked at the various proposed amendments.

Most of the proposals are routine and do not merit a lot of arguments because they are purely aligning or making the law applicable and better than it is. This applies to the Oaths and Statutory Declarations Act which will enable magistrates to administer oaths and affirmations when they are appointed. The Advocates Act proposes that the LSK Council will make laws as far as admission of advocates is concerned. There was a bit of hesitation on this and there may be a proposed amendment. This is because the issue of admitting advocates under the Advocates Act is a preserve of the Chief Justice, who is supposed to promulgate any rules and regulations. The Report by the Departmental Committee on Justice and Legal Affairs will look into this. If there are proposed amendments, they will be moved during the Third Reading of the Bill.

The same applies to the Notaries Public Bill with which magistrates have to become notaries public. The problem with that is even for advocates to become notaries public, they must have practised for at least five years. We cannot have a magistrate appointed after three years of admission becoming a notary public straight away. We have to look at this.

The Civil Procedure Act which is the Act that encompasses the law regarding hearings of civil matters, is proposed to be amended so that the composition of the Rules Committee is slightly enhanced especially the appointment by the Law Society of Kenya. We observe that, that may actually be necessary because advocates are the greatest consumers of the Civil Procedure Act and the rules that are made there under.

[The Deputy Speaker (Hon. Gladys Boss) left the Chair]

[The Temporary Speaker (Hon. Omboko Milemba) took the Chair]

Hon. Temporary Speaker, it is quite interesting that we are now doing away with Utamaduni Day which variously used also to be known as Huduma Day. This is under the Public Holidays Act, Cap 110 of the Laws of Kenya. There has been debate ever since this day was made a holiday bearing the title Moi Day and there were questions as to whether it was really necessary for the country to have such a holiday. But that was in honour of the late President Moi and soon after that, it was actually included in the Public Holidays Act. I am in agreement that this holiday does not serve a lot of purpose for Kenyans. It just enhances the number of holidays we have in the country, which is not good for our economy.

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There are many other laws which are proposed to be amended. I also wish to point out that we have the Office of the Attorney-General Act No.49 of 2012 in which there is a proposal to delete a reference to the Public Service Commission. What we are trying to do here is to de-link the Office of the Attorney-General from the Public Service Commission, not so much because of the argument that is given here that, that Office is independent but purely to ensure that this Office is cushioned and protected from the other Government agencies.

The Office of the Attorney-General has become a training ground for advocates. Advocates are taken in as pupils or interns, they are properly trained and soon after that they are raided by institutions like the Parliamentary Service Commission, ODPP, EACC, the courts and everybody else. That is where they draw their advocates. They go in and poach the lawyers and what remains of the Office of the Attorney-General is a shell. It is notable to defend cases in court. Those who are left are very young advocates who cannot beat seasoned lawyers out there. The idea, if this is going to help, is to give the Attorney-General the power to recruit and retain advocates on his own terms. The Public Service Commission has vehemently opposed this. One of the grounds is that the Office of the Attorney-General is not an independent office, and I agree. Even the Office of the Director of Public Prosecutions is not an independent office. The ODPP operates independently, that is what the Constitution says. It does not list that Office as an independent office. To make it work independently or to make it work without interference from anyone, the office of the DPP has a board that runs the affairs of the office.

The Law Society of Kenya has proposed that we create a board for the Office of the Attorney-General that is going to run the affairs of that office so as not to make the Attorney-General an autocratic person who runs the office singlehandedly. That is possibly a further amendment we have to consider in respect of that particular Act when we go to the Third Reading of the Bill. There is then the litany of many other Acts that are being amended in a miscellaneous format.

What we wish to point out here is that as we amend these laws in a miscellaneous statute, we must be cautious of the fact that anyone who goes to court may try to argue that we have made substantive amendments. It is my considered view and that of the Departmental Committee on Justice and Legal Affairs that we can actually effect these amendments through this miscellaneous Bill and when they are read a Third Time, we will be looking at what the public has told us about the various proposed amendments. This is why it becomes extremely important for the Members of this House to obtain the reports, go through them, hear what the public has said and then we can look at all these in entirety when it comes to the Third Reading of the Bill.

With those remarks, I confirm I support the Bill.

The Temporary Speaker (Hon. Omboko Milemba): Very well. Hon. Shakeel Shabbir. In fact, Hon. Millie Odhiambo is next. So, if Hon. Shakeel Shabbir is not ready...

Hon. Shakeel Shabbir Ahmed (Kisumu East, Independent): I am ready, sir.

The Temporary Speaker (Hon. Omboko Milemba): Proceed.

Hon. Shakeel Shabbir (Kisumu East, Independent): Thank you, Hon. Temporary Speaker. When we get the omnibus statutory Bills, we become concerned. As much as the Chair has gone through all the elements, we sometimes are ambushed by this omnibus Bill. One of the concerns that I have is an attempt to amend the Bill to operationalise or correct an abnormally, generally, what we might call abuse of office. Those are the ones that are in relation to what we might say a lacuna that might allow misuse of funds.

As much as we have discussed and spent a lot of time on the notary public and other issues, I find that Members of Parliament like myself who are not lawyers are sometimes taken aback by the amendments in this Bill. I agree and I believe that our Chairman of JLAC has looked through this carefully and has had public participation. It is on that belief that we need

to relook at these issues. If we are looking at it now and JLAC has given us this undertaking, on that basis I would reluctantly say yes, I support.

The only exception to this issue is the fact that this statute has been used in the past to put us back on issues of corruption and leadership and many other issues by way of regulations. The Chair of JLAC has made a declaration that these are only statutory miscellaneous amendments that have no real impact on the spirit and direction of the laws that they are amending and they are only correcting them. As far as the Anti-Corruption Caucus and I are concerned about issues of good governance and integrity, we hope and pray that these miscellaneous amendments as proposed and seconded, and as undertaken by the Chair of JLAC, have been dealt with in a proper manner, and there is no mischievous amendment therein.

Thank you.

The Temporary Speaker (Hon. Omboko Milemba): Hon. Millie.

Hon. Millie Odhiambo-Mabona (Suba North, ODM): Thank you, Hon. Temporary Speaker, for giving me this opportunity. I wish to support the Statute Law (Miscellaneous Amendments) Bill with proposed amendments. I wish to also give an indication that I agree with the Chairperson of the Departmental Committee on Justice and Legal Affairs that miscellaneous amendment Bills are not supposed to deal with substantive issues. However, I disagree with him that this Bill is not dealing with substantive issues. Actually, there are substantive issues that are being dealt with in this Bill. I want to encourage that in future – as I have said countless times before – when we are dealing with a miscellaneous amendments Bill, it should not touch on substantive issues. I have looked at this Bill and I have counted about 16 pieces of legislation that are being amended.

The Chairman of the JLAC has indicated to us that their Committee did public participation yesterday. He has encouraged Members of this House to look at the reports of the JLAC. I am sure that the JLAC did not deal with the 16 pieces of legislation, because not all of them are related to justice and they are quite a number. For instance, the Civil Aviation Act, the Value Added Tax Act, the Privatisation Act, the Public Finance Management Act, the Universities Act amongst others. So, these legislations went to the various relevant committees. You can now imagine reading all those Reports and yet – if the practice of this House is anything to go by – the likelihood of this Bill going to the Committee of the whole House stage tomorrow is very high. That is the reason we are very amenable to suits in court. Earlier today, I said it to the Speaker – and I will repeat – that the other side has the majority of the Members so I do not understand where we are rushing to. It is basically the same way we rush to get loans all over and then say that we are broke. I think we need to be very serious about the way we are dealing with issues as a country.

There are some minor amendments which I have no problem with, including the proposed amendment to the Sexual Offences Act that is situating the registry at a different place. How I wish that – now that we are bringing substantive amendments through this Bill – we brought a more substantive amendment that is thornier on the issue of the Sexual Offences Act, where minors engage in sex with minors. I have no problem with the proposed amendment to the Trustees Perpetual Succession Act. However, in that amendment, they would have also brought an amendment on how you change trustees when they leave or when they retire. That is still problematic.

On the issue of Utamaduni Day, I was very keen to listen to both the Mover and the Seconder to see the reason why we want to remove the Utamaduni Day other than the fact that it is aligned to the late President Moi and we may not have liked him for whatever reason. For me, I have no problem with the late President Moi. I do not understand why we want to remove Utamaduni Day and yet we create impromptu environmental days or tree planting holidays.

Why can we not use this Utamaduni Day to do every other thing, including planting trees, dancing and smiling? All those are Utamaduni-related issues.

Hon. Kimani Ichung'wah (Kikuyu, UDA): On a point of order, Hon. Temporary Speaker.

The Temporary Speaker (Hon. Omboko Milemba): What is your point of order, Leader of Majority Party?

Hon. Kimani Ichung'wah (Kikuyu, UDA): Thank you, Hon. Temporary Speaker. It is not a point of order. I was seeking to inform Hon. Millie.

Hon. Millie Odhiambo-Mabona (Suba North, ODM): I did not ask to be informed. I am sorry. I am sorry, you cannot inform me. You intervened on a point of order; you are not on a point of information. You cannot inform me without my permission. I am sorry.

The Temporary Speaker (Hon. Omboko Milemba): Order, the Leader of the Majority Party! Order, Hon Millie!

Hon. Millie Odhiambo-Mabona (Suba North, ODM): Hon. Temporary Speaker, I have said it before in this House that I am fairly informed. I do not need Hon. Ichung'wah to inform me.

The Temporary Speaker (Hon. Omboko Milemba): The Leader of the Majority Party, did you want to inform Hon. Millie? She has said she does not want to be informed.

If you have a point of order, then proceed. I thought you intervened on a point of order.

Hon. Kimani Ichung'wah (Kikuyu, UDA): Yes, Hon. Temporary Speaker. Hon. Millie may not have been there when I moved the Bill. She is debating the Bill as it was published. That clause is part of the items that we intend to delete because there has been a change following what happened on Utamaduni Day this year. So, 10th October will remain to be a public holiday, themed around the issue of climate change mitigation. As much as Hon. Millie did not want to be informed, it is good for her to learn that. Even without being informed, she has now learnt something.

Hon. Millie Odhiambo-Mabona (Suba North, ODM): Hon. Temporary Speaker, I like to learn substantive and intellectual things. So, I encourage Hon. Ichung'wah that the next time he wants to inform me, he should do so at my intellectual capabilities not over mundane things like that. This is because those are things that I just raise in passing but I talk about issues of substance.

I have a problem with the proposed amendment to Section 117(9)(a) of the Traffic Act, which provides that if any unauthorised person removes a notice affixed on a vehicle or tears or defaces a notice, they are guilty of an offence and liable, upon conviction, to a fine not exceeding Ksh200. Allow me to say that in Kiswahili: *Shilingi mia mbili*. Further, with your permission, I can say it in Dholuo, *siling mia ariyo*.

The Temporary Speaker (Hon. Omboko Milemba): Order, Hon. Millie.

Hon. Millie Odhiambo-Mabona (Suba North, ODM): Hon. Temporary Speaker, I sought your permission.

The Temporary Speaker (Hon. Omboko Milemba): I did not give you the permission to use mother tongue.

Hon. Millie Odhiambo-Mabona (Suba North, ODM): I apologise, Hon. Temporary Speaker.

The Temporary Speaker (Hon. Omboko Milemba): Proceed, Hon. Millie.

Hon. Millie Odhiambo-Mabona (Suba North, ODM): Hon. Temporary Speaker, the reason why I insist on stating that figure in the local languages is because this amendment seeks to move that fine from Ksh200 to Ksh200,000 and a fine of Ksh500 to Ksh500,000. I am sad that I was not here when Hon. Ichung'wah moved the National Tax Policy. That Policy must be anchored on what the Kenya Kwanza Government promised hustlers. These are the same hustlers you will fine Ksh500,000 for removing a notice on a car. Do you live in utopia? Do

you live in Mars? Are you crazy? Are you mad? Are you mental? Do you need a mental check-up? You are making Kenyans crazy.

Hon. Kimani Ichung'wah (Kikuyu, UDA): On a point of order, Hon. Temporary Speaker.

The Temporary Speaker (Hon. Omboko Milemba): Order, Hon. Millie. I will still give you time. This is the sweetness of debate. What is your point of order, Leader of the Majority Party?

Hon. Kimani Ichung'wah (Kikuyu, UDA): Hon. Temporary Speaker, is the Member in order when she uses the kind of unpalatable words that she is spewing? She is asking whether people are crazy or sick. But more importantly, we are debating the Statute Law (Miscellaneous Amendments) Bill. We concluded debate on the National Tax Policy, which was passed this morning. As usual, Hon. Millie was not in the House. I am not sure whether she contributed to the National Tax Policy. I also do not know whether she understands that fines deal with people who have a penchant for breaking the law; those who believe that laws are there not to be followed. Therefore, I request that you get Hon. Millie Odhiambo to restrict herself to the debate on the issues here. The National Tax Policy debate was concluded and passed in the morning. We are now debating the Statute Law (Miscellaneous Amendments) Bill. I heard her saying that she wants to engage in intellectual arguments. I have tremendous respect for a lady like her, but when she engages in epithets, I may not lower myself to that level.

(Hon. Millie Odhiambo spoke off the record)

The Temporary Speaker (Hon. Omboko Milemba): Please, Hon. Millie, proceed.

Hon. Millie Odhiambo-Mabona (Suba North, ODM): Thank you, Hon. Temporary Speaker. This is what I meant when I talked about intellectual engagement. Had Hon. Ichung'wah listened carefully, he would have known that I was making a connection between the two laws. He should know that as an esteemed lawyer, when I speak I know the rules of the House so I have made a connection between the Statute Law (Miscellaneous Amendments) Bill and the National Tax Policy. It is allowed under our procedures to refer to other laws and make such connections. The connection I made is that the Policy must be linked with the law that was passed. The National Tax Policy cannot be divorced from the law. The law must follow the policy. I inform Hon. Kimani Ichung'wah that indeed he prophesied that I would say something about him and that is why he pre-empted. I will repeat: Are you mental? Are you out of your mind? Think about the Kenyans you are harassing. Which Kenyan is going to pay Ksh500,000 for removing a foul piece of paper from a car? You are very unserious.

The Temporary Speaker (Hon. Omboko Milemba): Order, Millie! Order! Honestly you were doing very well apart from the language. You do not need to use unpalatable language in the House. That is fine but the language is improper.

Hon. Kimani Ichung'wah (Kikuyu, UDA): On a point of order, Hon. Temporary Speaker.

The Temporary Speaker (Hon. Omboko Milemba): The Leader of the Majority Party, Millie has finished. If you want to say something, I will give you a chance to speak. Give him a chance to rise on a point of order.

Hon. Kimani Ichung'wah (Kikuyu, UDA): Thank you, Hon. Temporary Speaker. You know it is one thing to debate intellectually but I do not know intellectuals who spew filth from their mouths. I do not know what intellectualism is there...

The Temporary Speaker (Hon. Omboko Milemba): Order, Leader of the Majority Party! Order!

Hon. Kimani Ichung'wah (Kikuyu, UDA): I do not know what intellectualism is there in spewing epithets.

(Loud consultations)

The Temporary Speaker (Hon. Omboko Milemba): Order! You were standing on a point of order because of the unpalatable language by Millie. Unfortunately, you are going the same direction. Could you please...

Hon. Kimani Ichung'wah (Kikuyu, UDA): Hon. Temporary Speaker, I need protection.

The Temporary Speaker (Hon. Omboko Milemba): You are fully protected but please do not use unpalatable language. Give the Leader of the Majority Party one minute, so we can hear him.

Hon. Kimani Ichung'wah (Kikuyu, UDA): Thank you, Hon. Temporary Speaker. I was saying you must protect the dignity of this House. If I question your sanity today and you let it go, tomorrow nothing stops me from repeating. I have never questioned the sanity of Millie Odhiambo. There are things that may occasion me to question it, but I cannot question on *The Hansard*. I needed you to give direction that it be expunged from *The Hansard* otherwise I can choose to also go to the level of spewing epithets which do not add any intellectual value to the debate before the House. I expect if you claim to be an intellectual, you debate intellectually. Do not throw insults. Some of us do not need to go to school to learn insults. I want to uphold the dignity of this House even for those I feel are undignified.

Hon. Rozaah Buyu (Kisumu West, ODM): On a point of order, Hon. Temporary Speaker.

The Temporary Speaker (Hon. Omboko Milemba): Thank you. You have made your point. What is your point of order Hon. Rozaah Buyu? Give her the microphone.

QUORUM

Hon. Rozaah Buyu (Kisumu West, ODM): Thank you, Hon. Temporary Speaker, for this opportunity. I stand under Standing Order 35 because the House lacks requisite quorum to continue with debate. This might calm down some Members.

Thank you, Hon. Temporary Speaker.

The Temporary Speaker (Hon. Omboko Milemba): Very well. A Member has risen in her place under Standing Order 35 on the issue of quorum. So, Serjeant-at-Arms, please ring the Quorum Bell.

(The Quorum Bell was rung)

Very well, we have done 10 minutes. The Serjeant-at-Arms can stop ringing the Bell.

ADJOURNMENT

The Temporary Speaker (Hon. Omboko Milemba): Hon. Members, the time now being 6.29 p.m., this House stands adjourned until Thursday, 7th December 2023 at 9:30 a.m.

The House rose at 6.29 p.m.

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