

NATIONAL ASSEMBLY

OFFICIAL REPORT

Tuesday, 26th July, 2016

The House met at 2.30 p.m.

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

PRAYERS

PETITIONS

(Several hon. Members walked in)

Hon. Speaker: Order, hon. Members! Those of you who are making your way into the Chamber, even if you have just come from the weekend, you can walk faster than that.

REVIEW OF GIRL GUIDES ACT

Hon. Speaker: Hon. Members, Standing Order 225(2)(b) requires that the Speaker reports to the House any petition other than those presented through a Member. I, therefore, wish to convey to the House that my office is in receipt of a petition signed by one Prof. Faith Nguru and Ms. Jennifer Karina on behalf of Kenya Girl Guides Association.

Pursuant to Article 119 of the Constitution, the Petitioners are requesting the National Assembly to amend the Girl Guides Act, Cap 220, which establishes and incorporates the Kenya Girl Guides Association.

The Petitioners state that the association as constituted under the Girl Guides Act is recognised as a branch of the Girl Guides Association, incorporated in Great Britain by the Royal Charter. The Petitioners further state the association as constituted is constrained from fulfilling its core mandate of training and development of character of girls and young women. The Petitioners, therefore, pray that the National Assembly reviews the Girl Guides Act, Cap 220 to establish the Kenya Girl Guides Association, as a body corporate with power to sue and be sued.

It is my view that this is one of those petitions whose implementation perfectly falls within the exclusive mandate of this House. Pursuant to the provisions of Standing Order 227, the Petition stands committed to the Departmental Committee on Labour and Social Welfare for consideration. I urge the Committee to engage the Petitioners and commence the process of drafting a legislation to address the prayers of the Kenya Girl Guides Association.

Thank you.

I see there is an intervention from the Member for Meru.

Hon. (Ms.) Kajuju: Thank you, Hon. Speaker. I am happy that this Petition has been brought to this House. I know that Faith Nguru and Jennifer Karina are quite passionate about girl guides and the scout movement in Kenya. After the promulgation of the Constitution, we

need to harmonise various pieces of legislation, regulations and laws to be able to work together in harmony.

It is clear that this is a law that is archaic and needs a number of amendments for it to be in tandem with the current provisions. My passion rises from my daughter who is at Alliance girls in Form three. She is a girl guide and is good in this movement and has travelled to various countries because of being a member of the Girl Guides Associates.

I believe that this is one movement that I can compare to the then National Youth Service (NYS) where we used to go. It instilled a lot of discipline within us during the time of former President Moi. Through the NYS, I appreciate what I am today. If we were to look at it and get to know what exactly to do with this legislation, then we shall be offering our girls and even the scout's movement an opportunity for discipline to be instilled in our children, since a lot of thinking goes into how we develop the mentality that we have today.

I support this Petition. I am excited that it is going to the Departmental Committee on Labour and Social Welfare. I pray that it is going to undertake all there is to ensure that we bring up a proper legislation that is going to take care of our girls as well as the scouts movement.

Thank you.

Hon. Speaker: It is not just girl guides. There is a Member for Makueni who is not a girl.

Hon. Maanzo: Thank you, Hon. Speaker, for giving an opportunity to comment on this very important Petition. It is true that we are not just talking about the girl guides but also scouts. It is good that as the Committee looks at the pieces of legislation, it also looks at the other side of the legislation because I believe that we need to. I believe the scouts' movement generally and the Girl Guides Association are very good for young people. In fact, it instils discipline and most probably that is what we need currently in the country because we have many situations where discipline is important and where students need to make sure they take care of their schools. There should be responsibility at a very young age.

I know Jeniffer Karina is very passionate and a good role model for many young girls in the country. I thank her for coming up with this Petition together with colleague. It is important that as a country we deal with the old colonial law or someday bring in new laws which conform to the new Constitution. Therefore, I welcome this move. I will be one of the Members of Parliament who, as a lawyer, will participate in the Committee dealing with legislation so that we get a good law.

Thank you.

Hon. Speaker: Member for Ol Jorok.

Hon. Waiganjo: Thank you, Hon. Speaker. I also rise to support the Petition. Indeed, the Girls Guides Act, Cap. 220 is a colonial relic. Progressively, we neglected most of the pieces of legislation that we should have seized and moved on to breathe some new life. An Act that was created by the Great Britain through a Royal Charter clearly cannot cater for the interests of our domestic situations.

I, therefore, see the sense in coming up with a Kenya Girl Guides Act to establish a board because as it were, the Petitioners say that it limits the mandate of the girl guides. I would also imagine that we need to relook at the law that is in operation in the scouts' movement. I know for a fact that there is the late Baden Powell site in Nyeri. It has never expanded. One of the reasons why it does not expand is because we do not have a stand-alone legislation or a review of the laws that were left behind by the colonialists. It behoves us as the 11th Parliament to take into consideration not just the Kenya Girl Guides Association, but also relook holistically into the laws that were created by the colonialists, and they are many, so that we factor them in our

domestic situation and come up with laws that are friendly, helpful, not oppressive and laws that do not leave us with hangovers of the colonial era. We need to liberate our minds, to review our laws and to live in an environment where we domesticate our own laws and where we bring together some legislation that fits the lifestyle of our people.

I would also urge that once this Petition goes through, we need to look at how it can attract a national fund in order to carry forward the mandate of the girl guides in the country. I am not quite sure why it has been committed to the Departmental Committee on Labour and Social Welfare.

I support the Petition. Thank you.

Hon. Speaker: Member for Runyenjes.

Hon. (Ms.) Mbarire: Thank you, Hon. Speaker. I also join my colleagues in supporting this Petition. Having been a girl guide in my secondary school days, I think this is a very opportune moment to modernize the Girl Guides Association as it were. In view of the fact that the current Act that supports them is one that has been there since the colonial days, many things have changed over time.

It is also important that as we look into this, we seriously consider having a fund that goes to the Girl Guides Association and the scouts' movement. In view of the challenges that we are now seeing facing our secondary schools, supporting movements such as the Kenya Girl Guides Association and the scouts' movement, we are able to use that platform to instill discipline amongst our young people so that we do not have situations where dormitories are being burnt and there is drug use and abuse. I am aware having been a girl guide that it instilled discipline in me as a student because of the values that were instilled in us. Because of the many seminars we held, we were taught on various things as we grew up as girls. That becomes very important. I am also hoping that the Departmental Committee on Labour and Social Welfare can take it upon itself not to just look at the Girl Guides Association Act, but also to look at the Scouts Movement Act so that the two can come concurrently and we can be able to see what fits where. Right now, over the years because of the challenges the girl-child has faced, there have been tendencies to ignore the boy-child.

I hope we will use this opportunity to do that. That is because all boys in the Scouts Movement want to take care of the boy-child. I also hope that with this Petition, we will also look at how we can cascade the activities of the Girl Guide Association closer home at the village level. I know that one of the biggest challenges that the Girl Guide Association has had is lack of enough funds to engage in their activities. The issue of having a special fund for the Girl Guide Association and for the Scouts Movement is critical and should be factored in this petition.

With those few remarks, I support.

Hon. Speaker: Homa Bay, it is your turn to present your petition.

SHOOTING OF STUDENT FROM ST. ALBERT'S ULANDA GIRLS HIGH SCHOOL

Hon. Kaluma: Thank you, Hon. Speaker. I am grateful for giving me this opportunity to bring this matter to the attention of the House.

I, the undersigned, on behalf of Mr. Fredrick Ojwando, the father and next of kin to Quinter Apondi Odhiambo, and concerned members of the public, draw the attention of the House to the following:-

THAT, on 20th May, 2016, Quinter Apondi Odhiambo, a Form Two student at St. Albert's Ulanda Girls High School, was hit in the face by a bullet fired by a prison warder;

THAT, at the time of the incident, Quinter was participating in secondary schools games at Migori Boys High School;

THAT, it is said the prison warder was seeking to apprehend an inmate who had escaped from Migori GK Prison and ran into Migori Boys High School;

THAT, Quinter was taken to Ombo Mission Hospital in Migori County and later referred to Moi Teaching and Referral Hospital in Eldoret, where her damaged left eye was removed;

THAT, on 6th June, 2016, Quinter was discharged from hospital, following the settlement of the attendant hospital bills by her parents and well-wishers through fundraising efforts and is currently at her parents' home, traumatized and abandoned by the Government;

THAT, due to the serious injury sustained by Quinter, there is urgent need to take her to the United Kingdom (UK) for specialized treatment for an eye implant and attendant surgery as such expert treatment and requisite facilities are not locally available; and,

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 Committees on Administration and National Security, and Health resolves and directs that:-

- (i) the Government caters for the costs of eye implant, treatment and incidental medical expenses for Quinter Apondi Odhiambo at the London Eye Hospital in London, United Kingdom;
- (ii) Pursuant to Article 95 of the Constitution, the National Assembly makes the necessary resolutions and directions for reparation to Quinter Apondi Odhiambo; and,
- (iii) Makes such other further order or direction that it deems fit in the circumstances of the case.

And your Petitioners will ever pray.

Hon. Speaker: Member for Suba!

Hon. Ngóngo: Thank you, Hon. Speaker. I want to support the Petition and just add that what happened to Quinter is a clear case of recklessness by the police force in terms of handling the very equipment in the name of guns that we buy for them to protect the lives and property of Kenyans. If you were close to the family of this little girl, like me, you will appreciate that this was a very sad case of irresponsibility by the police officer who shot that girl.

First, in investigating this matter, I would ask the Committee to determine what disciplinary measures have been taken against the police officer who recklessly used his gun, so that we can stop future carelessness and harming of other innocent Kenyans. This country has witnessed unprecedented cases of shooting of people by police officers as they purportedly try to stop what they call "riots", but which are in essence demonstrations. The victims of the shootings are usually little children and innocent students who happened to be going about their own business, like the case of Quinter that happened in a school compound in Migori. The response from the police officers was very careless even though they were trying to stop escaping prisoners. There was no prisoner who was escaping towards the school compound. This matter should be looked into carefully by the Committee so that action can be taken against police officers who are found to be reckless in order to avoid recurrence of such incidences.

Hon. Speaker: Hon. Members, I wish to guide you, as we continue. Let us just use the opportunity to make as brief comments as possible on the Petition. When you take so long, given that we have a maximum of 30 minutes, you disadvantage your colleagues.

Member for Chuka/Igambangombe!

Hon. Njuki: Thank you, Hon. Speaker, for giving me the opportunity to support the Petition.

Indeed, I feel for this girl. A police officer normally wears a hat with a crown of the country's emblem. Therefore, there is the belief by the public that the officers represent the Government, which is supposed to protect them. There are many intentional shooting accidents that have happened through the work of police officers as they combat riots. It is paramount that police officers are held responsible for the actions they take. The idea that the shooting happened accidentally is not an excuse to spoil the girl's life. We are talking about an eye that has been disfigured. The Petitioners want the Government to take responsibility. There cannot be any other way. Apart from the fact that it is the mandate of the Government to take care of the medical facilities of the people of Kenya, that accident was committed by an officer who was on duty. By all means possible, the Government should be able to take care of that girl. The Government should not stop at that. The policeman who committed the offence, whether intentional or accidental, should be disciplined so that this case can help to reduce the number of such accidents during the working lives of police officers.

With those few remarks, I support.

Hon. Speaker: Member for Bondo.

Hon. Ogolla: Hon. Speaker, a quick comment on this is that we have cases that could be arising out of neglect or normal crossfire. The main thing is that once there is a clear case like what we have in front of us, where it is very clear that a serviceman under the service of this Government goes ahead to commit this kind of accident, it needs to be recognized as an accident. Beyond this, some kind of action needs to be taken by the Government. The whole thing of abandoning such a matter once we accept that the shooting was as a result of crossfire, or it was unintended, then we have victims like Quinter. In my view, there has to be a proper way of handling such victims by the Government, in terms of taking care of them, rather than abandoning them like the way Quinter was abandoned. They have to meet all the hospital expenses. The little girl is yet to undergo additional medical attention. It is not right for the Government to abandon such a victim.

That is my comment, Hon. Speaker.

Hon. Speaker: The Petition stands committed to the Departmental Committee on Administration and National Security to deal with it as usual.

Hon. Members, before we go to the next Order, allow me to recognize the presence of students from Koilel Boys High School from Gilgil Constituency, Nakuru County, and AGC Sosiot Academy from Belgut Constituency, Kericho County, who are seated in the Public Gallery. They are all welcome to observe the proceedings of the National Assembly.

Next Order!

PAPERS LAID

Hon. A.B. Duale: Hon. Speaker, I beg to lay the following Papers on the Table of the House:-

Sessional Paper No.2 of 2016 on the National Slum Upgrading and Prevention Policy.

The Annual Report and Financial Statements of the Office of the Controller of Budget for the Year 2014/2015.

The Annual Report and Financial Statements of Jaramogi Oginga Odinga University of Science and Technology for the year 2014/2015.

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

- (i) The Constituencies Development Fund, Kibra Constituency;
- (ii) The Constituencies Development Fund, Embakasi West Constituency;
- (iii) The Constituency Development Fund, Kajiado Central Constituency;
- (iv) Rongo University College;
- (v) The Kenya Water Towers Agency;
- (vi) The Kenya Water Institute;
- (vii) The Kenya Utalii College; and
- (viii) The Kenya Tourism Board; and,
- (ix) The Unclaimed Financial Assets Authority.

BILLS

First Readings

THE CANCER PREVENTION AND CONTROL (AMENDMENT)
BILL (SENATE BILL NO.3 OF 2015)

THE KENYA NATIONAL EXAMINATIONS COUNCIL
(AMENDMENT) (NO.2) BILL (SENATE BILL NO.14 OF 2015)

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

Second Reading

THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION
(AMENDMENT) BILL

(Hon. Chepkong'a on 21.7.2016)

(Resumption of Debate interrupted on 21.7.2016)

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

Hon. Speaker: Please, proceed.

Hon. Chepkong'a: Hon. Speaker, the Independent Electoral and Boundaries Commission (Amendment) Bill is currently before the House for the Second Reading but as we all know, there is an ongoing parallel process that is being undertaken by the Joint Parliamentary Select Committee on Matters relating to the IEBC – a Committee which was created by this House. We do not want to cause confusion in terms of the way we want to approach these issues. We must approach these issues in a wholistic manner.

Hon. A.B. Duale: Halleluyah!

Hon. Chepkong'a: Hon. Speaker, I do not know what that "halleluiah" is about but what I am saying is this: Some people are claiming that I have seen the light. That is not true, I have always been with the light.

(Laughter)

Hon. Speaker: If not with the light, in the light.

Hon. Chepkong'a: Yes, that would be the light. I am not a light but a manifestation of the light.

(Laughter)

Hon. Speaker, in light of the ongoing, it would only be proper and fit that we postpone debate on this Bill pending the recommendation of the Joint Select Committee (JSC). So, would I be in order if I would request you, pursuant to Standing Order No. 83 read together with Standing Order No. 40(2), to reorganise today's business so that this Bill can be debated after we have received the JSC Report that is gathering views on electoral reforms?

Thank you, Hon. Speaker.

(Applause)

Hon. Speaker: Is Hon. Midiwo your seconder?

Hon. Chepkong'a: Yes.

Hon. Speaker: Hon. Midiwo, are you seconding?

Hon. Midiwo: Yes. Hon. Speaker, the Member was standing between me and you.

(Several Hon. Members entered the Chamber)

Hon. Speaker, I rise to second. They are young men and they are welcome.

I want to thank Hon. Chepkong'a. Sometimes common sense is just common sense. This is because if and when there are recommendations from the Committee, it would be prudent for us to take what we agree with as a House and have the Chair of the Committee move them by way of amendment to an existing Bill before the Floor when he is answering to the debate or during the debate. In that way, we will be using our time properly and appropriately so that it does not look---It also cures the problem of accusations that there are too many processes that are running parallel. I think it is in good taste. I want to thank Hon. Chepkong'a for seeing the light even though it is towards sunset. We can now accommodate him.

(Laughter)

Hon. Speaker: Order! Order! Relax. Hon. Members, there is no debate on this though I recognise that 14 Members had contributed. Hon. Jared Opiyo who was on the Floor had a balance of five minutes. However, because of the reasons stated by both the Mover and Secunder, it is only fair that we give the Mover of the Bill an opportunity when replying to also address some of the issues that may come from the other process.

*(Question, that Debate be now adjourned,
put and agreed to)*

Hon. Speaker: The Leader of the Majority Party, did you say no? Order! The Ayes have it.

(Debate adjourned)

(Hon. Wandayi entered the Chamber)

The Member for Ugunja, you risk---

(Laughter)

You risk seeing the door soon even after making entry. The Member for Ugunja, welcome back to the National Assembly of the Republic of Kenya. It is a very orderly Chamber. Next Order!

BILLS

Second Reading

THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) (NO.2) BILL

Hon. Midiwo: On a point of order, Hon. Speaker, Sir.

Hon. Speaker: Okay. What is your point of order? You have not put on your intervention button.

Hon. Midiwo: On a point of order, Hon. Speaker. I apologise for that. I think somebody may have helped himself to my pockets. I do not want to accuse anybody but I will be looking after this. I was trying to raise a very important issue---

Hon. Speaker: I have been worried by the way I see so many people sitting next to you. I wonder who the leader is and who is not. Everybody wants to sit around you. You better be careful of the Members sitting next to you.

(Laughter)

Hon. Midiwo: Hon. Speaker, I can accommodate the lady but for Hon. Wandayi, I will excuse him. You know he has been out of Parliament for too long so we will teach him the new rules. He is yet to know the sitting arrangements. That is on a light touch.

However, Order No. 11 is something I would like you to indulge me for a second. This is because the Statute Law (Miscellaneous Amendments) Bill is usually done on simple errors and things which are non-existent in law.

Hon. Speaker, we have rulings in this House. Looking at this Bill being proposed by the Leader of the Majority Party, I see those amendments which are proposed, especially three which are major. One amends the Industrial Training Act to affect Federation of Kenya Employees

(FKE). It will also affect Central Organisation of Trade Unions (COTU) which is the umbrella body of the majority of Kenyan workers.

Hon. Speaker, the import of this, and I can only imagine that it is trying to address mischievously matters which have been settled by court, this is where somebody wants COTU not to be in --- As you know, COTU is at loggerheads with the State, the National Social Security Fund (NSSF) and the National Hospital Insurance Fund (NHIF). Hon. Speaker - I hope the Leader of the Majority Party will agree to that – to make amendments of that nature, we need substantive amendments to the principal Acts, not miscellaneous. This formula has been used severally to do wrongs in this country. To do an amendment that will take COTU or FKE representation from NHIF or NSSF is wrong.

Hon. Speaker, thirdly is the copyrights. It affects the people on the streets. I am the one who moved an amendment to stop the Copyright Society of Kenya from stopping *matatus* and arresting *matatu* handlers. They said they were affecting our economy by playing copyright music but instead all they wanted was to collect money from them which amounted to extortion. There is need for the Leader of the Majority Party to bring several and various substantive amendment Bills so that this House can address it. If you look at what the Copyright Society of Kenya was doing, it used to be an amorphous body collecting taxes. They would stop *matatus* and also walk to all the shops in River Road, Nairobi and tell the owners that since they were playing copyright music, they needed to pay copyright fees. They would arrest people all over the country. Three years ago, on the Floor of this House I stopped that through legislation. I plead with you to go back to the rulings that have been made before this House, particularly by Hon. Kaparo and Hon. Marende which say that miscellaneous amendments cannot be used to make amendments to substantive laws.

Hon. Speaker, you cannot interfere with workers without public hearing. That is a tenet of our Constitution. I plead with you and the Government that we can do some of these things right as opposed to leading us to make noise. This is not necessary noise. If there is need to deal with COTU, FKE or have another parallel tax collector, please, let us debate it and have sufficient time to debate and amend the relevant laws.

The KRA is the only authorised tax collector. If you look at the Order Paper, we will be dealing with another issue which Hon. Duale has brought to the Floor. On this issue of people collecting monies in bettings and all that, we need to know who is collecting money other than the State. There are too many people touching public funds and the State has no control over them. I plead that you make a ruling but make it in the direction that has been made by your predecessors so that we run this House through rules and traditions that are orderly.

Thank you.

Hon. Speaker: There is a point of order by Hon. Chepkong’ a.

Hon. Chepkong’a: On a point of order, Hon. Speaker. I have been sitting here wondering what Hon. Jakoyo Midiwo is raising. If he had cared to read newspapers which I hope he does, he should know that the Departmental Committee on Justice and Legal Affairs has already filed a report. We conducted public hearings and we have a report that is duly filed.

Hon. Speaker as you know, anyone can bring any Bill to this House. Article 117(1) of the Constitution is very clear. It says: “There shall be freedom of speech and debate in Parliament.” It is his right to oppose but he has no right to say that a Bill cannot be debated. In fact, you cannot rule me out of order for bringing the business of the people of Ainabkoi Constituency to be debated in this House. That is the reason I represent them. So, it is incumbent upon Hon. Midiwo to convince us to reject this Bill. It is not in his stead to prevent us to debate the Bill.

First, we should move the Bill then he should be given the first priority to say what he wants to say. He is a leader in this House and we respect him. In fact, he should request to be number three after you put the Question. That could have been in order.

Thank you, Hon. Speaker.

(Laughter)

Hon. Speaker: The Leader of the Majority Party!

Hon. A.B. Duale: Hon. Speaker, now that I am the sponsor of this Bill, I will take a middle ground. I will not take the position of both Hon. Jakoyo and Hon. Chepkong'a.

Hon. Speaker, this Bill has been here since 2015. It is a Bill that will go to the Senate. I am sure the issues raised by Hon. Jakoyo are in place but they are supposed to be discussed in the Second Reading and opposed in the Committee of the whole House. However, with your permission, Hon. Speaker, I will ask that as we continue with the Second Reading, maybe on the Industrial Training Act, the Department Committee on Labour and Social Welfare is told to conduct a public participation and on the NHIF, the Departmental Committee on Health must do public participation.

There is a report in the House on this Bill tabled by the relevant Committee. It is the same we do with corporate. Then there is the Departmental Committee on Education, Research and Technology and the last on the Kenya Law Reform Commission. I am sure the Departmental Committee on Justice and Legal Affairs will do a report but, to step the Bill aside and forget about it is not in place.

Hon. Speaker, maybe, before we go to the Committee of the whole House, those four Committees can meet the stakeholders on the matters raised here.

Hon. Speaker May I get a confirmation from the Chair of Departmental Committee on Labour and Social Welfare. Hon. Were.

Hon. Were: Thank you, Hon. Speaker. I agree with what the Leader of the Majority Party has said because my Committee has not had a meeting on the Bill. So, I would go with what the Leader of the Majority Party has said.

Hon. Speaker: Are you saying that your Committee has not filed a report on this?

Hon. Were: We have not.

Hon. Speaker: There is this proposed amendment to the Industrial Training Act to delete the words "Kenya Federation of Employers" and substituting therefor the words "federation most representative of employer's organisations". The other amendment is to delete the words "Central Organisation of Trade Unions" and substituting therefor with the words "federation most representative of trade unions". I would have expected that your Committee has looked at this. It is very critical that, at least, those organisations are heard.

Hon. Were: Hon. Speaker, I agree with you.

Hon. Speaker: The import of the proposal here is massive. The import has far-reaching implications. It is fair that your Committee should have conducted some public hearings.

Hon. Were: Hon. Speaker, that is the right way to go so that we can deal with this matter appropriately.

Hon. Speaker: Hon. Members, I see there are several of you who want to say something. We do not really need to belabour the point.

Hon. Ng'ongo: On a point of order, Hon. Speaker.

Hon. Speaker: Member for Suba, you do not have to speak. What you want to say mostly likely has been said in different words. So, just relax. We owe it to the country. We are required, as a matter of fact, to invite the public to appear before our Committees and say whatever they have to say about each legislative proposal that is presented before the House. To the extent that this comes by way as a Statute Law (Miscellaneous Amendments) Bill but affecting a few pieces of legislation, it is only fair that the House gets the benefit of the reports from those Committees on what the public has said, if anything at all. To be fair, this is something the Committees should have done.

Indeed, the Leader of the Majority Party agrees to have it stood down for two weeks.

(Applause)

I order and direct that the Clerk arranges newspaper advertisements indicating desire for the Departmental Committee on Labour and Social Welfare to hear presentations to amend the Industrial Training Act; the Departmental Committee on Health to hear proposals on amendment to the National Hospital Insurance Fund Act; the Departmental Committee on Finance, Planning and Trade to hear public presentations on the proposals to amend the Copyright Act; the Departmental Committee on Education, Research and Technology to invite the public to give their views on the proposed amendments to the Kenya Institute of Curriculum Development Act, 2003 as amended in 2013 and; finally, to invite the public to give views on the proposed amendment to the Kenya Law Reform Commission Act of 2013 and file reports within a period of two weeks, so that nobody thinks that it is an opportunity to go and relax. The Chairs of those Committees are advised.

You do not have to go to any place outside Nairobi. I am sure the Clerk can put the advertisements even tomorrow. It is important to let the public express themselves on these proposals. It is so ordered.

The business is stood down.

(The Statute Law (Miscellaneous Amendments) Bill deferred)

THE WAREHOUSE RECEIPTS SYSTEM BILL

Second Reading

(Hon. (Dr). Shaban on 10.3.2016)

(Resumption of Debate interrupted on 10.3.2016 – Afternoon Sitting)

Hon. Speaker: Debate on this Bill commenced with the Deputy Leader of the Majority Party moving and Hon Jared Opiyo seconding. Thereafter, the record shows that the Member for Kiambu claimed to stand in her place to advance that there was no quorum and, indeed, there was none. So, you may proceed from there. It is the Warehouse Receipt System Bill, National Assembly Bill No. 12 of 2015.

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

Hon. Speaker: A point of order on this?

Hon. Wakhungu: Thank you, Hon. Speaker. I rise on Standing Order 95. This matter had been debated extensively and we have serious business awaiting us. Will I be in order to request that you call the Mover to reply?

Hon. Speaker: Did you say extensively? Unless you were not listening to what I was saying, the record shows that it was moved by the Deputy Leader of the Majority, seconded by Hon. Jared Opiyo and thereafter---

Hon. Wakhungu: The issue was the Public Finance Bill which is actually very important. I thought you would change and handle it before we come to this matter.

Hon. Speaker: Why do we not clear this? This Bill has been pending for too long. I do not even know. The Leader of the Majority Party, the issues this Bill was supposed to address touched on the last financial year's Budget. I suspect if you consider the current proposals, they may have been addressed by the Cabinet Secretary, National Treasury in this year's Budget. Unless you withdraw it, it is still part of your legislative proposals.

Hon. Sakwa Bunyasi, Member for Nambale wants to contribute.

Hon. Bunyasi: Hon. Speaker, this is one of the most important Bills in this House. We complain a lot about failures in marketing. The Member from Trans Nzoia should know that maize is suffering a lot because we have very archaic and basic marketing systems. This is one way of deepening marketing using the private sector without committing huge public resources. This is something we should have done yesterday. I pray that we hear it fully and get done with it.

Thank you, Hon. Speaker.

Hon. Speaker: I thought the Hon. Member for Nambale was contributing. You are at liberty to contribute to this Bill. I fully agree with you that it was not extensively debated. It was not actually debated, save for the moving and seconding.

Hon. Bunyasi: Thank you, Hon. Speaker. We are just at the beginning of the process. The warehouse receipts system provides instruments that transfer the risk to the principal actors in the private sector. Whereas Government stands to guarantee it, it enables risk to be shared by those who are directly involved in it.

For the agricultural system, this will be one of the most powerful instruments that will enable us reach a point at which the systems that handles a particular produce will enable other actors, like processors, have the confidence that the market is wide enough. It will also ensure that the products and goods are in a domain which you can assess. It will be clear how much of the goods are there; for how long they are there and how they move through the process. It is also a system in which other intermediaries, for example, the financial sector, assess the reliability and quality assurance in respect of the output that passes through the market. The provisions in the Act will provide the confidence the financial sector will intervene.

We have lauded institutions involved in processing, for example millers. Mumias Sugar Company was lauded for years for directly providing credit to millers. Other handlers like the National Cereals and Produce Board (NCPB) have not developed this instrument. They have relied exclusively on funding from the National Treasury. The Bill enables Kenya to move in that next line of responsibility by helping the financial sector to participate in the risk-taking.

I strongly support the provisions of the Bill. I hope that as Members debate and look through this, we can support the Bill and enforce it.

Hon. Speaker: Let us hear from the Hon. Member for Kitui Central.

Hon. Mulu: Hon. Speaker, I am not ready to contribute to this one.

Hon. Speaker: The next person on line is Hon. Richard Makenga, Member for Kaiti.

Hon. Makenga: Thank you, Hon. Speaker for giving me this opportunity. I want to contribute to this very important Bill.

The proposed Bill will establish warehouse receipting system for grains and cereals with a view to stabilizing commodity prices and cushioning farmers against price fluctuations. It also seeks to enable farmers to save money in the banks. The warehouse receipting system is a tool that will provide farmers with confidence or surety that when they take their produce to the warehouse, prices will be guaranteed. The warehouse receipting system is long overdue. It should have been introduced a long time ago.

Countries like Tanzania have conducted a pilot project of warehouse receipting for their cash crop and cashew nuts. The farmers were able to get a price increase from 2008 to 2011. They were able to earn two-and-a-half times the cost of the price when the warehouse receipting system was established. The warehouse receipting system will enable farmers store their produce soon after harvesting, when prices are characteristically low. That will allow the sales of their produce to continue over time from the harvest.

In my constituency, the Ministry of Agriculture, Livestock and Fisheries has put up a warehouse to store commodities. As it is perennially understood in our region, when maize is harvested from the *shambas* and stored in small stores, it ends up getting aflatoxin. Warehouse receipting will enable them to take their produce to the warehouse. The grains will be dried and stored over a period of time.

How will the farmers be made aware? This is a new concept being introduced in the country. However, there is no proper sensitization of farmers on how they should handle those grains. The line ministry should be encouraged to sensitize farmers on the use of that facility. This is the time for the warehouse receipting system to rescue the farmers who have been perennially affected by wastage and even loss of their products or commodities in their areas.

The warehouse receipting system will also enable the Government to quantify what quantity of grains is stored in the warehouse. It will also enable NCPB to offload some of the excess grains to the warehouse receipting agents.

With respect to the management of national security and strategic reserves, an effective warehouse system provides the Government authorities with timely and accurate information about aggregate stock of stored agricultural commodities in the country.

This Bill is very timely. It will contribute quite immensely in ensuring that farmers have money, not only in their pockets, but also saved somewhere. They will exchange their commodities for a receipt which they can use to negotiate in financial facilities and even get money in advance. Therefore, they can help themselves by paying school fees or cover any of their needs.

I support the Bill. Warehouse receipting system will also minimize the risk of the farmers' grains being affected by weevils and other pests. I would like to urge the Ministry of Agriculture, Livestock and Fisheries to fast-track the opening of the warehouse in my constituency, which is based in Mukuyuni so that my farmers can take their produce there.

Hon. Speaker: Let us have the Member for Kipkelion East. The Member for Kipkelion East Constituency does not normally sit there. Let us try.

Hon. Limo: The Warehouse Receipts System Bill is very important for this country. Agriculture is the mainstay of our economy. In fact, it has contributed to our economy for a very long time. It has been the leading foreign exchange earner.

Before I contribute to this Bill, I want to bring to your attention challenges which have faced the agricultural sector, other than those of warehousing. The tea sector has recently faced

many challenges in labour. It is high time the companies involved in tea production recognize the importance of stabilizing the market.

The other issue which is of great concern is about the flower sector. Though it has contributed to our economy a lot, we want to bring it to the attention of the Government. We want it to investigate. There are some companies which are not practising good practices. They register as small farms and yet they are not. There is a company called James Finley which has started a farm in my constituency. It is recognized as a small firm while it is managed by multi-nationals. We can consider that as fraud. We should have such legal frameworks to address such investors who are not sincere. As we talk, they have threatened to sack 600 employees who belong to Lemotit Farm in my constituency. It is risky for the economy. I call upon the Cabinet Secretary (CS) to intervene immediately because the market is becoming very unstable. My constituents are up in arms. They are going to cause a lot of mayhem. I call upon this House to support legal frameworks like this to ensure the market is regulated.

The cereals sector has faced equally serious problems. In my constituency, I have three warehouses of the National Cereals and Produce Board (NCPB). For a very long time, they have been seriously under-utilized. I want to support this Bill which will bring a structured way of trading in agricultural commodities, especially maize.

Most farmers have lost huge amounts of cereals through lack of proper storage. They keep produce in their stores for a very long time waiting for prices to improve. A receipting system will save the farmers in two ways. They can release their produce two months after harvesting. The release of agricultural produce to the warehouses will save them in terms of weight. That is because cereals become very light when they are very dry.

The other serious risk is the destruction caused by pests. Those pests have been destroying most produce of our farmers. They have caused a lot of losses to this country. Though we produce a lot of maize, we have never attained self-sufficiency because of fluctuations. You will find that there is a lot of produce or over-supply in our markets some months in the year. There is shortage shortly thereafter. The reason is a serious lack of proper storage. Introduction of this receipting system will ensure we store this maize in a proper manner.

There is lack of stability in market prices. Our market prices will be stable when we introduce that receipting system, It is because there will be a constant supply of cereals and other produce to the market. The Government will be able to release it in a timely and much organized manner. One of the biggest issues in this country is that we cannot know how much we have in store. In most cases, you will find people claiming there is a lot of stock whereas it is not there. In some cases, you will find the Government stating that we have very low produce while there is a lot of maize in our stores. If we introduce this system countrywide, the Government will get the real numbers, quantities and grades. It will help the Government seek market early because they will know when we have extra.

If the farmer is not able, willing or ready to dispose of their produce at that time, they will have an alternative recognition of their stock. As it is, you can have produce in your store but it is not useful if it is not sold because it is not recognized as an asset anywhere in the world. Once we implement this receipting system, farmers will be having receipts and they will be able to produce them to the bank to access quick credit. The farmers will be able to even access supply of fertilizer before they get the right market for their produce. In terms of helping farmers have an alternative asset, it is a very wonderful system.

I want to end this by urging the House to support this very important Bill. I urge the CS of the Ministry of Agriculture, Livestock and Fisheries to be on the look out to ensure all players

in the agricultural sector are seriously regulated. We do not want issues of Kenyans being mistreated by foreigners in the name of having tea or flower farms. We ask the Government to look at the investors, especially in Kericho County, *vis a vis* the welfare of the workers. Then, it should ensure there is stability in the market. Agriculture is the mainstay of this country.

I ask this House to support. I ask the Executive to be on the lookout to ensure that no workers are mistreated in this country. No amount of intimidation will be tolerated.

I support this very important Bill. Thank you very much, Hon. Speaker.

Hon. Speaker: Hon. Christine Ombaka.

Hon. (Ms.) Ombaka: Thank you, Hon. Speaker. I am sorry. I did not mean to contribute to this one. I will say a little bit. This is a very good Bill. We need to support it.

Thank you.

Hon. Speaker: Or you wish to support it? I hope everybody whose names appear here intend to contribute to this. Next is the Member for Emurua Dikirr. You are not on this Bill?

Hon. Kipyegon: Allow the Mover to reply so that we can go to the next business of the House. Not so many people are interested.

Hon. Speaker: There is the Member for Mbita, who wants to contribute.

Hon. (Ms.) Odhiambo-Mabona: Thank you, Hon. Speaker. I want to contribute to this Bill. Thank you for giving me this opportunity.

As we know, this country is primarily an agricultural country. Other than tourism, the mainstay of this country is agriculture. We live in a competitive world and we must have a competitive edge both locally and abroad. This is why I support this Bill because it provides a framework for structured trading in agricultural commodities. It ensures efficiency, effectiveness and integrity of the process. It also helps address marketing challenges in the sector. Internationally, this is the way to go. As the Departmental Committee on Agriculture, Livestock and Cooperatives, we have just recently returned from Italy where we were attending a meeting of the Food and Agriculture Organisation (FAO). One of the things that emerged from that meeting is that aquaculture is overtaking capture fisheries. One of the challenges that were faced is the issue of lack of regulation, lack of standards, effective and efficiency marketing, which is what this Bill is seeking to do. I know I have raised this issue with my Committee, but I want to put it on the Floor of this House for purposes of records, that not only should we do this for purposes of agricultural commodities, but this is the direction that we must go even in relation to fishing. If we do not go this direction, there are thousands of Kenyans, including Kenyans in my constituency, who are going to suffer from lack of access to food. For purposes of food security, it is important that we do not only look at this area, but we must also learn to diversify, especially because of issues of climatic change and global warming.

The only other issue I want to address in relation to this Bill is if you look at the composition of the Council, even though the Constitution provides for the issue of one-third representation, the Bill does not provide for the one-third representation for members of the Council that are not government members. I have indicated that to my Committee and I hope the amendments were taken because I have been away. So, I have encouraged my Committee and if they have not done that, I will bring an amendment to ensure that we have one-third representation from those appointed outside the Government.

I would also want to encourage that we bring an amendment that takes a zebra approach. The zebra approach provides that if the chairperson of the Council is a man, the vice-chairperson is a woman and vice versa. Only today, we have seen the great Mrs. Obama giving a very impressive speech that has raised back the Democratic Party after a lot of bashing. This is the

direction we are going. That is why the Council must ensure that if the Chair is a man, the Vice-Chair is a woman. This is the direction the entire world is going.

With those few remarks, I support.

Hon. Speaker: You are lucky. Why did you veer off the Bill into other things? Member for Muhoroni.

Hon. (Ms.) Odhiambo-Mabona: *off record.*

Hon. Oyoo: I am on the Floor. I have been given the Floor. Thank you very much, Hon. Speaker, for giving me the opportunity to speak to this important Bill. At the outset, I want to say that this Bill will add value to this country. It will advance the security aspect. We have been benevolent with serious insecurity and a lot of arms have been passing through our porous borders, thereby affecting the security and safety of our Kenyan citizenry. With proper warehouse receipting system, the security agents will be able to monitor and detect when there are illegal firearms or gadgets that can be used to cause insecurity in this country. That will be very good. Therefore, it is a step in the right direction.

On agriculture, it will serve this country well because those in charge of agriculture will be able to monitor the stock piles of grains and other agricultural produce we have so that when they want to make other orders, they will know whether the orders are what we need or they are more than what we need. It will also help for political reasons, especially among the big businessmen, more so in the Coast, who are opposed to the Government system. In the *mafia* system, things can be put there and purported to have been imported by you when you do not know about them. The businessmen in Mombasa now have a reprieve. Nobody will come and say that you brought the grains when it was opportune for them and now you are not singing in tandem with them. They cannot come and purport to say that you imported some goods or rice which was yours and they are not yours.

It will be a good system. It will also help us in the agricultural sector in monitoring inflow of illegally imported sugar into this country, which is affecting my constituency and a few other constituencies in the western and Nyanza regions. If they are well warehoused and receipted, we will know whether the so-called illegal imports and the sugar from Uganda is coming through the correct channel and if the duty is paid for. Because of lack of proper warehouse receipting, we have had a situation where a lot of sugar has been brought in under the guise of being from the Common Market for Eastern and Southern Africa (COMESA) countries, when we know that COMESA countries do not have enough table sugar for consumption in their own countries. We are wondering how Zambia can be the source of sugar for Kenya, when they do not have enough. We have been wondering how Malawi can export sugar to Kenya. With a proper receipting system, we will know whether the sugar we are getting is genuinely coming from COMESA countries or it is coming from Brazil to Kenya to spoil our market.

With those few remarks, I support this Bill. It will add value to this country.

Hon. Speaker: Member for Turkana Central.

Hon. Nakara: Thank you, Hon. Speaker, for giving me an opportunity to contribute to this Bill. At the outset, I support this Bill. It will enable us to streamline services and delivery at our warehouses. Whenever farmers take their goods to the warehouses, there has been confusion. Some of them get lost as a result of not being receipted. That brings a lot of confusion at the warehouses.

This system will curb the corruption that happens in the warehouses in this country. When some farmers go there, they have to bribe so that they can get access to the warehouse or

so that they can get ahead of others. However, this digital system will curb that issue of corruption and our farmers will get services.

I will also talk on the issue of accountability. Sometimes, the goods that the farmers deliver at the warehouses are not accounted for. Sometimes, even those managers who work there are not responsible because there are no receipts to show that farmers delivered goods to the warehouse. To avoid such situations, farmers need to be given receipts after they have delivered their goods to the warehouse.

Another issue is about the standards. Sometimes, the goods we deliver to the warehouses do not meet the standards that the export goods are supposed to have. For us to have such kind of standards, we need to have receipts which will also show the standards of the goods that were delivered at the warehouses.

Another issue that this system will sort out is the storage. Some farmers take their goods to the warehouses for storage for a particular time and collect them when the prices are good. However, our storage system in this country is very poor. With the receipts system, we will deal with the problem of lost goods in the storage facilities.

With those few remarks, I support.

Hon. Speaker: Let us have the Member for Rarieda, Hon. (Eng.) Gumbo.

Hon. (Eng.) Gumbo: Thank you, Hon. Speaker. Like my colleagues have said, proper warehousing will help us address some of the issues facing this country particularly on food security. I have stated before, and I want to state again, that one of the biggest reasons we have food shortage is not because of low production levels but because of poor storage and distribution. Warehousing forms a major part in the distribution network. Whether it is in terms of food security or imported goods, I think streamlining the warehousing system in this country will go a long way in addressing many issues affecting this country.

I have looked at the Bill and I intend to propose some amendments at the Committee stage. This is an approach that will address some of the issues that we are facing. It is a step in the right direction.

With those few remarks, I support.

Hon. Speaker: The Member for Kwanza, you have the Floor.

Hon. F.K. Wanyonyi: Thank you, Hon. Speaker. I want to take this opportunity to add my voice to this Bill. It is a progressive Bill. For those who do not know, what happens is that one takes goods to the store and is given a serialised receipt. In our context, it will be a receipt made by De La Rue. You get a particular company that produces those receipts. After taking your goods and agricultural products to a store, you will keep the serialised receipt that you will be given. It has worked well in a country like India. I happen to have seen the system in India.

First, they established a Warehouse Receipt System Council with minimal personnel. There is a Chief Executive Officer (CEO) who coordinates all the transactions in the country, and a secretary. In India, a secretary is not someone who works in the Government but in a private enterprise. They carry out inspection of all the receipts and so goods are not necessarily moved.

The advantage of this is that the receipts can be used as a title deed. You can do business without moving goods. That lacks in our country. This system should be introduced and I hope we can fasttrack this Bill.

It creates employment because there is a lot of movement of goods. For example, if an area is short of certain food like maize, you do not have to move goods to that area. For instance, if you have a warehouse in North Rift, Kitale or Kwanza, all you have to do is to ask if they have

that quantity of goods and then you trade. Once the receipt has been moved to the new owner, it is again registered in the Central Bureau. It is like a stock exchange. It is an advanced system and we should embrace it so that goods do not have to be moved, so that you can only trade using a telephone. It is like the Nairobi Stock Exchange (NSE) system. If you are in Mombasa and you need maize, beans, rice or wheat, all you need to do is contact the Central Bureau, which is like a council to give you information on the available goods, which are then brought to where you are.

We have very poor storage in this country. Yesterday, we heard the National Cereals and Produce Board (NCPB) complaining before the Committee that some cereals are moved to some areas and since the storage is too bad, they rot within four or five months. This system will have a warehouse that is inspected and must meet minimum requirements. These stores are normally commercial and their standards are very good. Once the goods are moved and you have the receipt, your goods can stay for four or five years without any problem. Storage of goods will be maintained with this system.

Farmers will not have to worry because there are inspectors who go round making sure that farm inputs and standards of the cereals are maintained because the Workshop Receipt System Council has personnel who maintain standards in the whole country. There are also agriculturalists and agronomists who are trained. The extension officers ensure that minimum requirements for producing maize and other crops are met. We have had cases of people complaining of poor fertiliser and seeds. This Council will provide the minimum standard that farmers must meet. I think we should embrace and fast track this Bill so that we can have that system. We have several stores in this country such as the NCPB which are all over the country which will be used. This is because the NCPB has licensed and inspected stores. This system is good and we should approve this Bill.

Those who are going to operationalise this Bill should benchmark with India and New Zealand, which have very good Warehouse Receipts System. We should replicate this system in our country so that we can move forward as an agricultural country. I hope people will understand the meaning and importance of this Warehouse Receipts Systems Bill so that we can move our country forward.

With those few remarks, I support.

Hon. Speaker: Let us now have the Member for Uriri.

Hon. Kobado: Thank you, Hon. Speaker for this opportunity. This is an extremely important Bill. In November last year, I had the opportunity to attend a conference in Lima Peru on Parliamentary Front against Hunger. At this conference, it was observed that between 20 to 50 per cent of the harvest in developing countries go to waste. Post-harvest risk could be reduced if warehouse receipts system was put in place. Post-harvest risk includes contamination by micro-organisms and physical damage. A lot is wasted. If you look at the value chain, you will realise that from production in the field to putting food on the table, there is a huge amount of waste that could be looked at and corrected by putting in place this particular system. There are processes that take place before food is put on the table. We have harvesting, handling, storage, processing, transportation and marketing. This will create a whole sector for employment opportunities for the youth, apart from setting standards which will be necessary for the provision of products that are competitive.

Both quantitative and qualitative losses normally occur between harvest and consumption. Therefore, this Bill is a reform strategy for mitigating hunger and improving food security. This Bill will not only assist agricultural commodities but will also be used in other areas, where production and processing takes place. An inventory will be kept if a particular

product is semi processed. There are costs which are associated when you keep inventory. These are costs of deterioration, pilferage and wastage. If this system was put in place, all these could be avoided.

Hon. Speaker, small-scale farmers in this country have suffered a lot, in terms of lack of competitiveness, because of the fragmentation of the land that they use. There are third parties who come in, and take advantage of small-scale farmers. Therefore, this Bill will provide or mobilise credit for small-scale holders so that after harvest, their commodities will be taken to warehouses where receipts will be issued. These receipts can be used as collateral to obtain credit from the bank, so that they can purchase input to prepare the land for another harvest. Apart from that, there are price fluctuations when the small-scale farmers harvest. Normally, the other traders take advantage of price fluctuation. They buy products at exploitative prices. So, if these storages are there, the small-scale farmers will store their products until a time when they will compete with large-scale farmers.

This Bill will also facilitate regional trade through harmonised commodity standards. This is to do with quality. If the standards are harmonised across the region, they will be met. This will allow such commodities to be exported to other countries at rates that are competitive. The adoption of post-harvest best practices can take advantage of this warehouse receipts system.

Lastly, the Bill will improve the quality of agricultural commodities. After harvest, there is cleaning, drying, packaging, storage, dispatching and marketing of commodities. If this raft of activities is not properly handled, we will end up with a situation where there will be a lot of wastage. Therefore, this Bill will improve productivity from the farms.

Hon. Speaker, with those few remarks this is an important Bill, and I strongly support it.

Thank you.

Hon. Speaker: Before we proceed, allow me to recognise the presence of pupils from Kabati Primary School, Naivasha Constituency, Nakuru County in the Speaker's Gallery and those from Ali Kima Integrated Academy, Embakasi Central Constituency, Nairobi County; Ndung'u Girls Secondary School, Limuru Constituency, Kiambu County, and PCEA Kiriani Junior School, Maraa Constituency, Tharaka Nithi County.

They are welcome to observe the proceedings of the National Assembly.

(Applause)

The Member for Bomet Central, you have the Floor.

Hon. Member: He is not in the Chamber!

Hon. Speaker: Then let us have the Member for Kiharu.

Hon. Kang'ata: Hon. Speaker, allow me to support the Warehouse Receipts System Bill.

Presently, our warehousing system is not proper. It is a system that is devoid of professionalism. It is also a system that is not accountable. It is outdated. This Bill will create systems and ensure that once a produce has been harvested, the warehousing is professionalised. It will also create systems to ensure that farmers do not lose their produce, like it is happening in this country.

Agriculture contributes about two-thirds of all employment opportunities in this country. We are still a small-scale agricultural society. We are yet to convert into a large-scale agricultural society. I strongly believe that for a country to move forward, we need to entice people to turn into large-scale farming. I will give a good example of a country like Britain where about 15 per cent of its citizens are farmers. It is only 85 per cent of its citizens who live

in urban cities. You can see that agriculture needs to be modernised by ensuring you have larger parcels of land and systems. Therefore, the key import of this Bill is to help our country to move from the traditional forms of warehousing to modern forms that are acceptable to other people who may be included in this sector.

If you look at the entire value chain of production of agricultural products, you will find that there are several components which I will be proposing we put in place through legislation. One of the issues is the current debate whether we should have maximum and minimum ownership of land in this country. I know that one is a constitutional provision, but I am very fearful that if we cap ownership of land whether national or not, it will affect our country.

Zimbabwe is a country which produced many agricultural products for export prior to President Mugabe's policy of indigenisation of land. The effect of that policy was to wreck the agricultural sector. Therefore, if you look at this Bill and the traditional approach to land and generally agriculture, you will realise that one of the key advantages is to bring that modern aspect of agriculture. As it has been pointed out by one of my colleagues who submitted earlier, warehousing reduces the amount of crops or produce that is lost prior to that produce being taken to the market.

The Kenya Revenue Authority (KRA) will now use this Warehouse Receipting System to track produce and it will create both positive and negative effects. I strongly believe for us to boost our agricultural produce, we do not need to overtax our agricultural sector. We are known to be one of the highly taxed societies. Therefore, it is good for us to have a more efficient tax collection method which this Bill is proposing to bring to the agricultural sector. On the other hand, I would not want it to have a negative effect. Once we establish the system, we will give people better tax incentives, so that they can invest in the agricultural sector.

Hon. Members need to know that warehousing is much bigger than issues relating to agriculture. There are several items that can be kept in a warehouse.

The industrial sector and various distribution sectors deal with warehousing. We also have some service providers who have established warehouses. Therefore, as we discuss this Bill, let us also come to that realization that warehousing is not strictly an issue of the agricultural sector. This is because even other sectors have warehouses.

With those remarks, I support this Bill because it is trying to modernise our warehousing system. This is a good way of illustrating that we are modernising our society.

Thank you, Hon. Speaker.

Hon. Speaker: I had indicated before that all the other Members are not contributing. So, the Mover is now called upon to reply.

Hon. A.B. Duale: Thank you, Hon. Speaker. First, I want to thank all the Members who have contributed to the Warehouse Receipts System Bill, 2015 which is very important.

Basically, this Bill provides a legal framework for the development and regulation of Warehouse Receipts System mainly for agricultural commodities. It talks about the establishment of a Warehouse Receipts System Council. It also addresses marketing challenges which are associated with the cereals and the grains sub-sector in Kenya.

The Bill has also addressed a number of issues, mainly dealing with the establishment of Warehouse Receipts System Council, inspection and licensing of warehouse receipts. It deals with obligation and rights of warehouse operators within our country upon the receipts. It also deals with negotiations and transfers of receipts and many others. Without much ado, I want to thank all the Members. I am sure all the issues which they have raised will help in improving this piece of legislation when it comes for the Third Reading.

I beg to move.

Hon. Speaker: Hon. Members, for some obvious reasons contained under Article 121 of the Constitution, we will skip some procedure and proceed to the next Order.

THE PUBLIC FINANCE MANAGEMENT (AMENDMENT) BILL

Hon. Speaker: The Leader of the Majority Party, you have the Floor.

Hon. A.B. Duale: Thank you, Hon. Speaker.

I beg to move that the Public Finance Management (Amendment) Bill 2015, be now read a Second time.

This is a very important Bill and it is one of those Bills that were part of the 2015/2016 legislation. I hope we conclude the debate on the Second Reading today so that we can bring it for the Third Reading next week. This is because it will go to the Senate.

The principal object of this Bill is to amend the Public Finance Management (PFM) Act No.18 of 2012, the main reason being to ensure its smooth implementation. These amendments have been formed at the backdrop of the lessons learnt during the implementation of the PFM Act, 2012, at both levels of Government in terms of basic financial management.

Therefore, this Bill demands that we need to amend our laws to reflect on the realities that we face, and further to facilitate efficient and effective service delivery to the people of Kenya.

The proposed amendments to this Act adopt an approach to financial management focused on outputs and responsibilities. Basically, it will deal with the use of prudent financial management which is focused on outputs and responsibilities. Therefore, it gives a broader strategy on enhancing prudent public finance management in the public sector.

Clause 1 of the Bill sets out the short title and the commencement of the proposed Act. Clause 2 of the Bill proposes to amend Section 2 of the Act. This is just to clarify the definitions of some words like “National Government Entity and Security,” “Treasury Single Account” and insert a new definition called “Government-to-Government Loan”, which are used in the Act as technical phrases.

As I said earlier on, this Bill will go to the Senate because it also touches on the county governments in their financial management system.

Clause 3 proposes to amend Section 5(1) of the Act by including Parliament in the approval process of the declaration of county government entities. Therefore, there is a very specific role which is being given to both Houses of Parliament, in the process of approval and the declaration of county government entities.

Further, Clause 3 proposes to amend Section 5(4) of the Principal Act, by including and giving the County Executive Committee (CEC) certain powers in the approval process where a county government entity ceases to be a county, in accordance with this Act.

At the outset, I want to tell the House that this Bill is fundamentally important as we approach the general election, on how we deal with matters of public resources. What measures can we put in place to safeguard county government resources in the event a Governor loses election? The same PFM Act provides a safeguard to Members of Parliament as far as the usage of National Government Constituencies Development Fund (NGCDF) is concerned.

Clause 4 of the Bill proposes to amend Section 8 of the Act. Basically, it wants to align the provisions in this section with the role of the Senate as provided for under Article 189 of the Constitution.

Therefore, the amendment to Clause 4 gives more strength and powers to Section 8 on the role of the Senate in overseeing county governments. This Bill further proposes to include the Cabinet Secretary (CS) responsible for matters relating to finance in carrying out the functions provided under the Section, for the purpose of guiding the Senate and other players, on the implementation and moving of resources from one county to another *vis-a-vis* the proposals that are always made in the county allocations.

This Bill, as I said earlier on comes at the backdrop of the three-and-a-half years implementation matrix of county governments. This Bill wants to seal all the loopholes to make sure that prudent financial management is attained, more so as we approach the general elections.

Clause 5 of the Bill proposes to amend Section 10 of the Act to enable county assemblies to request the Parliamentary Budget Office (PBO) for capacity building where necessary. This is very important and I have said it. When we established county assemblies, we never thought of establishing very important technical arms of the county assemblies. Today in the National Assembly we have a fully-fledged PBO, even more powerful or close in terms of technical capacity to the National Treasury. We have very strong technical offices in the name of Legislative and Legal departments. So, we must amend Section 10 of the Act so that these Members of the County Assemblies (MCAs) who are subjected to budgets and Bills but have no technical capacities can get support, on request, from the PBO when and if necessary.

Clause 6 of the Bill proposes to amend Section 13 of the principal Act by deleting the words “Cabinet Secretary” since a Cabinet Secretary cannot delegate duties under his or her watch to himself or herself. Basically, the role of the CS in that section is, again, defined. Clause 7 of the Bill proposes to amend Section 15 of the Act so as to restrict the provision of this section to only the national Government. There is a lot of alignment in terms of implementation of the Public Finance Management Act.

Clause 9 proposes to amend Section 24 of the Act so as to provide for the role of the National Treasury in specifying the accounting procedures, systems and the role of the Auditor-General in auditing the accounts before submission to Parliament. This is in line with international best practices. Now that we have a new Public Audit Act and two levels of government, Clause 9 is amending Section 24 in order to provide a certain role for the National Treasury in specifying the accounting procedures that can be used in the national or county governments, and the role of the Auditor-General in auditing accounts of these governments. Something very peculiar is happening in the pastoral areas; auditors do not even go there. I am told I do not know how true it is that when the Auditor-General or the Ethics and Anti-Corruption Commission (EACC) send officers to Mandera, Marsabit, Turkana, Garissa or Wajir, they are told there is a likelihood that *Al Shabaab* will be in the area, and so they do not go. Some county government accounts have not been audited because fear has been instilled. This is something very strange. The same auditors go and audit the national Government and the NGCDF in our constituencies, but when they are sent to a county government, they are told that there is serious likelihood of cattle rustling, *Al Shabaab* and highway banditry. I think that should not be the case.

Clause 10 of the Bill proposes to amend Section 35 of the principal Act so as to mirror what is provided under Section 125(1)(c) of the Act. Basically, this is to facilitate the preparation of a comprehensive estimation of national Government revenue and expenditure. I am just picking the key highlights of the clauses.

Clause 12 of the Bill proposes to amend Section 39 of the Act to mirror the language used under Article 222(1) of the Constitution to avoid any contradiction. Clause 13 of the Bill is

very fundamental because it proposes to insert a new Section 39(A) to the Act to provide for the process of approving expenditures before Budget Estimates are approved by the National Assembly. That new section gives us a process in which we can approve expenditures before the Budget Estimates are provided to the National Assembly. What does this do? This is just to facilitate Government expenditure, especially during the year of election. This is where I want Members to be keen. How do we protect the budget allocations we give to the national and county governments in an election year? This is to facilitate Government expenditure especially during an election year or when Parliament is unable to approve a vote of account at the beginning of a financial year.

Article 222 of the Constitution does not contemplate a situation where the National Assembly does not approve Budget Estimates before the end of a financial year. That Article does not anticipate a situation where the National Assembly will not be there to approve the Budget Estimates at the end of any financial year.

Article 222(1) of the Constitution authorises the National Assembly to approve the withdrawal of money to meet the national Government expenditure through the Appropriations Act and only when the Budget Estimates have been approved by the House. What happens if the Appropriations Bill has not been assented to by the President at the beginning of a financial year? An interpretation of this matter has already been issued by the courts. The Constitution does not clarify what happens in the event that the National Assembly has not approved Budget Estimates at the end of a financial year. This is a catch 22 situation. The elections will be in August and the Budget Estimates, according to the Constitution, must be approved around June next year. So, what happens if there is no quorum here or there is nobody in the House? Maybe it is only the Speaker and the Leader of the Majority Party around. This Bill is very important.

Experience in other countries suggests that such a scenario may occur. For example, in the United States of America, it happened during the second term of President Bill Clinton and this resulted in a complete shutdown or scale down of various Government services or offices. It should be remembered that under Section 48 of the repealed Constitution of Kenya, Parliament had minimal powers to alter the Executive's Budget proposals. Naturally, therefore, the risk of a deadlock between the Executive and the Legislature on the Budget Estimates was minimal.

Under the current Constitution, however, the National Assembly has been given significant powers to amend the Budget proposals of the Executive. The budget-making process is now a function of the National Assembly. We can amend the Budget proposals of the Executive. This, therefore, suggests that differences between the Executive and the Legislature on the Budget Estimates will be unavoidable and are likely to arise every time. The increase in legislative powers to amend the Budget and the absence of a provision in law for a provisional Budget increases the risk of a deadlock leading to non-approval of the Executive's Budget and, therefore, a shutdown of Government services.

Clause 13 proposes to introduce a new Section 39(A) of the Act. That is one of the most important clauses. Further, research indicates that the risk of a deadlock increases in countries such as ours with a presidential system. With a multiplicity of political parties, additional complications arise if the Deputy President belongs to a party different from that of the President but, for now, I want to confirm that the Deputy President belongs to the same party as the President. In the unlikely event, as CORD wants to push us to a government of national unity, which we will not accept, the provisions are not there, we need to be careful.

Hon. Speaker, if Hon. Raila becomes, maybe, the second or third Deputy President, - I am not saying so and I do not want the media to quote me--- I am not saying that there is a

likelihood, but from research that can happen. That is one complication. So, the whole of Clause 13 talks about a deadlock. Before I leave that, I need to say that if this matter is not resolved and the country has to go for an election, how can the election be funded without an approved budget? So, it is a big complication. Let us even say that the country shuts down, Parliament is not there and we go for an election. The question is: How will that election be funded without a budget? We should remember that governments are expected to ensure continuity of service delivery to citizens and avoid suffering of citizens. That is a cardinal rule in the Constitution.

This is the reason why countries around the world provide for revisionary budgets which is what the proposed Section 39(a) in the Public Finance Management (PFM) Act seeks to do. That is my conclusion.

Section 39(A) is basically creating what in other countries is called “revisionary budgets”. Revisionary budgets define the cost of not approving budgets by spelling out what happens should the legislature’s authorisation be delayed beyond the commencement of the financial year. So, the provision of that element we are trying to bring is to save that unlikely scenario which the framers of the Constitution did not anticipate.

The National Assembly has significant powers over the Budget and can extract concessions in the extreme way the Executive Budget proposal takes effect as is the case in France. There are a number of countries with this.

As I finish, Hon. Speaker, allow me to table this document because it has been done by experts both in our Budget Office and the National Treasury so that Members can use it as we continue with the debate.

Clause 14 of the Bill proposes to insert a new Section 42(A). This again provides for the process of approving expenditure before county allocation of revenue is approved. So, we have now shifted to the county governments and the Senate. This is to provide a national legislation on the basis of which the Controller of Budget may authorise transfer of funds to county governments to incur expenditure. The delays in approval of the Division of Revenue Bill and the County Allocation of Revenue Bill by Parliament have been experienced over the last three financial years. We have proposed a provision to allow for the authorisation of revenue transfers to county governments prior to approval of these two very important Bills.

So, what happens if both Houses decline to pass the Division of Revenue Bill and the County Allocation of Revenue Bill? What happens to county governments if it is delayed? The delay in enactment of the two revenue Bills is likely to affect service delivery in our county governments. If measures are not put in place for the lawful way of allowing county governments to access equitable share of revenue, as provided for in law, then the approval of these two Bills is awaited.

I am happy that the Deputy Leader of the Minority Party is here. On my table I have a serious allegation of misappropriation of funds from Siaya County. I do not know how it ended up on my table. There are serious allegations of misappropriation. I am sure they must have been sending it to all Government agencies. I found it this afternoon on my table and I went through it. You cannot imagine what goes on in that county. I thought I come from the worst county in the country. I have realised I am among the worst because Hon. Abdikadir will agree with me that as we sit here, we have no budget.

Our governor has been out of “circulation” for six months. In fact, very soon, we will go to a police station to ask where our governor is. We only see letters from him sacking his County Executive Committee (CEC) members. Last night he sacked his CEC for Finance. After I saw what is happening in Siaya County, I realised we are many in this problem. This law will help us.

Definitely most of them are going home but, as they go, how do we make sure that they do not go with public resources or taxpayers' money? That is why this Bill is very important.

Clause 15 of the Bill proposes to amend Section 52(2) of the Act to provide for delegation of powers to execute loan documents by the CS to accounting officers. Clause 16 of the Bill proposes to amend the same. Can a CS delegate his powers to accounting officers to deal with matters of execution of loan documents?

Clause 17 of the Bill proposes to amend Section 66 of the principal Act so as to include monitoring of non-financial performers. This is basically important in linking financial resources to actual output achieved whereas Clause 18 of the Bill proposes to amend Section 68 to, again, clarify the role of the CS for relevant entity. This is a very important Bill. The most important was on Clause 13 which I spent a lot of time on. This is another very important one. I want Members to go with me.

Clause 37 proposes to amend Section 123(3) of the Act to remove the requirement to submit county government debt management strategy to the Commission on Revenue Allocation and intergovernmental budget and economic--- I was wondering why that is removed. This is one amendment that we need to disagree with the CS because counties are now wallowing in debts. There are contractors everywhere. A question that must be asked is whether those pending bills are transferable from one government to another or from one governor to another. In fact, we must amend it further and put a very strong system on how to provide the county government debt management strategy.

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

*(The Temporary Deputy Speaker
(Hon. Cheboi) took the Chair)*

More fundamentally, Hon. Temporary Deputy Speaker, these pending bills must be verified before some governors go to elections. Is it true that these pending bills are genuine? They are now issuing letters of contracts in all manner of places; in bars, in churches and in mosques.

In my county, the biggest contract is the fencing of graveyards. You are told to go and look for a graveyard somewhere, fence it and you are given money. I am sure there is no county which does not have a pending bill of between Kshs3 billion and Kshs10 billion.

Clause 39 of the Bill proposes to amend Section 126 of the Act so as to provide a linkage plan being referred to Section 125. For you to understand this amendment, it is important that the Office of the Clerk provides the principal Act to members. You need to look at both the principal Act and the amendment. The amendment under Clause 39 proposes to extend time to allow county governments to prepare their annual development plans. I want to pick on the key highlights.

The Public Finance Management (Amendment) Bill of 2015 is firmly anchored on Article 201 of the Constitution. That Article gives effect to the principles of public finance as enshrined under the Constitution. In particular, the Bill provides for openness, accountability and public participation, which is missing in the county governments. I am sure many of us, including Hon. Jakoyo, do not want to become governors.

However, we appropriate money on behalf of the people of Kenya. We play a key role and must follow each and every penny that goes to the people of Kenya and account for it. There

must be openness, accountability and public participation. The public must be involved. There must be prudent and responsible management of public resources.

Finally, there must be responsible financial management and clearing of fiscal reporting. What happens in county governments? I thought the Budget and the Appropriations Bill we pass in this House are what guides the Cabinet Secretary for the National Treasury in allocation of projects. The same is replicated in the county government. What has been passed, through public participation by county assembly, must prevail. You will find that in a county, the governor wakes up one morning and says that he wants to buy a property and yet it is not in the budget; that property has not been budgeted for and is not in the Appropriations Bill. If that is not stopped, governors will now finance political parties. They will finance candidates. In the event that the governor loses, who will be accountable for the budget in 2016, 2017 and 2018? This House is under obligation to safeguard budgets in both the national Government and county government.

How do we safeguard the Budget for the 2017/2018 Financial Year? As we go into elections, we want to know where we need to invest core services so that in the event of a new Government in the national arena, we will know that the budget has been properly utilised according to the law.

In the event that a governor loses, then the 2017/2018 budget for that county must also be secured and safeguarded within the reading of Article 101 of the Constitution on openness, accountability, public participation, prudent and responsible management of public resources, and responsible financial management and clear fiscal reporting.

This is a very important Bill. If we finish it today, it will go to the Senate. I will ask the House Business Committee (HBC) to bring it for the Third Reading, either on Tuesday or Thursday, next week so that this Bill is enacted into law immediately. Those of us who served in the last Parliament know that the NGCDF law is very clear. It reaches a stage where you cannot use the funds and your account is frozen as we approach a general election.

With those many remarks, I ask Hon. Makali Mulu, the Member for Kitui Central, who is an expert in this area, to second.

I urge my colleagues to prepare amendments to make sure that we protect public resources as we head towards the general election.

The Temporary Deputy Speaker (Hon. Cheboi): Proceed, Hon. Makali Mulu.

Hon. Mulu: Thank you, Hon. Temporary Deputy Speaker. Let me start by thanking Hon. Duale for moving this Bill. The area of public finance in this country is very important. That is why in the Constitution there is a whole chapter on Public Finance. This is Chapter 12.

At the same time, the issue of public finance makes both the CORD and Jubilee to work very hard to be in Government because while in the Government you are able to control public finances.

These amendments are very important to this country. We have implemented the Public Finance Management Act since 2012. That is about three years of implementation. For the county governments, we started in 2013 after the general elections, which is about two-and-a-half years of implementation.

Since I do not have as much time as the Mover, I just want to pick some of the highlights which will help us move forward in terms of improving public finance.

Under Clause 7 of this Bill, the amendment tries to make sure that the 30 per cent requirement for the Development Vote is maintained for the national Government. Surprisingly, it deletes that requirement for the county government. This is a serious omission.

At the county level, we need more control on how much resources should go to Development as opposed to Recurrent Expenditure. A situation where the Bill proposes that we exclude county governments from this requirement to have a minimum of 30 per cent for Development Vote is something we should change as a House. This will ensure that both the national Government and county governments spend, at least, 30 per cent of the resources allocated to them on development.

The other important issue is approving public debt. The current law has a provision where the county government can authorise public borrowing at that level. This Bill takes that role away from the county assemblies and county governments, and gives it to the national Government. This is very important. It is in line with the Constitution which requires that for any public borrowing, the National Treasury must guarantee that borrowing. The fact that we are leaving county assemblies and county governments out of that authorisation is very important for this country for purposes of how we manage our public debt.

The other issue is on disbursement to county governments. Currently, the law requires that we do it quarterly. The amendment proposed in the Bill is that it is done monthly. The whole issue of disbursing funds monthly is important because in that case, they will get money every month and they can plan for its implementation.

Quarterly disbursement of funds is at times tricky when you look at the cash projections in terms of collection. The money we spend is collected by the Kenya Revenue Authority (KRA) on a monthly basis. Kenyans pay their taxes on monthly basis not on a quarterly basis. On that note, making the disbursement on a monthly basis makes it easier for the National Treasury to release resources.

Another important amendment is the issue of having the disbursement schedules ready by 15th May so that it allows the National Treasury to plan for disbursement. That is another important amendment. Currently, our budget is in terms of revenue and expenditure. Clause 10 says that in addition to making estimates in terms of revenue and expenditure, it is important that we also make estimates in terms of borrowing levels. This appreciates the fact that every year, our national budget is expected to register some deficits. Even as we budget, it is important budgets clearly indicate the estimated deficit. This clause appreciates the fact that we will be registering deficits as we move forward. They must be estimated as we do our budgets.

Hon. Temporary Deputy Speaker, another important aspect is under Clause 14 which talks about votes on account for county governments. For example, for the last three years, the National Assembly has not approved the Division of Revenue Bill and the County Allocation of Revenue Bill on time, as per the requirements of the existing Act. We have had delays every time. It is last week when the President assented to the County Allocation of Revenue Bill. This was done so that we do not leave a situation where county governments have no alternative to get resources until important Bills are approved by Parliament and assented to by the President. This amendment allows votes on account so that in situations where there are delays, the county governments can withdraw or access 50 per cent of their budgets as we process the Bills and get the President's assent.

Clause 17 says that in addition to monitoring the financial aspects of our budgets--- This is what has been happening for many years. If you look at the reports of the Controller of Budget and the Auditor-General, you will find that they are mostly talking about how money has been spent. If you look at the Office of the Auditor-General and the Controller of Budget in terms of monitoring budgets, you will also find that they tell us more on financial reports. This demands

that even as we do the financial monitoring of our budgets, it is important we monitor the non-financial aspects of the Budget.

We have shifted to programme-budgeting. That means we are more on outputs, outcomes and the targets we achieve. As a result of that, we will compare money spent against the output. In that case, you can have a fairly good assessment of the Budget. This is very important and will help this country in monitoring the Budget.

Clause 32 is tied to Clause 1. The county assemblies have been given the mandate to authorise the thresholds of borrowing, the way we do at the national level. County governments will not just borrow. They will have thresholds on how much they can borrow.

Out of these amendments, Clause 33 is the most important. It introduces what we call the “Treasury Single Account”. You will realise that counties have separate accounts in the Central Bank of Kenya (CBK). We are given the balance in those accounts. At times, you will find the balances are in billions. The Government has billions in the CBK through county governments. However, it cannot access that money. It ends up borrowing money from commercial banks at very high interest rates while it could use this money. The county governments could get the money when they are ready. The issue of single treasury account is very important for this country. It is going to help us.

I wish I had more time, but let me conclude. The element which we need to bring in this Bill in terms of amendments is the issue of how we manage money collected at the county level. Counties collect money every time, but there is a kind of dark area in the way we manage that money. We need to come up with a law that can take care of the dark area we are talking about.

The other area is the issue of re-voting their budgets. Some Governors have become very lazy. They do not spend money every financial year and they want to re-vote. They take advantage of the fact that they have that window of re-voting and yet Kenyans are not getting value for money. That is another area we need to see legislation so that implementation takes place even as we allow them to re-vote.

I support this Public Finance Management (Amendment) Bill.

Thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Cheboi): Very well.

(Question proposed)

I will give the first shot to the Member for Bomet Central.

Hon. Tonui: Thank you, Hon. Temporary Deputy Speaker for this opportunity to make my comments on this Bill.

It is unfortunate it has been tabled without a report from the Departmental Committee on Finance, Planning and Trade. I intend to go towards the direction of opposing it. It is a very important Bill which required to have been digested by the Departmental Committee of this House extensively. There are very many clauses of this Bill which are very critical and intended at making this House very irrelevant.

One of them is on the process of approval of the Budget. The Executive will now be able to get access to funds even before the National Assembly approves. Then, what are we here for? Do we simply come to sit here while some of our key functions have been taken by other institutions? That is not a good thing. To take Parliament to be a very irresponsible institution and that others are more responsible than the people sitting in this House is not a good idea. The Hon. Members here represent the people on the ground, and they are the ones who are more

responsible than the Executive. That is because they are elected. This clause is not in the best interest of the provisions of the Constitution. I oppose it.

There is an issue on Clause 9 which intends to remove the issue of the independence of the Office of the Auditor-General. It is saying that the National Treasury will be specifying the accounting procedures to be used by the Auditor-General. The National Treasury is actually subject to audit by the Auditor-General. This is not going to be a positive issue. It will be important to be relooked into. It is introducing changes to a previous Bill we approved. We were trying to make the Office of the Auditor-General very independent. Now, we are introducing the clause that the National Treasury will control the Auditor-General. If we want to deal with issues of corruption, then the Office of the Auditor-General needs to be truly independent. What is in Clause 9 is not friendly.

Clause 5 of this Bill is a friendly one. It says the Budget Office needs to provide capacity on the budget-making process to county assemblies. The National Assembly is rich in experience because it has been there for a longer time. It is important we have this capacity-building programmes being undertaken by the Budget Office of Parliament to assist county assemblies budget issues.

We may need to bring an amendment to ensure the sequence of implementation of projects is followed when counties are paying their pending Bills. It should not be based on the friendship of those in the Executive and the contractors. There should be clear procedure so that bills that come early are paid before subsequent ones. The idea of prioritisation of payment of pending bills must be inbuilt in this Bill so that it is fair.

I have also noted that this Bill is mainly targeting county governments and omitting the national Government. The national Government does not consist of angels. If there are problems in the counties, there are similar challenges in the national Government. I do not believe that it is fair when we say we will need to insert the word “county” under Clause 32 so that we leave out the national Government. We should simply talk about all the institutions, those under the national Government and the county governments so that there is fairness when we are dealing with resources. This is because when we do not use the resources very well either at the county level or at the national level, it will not be fair to our people. We must use the resources we have in the best interests of our citizens.

I also welcome the idea that the National Treasury will be disbursing money to the counties on a monthly basis rather than on a quarterly basis. This is friendly because taxes are collected on a daily basis. At least, they can be harmonised within one month and the counties can now receive their share of the national revenue. This is going to be friendly. It will ensure that the services in the counties are offered regularly in a much organised way. I support that.

I have not been able to digest this Bill well because I believe it is being rushed. I do not know the interests. The issue of external borrowing should be well clarified. We can use all the funds we are borrowing externally for capital development. I welcome that. If we do that, the debts can easily be repaid but it is not going to be orderly if we use it in other activities that are not generating income. So, this is in order. It is a very good part of this Bill.

There is one provision I was expecting to see which I am yet to see. I am still perusing through this Bill because it is an ambush. The President promised the tea farmers of this country that all the levies in the tea sector will be removed. I was expecting to see it somewhere in this Finance Bill that the tea levies which are currently oppressing our tea farmers will be removed, noting that it is only the tea sub-sector which has not been subsidised by this Government. We normally hear that the sugar sub-sector has been allocated Kshs1 billion or Kshs5 billion. The

miraa and coffee farmers have also benefited. Even though they are also experiencing great problems in repaying debts which were incurred in building the Kenya Tea Development Authority (KTDA) factories, tea farmers have never benefited from the national Government through write-offs. They also require to be assisted by doing some write-offs. Those ones are not captured here. I would have wished that specific levies which are being removed as promised by the President be well captured in this Finance Bill. Unfortunately, that is missing. So, we need to move amendments at the right time to include the tea levies that have been abolished. The farmers should no longer pay them so that they can concentrate better in the tea industry.

With those few remarks, thank you Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Cheboi): The Member for Bomet Central, the absence of a Committee Report cannot stop the House from debating any particular matter. Curiously, I would have asked you, because you are a member of the Departmental Committee on Finance, Planning and Trade, what have you done about it yourselves? Is it possible that you might have been a little bit late in presenting the Report? Therefore, it should be the House observing that you should have moved a little faster.

Let us hear from the Deputy Leader of the Minority Party.

Hon. Midiwo: Thank you Hon. Temporary Deputy Speaker. Thank you for being very kind. I am sorry. Somehow, I cannot find my card or my wallet. I am sitting next to Hon. Chris. I do not know if Hon. Chris has all over a sudden become bad. I will find out.

I rise to support the Public Finance Management (Amendment) Bill. It is good to clarify to my colleague, the Member for Bomet Central, Hon. Tonui, that this is not the Finance Bill. This is the Public Finance Management (Amendment) Bill. The object of it speaks on the title. What it seeks to do is very good for this country and it is timely. We should have done this before we allowed funding to the counties. The financial mess and chaos we find ourselves in, in this country is phenomenal.

As it has been raised by the speaker who has just concluded speaking, it will be nice for the Departmental Committee on Finance, Planning and Trade to thoroughly address itself to this Bill. I agree that it needs to be done as soon as possible, but it will be nice to allow some days of proper thought.

Let me begin by saying that where our country has reached with the NGCDF, we need not reinvent the wheel. Part of the way NGCDF has been managed, the Departmental Committee on Finance, Planning and Trade needs to bring a Report here that has copied many sections of that management process.

We talk about pending bills. There need not be any pending bill in the counties. What happens is that when budgets are passed, these budgets of the counties, like the national budget, are itemised. What they do is if they were supposed to construct some roads, tenders are given but money comes and they divert it to other uses and the contractors are not paid, hence the pending bills. That is an illegality. All we need to do is to put it in this Bill that what we are financing must be that which was passed in the budget so that when that work is done, the money should go direct to the contractor. It is not happening now. I know people who did works in the 2013/2014 Budget and nobody is now even picking their calls. These are Kenyans who borrowed monies from banks. They are stuck with the principal money they borrowed and the interest rates as they are in our country. Lives are being ruined while the intention of devolution was to make money circulate and improve the lives of our people.

It is interesting how that was missed and has been misconstrued as a loophole while it is not. Because everybody is behaving daft as if there is a loophole, let us put it in law. This House

must insist that there must be monies going direct to the projects as proposed. We did it almost 14 years ago. To stop the wanton theft of public funds, we must have project management committees in everything, be it NGCDF, county funds or any devolved funds so that people can be allowed to have a say. Devolution is about people. The way it used to happen has changed. That is what our people expect with devolution. The NGCDF has not disappointed. I can tell you with a lot of comfort that the economic growth figures that we keep reporting here have a lot to do with the NGCDF. It has very little corruption. If any, people cannot steal from themselves. Individuals are stealing from people and that must not happen.

Hon. Temporary Deputy Speaker, I am in the know that the Senate, through Sen. Amos Wako, is proposing a Bill to have counties have their own attorneys who are salaried. Not too long ago, the Leader of the Majority Party tabled a list of the money the Council of Governors (CoG) has paid to private lawyers. If the national Government can use the Office of the Attorney-General (AG) whose budget we pass here, why would 47 counties use Kshs1 billion in a year? What has that money been used for? There are cartels which have found their way from Nairobi to the CoG. If we do not use this opportunity to stop them, then we will not be doing ourselves any good. So much is not understood because of who we are. We must import the wisdom of the framers of our new Constitution where everything is put in black and white and which says "shall." If we do that, we will all obey the law. I say that because in my county, the local revenue collection is the work of the county assembly. It is their work to audit market and beach collections and tolls. We need to empower the county assemblies and stop the Senate from looking at local revenue collections.

I was reading a couple of court rulings and there is one by Justice Isaac Lenaola which nicely interpreted the provisions of the Constitution. It says that the Senate is supposed to look at national allocations. That is why the Senate is in Nairobi. You find a scenario where Senators are now in counties looking at what was collected in markets. The worst thing it does, which is unconstitutional, is take away the job of the MCAs. We need the MCAs. How nice would it be to take a little time and make an amendment that clarifies that which the Senate is seeking and trying not to understand? We must do that. We must tell the Senate, counties and the national Government boundaries in law. I am happy my good friend, Hon. Gikaria, is here.

The Temporary Deputy Speaker (Hon. Cheboi): I will add you five more minutes.

Hon. Midiwo: Thank you, Hon. Temporary Deputy Speaker. Maize farmers in the Rift Valley and western Kenya are complaining that their maize is levied on the highway when going through Nakuru County. Where does the governor get powers to levy maize coming to Nairobi from Kitale? It is happening in Nakuru County. It is a big problem. We should put here what governors can collect, where they collect and the reason for collecting. National highways are not under the control of the counties. People producing *waru* in Kinangop cannot get to Nairobi because they are taxed on the highway in Kiambu County. Unfortunately, the market is only in Nairobi and they cannot consume all the potatoes they produce.

This management must include income and output, so that we can deal with this mess and imaginations of people who have too much appetite for money. We must deal with this issue. The 2016/2017 or 2017/2018 Budget is going to be so exposed if we do not say what can happen, what time, by whom and how. If we do not do that, it is going to be so messy. Governors are now saying that whoever wants their seats must have more money than them. Some of these people were walking on the streets without cars not long ago. It should scare this nation that if by any bad luck a crooked governor is re-elected, at the end they will have served for 10 years

without the law. We must do what the Ethics and Anti-Corruption Commission (EACC) has failed to do to save this country. It is so messy, but this House has a responsibility.

Clause 9 of the proposal is not right. It states that the national Government should recommend to the Auditor-General how to do his job. That will take away the independence of the Auditor-General. That must be deleted because it does not belong here. He must be allowed to independently do his work. Two years ago, I said that we should have a devolved fully-fledged Office of the Controller of Budget, Auditor-General and the AG in the counties, so that we can deal with instant auditing. If the Office of the Controller of Budget works with the Auditor-General before the occurrence of corruption, I think we can deal and slay the dragon of corruption. I know we are all concerned.

I beg to support.

The Temporary Deputy Speaker (Hon. Cheboi): Member for Balambala.

Hon. Aden: Thank you, Hon. Temporary Deputy Speaker for the opportunity to speak to the Public Finance Management (Amendment) Bill. From the outset, it must be understood that the Public Finance Management (PFM) law is one of the most significant laws that are in existence in our country. We must at all times be prepared to safeguard it to make sure that it is in the best form. Whenever such amendments are brought, we must not allow this law to be used to bring inefficiencies into the way we manage our public finances. It is a good Bill. This Bill amends quite large sections of the PFM Act. When such a thing is happening, it is very important that it is always preceded by the involvement of the Committee where Members can have inputs into these amendments to ensure that by the time it is getting to the Floor of the House, we have a report that guides us.

I am guided by your earlier direction that that report is not a necessity for this Bill to be on the Floor of the House. It is wise for us to make the amendments. There are a number of sections which are good. Clause 5 of this Bill is good. It amends Section 10 of the principal Act, where capacity is built in the respective county assemblies in the budget making process. Each county assembly can have the equivalent of our Budget office with experts who can give directions. We will delete Clause 7 of the Bill, which is amending Section 15 of the principal Act. We should not allow that. It will be wrong for us to allow that to happen.

Because of time, I want to go to Clauses 13 and 14 of the Bill, which introduce sections 39A and 40A. One is at the national level, which is the National Treasury, and the other one is the equivalent of it at the county assembly level. We are giving powers to the National Treasury to use or start spending 50 per cent of the Budget of a given year without getting the approval of Parliament. There are occasions that could cause that to happen like in an election year. If we allow them to use 50 per cent of the Budget, I can assure you that our Budgets in the future will be coming so late. They will be made lazily by the National Treasury. We are encouraging laziness in the National Treasury by allowing them to have the leeway to spend 50 per cent of what they should spend in the year. I will bring amendments to reduce that from 50 per cent to not more than 25 per cent, so that they can be bound by time and seek the authority of this House. If we are to go by the calendars that we have, there is ample time during election time for the National Treasury to do business with Parliament. Parliament can pass the Budget before people take a recess for elections. Those two new clauses bring in a lot of laziness into the affairs of management of things.

Clause 15, which amends Section 52 of the principal Act, brings in the issue of the appointment of an Accounting Officer to approve loans and documents. We must carefully scrutinise that clause in the Committee of the whole House. We must bring in wordings that

ensure that responsibility is carried by whoever is appointed to sign loans on behalf of either the national Government or county governments.

I want to bring your attention to Clause 16 of this Bill, which amends section 60 of the principal Act. I am surprised by this. How can we introduce this new clause? It says that the Attorney-General can give instructions for money to be withdrawn from the Consolidated Fund. That will be adequate instruction to the Controller of Budget to approve that payment or that guarantee. It will not be wise to do so without consulting the Cabinet Secretary (CS) for the National Treasury. It is another important amendment which we must bring to this particular Bill.

The other issues have a lot to do with the manner in which we want to control the usage of funds by the national Government. I will bring amendment to Clause 50, which is not shown here. This amendment is very important because unfortunately, the prior amendment to the Public Finance Management (PFM) Act revised Section 50, before the execution of the infamous Eurobond, to allow the CS and the Central Bank of Kenya to open accounts overseas to hold money collected on behalf of Kenyans out there from either the proceeds of the kinds of bonds that we have seen or from loans. The Constitution is very clear that any money borrowed on behalf of the people of Kenya must be deposited in Consolidated Fund. Therefore, the amendment that I will bring will say that even if that account is opened out there, it must be an extension of the Consolidated Fund and that account must be brought under the powers of the Controller of Budget.

The county assemblies are getting away with big crimes. They are doing very poorly in the management of debts. The colleague who spoke earlier mentioned this. We have businessmen who in the past were doing good businesses. Today, they are walking on the streets as poor men and women. There are contractors who have done some work and are holding documents which were given to them by Garissa County to the tune of Kshs2 billion or more. Recently, the returns that the Garissa County Government made to the Controller of Budget show that their debt level is zero. This means they have disowned all the documents through which they issued instructions to contractors to undertake development projects on behalf of that county government. We must now allow county governments to get away with this.

Failure to adhere to the procurement laws is becoming obvious in all the county governments. We must use this to ensure that we give teeth or powers to the Senate Committee in charge of Finance, which oversees expenditure of county governments, so that they can scrutinise such expenditures in detail and take action. Unfortunately, time and again, governors have declined to honour summonses by the Senate. A governor simply does not turn up and nothing happens. If he turns up, he is asked tough questions, accompanied by drama on television, but nothing happens. We must put in place laws that make culpable governors take responsibility. They are the chief executive officers of the counties. They must be responsible for the expenditures of the money. They must be prepared. We must bring this into law, commitments that will hold them liable for misappropriation or poor management of public funds.

I end by saying that Article 226(5) of the Constitution must be adhered to, to the letter. It requires public officers to be held responsible for misuse or for directing misuse of public funds under their control. I can see that my time is up. This is a good Bill. I support it, but we require bringing a number of amendments to it.

Thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Cheboi): Let us have the Member for Mbita.

Hon. (Ms.) Odhiambo-Mabona: Thank you, Hon. Temporary Deputy Speaker, for giving me the opportunity to contribute to this Bill, which I support with amendments.

This is one of the very good statutes that were enacted by the 10th Parliament. We have to think very carefully before we bring amendments to it because it gives Parliament the very serious powers of oversight over administration of public finances. I know that the amendments we are bringing are fairly attractive, especially because quite a number of them seem to target the county governments. However, I want us to exercise a lot of caution, so that as we exercise our role as the National Assembly or as Parliament, which is a standard setting, we do not encroach on the constitutional mandate that is given to counties in devolution. There are counties which have been marginalised over the years, which now benefit from devolution. We know that most of the governors have done a lot of things which have made us ashamed. They have moved away from the principles on which devolution was based. However, I still want us to exercise a lot of caution so that we do not throw out the baby with the bathwater. If you look at some of those amendments, they seem to take away those powers. Probably, we would be left with former county councils. That is not what we set. We are not a centralised Government, but a devolved Government.

Last week, I was in Uganda speaking to women lawyers. I was training them on our oversight roles. I told them that Kenya has moved significantly on the issue of oversight of roles, especially the Executive. One of the things that I was loading on was principles of public finance, adherence to fiscal discipline, prudent and responsible utilisation of resources, accountability and transparency. That can only be realised if we leave the powers that Parliament has. That is why I am going to support with amendments.

I do not support the amendment that is taking away the Parliamentary powers especially providing the 50 per cent that can be spent on Budget before it comes to Parliament. The way this country has been moving forward, we need to encourage the speed of doing well. If you are doing well you should not slug, but move forward with the same speed. But when we start giving people excuses of being sluggish, we will be crawling back the gains we have made in the Constitution.

I want to encourage the removal of the amendment that takes away the independence of the Auditor-General. I am hoping that we can further bring an amendment which will entrench the financial independence of the National Assembly and the Judiciary.

Recently, we passed a Bill that was entrenching the financial independence of the Judiciary. By law, we have provided for the independence of the Legislature. Most of us in this Parliament also sat in the last Parliament.

Hon. Temporary Deputy Speaker, I know you sat in the 9th Parliament and there are events that are very worrisome for me. Our financial independence is no longer guaranteed as a Parliament. As a matter of urgency, we need to act on this because Parliament cannot be subservient to the Executive arm, even on financial issues. That is something that must be dealt with urgently.

I sit in the Pan African Parliament (PAP) and as at now, I do not know whether I will go there because I am waiting for the Executive. I do not sit in the Executive. I want to take my directions from the Speaker. I do not want to hear that the Executive is yet to send a signal. I do not need any signal from them, but from the Speaker. That is the reason I am very hesitant about issues that are taking away the financial authority and autonomy of Parliament.

I want to support Hon. Jakoyo that we need to hold our governors accountable. Even though I am saying we need to walk carefully, we must still hold them accountable. This is

because devolution came so that we could bring development, equity and equality to areas that had not benefited. As a standard setting institution, we must make sure that this law provides a framework of accountability by the governors.

Therefore, I want to encourage that we bring an amendment that brings something a kin to the NGCDF Act and the PMCs. If you see the way governors are acting, you will get shocked. Sometimes, I hear contractors working in county governments calling me and asking me to give them a road the way the governor is giving. I have no authority and mandate to give anybody a road as a Member of Parliament, yet governors give roads out like dishing out sweets. Even dishing out sweets is difficult because you have to go to a shop and buy them. Governors just give roadside declarations which this country had come out from long time ago. There must be a system that holds governors accountable and involves public participation.

I know many Kenyans are not aware of the rigorous exercise that the NGCDF process entails. To come up with a budget for NGCDF, there must be public participation. It is the public who says what they want in the budget. Once it is done, it is approved by a national body and one cannot, on their own, decide that from today, they do not want to do a fish market, but a school instead. There must be standards. Hon. Jakoyo has said that he is going to bring an amendment in that regard. When that amendment comes, I will support it fully.

With those few remarks, I wish to support the Bill with amendments.

The Temporary Deputy Speaker (Hon. Cheboi): Very well, let us have Hon. Omondi.

Hon. G.W. Omondi: Thank you, Hon. Temporary Deputy Speaker, for giving me the opportunity to contribute to this very important Bill.

It is true that this Bill intends to bring in financial discipline taking cue from the experience we have had in the past several years. The Bill creates some other loopholes which must not be allowed. I will point out a few clauses which are good and others which are bad and will require amendments.

Clause 5 talks about giving counties capacity building. Rather than giving them capacity building, they should be assisted to set up their own budget offices. For the Parliamentary Budget Office to assist the 47 counties in capacity building, they may be over stretched. At the moment, counties are only operating with one fiscal analyst and maybe that is why things are going bad. That should not happen. Clause 5 removes Clause (c) and replaces it with a new one. Maybe we should be moving the current Section 35(1)(c) to Section 31(b) because leaving out the Budget Policy Statement wording may not be very appropriate.

I will bring amendments to that. It is not right to bypass or contravene Article 222 of the Constitution and the National Assembly. My colleagues have suggested coming up with a lower figure which can be spent without the approval of Parliament. That section should be looked into deeply, so that the powers of Parliament are not by bypassed. Clause 14 is good because it takes care of the delays that could arise when the Senate and the National Assembly do not agree and there is a stalemate.

Clause 15 states that:-

“Section 52 of the principal Act be amended by deleting subsection (2) and substituting thereof the following new subsection-

“(2). Despite the provisions of sub-section (1), the following persons may be authorized by the Cabinet Secretary to execute loan documents for borrowing by a national government entity –

(a) The accounting officer responsible for the entity; or

- (b) Any other specified officer authorized by legislation to executive such documents on behalf of the entity”.

Here, the authority was being given beforehand, but now the amendment is good because the responsibility will still remain with the CS for signing of those documents.

Clause 43 is not a good amendment because it also bypasses Section 134 of the Act. It allows a county government to spend money without the approval of the county assembly. That amendment is not good and should be looked into in the same manner that we have looked at the national Government.

Clause 50 should be looked into and we agreed it is a good amendment because the authority was given in advance. The original provision could be misused because it gave authority beforehand. Now it remains with the County Executive Committee (CEC) member who may give authority for signature when he is not there.

Clause 62 gives the timeframe within which accounts should be prepared and annual reports produced. This was not there before. The amendment also states that both annual reports and accounts should be reported to the Auditor-General and the County Treasury. That is a good amendment which I support.

Clause 67 deals with the Public Sector Accounting Standards Board (PSASB). I think it was left hanging. The clause stipulates that the PSASB is now accountable to the Cabinet Secretary (CS) for matters relating to finance. This is a good amendment which was not there before. This particular amendment now brings the operations and reporting of the PSASB under the direct control of the CS for the National Treasury.

I support the Bill, but I will bring amendments as I have indicated.

The Temporary Deputy Speaker (Hon. Cheboi): The Member for Molo.

Hon. Macharia: Thank you, Hon. Temporary Deputy Speaker.

Hon. Gikaria: *(Inaudible)*

The Temporary Deputy Speaker (Hon. Cheboi): What is it, Member for Nakuru?

Hon. Gikaria: *(Inaudible)*

Hon. Macharia: I do not belong to any side, Hon. Gikaria.

The Temporary Deputy Speaker (Hon. Cheboi): Hon. Gikaria, I would have thought that probably you noticed that he has just walked in, which is a genuine concern. Unfortunately, like many Members, what he did was to leave the card there and go out. Ordinarily, I think we would not be very keen to give Members who behave in that manner a chance to contribute because it means they might repeat what has been said. When you get to the queue and wait outside, you may not really know what transpired in the House.

Member for Molo, I will give you very few minutes so that you do not get tempted to repeat yourself.

Hon. Macharia: Hon. Temporary Deputy Speaker, I just walked out to answer a call. Hon Gikaria has some genuine concern, but it is okay.

I support the Public Finance Management (Amendment) Bill, 2015. In this country, we have seen wanton mismanagement of public funds especially at the county government level. In my county, I have seen what I could call serious mismanagement where a whole county government wakes up one morning and explains to everyone who cares to listen that 95 per cent of revenue generated and the money from the Exchequer is used on salaries and Recurrent Expenditure. We have also seen in many county governments public money being used for buying wheelbarrows which are very expensive. It is also alleged that some counties, including

Nakuru, have built toilets to the tune of Kshs8.9 million. It is high time public finance is managed properly.

When the NGCDF started, it also had problems akin to the county governments' in terms of financial management. As I speak, NGCDF is one of the best managed funds. Even if a public officer was a wanton thief, it is very difficult for him to steal because of the structures we have put in place where PMCs and the people are involved in deciding which projects are going to be funded, how the funding is going to be controlled and how they are going to achieve best results. Most of the county governments have public participation fora, but most of them are fixed. The dates when they are supposed to be done are not properly announced and they are only done for the sake of it. That is why we do not have a common procedure in the counties. Counties like Nakuru have Ward Development Fund (WDF), but in other counties, governors decide what happens.

Hon. Temporary Deputy Speaker, I support this Bill.

The Temporary Deputy Speaker (Hon. Cheboi): Hon. Chrisantus Wamalwa, the Member for Kiminini. Hon. Members, we are going by the list and you can be very sure that Hon. Wamalwa has been faithfully queueing for the last few hours.

Hon. Wakhungu: Thank you, Hon. Temporary Deputy Speaker. This is a very important Bill. It is very disappointing that we are debating it without any report from the Departmental Committee on Finance, Planning and Trade. This Bill provides a clear framework of managing public funds, so it is very critical. It affects the national Government and county governments. We hope that before we go to the Committee of the whole House, the report will have been tabled, so that Members can amend the Bill accordingly.

Clause 5 of the Bill proposes capacity building which is very critical. The budget offices in the county assemblies do not have the expertise compared to the Parliamentary Budget Office where Mrs. Makau sits. You find these are experts who came from the National Treasury. So, it is, indeed, important that capacity building has to be done at the county level, but not to be borrowed from the National Assembly. I want to agree with the earlier speakers in terms of why we cannot employ budget officers at the county level. Why can they not be trained or employed at that level? Capacity building in the 47 counties is not going to be an easy task given that the Budget cycle in this country is continuous. Our PBO is always very busy. I am saying this having served in the Budget and Appropriations Committee. You realise that PBO officers are busy throughout. Much as you want to do capacity building at the county level, we cannot manage to get officers from the National Assembly. My proposal is to allow county assemblies to employ their officers, so that they can build capacity based on the officers in their offices.

One good thing about this Bill is the element of monitoring and evaluation of financial programmes. People want to talk about issues of finance, but we have many other reports that we require which are non-financial. For instance, our Budget is programme-based budgeting. In this case, what are the inputs, outputs or outcomes and does it resonate well with whatever we are inputting and what is coming out? This Clause is very critical. It is going to help us in doing efficient and effective monitoring.

Clause 9 proposes to amend Section 24 of the Act to give a provision to the National Treasury to specify the accounting procedures of the Auditor-General. This is not acceptable. The Auditor-General is one of the offices which are supposed to be independent. We have the Public Audit Act which is supposed to give a provision in terms of how the Auditor-General is supposed to work. If we allow such issues to happen, this is the time independence will not be

possible. When it comes to the Committee of the whole House, we are going to do amendments so that we can reject this.

We know very well that after the Public Audit Act was passed here, we even have a matter in court pertaining to the independence of public audit. This clause is trying to interfere with the independence of the Auditor-General. This should not be entertained because of the reasons I have given.

Clause 13 proposes a new Section 39A of the Act that provides for the process of approving expenditure for purposes of the National Assembly. It is already provided for in the Constitution, but we do not want governments to take advantage that we have this provision and circumvent the role of the National Assembly. In the presidential system, the National Assembly is a budget-making House and it is, indeed, important that all budget making processes pass through the House. The issues of the Budget Policy Statement, the passing of the Estimates and the passing of the Appropriations Bill must all come here. So, this provision can only be applied at extraordinary circumstances like electioneering time. Even in electioneering time, the budget-making process can be brought earlier, but if we bring such a clause, it is going to encourage bad behaviour. If any discretion is allowed, then this Parliament, being a budget-making House and somebody somewhere is going to take this role from us. It is key that we guard this role jealously.

Clause 14 of the Bill duplicates what is in Clause 13 going to Clause 14 where it says, “to insert Section 42 (a) of the Act to provide for the process of approving expenditure before the County Revenue Allocation Act”. When it comes to the county level, sometime back we had issues with the Division of Revenue Bill. I remember last time the Senate went to the Supreme Court for a legal advisory. In such circumstances where passing of the Division of Revenue Bill has been delayed, Clause 14 is going to be very handy in helping county governments to continue with their operations without any problem.

Looking at Clause 43 of the Bill which is proposing to insert Section 131(a) of the Act to provide for the process of approving expenditure before the Budget Estimates are approved by county assemblies, we hope governors will not take advantage of this clause. I am saying this as earlier speakers had mentioned. You find governors spending money on items that have not been approved by the county assemblies. This is where we must do a lot of checking. Clause 43, much as it is coming in to help during extraordinary challenges, we hope the governors will not take advantage and spend some money without the approval of the county assemblies.

Clause 22 of the Bill proposes to amend Section 87 of the Act to align it with the rest of the revisions of making reference to the corporations. This is where we are going to have full disclosures when it comes to county revenue allocation. Before the new Constitution, and my friend Hon. Gikaria will agree with me because he worked in county councils and municipalities, there was a lot of money and levies that they were collecting, but right now, we do not hear of it.

This is the money that governors are using. They collect the money and spend it in the way they want. This is where corruption is. We must put in a clause to ensure that there is full disclosure of the levies they are trying to collect. We are only focusing on the money that is coming through the division of revenue and the national Government. What about the money from the county? You will find that counties collect Kshs1 billion in revenue, but only disclose less than Kshs100 million in their books. Where does the rest of the money go? This is the source of corruption.

We know that governors are arming themselves. They are moving all over bragging that they have all the billions when it comes to elections. I am worried for my colleagues who will

run for governorship. Some governors are asking if their challengers have what it takes. We have seen some governors stating that they must be given an automatic party ticket as they defend their seats for the second term. This is because of the loophole in the law as far as this levy collection is concerned.

Clause 33 of the Bill proposes to amend Section 109 of the Act to facilitate easy operationalisation of the Treasury Single Account. This is key because when county governments have several accounts at the Central Bank of Kenya (CBK), it becomes very difficult for purposes of monitoring and harmonisation. A single account will add a lot of value.

Moving on, Clause 37 of the Bill proposes to amend Section 123(3) of the Act to remove the requirement to submit the county government debt management strategy to the Commission on Revenue Allocation (CRA) and Intergovernmental Budget and Economic Council (IBEC). This is dangerous.

As we approach elections, governors keep incurring bills. Some of them are very crazy. It is necessary that they are monitored. It is time for the CRA and IBEC to pull up their socks to counter that. Otherwise, if we do not look at this critically, the governors who will come in will find a lot of pending bills. I can see my time is up and so, I support the Bill.

The Temporary Deputy Speaker (Hon. Cheboi): We will have two more Members and then the Mover will be called upon to reply. I have only two requests from Hon. Gikaria and Hon. Mwadeghu. That will be the position.

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

The Temporary Deputy Speaker (Hon. Cheboi): He will have some few minutes before we call upon the Mover to reply. He has been out for most of the afternoon. He has just come in now.

Proceed, Hon. Gikaria.

Hon. Gikaria: Thank you, Hon. Temporary Deputy Speaker. First of all, I want to thank you for giving me an opportunity to contribute. Looking at the Bill, when I was reading through the amendments, I did not understand why it only concerned county governments. The end of the memorandum says that this Bill is one concerning county governments to manage public finances at the county level.

This Bill was first published on 10th December, 2014. Two years down the line, it has finally found its way to Parliament. I wish to take this opportunity to ask those Members who sit on the House Business Committee (HBC) that they need to prioritise Bills that are supposed to be tabled on the Floor of the House. Bringing this Bill early for the First Reading would have saved this country millions of shillings.

That notwithstanding, I thank the HBC for that now that the Bill has found its way here so that we can address some of the issues which have been raised.

Secondly, there are so many amendments that may be confusing.

Looking at the import of the Public Finance Management (PFM) Act, too many amendments make it confusing. We would have asked for a review of the whole Bill in the past when there were too many amendments. That was when we had one Bill which you can understand when you read. That notwithstanding, the amendments which have been brought here are in line with the Constitution. It tries to guard public finances at the county level.

At the same time, we need to be a little bit careful. When Hon. Jakoyo was speaking, he looked at the Bill and came out to try and give a practical application outside the Bill. He tried to

give practical issues on the amendments suggested. I agree with him that this has been a problem. People are complaining that doing businesses has become so expensive.

He gave an example of getting sugar or products across some counties. These counties want to charge levies. I remember vehicles with adverts on their bodies are charged by every county. If one is taking his product from one county to another and he is to cross through six counties, and they have that provision in their fees and charges, he will pay in every county. It is becoming excessively unreasonable for business people to trade.

As Hon. Chris Wamalwa said, and I totally agree with him, money collected by the counties never reach the Exchequer as supposed. Most of the money is spent by governors to do their lavish spending and bragging. I was a councillor and we used to collect almost three quarters of our expenses from our own fees and charges. Governors are in slumber because there is a lot of money from the Government. Instead of pushing back whatever is being collected to be used in the counties for purposes it has been budgeted for, it ends up in their pockets.

I had raised the matter with the just retired Chief Justice about Nakuru in terms of a court collecting fines and he referred me to the Constitution. I admitted. A year after, he stopped the process and the money is now being paid to the counties. I can assure you that Nakuru County owes people going to court more than Kshs500,000 million. When you go to court and are given a fine or cash bail, that money is never refunded. If your cash bail was Kshs100,000 and the magistrate fines you Kshs20,000, you were supposed to get Kshs80,000 refund. To date, that money has never been given back. We never knew where this money from court proceedings was going, which is supposed to be part of the money we send back to counties. We raised this issue with governors and they continue to charge. It is unfortunate. I will be raising this through the Departmental Committee on Justice and Legal Affairs. The governor continues to charge the residents of Nakuru charges which were in the by-laws.

I also want to talk about repetition in the Bill. Most of the issues I wanted to raise have been raised by different people. If you look at some of the proposals as Hon. Wamalwa said, we need not allow governors to spend without approval.

When we allow the CECs to oversee county finances as indicated in Clause 64, it should be looked into. The CECs are the people who are going against the law. I remember raising the issue that they were going against the PFM Act. First, we used to have a centralised procurement entity within the county. It was taken to each department and back. It brought a lot of confusion, but now there is some clarity. We will bring some amendments. If a department is given a budget, let it oversee its own budget, so that tomorrow we do not have excuses. As it is, if you try to query any misappropriation, you are told that it never used to be under their docket then. Then, whom do we ask? You are taken round and round and you cannot know who to hold to account.

Clause 41 is a bit confusing. I want to believe that budgets are for the Executive. The Executive sits and discusses with the Executive Committee and comes up with a budget. Under the PFM Act, there are provisions as how much you can amend. I did not understand, but maybe, in the Committee of the whole House, we will bring some amendments and visit the Departmental Committee on Finance, Planning and Trade to explain if budgets are for the Assembly or the Executive. Clause 41 suggests that budgets are not for the Executive, but for the county assemblies.

As Hon. Wamalwa has said, counties have millions of accounts. They are programmed to steal. Every county has one account at the Central Bank of Kenya (CBK). I do not see why a

county should have a million accounts. Counties have been using this process to misuse public funds.

With those few remarks, I support. In the Committee of the whole House, we will bring some amendments.

The Temporary Deputy Speaker (Hon. Cheboi): Hon. Mwadeghu.

Hon. Mwadengu: Nashukuru, Mhe. Naibu Spika wa Muda kwa nafasi hii nami nitoe mchango wangu kwa Mswada huu unaotoa mwongozo wa matumizi ya fedha za umma. Ijapokuwa umeshatoa uamuzi kuwa si muhimu tuwe na Ripoti ya Kamati ili kujadili Mswada huu, naomba nitoe mapendekezo kuwa lingekuwa jambo la busara sana kama Ripoti ya Kamati ingekuwa imejadiliwa Bungeni ili Wabunge wapate mwongozo na mwelekeo wa kuchangia kwa undani Mswada huu.

The Temporary Deputy Speaker (Hon. Cheboi): Just to correct that so that it does not go on record in that manner, I did not say that it is not important to have the Committee Report. I said that it is not fatal when we do not have it. The ideal situation is that we should have the Report. That should be very clear, Hon. Mwadeghu, so that Committees do not become lazy and fail to present Reports. It is critical that we have them, but it is not going to be fatal that we cannot proceed on the basis of that.

Hon. Mwadengu: Nashukuru, Mhe. Naibu Spika wa Muda, kwa kunipatia mwelekeo. Kabla sijatoa mapendekezo yangu, wacha nifanue kuwa niko na nia ya kugombea kiti cha ugavana katika Kaunti ya Taita Taveta 2017 lakini haimaanishi ningependa kupigania kiti cha ugavana wakati huo na sheria mbaya. Singependa niwe gavana na sheria mbaya ambayo itawafanya wafanyakazi waendeleo na wizi ambao ninauona. Ningependa niwe gavana ambaye atafuata sheria. Ndio maana ninapendekeza sheria hii ibadilishwe ili magavana wasiwe wanaweza kupunja na kutumia fedha za umma kiholela kama vile tunavyoona hivi sasa.

Tukiangalia hali ilivyo hivi sasa, kuna mambo matatu ambayo ningependa nichangie kwa undani. Kwanza, vipengele vya 13 na 14 vinaleta vipengele vipya kabisa katika mwongozo huu wa matumizi ya fedha. Vipengele hivi vinataka Wizara ya Fedha ipewe mamlaka ya kutumia fedha za umma bila idhini ya Bunge. Naomba tukubaliane kuwa Bunge limepewa jukumu la kuidhinisha matumizi ya fedha za umma za Serikali yetu. Tukisema kuwa Wizara ya Fedha ipewe idhini ya kutumia fedha mpaka theluthi hamsini bila kupitia Bungeni, nchi hii itajikuta kwa shida. Hii ni kwa sababu italeta uzembe na maafisa wanaohitajika kuwasilisha makadirio ya pesa hawatahusika na watasema kuwa hawawezi kuwasilisha kwa muda unaofaa kwa sababu kulingana na mwongozo wa sheria za matumizi ambazo tutapitisha, zinawaruhusu kutumia fedha bila kuidhinishwa na Bunge. Napinga hicho kipengele na naomba kuleta mapendekezo yangu kuhakikisha kuwa idhini kama hiyo haitatolewa.

Katika Katiba yetu, tuko na Mkaguzi wa Vitabu vya Fedha za Serikali. Ni muhimu apewe nafasi ya kukagua vitabu na kuja na sheria na miongozo ambayo itasaidia fedha za Serikali zisifujwe vile watu wanavyotaka. Tukianza kumwekea vikwazo na kumfunga kamba ya shingo ili tumwelekeze jinsi ya kukagua vitabu kwa mujibu wa sheria ambayo tunaweka, tutakua tunamnyima nafasi yake. Si ajabu kuwa hivi vitabu havitakaguliwa na vituo mwafaka ambavyo vinahitajika kuangazia vile pesa zimetumika. Si haki na sheria kumwekea Mkaguzi wa Vitabu vya Fedha za Serikali kitanzi kwani tutakuwa tunamnyima uhuru wake.

Mhe. Naibu Spika wa Muda, nikiambuka mwaka jana katika zoezi hili la Mwongozo wa Sheria za Matumizi ya Serikali, tuligeuza na kusema kuwa Wizara ya Fedha ina idhini ya kutumia pesa kulipia ada ya mikopo yote kutoka nje. Ilipokuja mambo ya 'Euro Bond', hawa mabwana walihakikisha kuwa zile fedha zilipoingia, badala ya kuleta hapa Bungeni vile zilivyo,

walazitumia kulipa ada zingine huko nje. Walipoulizwa kilichotendeka, walisema kuwa wamezitumia. Tulipouliza kwa idhini gani, walisema kuwa tulikuwa tumeipitisha sisi wenyewe. Kipengele hicho kiangaliwe na wanyimwe hiyo ruhusa ili wasikope pesa na kuzitumia huko nje.

Wenzangu wamechangia kwa undani kuhusu upotovu, kukosa nidhamu na jinsi magavana wanavyotumia pesa za umma. Ugatuzi ulikuja ili tuwe na usawa na watu wasaidike mashinani. Lakini yanayotendeka ni kuwa kandarasi zinapeanwa kiholela na hakuna makadirio ambayo yanafuatwa. Ya kusikitisha ni kuwa kuna kodi ambayo ilikuwa inachukuliwa tangu hapo awali tulipokuwa na mabaraza ya miji. Fedha hizi zilikuwa zinaonekana waziwazi. Kwa mfano, katika Kaunti ya Taita Taveta, tulikuwa tunachukua Ksh140 milioni kutoka Soko la Taveta, lakini tangu ugatuzi uingie, ada imeshuka hadi Ksh80 milioni. Shiling milioni sitini zimeenda wapi? Wanaajiri wafanyikazi na kuwalipa Kshs18,000 kwa mwezi na wanaleta kodi ya Ksh3,000. Hiyo kodi ingine haipatikani. Je, huo mshahara unaomlipa unatoka wapi?

Mhe. Naibu Spika wa Muda upotovu na ukosefu wa nidhamu kama huu umeletea Kaunti ya Taita Taveta matatizo chungu nzima. Wenzangu walikuwa wanazungumza kuhusu akaunti ambazo ziko Banki Kuu ya Kenya. Unakuta kuna hundi ambazo zimetolewa za karo lakini zote zimerudi kwa sababu hakuna fedha. Ni Jambo la kusikitisha kuona kuwa kaunti inaweza kutoa fedha kupatia wanafunzi za kuwasaidia kulipa karo na hizo hundi zote zirudi kwa sababu hakuna pesa kwa akaunti. Ni jambo la kuaibisha na naomba lichukuliwe hatua ambayo inahitajika ili kuwe na nidhamu katika matumizi ya pesa za umma. Tukiwacha hawa magavana waendeleo vile wanavyofanya, na nchi iendeshwe hivi, nchi hii itakwama na kusimama na hakuna lolote litaendelea kufanyika. Tutapatwa na hasara.

Nikimalizia, ningependa sheria hizi zigeuzwe ili tuhakikishe usawa na haki. Kuna ndeni ambalo litawachwa na magavana wakati huu, kwa sababu katika makadirio yao, wanaweza kutoa kandarasi lakini hawatailipia. Wataipeleka mbele kwa makadirio ya mwaka ujao. Kwa hivyo, kila wakati kuna deni na hili deni linaendelea kukua. Hii nchi itajikuta iko katika matatizo na imejitia kitanzi. Ndiyo maana naunga mkono Mswada huu.

The Temporary Deputy Speaker (Hon. Cheboi): Hon. M'eruaki.

Hon. M'uthari: Thank you, Hon. Temporary Deputy Speaker, for giving me this opportunity to contribute. I rise to support this Bill. It is very important because it aligns the Act with the Constitution. Of essence is the fact that this Bill is proposing to seal some of the loopholes in the existing Act that allow misuse of public funds, especially by county governments. The other area which I find very interesting is Clause 5, which proposes the opportunity for the Budget Office to provide capacity to county assemblies.

Most of our county assemblies do not have capacity to provide appropriate oversight of the county governments. In most cases, it appears as if county assemblies and the Executive are so close that one is not able to provide either oversight or capacity. We have seen this in several occasions in Meru County. This allows a lot of misuse of the resources.

There is the question of taxation. Goods are being taxed from one county to the other. We are trying to make Kenya a country where doing business is easy. Because the law is not properly harmonised in various counties, it allows multiple taxation. This impedes and discourages investment by both local and foreign investors. We need to look into this. I am a *miraa* farmer. I support those who trade in the commodity. Our vehicles are taxed in almost every place they go. There are some counties like Mombasa which have increased more than 300 per cent taxation on levies that are levied to vehicles which transport this commodity. At times, we feel as if *miraa* traders or transporters are unnecessarily overtaxed and by extension, this is passed over to the farmers.

I support this Bill. We will look into it and make the appropriate amendments. It is unfortunate that it is coming one year later when it has caused losses. This is one of the Bills the House Business Committee is pushing. For the sake of public interest and for the good of the nation, other Bills are important. There are some, if passed, they may save the country greatly. If this Bill came earlier, I am sure it would have been of greater benefit to the nation.

Thank you.

The Temporary Deputy Speaker (Hon. Cheboi): Very well, seeing that there is no other Member who is interested in contributing. I will ask the Mover to reply.

Hon. Katoo: Thank you, Temporary Deputy Speaker. In replying, I want first of all, to express my displeasure with the relevant Committee that has not brought the Report of the Bill since last year. It should have brought it before this House because it was published in February 2015. We expect a report of the Committee to have been in this House. I also agree with the Chair that there has been consistent ruling by the Speakers, even in the 10th Parliament, that lack of a Committee Report cannot hold the House to ransom. The House will always go ahead and execute its business.

In replying, I want to say that the Members have raised several pertinent issues and I have picked nine of them. The first one is that there is need for disclosure of county revenues in terms of collection. What the county collects should be properly disclosed and not only the funds given by the national Government. The second one is that Members talked about the need to give counties capacity in terms of Budget preparation. Therefore, the Bill proposes the need to have a budget office to avoid rejection of their budgets by the Controller of Budget.

Thirdly, Members proposed the need to decentralise some of these offices especially the Office of the Auditor-General and Controller of Budget Office to the county level for proper functioning of counties in the discharge of their functions and mandate. Fourthly, there is need to strictly adhere to the law to avoid unnecessary pending bills. Always, when there is a pending Bill, it forms the first charge in the coming financial years. Therefore, when county governments have huge pending bills, they consume a lot to the allocation of the next financial year.

When this Bill goes through together with the amendments which are going to be brought by individual Members, it will cure that. The fifth issue is the need for counties and the national Government to adhere to the procurement and disposal of public assets when dealing with public utilities and assets. Sixthly, Members have raised the need to have proper public participation to ensure that some things are done first. In terms of limited financial resources, there is need to put effort in priority areas which serve the public most.

The seventh issue is that there is also need to involve CECs in budget preparation. Just like we do here in Parliament, respective House Committees hold sessions with respective Ministries of the Executive so that everybody is brought on board. Therefore, county assemblies committees should have time with the respective CECs of the respective devolved function in budget preparation.

The eighth issue is the need to centralize the Exchequer account for both the county and national Government in the National Treasury. This will ease auditing of public funds, monitor absorption, performance and utilisation of public finances by all public entities.

Finally, the ninth issue is the need to separate county assembly funds from the county executive funds just the way we do in the national Government where we have a budget for the Executive, Parliament and the Judiciary, which is totally independent of each other. Therefore, that will also result to independence of the three arms of the Government. At the county level,

the county assembly needs to be totally independent of the Executive wing of the county government to bring financial independence.

As I close, I call upon the individual Members of this House to bring amendments when we go to the Third Reading to enrich this Bill. It will also have to go to the Senate and I expect them to improve on it now that we do not have the Report of the Committee.

I beg to reply.

The Temporary Deputy Speaker (Hon. Cheboi): Hon. Members, the Question will not be put for very obvious reasons.

(Putting of the Question deferred)

ADJOURNMENT

The Temporary Deputy Speaker (Hon. Cheboi): Hon. Members, the time being 6.30 p.m., this House stands adjourned until Wednesday, 27th July, 2016, at 9.30 a.m.

The House rose at 6.30 p.m.