

NATIONAL ASSEMBLY

OFFICIAL REPORT

Wednesday, 5th March, 2014

The House met at 9.00 a.m.

[Hon. Deputy Speaker (Dr. Laboso) in the Chair]

PRAYERS

QUORUM

Hon. Deputy Speaker: Hon. Members, we do not have quorum. I, therefore, order that the Division Bell be rung.

(The Division Bell was rung)

Order, hon. Members! We can now transact business.

NOTICE OF MOTION

Hon. Deputy Speaker: I can see some Members listed here as having notices of Motions.

Hon. Francis Njenga, do you have a notice of Motion? Let us move to the next Order if there is no notice.

BILL

Second Reading

THE CONSTITUTION OF KENYA (AMENDMENT) BILL

(Hon. Lati on 26.2.2014)

(Resumption of Debate interrupted on 26.2.2014)

Hon. Deputy Speaker: So, hon. Njenga, this is the one that you wanted to make your contribution on. You are the first on the line. So, have your bite.

Order, hon. Njenga! Apparently, there was a Member who was on the Floor. He had a balance of four minutes. That was hon. M'eruaki M'uthari. I do not see his request. So, Francis Njenga, you have the Floor.

Hon. Njenga: Thank you very much, hon. Deputy Speaker. I support this amendment because you can see that the governors have totally failed to absorb their

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funds in this country. The governors have over Kshs80 billion which they have not taken from Central Bank of Kenya (CBK). Giving them more funding is actually over-burdening them. I, therefore, think this should go to the Members of Parliament who, through the Constituencies Development Fund (CDF), development has been seen by the people of this Republic.

Furthermore, it is the same Members of Parliament who know the problems in their constituencies. They are the ones who criss-cross every village in their constituencies. They know the problems they undergo and I am very sure that, once they take charge of this Equalisation Fund, they will solve all those problems depending on their priorities.

Hon. Deputy Speaker, it has now been proven and it is no longer a theory that the only Government funds that are felt on the ground by ordinary Kenyans are through CDF. Over the last ten years, CDF has done a lot. Go anywhere in this Republic and you will see that. Go to Prof. Nyikal's place, Ngumo's constituency, my place and even to your constituency and you will see what CDF has done. One thing that is well done with supervision and accountable level is CDF. I think this Equalisation Fund should also follow the same route so that people can enjoy the fruits of this good Government and legislators of this country.

Hon. Deputy Speaker, I think the formula that was followed is skewed and I believe that it should have looked at the area. After doing that, probably, there would have been much more. I believe there are areas that have people who are suffering and who have been left behind. Those are the people who need to be uplifted. I think we need to urge that this Fund be appropriated in time. I am very sure that, once this is done, people will prosper economically and socially.

Hon. Deputy Speaker, with those few remarks, I support this amendment and ask other Members who have seen how Maasais, Samburus, Kikuyus from Ndeiya and Thika and Kambas suffer during the dry season to pass this Bill and have this money get to the people following the route that the CDF has taken with our participation and patronage and all will be well.

Thank you.

Hon. Deputy Speaker: Thank you. The hon. Member for Mbalambala, hon. Abdikadir.

Hon. Aden: Thank you, hon. Deputy Speaker. I rise to support this very important Constitution of Kenya (Amendment) Bill. That is because in the spirit of devolution funds targeted at improving the wellbeing of Kenyans who are living in the very marginalised areas is, indeed, the best way of implementing and moving Kenyans from below the poverty line to a sustainable livelihood.

Hon. Deputy Speaker, devolution is the spirit that Kenya is going to have now and the lowest that you can devolve is not just the county. Indeed, it should be lower than the county, which is the constituency level. Therefore, this particular Amendment Bill brings the theory or the concept of wanting to move this particular Fund, which is 0.05 per cent of the national revenue, to be implemented through the CDF.

Hon. Deputy Speaker, the CDF is today the only tangible development agenda that Kenyans can identify with. It has put up hospitals and schools in all the necessary places. However, as we all know, CDF, which is only 2.5 per cent of the national

revenue, is a very small amount of money. This particular Fund, which has been set aside to help in the areas of water and health, will be an additional value to CDF. It translates to bringing water services and healthcare to Kenyans at the lowest levels.

There are a number of schools in my constituency where pupils are still learning under trees, and I have said this before. We need to move fast to put roofs over the heads of those children who are learning in those marginalized areas. Every time there is drought - like what we are seeing now in places like Turkana and Garissa where my constituency is - we have the problem and the challenge of mass suffering of ordinary citizens. Therefore, this particular Fund will go a long way in improving the lives of Kenyans and I very much wish to recommend and support this particular Amendment Bill.

Hon. Deputy Speaker, as I end, I want to say that, indeed, the 0.05 per cent of revenue collected is actually a very small amount. This Fund needs to be increased actually. That is because even in Nairobi, you will find pockets of areas that are marginalized and that require improvements in order to be brought at parity with the rest of Kenya. Therefore, as a member of the Budget and Appropriations Committee, I will take up the task to push for the increasing of this particular amount; meaning that in the subsequent times, we should actually be thinking of amending this from 0.05 per cent to about 1 per cent. That is so that this Fund becomes a bigger basket that can be able to do much more bigger and tangible development initiatives for our people at the lowest level of devolution, which is through the constituency which houses the wards.

Hon. Deputy Speaker, I end by saying that this is a very good Amendment Bill and I thank hon. Lati very much for this particular very good initiative. My addition to this is: I think that 0.05 per cent of revenue collected at the national level should be increased to 1 per cent.

Thank you.

Hon. Deputy Speaker: Hon. Ibrahim Elmi, the Member for Tarbaj.

Hon. Elmi: Thank you, hon. Deputy Speaker. I want to thank hon. Lati for bringing this excellent Amendment Bill. Inequality anywhere is what finishes a country. At the moment, our great country is facing numerous challenges, but one of the greatest is inequality – regional and internal inequality that is so bad that eventually, it will catch up with us.

In the wisdom of the framers of our Constitution, we created an equalisation fund. In my view, the best approach would have been, if the Executive side of the Government was willing, it could have planned and actually checked the difference between the average Kenyan and those places which are marginalised, do a programme where they borrow in advance an amount that is equivalent to 0.05 per cent of 20 years budget, take a loan and do those projects upfront. Unfortunately, four years down the line, the Government has not even released that money to the Equalisation Fund. Therefore, this House has a duty to bring up a legislation that will make sure that, that money is effectively used. That is the money that the Constitution has already set aside.

Hon. Deputy Speaker, inequality is so terrible in this country that the lives of Kenyans have almost become nothing. The other day, somebody killed his wife because of Kshs50. There was no outrage in this country. If you walk at 5.00 a.m. on Mbagathi Road, you will be shocked by the level of poverty in this country. The political elite or

the non-political elites in this country are burying their heads in the sand. The level of inequality is intolerable and, therefore, I urge the House that we come together and pass this excellent amendment in the absence of an Executive that does not want to end inequality in this country.

Hon. Deputy Speaker, devolution is another one that is going to help with inequality. At the moment, it is going through a turbulent period and my advice is that we nurture and protect it to make sure that we reduce inequality. My view is that we should not throw it away just because of a number of errant individuals in the county governments. We should not throw out the baby with the bath water. At the moment, I know many people are not happy with their counties. But that is not a reason not to protect devolution and support it. People must be accountable! Most of the monies should go to poverty eradication. It should not be about status.

The other thing that this country is ailing from is injustice and, more recently, there has been a lot of discussion about the Judiciary in this House and outside. Again, as a country, we have a new order; we have moved to a presidential system and the three arms of Government are trying to find their level. But my take is that we must be very cautious as opposed to the other two arms of Government. The Executive and the Legislature can take any beating or criticism in their stride. However, my view is that the Judiciary should be protected by this House. If we want to introduce any changes, let us introduce them through the laws; any changes that we want to bring, let us bring them through the institutions that exist. Why do I say this? In 2008, we had a problem. We had a contested presidential election. People were aggrieved in this country but nobody would go to the Judiciary. It could have been real; it could have been perception. If we create a perception that the Judiciary is back to the old days, we are playing with fire. It is better to have a Judiciary, in my view, with whatever faults, but that everybody is willing to go to. Any judgments that the Judiciary makes, there is always a place to go and change it, even if it means for us to change the law. Therefore, my plea is that we must protect the Judiciary. That is also going to help us with equality in this country.

I want to add that the Commission on Administrative Justice is not doing its job. That is the Commission that should have supported the poor people who cannot go to lawyers, and who cannot afford it. At the moment, they are poorly funded. But they are also not focused. Therefore, I urge my colleagues in the House to make sure that, that Fund works for the poor people.

Finally, one word has been creeping into this House quite a lot. It is called “activism” as if it is a bad thing. Mother Theresa was an activist. Mandela was an activist. Jomo Kenyatta was an activist. This world is changed by activists. In America, for example, Martin Luther King was an activist. Mr. Obama would never have been the President of USA if it was not an activist judge. When Abraham Lincoln abolished slavery, it took more than 100 years before an activist judge decided that there would be no segregated schools. So, this thing of branding anybody who opposes the Executive as an activist should stop. Of course, there are people who are not activists. Activists are principled people. So, if you see people jumping around without any principles, those are not activists. Activists are people who are focused on a specific principle. Omtatah should, in the next national day, be given a medal. I want to repeat: Omtatah! That is because that guy went to court and made sure that the police emergency line 999 is

restored in this country. All of you have a telephone number of a senior police officer in this House. All the rich people have a connection. When a middle income person or a poor person is attacked, what number would they call? How would the police come to them? Omtatah, as much as people say he is an activist and all that, has a principle; he wants the law to be followed. He only goes to court. He demonstrates within his rights and he has changed it. We have 999 in place. His Excellency called the number. We, as legislators, are the people's representatives, but we did not do that. So, they have their place and I want to say that when you have a new Constitution like the one we have, judges who push the boundaries of the law in support of the people are the judges who will make our laws become even better. But I am not talking of the ones who are corrupt. I am not talking of the ones who try to support their friends. I am talking about the ones who really want to help this country move forward. Therefore, for us, as a country, to move forward, which is the mantra of the Jubilee Government to move forward, we must have Equalisation. This country cannot afford the level of inequality, the level of insecurity and the level of empty noises that do not benefit the poor of this country. We were elected to represent the people and it is high time both sides of the House came together and put the Executive on notice, so that it can be focused and help the country on getting out of the problems that it has.

Thank you! With those few remarks, I beg to support.

Hon. K.K. Kinyanjui: Hon. Deputy Speaker, mine is to seek for some guidance. I need to be guided because I would like to introduce some amendments. I wonder whether it is going to apply at this stage or whether it is going to be directed to the Commission on Revenue Allocation (CRA). That is because we have three counties which ought to have benefited from the Equalisation Fund; that is Tharaka-Nithi, Tana River and Nyandarua counties. Up to date, they do not have a single facility on the ground. I wonder why they were left out of that Equalisation Fund. So, I seek your guidance whether an amendment can be applicable at this stage or I can apply my amendment to CRA.

Hon. Deputy Speaker: Hon. K.K. Kinyanjui, unfortunately we cannot amend a Constitutional Bill on the Floor of the House. Already, this had to go through the 90 days for public participation.

(Hon. (Ms.) Nyasuna stood up in her place)

Are you on a point of order?

Hon. (Ms.) Nyasuna: Hon. Deputy Speaker, I had pressed the button to contribute and I saw my microphone on.

Hon. Deputy Speaker: Hon. (Ms.) Nyasuna, I think something must be going wrong with all of them. That is because I can also see hon. Omulele and yet, that is not the order that I have with me here. So, hon. members, just hold on. I have a list here. I do not know what is happening with the microphones. Hon. K.K. Kinyanjui, had you finished your contributions? There seems to be a problem with the microphones going all over the place. That is because the next one to speak is hon. (Eng.) Gumbo and not all the hon. Members standing after hon. K.K. Kinyanjui.

Hon. (Ms.) Nyasuna: On a point of order, hon. Deputy Speaker.

Hon. Deputy Speaker: What is not in order, hon. (Ms.) Nyasuna?

Hon. (Ms.) Nyasuna: Hon. Deputy Speaker, I just wanted to say that because my microphone came on, I will now go to the bottom of the queue when I press again. So you have to make that consideration.

Hon. Deputy Speaker: We will see where to fit you. That is okay but, this is the time for hon. (Eng.) Gumbo.

Hon. (Ms.) Nyasuna: Much obliged!

Hon. (Eng.) Gumbo: Hon. Deputy Speaker, could you protect me from the Member for Homa Bay who is eating into my time?

I want to thank you for giving me the opportunity to contribute to this Constitution (Amendment) Bill. It is a known fact that over time, inequality anywhere translates into inequality everywhere. The issue of inequality in Kenya has become so serious that it must be addressed as a matter of national concern.

You remember last week, one of the major media houses in Kenya was doing a serialization of the wealthy in Kenya. Much as it is encouraging, it also offered very depressing statistics. What emerged is that over 80 per cent of wealth in Kenya is in the hands of less than 10 per cent of Kenyans. In simple terms, this is a recipe for disaster. The income disparities in Kenya are so serious that something has to be done urgently. It is said that, at the moment, the wealthiest person in East Africa lives in Kenya. Similarly, the poorest person in East Africa also lives in Kenya. We must seek to have a fair society. Not necessarily a welfare society; because when you seek to have a welfare society, you are mainly pursuing entitlement. But when we seek to have a fair society, we are seeking a convergence of effort and entitlement. A lot of the disparities that we have in our country have historical connotations. It goes back to the targets that were missed from the time this great country became independent. We had very noble goals - very simple, realizable, and achievable. Within no time, those noble goals of fighting poverty, ignorance and disease immediately we attained independence due to self interest, ran into the head winds of tribalism, corruption and bad governance. This is why we are what we are today. I think we have a duty as a country to address the issues that have been affecting this country. The only way all of us can live peacefully in this country is if the majority of Kenyans can feel that they have an entitlement in the affairs of the country; if a majority of Kenyans feel they have a stake in the future of their country. At the moment, if you look at what is happening in our country, I am afraid to say that a majority of Kenyans do not feel that they have a stake in the affairs of this country. That is very worrying. Those of us who have walked in the streets of Kampala and Nairobi--- When you walk in the streets of Kampala, which is our neighbouring country, even on the faces of the people in the streets, you see hope; you see people who have a reason to live. You see people who are struggling to make ends meet and believe they have a chance to make it. When you walk in the streets of Nairobi - and a colleague has just mentioned it - you will see lines and queues of people on Mbagathi Road as early as 4.00 a.m. They will be streaming from Kibera to Industrial Area. That sort of development is not good for our country. I think as the leaders of this country, a time has come when we must rise above partisan considerations and look at those issues that will make every Kenyan, no matter their income levels, feel that, indeed, they are proud to call themselves Kenyans. I think the sense of pride, sense of patriotism, the sense of

nationalism, the sense of feeling, the sense of belonging, the sense that I truly want to be proud to be a Kenyan at the moment is lacking in our country and that is coming about because of income disparities. As leaders, I think we owe it to the people who have brought us here; the people who have brought us to this privileged House and environment. We must spread hope around. The only way we can spread hope around is through our actions, taking actions that will make sure that every part of Kenya feels that, indeed, they have a right to call themselves Kenyans.

I remember about 20 years ago as a young engineer, I went to the northern part of Isiolo at a place called Merti. I was very surprised when the people we met there--- In fact, when I met field officer, the first question he asked us was: "How is Kenya?" I was wondering why he was asking me how is Kenya and yet, he is supposed to be a Kenyan. When I looked at that town at that time - and I have not been to Merti now in almost 20 years - I had reasons to believe that those fellows did not feel at all that they were part of this country. We were going there as people taking solutions to that part of the country. But even a decent place to sleep or have a good meal was not there. When we looked at the way people were going about their businesses, clearly something has gone wrong in this country. It has been said that if we do not do something urgently, the poor in Kenya will have no option but to feed on those of us whom they feel are the privileged lot in society. Therefore, this Constitutional Amendment, in so far as it aims to take the resources down to the people; I think it is a welcome move. We need to do more. The programmes that we have pursued in the past have only succeeded in creating unhelpful oligarchies. We have pursued policies that only help to create very few wealthy at the expense of the majority of Kenyans. That is how autocracy creeps in and in some worst cases, you have aristocracy creeping in and people start to feel, indeed, that it is 'us versus them'. This 'us versus them' scenario in Kenya is something that we must fight. We cannot all be the same. Even the fingers in our hands are not the same. But we can bring every Kenyan to a level where everybody, no matter what they do, feels that truly, I have a right to have hope for my children and the children of my children. If we do not do that as leaders, I think we will be failing miserably.

As for the proposal to take the Equalisation Fund to the constituencies, I think it is a good thing. I have been privileged to have been in the CDF Committee in the 10th Parliament and even now. I have seen what the CDF has done. I think that model will work.

With those remarks, I do support.

Hon. Deputy Speaker: Member for Kesses, is it technology or you no longer wish to contribute to the Bill? That is because you have been on the top but now, I do not see you. Is it the question of technology?

Hon. J.K. Bett: Thank you hon. Deputy Speaker. Thank you for giving me this opportunity to contribute on this subject of Equalisation Fund. I want to say that looking at Kenya as a country; we have a lot of disparities in terms of road infrastructure, water and even electricity. This concept of an Equalisation Fund comes as a big remedy to try to equalize those disparities in the provision of those services. I want thank my friend, hon. Lati, for bringing this Amendment Bill and proposing that the funds for Equalisation should be used under the CDF model. I want to say that CDF has a proven track record and it is a model that has structures. Even when you look at the type of classrooms,

laboratories and even bridges that have been built by hon. Members through CDF, they are some of the best. That is because most of these Members are really committed. I want to mention that if you were to use the governor's model--- We know that counties have no capacity in terms of personnel. Even their procurement systems are not up to date. They have not absorbed 50 per cent of the funds that we provided for them in the last financial year. I want to support this Amendment Bill that we use the CDF model. I urge that, maybe, in future, the percentage should be increased so that we can have equal development across the country. The Jubilee Government mentioned in its manifesto that one of the priorities is to make this country a double digit economy. Unless we use the Equalisation Fund, those areas that are perceived to be poor in the provision of services like roads, water and electricity will not achieve that.

Hon. Deputy Speaker, with those few remarks, I rise to support this model and thank my friend, Lelelit Lati for bringing this Bill to the House.

Hon. Kato: Thank you, hon. Deputy Speaker for giving me this chance. I also want to thank the Mover of this Bill, hon. Lelelit, for this noble idea of trying to end marginalization in this country.

I will be very brief. I will talk specifically about Article 204. The way it is now, the Equalisation Fund is meant to go through the counties. Some of us said from the beginning that if we are not very careful, counties can even be a source of more marginalization. I heard hon. Elmi, while contributing, talk about internal marginalization. But if we use the current model or the way Article 204 of the Constitution is, counties are being generalized. Some of the counties will not get or benefit from this Fund because they are being generalized. If you take, for instance, Nairobi as a County, if it is generalized, I am very sure that it will not benefit from that funding. However, if you take the specific constituencies, you may end up getting some constituencies within Nairobi County benefiting from the Equalisation Fund.

I think it is a noble idea to use the constituencies which are the smallest or basic unit of devolution in this country. Constituencies should be the parameter to be used on deciding which areas should benefit from the Equalisation Fund.

Hon. Deputy Speaker, if you look at counties like Kajiado, Nyeri and Machakos, you will find that some areas of those counties are being classified as ASAL areas. However, if you use the current Constitution, they will not benefit from the Equalisation Fund and yet, they fall under ASAL areas. The ASAL areas are the ones which year in, year out, depend on relief food. This is the case and yet, you deny them the benefit of the Equalisation Fund because you have talked generally as a county. If you take the county parameter, it comes to the institution or the offices that do poverty evaluation in this country. They pick some areas. Let me even use my county, which is Kajiado, as an example. The county starts here in Nairobi, extends to Ngong and borders Coast Province in Taveta. If an institution that does the poverty evaluation index report just picks some areas of Ngong Town, Rongai, Kitengela, Loitokitok Town and then generally says that this is a very rich country, that does not even constitute 0.01 per cent of the 22,000 square-kilometers of that county.

Therefore, it is good to use the constituency level criteria for qualification for the Equalisation Fund. This calls for the Commission for Revenue Allocation and other Government institutions that are responsible for doing poverty evaluation in this country

to stop going along the main roads when they do the poverty index survey. They should consider all the parameters, including size and the economic value of that area. That is because you can have a constituency or a county with large land mass but the economic value of that land will not qualify that county or the specific constituency to be a rich. Therefore, the Commission on Revenue Allocation (CRA) and others should go to where the *Wanjikus* are or the bottom of the constituencies and try to get the poverty survey index correctly.

Even on population, when they carry out the survey, they should consider many factors. We have seen that population and poverty index are the main parameters that are used when allocating resources in this country.

Hon. Deputy Speaker, there is also the proposed amendment to Article 204 which says: "Recent audited accounts and approved by the National Assembly". Two things are in play here. First, is "Recent audited accounts" and second is "approved by the National Assembly." I would like to call upon PAC to speed up their work because the last audited accounts approved by this House were for the 2007/2008 Financial Year. If we were to go by that, we will not be doing justice to the people of this country. That is because we are now in the 2013/2014 Financial Year.

I know that PAC has just tabled a Report for the accounts for the 2008/2009 and 2009/2010 financial years. The Auditor-General has tabled a Report of, maybe, the 2012/2013 Financial Year. But that is not enough because the Constitution says: "Last audited" and "approved accounts by this House." Therefore, it is upon PAC to speed up in terms of examining and presenting a report to those accounts.

Finally, Article 204(3)(b) says:-

"Either directly or indirectly through conditional grants to counties in which marginalized communities exist."

This is to the extent that the expenditure of those funds has been approved in the Appropriation Bill as enacted by Parliament.

The Mover has retained the word "Parliament", but if you look at 204(1) it says "as approved by the National Assembly". In the Constitution, when we use the word "Parliament" it means both Houses. Since it says "as approved by the National Assembly", it will be good to be specific on 3(a) and say "Appropriation Bill enacted by the National Assembly" in order to cure that inconsistency.

Hon. Deputy Speaker, I beg to support.

Hon. Deputy Speaker: Thank you.

Yes, hon. Nyasuna!

Hon. (Ms.) Nyasuna: Thank you, hon. Deputy Speaker. I rise to support this Bill. I also thank very much hon. Lati for bringing it. Inequality is what has resulted in some parts of this country declaring themselves as not being part of this country. This Equalisation Fund is what will make us say with strength that Pwani is Kenya, Samburu is Kenya, Turkana is Kenya, Suba is Kenya and every part of this country is Kenya. Therefore, it is a matter that we must then look at very keenly.

Devolution is intended to bring Equalisation and equality. Where we go wrong is to think that devolution is about one person or about the governor or the county assembly. Devolution is about all of us. Devolution cannot end just at the county level. Custodians of devolution cannot just be one person because it is such a great asset to this country that

all of us must be party to it and must own and protect it. I have read in the Press lately that there has been a factional call and one of the objectives is to protect devolution. One set of people cannot say that they will protect and defend devolution. Devolution is for all of us and we all support it. But where the mistake is, is to think that devolution equals to one office. It is not. It cannot be. That is not the devolution that we voted for. All of us will combine efforts and protect devolution. All of us will ensure that the ills that we have suffered because of centralization for many years will end in this era of devolution.

Even with this amendment, money that is meant for equalisation is still going to counties because counties are made up of constituencies. What we are saying is that they should not just end at the county, but should now go to the constituency level, so that ownership of devolution is broadened. When I read Article 204(2), it says that:-

“The national government shall use the Equalisation Fund only to provide basic services including water, roads, health facilities and electricity to marginalized areas---”.

This is the national Government money. Therefore, the National Assembly is not wrong to engage with the national Government money. The Article does not say at this point, county. It says areas, which can be a constituency or ward. Marginalized areas is what Article (204)(2) is talking about. Therefore, we are saying that the law now be amended to define those marginalized areas as a constituency rather than end it at the county level. As we look at marginalization of geographical areas, we must also look at marginalization of certain populations. Even as we pass this Bill and as we support it, we must also be going the extra mile to look at how we can take care of affirmative action. It should not just be affirmative action areas, but affirmative action populations as well. Those are populations that have been disadvantaged because of who they are. In Article 27, the Constitution provides that affirmative action groups must be included as well. As we move forward, we are going to be looking at ways of also ensuring that affirmative action groups are included within the counties. County members and women representatives such as ourselves, will also find a solid role within working with affirmative action populations. We will be looking for the support of this House towards this end.

As I end, I also add my voice to what the Majority Whip has said about the audited accounts. If we are still working on audited accounts from 2008/2009, then it means that when we say that we are dividing revenue as per the audited accounts as last approved by Parliament, then we will not be doing justice to our counties and the rest of us. So, we urge the Public Accounts Committee (PAC), apart from the accounts that they have tabled for 2008/2009 and 2009/2010, they should hasten to bring us 2011/2012 accounts, so that even as we do the Division of Revenue Bill, we will be basing it on the latest audited accounts, so that our counties can get the justified amounts.

With those many remarks, I thank you for giving me the consideration and I support.

Hon. Ngikor: Thank you, hon. Deputy Speaker for giving me this chance to contribute to this Bill. To start with, I am one of the victims of inequality. I am one of the people who have been marginalized for all those years. This Fund is meant to bring the marginalized areas at par with the rest of the country. This Fund can bring good things to the people of Turkana East or the people of Turkana at large. When we talk about roads, water, electricity and schools, they are not there. Even Government representation in

areas like Loriu and Suguta is not there because there are no chiefs. Nobody represents the Government there. I support this amendment so that this money can be used to bring those areas at the same level with other parts of this country.

I support what hon. Gumbo has said that when we come from some of those areas like Turkana, when you reach Kitale, you start saying that you are in Kenya. When I go to my constituency during weekends, people ask me where I have come from. I tell them that I am from Kenya. That is not because I am not a Kenyan. I am a Kenyan, but because of lack of those facilities, people feel that they are not part of Kenya. Kenya is a developing country and it will not move from being a developing country to a developed country just because some areas are being developed and others are not. We are all going to remain a developing country just because of those areas which have been left behind.

Unity will not be achieved when the rest of Kenyans are enjoying water, health services, electricity and good schools, but some parts are not. We are talking of being united as a nation. We cannot until that time when all of us will enjoy all those. That is the time we can say that we are in Kenya and we are one because nothing will make us be different from one another. When we talk about Vision 2030, which is now nearing, I do not know how the whole nation can claim to have achieved Vision 2030 when some parts of this country - places like northern Kenya and Turkana where I come from - have not even started one of the pillars of Vision 2030. We are still there.

I urge this House to support this amendment so that all Kenyans will enjoy being in Kenya. With regard to roads, the road from Kitale to Nadapal is a nightmare. This is not because we do not have engineers and public works officers there, it is just because of marginalization. Those places are not equal to the others. With this money, we can make all those areas to be equal. The CDF, which has been tested since 2003, has done a lot. The only dispensary that we have in my area is through CDF. The schools that we have are from CDF. The only borehole that we have is through CDF.

(Loud consultations)

Hon. Deputy Speaker: Order, Members! The levels of consultations are too high! Why should we not try this Equalisation Fund to also go through CDF, because it has been tested? When we talk of this money going through counties, they are only one year old. You will hear how the governors are just talking of this money being channeled through them. They will take this money for their own personal benefits. But, for the CDF money, the common *mwananchi* down there can give you a testimony about it. That is why I support this amendment and say this money should be channeled through CDF, so that the common people down there can get it and exercise their right and participation over it, the way CDF does.

That is because CDF is purely guarded by the people themselves. The Members of Parliament (MPs), as people say, are not running CDF. They are run by the communities themselves. By this money going the CDF way, the people will run it and use it for their own benefit. It will bring good things to this country.

With those few remarks, I beg to support.

Hon. Deputy Speaker: The Member for Teso North, hon. Arthur Odera. Where are you?

Hon. Odera: Thank you, hon. Deputy Speaker; I rise to support this Motion. We know that the very essence of the Equalisation Fund was to attempt to address the differences in standards of living of the people of this country. Knowing that, obviously, identification of those areas is one major step and the ability to change the standards of life of the people in those areas is the next important step.

Clearly, that is one of the reasons why we came up with the Equalisation Fund. We were to address the best way to disburse it. We did address things from an average point of view. This country operated on averages for a long time and now we know the folly of averages. That is because the average man or woman does not represent the man in the village who has no food to eat, no road to use, no hospital to go to and no house to sleep in.

It is a simple thing in my view. If we compare the ability of the county to identify and attack poverty wherever it is, with the ability of the constituency to identify and to attack poverty wherever it is, the answers are obvious. The constituency is able to do that quicker, much better and more effectively. The lessons can be picked much faster. On the other hand, and for the very reason that we are coming up with the Equalisation Fund, is to disburse resources to areas that need them more than others. The county then, is less able to do that, than the constituency.

Therefore, it seems that most of us believe that for devolution to work, the deeper it goes into the grassroots the better. Then we need to support this Bill and make sure that we are able to sense areas of poverty and address them wherever they exist. On the other hand, this Bill is a practical solution to marginalization. This country has operated with areas of extreme poverty for a long time. It is also possible for a county to go forward and leave the marginalized areas behind. It is less possible for a constituency to go forward and ignore areas of marginalization. Therefore the constituency is much better able to handle this Fund, disburse it deeper into the grassroots and address areas and pockets of poverty than the county can.

It is also important to note that the Constitution does not talk about counties. It talks about areas. While we might not split hairs on what an area is, we know that within counties, for example my county of Busia, there are areas that may not require the Equalisation Fund and there are others that do. Really, if we want to be fair to the people of this country, we better go deeper into the constituency level where we are better able to map and know where there is poverty or not, and where the Equalisation Fund should go or where it should not.

I beg to support.

Hon. Deputy Speaker: The Member for Mwingi North, hon. Munuve John.

Hon. Mati: Thank you, very much, hon. Deputy Speaker, from the outset, I would like to state that I support this Motion and in doing so, I know too well that I represent an area that is very disadvantaged. It has less than 1 per cent of the population enjoying clean water and it would pride itself with having not less than five schools in the last 50 Kenya Certificate of Primary Education exams. It has only 800 meters of tarmacked road. It is a constituency where half of the population sleeps in the bush because of insecurity. It has seen the girl-child suffer because of walking for long distances to and from school.

As a matter of fact, I fully support this Bill because we have problems like other places. The Governor has not come to my constituency despite the fact that governors have been given resources. Although this is a matter for this afternoon, I would like to say that, maybe, the Constitution actually made a wrong choice of a name. The people getting the name “governor” have made them almost “lords” in the constituencies. Maybe, we should have called them “coordinators”. There is selective distribution of resources in most counties. Some areas have been favoured by the governors simply because, probably, they did support them or because they have affinity to others.

However, I would like to beg the ministry which deals with the prioritization of the Equalisation Fund to re-look at it once again. There are many areas that do not enjoy anything in terms of development. They have been left out in this Fund. This means that although the funds are going to be availed to the constituencies, a constituency that has poor people like mine may not really benefit because this Fund might not be targeted for the County of Kitui. I think we need to move from using the county as the reference point for the Equalisation Fund and use the constituency. If you look at constituencies like Mutomo and mine, which are in Kitui County, they are absolutely poor. If you use the basis on which we calculate CDF distribution, you will see that those two constituencies rank very high nationally in terms of poverty as defined by what we get.

I support the Motion. But rather than use the county as the reference point for determining who gets the Equalisation Fund, we should use the constituencies. That way, we will be able to reach the poorest of the poor who continue to suffer, are marginalized and left out in the Third World.

Hon. Mulu: On a point of order, hon. Deputy Speaker. I would like to know whether the hon. Member is in order to mislead this House that his constituency is the worst in terms of poverty levels. Is it clearly documented that Kitui Central is actually the poorest in the country? I think he is misleading the House.

Hon. Deputy Speaker: Hon. Munuve, you need to give us documented evidence that yours is actually the worst.

Hon. Mati: The only basis on which I base my argument is the allocation of CDF and other resources. If I use indicators like tarmac, Kitui Central has got a tarmac road that cuts across it. I have got only 800 meters - not even 1 kilometer. If we look at water, Kitui Central has the biggest pipeline in our county. I have less than 1 per cent of the population in my constituency who access clean water.

So, I have all the facts. However, this is not a matter of comparison between Kitui Central and Mwingi North. I do not represent Mwingi Central. I have every right to speak for the great people of Mwingi North. They have been resilient for the last 50 years in terms of suffering in silence. So, it was rather out of order for the Member for Kitui Central to compare the “London” of Kitui County with Kyuso, where the wretched of the earth have had to contend with a lot of suffering.

Hon. Deputy Speaker, I wish to support. I would still urge that rather than use the county as the yardstick for deciding which areas should benefit from the Equalisation Fund, we should use the constituency as we do for the Constituencies Development Fund. If we just generalise, some big pockets of this country, like Mwingi North, which has about 30 per cent of the population of Kitui County, will be left out of the development process.

I can go further and talk about the issue of computers. School children are going to be given computers fairly soon. I thank the Jubilee Government for coming up with the noble idea of providing computers to primary schools. However, 80 per cent of the children in my constituency will not be able to enjoy those gadgets because there is no electricity. There are no classrooms that can be fitted with electricity. Almost 80 per cent of them study in mud-walled houses. The rest of them study under trees. Can we install electricity under a tree? Can we put a computer lab under a tree?

Therefore, the Equalisation Fund should be operationalised very quickly to save my people from being left behind. Even with the one-size-fits-all pronouncement relating to computers for everybody, if we do not consider schools that basically operate under green trees, where the greenest tree within the compound is the staff-room for teachers, we may not get far.

With those few remarks, I beg to support.

Hon. Deputy Speaker: Yes, hon. Mohamed Haji, the Member for Banissa.

Hon. Mohamed Abdi: Thank you, hon. Deputy Speaker, for giving me the opportunity to support this noble Bill. On the outset, I want to thank the Mover for coming up with the Motion. The provision for the Equalisation Fund in our Constitution is a noble idea. The framers of our Constitution have done very well. What I want to say is that it is a bit too little too late, but that will be a Motion for another day. However, this is an effort in the right direction.

Hon. Deputy Speaker, the level of development disparities in some parts of this country, which have been occasioned by marginalisation, are very high. As some parts of this country talk about 95 per cent literacy levels, others talk about 30 per cent and yet, we are all in one nation. That means that the achievement of one region that has done very well in terms of development is being diluted by an area that has recorded little development. Therefore, as a nation, it is important that we develop at the same pace. This country wants to join the league of developed nations. So, it is important that the development in all regions is brought to the same level.

This country wants to integrate with our neighbours. Any country integrating with another country like Kenya would want to reap some dividends from the merger. We have a country with some areas that are highly developed, with 90 per cent of the people accessing electricity, water and education; and other areas with 20 per cent development rate. Before another country integrates with this country, it looks at all the parameters and all the regions. That is probably why the rate of integration within the East African Community is slow. So, it is important for this country to look at all this with a view to ensuring that we attain the same level of development for all parts of this country.

Hon. Deputy Speaker, in order for us to reduce conflicts, so that Kenya can be a peaceful country, it is necessary for all parts of this country to develop at the same level. That is the wisdom behind the creation of the Equalisation Fund. Secondly, why do we want to put the Equalisation Fund under the constituency? It is because the constituencies have been tested. For the last ten years, we have had the Constituencies Development Fund (CDF), which has been doing a marvellous job. The audit reports that have been coming out over the years have rated the CDF at 85 to 90 per cent successful. That is very great.

What is happening at the constituency level should be emulated. Therefore, since the CDF has so far stood the test of time, it is important that we put the Equalisation Fund under the constituencies. With less than 5 per cent as overheads and administration costs, 95 per cent will go to development straightaway. Our counties are having teething problems. Therefore, it would not be fair to load them with this amount of money and additional responsibilities. We want to take this money directly to the constituencies, which have the capacity and ability to successfully use it for the development of the constituencies. The CDF is a tried model. We will be able to utilise it very well.

With those few remarks, I support the Motion.

Hon. Deputy Speaker: Member for Luanda, what is out of order?

Hon. Omulele: Hon. Deputy Speaker, there is really nothing that is out of order. I just want to bring to the attention of the House the fact that all the speakers to this Motion today seem to be in agreement that this is an amendment that is agreeable to the entire membership of this House and move, under Standing Order No.95, that the Mover be now called upon to reply.

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

Hon. Deputy Speaker: Hon. Members, I am sure that you have noticed that I have tried to take Members from the areas that are marginalised. So, I now call upon the Mover to reply.

Hon. Lati: Hon. Deputy Speaker, before I reply, I have requests from many hon. Members asking me to donate part of my time to them. So, I will donate one minute to each Member randomly, to a maximum of five minutes.

Hon. Deputy Speaker: Mover, I have just put the Question that the Mover be called upon to reply and the Ayes have it. So, just proceed and reply, so that we can proceed.

Hon. Lati: Hon. Deputy Speaker, I want to start by thanking all the Members of this House for overwhelmingly supporting this Bill. With the bipartisan spirit exhibited in this House during the debate on this Bill, and the trust that I have in the Eleventh Parliament, I am confident that the Bill, if passed, will bring a positive change to people in marginalised parts of this country.

Hon. Speaker, what we are doing for the marginalised communities is not unique to Kenya. This is something which has been done in many developed countries, and it still continues to be done even in the most developed countries in the world. Australia has set up an equalisation fund, and it is still in place. Canada puts a lot of money into that country's equalisation fund – the equivalent of Uganda's GDP or about US\$16 billion a year.

There is something I want to point out. The perception that is out there is that the Equalisation Fund is a county fund. That is a wrong perception. It is actually a creation of the Commission on Revenue Allocation (CRA). The CRA was mandated to make recommendations on marginalised areas, as stipulated under Article 204(2) of the Constitution.

Hon. Deputy Speaker, it is only the Commission on Revenue Allocation (CRA) that has assumed that a marginalized area can only be a county and that is why we have brought up this Bill. We feel constituencies are also areas referenced in the Constitution. I want to say that CRA erred in that respect by always thinking of counties as referenced area of the Equalisation Fund. The Constitution is very clear; it only refers to marginalized areas.

I want to say that even within counties that are well developed, there are marginalized areas that exist within those counties. I have had time to ask the CRA why they had referenced the counties as marginalized areas. They did not dispute what is stipulated in the Constitution. All they had to say is that it is too much work to go down to the constituencies. But I want to tell CRA today that in the opinion of this House, constituencies are the best areas to devolve this money to. I also want to tell them that their job was to do the work. They thought that to minimize their workload, they should just put the Equalisation Fund to the county level. That is wrong.

I also want to tell our governors, the media and everybody out there that we are not trying to take money away from the county governments. For those of us who sit in the Budget and Appropriations Committee, they know very well that in the Division of Revenue Bill, there are different funds for different areas. We have the county fund and the national fund. It is clearly stated in the Constitution of Kenya that Equalisation Fund falls within the National Government.

Hon. Deputy Speaker, Article 204 (2) is very clear. It states that:-

“The national government shall use the Equalisation Fund only to provide basic services including water, roads, health facilities and electricity to marginalized areas to the extent necessary to bring the quality of those services in those areas to the level generally enjoyed by the rest of the nation, so far as possible.”

For that reason, the Equalisation Fund is a national fund and we are not trying to take away anything from our good governors. We are not and we have not interfered with any county fund. We are only asking the national Government to give us the Equalisation Fund so that it can be operationalised at the constituency level because of the good work that the Constituencies Development Fund (CDF) has done.

I want our friends in the media to get this one as well. We are not taking away any money from the county governments; we are asking the national Government to give us this money. That National Government Equalisation Fund should be taken to the constituency level. The Constitution is very clear that this is a national fund. It actually goes further in other sub-articles to refer that the National Government “may” – and that is the only time the Constitution mentions a county within the Equalisation Fund framework--- The county government “may” use, I want to stress the word “may” donate the Equalisation Fund to a county as a grant. But we are asking the national Government in this Bill to give this money directly to constituencies. We have a reason to do so. We have seen what CDF has done across our country. Where I come from, we have seen it and it does not matter your relationship with your former Member of Parliament; whether you are a good friend or whether you have had a good fight during elections and you are not good friends anymore.

Hon. Deputy Speaker, the truth today in our country is that, if you go to the remotest part of our country, you will find a dispensary---

Hon. Deputy Speaker: Order, hon. Lati. There is a point of order from hon. David Gikaria.

Hon. Gikaria: Thank you, hon. Deputy Speaker. I wanted to raise an issue on what we were dealing with before this Order.

Hon. Deputy Speaker: Okay, that is past. You cannot take us backwards, hon. David Gikaria. Just allow hon. Lati to finish replying to his Bill.

Hon. Lati: Thank you hon. Deputy Speaker. I want to say that the main principle behind this Bill is to extend the CDF success story. That is because CDF has done so well that we want to extend that story by putting the Equalisation Fund into use within the CDF framework. That is all we have. We have nothing against our counties or governors and we are not taking any money from the governors. At least, this time, we are asking everybody who is talking about the counties and the governors to give us a break because this is totally a national fund and this is what we want to do.

I want to end by thanking all hon. Members of this House for the bi-partisan spirit that they have exhibited in this Bill. The reason why you are doing that is because you care and you mind the marginalized areas of our country. We want to have good roads in northern Kenyan and all the other parts of our country that have been left behind since Independence.

I want to thank all of you. I think this is a good spirit in this Parliament.

I beg to reply.

Hon. Deputy Speaker: Hon. Members, this being a constitutional amendment Bill, we cannot, therefore, put the Question as we require 233 hon. Members to be present, which we do not have in the House at the moment. Therefore, you will be informed when the Question will be put for this Bill.

Let us move to the next Order.

THE NATIONAL FLAG, EMBLEMS AND NAMES (AMENDMENT) BILL

Second Reading

Hon. Keynan: Thank you, hon. Deputy Speaker. I beg to move an amendment with regard to the National Flag, Emblems and Names (Amendment) Bill, National Assembly Bill No. 3 of 2013.

Hon. Deputy Speaker, the drafting of this Bill was informed by the fact that there was a lacuna in the law. First of all, this was among the first Bills and Acts that were supposed to be amended in Cap.99. I think those were among the first Acts that were legislated immediately we got our Independence.

This Act has to be amended to bring it in tandem with the new Constitution. That is because there are particular offices or individuals who occupy certain offices under the constitutional dispensation that are not covered by this particular Act. Therefore, the old Act as it is, is obsolete and un-constitutional. Therefore, I felt that I should bring in an Amendment Bill, in order to have an Act that takes into account the expectations and the spirit of the new Constitution, and remove this substantive legislation from the ambit of--

Hon. Deputy Speaker: Hon. Keynan, please, let us follow the procedure. First move the Motion on the Bill before your argument. You have not actually told us what you are arguing on.

Hon. Keynan: I thought I did. Hon. Deputy Speaker, I beg to move that the National Flag, Emblems and Names (Amendment) Bill, National Assembly Bill No. 23 of 2013, be read a Second Time. I am sorry.

Hon. Deputy Speaker, I was just explaining that what informed the drafting of this amendment is that we have a new Constitution. The work of this Eleventh Parliament is to deal with all the legislations and Bills that are in place and that have been drafted and passed by all the previous Houses, from 1963 to 2010, when we promulgated the new Constitution.

If you look at that particular Act, the old Act Cap.99 of the Laws of Kenya, it is actually obsolete. It gave a lot of prominence, first of all, to subsidiary legislation. In the Kenyan context, the first source of law is the Constitution, in every aspect. The second source of law is the statutes. The third is subsidiary legislations; the fourth, of course, is the customary law. I do not know whether these days, we have presidential decrees. We have something to do with international law.

If you look at the Act as it exists, there are a number of office holders or serious constitutional offices that are not included in the utilisation of this very important national gadget called the National Flag. This is an instrument that is supposed to be used properly and with dignity. The current Act, which we intend to amend, gives a lot of powers to subsidiary legislation. The intention of this Bill is to entrench this law into the substantive law so that we do not have regulations--- Sometimes, regulations are very dangerous because they might not reflect the very spirit of that particular Act. This amendment, therefore, when passed it, will bring in clarity of law and ensure that we have an Act that is enforceable and implementable without taking away the very essence of providing national unity and symbolizing patriotism and nationalism and more so reflecting the institutional independence and the power that comes with it.

Hon. Deputy Speaker, the intention here is to allow--- Pursuant to Article 95, we have a number of State officers. If we say that all State officers should fly the national flag, then that will be a national problem. Therefore, we must limit and ensure that, first of all, those who will be allowed to fly the national flag must be office holders that show some sort of national significance. Currently, all individuals all over fly the national flag on their vehicles. Let me clarify this point. It is the inherent constitutional right of each and every Kenyan to identify themselves with the national flag of Kenya. Therefore, this Bill does not take away the rights of each and every Kenyan to identify themselves with that beautiful flag of the Republic of Kenya. What this Bill intends to do is to limit the number of individuals who can use the national flag hoisted on their vehicles. This is the distinction. This is only applicable to those who want to use the national flag on their vehicles. If you are a Kenyan and you want to have the national flag somewhere in your house, office and so on, then you are perfectly in order. However, what we are saying is that this issue has become a menace. If you go to the streets, you will see the national flag somewhere on a bus, other places in the streets and others that I do not want to mention. We need to retain the respect and dignity that is restored on the national flag as a critical symbol of national unity.

The Constitution and different regulations allow different entities to come up with their own symbols. The Kenya Defence Forces have their own symbols. The Kenya Police Service has its own symbols. In the past, county councils or municipalities used to have their own symbols. Again, this amendment does not take away the right of those entities recognized under our laws to come up with their own symbols. Therefore, each county government will be actually in order to come up with their own symbols that will reflect the uniqueness of that particular county. Where I come from it is a pastoralist area. Therefore, I would like to see a flag that shows an aspect of giraffes, camels at a water point and so on. If you come from Kiambu here, you will want to see a flag that shows a rich agricultural background. Those are the realities. If you come from Rift Valley, you would like to see flags reflecting the escarpment of the Rift Valley.

What is being proposed, therefore, is that we should only allow the President, the Deputy President, the Chief Justice and the two Speakers of Parliament – those are five of them – to fly the national flag. All others will have the right to decide, craft and come up with a flag that symbolizes their own institutions. They will be still in order to come up with their own flag. Those flags, however, can only apply within the jurisdiction of those entities. If it is a flag of the Kenya Police Service, it should only be hoisted within the compounds of the Kenya Police Service and not anywhere else. The same applies to, say, the KDF. If a particular flag is designed and approved by a county government then, that flag should only be applicable within the boundaries of that particular county. This is so that we have some semblance of law and order.

The other day, I attended a function in Mombasa and I saw over three hundred vehicles with flags. That is an abuse of that very important facility. In the African context, there is something called status symbol. Unfortunately or fortunately, in our young democracy, this status symbol is actually one of the causes of abuse of office. I am sorry to say that. The flag is very important, but, again, is it a must that every State officer displays it on his vehicle. Must all the, say, 2,000 State officers have the national flag on their vehicles?

Hon. Deputy Speaker, another thing that this Bill seeks to address is this: Those who fly the national flag should behave in a manner that is consistent with the respect and importance that is attributable to this very important facility. We need to also appreciate that the Constitution allows--- You know, basically, Kenya is a free society. But in that freedom, we have so many individuals who are not responsible. This amendment is expected to rein in those rogue elements who abuse this facility for their own personal aggrandizement. We know that the five institutions we are proposing are respected national institutions. The Presidency is a key unifying institution and nobody has any question about it. The same goes for the position of the Deputy President. The two Speakers of the Senate and the National Assembly and the Chief Justice also are critical State officers. The role they play and the institutions they head provide a semblance of unique national functions. This is why we are saying that the flying of the national flag be limited to those offices.

The other day, I attended a function at Nyayo Stadium. I realized that I was the only State officer who did not have a flag. Some other persons who are not even described by the law to have the flag had their own flags. We appreciate the level of determination and expectation to apply this, but whatever we do must be consistent with

the rule of law. This Eleventh Parliament is the first Parliament under the new Constitution and so it must provide leadership. The Tenth Parliament was a transition one.

I want to bring it to your attention, without being speculative, that there is a lacuna in the law. You realized the other day when the great lady called Sarah Serem came up with the famous Gazette Notice. The Member of Parliament in the pecking order was ranked number 43. Really, if you look at the job description and the constitutional role you play, is that the right place for a Member of Parliament?

Hon. Members: No! No!

Hon. Keynan: I have not heard any Member of Parliament who has insisted that he or she wants to fly the national flag. It is because we are contended with the constitutional roles that we play. Why should there be clamour by other entities to have this very important facility hoisted on their vehicles, while there is no relevance of their jobs with regard to this facility?

The new Constitution is a very generous document and the way it is being applied or interpreted is shocking. This Eleventh Parliament, including the Senate, must provide leadership. If we allow all entities to interpret the Constitution in a way that befits their own day to day interests, then we shall have lost the very theme of having a civilized nation managed under a constitutional order.

That is why we have the kind of uproar that we are having right now on the mandates and separation of institutional roles between the three arms of Government and other emerging arms. This House must provide leadership.

That is because pursuant to Article 95(2), it is this House that is expected to provide leadership and guidance on how State officers are supposed to behave, including ourselves, and that is the bit that we have not done. That is why today, you find that different State officers are doing different things just to suit their own day-to-day interests.

Hon. Deputy Speaker, I want to conclude before I call hon. Kamama to second. The passing of this Bill should not be construed to mean that we are denying the governors or any other person the national flag. No. We are asking the governors and all the other individuals who have been using this facility to quickly move with speed and design their own county flag which will be unique for that particular county. That is so that Kenyans also appreciate the uniqueness of that particular county because the counties did not come from the moon. When we divided the administrative structure of this country into 47 units, we were looking at different scenarios. Those scenarios still remain unique to those specific counties. This uniqueness must be seen in the kind of county issues that they really want to project and share with other Kenyans.

It is because of this that I am persuaded - and I know the Senators have almost done the same - that this Bill will bring in a bit of discipline and will ensure that the national flag is only applied in areas and individuals that are consistent with respect and benefit that goes actually to this very important facility. Therefore, once this is done, I am sure the hullabaloo and other cries that we have been seeing will come to an end. That is because the punishment for not complying with this Bill, once it is enacted and assented to by His Excellency the President, will actually be severe. I know there will be an

amendment by the Departmental Committee on Administration and National Security just to clarify certain issues. But I am sure that will be moved by the Chairman later on.

Hon. Deputy Speaker, at this juncture, let me ask hon. Kamama to second. Thank you.

Hon. Deputy Speaker: Hon. Kamama.

Hon. Abongotum: Thank you very much, hon. Deputy Speaker for granting me the opportunity to second this Bill by the able hon. Member for Eldas, hon. Keynan, who has actually come up with quite a number of Bills in his lifetime in this Parliament.

Hon. Deputy Speaker, I must congratulate the hon. Member because very few people have the time to sit down and generate Bills or Private Bills. It is not easy. It is a preserve for those who are prepared to legislate and walk for an extra mile.

Hon. Deputy Speaker, I wish to second this Bill by saying that we must bring order and discipline in this country. First of all, I want to actually state that, as the National Assembly, we are not going to compromise on the issue of devolution. We are prepared to support devolution to the very bitter end and I want to confirm again that, as Parliament, we are the ones who started devolution - especially economic devolution. The Eighth Parliament came up with the Constituencies Development Fund (CDF) Act and the Ninth Parliament implemented it. So, for somebody to behave or rather even insinuate that this National Assembly is against devolution is actually to miss the point. This is because we are already there. We started CDF. We devolved economically. What this Constitution has only brought now is what we call added political devolution. So, that is what is being added at the moment, but this National Assembly is the initiator of economic devolution.

Hon. Deputy Speaker, what we see these days on our roads is what we call display of opulence, wealth and pride and this is what we must stop as the National Assembly. We want our flag to be flown by the five people indicated. We are going to bring amendments later so that our governors and the rest of the people can fly their specific flags.

Hon. Deputy Speaker, as indicated by hon. Keynan, we want to see that diversity and uniqueness in our counties. For example, in a place like Baringo where I come from, we want to see flamingoes of Lake Bogoria, the hippos of Lake Baringo or Lake Kapnarok being displayed on the flags of that county. You go to Coast Province and we have the famous *zipapa*. We have the uniqueness and the culture of the Miji Kenda. We want that culture to be displayed. If you go to Narok and Kajiado, we want to see the "Big Five" – the lions, buffaloes, hippos and the rest. So, that is what we want.

Hon. Deputy Speaker, we want to say that what we are doing is actually not an invention from Kenya. If you go to South Africa, that is the situation that obtains to all Ministers. All Ministers there do not fly flags. In fact, they just have some special number plates. So, if they want special number plates, there is no problem. In fact, as we speak now, most governors have special number plates.

Hon. Deputy Speaker, we want to also indicate that we have imposed a fine of between Kshs1 million and not more than Kshs2 million if somebody flouts this specific law, if it is assented to by the President. So, this is what we want to do. We also want to advise our brothers and sisters who are in the counties, especially the governors really,

not to have so many chase cars. Those chase cars are a display of power as opposed to what we call servant leadership.

Hon. Kaluma: On a point of order, hon. Deputy Speaker. I seldom intervene in the presentations of colleagues. It does appear to me that we are debating the governors and not the national flag as a symbol of national unity. I would request that the hon. Member who is a person that I respect highly to keep to those issues so that we de-politicise the matter and look at it rightly.

Hon. Abongotum: My good friend the hon. Kaluma, I think that is a good suggestion and so, I will not really concentrate on governors. I will specifically address the issue of the national flag.

Hon. Deputy Speaker, I think this Bill has come at the right time and I want to call upon all hon. Members to really support it so that we can bring order, discipline and decorum to this nation.

With those very few remarks, I beg to second.

(Question proposed)

Hon. Deputy Speaker: Hon. Protus Akuja, the Member for Loima.

Hon. Akujah: Hon. Deputy Speaker, thank you. I rise to contribute in support of the National Flag, Emblems and Names (Amendment) Bill. First, I want to thank hon. Keynan for taking time to bring this amendment to this House. This Bill is meant to bring some sanity in the use of national flags and emblems because the route this country is taking is creating a bit of confusion. This is likely to occur as is happening in Nigeria and South Sudan, where national flags are being hoisted on private houses; we do not want this to happen in Kenya. The National flag must be restricted to specific offices that have a national outlook and not for everybody. This is meant to create respect and dignity for specific offices that are meant to fly the national flag. This should not be everybody's cup of tea.

The use of the national flag by county governors and county executive committees must be corrected, because this dilutes the purpose the flag is meant for; it creates a lot of confusion because you cannot know when the President is flying it or when the county executive committee member is flying it. This is a confusion of the highest order. The county governors, if they must fly a particular flag, must fly flags bearing the county emblems as suggested by hon. Abongotum. This resonates with the current debate that there is a national Government and county governments. Why do the governors want to fly the national flag if they have their own county governments? This means that they should fly their own county flags with their own emblems.

[Hon. Deputy Speaker left the Chair]

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

Hon. Temporary Deputy Speaker, with that short contribution, I beg to support.

Hon. Gikaria: Hon. Temporary Deputy Speaker, I rise to support this amendment by hon. Keynan. Hon. Kaluma just suggested that we should not be mentioning some governors because we are seen as if we are politicizing the amendment, but I think the amendment has arisen out of what the governors are doing with regard to flying flags and the use of names; it is not us, as Members of Parliament. It is not also the Senators or any other person. It is actually the governors who have misused this privilege of flying flags all the over place. We visited some functions over the weekend and everybody had a problem with how to address the Deputy President and the governors, who were there. It became very difficult for you to address them; everybody was perturbed as they did not know how to address the Deputy President and the two governors, who were present. We preferred to say “His Excellency the Deputy President, all protocols observed.” The best thing we need to do, as suggested by hon. Keynan when he visited our Committee, is to have the national flag as a symbol of unity. When it is used to show some might or positions within the counties, then it becomes a very difficult issue. One of the areas we visited after some committee meeting was Bomet. You find the governor there had two lead cars and four other chase cars and there was nobody else on the road. All the sirens were just on and they were trying to remove people from the road, yet there were no vehicles. So, I think the aspect of the national flag, the emblems and names is something, as suggested by hon. Keynan, proper for us to legislate on so as to stop misuse.

As hon. Abongotum has said, when hon. Keynan visited our committee, the question was, assuming you fine the driver and the governor in the vehicle who is supposed to be charged? It is an issue that we need to look at and understand; when a flag is flying, is it the governor who should be charged or is it the driver or the security personnel? Of course, he said that if the governor is not in the vehicle, then we should charge the driver. But if both are there, then who takes the responsibility of answering in court with regard to flying the flag against the National Flag, Emblems and Names Act?

It has also been suggested on how we address the Senators. It was mentioned that we should leave the names of the Senators and hon. Members as they are. I cannot remember whether it is this Act or another one that talks about the MCAs who call themselves “hon. Members” at every corner. So, again, we need to have the amendment and support it, so that we can have the right people flying the national flag, which is a sign of national unity. As indicated by hon. Keynan, those specific individuals who have been mentioned in the Bill should be the only ones flying the national flag.

Recently, you heard of a governor who has appointed an envoy to one of the foreign countries. Now we are saying our Kenyan ambassadors in foreign countries can fly the flags when they are there. The question will be: Will the envoy who has been appointed by the governor be flying the county flag in that country? These are things that we need to stop the governors from doing; they are misusing their powers and privileges that devolution has bestowed on them.

As we have indicated, as the Jubilee Government, we want to embrace devolution 100 per cent. Again devolution must be as it has been indicated in the Constitution. As was said earlier, devolution is not about the governors and the counties; it is for us all. It is for all the citizens of this country to advocate for it as it is.

With those few remarks, I beg to support.

Hon. A.B. Duale: Hon. Temporary Deputy Speaker, hon. Mbadi is shaking his head, but I want to assure him that I am only exercising in this House the powers given to me by the people of Garissa Township. I do not implement any projects. Implementation is the work of Hon. Uhuru Kenyatta and his Government and the governor of Garissa. Mine is to make sure that laws are made; and it is the work of the Judiciary to interpret and declare whether those laws are valid or unconditional.

On the outset, I want to thank hon. Keynan, for being so foresighted that he wants to bring order and sanity to the two levels of the Government, the national Government and the county governments. I draw my powers from Article 95 of the Constitution. So, what I am doing here is not illegal. I have nothing against governors. Chapter 99 of the Laws of Kenya talks about the national flag, emblems and names.

This morning I read it; it even defines the “National Anthem”. There is a way you can read the National Anthem and you might be singing something different. This Bill is meant to set the stage for senior leaders in this country, including the kind of salutations that they should have, the flags that they should carry and so on. I want to tell my colleagues that - I am sure they are not aware of this - just when we won our elections on 4th March, one year ago, before the Jubilee Government took over, there was a meeting between the former President, hon. Mwai Kibaki and the governors in Naivasha. The governors gave the former President--- If you allow me in the afternoon, I will look for that memorandum and bring it here in case anybody challenges me.

The highlights of that memorandum made hon. Mwai Kibaki annoyed. In fact, he walked out of the meeting. The highlights of that memorandum were that the governors wanted three vehicles each, with special number plates; they wanted to fly the national flag; they wanted eight body guards, two of whom would be for their spouses; they wanted diplomatic passports, a liaison office in Nairobi, liaison houses in the City of Nairobi for their families and the salutation of “His Excellency”. Hon. Mwai Kibaki just looked at the memorandum and walked out on them.

I think that is where we should have picked up from. His Excellency President Uhuru Kenyatta agreed to the entire memorandum. He is my Coalition Leader, but I can tell you the action of hon. Mwai Kibaki was right. He said: “No, go back to the Constitution.” If you look at the County Government Act--- I want the Chair of the Governors’ Council, a co-founder of United Republican Party with me, the hon. Isaac Ruto, to listen. Section 4 provides:-

- (i) county flag;
- (ii) county Coat-of-Arms.
- (iii) County Public Seal.

The legislation is there in Section 4. The law says they should have public participation and county flag, public seal and coat-of-Arms. My biggest worry is that - I said it when I was supporting the Constitution of Kenya (Amendment) Bill on Equalisation Fund, as a Member for Garissa Town who has been marginalized for 50 years by successive Governments; the Government of the late *Mzee* Jomo Kenyatta, *Mzee* Moi and the Government of the third President, hon. Mwai Kibaki. Our hope was in devolution. We hoped that our people would get roads, water, sanitation, healthcare and our children would go to school and perform well. I want to share with my colleagues, those of you who come from regions that have produced presidents, prime ministers and

deputy presidents like Rift Valley, Central, Western, Nyanza and those whose relative is the President in the United States of America---

(Laughter)

The best we have produced is the current Speaker of the Senate. The best we have produced close to power is hon. Ekwee Ethuro. There are people who sit here with me; they have produced prime ministers and vice-presidents not once. Western has produced three vice-presidents, Nyanza has produced one of the most able prime ministers and the only one. We thought our president, in terms of devolvement, would be the governor, but what do we see? There is not a single tarmac road. Civilization and tarmac ends in my constituency.

(Loud consultations)

Hon. Temporary Deputy Speaker, there is an hon. Member who is responding to me in a very *jua kali* way and he has produced a prime minister. In fact, hon. Ochieng should not complain because he comes from another county. He comes from Siaya County; he is the Member for Ugenya. What has happened now? I have no single tarmac road. I see my governor driving with a flag and 50 vehicles in the middle of a poverty stricken pastoralist area.

If you look at Chapter 11 of the Constitution, it deals with objects and functions of devolution. I want to read it to hon. Members. It reads:-

“To recognise the rights of communities to manage their own affairs and to further their development;”

As a Member was saying the other day, we must, as a country, kill this powerful syndrome in leadership. Leaders must be servants of the people. Sometimes, when we go to a big rally and speak to thousands of people, we are given very good food. We leave the crowds hungry and that raises very serious moral issues. We want devolution. If you read the Public Finance Management Act, County Governments Act 2012 and the Constitution, you will never see any Article which says, including the 14 functions that we have devolved, there is a function called a flag that we must devolve. I have, out of respect, to call her or him “His or Her Excellency”. I want my colleagues and the media not to put this upside down. We are not fighting county governments; we are not fighting the governors. They are our people. Some of us campaigned for the governors. What we telling them is that they must be accountable to the people. We must not move around with flags and big cars--- Today, I am sure that every Member of Parliament will agree with me that if you walk around the constituencies, you will see health centres, schools, water projects with words “Built with funds from CDF”. The first financial year under a devolved Government, 2013/2014 is coming to an end, and I want to speak for the people of Garissa County. I want to speak for the people of Garissa County and I have nothing against that governor. I even voted for him. Today, there is no single project in that county. That is why we must enact a law that will give Parliament---

Hon. Kaluma: On a point of order, hon. Temporary Deputy Speaker. Under Article 95(5) of the Constitution, we have the sole powers as representatives of the people of Kenya to oversee all State officers. Is the hon. Member---

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Kaluma, are you giving information or is something out of order?

Hon. Kaluma: I am on a point of order, hon. Temporary Deputy Speaker. Is the hon. Majority Leader in order to say that the governors are doing nothing when he should be the one forcing them to do it? Is he confirming to his people that he is not doing his work?

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): The hon. Leader of Majority Party, you stand advised.

Hon. A.B. Duale: Hon. Temporary Deputy Speaker, Article 96 is essential in the creation of the Senate. I am sure that if the Senator for the great County of Garissa is watching me, he will realize that he is there to oversee the county government as I do so over the national Government.

Coming back to what I was saying, there is an amendment that is coming to this House--- The National Assembly, through a petition from the people in the county, can petition Parliament. A committee of this House can discuss the conduct of a county government, pass a verdict and then push it to the Senate. We must have a two-way front. In every county, you have a minimum of five to six Members of Parliament. You have a county like Kakamega and a county like Kiambu with about 12 to 13 Members of Parliament. As a Member of Parliament, you cannot be told to sit back, watch, sing and call Her Excellency or His Excellency and eat the dust when the governor is driving on those very poor roads in various marginalized areas, yet we have nothing.

Hon. Temporary Deputy Speaker, on 4th March, hon. Mbadi, I and others went and sought to be Members of this House while others became governors, MCAs and Senators. If you chose to be a servant of the people in the office of the governor--- Even the law which exists does not allow the governor to fly a flag. In fact, what they are doing is criminal.

We do not want war but we want to set the record straight today. We should say who flies a flag and who does not. We should also say who should be called “His Excellency” or “Her Excellency”; ultimately, it is not the flag or “Her Excellency” that will bring food and development to the people. We want our governors to make sure that they become servants of the people and not demigods. Some of them became governors because of the campaign we did for them.

Hon. Temporary Deputy Speaker, with those very few remarks, I say that this House will defend devolution. This is not equivalent to a governor. It is in the Constitution and it is not a choice. Kenyans decided to have a devolved Government. So, you cannot chase some and protect devolution. Devolution will be in this Government, in the next Government and forever.

I beg to support hon. Keynan’s Bill on the national flag, emblems and names.

Thank you.

Hon. (Dr.) Pukose: Thank you, hon. Temporary Deputy Speaker for giving me an opportunity to contribute to this Bill. From the outset, I want to support it and hope that amendments will be brought to the House on the title “The National Flag, Emblems

and Names”. I think the names have not been well captured; they will need to come out very clearly; that is the names we are talking about. That is if we are talking about giving people titles. Who should be referred to as “honourable”, “Senator”, His Excellency and so on?

Hon. Temporary Deputy Speaker, we need to appreciate that resources, as the Constitution stands, were devolved to the counties but power was never. I think this is what our brothers have never got clearly. More often than not, you will find that when the national Government, through the Division of Revenue Bill, shares money between itself and county governments, the governors say that this is what their government has given. Instead, he is supposed to say “this is what I received from the national Government for this county”. He is supposed to be held accountable for the resources. This is because more often than not all the resources that we get at the various counties come from the national Government. It is the national Government’s responsibility to collect those resources and distribute them fairly to all the constituencies. What we are trying to capture in this amendment about the flag is who should fly it.

I think you will also need to amend the Bill because we do not have a Vice-President, yet we have been talking about one.

Hon. Temporary Deputy Speaker, on devolving resources to the various counties, what is coming out very clearly is that we might end up creating what we call blocks, where we have tribal enclaves especially in areas where we have many ethnic groups living. An example is Trans Nzoia, which is my county. Some areas have been marginalized since Independence, more so, my constituency. Just as the hon. Member for Marsabit said, tarmac ends in his area; tarmac ends just before my constituency begins and the rest of it---

Hon. (Eng.) Gumbo: On a point of order, hon. Temporary Deputy Speaker. I have a lot of respect for the good doctor. I am looking at the Bill that we are debating and I am asking myself what this Bill intends to achieve. If you look at the Memorandum of Objects and Reasons, it says that the object and purpose of this Bill---

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Gumbo---

Hon. (Eng.) Gumbo: Let me drive my point home; I want to believe that the Bill we are debating might not be constitutional; just indulge me, hon. Temporary Deputy Speaker.

“The object and purpose of this Bill is to amend the National Flag, Emblems and Names Act (Cap. 99) to reserve the flying of the national flag on motor vehicles to the following State officers: the President, the Deputy-President, the Chief Justice, the Speaker of the National Assembly and the Speaker of the Senate. The flying of flags on motor vehicles by designated state officers is presently governed---

It goes on to say “(3) A person who contravenes subsection (1) commits an offence and shall be liable, on conviction, to a fine not exceeding one million shillings or to imprisonment for a term not exceeding five years, or both.”

Article 10 of our Constitution talks about national values. This Article says:-

“(2) The national values and principles of governance include-

(a) patriotism, national unity, sharing and devolution of power---

Hon. Temporary Deputy Speaker, this is not theatrics.

Madam Temporary Deputy Speaker, I am very concerned because we are trying to stop Kenyans from--- For argument's sake, this year we are having the World Cup. Suppose Kenya was participating in the World Cup today and we won it, what would be wrong in all Kenyans putting the Kenyan flag on their cars and flying it all over the place? According to this Act, that will be an offence.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Gumbo, nothing is out of order. Hon. Keynan moved the Bill and you were not in the House. Then you are raising an issue which you have the right even to amend. We are on the Second Reading.

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Speaker, I am raising a constitutional issue. This borders on patriotism. What is wrong with every citizen of the country flying the flag? If this is about settling the fight with the governors, it is an exercise in futility.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Gumbo, you are raising an issue that can be handled in this House. You still have a right even to refuse to support this Bill in this House. There is nothing out of order in relation to what the Member was saying. I thought you were raising an issue that the Member was out of order.

Hon. Member, carry on.

Hon. (Dr.) Pukose: Thank you, hon. Temporary Deputy Speaker for allowing me to continue. This amendment Bill is about the National Flag, Emblems and Names Act and connected purposes; we are talking about flying the flag on our vehicles. You find that more often than not, when people fly the flag within the various areas and accompanied by sirens, the Kenyan public knows that an important person is passing around. It has been used more often than not for intimidation purposes. We want those who are going to fly the flag to fly it with responsibility, so that at the end of the day everybody, whether you want to fly the flag for any other purpose--- As the County Act provides, the flag to be flown within the county should be the one of county.

The flag that is going to be flown on the vehicles of the President, the Deputy President, the Speaker of the Senate and the Attorney-General, will people know that this is the President or the Attorney-General who is passing? When we have multiple flags, they create confusion. You are talking of 47 flags within a country congregating within a certain area. What happens especially in our City is that we experience a lot of traffic jams and more often than not, inconvenience many Kenyans in their day to day activities. So, one of the aims of this is also to reduce traffic jams and allow Kenyans to carry on with their daily activities.

With those remarks, I support.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Thank you. Hon. Pukose was not out of order. So, there was nothing to be raised. I agree with you but that was the wrong time to raise it. It was not the Member who was out of order. Yes, you have raised a very important issue on patriotism and constitutionality of the Bill, and even whether it is supposed to be in the House, Communication will be made to this House. Let us continue with the debate.

Hon. (Ms.) Muia: Thank you, hon. Temporary Deputy Speaker. I rise to support this amendment about flying the national flag. There has been a lot of confusion when it comes to who should fly the national flag. You know very well and you have come from

an area where many people have been frustrated because of what has happened after the devolved government. If you look at the Constitution, on the Chapter on Devolution, there is no provision that a governor is supposed to fly a flag. That is why they sat at their county governments and came up with their own rules, and they even call themselves “His Excellency” and “Her Excellency”. You even see the MCAs calling themselves “hon. Members”.

An. hon. Member: What is wrong with that?

Hon. (Ms.) Muia: Hon. Temporary Deputy Speaker, I am speaking and the Member should wait for his or her time.

I went to a funeral and there was a lot of confusion. As a Member of Parliament in charge of a constituency, there was hon. Regina Ndambuki Muia, hon. Rose Ndunge and hon. Titus Muli. There was a lot of confusion. Even the old *mamas* were not able to differentiate who was in charge of a constituency and who was in charge of a ward. So, we must have control of our devolution.

Hon. Wandayi: On a point of order, hon. Temporary Deputy Speaker. I have an issue. There is the issue of relevance in our Standing Orders. This Bill is all about the national flag and the reference being made by the Member is to governors, the county assembly, the ward representatives and the title “honourable”.

Hon. (Ms.) Muia: That is not a point of order!

Hon. Wandayi: We need guidance. There is the issue of relevance. This House can do better than this.

Hon. (Ms.) Muia: Will you sit down? Just switch him off.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Members, let us respect this House. Hon. Wandayi has a point on relevance. Please, Members, let us stick to the debate. Hon. Member for Kilome, carry on.

Hon. (Ms.) Muia: Hon. Temporary Deputy Speaker, that was not a point of order. That was a point of interruption but I excuse him.

We are talking about devolution and we are not going to be serious in the Bills that we pass on the Floor of the House, if they are going to be abused out there. There have been a lot of complaints about what is happening. If you listened to what the Members said during debate on the Equalisation Fund Bill, you will see that there was a lot of confusion.

We know there are some Members who support the governors even when they are doing wrong. Please, listen to other people when they are pointing out mistakes about what the governors are doing. They are placed at the county, so that they can manage issues in the county, but not issues at the national government.

(Applause)

I have finished; Members can speak at their own time because I am done.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Unfortunately, she is through with her contribution. Nothing is out of order. You could only raise the point of order when she was out of order. She is through with her contribution. You can only say what is out of order.

Hon. Members, I hope we are informed. We should be informed at this level to differentiate between points of order, which are about something out of order, according to our Standing Orders, and points of information; you may want to give a Member some information, which he can agree to take or not.

(Hon. E. Keter and hon. Korir stood up in their places)

Hon. E. Keter, Member for Belgut, let us have sanity here. Hon. Wesley, you are out of order. Can you resume your seat? I will throw you out. Members, someone is going to get out of this House. You have to have some order and decorum. Your constituents are watching you. Hon. E. A. Keter, Member for Belgut.

Hon. E. Keter: Thank you, hon. Temporary Deputy Speaker. I stand to support this Bill. Really, this issue has come about because of devolution. As the other Member has said, power was not devolved; what actually took place was that we wanted counties and constituencies to benefit from the allocation of resources from the national Government.

The issue of the flag is a concept which came about as a result of the scenario where Members of the County Assembly and the governors, wanted to have a way, in which they could aggrandize themselves so as to be seen and recognized wherever they maybe. This House should give guidance on how the national flag should be respected. I am not challenging the fact that we should be patriotic, but there are so many ways in which you can show patriotism. Having a flag on my table is one sign; I do not deny that fact, but the issue of a Member of the County Assembly or the governor travelling in the same style as His Excellency the President is not acceptable.

The other issue, which I want to really emphasise on, is names, which are a problem. When we are in the field and we meet with councillors, or Members of County Assemblies, there is no distinction between them and a Member of Parliament. There should be a very clear distinction, and I should be recognized as the hon. Member. Some of us were councillors; if a councillor or County Assembly Member is referred to as “an hon. Member”, where is the distinction? It is time we gave guidance on this issue, so that we do not mix issues. Otherwise, I do support.

Thank you, hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): The hon. Member for Luanda.

Hon. Omulele: Thank you, hon. Temporary Deputy Speaker, for giving me an opportunity to give my thoughts to this very important proposal for amendment. From the outset, I support it. To me the reasons are very clear, according to the Constitution and I want to support it because of legal reasons.

I have looked at the Constitution, particularly Article 9, which provides for the national symbols and national days of the Republic of Kenya. The first one is the national flag. I am informed in this presentation by the provisions of Article 6(1) and (2), which provide that:- “(1) The territory of Kenya is divided into the counties specified in the First Schedule. (2) the governments at the national and county levels are distinct and inter-dependent, and shall conduct their mutual relations on the basis of consultation and cooperation.”

It is clear in the Constitution that we have two levels of government, the national and county governments, and we have gone ahead under this Constitution to define what the national symbols are. These national symbols are important because they define what Kenya really is. It is important for us to define and prescribe those people who shall---

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Millie Odhiambo-Mabona, what is out of order?

Hon. (Ms.) Odhiambo-Mabona: On a point of order, hon. Temporary Deputy Speaker. I want to raise two points of order. One is that I have just walked into the House; ordinarily it takes me about 10 minutes to reach Parliament from my House. Today, it has taken me two hours, and I have had to walk part of my journey without my security, because they cannot also reach town. I would like to know whether there are men in black who have taken over the Government of Kenya.

(Laughter)

At one point, I have seen people who have blocked the roads with their vehicles. There is a police car behind them doing absolutely nothing; it had somebody having a siesta. I would want to know whether there are men in black, who have taken over, either the City of Nairobi or the Government of Kenya.

My second point of order is that halfway while I was coming in my vehicle before I abandoned it, I was listening to the proceedings of this House and your ruling on the issue of constitutionality of this Bill. I know you said that you will give a ruling later. I would want to request that you indulge me because when hon. Gumbo raised the issue of patriotism--- I have another ground why this Bill is unconstitutional. I have indicated to my good friend, hon. Keynan, that I know his intentions are good, but whatever law we make must be constitutional. I want to give you reference, so that when you are making your ruling, you will be guided by constitutional provisions. I want to speak to Article 10 of the Constitution on national values and principles of governance, which is what hon. Gumbo was referring to as patriotism. Even countries like Sudan or the United States of America (USA), where people fly flags all over, this is an issue of patriotism. When you want to use a symbol of national unity, as a private member's thing, then you are taking away our right to be proud as Kenyans and to fly our flag.

I want to also raise the issue under Article 27 of the Constitution on equality and freedom from discrimination. I want you to look especially at Article 27(5). "A person shall not discriminate directly or indirectly against another person on any of the grounds specified or contemplated in Clause (4)." If you look at the grounds in Clause (4) you are talking about social origin, amongst many other bases. When we arrogate to ourselves supremacy above every other Kenyan, we purport that there are certain people who are more equal than others.

We were elected to serve the people of Kenya as servants; we cannot then purport to give ourselves standards that are way above those of Kenyans on things that are symbols of national unity. In your ruling, I would want to request and urge that you look at Articles 10 and 27 on the issues of patriotism and discrimination.

Thank you, hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Thank you, hon. Millie for the two points of order and the issues that you have raised. I will consider them and a ruling will be made in this House; thank you for the information. The first one to me was about men in black and those who were blocking the roads; there was nothing out of order in this House, but the House has been informed.

Hon. Member let us continue.

Hon. Omulele: Thank you, hon. Temporary Deputy Speaker for allowing me to continue with my contribution.

I have spoken to the provisions of Article 9, which provide for the symbols of our nation. Once we recognise these symbols as our national symbols – the national flag, the National Anthem, the coat of arms and the public seal – we must also define how these national symbols shall be used by anybody in our Republic. We are saying that we must limit the utility of these symbols. For example, we cannot have the public seal being used by every Kenyan in whichever ways they wish to use it. I believe that this point is within the law. We should define how our national symbols should be used.

I have also listened to my able colleagues as they made their submissions on the provisions of Article 10 of the Constitution, which particularly addresses the issue of national values and the principles of governance. As we look at the national values and principles of governance, we must also take cognizance of the fact that this is a sovereign state, which needs to define how those values shall be achieved. We cannot have values of everybody running around, wrapped in the colours of the national flag, and doing whatever they want to do.

The amendment that we are debating is only seeking to limit the use of a national symbol, which is the national flag on motor vehicles. We are limiting its use to vehicles by His Excellency the President, His Excellency the Deputy President, the Chief Justice and the Speakers of Parliament. I agree with the amendment. Therefore, it is proper for us to support the proposed amendment.

Thank you.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Members, let us hear a voice of a “dove” Yes, hon. Cecily Mbarire.

Hon. (Ms.) Mbarire: Thank you, hon. Temporary Deputy Speaker. I rise to support the amendment.

I want to begin by saying that while it is very clear under our national values that every Kenyan has a right to show their patriotism for the nation, we need to look at this amendment and appreciate that it really provides for control of the use of the national flag on motor vehicles by State officers. What does that mean? It means that we are avoiding a situation where we wake up one morning and find that every State officer is flying the national flag on their car as a symbol of their status and cause confusion. Unless we control the use of the national flag on motor vehicles, we will continue to have the confusion that we have right now. It is, therefore, very important that we limit the use of the national flag by State officers, otherwise it will be misused.

I want to say, with respect to governors; that they are misusing the national flag. Flying the national flag on your motor vehicle does not mean that you should cause traffic snarl ups just because you are flying it. It is simply a show of unity, which must go with some responsibility. Maybe, hon. Kenyan can look into the issues raised earlier on

by hon. Millie and her colleagues to see whether in any way, the amendment means that on a day when we are celebrating a national day or a sports event that we are all proud of, Kenyans cannot fly the national flag on their cars to show patriotism and solidarity with our national team. Personally, I do not think so, but if this particular amendment, in the way it has been crafted, might limit this, we can move a further amendment to it. However, that does not mean that we cannot limit the use of the Kenyan flag by State officers. It is very important to do so. There is the centre of power that always symbolises the unity of this nation.

Finally, although I have spoken to hon. Keynan about this, it is very important that we not only deal with issues of the flag but we also deal with issues of titles. Even in terms of protocol, we should provide for the titles that specific cadres of State officers should use and who should come before whom during public functions. Right now, there is a lot of confusion.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): What is it, hon. Keynan?

Hon. Keynan: On a point of information, hon. Temporary Deputy Speaker. I would like to inform hon. Mbarire.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Would you like to be informed, hon. Mbarire?

Hon. (Ms.) Mbarire: Yes, hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. (Ms.) Mbarire): Hon. Keynan, you can inform hon. Cecily Mbarire.

Hon. Keynan: Hon. Temporary Deputy Speaker, I would like to inform hon. Mbarire on one of the points that she has made. There is a Bill that is about to be published on the order of precedence. It is going to deal with protocol issues. This is just a simple amendment. Issues of titles and protocol and how we are supposed to behave in public galleries and wherever else, have been addressed in that Bill. In the next one hour, I will make copies of the Bill available at the main reception, so that hon. Members can comment on it. I am sure that such issues will be raised on that particular day, so that we can be systematic. Otherwise, the Bill being debated is limited to an amendment to Cap.99 of the Laws of Kenya.

Hon. (Ms.) Mbarire: Hon. Temporary Deputy Speaker I am accordingly informed. Once again, I support the Bill.

Thank you.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Yes, hon. Njuki of Chuka/Igambang'ombe.

Hon. Njuki: Thank you, hon. Temporary Deputy Speaker, for getting that very long beautiful name right for the first time.

I want to congratulate my friend, hon. Aden Keynan, for coming up with this very important amendment.

(Loud consultations)

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Mbadi, you are consulting loudly. You are not the Leader of Minority Party.

Hon. Njuki: Hon. Temporary Deputy Speaker, sitting on the seat of the Leader of Minority Party does not give hon. Mbadi the right to use it. He is eating into my time. You have to protect me.

Hon. Temporary Deputy Speaker, the national flag is a symbol of unity. It actually speaks of the history that we have as a country. Just to know how serious it is, before we had the recent development of the devolved governments, it was not possible to find the national flag being sold in any backyard shop in the country. Even today, if you want to buy the national flag, you cannot walk into any shop and buy one. There is a specific shop that has been mandated by the Government, where you can get the national flag that has been made with the right material and the right texture. We have to differentiate between the particular flag that is flown on motor vehicles by State officers from the long sheets that are normally used for decorating the podium during national day celebrations. The two are totally different.

As one of the symbols of national unity, it is important that we limit the use of the national flag. We do not want to have confusion in the country such that the national flag loses its meaning. Before the new constitutional dispensation, the predecessors of the current Cabinet Secretaries; Cabinet Ministers used to fly the national flags on their cars. I remember that flying the national flag was so significant that even during election campaigns, people used to promise their constituents that they had already drilled holes on their cars to fly the national flag. If you flew the national flag, it meant that you were holding a very important position. If we allow everyone in the county to fly a flag on their cars, as it has been the case in some instances where the national flag is even flown on motorbikes that are part of the motorcades of some county governors, it will not have any meaning.

In order for us to have respect for the national flag, it is important that the counties come up with regulations, so that we can have county flags. As it is now, when governors converge somewhere, it is not possible to tell which governor is from which county government. We should be proud of our county governments, and be able to come up with flags that depict our counties. I come from a county that borders Mount Kenya. I would like to see a flag where our cultural background has Mount Kenya. I would like to distinguish my governor from the governors of Uasin Gishu and some counties in the coastal region. That way, we will be able to promote the unity of our people in the counties since counties will be identified by their flags.

Hon. Temporary Deputy Speaker, most of the hon. Members who have been speaking seemed like they were---

(Loud consultations)

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Members, can you consult in low tones? We need to hear what the hon. Member on the Floor is saying.

Hon. Njuki: Hon. Temporary Deputy Speaker, some hon. Members have been speaking as if it is only the governors who fly the national flag. It is not only the governors who fly the national flag. I have seen county representatives fly the national flag out there. Of course, the Cabinet Secretaries normally fly the national flag. Of course, the issue of titles will be dealt with in a different Bill. The title "honourable" is

nowadays used by anyone who works in the counties. If you look at the business cards that they print, even the ones for the county executive, the chief officers; all of their names start with “honourable” Therefore, you cannot tell who is a Member of Parliament; a Senator and even a governor. Actually, members of the public are confused at the moment; they do not know who is who. Even as I support this amendment, I cannot forget that it is not only individuals who fly flags on their cars, I have seen proprietors of businesses in this country operating hotels that they call international hotels flying flags. You can even find flags flying in villages. Sometimes, you cannot differentiate between the chief’s office and a hotel in the neighbourhood where flags fly.

Therefore, we need to restrict the flying of flags to buildings that actually can be identified as Government offices. I look forward to that time when the flag will actually have a meaning that can--- I am not saying that they do not have a meaning; I am talking about when it will be used in a way that will enable us identify a Government officer, as is stated in the Bill.

Lastly, hon. Temporary Deputy Speaker, we look forward to a time when we will have 47 counties with 47 flags, all with different meanings for the counties.

With those few remarks, I would like to support this amendment.

Thank you.

Hon. Kipyegon: Thank you, hon. Temporary Deputy Speaker. I rise to support this particular amendment. I can see my friend hon. Ng’ongo is shocked.

One thing I must appreciate is the fact that this is not a creation of law. It is an amendment of the already existing law; Cap.99. Therefore, when we try to bring in issues of whether it is constitutional or not, I think we are actually contradicting what is already in existence.

Hon. Temporary Deputy Speaker, Chapter Two of the Constitution states clearly the national symbols and national days. I think there was a reason why the drafters of this Constitution created this particular chapter. It is in Article 9 where we have specific days, names and items that are called “national symbols”. We have the national flag, national anthem, the coat of arms and the public seal. The reason why we have these particular items in the Constitution is to separate and differentiate those factors that are of national importance from those which can bring us together and give the country unity.

Hon. Temporary Deputy Speaker, why do we have specific days called “national days”? We cannot wake up one day and just determine that it will be a holiday; it has to be a holiday which is actually in the Constitution, or which is designated by Parliament. Why do we have one national flag? I think the major reason why we have one national flag is because it is a symbol of unity. We cannot just allow it to be misused, just as any other country cannot allow its national flag to be misused. The intention of this particular amendment is to create a situation where the dignity of the flag and the unity of the country can be symbolized. It cannot be symbolized by anybody flying it. I cannot wake up today and hoist a flag in my private compound. It cannot happen. We know the cultures, traditions and the norms of this country are different those of any other country. We cannot just wake up today and allow anybody to enter this House, unless we seek leave. Those are rules which govern our conduct. We need to have serious rules and serious constitutional norms that we follow.

Hon. Temporary Deputy Speaker, in this particular amendment I think I need to make it clear that we are not talking about county governments. Anybody who actually purports to speak for or against the county governments, we are actually specifically specifying those particular individuals who are supposed to be flying the flag. Those people who are not within that bracket, including me, as a Member of National Assembly; will be excluded and it will be illegal for them to fly that flag. We are only talking about the President and Deputy President. When we are referring to this, we are also actually referring to the three arms of Government where we have the Legislature which is actually headed by the Speaker and the Executive, which is headed by the President; we also have the Judiciary, which is headed by the Chief Justice.

Hon. Temporary Deputy Speaker, we are trying to amend the law today to allow these particular heads of the three arms of Government to show the significance of national unity. We are only making it known that the only personalities who are State officers, and who are allowed by this law to fly the national flag are these heads of the arms of Government.

In this case, we are not referring to anybody because we have three arms of Government. We do not have four. The county government is not an independent arm of Government. So, when we are making this particular reference, we are talking about the three arms of Government.

I would also want to make reference to so many other factors which make us one, as a nation. We do not wish to make laws which do not even attract respect for this particular House. When we make reference to emblems--- The same Act does not only talk about emblems, but also about names and flags. Therefore, when we make reference to other names, which of course, I do not even wish to mention – I do not intend to remove names from some people; they can call themselves any other names they wish to be known by. What I think we need to do is specify the Cap.99 which we are amending, and define who is supposed to fly the flag.

I wish to end by saying that this amendment does not contravene the Articles that talk about devolution and the county governments; we are not even making any reference to the county governments.

I wish to support.

Thank you.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Thank you, hon. Member. I have 36 requests. This is one of the Bills that have really generated a lot of anxiety in the House.

Hon. Nuh: Thank you so much, hon. Temporary Deputy Speaker. I stand to oppose this Bill.

(Loud consultations)

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Members, the hon. Member for Suna East is on the Floor. Let us accord him time to give his views.

Hon. Nuh: I stand to oppose this Bill.

Hon. Ekomwa: On a point of order, hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): What is out of order? If you raise an issue which is not out of order, you can be assured that you are going to get out of this House. You will be out of order.

Hon. Ekomwa, what is out of order?

Hon. Ekomwa: Hon. Temporary Deputy Speaker is it in order for hon. Members who have just come in now to be given opportunity to contribute yet we came here very early? I was the first one to press this button. It is unfair and it is not in order. It is also not in order for hon. Members who come to consult the Chair to be given a chance. We can all come to that place; it is not fair.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Ekomwa, I was here at 9.00 a.m.; I am the one who opened this House and there is a request list here. You can even come and check it here. There is nothing out of order here.

Hon. Nuh: Hon. Temporary Deputy Speaker, you need to inform the hon. Members that you have the prerogative of giving opportunities for hon. Members to speak. There are hon. Members who are senior like us who should speak first---

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Nuh, we do not follow seniority here. We follow the requests. You have the Floor.

Hon. Nuh: Thank you. I stand to oppose this Bill because it is unconstitutional. This is a Bill that wants to deny Kenyans their rights that are enshrined in the Constitution. As has been pointed out under Article 10 (2), the issue of patriotism is very clear.

The Constitution created devolved systems of government. But still we have one unitary system of government. We must look for a way to put Kenyans together and the only symbol that brings people together is the national flag. If we use this House to make a law that gives the authority for the use of the national flag to a certain group of people then there is nothing that can be more unconstitutional than that.

Hon. Temporary Deputy Speaker, we cannot create a law for a certain group of people. We cannot create a law that targets certain people. We create laws for posterity. We must accept that the Government---

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): There is a point of order from hon. Njomo of Kiambu.

Hon. Njomo: On a point order, hon. Temporary Deputy Speaker. Is it in order for hon. Junet to mislead this House that the only way a State officer or a member of the public can show patriotism is by displaying a flag on his car? Is it in order for him to say that when we know that there are so many other ways like carrying the flag on one's head or shoulders? When we put the flag on the car, it is a symbol of authority.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Njomo, you have a right to argue and so has the Member for Suna East.

Hon. Nuh: Hon. Temporary Deputy Speaker, I want to inform my good friend, hon. Njomo, that the national flag is one of the ways. Article 10(2) talks of patriotism, national unity, sharing and devolution of power, the rule of law, democracy and participation of the people. So, the national flag is very important for purposes of patriotism.

Secondly, we cannot create laws here to bar a certain group of people from enjoying certain rights. We must accept that there are two governments that are distinct

and interdependent in this country, and one of them is headed by the governor. If we want to have national unity we must allow the governors to fly the national flag, otherwise very soon you will see counties that create their own flags and then declare their own republics. For example, Kakamega County has a population of 1.8 million people. This population is more than that of some countries of the world. For us to have national unity, the national flag must be used to bring people together. That is the reason I support that the governors should fly the national flag. You do not expect a governor to fly a flag which has decorations of elephants, crocodiles, ants *et cetera*. We cannot allow that to happen in this country because it is demeaning to the office of the governor. The office of the governor is as powerful as any other office which has executive power by virtue of the Constitution. For that reason, let us not bring in laws that intend to punish certain groups of people. We make laws here for posterity and so that we can take this country forward.

If you look at the intention of this Bill, it is very clear. Even Ministers of this country have been flying flags since Independence; from the days of the Government of the late Jomo Kenyatta. Today, we want to stop them. If Members of Parliament are envious of the governors, let them provide in the Bill that they will also fly flags on their cars.

(Applause)

You do not deny somebody his right for you to be equal to him. If you feel that you are also a State officer and you feel like having a flag on your car, then have it on your car and drive in town. Nobody will deny you that right but do not bring here laws that will make other people look demeaned.

Hon. Temporary Deputy Speaker for that reason, I oppose this Bill vehemently and I want governors of this country to actually fly two flags, namely the national flag and a county flag. Do not target governors. Tomorrow you will be a governor. Some of these Members of this Parliament are going to be governors. You are only a Member of Parliament today, tomorrow you can become a governor. Are you going to say that you will bring a Bill here again because now you should fly the national flag since today you are the governor?

Hon. Members: On a point of order, hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): There is nothing out of order. Hon. Members, you will have your time to speak.

Hon. Nuh: Hon. Temporary Deputy Speaker, let us not use this Bill to discriminate against other people. It will be unethical, immoral and unacceptable to bring a Bill here that is going to demean a very powerful office like the office of the governor, like His Excellency the Governor of Migori.

With those few remarks, I oppose the Bill. Thank you very much.

(Laughter)

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Thank you, hon. Member. On my request is hon. Sakwa Bunyasi, the Member for Nambale.

Hon. Bunyasi: Thank you, hon. Temporary Deputy Speaker, for the opportunity to contribute to this Bill.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Member for Dagoretti, you have an intervention.

Hon. Bunyasi: Why would he intervene when I have just begun speaking?

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Because it is an intervention. He has a right.

Hon. Simba: Hon. Temporary Deputy Speaker, because of the importance of this issue, I am requesting that we reduce speaking time to two minutes.

Hon. Members: No.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): The hon. Member for Dagoretti North is requesting for reduction of time to two minutes. Can I put the Question?

Hon. Members: No.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Members, it is a request for reduction of time. He has the right to do that, and I will put the Question.

*(Question, that time be reduced
to two minutes, put and agreed to)*

(Loud consultations)

Hon. Kaluma, my ears are very clean. I do not suffer from ear problems. Hon. Members, you need to freeze. Please, let us read the Standing Orders of this House. Can we be better informed? I want sanity and some decorum in this House. Carry on, hon. Bunyasi.

Hon. Bunyasi: Thank you, hon. Temporary Deputy Speaker. I would plead with my colleagues on the other side to consult in low tones, so that we can hear each other; we always hear them when they speak.

Hon. Temporary Deputy Speaker, I rise to oppose this amendment for the reason that in my understanding, and because of my age now and given that I have travelled around this world, we must allow citizens to express, in their own way, their patriotism. Let us allow patriotism to flow freely. One of the main ways in which people express patriotism is that they know their national anthem, and can sing it; this is done all over. We must allow our citizens to fly flags freely. There are some areas in this country where people will ask you "Are you from Kenya?" The reason why they ask you whether you are from Kenya, when they are within this Republic, is because they see very few symbols of national unity or patriotism. If you are in Garissa, Isiolo or Marsabit - the Leader of Majority Party is not here - people will ask you whether you are from Kenya. We must understand the fundamental reasons why people do not feel they are part of this Republic.

Marginalization is one---

(Loud consultations)

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Members on my left, we are not here to heckle. If you want to put a point across, please raise it the right way. Let us not make noise. We need to listen. The world and the country are watching. The hon. Member for Nambale is putting his sentiments across. You will have your time to, maybe, oppose.

Carry on, Member for Nambale.

Hon. Bunyasi: Thank you, hon. Temporary Deputy Speaker. I will appreciate if hon. Mbadi listens for a minute.

Hon. Ng'ongo: On a point of order, hon. Temporary Deputy Speaker. From previous Speakers' rulings, it came out very clearly that a House can only debate Bills that are constitutional. The Chair has ruled time and again that in the event that this House is doubtful about the constitutionality of a Bill, the best thing to do is to stop the discussion at the point of doubt and seek a proper ruling. I am saying this because it will be out of order for this House to debate something in vain. If the Speaker will rule that this issue is unconstitutional, the time spent in debating the Bill will have been wasted. This House cannot spend time in vain.

Hon. Temporary Deputy Speaker, a number of my colleagues have expressed the fears on the constitutionality of this Bill. I do know that a number of us have issues with governors but we are stretching it too far. I want to invite the Speaker to look at Article 95 of the Constitution. It says:-

“(1) The National Assembly represents the people of the constituencies and special interests in the National Assembly.

(2) The National Assembly deliberates on and resolves issues of concern to the people.”

Hon. Temporary Deputy Speaker, it pains me that we prioritized this issue as opposed to the Value Added Tax (VAT) Bill, which will help the people of Kenya by reducing the cost of living. We just want to spend time discussing a matter that is unconstitutional.

As I was coming here this morning - I want to share this with this House - I was called by one of the presenters of a television station. He was interviewing the Secretary-General of TNA and Macharia Gaitho. He called me on behalf of ODM. I think he forgot that I am not the Secretary-General of ODM.

(Laughter)

He forgot that we left it to hon. Ababu Namwamba and hon. Zani.

Hon. Dawood: On a point of order, hon. Temporary Deputy Speaker.

Hon. Ng'ongo: I am on a point of order, hon. Temporary Deputy Speaker.

This thing is not helping Merus; what would have helped Merus is the VAT Bill.

(Laughter)

I am sharing this with this House because the presenter asked me what the price of a 2-kilogramme packet of *unga* is. I answered that it is between Kshs150 and Kshs160. He said that he was glad that I was just about Kshs10 away from the exact price.

He said: “We have realized that the leaders of this country are far removed from the reality on the ground”. This is a clear indication that we can spend all this time discussing flags and emblems - things that have no value at all to this country - instead of discussing things that are of importance to this country. I request you to stop debate on this Bill until a clear and authoritative ruling is given. I respect hon. Keynan. This Member has been bringing very progressive legislation in this country. He is one of the best Members we had in the Tenth Parliament and even in this Parliament; but this time, I am sorry that my friend, hon. Keynan, has got it wrong. Stop the debate here.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Mbadi, thank you for your sentiments. I am sure other Members like Millie have already raised the issue, and the Chair has already given a ruling. I know your Bill is coming; let us not just rush simply because we want to debate other Bills.

Hon. Members, let us debate; a ruling will be made in this House and a decision will be reached. I will not listen to you. Let us contribute and a decision will be made. We are not finishing the Bill today. You will express your sentiments. Hon. Waititu, take the Floor.

Hon. Waititu: Thank you, hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Actually, it was not hon. Waititu. It was hon. Bunyasi. Let him finish and you will be the next one.

Hon. Bunyasi: Hon. Temporary Deputy Speaker, you are so good; you should be the substantive Speaker.

An hon. Member: On a point of information, hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): You want to advise the Member?

Hon. Bunyasi: Hon. Temporary Deputy Speaker, this is intended just to disrupt.

An hon. Member: On a point of order, hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Let him finish. He is not out of order. The Member for Nambale was on the Floor; let him finish, so that you can raise your issues.

Hon. Bunyasi: Hon. Temporary Deputy Speaker, even though I rise to oppose the Bill, I want to thank hon. Keynan for bringing it. I am distressed that the discussion around it is not dealing with the merits and demerits of the proposed amendment. We have been driven adrift by focusing on governors and so on. We should eliminate that sentiment. It belittles an otherwise very important issue about the symbolism of national unity and patriotism; let us just focus on the merits and demerits of it.

The fact that somebody is flying a flag will not cause traffic jams in Nairobi. We know that for sure. Let us not go astray. I conclude by saying that despite the importance and the intrinsic merit of discussing this, I oppose the amendment.

Hon. Ganya: On a point of order, hon. Temporary Deputy Speaker. This is a House of rules and procedures, with traditions and precedents. Once a Member has raised an issue regarding constitutionality of any Bill, there has been precedent and I am a senior Member of this House; until that is determined, debate cannot continue. That is the precedent, unless we are changing the rules of this House. Until we determine the constitutionality of this Bill, this debate should not continue. Those are our rules unless we are changing them today. I am really concerned and I have to put it on record.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Ganya, you can see a lot of consultations in the office of the Speaker; I said that a ruling will be issued in this House. I gave the ruling that a decision and a ruling be given to this House. Hon. Members can express their views.

Hon. Sakaja: Hon. Temporary Deputy Speaker, I hear the issues being raised by hon. Chachu. Hon. Mbadi as well said that there is an issue of constitutionality. By the time this Bill came to the Floor of this House, the issue of constitutionality had, probably, been dealt with by the Speaker because he approved this Bill. Since many of us may not want it or many may want it, we should allow the House to debate all its merits and demerits; issue of constitutionality can be determined at some other point. We should not curtail debate if we do not like this Bill before it gets to the Third Reading. If it is unconstitutional, it will not come to this Floor for Committee Stage and Third Reading. At this point, let Members debate it. We should not pre-empt hon. Members' feelings on the Bill. Determination by the Temporary Deputy Speaker will not be made right now, when she is on the seat. The substantive Speaker had ruled that the Bill was constitutional by virtue of it being debated in this House. So, let the debate go on.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Member, you are on the Floor. Just continue.

An hon. Member: On a point of order, hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): I accept the anxiety bells. I am very happy. That is what we came here to do. Let the hon. Member continue.

Hon. Waititu: Thank you, hon. Temporary Deputy Speaker. I also concur with hon. Millie Odhiambo-Mabona that this morning there was a heavy traffic jam in the City. I agree with her that it caused many of us to be late. However, the men in blue uniforms are trying to maintain law and order. There was a problem. The Governor of Nairobi said that he could control the traffic jam in Nairobi. He now knows what can happen in the City.

Hon. Temporary Deputy Speaker, coming back to the Bill, it is true that---

(Several hon. Members stood up in their places)

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Members, let him conclude his contribution on this matter. Hon. Members, you know how to catch the Speaker's eye. By virtue of your standing up, I am going to rule you out of order, and you will not get time to speak.

Finish, hon. Waititu.

Hon. Waititu: Hon. Temporary Deputy Speaker, thank you for being firm.

On the issue of flying the national flag, I remember that even during my primary school time, we used to respect the national flag. That is the trend that we should be following.

An hon. Member: On a point of order, hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Members, the points of order are so many that I cannot see which one is yours. Your name is not even here. You have confused yourself. Let us hear the Member from Nairobi County.

Yes, hon. Member!

Hon. Dawood: Hon. Temporary Deputy Speaker, does it mean that the one who makes the loudest noise is the one who gets a chance?

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Member, what is out of order?

(Hon. Okoth stood up in his place)

Hon. Ken Okoth, you have to resume your seat. As much as I would want to give you time to speak, you do not ask for a chance to raise a point of order when you are standing. You know it very well.

(Hon. Okoth resumed his seat)

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Members, let us hear a point of order from hon. Ken Okoth now that he has resumed his seat. What is out of order?

Hon. Members: On a point of order!

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Requests for points of order are now becoming a song.

Let us hear hon. Okoth. You will have a chance to be heard. Yes, hon. Ken Okoth.

Hon. Okoth: On a point of order, hon. Temporary Deputy Speaker. Is the hon. Member in order? He is not a citizen of Nairobi County! Is he in order to cast aspersions on the competence of our governor, who cannot defend himself in this House? We know that it is the agenda of the Jubilee Government to frustrate devolution by making sure that the Inspector-General, with all the powers and the budget that we have given him, lets the *matatu* thugs stop this City from working? Inspector-General Kimaiyo is not doing his job.

The Jubilee Coalition is frustrating devolution. We want our governor to be supported with the money that we pay as taxes to make sure that the thugs who are stopping business from going on in Nairobi today resume their work. Members from *ushagu* should not comment on the Governor of Nairobi, whom they never elected, and who is being frustrated by the Jubilee Government. It is out of order for such Members to talk about the Governor of Nairobi. Talk about your county governor. Leave Governor Kidero alone. *Dawa ya Nairobi* works for Nairobi.

Thank you.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Member, stand advised not to use such names. We have an hon. Member for Nairobi County, who is out to protect the governor. Let us also protect them. What has he said? You want to raise a point of order? What has he said?

Continue hon. Member!

(Loud consultations)

Order, hon. Members! Look at Standing Order 107. This is a House of decorum and procedures. Let us accord other hon. Members respect. Today is my Sunday, I would have thrown ten of you out of this House.

(Applause)

You have to agree with me. It may be a Monday in the next five minutes. Finish, hon. Waititu.

Hon. Waititu: Thank you, hon. Temporary Deputy Speaker. We were on the national flag. As we all know, the national flag is a symbol that we should all respect. I remember when my colleagues were contributing here, they spoke about two governments, the county governments and the national Government. When they talked about the county governments, to my understanding, if I go to Kisumu with my friend, hon. Simba Arati, and there is a meeting being held by the citizens of Kisumu, he will introduce me as a national leader from the National Assembly. When the Governor of Kiambu goes to Kisumu, he will be introduced as the Governor of the County of Kiambu. It is only for us to understand ----

(Hon. Kaluma stood up in his place)

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Kaluma! Okay; you are apologetic.

Hon. Members, let us accord hon. James Ekomwa, hon. Member for Turkana South, a chance; you are the next one on the list.

Hon. Ekomwa: Thank you, hon. Temporary Deputy Speaker. I rise to support the amendment. We cannot all be presidents. The President of this nation is one. Moreover, patriotism cannot only be seen through flags. We want people to “fly” solutions to problems faced by Kenyans, and not flags. We have three arms of Government; the President and those below him, Cabinet Secretaries, cannot all fly the flag. We have the Speaker who is our boss; all of us cannot fly the flag. We have the Judiciary; all the judges are under the Chief Justice----

Hon. Kaluma: On a point of order, hon. Temporary Deputy Speaker.

Hon. Ekomwa: Hon. Temporary Deputy Speaker, can you protect me?

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Kaluma, can you get out of the House? Hon. Kaluma, can you get out of the House? Get out of the House!

(Hon. Kaluma withdrew from the Chamber escorted by hon. Members)

You can be escorted by as many hon. Members as you want. Get out of the House! We need sanity in this House. Just finish hon. Ekomwa.

Hon. Ekomwa: Thank you, hon. Temporary Deputy Speaker for protecting me. Imitation is limitation. Kenya is a unique country. We cannot imitate what South Sudan or the Democratic Republic of Congo is doing. Kenya has its unique Constitution and we

have to be unique. If people in South Sudan have everybody flying a flag, we cannot do it in Kenya.

Our flag is very beautiful and it can only be flown by a few people, who have power. We have the President, who was elected by the majority of Kenyan voters; because of that he has----

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Thank you, hon. Ekomwa. You will have your remaining minutes in the next sitting. It is actually one minute.

Hon. Members, I must appreciate this House for today. We came to do what we were supposed to do and we were doing it so well. Hon. Members, this is a House of rules and procedures.

ADJOURNMENT

The time now is 12.30 p.m. This marks the end of our sitting this morning, and therefore, this House stands adjourned until this afternoon at 2.30 p.m.

The House rose at 12.30 p.m.