

NATIONAL ASSEMBLY

OFFICIAL REPORT

Thursday, 21st April, 2016

The House met at 2.30 p.m.

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

PRAYERS

MESSAGES

APPROVAL OF BILLS BY THE SENATE

Hon. Speaker: Hon. Members, Standing Order No. 41 relating to Messages requires the Speaker to expeditiously report to the House any Messages received from the Senate. In this regard, I wish to report that on Thursday, 21st April 2016, in accordance with the provisions of Article 110 (4) of the Constitution, I received two Messages from the Senate.

The Messages convey that the Senate has, today morning, passed the Anti-Doping Bill (National Assembly Bill No.6 of 2016) in the form passed by the National Assembly on Tuesday, 19th April 2016. Similarly, the Senate also, by way of a resolution, approved the mediated version of the Statute Law (Miscellaneous Amendments) (No. 2) Bill (National Assembly Bill No.33 of 2013) in the form approved by the National Assembly on 29th March, 2016.

In this regard, I will now proceed to present the two Bills to His Excellency the President for assent in accordance with the provisions of Articles 109 and 113(3) of the Constitution.

Hon. Members, I also wish to inform the House that today afternoon, Thursday, 21st April 2016, I received a Message from the Senate regarding the approval of the second basis for equitable sharing of national revenue allocated to counties.

As contemplated in Article 217 of the Constitution, the National Assembly may consider the Senate's resolution and vote to approve it with or without amendments, or reject it in total.

Hon. Members, this being a Special Motion, the House has 14 days within which to make a decision in one way or the other. However, since the formula has implications on the Division of Revenue Bill and the County Allocation of Revenue Bill, it requires to be concluded expeditiously and before the passage of these two Bills. I have, therefore, allowed the Leader of the Majority Party to give notice of Motion on this matter today.

Therefore, the Message and accompanying documents stand committed to the Liaison Committee of this House. The Committee is expected to consider and submit a report to the House by Wednesday, 27th April 2016, so that the Motion may be considered next week on Thursday, the 28th day of April, 2016.

I thank you.

PETITIONS

MEASURES TO CURB UNREST IN UNIVERSITIES

Hon. Onyonka: Hon. Speaker, on behalf of the residents of Kitutu Chache South Constituency, I would like to draw the attention of the House to the following:-

THAT, in the past two weeks, three public universities; namely, the University of Nairobi, Laikipia University and Masinde Muliro University have been closed indefinitely following incidences of students unrest;

THAT, the closure of those institutions will have negative impact on the education of a large number of young Kenyans who have been undertaking their studies in the said institutions;

THAT, in addition to this, the effect of the closure has a direct financial implication on the parents and guardians of the students of all those universities;

THAT, the Ministry of Education, Science and Technology has been reluctant in addressing the incidences of activities that have culminated in the indefinite closure of those institutions; Further to that, there have been occurrences of gender violence and criminal activities within those public institutions;

THAT, efforts to resolve this matter with the relevant government agencies have been futile;

THAT, the matter in respect of which this Petition is made is not pending before any court of law.

Therefore, your humble Petitioners pray that the National Assembly, through the Departmental Committee on Education, Research and Technology:-

- (i) recommends the constitution of a taskforce to establish the root causes of those disruptive incidences within our universities and find lasting solutions;
- (ii) recommends that the various institutions re-opens with immediate effect;
- (iii) recommends that the Ministry of Education, Research and Technology formulates regulations to streamline student leadership within all the institutions of higher learning in our country; and,
- (iv) makes any other directions that it deems fit in the circumstances under the above case.

And your Petitioners will forever pray.

Hon. Speaker, thank you for giving me the opportunity.

Hon. Speaker: Hon. Daniel Maanzo, do you want to comment on this Petition?

Hon. Maanzo: Thank you, Hon. Speaker, for giving me this opportunity. I support this Petition. We have many young university students who are idling in our constituencies and it is not clear when they will go back to the universities. The instances of violence have been worrying. In fact, recently, the Co-operative University College lost three students. They died in an accident while campaigning. We saw the loss of property at the University of Nairobi (UoN) recently when the Students' Organisation of Nairobi University (SONU) office was burnt down by students just before the closure of the university. The elections in this country are a role model to what is happening in the universities. The students are trying to do elections and exercise their right to be well represented. It will be proper if this House gives direction so that the university students can go back and we have a permanent solution to that problem. We should ensure that university learning will not be disrupted again. I support.

Hon. Speaker: Hon. Robert Pukose.

Hon. (Dr.) Pukose: Thank you, Hon. Speaker. I support the Member in this very noble Petition. I am an old student of UoN and you would be glad to know that SONU was founded in 1992. My colleague, Hon. T.J. Kajwang' was the interim chairman. He did not fight to remain the chairman, but instead handed over to Hon. Kabando wa Kabando. At that time, I was a congressman within SONU. What we are noticing now is a changing trend. One student, Babu Owino, has changed the constitution of SONU to remain in power for many years. He has been elected four times. He has become the "Mugabe" of the university. He has changed the constitution to allow himself to remain in leadership. Where is the university going? The riots that we witness in the university are rather unbecoming. It is important that the Departmental Committee on Education, Research and Technology looks at this matter seriously because any time spent at home is time wasted. We are wasting those young people who should be contributing effectively in the development of this country.

With those few remarks, I support the Petition.

Hon. Speaker: Hon. Chris Wamalwa.

Hon. Wakhungu: Thank you, Hon. Speaker. I rise to support this Petition. It is unfortunate that the unrest has gone up. During retired President Kibaki's regime, we did not hear a lot of unrest. It is just during the regime of this Jubilee Government that we see a lot of unrest in the universities. I am wondering what is going on. It is very unfortunate. The young people are idling at home. At that age, they are very active in everything. That is why when they stay so much at home, cases of insecurity and pregnancies increase. At that age, you are very active and you must involve your mind. If you are not involved, you are likely to indulge yourself in some unworthy activities. So, my humble request is to the Departmental Committee on Education, Research and Technology to move with speed so that we can find a solution. Is it because of economic hardships, the issue of bursaries or because of representation? If it is anything to do with the constitution of SONU, then they must review it so that they can give leadership to other people. You cannot lead forever.

I saw a student giving out money in a video that went viral. I wondered where that student got the money from. It is important that representation should not have anything to do with money. In the Political Parties (Amendment) Bill that was in Committee of the whole House today morning, we saw that some specific amount of money should be put aside for the women in elections. We said that it is very unconstitutional because you cannot discriminate. I support this Petition. I urge the Committee to move with speed so that it can provide a lasting solution.

Hon. Speaker: Leader of the Majority Party.

Hon. A.B. Duale: Thank you, Hon. Speaker. As I support the Petition, may I remind Hon. Chris Wamalwa that there is nothing wrong with pregnancy. He said it is a problem. Pregnancy takes place and it is part of the procreation as provided for in the Bible and in the Quran.

I am sure the Chair and the members of the Departmental Committee on Education, Research and Technology will agree with me that there is the Universities (Amendment) Bill. In that Bill, there is a provision which deals with the election of the student leaders in all universities. The Bill is in Second Reading. I am sure when it comes to Third Reading, we will make some relevant amendments on the term limits and how the elections of the student unions are going to be conducted.

As a parent, I am a very worried man because a majority of us went to universities. Today, we are parents and we want our children to finish their university education within the stipulated time. There are many parents who toil to look for money to pay school fees, but a few students want to become career students. For the first time, I have heard the term “career students”. For the first time, we have heard that drugs and arms were found in the halls of residence. I am sure the Government is listening. We must re-introduce the “boom”. Some of us went to university during the “boom period”. It was very difficult to tell whether you are the son of a minister or a poor person. However, this idea of paying for university fees is creating a lot of problems in our universities. Some come driving a Mercedes while others do unorthodox things to maintain their lives. So, we must introduce the “boom” the way we did with free primary education. Those of us who took the “boom” paid it back. I paid the “boom” that I was given. That time, it was Kshs5,080. That “boom” helped us, as students, to pay fees for our siblings.

I think what is creating chaos in the universities is the unequal lifestyle where somebody will be dealing in drugs, arms or prostitution. As policy makers and leaders of this country, we must make sure that the university scheme, which was available to students in the 1980s and 1990s, is returned. That is the only way we can create an equal society. I remember we even used part of the Kshs5,080 to pay school fees for our siblings. Colleagues, as we wait for the consideration of the Petition, let us make the necessary amendments to the Universities Act so that we bring back some sanity to how student leadership is elected. Of course, student leadership is important in the running of the universities. It gives the students a voice in the university senate and council. But it is not for one to become a student leader to prosper and deal in drugs, violence and guns. I saw somebody dishing out US\$100 notes to students. If there was “boom”, there is no way that person would have done that.

I support the Petition and thank Hon. Onyonka for bringing it.

Hon. Speaker: Hon. Ababu Namwamba.

Hon. Ababu: Hon. Speaker, I support this Petition. I want to invite the Departmental Committee on Education, Science and Technology to focus on three issues as they look into this serious matter. Closure of universities has now become so casual that it is like common practice. I would encourage the Committee to look at these three factors.

Number one is the quality of the management that we have in our universities. That is because at the slightest wave of crisis, we see the management of most of those universities rushing to close the universities, which should be a measure of last resort. It also calls to question the capacity of the administrators of those universities to deal with a crisis. The management of young people is not easy. We must have men and women in our universities with the capacity and experience to manage people and crises and not to resort to closure of universities and expulsion of students. The example of what we saw at the University of Nairobi, where over 160 students have been suspended from the university, is bad. That is so punitive. It is actually an indictment on the management capacity of those universities.

Number two is the character of the students themselves. Obviously, we have a serious problem with discipline. If every time there is a problem students resort to violence, then it means there is a very serious problem with the character of the young people that are ending up at our universities today. We may, as a House, want to consider the option of the National Youth Service (NYS) pre-university model where students went through a programme to stiffen them a little bit and prepare them for life in college. The question of discipline is a matter that we cannot ignore in this case.

Finally, there is the recommendation that has been made by the Leader of the Majority Party. I do not normally agree with the Leader of the Majority Party on many things in this House but, on this particular matter, I want to agree with him. Many students live under unbearable stress. The Higher Education Loans Board (HELB) releases money in a manner that is not reliable. All of us in this House can attest to this because, at the end of the day, the stress and burden creeps back to us. Therefore, this House, through the Departmental Committee on Education, Science and Technology, may want to consider an option that will enable our young people to have the financial capacity to take care of themselves while in college. That might necessitate the need to bring back the “boom” or a special stipend that should be available to every university student, both in public and private universities, to take care of their basic needs. I support this Petition.

Thank you, Hon. Speaker.

Hon. Speaker: The Petition is committed to the Departmental Committee on Education, Science and Technology to consider all the issues that have been raised by Hon. Onyonka.

Hon. Speaker: Hon. Raphael Otaalo.

ERECTION OF BUMPS ON KAKAMEGA-MUMIAS ROAD

Hon. Otaalo: Thank you, Hon. Speaker. I have a public Petition by the residents of Lurambi in Kakamega County on the construction of speed bumps on the Kakamega-Mumias Road due to the high prevalence of road accidents.

I, the undersigned, on behalf of the residents of Lurambi Constituency in Kakamega County, draw the attention of the House to the following:-

THAT, a road network is a prerequisite to rapid economic growth and poverty reduction as it influences production costs, creates employment, eases access to markets and opening up of the region for investment;

THAT, the Kakamega-Mumias Road facilitates administrative and commercial activities in the region, including but not limited to transportation of agricultural raw materials to factories and finished products to neighbouring countries for export;

THAT, the said road has experienced numerous tragic road accidents, especially at a place called Shibuli Market, where 10 lives were lost in the recent past as a result of speeding and careless driving by motorists;

THAT, the presence of potholes and lack of speed bumps has increased the susceptibility of pedestrians to hit-and-run accidents as a result of rogue drivers taking off after maiming or killing pedestrians or destroying property;

THAT, the victims of those accidents where drivers evade liability are left suffering with no recourse for compensation or substantial intervention from the Government or other relevant bodies;

THAT, the problem has been compounded by rogue road contractors who are granted tenders to repair or rehabilitate roads in the region, but fail to erect speed bumps in areas with high human traffic;

THAT, efforts to obtain long-term solutions to that problem have been fruitless;

THAT, the matter raised in this Petition is not pending before any tribunal or court of law.

Therefore, your humble Petitioners pray that the National Assembly, through the Departmental Committee on Transport, Public Works and Housing:-

- (i) Intervenes to have the road re-carpeted and speed bumps erected at designated sections of the Kakamega-Mumias Road, particularly at Shibuli Market and other affected areas along the said road; and,
- (ii) Makes any other order and direction that it deems fit in the circumstances of the case.

And your Petitioners will forever pray.

Hon. Speaker: Hon. Dalmas Otieno, do you want to comment on that Petition? Go ahead.

Hon. Anyango: Hon. Speaker, I am seeing writings on the walls. Whether it is the one behind the Leader of the Majority Party, riots at the universities or failing to honour speed limits on our roads, the issue is the same. The issue is impunity and corruption. When it comes to universities, an element of ethnicity is added. We have taught these things to all our youths. I had wanted to comment on the rioting by universities. I would have said that if we teach our youth that leadership by handouts is sustainable, they will do so. If we teach our drivers that some people are bigger than the law and they can disobey speed limits until we have to erect big bumps, it is not good. Yesterday, my driver missed the road in Rongo after going into a bump when it was raining. Some of the bumps are so huge that you cannot pass them.

Here we are; the leaders, instead of addressing why we fail to enforce traffic laws so that we have the discipline to have clean and smooth roads and honour speed limits, we are not addressing that. Instead, we are asking for bigger bumps which are a mess to our highways.

(Applause)

Both this Committee and the one on universities should address the total problem in the population. The symptoms are already showing amongst our youth.

As Parliament, if we continue to demonstrate that leadership by handouts is the way and that power can be bought, we cannot blame Babu Owino for dishing out notes in the open. The solution will not be the “boom” as it was. If you look at the Income Tax or the Pay as You Earn (PAYE) collection, it is not growing fast enough to continue the “booms”. Who is going to pay when only a small percentage of the population is enjoying increasing incomes and the rest have their incomes stagnated? Who is going to pay?

This House should check all the ills in our society entirely and the extent to which they are being demonstrated amongst the youth and on our roads. We should treat that instead of asking for panadol, which is to erect bigger bumps and closing universities. We have a serious problem in our society. It is the responsibility of this House to commence corrective measures early enough before all of us are overwhelmed by those bad habits.

Thank you, Hon. Speaker.

Hon. Speaker: Very well. That Petition is committed to the Departmental Committee on Transport, Public Works and Housing.

Next Order!

PAPERS LAID

Hon. A.B. Duale: Hon. Speaker, I beg to lay the following Papers on the Table of the House today Thursday, 21st April 2016:-

The Report of the Auditor-General on the Financial Statements in respect of the following institutions for the year ended 30th June 2015, and the Certificates therein:-

- (i) Women Enterprise Fund;
- (ii) Policy Holders Compensation Fund; and,
- (iii) Competition Authority of Kenya.

The Report of the Auditor-General on the Financial Statements of Kenya Post Office Savings Bank for the year ended 31st December 2014, and the Certificate therein; and,

The Annual Reports on the Financial Statements in respect of the following institutions for the year ended 30th June, 2014:-

- (i) Communication Authority of Kenya;
- (ii) Kenya Broadcasting Corporation;
- (iii) Postal Corporation of Kenya;
- (iv) The Kenya Year Book Editorial Board; and,
- (v) The National Communication Secretariat.

Thank you, Hon. Speaker.

Hon. Speaker: Hon. Alex Mwiru, Chairman of the Departmental Committee on Lands.

Hon. Mwiru: Thank you, Hon. Speaker.

I beg to lay the following Papers on the Table of the House today Thursday, 21st April, 2016:-

The Report of the Departmental Committee on Lands on the land dispute between Kilifi Air Charters and Kiwandani residents; and,

The Report on the land dispute at Ng'ati Farmers' Co-operative Society.

Thank you, Hon. Speaker.

NOTICES OF MOTIONS

APPROVAL OF REVENUE SHARING FORMULA

Hon. A. B. Duale: I beg to give notice of a Special Motion:

THAT, pursuant to the provisions of Article 217 of the Constitution as read together with Section 16 of the Sixth Schedule to the Constitution, this House concurs with the Senate and approves the second bases for equitable sharing of national revenue allocated to counties. The parameters for allocation were:-

Population: Current formula is 45 per cent and the proposed formula is 45 per cent.

The Basic Equal Share: Current formula is 25 per cent and the proposed formula is 26 per cent.

Poverty: Current formula is 20 per cent and the proposed formula is 18 per cent.

Land Area: Current formula is 8 per cent and the proposed formula is 8 per cent.

Fiscal Responsibility: Current formula is 2 per cent and the proposed formula is 2 per cent.

This year, there is development factor which is 1per cent.

Thank you, Hon. Speaker.

Hon. Speaker: Hon. Alex Mwiru.

Hon. Mwiru: Thank you, Hon. Speaker. I beg to give notices of the following Motions:-

ADOPTION OF REPORT ON LAND DISPUTE IN KILIFI

THAT, this House adopts the Report of the Departmental Committee on Lands on the land dispute between Kilifi Air Charters and Kiwandani residents, laid on the Table of the House today, Thursday, 21st April 2016.

ADOPTION OF REPORT ON LAND DISPUTE IN NG'ATI

THAT, this House adopts the Report of the Departmental Committee on Lands on Ng'ati Farmers' Co-operative Society land dispute, laid on the Table of the House today, Thursday, 21st April 2016.

Thank you, Hon. Speaker.

Hon. Speaker: Next Order.

STATEMENTS

BUSINESS FOR THE WEEK COMMENCING 26TH TO 28TH APRIL, 2016

Hon. A.B. Duale: Hon. Speaker, pursuant to the provisions of Standing Order No. 44(2)(a), on behalf of the House Business Committee, I beg to give a Statement regarding the business appearing the week beginning Tuesday, 26th April, 2016.

The House Business Committee met on Tuesday this week at the rise of the House to prioritise the business of the House.

The House Business Committee resolved to give priority to Bills with timelines of 27th August 2016 and need to be considered by both Houses.

On Tuesday next week, in the Committee of the whole House, the House will consider the Energy Bill and the Petroleum (Exploration, Development and Production) Bill. Hon. Members, as you are aware, those Bills have constitutional timelines and require consideration of the Senate. Thus, it is important for us to conclude them in good time.

If time allows us, in the Committee of the whole House, we will handle the Private Security Regulation Bill, 2014. Other Bills scheduled for Second Reading on the same day include the Judiciary Fund Bill, should we do not conclude it today, the Election Laws (Amendment) Bill (National Assembly Bill No.63 of 2015), the Seeds and Plant Varieties (Amendment) Bill (National Assembly Bill No.43 of 2015), the Kenya Roads Bill (National Assembly Bill No.26 of 2015) and the Warehouse Receipts System Bill (National Assembly Bill No.12 of 2015).

The House Business Committee also resolved to prioritise a number of Senate Bills, particularly those that are not money Bills. This morning, the House concluded the County Governments (Amendment) Bill (Senate Bill No.2 of 2014) by Senator Martha Wangari.

On Wednesday next week, we will also be putting the Question for the Second Reading of the Constitution of Kenya (Amendment) Bill No.4 of 2015, which is known as the “Duale Bill”. I urge all Members to be in the House on Wednesday next week so that we can raise the required two-thirds majority for the Question to be put. This is a Bill seeking to resolve the question of the two-thirds gender rule. On the same day, we will go to the Committee of the whole House and the Third Reading of the Constitution of Kenya (Amendment) (No.2) Bill by Hon. Peter Kaluma. This Bill is proposing to amend Article 165 of the Constitution relating to the jurisdiction of the High Court on matters that are active in Parliament.

Aware of the provision of Article 256(1)(d) of the Constitution which requires a threshold of 233 Members to vote in support of the two Bills to pass, I urge my colleagues to come in numbers on Wednesday so that we can undertake that important task. I am also reminded that the two Bills will thereafter be forwarded to the Senate for consideration. Time is of essence since after the First Reading in the Senate, the Bills have to be stayed for 90 days to allow public participation.

In this regard, on Tuesday next week, I would like to invite all Members to a Speaker’s *Kamukunji* at 11.00 a.m. in the National Assembly Chamber. We could not do it last week because of the Cabinet retreat which was in Naivasha. In the *Kamukunji*, we will put our heads together to discuss the manner of raising the two-thirds majority and allow the Cabinet Secretary for Energy to brief the Members on the Last Mile Connectivity Programme which was rescheduled to Tuesday next week on 26th April. I urge the Departmental Committee on Energy, Communication and Information to schedule a date and ask Members of the Committee and the whole House to come to that *Kamukunji*, at least, to discuss the two-thirds majority and listen to the Cabinet Secretary on the Last Mile Connectivity Programme.

The House Business Committee (HBC) will reconvene on Tuesday 26th April at the rise of the House. I now wish to lay the Statement on the Table of the House.

(Hon. A.B. Duale laid the Statement on the Table)

Hon. Speaker: Let me allow the Member for Othaya to make a personal statement.

PERSONAL STATEMENT

HON. MEMBER CAST IN A NEGATIVE LIGHT

Hon. (Ms.) Munene: Thank you, Hon. Speaker, for giving this opportunity. Pursuant to Standing Order No.84, I wish to make a Personal Statement regarding an adverse mention of myself in the course of the debate this morning by another Hon. Member. The Member for Kiminini, while debating a particular Bill, mentioned that female politicians are wealthy and therefore, do not need financial support from political parties.

He referred to me by name in a negative light. His statement seems to imply that women should survive on their own politically if they are wealthy and yet, even my wealthy male colleagues still receive support from the political parties. I have worked hard to get to where I am

today. I struggled to get my seat and I deserve support in my political career just like my male counterparts who are never mentioned in this House. I also wish to state that I am an active, saved and respected Presbyterian Church of East Africa (PCEA) member. I wish to quote a verse from Proverbs 31:17 which says: “She dresses herself with strength and makes her arms strong.”

I also end by quoting from James 3:14: “But if you have bitter jealous and there is selfish ambition in your heart, do not boast and be false to the truth.” I just want to add something; I think everybody in this House knows how I struggled to get my seat. I was not helped by anybody except my God whom I trust.

(Applause)

I want everybody who is here to trust God because he is going to give you what you want.

Thank you.

Hon. Chepkong’a: On a point of order, Hon. Speaker.

Hon. Speaker: Did you have a point of order, Hon. Chepkong’a?

Hon. Chepkong’a: Thank you, Hon. Speaker. I am not rising to say anything about what Hon. Wambui has said because it is a Personal Statement. You remember there was a proposed amendment to the Standing Orders which were supported by over 50 Members of Parliament and it was referred to the Procedure and House Rules Committee.

Hon. Members: We cannot hear you.

Hon. Chepkong’a: I am addressing the Speaker.

Hon. Nuh: Privately.

Hon. Chepkong’a: Hon. Junet, who has not been seen in the House for a long time, claims that I am addressing the Speaker privately. It is not true. I am addressing the Speaker in public.

Hon. Speaker: Indeed, it is out of order for a Member to communicate with another across the aisle without going through the Speaker. So, the Member for Suna East is advised accordingly.

Hon. Chepkong’a: Hon. Speaker, there is a precedent in this House where it is alleged that some Member sold signatures for other Members. I do not want to be accused of that. I still want to maintain integrity. I would just request for whatever decision of the Procedure and House Rules Committee to be brought to the House so that we know that the matter was considered by your Committee, Hon. Speaker.

Hon. Speaker: Very well. It is a matter dealing with the proposed amendments to the Standing Order No.176 for those of you who are familiar with it. That is because I can see some of you wondering whether there is any such Standing Order. There is - on discharge of Members. The matter is actively being considered by the Procedure and House Rules Committee. Indeed, the Committee has scheduled a retreat for two or three days when we go for the long recess in May. It is going to be addressed.

Hon. Aluoch: On a point of order, Hon. Speaker.

Hon. Speaker: I see Hon. Olago Aluoch. Do you have a point of order?

Hon. Aluoch: Hon. Speaker, it is an intervention, but not on Hon. Wambui’s Personal Statement because I have no powers to do that. I thought that this morning what Hon. Wambui was going to refer to was the fact that Hon. Chris Wamalwa, in mentioning her name, referred to

her as Wambui Kibaki. I thought that is what she was going to address, but she did not touch on it. Instead, she was preaching to us. I do not know if that is irrelevant or not.

Hon. Speaker: Since I was not on the Chair, I am unlikely to comment. The Member for Othaya has made a Personal Statement. I was not even there to know the names which were used. I may not comment.

Hon. A.B. Duale: Hon. Speaker, before I raise issues, I was in the House. Hon. Chris Wamalwa should be asked to withdraw and apologise and have it removed from the HANSARD because the official names of the Hon. Member for Othaya are known in records. Hon. Chris is not here, but I am sure if he is given an opportunity---

MANDATE OF COMMITTEES IN RELATION TO AUDIT
REPORTS OF POLITICAL PARTIES

Hon. Speaker, I rise under Standing Order No.197, relating to limitations of mandate of committees in relation to the examination of audited reports of political parties by this House. I have, so far, in the last three years, tabled the audited reports of over 60 political parties, which I have here and are available to Members. On Tuesday, as on many other occasions, I laid the Report of the Auditor-General on the Accounts of Political Parties. The reports are submitted by the Auditor-General, as required, under Sections 29, 30 and 31 of the Political Parties Act, 2011, and as amended in 2012.

(Loud consultations)

Hon. Speaker, instruct Members to listen to me because there are many discussions going on. This matter affects them because the audited accounts include both what the parties receive from the Political Parties Fund and the money they contribute to their respective parties. In the same qualified Report, the Auditor-General raises fundamental audit reservations, including procurement issues, over-stated statement of assets, unaccounted for funds, undeclared income and loss of funds in political parties.

While Committees of this House, particularly the Public Accounts Committee (PAC) and the Public Investments Committee (PIC) rush to examine reports of the Auditor-General on the accounts of the national Executive and State corporations, and the Senate deals with the accounts of the county governments, there have never been - if I am not wrong - examinations done on any of the reports of the Auditor-General on the more than 55 political parties in Kenya since 2011. I will give you just a few examples so that this House, the Members and the general public can appreciate the gravity of the audit issues of our parties.

I will start with my own party, the United Republican Party (URP). Is it the secretariat or the Auditor-General that has never submitted any of URP's audited reports? The audited reports are either with the Auditor-General or with the secretariat since 2012, when that party was formed.

According to the Report of the Auditor-General on the financial statements of the Orange Democratic Movement (ODM) for the year ended 30th June 2010 - and I am happy that the Secretary General of ODM is here - which I laid on the Table of the House on Tuesday April 19th 2016, the party failed to declare income to the tune of Kshs19,549,706. This was mainly from the

statutory Political Parties Fund, parliamentary group contribution, donations and membership fees.

On the other hand, the Auditor-General reported in the year ended 30th June 2013 that the Forum for Restoration of Democracy–Kenya (FORD (K) accounts showed unsupported expenditure of more than Kshs7.4 million.

In the same accounting period, Forum for Restoration of Democracy–People (FORD (P) party accounts showed unsupported expenditure of more than Kshs11.5 million with unexplained expenses of Kshs1.1 million.

The Grand National Union (GNU) failed to declare an income of Kshs679,245 during the 2012/2013 Financial Year. In the same year, GNU received Kshs9,627, 453, though there was no document to support the income or its expenditure. They did not disclose how they got the money or how they spent the Kshs9,627, 453.

To be fair to everybody that I have no ulterior motives, The National Alliance Party (TNA) had all its audited accounts up to date until the audited accounts as at 30th June 2012, where it failed to declare an income of Kshs1,080,000, which was received from the Political Parties Fund.

Section 30(1) of the Political Parties Act 2011 states:-

“A political party shall, at least 60 days before a general election, submit to the Registrar, a register of its members and a statement of its assets and liabilities in a prescribed form.”

Further, Section 30(2) states:-

“Notwithstanding any other penalty provided in this Act or in any other written law, the Registrar shall deregister a political party which:-

- (a) fails to comply with this section; or,
- (b) submits a statement which is false in any material particulars.”

The question that I want you, Hon. Speaker, to address yourself to is this: Does this mean that the Registrar of Political Parties should have deregistered ODM by now for failure to declare income? This country has 55 registered political parties, most of which are yet to submit accounts and declare income for the Financial Years 2011/2012, 2012/2013, 2013/2014 and 2014/2015.

I am aware that the financial statements of the Wiper Democratic Movement-Kenya (WDM(K)) for the year ended 2014 were very clean and they were approved. I want to thank the secretariat of WDM(K).

From the information I have, URP is yet to submit its accounts to the Auditor-General. That raises more questions than answers. So as not to condemn anybody unheard because we are under obligation to audit the national Government and its parastatals, the political funding money we give to our own secretariat and the money that we donate must also be accounted for. So as not to condemn anybody unheard, the relevant committee of the House should move speedily to examine these accounts in the same way the accounts of the national Government and State corporations are examined. We cannot be the organ that makes laws and breaks the same with great recklessness.

My point of order is that considering political parties are neither part of the national Executive nor parastatals, which committee should undertake the examination of those accounts? Is it the Departmental Committee on Justice and Legal Affairs, PAC or PIC? Do we, as a House, resolve to establish a special committee for the purpose on a bipartisan approach? I recall in the

last Parliament, when there was a huge backlog of unexamined accounts of the local authorities, the House established a special committee chaired by none other than the Chief Whip of the Minority Party, Hon. Thomas Mwadeghu, to look into those accounts.

Hon. Speaker, I need you to give us direction. We cannot have over 55 political parties handling the political parties state funding; handling money donated to them by well-wishers; handling the membership contribution and when the audited accounts are done, there is massive losses. The people who run those parties are not Members of Parliament but secretariats. They are not subjected to what the rest of public officers and institutions that are entrusted with public resources are subjected.

So, I seek your “solomonic” guidance on this so that we make sure that there is prudent use of public resources as we appropriate money. Then the people who run our secretariats must also be accountable. I suggest that you give a Communication and directive to either of these Committees or form a special committee that will invite all those 55 political parties. We do not want to become victims, as leaders, of political parties in the House. We do not want to become victims of people we have employed or people who are handling our resources and are the same people who are enjoying, through corruption, the money that belongs to political parties.

The House will agree with me and we expect you to give direction. I am sure the head of the URP secretariat, if he is listening to me, will rush his audited accounts to the Auditor-General or if the Auditor-General has our accounts, he better bring them here. I also thank the Wiper Democratic Movement. At least, from the audited accounts I have seen, it is the only party that has been given clearance by the Auditor-General.

I need your guidance on this matter, Hon. Speaker.

Hon. Speaker: Is it a point of order or you want to contribute on that, Hon. Midiwo?

Hon. Midiwo: Thank you, Hon. Speaker. Let me apologise. The MP for Kisumu Town has disappeared with my card. I do not trust him.

Let me, first of all, just ask the Leader of the Majority Party what he is trying to do. When I look at the Order Paper, I am perplexed by what he is raising. Though he is raising some very good points about accountability in political parties, interestingly, he is also wondering why his own political party does not show audited accounts. My answer to him would be that his political party houses impunity.

The problem of political parties begins with the attitude of the State. Why do we not have a properly chosen Registrar of Parties so many years after that Office was established? We cannot be throwing lose blames while this Government knows it opposes this. That is because it uses this unknown office of some imaginary person who has an office which is not properly constituted. He has also even gone ahead to suggest that somebody who is in an interesting office in an interesting manner can deregister political parties. I do not condone corruption. I know there is corruption, but charity begins at home. Let us begin by doing it right first. We have attempted from the other parliament to constitute the Office of Registrar of Political Parties correctly and that has not happened.

The second thing that I need to bring to the attention of the Leader of the Majority Party is that, that funding is by law. The Government of the day has refused to give the stipulated political parties money ever since. It is like the Equalisation Fund which we are treated to a claim that it has been given and yet, it has never been given to any constituency or any county. The Leader of the Majority Party should be more magnanimous and tell this country if the Government of the day is willing to release to political parties the 0.5 per cent stipulated in law.

What would be your motivation? It is like you do not like an organised system. You do not want political parties to be strong. You are questioning them, but you are not giving them money.

The reason why a small party like the Grand National Union (GNU) has not prospered is because--- In fact, the owner even said the other day that he had dissolved it to join Jubilee. The party cannot even pay for its offices as per the requirement of the law. The GNU is not in my village and it is not even in Nairobi. So, Hon. Kiunjuri had no otherwise but to dissolve it because the “Government of Duale” has refused to fund political parties.

Hon. Speaker: Hon. Midiwo, what do you mean by the “Government of Duale”?

Hon. Midiwo: Hon. Duale---

Hon. Speaker: I will give a few of you a chance to comment, but do not take forever.

Hon. Midiwo: I am concluding. To respond to you, the new Constitution requires this House, led by you, to be the other arm of Government. But Hon. Duale takes a section of this Parliament to be in Government. So, they have to answer because that is what they have been doing. He said that he is the head of government and the representative of the Government in the House and we have to take him on, blame him, congratulate him and tell him when he is saying things on behalf of the Government.

Lastly---

Hon. Speaker: Hon. Midiwo, you are not responding to the issue that was raised by Hon. Duale. You have now decided to address some imaginary place. Indeed, for us to continue to listen to you, you must also be relevant. Hon. Duale is raising the issue whether it is the Departmental Committee on Justice and Legal Affairs or the Public Accounts Committee or the Public Investments Committee that should look at the reports of the Auditor-General with regard to audited accounts of political parties. This is a very legitimate concern.

For information so that we do not take it the way we are doing, political parties have their anchor in an Article of the Constitution. It is for that reason that they are required to have a national character. When you go to the Political Parties Act, they receive public resources. You raised a very valid point about the not more than 0.3 per cent or even less, I am aware, in the Political Parties Act that, once they receive that money, they must account for it. So, when the Auditor-General brings his reports to this House, which committee should look into those reports and report to the House so that the House, through its other committees such as the Committee on Implementation, can pursue the resolutions? These are matters we should address in a manner that shows that we also want the institutions called political parties to be properly run as very innovative institutions of public governance in our country.

I thought this is what we should be addressing because there is a need. What he has raised is true. Neither Public Accounts Committee (PAC) nor the Public Investments Committee (PIC) or the Departmental Committee on Justice and Legal Affairs has looked at those audited accounts from the Auditor-General. Can the Auditor General be said to be acting in vain when he faithfully brings to the House reports on the audits of political parties? This House should suggest a way of handling those reports of the Auditor General. That is the point. I will not worry so much about those that have not submitted their reports because they should be dealt with in the manner I am sure Hon. Midiwo knows very well. The Registrar of the Political Parties is supposed to deal with the offending parties in the manner provided for in that Act. Hon. Midiwo, because you had not finished, please finish.

Hon. Midiwo: I stand guided. I hope I was not being offensive but the question of where the Auditor General’s reports reside is in the Standing Orders. You must understand me.

Whenever Hon. Duale brings something like this, he is up to something. I have a responsibility and let me explain.

Hon. Speaker: Yes. Let us have Hon. Duale, because you are making some insinuation.

Hon. A.B. Duale: On a point of order, Hon. Speaker, I have not come to sell *mitumba* in this House. So, whenever I speak, I must be up to something sensible. Hon. Speaker, the matter of the day is that our political parties are accountable to the funding they receive from the Government. His party, the Orange Democratic Movement (ODM), according to the Auditor General, has not accounted for over Kshs19 million. The Forum for Restoration of Democracy-Kenya (FORD (K) has not accounted for the money that they received. The National Alliance (TNA) Party, which is my own, has not submitted. He should address that. How come even the PAC, in the last three years after receiving 60 audited reports from 60 political parties, has not dealt with that matter? This is the direction I am asking from. Whether I am up to something, I just picked on Wiper Democratic Movement (WDM) and their records are clean. I looked at ODM, they have an outstanding audit query of Kshs19 million, unless Hon. Jakoyo knows where the Kshs19 million went.

I think the Chairman and the Secretary General are better placed to reply to that matter. So, what I am asking is: Can we audit all political parties? I am up to nothing but, of course, when I walk in this House, I represent the people of Garissa Township. Secondly, I represent the Jubilee Coalition. Thirdly, I do my oversight whether it is on the national Government or the ODM. For today, I am protecting the money that has been paid by party members who are sitting in this House to the secretariats. That money has been misappropriated by people we entrusted those offices with. So, Hon. Jakoyo, I am not up to anything. Relax. Since I have said ODM has not accounted for Kshs19 million, there is nothing wrong with it. It is the Auditor General and not Hon. Duale. If I was the Auditor-General, I would have said no. For now, the Auditor General has said you have not accounted for Kshs19 million and you should address that matter.

Hon. Midiwo: Hon. Speaker, I was just finishing. Hon. Duale, relax. I would like an ODM without corruption. I would like an accountable ODM. At least, your party is not even appearing in the chart for attempting. All I want to say is that it is good that the Hon. Leader of the Majority Party is saying that when he stands here, he is up to something for the betterment of this country.

The same Hon. Leader of the Majority Party last week told us that he does not like special committees which he is now calling for. When I tried to set up a committee to investigate the banks, he refused. Today, somebody is re-opening Chase Bank without investigations. So, he must be consistent and I suspect he is up to something.

Thank you.

Hon. Speaker: Yes. Hon. Chepkong'a. What is your point of order? Hon. Members, while making the address on this, make it short and brief. Please, let us try to make suggestions about the way forward. It is all in the interest of good governance.

Hon. Chepkong'a: Thank you, Hon. Speaker. I get very worried when Hon. Jakoyo Midiwo accuses the Hon. Leader of the Majority Party of some unseen forces. What the Hon. Leader of the Majority Party is raising is from Section 31 of the Political Parties Act. This has nothing to do with witchcraft. This is pure law. Knowing where he comes from, I know there could be some issues to deal with that. However, this is purely on a point of law. Section 31 of the Act states:-

“The accounts of every political party shall be audited annually by the Auditor-General and shall be submitted to the Registrar and tabled in the National Assembly.”

Those audited accounts have been tabled before and no committee has examined them. PAC has tabled its Report in which the Division of Revenue Bill has been used as a basis to divide the revenue between the national Government and the county governments. Therefore, if PAC has been tabling a Report that does not contain part of the revenues that have been used by one segment of the society, then the usage of the latest revenue collected by Government has been erroneous because it has not been complete. So, what the Hon. Leader of the Majority Party is raising is extremely valid and relevant. This is because the revenues of Government have not been holistically audited. So, we are asking where this should be done.

Let us forget about the fact that ODM has not accounted for Kshs19 million and FORD (K) Kshs11 million. That should be of less concern to us. It should be the principle itself. Where should this be domesticated? Just to clear the air, many things have been alleged by Hon. Jakoyo Midiwo, including why we have not employed a Registrar of Political Parties. As you know, it was a responsibility of Parliament to do so. As Members know, the Constitution was changed. It is no longer the mandate of Parliament to employ people. It is the mandate of the Executive and so, we amended the law the other day about one month ago to require the Public Service Commission (PSC) to advertise and recommend names to come to Parliament. With regard to whether we have allocated sufficient funds to the political party's kitty, it is the responsibility of this House and not of the Executive. We are the budgeting arm of Government. If we think that sufficient money has not been allocated, we should look for that money and allocate.

So, it has nothing to do with the Executive in light of the new Constitution. We have spent a lot of taxpayers' money travelling across this world. I do not think we have shown any value for our travels. In a presidential system, what is the relevance of PAC and PIC in oversighting the Government? Should it not be all committees overseeing the various departments with respect to interrogating the accounts that have been submitted by the Auditor-General?

I was in the United States of America (USA) together with Hon. Baiya and other chairmen. We found that they do not have PAC in a purely presidential system. For example, the Departmental Committee on Justice and Legal Affairs to which I am the Chairman, the equivalent committee in the USA budgets and interrogates the Auditor General's report once submitted to Parliament with respect to the Judiciary and the Independent Electoral and Boundaries Commission (IEBC) and that is a presidential system. We are still in transition from a parliamentary system to a presidential system. These are the issues that we should be addressing so that we can amend the Standing Orders to be in line with the presidential system. As long as we have a presidential system we must be faithful to it. We cannot choose and pick what we like in a parliamentary system and import it to a presidential system so that the system becomes confused and convoluted.

Those are the issues that the Leader of the Majority Party, who is so hawk-eyed, has been seeing. I must thank him. I do not know why he is being blamed. In fact, if you drink wine as Hon. Midiwo does, we could have opened champagne for you. It should not be a cause for him to blame you for bringing very important issues to this House. It is important that we review the Standing Orders before the next elections so that the 12th Parliament will benefit from the knowledge and experiences of the Members who have travelled to various jurisdictions, for instance, the Philippines. A number of us have been to the Philippines and the United States of America (USA). These are purely presidential systems. What did we learn? Did we come back and file our reports and that was the end of the story?

That is not the essence of travels. The essence of travelling is to gain what we call evaluated experience. We are not seeking any experience. We are looking for evaluated experience and that is the reason we visit democracies such as the USA. As you know, there are contentious issues particularly with political parties. I do not think it is something that can be dealt with by the Public Accounts Committee (PAC). This should be referred to a special committee to be chaired by Members who are appointed in a consultative manner between the Leader of the Majority Party and the Leader of the Minority Party. That is something that I should have heard from Hon. Jakoyo Midiwo; that he is going to consult so as to set a special committee to deal with political parties' audited accounts.

Thank you, Hon. Speaker.

Hon. Speaker: I have heard what Hon. Chepkong'a has just said from a number of you, including but not limited to Hon. Ababu Namwamba, Hon. Midiwo, Hon. Dalmas Otieno and several others. Issues about what is in our Standing Orders that do not reflect the current governance system. These are things that we cannot shy away from. Let us deal with them in a bipartisan way that will improve our governance structure.

Hon. Ababu Namwamba.

Hon. Ababu: Thank you, Hon. Speaker. This is not a trivial matter but a very crucial one. I want to thank the Leader of the Majority Party for bringing it to the attention of the House. These are public funds. The system that we are trying to implement is still pretty much noble in our jurisdiction. We have not had political parties receiving funds from the public purse previously. It is a matter we have been grappling with for maybe five to six years now. These are teething problems and challenges. Being a House that is now seized of the responsibility of budgeting besides oversight, we should take it as a challenge to find a way of streamlining the system so that it works.

My submission is just on two points: one is on procedure. If we proceed in accordance with the current Standing Orders, because we are a House of rules, then without a shadow of doubt, we should look at Standing Order No.205. These accounts should be committed to the PAC and there should be no doubt on which committees of this House should have responsibility over this. Standing Order No.205(2) reads, and for avoidance of doubt allow me to put it on record:-

“(2) The Public Accounts Committee shall be responsible for the examination of the accounts showing the appropriations of the sum voted by the House to meet the public expenditure and of such other accounts laid before the House as the Committee may think fit.”

So, any accounts that are laid before this House either of a general or specific nature such as this touching on appropriations voted in favour of political parties should be committed to the PAC. The Leader of the Majority Party should not have a headache about which committee should deal with this. This is a matter that should immediately be committed to the PAC to handle it.

My second and final point is one of propriety. When accounts such as these come to the House, we know that there is a process through which they are interrogated. The committee that is responsible in this case as I have submitted is the PAC. It will interrogate those audit queries and give opportunity to accounting officers to respond to them. Therefore, I would wish to submit that it would certainly not be in order for us to bandy around any figures before they have gone through that process of interrogation by the PAC, which also gives opportunity to the respective accounting officers to explain.

If the Leader of the Majority Party, for instance, says that the ODM has not explained or accounted for Kshs.19 million in revenue, that is a very presumptuous and an unfortunate statement. It sends an erroneous impression out there that this is fact and it has been confirmed after having gone through the process of interrogation. As a person who has chaired the PAC, I know that an audit query is just that and must be subjected to interrogation. My submission therefore, on the basis on Standing Order No.205 is let this report proceed immediately to the PAC for interrogation. It will afford opportunity to the various executive directors of the political parties as accounting officers and the Registrar of Political Parties being the superintendent of this whole process to respond to these audit queries.

In the absence of that and before that is done, anything else will be speculative and it will be unfair to the various political parties. I know, for instance, that the question of revenue is a complicated one. I would like the Executive Director of my party, ODM to be invited by the PAC. I would definitely encourage him to appear before the PAC and explain the audit query of revenue. I believe that after the PAC has interrogated that process, it will then submit a substantive report to this House for debate.

As at now we do not have anything for this House to debate. All we have is an audit query from the Auditor-General that should be interrogated by a committee of this House for us to debate. Otherwise, we can go round casting aspersions and speculating all over the place. I could say, for instance, the accounts of the URP have not been submitted having heard through the grapevine that they could not account for Kshs.20 million or Kshs.100 million. The moment I utter that on the Floor of this House that could be reported as gospel truth which is unfair to the political party.

On the question of having a special committee, I agree that the manner in which we handle funds given to political parties is special. My submission would be rather than have a special committee we should maybe revise the Standing Orders to provide a proper procedure and special mechanism that the PAC can use to deal with this particular area as a special area of interest. Personally, I do not see any need to set a specialized committee to deal with this. The PAC is properly and sufficiently established to deal with a matter of this nature.

For the benefit of the Leader of the Majority Party, my party is a party of democracy; the party that brought him to this House; the party that introduced him to politics. I submit on behalf of the Orange Democratic Movement (ODM), the largest party in this country from Todonyang to Loitoktok and from Budalangi to Shimoni that we will definitely provide all the details required to respond to any audit queries on the funds utilized by the party. I submit.

Hon. Speaker: May I encourage you, Hon. Members, to avoid making direct references to one another as you make your contributions. You seem to assume that every time you are mentioned, there is something out of order. The Leader of the Majority Party is burning to respond.

Hon. A. B. Duale: Hon. Speaker, I am sure you will protect me. In the last Parliament, I was a Member of Parliament for the great people of Dujis. Part of Dujis is represented by the great Member, Hon. Abdikadir. They are not called ODM but the people of Dujis. I was a founder Member of ODM. In fact Hon. Ababu Namwamba used to request me to ensure that he is given the certificate of Budalangi.

(Laughter)

If the former Prime Minister is watching, he will remember in 2007, I begged him to introduce this young man to be given a certificate to become a Member of Parliament. To prove that it was not ODM that brought me to Parliament in 2007, in 2009, I disagreed with them on ideological issues, walked away, formed a party and became a Member of Parliament for Garissa Township. I dare him to walk out of ODM and get re-elected on any other party. I can tell the people of Kenya, if Ababu Namwamba walks out of ODM, with the arithmetic of Budalangi voter register, he will never see Parliament again. But for me, history can judge me. I walked out of ODM, went and formed a party together with other colleagues and brought to this House 76 Members of the United Republican Party (URP). That shows the type of a person I am. But I dare him and Hon. Members including Hon. Junet, will agree with me--- I dare him to stand on a platform and talk ill of ODM and the next day he will lose his seat.

Hon. Speaker: Hon. Members, we have now veered off the issue that was raised. It is the Speaker's business to some minority in this House; they are called independent--- There is a minority Member who has just come from running in the United States of America and has been burning to say something. Let me recognize him and allow him to say something because he does not belong to any political party.

Hon. Korir: Thank you, Hon. Speaker. What we are being taken through here, is a fight between people who want to show how their political parties are stronger than the others. The key issue is fundamental. What the Leader of the Majority Party has raised here today is a very important issue and we need to take it seriously. We are giving money to political parties. If you look at the Political Parties Act, the one Hon. Chepkong's read, it says that every political party has a responsibility to bring their reports to the Auditor-General every year. If the political parties are not doing that, they should be de-registered. They should be taken according their offences. If you look at the Political Parties Act, it states clearly what the Registrar of Political Parties will do if those parties do not follow the rules according to the Political Parties Act. We should not be playing politics with this issue; we should give it the seriousness it deserves. We are going into an election period and we do not want to have political parties that do not follow the laws of this country, to be given a chance to sponsor people to this House. If a political party does not follow the law and sponsors somebody to come to this House, then that person will not follow the law because the father that brought him here does not follow the law. They will then come here and do crazy things that devalue this House. This is going to spoil the names of other people that came here to change this country, like some of us who came here as independent candidates. It is not a matter of who is who, but a matter of seriousness; a matter of making a decision, and deciding which committee that matter should go to. If it is forming a new committee, we should form one that is going to be serious and one that is not going to do what they are doing here. The Chairman of that Committee should be an independent candidate that is not partisan. He should come up with a very serious report that will guide us. If those political parties have gone against the Political Parties Act, we should follow the law and deregister them and have fewer political parties that will bring people with integrity in this House.

Thank you, Hon. Speaker.

Hon. Speaker: Hon. Nyikal

Hon. (Prof.) Nyikal: Thank you, Hon. Speaker for giving me this opportunity. This is an extremely important point that has been raised. Three years down the line I found it interesting and difficult to understand why when very important issues are being discussed we tend to throw

in innuendos and statements that derail us. Whether this is for entertainment or for the gallery, I do not understand.

Standing Order No.107 gives you the power to get people not to derail us when we should discuss important issues. The issue that was raised here is who should look at these accounts. That is the basic issue. If you look at the structure of the Government, I know with the new Constitution, there are things that do not immediately fall into line. If we take it simply, the person who superintends and the person through which political parties work through is the Registrar of Political Parties. The Registrar of Political Parties is a national office under the national Government structure.

The political parties receive monies appropriated by this Parliament. The money they receive is money that is not invested but money that is utilized and should be accounted for, which is different from other monies that we give to organizations like parastatals where we invest and expect returns. It, therefore, stands to reason that even if we did not have Standing Order No.205 that Hon. Ababu Namwamba has referred to, the only place you would probably place it is the PAC. I know that recently when we had an issue with the Budget and Appropriations Committee, we decided that the Liaison Committee will take up the matter and get the job done. Therefore, my proposal is not supported by Standing Order No.205 that this account should be taken to the PAC.

I see a small point that arises from that. Who will the PAC call to account for this? One is the Registrar of Political Parties, and two, the officials of the political parties. That raises an issue that we have in this country that we may look at the law, that officials of political parties are politicians some of whom are Members of the National Assembly. It will raise an issue that when they are called to appear before the PAC, it is an interesting situation where those Members of Parliament appear before their colleagues. It may be a little difficult to look at that, but it is perhaps what we should look at so that if we were to get a special committee, one will wonder whether we are still talking about Members of the National Assembly or we should look at the Political Parties Act and say that politicians who are running for offices in the National Assembly or any other should not hold offices in the political parties. This is because they are being financed by public funds and, therefore, there is conflict of interest.

I do not understand. Maybe I am still a professional and not a politician. These are matters that we should just look at what is practical and makes sense and go down with it. We are not looking at fundamental issues that are bringing problems that we look at daily because we take things lightly. Yesterday, we were talking about utilization of funds by governors who gave the Council of Governors monies ranging from Kshs48 million to Kshs300,000.

Why are they being given money? The Constitution established the national Government responsible for policy and standards and the county governments that are for implementation. I am not sure whether we have looked at this lacuna. The county governments should operate within the standards and policies set by the national Government. What structure will ensure that the county governments are operating within those standards and policies? As it is now, any attempt by the national Government is seen by the county governments as interfering with structures that are not a county function. We do not have standards in some areas and that is why one county will give Kshs300,000 and another one gives Kshs48 million. We do not have a framework that guides us on the standard and policy function of the national Government. Those standards and policies are not being implemented. As a country, when an issue arises that requires us to look at the new Constitution, then we should be practical. It is for entertainment

and warming up the House but it takes too much time and we lose direction and time that we should use to do other things.

Thank you, Hon. Speaker.

Hon. Speaker: The only State officers who are banned from holding offices in political parties in terms of Article 77(2) of the Constitution are appointed State officers. That then begs the question whether you are appointed, elected or nominated. That should be food for thought. Several Members who were in the 10th Parliament had occasion to discuss this, and I know Hon. Ababu would remember the issue of appointed State officers. What would you call a minister then who was deemed to be in the transition clauses an appointed State officer? Nevertheless, most of them if not all were also elected. Hon. Chepkong'a raised a very valid point on implementing a presidential system with nostalgia for some aspects of the parliamentary structure that we got used to in the course of the last 50 years. Hon. Ochieng, I can see that Hon. Munuve's intervention is earlier than yours.

Hon. Mati: Thank you, Hon. Speaker. This is an important point. Given the high number of political parties that Hon. Duale has given us, it means that there is a big battle of audience. I want to congratulate him for bringing up the backlog of political parties audits. We are heading to an election and one of the weaknesses we have as a country is that political parties are not institutionalised. They operate on the whims of many political parties and individuals. The other day, I talked about Personal Political Parties (PPPs). Unfortunately, nothing stops us as a country from using public funds to fund political parties that are not democratic and Family Political Parties (FPPs). In FPPs, the families decide the events of the party and the people to be nominated. We go further to fund them as elected Members of Parliament through the FPPs through a check-off system. I am a good example because I used to contribute Kshs30,000 until I was dewhipped. We both lost because I cannot now contribute Kshs30,000 because I do not have it.

I want to challenge us to form an interim special team to clear the backlog. We have to sanitise these political parties. I do not think it makes sense to have 60 to 80 political parties in a small country like ours. We need to scrutinise each and every political party. The audit should not just be financial one but management and structural so that we can determine whether these are political parties or institutions owned by families or a club of friends. We can then determine the political parties that can enjoy the funding of the taxpayer. In a country that is as poor as Kenya, we cannot fund institutions owned by families. I come from a poor county- Kitui, which can afford to give Kshs48 million to the office of the governor which could have been used to construct 15 boreholes. In Kitui County, citizens walk 40 kilometres to get water.

Hon. Speaker: Remember the rule of relevance.

Hon. Mati: I am not digressing. We should sanitise these political parties by having a special group. The PAC and the PIC have other responsibilities. We need a committee that is dedicated to sanitise our political parties list because it contains things that do not need to be funded by the public. We should not just look at the returns because a party can be very efficient in making returns simply because it is a family or a personal matter and therefore, dispensing with the accounting does not take a lot of time. The audit should not just be financial but structural and organisational so that we can know if a political party is private or public institution. I would recommend formation of a small select committee that dedicates itself to sanitising this big list of political parties.

I am saying this with a heavy heart because in my earlier life, 18 years ago, I was involved in a political parties strengthening programme funded by the United States Agency for International Development (USAID). If political parties are not institutionalised, you strengthen the bureaucracy that is in a political party today, and tomorrow the owner of the party rejects your changes or closes the office and resources used go down the drain.

Hon. Speaker, I want to emphasise the fact that we need a small group that looks at political parties. The Committee should not only audit the finances and practices that are there. Political parties should be democratised and institutionalised. We can then talk about institutionalisation of political parties in the Republic of Kenya and move away from PPPs.

Hon. Speaker: Hon. Members, there is a difference in implementation because why do we have Article 91 of the Constitution giving attributes of a national political party? There is a whole Act of Parliament that Hon. (Ms.) Millie Odhiambo had the opportunity to amend in 2011 from the original one of 2007 that became operational in 1st July, 2008. We should be addressing that when we talk about other elements or components of political parties.

Yes, Hon. Ochieng.

Hon. Ochieng: Thank you, Hon. Speaker. The matter before you was not a political party matter but a technical matter that you must keenly consider. If you go the Committee's way, it will open a Pandora's Box. What happens on a day when the party that produces the President is the Opposition Party in the National Assembly? Where does the PAC come from? During the PNU days, the Members in the ruling party were 45 out of 220. If we go this way, we need to overhaul the Standing Orders so that we reflect what we want as a country. Our Standing Orders do not reflect on the fact that on a good day, there can be a President coming from a party that has 20 Members of Parliament out of 349. The Government must run because Parliament is supposed to make the Budget.

As we speak, the United States of America (USA) Congress went home without passing a Budget. However, the country runs because the Congress is run by the Republicans and the presidency is held by the Democrats. The role of Parliament is to make the Budget but not to receive it from the ministries and do what we do here every day. We do it because the majority party in Parliament is the one that has the President.

Hon. Speaker, as you make a ruling on this matter, consider that the PAC that we have been talking about all along may not be the best Committee in this Parliament to look into the political parties audit report. The departmental committees which consider and approve monies, and the one that looks at the work of the ministries, would be the best to look at how money is spent. If you decide selectively today that you will have a special committee to handle the case of political parties, then what will stop us the next day from asking you to form a special committee to look into other issues like the National Youth Service (NYS) saga? What will stop us tomorrow from asking you to form a special committee to look into the matters of Eurobond since they are so hefty and heavy?

The law is very clear on these matters. If you do not make a ruling, it is very clear in the Standing Orders. Like Hon. Ababu has said, under Standing Order No.205, there will be no reason for you to order formation of a special committee because the law is clear that we give it to the PAC. If you follow what Hon. Chepkong'a told you, we are a mongrel. We are dealing with things we do not understand. I want you to appreciate the fact that if you establish a special committee, the next thing you will ask will be having other special committees to deal with other matters.

The point which you raised is very important; that in the last six or seven years, we have undermined and compromised the position of the Registrar of Political Parties because we fear that if it is strong, it will not work. It is time you put your feet down and required that the relevant party has a confirmed registrar so that we are able to resolve some of these issues the way they should be sorted out. There is so much that could be done in this country by the National Assembly without having to always throw barbs at each other and have the best way to go through some of these things.

The PAC is a very busy committee. It is supposed to look at all expenditure and everything that the national Government does. So, you may consider in your ruling that the Committee should be empowered by the Standing Orders to have sub-committees. We should consider a proper way of running committees that would make it easier for them to work. For instance, if PAC is the one that will do all the work, we should consider having sub-committees entrenched in the Standing Orders to make it work easily and faster. We will go to elections next year. We have parties which are receiving monies from the public. Some of those parties are telling the Government to account for the monies voted to its various agencies yet those parties cannot account for the money that was given to them.

Those are the comments which I wanted to make on political parties audit report.

Hon. Speaker: The Standing Orders permit committees to form sub-committees. The committees of this 11th Parliament do not want to form sub-committees and yet the Standing Orders permit that. I do not have to make any ruling on it. I do not know why it is not happening.

What did you want to say, Hon. Abass?

Hon. Abass: Thank you, Hon. Speaker. Any institution or organisation that receives public funds must account for every cent. I am very concerned as a member of the ODM when I hear that my party could not account for Kshs19 million, according to the Auditor-General's report. That is a cause for worry for me. I have done a quick calculation, which shows that from that Kshs19 million, my contribution to the party for the last years is close to Kshs720,000. So, when I am told that Kshs720,000 of my money cannot be accounted for, I am sure it is a cause of concern for every Member.

The PAC is the best Committee to look into the political parties audit report but having been a member of that Committee for close to three years, I assure you that it will not get time for political parties audit report. Their hands are already full. They are behind schedule. There are many things that they are unable to do. The PAC should look into that report but it cannot do it. I suggest that the best committee to clear the back log would be a special committee of equal membership of the two coalitions headed by an independent chairman. That is the best way to resolve this issue because we already have 60 audited reports. I was a member of that Committee. The PAC will never get time to check the political parties audit report. I suggest we form a special committee.

Hon. Speaker: I will give a communication before the end of next week, on Wednesday. The Chairman of the Departmental Committee on Lands, you may take the Floor.

Hon. Mwiru: I rise to seek your indulgence on a matter which is already in the Order Paper. This is business listed as Order No.8, which is the Land Laws (Amendment) Bill. I am seeking some deferment on this particular business because I want to consult further with Hon. Members. The Committee also received other amendments late, which we need to canvass including that of Hon. William Kisang. If the House allows, this business will appear in the

Order paper next week on Wednesday, 27th April. That is the only way we can build enough consensus so that we speed up the business and finish it. I seek your indulgence.

Hon. Speaker: The request is accepted. Skip the business appearing as Order No.8 on the Land Laws (Amendment) Bill. It is dropped. It will be dealt with next week. However, encourage the Committee to try and amalgamate as many of the proposals so that when you come to the Committee of the whole House, you will move as quickly as you did with the other one.

Next Order!

*(Committee of the whole House on
The Land Laws (Amendment) Bill deferred)*

BILL

Second Reading

THE JUDICIARY FUND BILL

Hon. Chepkong'a: Hon. Speaker, I beg to move that the Judiciary Fund Bill be now read a Second Time.

This is a fairly simple Bill. It is not very long because it contains 16 clauses. When the Judicial Service Commission (JSC) appeared before the Departmental Committee on Justice and Legal Affairs, they proposed to set up the Judiciary Fund through regulations. When we looked at the proposed regulations, we found that they were very substantive. The regulations were to be made pursuant to the Judicial Service Act. We then asked them to work on these regulations as a proposed Bill. The Committee examined the Bill, interrogated it and approved it. It is being sponsored by the Departmental Committee on Justice and Legal Affairs. This is the best way to create funds. I have nothing against the Senate. People think that I have something against the Senate, I do not. I have tremendous respect to the Senate but I am saying that things must be done in a constitutional manner. It is bad manners to create funds using regulations. We are creating the Judiciary Fund using legislation. There is nothing illegal. We are doing that so that we can interrogate and allow public participation, like we have done, and table a report. We are doing things in an orderly manner.

The basic objects of this Bill are to safeguard the financial and operational independence of the Judiciary. Secondly, it is to ensure the accountability of funds that are allocated to the Judiciary by this House. Thirdly, it is to ensure that the Judiciary has adequate resources for its functions. Once this Fund is created by this House, the monies allocated and disbursed by the National Treasury shall not be returned after 30th June of every year. As you know, what happens at the moment is the Judiciary has many ongoing projects, for example, construction of High Courts and Magistrates' Courts across this country. When it gets to the end of the Financial Year and they have not utilised the funds that have been released by the Exchequer, the unused amount is, ordinarily, returned to the National Treasury. However, a fund will retain the monies that have been disbursed by the National Treasury. So, the reason this Fund is being created is to ensure that the projects continue without any interference or lack of funds. The Fund is intended to defray the administrative expenses of the Judiciary. They are also meant for the acquisition

and proper maintenance of buildings, grounds and other assets of the Judiciary and for any other purposes as may be prescribed by the law and the Constitution.

Basically, that is the main tenets of this Bill. So, we urge that this Bill be passed. It is grounded on the Judicial Service Act No.1 of 2011 as amended and repealed previously. With those remarks, I request Hon. Waiganjo to second.

Hon. Speaker: Hon. Waiganjo.

Hon. Waiganjo: Thank you, Hon. Speaker. I rise to second the Judiciary Fund Bill. I simply want to emphasize what the Mover of the Bill has said. Basically, this is a legal framework for creation of this Fund, as opposed to this Fund being created by regulations. I completely agree that creating a fund through regulations is quite irregular. Therefore, anchoring it in law is the right way to go. This is a Bill whose time has come, particularly because it is very important for the Judiciary to maintain its own independence. One of the ways that we can make sure that the Judiciary is fully independent is by ensuring that it has its own Fund and also to make sure that it is accountable. It is important that we pass this Bill.

For a long time now, the Judiciary has been accusing this House of slashing its budget. Once we establish this Fund, it will be clear that the Judiciary has its own resources. More importantly, the Judiciary generates a lot of money, particularly through the filing fees in their registries and the fines it levies. Therefore, apart from the Exchequer, this Fund will be generated by the Judiciary itself. It is also very important that this money is retained to ensure continuity of the projects that the Judiciary has.

Lately, we have seen an explosive development by the Judiciary. We should commend them on that. We want this to continue because every county needs a High Court. Although there is serious progression towards that achievement, it will happen in a quicker way once the Judiciary has its own Fund. This is in Article 173 of the Constitution. What we are doing is that we are grounding it on the Judicial Service Act but, at the same time, we are complying with the provisions of the Constitution. Under the new constitutional order, the separation of power is more emphasized than ever before. We also want to see a situation where the three arms of the Government operate completely independent of one another but interdependent of one another. We do not want any institution or arm of government to accuse the Legislature of disabling it or being an obstacle to the achievement of their constitutional mandates. Parliament is a House of rules and procedures. It is our mandate to make laws. This Parliament will be proud of making a law such as the Judiciary Fund Act.

Therefore, I second this Bill and inform the members of this House that it is the most progressive Bill. We need to pass it and ensure that the Judiciary is independent. We should not give the Judicial Service Commission any excuse when they fail in their duties to hit back at the Legislature.

With those few remarks, Hon. Speaker, I beg to second.

(Question proposed)

Hon. Speaker: I have seen Hon. Ababu Namwamba desirous of contributing. Given that you served in the last 10th Parliament, as you contribute, you could explain why, in the Fifth Schedule of the Constitution, the Judiciary Fund Bill was supposed to have been enacted within the first two years from the commencement date. It must be a shock to many of us that neither the 10th Parliament nor the 11th Parliament have so far been sent packing for not enacting this

Bill, notwithstanding that Hon. Chepkong'a and the Seconder appreciate that it is an extremely important Bill.

Proceed, Hon. Ababu Namwamba.

Hon. Ababu: Thank you, Hon. Speaker. Indeed, you are right. As you spoke, I was flipping through the Fifth Schedule. It is true that this Bill had a timeframe of two years. It is one of those serious errors of both the 10th and 11th Parliaments.

Let us commend the 11th Parliament for correcting this alteration. Indeed, we had occasion to discuss this matter in the 10th Parliament and it was admitted that this was one of those little things that could easily have sent the 10th Parliament packing. Let me start by commending the 11th Parliament because we have done extremely well in ensuring that the timetable set out in the Fifth Schedule is met and that we beat all the deadlines as set in that Fifth Schedule.

This is an important and crucial Bill. It is a Bill which seeks to actualise the intention of Article 173 of the Constitution, which provides the constitutional basis for the Judiciary Fund. What is significant about this Fund is that it shall make the Judiciary to be truly autonomous and to operate in a manner that will even prevent or correct the current perception that the JSC has an overbearing control over the operations of the Judiciary.

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

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

This is a Fund that will be controlled or administered by the Chief Registrar of the Judiciary as the Accounting Officer. It will facilitate the administrative expenses of the Judiciary. It will basically give the Judiciary administrative wherewithal.

Today, we are in the midst of drastic and far-reaching reforms in the Judiciary. Indeed, one of the key intentions of our new constitutional dispensation is to have a Judiciary that is independent, responsive to the challenges of our nation, a defender and protector of justice and the rule of law. All those good and lofty objectives and vision will be very well served by having a fund that will facilitate the Judiciary to undertake its activities independent of the JSC. We know that independence in funding alone is not sufficient to grant institution autonomy. This institution is an example of an institution that has had financial autonomy for a while. Parliament budgets and oversees the operation of Government, but we still suffer a lot of control, as it were, or interference from the Executive.

Therefore, my message to the Judiciary is that even as you anticipate to have this Fund that will grant the much desired autonomy, you must continue to jealously guard the principles of independence of the Judiciary and avoid the interferences even from within, as has been the case previously by the JSC. It has been feared that the JSC has sort of gone beyond the mandate that was anticipated by the Constitution and interfered with the operations of the Judiciary. We are giving the Judiciary the freedom to dispense justice in the style that we have always dreamt of and that the framers of this Constitution and many Kenyans had hoped for. We want to see a Judiciary that delivers justice in a manner that is speedy and engenders confidence among the people.

We have had a scenario where many Kenyans express doubt as to just how independent the Judiciary is. Previously, the argument has always been that the Judiciary cannot fulfil some of these high expectations because of not being truly liberated in terms of financing. I am happy today that six or so years after we enacted the Constitution, and four years late from the date when this piece of legislation should have been enacted, we are finally seized of this Bill. We are finally setting the Judiciary free. The Judiciary can conduct its affairs freely and meet its expenses without any hurdles.

I have had occasion to go round the country to visit various judicial stations from when I served as Chairman of the Departmental Committee on Justice and Legal Affairs in the 10th Parliament. We toured our judicial stations across the country to see the state of the institutional establishment. Again, a year or two ago, the PAC visited various judicial institutions across the country, including in Kakamega, Kisumu, Runyenjes and here in Nairobi. One recurring theme is the constraints that the Judiciary has in terms of fulfilling the basic administrative necessities to enable it operate effectively.

I hope that among the mechanisms that this law will provide is that the Judiciary will be able to devolve basic operations like budgeting and procurement. You will find a situation in many of these places where procurement for basic things like paper has to be done centrally from Nairobi, making it very difficult for stations outside Nairobi to operate effectively. With the exponential growth of the Judiciary in far-flung places – I have a new court being constructed in Budalang'i and many other places now have access to court houses and facilities – it will be important for the Chief Registrar to devolve a lot of these administrative functions and ensure that all these stations are provided with sufficient funds to undertake their basic administrative work at that very local level, with the rider that we must expect the highest level of accountability in the utilisation of the funds that will be provided for this purpose.

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

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): I now give the Floor to Hon. Jared Opiyo. If he is not here, I will give the Floor to Hon. Nicolas Gumbo.

Hon. (Eng.) Gumbo: Thank you, Hon. Temporary Deputy Speaker, for the opportunity to speak to this Bill. As has been said by the speakers before me, the Judiciary Fund is a creation of Article 173 of our Constitution. The objective of the Fund, as outlined, is primarily to safeguard the operational independence of the Judiciary.

If there is one feature of the 2010 Constitution, it is the fact that it has been channelling huge amounts of resources to the Judiciary. As the PAC, we have witnessed a situation where in a period of hardly two years, the funds channelled to the Judiciary went up almost five times. I think this is for a good reason. For a long time, Kenyans have been yearning for fair administration of justice in our country. It is believed that by granting the Judiciary the amounts of the resources it needs, we will be making vital steps in attaining that objective.

Creating the Fund is a noble objective, but utilising the funds is another case altogether. I think concern has to be raised, as has been raised by none other than the Chief Justice (CJ) himself, as to the manner in which we continue to utilise the funds that have been channelled not just to the Judiciary but to the various arms of the Government. As a House charged with the responsibility of ensuring that all the arms of the Government are optimally funded, it is important we ensure these funds are managed prudently.

Hon. Temporary Deputy Speaker, this is a concern. Contrary to the provisions of the Public Finance Management (PFM) Act, 2012, I have seen that some of the funds we have

channelled to the Judiciary have sole signatories. I asked myself a question on the fact that these funds are resident in banks that are categorised as some of the largest banks in the country. Obviously, even for a private company, it is not possible to open an account where only one person is the signatory to such accounts. We have a Report before us where, for example, an account at the Kenya Commercial Bank (KCB) being run by the Judiciary was having a single signatory. You shudder to imagine what will happen in the event that person decides to take any arbitrary action. Once one is a signatory of an account, they have sole access to that account.

As we go through this legislation which is to give effect to Article 173 of the Constitution, our great concern should be how prudently we continue to utilise these funds. You cannot just give and not expect accountability for what you give. As an institution, it is time we demanded to be told how the huge amounts of resources we have channelled into the Judiciary have helped in achieving our objective of accessing justice to as many Kenyans as possible.

There is still a bit of a concern. I know we passed a law which requires every county to have a judge. I have over the years seen the Judiciary opening courts in various parts of the country. I hate to believe that an institution which is an entire arm of the Government will engage in a process like that without clear criteria on how they decide where a new court is to be opened. I believe every Kenyan in this country deserves and will be at some point, be in need of justice. We will make this law but it is equally important to start demanding accountability on how every amount of money is used. This is because money that will go into this Fund will be appropriated by this House.

As much as we are going to enact this legislation, it is equally important we follow it up and demand value for money through our engagements. This is whether it is through the Departmental Committees or at the tail end of the public finance cycle when these Funds are audited. We must now demand to know how these huge amounts of funds are used.

If you look at it five years ago, you will see that the amount of money that used to go to the Judiciary was very small. This was clearly a hindrance to access to justice for many Kenyans. We want to see what is the relation and proportion of that in relation to access to justice. Are Kenyans now having better access to justice because of the huge amounts of money allocated? I have been told that cases of backlogs in courts have gone down. However, we still hear of cases that have been in court for years. Justice delayed is justice denied. We must demand to be given a cost-benefit analysis and be told the effect of the noble objectives we have put in place to provide and make justice accessible to all Kenyans. That will ensure Kenyans are treated fairly, justly and Kenyans who deserve to be heard before courts do not inordinately get delayed merely because somebody is playing some games in matters of law.

Last is on corruption in the Judiciary. It has come from none other than the Chief Justice himself. It disheartens us to learn that there are some parts of this country where justice still goes to the highest bidder. It is a very sorry state if that becomes the practise and culture in this country. The Chief Justice has been lamenting in various fora. That even puts to question some of the institutions we have.

For example, we recently extended the life of the Judges and Magistrates Vetting Board. We should now ask whether the many institutions we have put are just there in name or they are helping us to have a better society.

I did not get a chance to contribute to the Motion on the extension of the time of the Judges and Magistrates Vetting Board. Honestly, some of the judges whose conduct is being questioned are the same ones who were cleared by the same Board a few years ago. Of course, it

does not mean that I cannot pass another exam because I have failed one today. I call upon my friend Hon. Chepkong'a to let institutions that are being funded be keen. I am particularly very concerned on the question of to what extent and how much benefit we have achieved from institutions like the Judges and Magistrates Vetting Board. How much has it done to improve the image of the Judiciary? When people feel that the image of the Judiciary is tainted, even those who want to seek justice hold back. The idea was to weed our Judiciary of characters who have made justice a commodity which goes to the highest bidder.

We must demand performance. It will be very important that before we give blanket approvals for extensions of the lives of institutions such as the Judges and Magistrates Vetting Board, somebody must put them to account. That somebody mandated to put them to account is this House which is the representative of the people of Kenya.

I support.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): I now give the Floor to Hon. Alice Wahome.

Hon. (Ms.) Wahome: Thank you, Hon. Temporary Deputy Speaker for giving me opportunity to support the Judiciary Fund Bill, 2016. It is regrettable that Parliament, in its duty, has not enacted this Bill.

However, this 11th Parliament is doing the job timely. The timing of this Bill allows us to say something about the manner in which our Judiciary is managing administration of justice. We have been treated to numerous cases, allegations and accusations that the Judiciary is being compromised. We have heard that those who have money in this country buy justice. This story has been going on for long.

You will recall that there was the radical surgery of the Judiciary and then thereafter the vetting of the magistrates and judges. We are talking about reforms under the new Constitution. It saddens Members of this House and legal practitioners who take cases and believe that they can get justice on merit.

When we talk about having this Bill in order to assist the Judiciary in its financial management, administration of justice, creating more space and facilities for the Judiciary, we cannot avoid saying we need seriousness in our Judiciary. We need cessation of commercialisation of our Judiciary by the judges and the leadership of the Judiciary. Personally, I would say that it is not proper for the Head of the Judiciary to be the one saying that there is corruption and that there is nothing he can do about it yet he is the Chief Justice of this country; a position constitutionally given to him. The objective of the Fund is to safeguard the financial and the operational independence of the Judiciary. Money alone cannot give the Judiciary its independence. There are cartels and criminals. That is where the biggest problem is. We may give money and allow larger or wider facilities but still there is no independence of the Judiciary in administration of Justice in terms of fairness, timeliness and expeditious disposal of cases. Cases are referred to known judges for specific interests. We must stop that as a country and clear those who are not able to work within those parameters.

I am supporting this Bill. In terms of accountability of the funds, we have seen some investments by the Judiciary that are not above board; houses being bought by the Judiciary with monies and amounts that are not logical in terms of the figures. The Kshs300,000,000 was spent on the purchase of a house for the Chief Justice a year ago but to date, it has not been occupied. We have heard of renting of houses for the Judiciary. When we create this Fund, we are hoping that we are now not putting money in the hands of the same people who have failed to be

accountable to the people and to the country. Therefore, for this very critical arm of Government, it is right and proper for us to have this legislation to support them in handling their own funds.

If they have to resort to the Government, we are aware and I know that it is possible for them to be arm-twisted and be given some conditions. Therefore, we want to speak to the fact that it is now time that the Judiciary lived to the expectations of this country. Judges who have attained the age of retirement whether there is a case going on or not, must know the Constitution did not exempt anybody. The retirement age has been stated at 70 years. I do not know why we are speaking very many words about that. The swearing of the new judges under the new Constitution allowed and made them accountable to the Constitution which they should defend and protect including provisions and articles that speak to when they will retire from the Judiciary.

I am reminded that there is a case going on. The issue of *sub judice* has been pushed to levels that are not acceptable. We must continue to tell the judges that they are no longer living in the old regime where we did not criticise the Judiciary. They must also give this Parliament room to do its business and avoid putting the country in situations that are not acceptable. We have always known that in the administration of justice, judges do not operate in a vacuum. They must also remember that the country is still bigger than one individual. Therefore, even as some judgements are coming, we need to interrogate them and see whether they are also politically aligned or are serving certain sectors.

I am happy with this specific legislation. Defraying the administrative expenses of the Judiciary, is something that the Chief Registrar needs to have.

I want to rest my case. I support.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Deputy Leader of the Majority Party.

Hon. (Dr.) Shaban: Thank you very much for giving me this opportunity to add my voice. Although we are late in debating and passing this Judiciary Fund Bill, there is a saying that better late than never. This is the time we need to work on this and make sure that it becomes law.

According to Article 173 of the Constitution, this Judiciary Fund should have been operational by the beginning of 2013 after the promulgation of the new Constitution in 2010. Having said that, when we look at it from the angle of what this Fund ought to do, a lot of emphasis should be put on how these funds are going to be utilised. We do not want to see a situation where now that they are going to have their own funds, they are going to decide to misuse money, fail to account for it and get away with it and say since they are the Judiciary, they can do as they please.

We have seen at the county government level, people coming up with funny benchmarking trips just because they have the money and they have decided to use it for their own benefit; that once they have, it does not matter whether the money is going to do what it ought to do. These funds should be specific on what the Fund is supposed to do. For example, the two issues which have been set out in the Constitution were administrative. I am worried that administrative is too huge an animal for it to be just used. It is a relative term. On administrative, people can even choose to go on those funny trips and use the money. What is very important is that the Act itself will come talking about providing space, buildings and maintaining buildings to make sure that this service reaches the people of Kenya wherever they are.

We come from areas where people have been carrying out this judicial service in some small dingy place where you find most of the people are seated outside in small structures or old structures which were done during the colonial times and were meant to be stores or something. That is where these functions are being carried out.

What is important in the Judiciary Fund is that we shall be able to allow the Judiciary to build courts all over the country. This is more so with the new Acts which are in place like the Small Claims Court Act and the High Court (Organization and Administration) Act. The High Courts are being implemented in all the counties. This is the money that they require so that this service can reach the people.

As we are looking at this Bill and as they go out there to carry out the regulations, the Chief Justice and the JSC should come up with foolproof regulations so that there is no pilferage of this money and people will look at this money like money which is meant to improve the Judiciary. This money is not meant for their personal use; that is to make them more comfortable and misbehave as they please.

There is a disease which got into this country since the promulgation of the new Constitution. As money is going out there for devolution and for other things which are supposed to be implemented by the Government--- I believe that Kenya is a unitary State which has one national Government and 47 county governments but people have decided to make their own small kingdoms where they can do as they please and get away with it. This is a disease which has to stop. We have to move on. I have heard some of my colleagues saying that they were very unhappy that during the State of the Nation Address, the President pointed out that he is also joining Kenyans in asking what the money which has gone to county governments has done. Apart from what the money is doing at the county governments' level, we also ask that as the Judiciary implements this Fund, we want to see it being properly utilised, doing the work it was meant to do and not being misused.

This law is long overdue. We shall pass this Bill quickly and it will be assented to as quickly as possible so that this can be a reality. People pay a lot of money when they go to those courts, file cases and are fined quite a bit of money. This is a Fund which should operate almost instantly, considering that there are quite a number of fees that the Judiciary collects from Kenyans as they go to obtain services.

Having said that, I join my colleagues in saying that the earlier we do this the better, so that we can see improved service delivery by the Judiciary officers in our country, who would be able to make decisions on their own as an arm of Government. This is considering that some of the monies that they have been collecting will be useful in making sure that Judiciary services are improved for Kenyans.

I support the Bill.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): I now give the Floor to Hon. Aghostinho Neto.

Hon. Oyugi: Thank you, Hon. Temporary Deputy Speaker. I stand to support this Bill. This is a Bill that is made in furtherance to Article 173 of the Constitution. Article 173 (2) of the Constitution anticipates the creation of a fund that shall be used for administrative expenses of the Judiciary and such other purposes as may be necessary. Article 173(4) gives the National Assembly powers to approve the expenditure of the Judiciary. It anticipates in Article 173(5) that Parliament shall enact legislation to provide for the regulation of the Fund. That is what this particular Fund seeks to do. It is in order and I support it.

The doctrine of separation of powers speaks to an independent Judiciary, Legislature and Executive. Judicial independence, apart from the fact that the judges ought to be free and exercise freewill in dispensing justice, ought to also be coupled with financial independence. For a long time now, we have suffocated the Judiciary. An independent Judiciary ought to be one that is also in charge of its own purse so that they decide what to do with it.

Even though I speak to an independent Judiciary that is in charge of its funds, that does not mean that the Judiciary cannot be held accountable for those particular monies. That distinction ought to be very clear. It is a problem that we had with the Judicial Service Commission (JSC) when we asked them as the Departmental Committee on Justice and Legal Affairs to account for monies that they had been given and there was misappropriation. The fact that you are free and independent simply means that you are still answerable to the various arms of Government when the time comes to answer to them. That is what interdependence is about. That someone is allowed to check you. The same way that they can rule the laws that Parliament makes to be unconstitutional is the same way we can also find them to have misused funds and to hold them accountable for those funds.

This Bill, in its objectives under Clause 3, sets the reasons for which we are making this Fund. It is going to help the Judiciary in doing its administrative work, in running the Judiciary efficiently and making sure that half the work they do is in order and sufficiently funded. What I like about this Bill is the fact that the money we give the Judiciary will not be returned to the Exchequer but will be deposited in the Fund. Essentially, that would mean that the Judiciary will constantly have money to run its affairs. If at all they come up with appropriate budgets, they should have money carried over in the financial years that will always be useful for them.

Clause 10 creates obligations on the part of the Chief Registrar to keep the books of accounts in line with the Public Audit Act of 2003. The Chief Registrar is expected, within a period of three months from the end of each financial year, to submit to the Auditor-General the accounts of the Fund. That accounting principle is fairly important so that we at least stipulate the timelines of how they will show cause of what they have done with the money. It is also anticipated that the accounts of the Fund shall be audited and reported in accordance with the Public Audit Act.

We have had problems with the Judiciary, even as currently constituted, in terms of how they spend money. Now that we are creating for them a specific Fund, the auditing function, follow up and oversight of this Fund should be more stringent because they now have money on their own volition. As a Member of the Departmental Committee on Justice and Legal Affairs I am aware that year in, year out, even in this Supplementary Budget, the Judiciary has not been able to use all the monies that are allocated to it, either because they do not have the absorption capacities or some other reason. To have a Fund where they are going to have a lot of money retained year in, year out calls for more reason so that proper oversight is taken into consideration, so that the money, even though it is retained, does not go to waste.

Clause 11 of the Bill speaks to the fact that within three months after the end of each financial year, the Chief Registrar shall report to the National Assembly with regard to the operations of the Fund. That is also important in terms of Parliament monitoring the Judiciary in terms of what they have done and how they are planning to do other works to see if they are at all attaining their mandate in terms of the work that they set out to do within the meaning of the monies they applied for.

The Judiciary has done some commendable work over the past three or four years after the promulgation of the Constitution but it is also doing very badly because people still do not have trust in the overall court system. Whereas we praise them for the good work done, there is still room for improvement. If at all you are in the Judiciary, people need to believe in the court system. One of my colleagues has said it very well that the Chief Justice does not believe in his own institution. The fact that the Chief Justice of Kenya has told us that he has a problem in trying to streamline the Judiciary and still worries that the level of corruption in the Judiciary is fairly very high is disturbing. Even though we are giving them an independent Fund, we want to see some integrity on the part of the Judiciary, in a manner that will give confidence to the court system.

Kenyans think that you can still buy justice at the courts. That is a disturbing scenario. If you have a country where the institutions that are supposed to be dispensing justice are institutions that you cannot believe in, the only thing that you will be moving forward towards is anarchy. Whatever the Judiciary can do, both the JSC and the Chief Justice before he leaves office, should be to give us a Judiciary that Kenyans can believe in. As Parliament, we are doing our role by making sure that they have the money that they need so that they are autonomous. Because the law has already made them autonomous, they need to do everything else to have their independence.

I have a problem with two clauses in this Bill. The first one is Clause 12 which gives the Chief Registrar the powers to delegate to any officer of the Judiciary the powers of an Accounting Officer. Whereas that is possible to do within the meaning of the law, I speak with a bit of experience after what we saw when the last Chief Registrar left office. There are moments when sometimes the buck has to stop somewhere. If the Chief Registrar is the one supposed to account for the funds like this Bill anticipates, I have a problem when you say that he or she can also delegates that function in terms of the authority to incur expenses. You will have people incurring expenses with delegated powers or not then someone runs away with particular responsibilities. Whereas it is possible within the meaning of the law to have various officers working together, it would be a dangerous provision to give, as provided in Clause 13, that the Chief Registrar can give the authority to incur expenses to somebody else. Unless we think it through properly, that will be a fairly dangerous provision in my view.

Hon. Temporary Deputy Speaker, it is a fairly good Bill. It is a Bill that we should have done a long time, like my colleagues have said. I really hope that it makes the Judiciary operate very efficiently. Like I have said before, the Judiciary has done some very good things in terms of expansions and in expediting justice in some cases but, it has also done very badly in terms of corruption that we have seen. There is still room for improvement but so far we have tried. I hope this Bill will help them to make sure they are efficient in how they dispense the administrative work.

I support and thank you.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Okoth, do you have a point of order or you have pressed the wrong button? Please, press the right button. That one is for intervention.

I now give the Floor to Hon. Makali Mulu.

Hon. Mulu: Thank you, Hon. Temporary Deputy Speaker, for giving me the chance to contribute to this important Bill. It is important for this country. Other than being important, it is

also a constitutional requirement so that we meet the expectations of Article 173 of the Constitution.

This Bill will ensure that we have financial autonomy or independence for the Judiciary. Looking at the Bill and its objectives, in Clause 3, it has three objectives which are very important. One is to safeguard the financial and operational independence of the Judiciary. Two is to ensure accountability for the funds that will be allocated to the Judiciary and the third one is to ensure that the Judiciary has adequate resources for its functions. What this means is that even as we appropriate funds to the Judiciary, as the National Assembly, we will make sure that the third objective is met to ensure that Judiciary has enough funds.

Clause 7 is very important in the Bill. It says that all the funds which will be appropriated for the Judiciary in each financial year shall be retained at the end of the year. So, this becomes more like another National Government Constituencies Development Fund (CDF) where once the year comes to an end instead of people saying that money is going back to the National Treasury, the Judiciary will roll over these resources to use in the subsequent year. This is very important because you realise that where they have challenges in the implementation, they will have no need to re-budget. Looking at what happened, for example, in the 2015/2016 Financial Year - we are now and 2013/2014 - the Judiciary was only able to use 50 per cent of the allocated Kshs17 billion. This implies that if this law was in place or if this Bill had become an Act of Parliament the additional Kshs8 billion would have remained in their account. So, if there is a budget for this year, these would be additional resources they would spend more in this financial year.

This will be very important to this country, because looking at this country in terms of access to justice; Kenyans have a lot of challenges. There are Kenyans who travel over 100 kilometres to access justice; going to courts. If the Judiciary has these resources, they will be able to have more courts near people and they will improve the mobile courts so that they can have many of this to make sure that those Kenyans who are in the interior parts of Kenya can access justice.

The other important part of this Bill is the whole issue of auditing. The Bill confirms that at the end of every financial year, the Auditor-General will audit the books of the Judiciary. This will ensure that there is accountability to Kenyans. We will account for the money we give them.

But even as we put this law in place, we need to bear in mind that there are things which do not need to be legislated for them to take place. I have given the example of low absorption of the Judiciary's budget. Every year, this House goes that extra mile to ensure that the Judiciary has money. If you look at the Budget Policy Statement we passed, we have proposed again about Kshs17 billion yet last year they spent about Kshs8 billion. So, the question I am asking myself and the challenge we want to throw to the Judiciary is to make sure that while this House has goodwill, to make sure that we provide resources for them so that they are able to meet the expectations of Kenyans, it has to go an extra mile to make sure they use the funds and implement. It does not make any sense to any Kenyan to have money in the books which is not spent. That is the challenge I want to throw to the Judiciary staff. Where they have no capacity, let them build it so that the resources we give them as a House are utilised for the benefit of Kenyans.

The other important matter is the issue of corruption. This House discussed the Special Report on the Judiciary the other day. In that report, Kenyans were able to see the kind of misapplication of resources. I plead with the Judiciary that this Fund is going to enable them to

access more resources and have control over them. But even as we say that, the Judiciary must also take the challenge to make sure that resources are applied for the intended purpose. That will help this country in terms of accessibility to justice.

I look at this Bill as very important. Over time we have been saying that Judiciary, the Legislature and the national Government want independence. Providing financial autonomy to any institution is the best thing to do to ensure that that independence is achieved.

This law is important. It is unfortunate, as my colleagues have said, that we did not have it in place earlier than today but, we are not late. There is still time. As we move forward, it is going to help the Judiciary.

The last point and this is now generally a matter we need to think of as Kenyans, is in terms of management of our resources. When you look at financial management in this country so many institutions have different accounts in different financial institutions. For example, those of us who read the Chase Bank Report, you realise the Public Accounts Committee had already identified that Kshs180 million for the Youth Fund had been deposited in this Bank. I do not know whether this is good or bad but before the Bank collapsed, the people who claimed corruption had withdrawn the money. Why should we as a country have money in private banks when we have Government banks where the Government can deposit the money and borrow? As we move forward as a country, we need to think about a holding account in the Central Bank of Kenya so that even when we have these separate funds for different institutions, we have one central account where all our money can be and when there is need for these institutions to get cash, instead of borrowing from a bank. They can use the money and when the other institution is ready to use the money, they can then--- I know we collect money monthly. It is a very bad practice to see Kenyans' money deposited in a bank like Barclays, Chase or Imperial. The same Government goes to borrow Government money from a private bank for development. You are actually borrowing your own money for development at a high interest when you earn very little interest to have the money in that bank. Kenyans need to think seriously about how to make sure that the money we have in this country is safe, and I believe we have enough resources. If we bring on board proper financial management, this country will benefit a lot and we will improve the standards of living of our people and they will appreciate that the Government is really taking care of them.

This law is very important, but as we move forward, let us also think about that one central account. For example, if you go to the Central Bank, there is a lot of money being retained for Kitui and Turkana counties. Then Rotich and his team go borrowing money to fund a Government project because they cannot access that money. These are the simple things we need to do as Kenyans and take advantage of the limited resources we have. Kenyans are educated. We need to play around with the law and improve it so as to benefit this country.

With those remarks I support this law. Let this Bill be pushed. Let us hasten the process of getting it behind us so that it becomes an Act of Parliament and then the Judiciary can be independent and more so financial independence.

Thank you.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): I now give the Floor to Hon. Clement Wambugu.

Hon. Wambugu: Thank you, Hon Temporary Deputy Speaker. First, I support the Judiciary Fund Bill 2016. Though this was supposed to have been in 2010 after the Constitution, we still need to commend the 10th Parliament because of the work it did towards Kenyans

achieving and getting the new Constitution. It is one of those small things which normally slip off and we are not able to pick them. But we commend the present Departmental Committee on Justice and Legal Affairs for having spotted that.

The Bill as set is to assist the Judiciary get financial independence. This is going to help them to be accountable for the funds that we are also giving them. They will have adequate finances for their work, for Parliament to allocate enough resources and also through the collections of fees and fines.

When it comes to collection of fines, Kenyans are able to talk about corruption and the type of funds that have been disappearing because of the way the Government has set up its systems. The Integrated Financial Management Information System (IFMIS) and all other systems that have been put in place for accounting purposes in various arms of Government should also apply to the Judiciary. It becomes funny when you go to court and you are supposed to pay a fine and somebody goes back to his desk to produce a receipt book which you do not know whether it is genuine or not. Somebody scribbles a receipt for you and tells you that you have paid a fine. Most of those funds never get back to the accounts as they are supposed. We need more transparency in the way that fund will be run. It still worries me at this time in this country that access to justice for many Kenyans has still not been achieved and the Judiciary has got a long way to go.

For the Government to deliver its services starting from the last Parliament, there was the move that all constituencies will be converted to districts so that Kenyans could have access to Government services at their proper places. I would propose that as we continue funding the Judiciary, we need to devolve this system down to the lowest level even to the constituencies and sub counties so that each and every sub-county gets a Magistrates' Court. This is because it does not make any sense seeing somebody, for example, in my constituency moving from a place called Kiriani to Murang'a which is about 25 kilometers or even to Kangema to attend a court case which could be done at Kiriani. We are requesting that the Judiciary establishes a Magistrates' Court there.

Before some of the cases end up in a Magistrates' Court or any other court, there are so many other processes that take place especially at the grassroots level. We have elderly men who have been appointed by their various clans by the Assistant County Commissioners (ACCs) or chiefs to help within areas of arbitration such as land cases. We request that because the Judiciary will be having enough funds to operate, such *wazee* at the local level in the villages be looked into so that some of these cases that they handle are facilitated. It is very sad when you see *wazee* presiding over a case from morning until evening and you find it is the complainant who handles their facilitation. We would like that one to be looked into.

As I close, it is rather disappointing because we had the surgery of the Judiciary sometimes back and nothing much has changed. All this happened because of the corruption issues that we used to have in the Judiciary. We had the vetting of the judges and magistrates in this country. If as at now the place has not been cleaned up, then we feel that the Judiciary must have been very corrupt. I do not know which way we could look into it and get a better oversight facility for the Judiciary. The other time we were doing vetting of the same magistrates and then the next issue we hear is that there are corruption cases in the Judiciary. Something had better be done. Either we have an oversight facility or a body that will be overseeing the Judiciary so that we can have more trust in that system.

With those few words, I support.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Thank you Hon. Member. I now give the Floor to Hon. Mohammed Duale.

Hon. M.D. Duale: Thank you, Hon. Temporary Deputy Speaker for giving me an opportunity to contribute to this Bill. At the outset, the three arms of Government are independent of each other, interdependent and also complement one another. This Act will enhance the operational and financial independence of the Judiciary as per the first objective. It will also ensure accountability of funds allocated to the Judiciary and ensure that it has adequate resources to conduct its business.

The source of funds for this is mainly from the consolidated account but there also donations and levies that they collect. The Accounting Officer of this Fund will be the Chief Registrar. The Judiciary has a huge network from the Supreme Court, Court of Appeal to the subordinate courts together with its human resource. Its financial independence will make it operate effective once this Bill is enacted into law.

I come from Garissa County. It is sad that 53 years after Independence, I feel that the Judiciary network in Garissa County is limited to Garissa Town. For example, the first High Court in that region was opened about three years ago and there are no lower courts beyond Garissa. The fact of the matter is that if Judiciary as per Clause 7--- The beauty of this Act is that they will be able to retain any funds accrued from one financial year to another so that they and carry them forward. I believe that will give the Judiciary additional funds to improve its infrastructure.

The headquarters of Dadaab Constituency where I represent is about 100 kilometers from Garissa Town. We have over 300,000 refugees and a similar number of Kenyans in that constituency. So, there is a problem if you say that everybody who has a case has to go to Garissa. Every time we asked for additional resources from the Judiciary we were told there were no funds. We asked the United Nations Higher Commissioner for Refugees (UNHCR) to support the construction of the Magistrates' Court in Dadaab. I am happy that process is ongoing. Even, if that is done, still that construction will not be adequate to house the *Kadhis* and Magistrates' court. When you have over 600,000 people living in a place, for any crime that happens to give justice, there is need to have enough space. I am happy that this Act has been brought to the Floor of the House and it is my hope that all Members of Parliament will support it so that it can be fast tracked and implemented.

In terms of accountability and monitoring implementation, the Act is very clear that the accounting officer of this Fund is the Chief Registrar. The Fund will be subject to the existing financial regulations and will be audited by the Auditor-General three months after the end of the financial year. That kind of system will address the worries that we have. The bigger worry for Judiciary is the corruption of the system itself. What happens in the corridors of justice is more worrying because of people exchanging money rather than stealing the small resource that is provided. What is proposed here will ensure that accountability is well monitored and stressed.

It is my hope that for areas like mine where justice is delayed and they say justice delayed is justice denied, this Act will bring into effect additional resources to support construction of additional facilities in the form of lower courts and higher courts so that people in this country can get justice wherever they are.

Thank you, Hon. Temporary Deputy Speaker, I support the Bill.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): I now give the Floor to Hon. David Ochieng.

Hon. Ochieng: Thank you, Hon. Temporary Deputy Speaker, for the opportunity to contribute to this very important Bill. For the last one month we have been struggling to reinstate the Judiciary budget after it had been reduced through the supplementary process of rationalizing and reorganizing the Government Budget. You can imagine the Registrar of Judiciary trying to camp in the corridors of the National Treasury and Parliament to see if she will get enough money to run the Judiciary. It is a wrong thing to do. To require the Registrar of the Judiciary to negotiate all the time with bodies so that it can have enough money to run its business is wrong. That is why Article 173 of the Constitution had provided and foreseen that it should have a fund.

It may surprise you that when this Bill first came to the Committee, it was a regulation. We thought that probably they did not understand what the country meant when they said they wanted legislation. The first thing that came before us and Members of the Committee can attest to it was a regulation. Article 173 is clear that a fund should be established to be run by the Judiciary. In this Fund, there is no role for the JSC Commission at all to play in the way this Fund works. The Registrar is the sole Accounting Officer, the buck stops with him or her and she or he responds and is responsible to this Parliament, not anybody else. That is what Articles 172 and 173 say.

In the last PSC report we had here, you saw the tug of war between the Registrar of the Judiciary and the JSC in terms of how money should be spent with the JSC saying up to Kshs50 million, they would allow the Registrar to approve. From Kshs50 million onwards, there is a special committee of the JSC to approve yet the JSC has no role to play at all in terms of how the day to day operations of the Judiciary are run. This is information to the Registrar that on this one, no one there will be a scapegoat or blame apportioning to the JSC. This is purely a Judiciary Fund that will be run by the Registrar to ensure that the court systems are working well.

Last month, when we were looking at the Supplementary Budget the main issue was the certificate that had been presented by contractors and could not be paid. The National Treasury was telling the Judiciary that they must give them Kshs1 billion because they have to rationalize the Budget. If this Bill goes through then the money will go to the Judiciary Fund and they will plan their work. I have heard stories about absorption. You can imagine if you have to advertise and procure for Kshs10 billion in a country that is becoming over-religious, everyone is litigating nowadays. Everyone goes to court on almost everything. You expect that these guys will spend their Kshs10 billion in a given year, yet when they procure someone goes to court. In ensuring that the courts, once they commit money they do not have to return it, it will help them plan for over five years. The plan for five years should also be accompanied by monies being given over the five years as long as there is indication that it is spent well.

One other major thing that comes with big money like the one we are giving the Judiciary today is the capacity to use it well, follow it and avoid wastage. I am imagining that in the next three or four years the idea that the Judiciary will be having a budget of Kshs18 billion will go away. In the next three or four years, they will have built all the courts they want in counties and sub-counties. Therefore, the only money they will be asking for is for the day-to-day operations and not for big infrastructure. I am imagining in the next three or four years the budget will go down and then they will concentrate on making Kenyans access justice.

The independence of the Judiciary is not only the independence of judges. They require the independence of even the clerks down there, knowing that capacity and resources are there to do whatever they may want to. That is why in Clause 13, although there is a typo that can be corrected at the right time, they are allowing the Registrar to allow the Deputy Registrar or sub-

registrar somewhere in Busia to procure. Like someone said, why would they want to procure tea and cleaning services for staff in Busia, for example, in Nairobi? Are there no cleaners in Busia? Why not allow Busia people to do the cleaning? Why would they want to centralize cleaning services for the Judiciary; like having staff from Nairobi going to clean in Bungoma?

Allow the person down there to procure at least for cleaning and provision of sugar. That is why we are allowing the Registrar to authorise certain officers to incur expenditure. It helps. That is why in this Session again, we have passed three very important Bills. We passed a law to organize the High Court, Magistrates' Court and Court of Appeal in this year. When these courts are organized that way, each level will have some financial autonomy. The Registrar's role just becomes coordinating work so that at every level there will be some semblance of independence to ensure that justice is delivered. Then they will assess which courts are doing well and which ones are not. When you allocate human resource not everyone will work at optimal levels. It enables you to know who to transfer and who does best where. It is important to know how much they have at their disposal at any one point in time.

Going forward, we do not want to see a sparkling clean court in Nairobi with good parking and toilets and in another part of the country people are using buckets. People are taken to court and are held up in terrible cells like we saw the other day in photos. This fund will ensure that planning is done to ensure that all the courts in the country are the same within a specified time. The other thing that we have seen and happens a lot is that donors always want to give money to the Judiciary, because justice is very important. If donors are going to give money to the Judiciary, we do not want a situation where we are told there is an account opened in a bank in Kiambu or in Syokimau. The donor or development partners' money should be put in this Fund.

Whether it is donor money or whatever you want to call them; development partners or any other name since there are so many names. That is why we provided that all the monies that someone would want to give to the Judiciary should be put into this Fund, over and above what Parliament will have voted for them. The idea that Parliament cannot oversee donor funds is a fallacy. Public institutions get money from donors because they are Government institutions. Donors do not give money to non-government institutions, except NGOs. Therefore, people should not hide behind donor structures and say that they cannot be audited.

This afternoon and part of the morning, we were discussing the Political Parties Act. Under that Act, we established a body called the Political Parties Disputes Tribunal. Like many other tribunals, this tribunal does not have money. Giving enough money to the Judiciary will ensure that it plans for them. We have passed a law that requires that all tribunals, whether they are for sports or music, to fall under the Judiciary. Most of them are underfunded. Once you have money, people in the Judiciary will rationalize and decide which ones have so much work, which ones need how much money and they are budgeted for early enough. Some of them have not been in operation because there are no resources. So, this Bill helps do that.

Finally, we hope that once this Bill goes through, the Judiciary can go back to what it was. We have seen older lawyers trying to hold the Judiciary hostage. You see in newspapers and blogs how older lawyers in the JSC are trying to hold the Judiciary to ransom. We cannot be doing surgeries every year. People should just have good manners. Lawyers should continue being lawyers. We cannot have crooks becoming lawyers and judges. We need to reclaim our country. Once that happens, we hope that the money that will be given to them will help reclaim the soul of the Judiciary.

Thank you very much, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Thank you, Hon. Member, I now give the Floor to Hon. Ronald Tonui.

Hon. Tonui: Thank you, Hon. Temporary Deputy Speaker for giving me this opportunity to contribute to this Bill.

First of all, I intend to oppose it because it is poorly drafted apart from coming to this House through the wrong Committee. It should have been channelled to the House through the Departmental Committee on Finance, Planning and Trade. Basically, this Bill talks about funds, and not legal issues. I therefore believe that it has come to the House through the wrong Committee of Parliament. This is my opinion.

The propagating the idea that some funds need to be retained by the Registrar at the end of the financial year, and that those funds should not be included in the budgeting that is drawn by the National Assembly is taking over the role of Parliament in budgeting. It is watering down the role of Parliament. How can you have some idle funds somewhere whereas in another sector of Government you are unable to make certain commitments or implement certain projects? The Judiciary is seriously misusing funds. In Upper Hill, there are some buildings which were meant for the Court of Appeal that are idle to date, yet Kenyans somewhere cannot access clean water or health services. The idea that they need to be retaining money at the end of every financial year is not good. The Judiciary is one arm of the Government. How come the Parliamentary Service Commission (PSC) does not have such a fund? What is so special about the Judiciary that does not apply to Parliament? Those are the questions we need to discuss. We need to encourage efficiency. Any unspent money needs to be returned to the National Treasury at the end of each financial year in order to ensure inefficient use of public funds.

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

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Tonui, give me a minute. Member for Muhoroni, do you have a point of order?

Hon. Oyoo: Hon. Temporary Deputy Speaker, I feel that the Hon. Member on the Floor, who is my good friend, is misleading the House and the people who are watching us on television. This money is going to Judiciary, which is one of the arms of the Government. That money should be subject to oversight like any other public monies. That is why it is passing through Parliament. We should not give the impression that the money is just being thrown away or being hidden somewhere for its handlers to use it anyhow when there are other needy cases.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Member, you have heard the concern of the Member for Muhoroni.

Hon. Tonui: What I said is that this House is in charge of the budget-making process. The moment you have created a fund where money will be retained without coming back here for budgeting, it becomes unconstitutional. This Bill is, therefore, unconstitutional. This Bill does not even mention the Public Procurement and Disposal Act. When you are individualizing a fund, you are only talking of the Registrar of the JSC and no other person. That is individualizing it. You are not even referring this person to the Public Procurement and Disposal Act so that they follow that law. That is defective. Even a lay person in legal issues can see that this is not a good law. I do not understand why Hon. Members are supporting; it is a poor Bill. We are only talking of the Registrar. There is neither a committee created nor signatories mentioned anywhere in this Bill That means only one person will be the signatory to that Fund. This will never be law. We need to address it properly. There are a lot of excesses in the Judiciary.

The County Government of Bomet allocated the Judiciary some land to put up law court premises. The Judiciary went there and put up wooden structures using many millions of shillings. They misused the land instead of putting up proper buildings. They are putting up some buildings after misusing a lot of funds on wooden structures. They are now putting up sky scrapers. There is excess money in this country. The problem is that it goes to the wrong organs.

How can I confuse my small village? I cannot repair a murram road in my village yet we see massive wastage of taxpayers' money. This Bill is not good. We should not be talking about it. What the Departmental Committee on Justice and Legal Affairs should be dealing with is the issue of vetting of judges. We have three arms of Government. Those in the Executive renew their mandate every five years. We, in the Legislature, renew our mandate every five years. The mandate of those in the Judiciary is never renewed up to the age of 70 years. That is why the Judiciary is rotting. Instead of extending the vetting committee for three months, we should be concentrating on having a vetting committee for the Judiciary to renew their mandate every five years. This committee does not need to be permanent; they can be on temporary or part time basis to ensure that there is real justice in the Judiciary. Once we have justice in the Judiciary, we will have fairness everywhere else. We will effectively deal with corruption. The minute we have a corrupt Judiciary we have a big problem. Why do we even have an oversight body for the police? We should have one for the Judiciary. Those are the shortcomings that the Departmental Committee on Justice and Legal Affairs Committee should address. We should leave issues to do with funds to the Departmental Committee on Finance, Planning and Trade, which consists of many competent accountants. We should not have lawyers concentrating on funds simply because the word "Judiciary" is mentioned. That does not mean it belongs to the Departmental Committee on Justice and Legal Affairs. When we talk of independence of the Judiciary, we need to be interdependent. Nobody should truly be independent. They need to rely on the other arms. The Kenya Revenue Authority (KRA) generates all these funds and then again people say that there is no link anywhere and Judiciary needs to be independent. It should not be seen in the literal sense. We should relook at this Bill to ensure that shortcomings and challenges in the Judiciary are addressed.

We have a Supreme Court in this country. I do not know the number of times they sit. That is a waste of funds in a poor country. There is a Supreme Court of fellows who are idling there. Who accesses what they do? No one monitors them yet they are earning millions of money. They never contribute in a church fundraising. They rarely go to fundraisings to assist their communities yet they have millions and are idling in the Supreme Court. We take care of everyone with the little money we earn. That is really bad. This Bill is highly misplaced. We should reject this Bill because it is not good. We need to refer this Bill to the Departmental Committee on Finance, Planning and Trade to analyse and understand its import. Why should one arm of Government be special to have its own fund?

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

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Ken Okoth, what is your point of order?

Hon. Okoth: Hon. Temporary Deputy Speaker, is Hon. Tonui in order to present that important legislations in this country should be made on the basis of personal philanthropic tendencies? Whether people are philanthropic or stingy should be irrelevant to the laws we make for this country. We should simply make laws because they are good. Is he in order to insist that because judges are stingy, they should not get a Judiciary Fund?

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Tonui, please, conclude your contribution.

Hon. Tonui: I was concluding before I was interrupted by a non-point of order. That was a personal opinion and he could have waited for his chance to express the same.

In a previous contribution, Hon. Millie said that she believes Members of this House are bewitched. I believe that is the case and that is why Members are thinking of a Fund for the Judiciary but not for the Parliamentary Service Commission (PSC).

Thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Peter Kaluma, are you a member of the Departmental Committee on Justice and Legal Affairs?

Hon. Kaluma: Yes, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): I think you can answer some of the issues raised by Hon. Tonui.

Hon. Kaluma: Thank you, Hon. Temporary Deputy Speaker. We are not bewitched. I want to request Hon. Tonui to sit so that I can answer him.

We are passing this law as a requirement of the Constitution. Hon. Tonui should know that it cannot be unconstitutional. I believe we hold a very special place in the history of this country when it will be ultimately written. This law was to be passed two years after the promulgation of the new Constitution, like the other laws we have had to pass as the 11th Parliament. It is now falling upon our shoulders to do so.

I wish Hon. Tonui and my other brothers and sisters who are yet to speak listened to Hon. Ochieng. I believe he stole my speaking notes. We can have a rogue Executive in this country but if the Judiciary is good and independent, then we will survive. It has been said before that we can even have a very rogue Parliament but luckily, I am privileged to serve in a Parliament that puts the interests of the people under our charge upfront. If we have an independent Judiciary, we are safe and we continue to be Kenyans.

From the beginning of this year and more so, at the level of the Departmental Committee on Justice and Legal Affairs, this is the fourth legislation concerning the Judiciary we have brought forth to push through. We dealt with the High Court (Organisation and Administration) law the other day and, at the same time, we dealt with the law relating to the Court of Appeal, the Small Claims Court, the Magistrates' Courts and today, we are talking about the Judiciary Fund Bill.

Judicial independence is a complicated animal and so, I forgive Hon. Tonui if he says it is too late to understand and appreciate what we are dealing with. Judicial independence is not about the independence of a judge or a magistrate in decision-making. It is the independence of functions, the physical and financial independence of the Judiciary. More so, the latter is very crucial; the financial independence of the Judiciary.

Looking back in history, there was a time when the best courts were only found in Nairobi. Why was it so? This is because Kamiti Maximum Security Prison and Nyayo Torture Chambers were in Nairobi and so, you had a single court into which you could wheelbarrow people as late as now and rush them to Nyayo Torture Chambers. If the magistrate was in a good mood, those people would be released and the detention order would be signed outside the court. With the Government that came in 2002, the country has seen a lot of investments in the Judiciary. As a Committee, we are aspiring for a situation where each and every county will have

a High Court and subordinate courts, if possible, in each sub-county so that justice is fairly dispensed.

However, we have had challenges. We have had cases where the Chief Justice (CJ) goes to Homa Bay Town in the manner he did in 2013, does a ground-breaking ceremony and tells the people that the High Court is coming. At that time, we had budgeted for the High Court; only for the matter to be caught up in procurement and absorption issues of Government. Then we are told that the money has gone back to the Consolidated Fund. Senator Otieno Kajwang' with whom we attended the ground-breaking ceremony with the CJ has passed on and three years later, we are putting money for the construction of Homa Bay Courts that we are being told, due to tendering requirement and procedures, we have certain problems. I hope I will not die before I see that court. The Judiciary will not continue burdening Parliament with a Budget of Kshs10 to 17 billion because we will now budget for a specific item in the Judiciary. If it is a High Court in Homa Bay, we set aside the money for it. They will be reporting to Parliament three months before the end of each financial year and also doing so to the Auditor-General so that audits can be kept so that the work expenses and progress reports are not delayed by payments of works getting suspended.

Hon. Tunoi has spoken very well. If Parliament will remember, there was a court being constructed in Bomet at an outrageous amount of money of Kshs1.2 billion, and another one being leased somewhere. In 2014/2015, when we were questioning about the accounts of the Judiciary, we never knew whether we should consult the CJ over certain matters. A house was being purchased as a residence for the CJ, but he tells us that he did not know about it. The Finance and Administration Committee of the Judicial Service Commission (JSC) has been forced to intervene on matters of administration of funds remitted to the Judiciary by Parliament from the Consolidated Fund, in a manner that even salaries of magistrates and judges are delayed for a month or two. The former Chief Registrar (Ms.) Shollei was claiming to have powers to do certain things and, at the same time, the Finance and Administration Committee also saying that they are the ones to authorise. For clarity, it is not by this legislation that the Chief Registrar is going to administer and account to Parliament and the audit office, but it is in the Constitution. This is a Fund that the Chief Registrar administers and accounts for solely so that the buck stops somewhere and we do not have an array of people we can consult over these issues.

There is something that is important in that constitutional provision that has been imported into this Bill. The people of Kenya are saying that they want the judicial arm of the Judiciary to do judicial work. We want the administrative arm of the Judiciary to do administrative work. If we are dealing with matters of finance, we have the Chief Registrar. It is important to understand that financial administration is not a function of the Chief Justice or the Judges of the High Court.

We have spent a lot of time pursuing this Bill. We want to deal with the Bill relating to the retirement benefits of judges as fast as possible. I want to tell the people of Kenya that the clamour by judges to retire at 74 years and not 70 years is caused by the fact that the Judges Retirement Benefits Bill has not come to Parliament to be passed. I believe that most of the judges who misinterpret the Constitution and refuse to retire think that a retirement age of 74 years can apply against the clarity of the Constitution. They hope that there will be a law that provides them with security out there.

The Departmental Committee on Justice and Legal Affairs should push for the Judges Retirement Benefits Bill with the same vigour they have been pushing for this Bill, so that we do

not have the Mugabe-type judges that we currently have. They are saying that they will not retire. They want to continue serving us by force.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Kaluma, do you know that you cannot mention the name of a sitting president in the way you have just done? Please withdraw.

Hon. Kaluma: Hon. Temporary Deputy Speaker, I am very sorry. I withdraw and apologise. However, I am against the idea of public officers who have been allowed to serve up to their 70th birthday and refusing to retire upon reaching that age. What is this thing that he wants to do for the country that he has not been able to do before that? I believe we are moving in the right direction. Let us have the Judges Retirement Benefits Bill so that we do not have these many situations.

As I end, the Chief Registrar will be responsible for the effective, efficient and economic use of the proposed Fund. When a building like the Court of Appeal is leased, we will have somebody to ask why he has leased it against its purchasing and why it is not in use against it being put into use.

I urge my colleagues to support this Bill. It is a well fine-tuned Bill. It will not take us much time. It has taken us a lot of time, with the Judiciary, debating its content.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): I give the Floor to Hon. Junet Nuh.

Hon. Nuh: Thank you, Hon. Temporary Deputy Speaker, for giving me an opportunity to contribute to this Bill. This is one of the progressive Bills that this Parliament is enacting into law. It is one of the Bills that will truly make the Judiciary independent.

Things go wrong in countries when people lose faith in the Judiciary, and not when they have rogue parliaments or executive. The Judiciary keeps checks and balances in other arms of the Government by interpreting the law. I served in the Public Accounts Committee (PAC) for the last three years. I remember that when a special audit was done in the Judiciary, serious financial issues were raised. They could not differentiate which funds belonged to the Judicial Service Commission (JSC) and which funds belonged to the Judicial Fund. All funds were being operated by the JSC. That brought about serious conflict of interest. The Chief Registrar said that everything was administered by JSC. That is not what was envisaged in the Constitution. Article 173 of the Constitution says that this Bill should have been there two years after the promulgation of the Constitution. If this Bill was in place, the confusion that we saw in that special audit report would not have been there. Everybody would have known which fund belonged to the JSC and which one belonged to the Judicial Fund. They say he who is given much, much is expected of him.

The Judiciary has been given a lot of money since the new Constitution was promulgated. One of the benefits that Kenyans expected to get from the new Constitution is a reformed Judiciary. Kenyans expected high value services from the Judiciary because of the new Judicial Service Commission (JSC) that was put in place, the way the recruitment of judges was done and because of the way the new Chief Justice was recruited. However, I dare say that the expectations of Kenyans have not been met. Kenyans are a bit disappointed with the performance of the Judiciary despite Parliament allocating huge resources to it.

This Bill is going to give them enough funds. If you look at the special audited accounts we discussed in the Public Accounts Committee (PAC), you will see that they were in a hurry to use the money allocated to them in one financial year. Procurement was done haphazardly so that

they beat the deadline of the end of the financial year. However, with this legislation, they are going to retain any money that is given to them in a financial year and they will plan very well without being in a hurry. When they were in a hurry in the 2013/2014 Financial Year, they started building many courts all over the country without any proper planning. We visited those courts and realised that they were in a hurry to absorb the monies that they were given by Parliament. This Bill is surely going to cure that problem where they misuse funds because they are in a hurry to absorb it so that it does not go back to the National Treasury.

This Bill also gives the Judiciary the opportunity to partner with donors and other partners who are willing to work with them and have funds in their accounts, which will be audited by the Auditor-General and reported to this Parliament. Initially, the Judiciary was only using the funds that have been allocated to them by the National Treasury. However, with this law in place, they will have an opportunity to get other partners who are willing to help them to achieve their target and to reform the Judiciary as expected.

Truth should be said that the Judiciary has devolved and gone to different parts of the country. In my country in Migori, there is now a High Court and there is a resident judge that operates from there. That is a milestone. Initially, people used to travel to Kisii and other major towns like Kisumu to get High Court services. However, now the Judiciary has brought a High Court in almost every county. That is a very good thing they have done. However, Kenyans are still grappling with the issue of corruption and judgements for sale. I do not think it is the amount of money that is given to the Judiciary that will make it independent. It is the way the judges and the staff of the Judiciary handle themselves. That is because even when their budget was increased to almost Kshs20 billion, the issue of favours being done in rulings and judgements is still going on up to today. That tells you clearly that it is not how much money you allocate to the Judiciary that will make it independent. It is other things that are really disturbing the Judiciary.

It is high time the JSC came up with mechanisms to tame those kinds of practises. It is shocking to see judges appearing before the JSC for disciplinary cases. There are disciplinary cases that are ongoing. It is disturbing to see judges who have attained, as my colleague has put it, their 70th birthday and still want to serve the country. When we were doing the approval of Justice Rawal as the Deputy Chief Justice, the issue of her age came up and this House said her age might give problems going forward. Nobody listened to that. Now the problem has come up. She is being told she is 70 years old and should retire. She still has a case in court arguing that she should retire at 74. There is no difference between a judge extending his retirement age from 70 to 74 and the President changing his tenure in office from two to three terms - like what happens in some African countries. It is the same thing these judges are trying to do. They want to change their retirement age from 70 to 74 years. What stops the President from saying: "I have gone for two terms, let me change the law and serve another term? That is how I see it. It is immoral and unacceptable.

With those few remarks, Hon. Temporary Deputy Speaker, I support the Bill.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Members, I will now call upon Hon. Priscila Nyokabi to reply on behalf of the Chair of the Departmental Committee on Justice and Legal Affairs.

Hon. (Ms.) Kanyua: Thank you, Hon. Temporary Deputy Speaker. In view of the limited time, I want to donate a minute each to the following Members: Hon. Ken Okoth, Hon. Samuel Gichigi, Hon. Onyango Oyoo, Hon. Millie Odhiambo, Hon. Nyikal and Hon. Savula.

Thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Let us start with Hon. Ken Okoth.

Hon. Okoth: Thank you, Hon. Temporary Deputy Speaker. I thank the Vice-Chair of the Committee for giving me this opportunity to support the Bill. An independent Judiciary is really important for the success of our nation in the long term. We rely on our Judiciary to exercise its independence in the delivery of justice to our people. One of the Sustainable Development Goals (SDGs) is around this.

This House has done a commendable job on four Bills around the Judiciary that have come from the Departmental Committee on Justice and Legal Affairs recently, including the Legal Aid Bill and the Small Claims Court Bill. These Bills will really impact the lives of poor people and all Kenyans in general.

I beg to support.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Onyango Oyoo.

Hon. Oyoo: Thank you very much, Hon. Temporary Deputy Speaker. I thank my colleague, Hon. Nyokabi, for donating a minute to me. This is a Bill I would have wanted to speak to thoroughly.

This Bill is in good spirit. The Judiciary needs money to enhance the quality of their services. We have a very good Judiciary but not a very good Parliament. Our Parliament has become partisan. We have people adoring parties instead of coming here to legislate independently. The Judiciary would have come in if it was effective. I think this Bill should be passed by Parliament because the Judiciary needs it.

The Judiciary needs to do something about the recruitment of judges because we recruit from lawyers who form a cluster of the most corrupt in this country. The Vetting of Judges and Magistrates Board (VJMB) dismissed some judges. There is a judge who made a very faulty judgment in Kisumu regarding the acquisition of Miwani Sugar Company by some fraudsters and then she was dismissed by VJMB. All of a sudden, the judge has been reinstated.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Your time is up. Hon. Gichigi.

Hon. Gichigi: Thank you, Hon. Temporary Deputy Speaker and the Vice-Chair. I rise to also support this Bill. Perhaps, it is the high time we looked at the Public Finance Management Act to see whether we can provide for reconsideration of budgets in situations where organisations fail to absorb money allocated to them. We can take care of this issue in the next Budget.

I also feel concerned about the judges who are extending their terms. It is high time we came up with another tribunal that will tackle issues that affect judges themselves. If a judge is dealing with an issue of retirement age and three years down the line he is supposed to be 70 years old, I think he has serious conflict of interest.

Finally, we need to separate corruption from---

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Your time is up. Hon. Millie Odhiambo.

Hon. (Ms.) Odhiambo-Mabona: Thank you, Hon. Temporary Deputy Speaker. Thank you, Hon. Nyokabi for donating time to me.

I want to support the Bill because of entrenching separation of powers and the independence of the Judiciary. I urge it becomes real independence. In Parliament, we are supposed to be independent, but we do not appear to do so in our monetary expenditure. As the

Departmental Committee on Justice and Legal Affairs considers this, I encourage that the regulations be timed so that we do not leave it open-ended. There should be a timeline for the regulations to be effected. I support. Thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Thank you Hon. Millie.

I now give the Floor of the House to Hon. (Prof.) Nyikal.

Hon. (Prof.) Nyikal: Thank you, Hon. Temporary Deputy Speaker. Thank you, Vice Chairlady of the Committee. I stand to support this Bill.

The Constitution establishes the Bill. We are just doing what the Constitution demands of us. Judicial services are key when we have problems of corruption in this country. Having a stable fund is key to their functions. This Bill establishes this Fund and takes into consideration all the legal structures in place. It is according to the Audit Act and the Public Finance Management Act. It calls upon the Chief Registrar to give reports regularly.

I am only concerned with the provision that the Chief Registrar can give the powers of the Accounting Officer to somebody else. It is okay with the authority to incur expenditure, but not accounting authority. That should remain with the Chief Registrar.

With that, I support.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Okay. Hon. Ayub Savula.

Hon. Angatia: Thank you, Hon. Temporary Deputy Speaker and the Vice Chairlady of the Committee for the opportunity. I also want to add my voice on this issue of establishing a fund for the Judiciary.

The stability and strength of a country both economically and socially depends on how strong the Judiciary is in dispute resolution. If you have a weaker institution of the Judiciary, you are killing a country. I do not see why we give powers and independence of handling funds to Governors and yet, a strong institution such as the Judiciary that holds the cohesiveness of a country does not have that independence. This Bill is a good idea.

I commend the Committee. We need to support it to ensure we have a strong institution of the Judiciary for resolution of disputes. That is whether the disputes are of elections, land or any other. That is how to ensure the cohesiveness of the nation.

Thank you.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Priscilla Nyokabi.

Hon. (Ms.) Kanyua: Thank you, Hon. Temporary Deputy Speaker.

The Departmental Committee on Justice and Legal Affairs wants to thank all the Members for supporting the Judiciary Fund Bill. We also thank the Mover who is our Chairman for bringing this Bill.

We note that there could be amendments from some of the things that have been raised by Members. We will look into that. We thank the Members for supporting this Bill and an independent Judiciary. All the speakers of today have noted the importance of the Judiciary, having it strong and the importance of following the Constitution.

Members have also noted the question of relevant judgements. As we ask for the independence of the Judiciary and the judges, we also ask them to give judgements that are in tune with the country and offering solutions when the country has problems.

The Speaker, Hon. Justin Muturi, had earlier on asked about the delay in passing the law. What happened before was that some provisions on sources of funding were included in the Judicial Service Act of 2012. In some way, the 10th House had complied with the requirements of the Constitution in certain aspects. There was need to go further and pass a comprehensive

legislation on the Judiciary Fund Bill with its own modalities and mechanisms and not to rely on the Judicial Service Act as had earlier been envisaged.

Again, there was need to cushion the Judiciary on returning of funds at the end of a financial year. That is one of the functions this Bill will serve when it is assented to.

Accountability is critical. It has remained very sad to watch corruption in the Judiciary. As we pass this law and protect the funds of the Judiciary, it is going to be very important for the Judiciary to be fully accountable. Caesar's wife must be above reproach. Those expected to jail other people for corruption must be spotlessly clean. All those things that we continue to see in the Judiciary must end with this law. We will be asking for increased and enhanced oversight on the Judiciary Fund Bill to avoid any issues of accountability.

There was institutionalization and the political parties debate earlier. Everybody who is receiving funding from taxpayers must continue to use those taxes and those funds appropriately. This is a poor country. Any fund must be put into good use. We thank the House.

I beg to reply.

ADJOURNMENT

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Members, we will not put the Question at this time. The time being 6.30 p.m., this House stands adjourned until Tuesday, 26th April, 2016 at 2.30 p.m.

The House rose at 6.30 p.m.