

NATIONAL ASSEMBLY

OFFICIAL REPORT

Tuesday, 23rd October 2018

The House met at 2.30 p.m.

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

PRAYERS

PETITION

UPSCALING OF GOVERNMENT CAPITATION FOR CO-CURRICULAR ACTIVITIES

Hon. Speaker: Hon. Member for Kathiani.

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

I, the undersigned, on behalf of the primary school parents, draw the attention of the House to the following:

THAT, Article 43(1)(f) of the Constitution of Kenya read together with Section 28 of the Basic Education Act, 2013, entitles every Kenyan child to free and compulsory basic education and obligates the State and parents to facilitate access to quality basic education;

THAT, co-curricular activities are an integral part of the education process that not only ensures that the education process produces all-rounded persons but also serves as an income earner to learners who pursue co-curricular related careers;

THAT, Section 54(7)(r) of the Basic Education Act further recognises the importance of co-curricular activities by obligating the County Director of Education to manage it alongside other sports education, talent development among others, in counties;

THAT, in furtherance of Government's policy to provide free basic education, the Ministry of Education banned charging extra levies in primary schools and provided under capitation of Kshs76 per pupil to fund co-curricular activities vide a circular dated 7th February 2017;

THAT, the said capitation of Kshs76 per pupil is given to the schools and they have been instructed to share at various levels of utility as indicated hereunder:

1. School level, Kshs46 per pupil;
2. Sub-county level, Kshs15 per pupil;
3. County level, Kshs10 per pupil, and;
4. Regional level, Kshs5 per pupil.

THAT, the financing arrangements leave the school with a meagre funding of only Kshs46 per pupil. It is not adequate for regular purchase of consumable co-curricular equipment and also sustain the mandatory co-curricular activities in primary schools;

THAT, if the situation is not mitigated, many budding talents in public primary schools may fail to blossom for lack of the opportunity to go beyond school level;

THAT, efforts to have the Ministry of Education review its capitation on co-curricular activities upwards or approving supplementary levies to be charged by schools have not yielded satisfactory action, and;

THAT, the matters presented in this Petition are not pending before any tribunal, court of law or independent body.

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

- (i) Recommends the Ministry of Education to consider upscaling Government capitation for co-curricular activities in primary schools from the Kshs76 currently provided to Kshs150 per pupil or more with a view to avail sufficient activity fees at school level;
- (ii) Causes the Ministry of Education to initiate an audit of the cost of co-curricular activities per pupil at school level with a view to recommending a reasonable capitation for co-curricular activities in subsequent sporting years;
- (iii) Recommends that share of the said capitation for the sub-county, county and region be submitted directly to the relevant offices, and;
- (iv) Makes any other order or direction that it deems fit in the circumstance of this matter.

And your Petitioners will ever pray.

Hon. Speaker: Very well. Hon. Members, that is a Petition presented through a Member. Before I allow comments, allow me to recognise the presence, in the Speaker's Gallery, of Members of the County Assembly (MCAs) of Vihiga County led by their Speaker Asnam Mbone Mudeizi.

(Applause)

They are welcome to observe proceedings in the National Assembly this afternoon.

Member for Emuhaya, you have indicated that you want to make comments on that Petition.

Hon. Omboko Milemba (Emuhaya, ANC): Thank you, Hon. Speaker. I thank Hon. Mbui for raising the issue of co-curricular activities in our schools. It is true that co-curricular activities are not funded. This has made the burden of paying for them be taken to the parents therefore reducing what the Government intended as free primary schools to costly primary schools.

As I finish, very shortly, the other thing is that the Ministry's officials take the entire amount of money that was supposed to be used in the schools and manage it. When it comes to the games, they take the position of managing games instead of leaving them to the teachers.

I support that Petition and I am looking forward to receiving it in the Departmental Committee on Education and Research, where I am a member so that we can look at it seriously.

Thank you, Hon. Speaker.

Hon. Speaker: The Leader of the Minority Party.

Hon. John Mbadu (Suba South, ODM): Thank you, Hon. Speaker. I also want to add my voice in support of this Petition by Hon. Mbui, who is my deputy. I remember when we were students, involved in co-curriculum activities, especially music we used to have the whole trip including meals financed by the Government. At the moment, it has become so difficult. I will tell you that all these Members of Parliament get requests to finance co-curricular activities for

schools right from the district competitions to the national level. It has become unmanageable. Apart from increasing the amount, what is affecting this fund is mismanagement by the education officers. The Government needs to look into that aspect. Education officers receive money yet they still beg from politicians. That is an area that needs to be looked into for proper accountability. I am confident that the Committee will handle the Petition.

Hon. Speaker: Member for Endebess.

Hon. (Dr.) Robert Pukose (Endebess, JP): Thank you, Hon. Speaker. I want to support the Petition raised by my namesake. This is a very important Petition. One of the biggest challenges that we now face in schools is that, with the amount of money they are given, schools are calling the NG-CDF offices asking for construction of toilets or buildings that have collapsed. The amount of funds that they are being given is giving them a challenge. We also wonder whether the Free Primary Education (FPE) Programme ensures that whatever is being provided for these children caters for their basic needs.

Our Constitution provides that access to information is very important. As the Departmental Committee on Energy, we faced a challenge because of some of the issues we have heard about Kenya Pipeline. They have very low network such that even accessing very critical information is a challenge. As you are aware, we have many issues that are facing that corporation. As a Committee we are facing challenges because even the Chief Executive Officer does not respond to our summons, yet he appears in the Senate and in other places. This is a very important issue.

Hon. Speaker, you had made a ruling but we still have some confusion. When an institution is being investigated, can a committee investigate the same institution? These are issues that are bringing conflicts between us and some institutions. The institutions say that since their matter is being investigated by the Directorate of Criminal Investigation and the Ethics and Anti-Corruption Commission, they cannot appear before the Committee. It is also very important that you give a ruling on this.

Hon. Speaker: That is not exactly touching on the Petition. Member for Igembe Central.

Hon. Kubai Iringo (Igembe Central, JP): Thank you, Hon. Speaker for giving me this opportunity to comment on this Petition. I support it and urge that when it goes to the Departmental Committee on Education and Research, they should critically scrutinise and make recommendations. As some of my colleagues have said, we sometimes have monies which are rarely unaccounted for. Sometimes when you find that there is some unrest in some schools, it is just because head teachers do not disclose the amount of money that the Government provides. Therefore, they keep on coming to our offices for petty things which the Government has already catered for, but they rarely disclose. There are times when there are games and students in certain schools lose. There is always provision for money for students who could have participated. However, it is only schools with participant that remain with the burden of taking students for games. When they realise that they do not have enough money, they come to solicit for funds. I support the Petition. Let the anomalies be looked into critically.

Hon. Speaker: Nominated Member, Wilson Sossion.

Hon. Wilson Sossion (Nominated, ODM): Thank you, Hon. Speaker. I rise to support this Petition. It is timely because the right to education is a provision in the Constitution and co-curricular aspect of our learning must be sufficiently funded. This country is thinking of moving to a competent curriculum and this cannot be done if severe underfunding continues to persist in the sector. Therefore, this Petition is timely and will allow the Ministry of Education and this House, to do a fresh costing and proper financing of co-curricular activities.

In fact, this nation should align itself to the global commitment. As we think about the best curriculum, we must run the co-curricular activities as it is at the moment in a very efficient and effective manner. The non-funding has attracted indirect charges. Indirect charges have led to dropout of learners through exclusion and through sending of children home to collect fees. This Petition as it is committed to the Departmental Committee on Education and Research, should then open a new chapter of a more vibrant and exciting learning in our schools through proper funding of co-curricular activities.

I support.

Hon. Speaker: Member for Kiminini.

Hon. (Dr.) Chris Wamalwa (Kiminini, FORD-K): Thank you, Hon. Speaker. I rise to support this petition. This happened about two months ago in my constituency. Students were doing very well, but there was no money for transport. We later learnt that the Director of Education had picked some money and had promised to refund. It is high time the auditors moved in with speed to audit the officials in the Ministry of Education. Some of them want to reap where they never sowed. We know sports play a very critical role as far as learning of students is concerned. We have seen many good sportspeople who have improved the livelihoods. We have seen professional footballers like Mariga and Oliech do very well in sports. Therefore, there is a delicate balance between class work and co-curricular activities. It is high time the Ministry upscaled and increased the allocation on matters sports.

We can also allow the NG-CDF to come in and help. The NG-CDF is the only money we know when it comes to devolution. We do not see the county government coming to support this agenda. It is high time we went further so that we see how we can enhance the NG-CDF later on when we think of referendum. I support.

Hon. Speaker: That is very good, coming from an aspirant governor. I hope that when you finally assume the position, you will implement what you have just said.

(Laughter)

Finally, Member for Makueni.

Hon. Daniel Maanzo (Makueni, WDM-K): Thank you, Hon. Speaker for giving me an opportunity to support this very important Petition. It is true that students and parents are being charged an extra fee across all primary schools in Kenya. Education is supposed to be free in this country. It has reached extent where students are being sent out of school so that their parents can pay this particular fee. Some miss out on school for quite some time.

Therefore, the Petition is timely, not only for this particular fund, but the whole free education fund. It should be relooked at together with the construction of structures in many schools in the country run by the Ministry of Education so that we can balance with what Members of Parliament do through NG-CDF, both of which are national Government functions.

I thank you, Hon. Speaker. I support this Petition.

Hon. Speaker: Hon. Members, as you know, the rules are that you make comments or seek clarifications. It is not to support. Essentially, other than to thank the Member who introduced the Petition, it is just to make comments. Petitions are not business. I can see many of you are now trying to look at me with sympathetic eyes. Let me not have sympathy on anybody beyond now.

The Petition will stand committed to the Departmental Committee on Education and Research to deal with and, where necessary, give a report to the Petitioner. Let us move to the next Order, please. Please, petitions are not business.

PAPERS LAID

Hon. Speaker: Leader of the Majority Party.

Hon. Aden Duale (Garissa Township, JP): Hon. Speaker, I beg to lay the following Papers on the Table of the House:

The Annual Report and Financial Statements of Jomo Kenyatta Foundation for the year ended 30th June 2017.

Special Audit Report of the Auditor-General on the World Trade Organisation (WTO) Projects and Pending Bills at Kenyatta International Convention Centre.

Performance Audit Report on the Implementation of the National Schools Upgrading Programme by the Ministry of Education.

Performance Audit Report on Effectiveness of Measures put in place by the Kenya Wildlife Service in Protecting Wildlife by the Ministry of Tourism and Wildlife.

Special Audit Report of the Auditor-General on the Procurement and Implementation of the Mombasa-Nairobi Pipeline (Line 5).

The Reports of the Auditor-General and Financial Statements in respect of the following institutions for the year ended 30th June 2017 and the certificates therein:

- (a) Jomo Kenyatta University of Agriculture and Technology.
- (b) Lake Victoria South Water Services Board.
- (c) Alupe University College.
- (d) Marine and Fisheries Research Institute, and,
- (e) Coast Development Authority.

The Reports of the Auditor-General and Financial Statements in respect of the following constituencies for the year ended 30th June 2017 and the certificates therein:

- (a) Sirisia.
- (b) Lugari.
- (c) Bumula, and
- (d) Kabuchai.

Hon. Speaker: I am informed the Chairperson, Select Committee on National Cohesion and Equal Opportunity is absent and he has requested that the Member for Bomachoge-Borabu, Hon. (Prof.) Ogutu, to lay the report.

Hon. (Prof.) Zadoc Ogutu (Bomachoge Borabu, Independent): Hon. Speaker, on behalf of the Chairperson of the Select Committee on National Cohesion and Equal Opportunity, I beg to lay the following Paper on the Table of the House:

Reports of the Select Committee on National Cohesion and Equal Opportunity on the following activities—

1. Benchmarking visit to Kigali, Rwanda, on 5th-9th March 2018.
2. The 27th Session of the Human Rights Council held in the UN Headquarters in Geneva, Switzerland, on 5th – 9th March 2018; and
3. The Global Peace Foundation Training and Reform held in Belfast, Northern Ireland, on 6th – 8th March 2018.

Thank you, Hon. Speaker.

Hon. Speaker: Chairperson, Departmental Committee on Lands.

Hon. (Ms.) Rachel Nyamai (Kitui South, JP): Hon. Speaker, I beg to lay the following Paper on the Table of the House:

Report of the Departmental Committee on Lands on its consideration of a Petition by Hon. Joseph Manje on behalf of the residents of Kajiado North regarding alleged discrepancy in compensation offered to land owners by the National Land Commission.

Thank you, Hon. Speaker.

Hon. Speaker: Next Order.

NOTICES OF MOTION

NOTING OF REPORT ON GLOBAL PEACE FOUNDATION TRAINING AND FORUM

Hon. (Prof.) Zadoc Ogutu (Bomachoge Borabu, Independent): Hon. Speaker, I beg to give notices of the following Motions:

THAT, this House notes the Report of the Select Committee on National Cohesion and Equal Opportunity on the Global Peace Foundation Training and Forum held in Belfast, Northern Ireland, on 6th-8th March 2018, laid on the Table of the House today, Tuesday 23th October 2018.

NOTING OF REPORT ON 37TH SESSION OF HUMAN RIGHTS COUNCIL

THAT, this House notes the Report of the Select Committee on National Cohesion and Equal Opportunity on the 37th Session of the Human Rights Council held at the United Nations Headquarters in Geneva, Switzerland, on 5th – 9th March 2018, laid on the Table of the House today, Tuesday 23th October 2018.

NOTING OF REPORT ON BENCHMARKING VISIT TO KIGALI

THAT, this House notes the Report of the Select Committee on National Cohesion and Equal Opportunity on a benchmarking visit to Kigali, Rwanda, on 5th – 9th March 2018, laid on the Table of the House today.

Hon. Speaker: Next Order.

QUESTIONS

Hon. Speaker: First Question by the Member for Luanda, Hon. Omulele.

Question No.080/2018

NUMBER OF REGISTERED TECHNICAL AND VOCATIONAL EDUCATION TRAINING INSTITUTIONS

Hon. Christopher Omulele (Luanda, ODM): Thank you, Hon. Speaker. I stand to ask Question No.080 of 2018:

Could the Cabinet Secretary for Education—

(a) provide a list of all duly registered Government-funded Technical and Vocational Education Training (TVET) institutions in the country, indicating their location in terms of counties and constituencies; and

(b) When will funds allocated to TVET institutions in Luanda Constituency during the Financial Year 2018/19 be disbursed?

Thank you, Hon. Speaker.

Hon. Speaker: The question is referred to the Departmental Committee on Education and Research to prioritise for appearance of the CS to answer it. Next Question is by the Member for Bomachoge-Borabu, Prof. Ogutu.

Question No.082/2018

POLICY GUIDELINES ON PURCHASE OF TEA LEAVES FROM FARMERS

Hon. (Prof.) Zadoc Ogutu (Bomachoge Borabu, Independent): Thank you, Hon. Speaker. My Question goes to the Cabinet Secretary for Agriculture and Livestock.

Could the Cabinet Secretary—

(a) provide existing policy guidelines regarding buying of tea leaves from farmers by tea factories, and in particular by the Mara Tea Factory located at the border of Kisii and Narok counties?

(b) what steps is the Ministry taking to ensure that the numerous challenges faced by tea farmers are addressed?

Thank you, Hon. Speaker.

Hon. Speaker: I forward that Question to the Departmental Committee on Agriculture and Livestock to prioritise for appearance of the Cabinet Secretary to respond.

Next is a Question by Nominated Member, Hon. Osotsi.

Question No.084/2018

COMPLETION OF KISUMU-KAKAMEGA-WEBUYE ROAD

Hon. Godfrey Osotsi (Nominated, ANC): I beg to ask the Cabinet Secretary for Transport, Infrastructure, Housing and Urban Development the following:

(a) When is the ongoing construction of the Kisumu-Kakamega-Webuye Road expected to be completed?

(b) Is the Cabinet Secretary aware that the said road has numerous design gaps, including huge open drainages, lack of foot bridges and pedestrian walkways, which lead to numerous accidents and loss of lives?

(c) Would the Ministry could consider compensating victims of road accidents that result from poor road designs?

Hon. Speaker: This one is referred to the Departmental Committee on Transport, Public Works and Housing to similarly prioritise for appearance of the CS to respond to it.

The next Question is by Hon. Musimba, Member for Kibwezi West.

Question No.087/2018

INACCESSIBILITY OF HELB LOANS BY STUDENTS FROM TECHNICAL VOCATIONAL
EDUCATION AND TRAINING INSTITUTIONS

Hon. (Dr.) Patrick Musimba (Kibwezi West, Independent): Hon. Speaker, I beg to ask the Cabinet Secretary for Education the following:

(a) Is he aware that students in some accredited Technical Vocational Education and Training Institutions cannot access Higher Education loans?

(b) Could the Ministry consider reviewing the policy with a view to ensuring that students in all accredited institutions have access to these loans?

Hon. Speaker: The Question is referred to the Departmental Committee on Education to likewise prioritise.

Finally, the Question by the Member for Isiolo County, Hon. Rehema Dida Jaldesa.

Question No.089/2018

IMPLEMENTATION STATUS OF REPORT ON BOUNDARY DISPUTE
BETWEEN ISIOLO AND MERU COUNTIES

Hon. (Ms.) Rehema Jaldesa (Isiolo CWR, JP): I beg to ask the Cabinet Secretary for Interior and Coordination of National Government the following:

(a) What is the implementation status of the report by the committee constituted by the Ministry of Interior and Coordination of National Government to look into matters relating to boundary disputes between Isiolo and Meru counties?

(b) What measures has the Ministry put in place to ensure that there is lasting peaceful co-existence between the residents of Isiolo and Meru counties?

Hon. Speaker: The Question is referred to the Departmental Committee on Administration and National Security to prioritise.

The next aspect of that order is a statement by the Member for Kieni, Hon. Kanini Kega.

STATEMENTS

IMPLEMENTATION STATUS OF DIGITAL LITERACY PROGRAMME
IN PRIMARY SCHOOLS

Hon. Kanini Kega (Kieni, JP): Hon. Speaker, pursuant to Standing Order 44(2)(c), I wish to request for a Statement from the Chairperson of the Departmental Committee on Education and Research regarding the implementation of the Digital Literacy Program in primary schools, popularly known as the Laptop Project.

Hon. Speaker, the Digital Literacy Programme is estimated to have received a budgetary allocation of about Kshs20 billion for supply of tablets for the 1.2 million children in public primary schools, in addition to entrenching Information Communication and Technology (ICT) in the teaching and learning process and management of education in primary schools. For clarity, in the Financial Year 2018/2019, the programme was allocated Kshs11.9 billion for equipping schools with tablets and enhancing the ICT capacity of teachers. As of today, statistics show that about 19,000 out of the 23,951 public primary schools have received the tablets.

Hon. Speaker, the programme appears to be facing a number of challenges. In fact, on a spot-check of schools in my constituency, I observed that many schools appear not to be utilising the tablets provided as the teachers are not adequately trained or conversant with the gadgets. Also, there is lack of power connectivity and internet in some schools.

Hon. Speaker, it is in this regard that I would like the Chairperson of the Departmental Committee on Education and Research to make statement on the following:

(i) the level of utilisation of the tablets across the country;
(ii) the steps being taken to ensure the programme is a success; and,
(iii) the measures being taken to ensure that value for money is achieved through the use of the tablets.

Thank you, Hon. Speaker.

Hon. Speaker: By default, Hon. Kanini Kega, the Table Office listed the statement for this afternoon, which was wrong but nevertheless you will have my sympathy. I direct that the statement be issued by the Chairperson of the Departmental Committee on Education and Research when the House resumes after the short recess.

There is an intervention by the Member for Endebess, the Vice Chair of the Committee on Energy.

FAILURE TO APPEAR BEFORE COMMITTEE ON ENERGY BY MANAGEMENT
OF KENYA PIPELINE COMPANY

Hon. (Dr.) Robert Pukose (Endebess, JP): Thank you, Hon. Speaker. I seek guidance from the Chair on a matter touching on the Committee in reference to our oversight role - the Kenya Pipeline Company (KPC).

First, we have written severally to both the board chair and the Managing Director, Mr. Joe Sang to appear before the Committee but they have declined, citing investigations being conducted by the Director of Criminal Investigation (DCI) and the Ethics and Anti-Corruption Commission (EACC). The matters that are before the Committee are serious. They are issues of massive corruption and so the Committee has severally written to them.

The worst was today when the Managing Director called the Clerk, instead of even writing a letter to explain why he cannot appear before the Committee. He called the Clerk and told him to ask the Committee to write to him, indicating that he must appear before it.

We think the KPC is in contempt of the Committee and that is why they have declined to appear before it. This can be supported by the Chair, Hon. Gikaria. We feel that we need your guidance on the matter, which is before the Committee but is at the same time being investigated by other agencies. As a Committee, we even feel that the investigations being done is mere firefighting; they are not addressing the whole issue so that people can forget about it. These are issues pertaining to Line-5, which is the pumping of fuel from Mombasa to Nairobi.

We have issues of the jet line that is in Kisumu. We feel that there are serious issues that need to be addressed by the Committee. We want the KPC to shed light on those issues. Since the issue of access to information is a constitutional right, when we approached the website, we discovered that they have interfered with it such that we could not access the necessary information we need in order to make decisions. This has been interfered with for the last three weeks such that we cannot access their website.

Hon. Speaker, we therefore need your guidance. Thank you.

Hon. Speaker: This is not for debate because Hon. Pukose has indicated he needs my guidance. It will be a simple one. If you write to any person once or twice to appear before your Committee and he or she declines, neglects or refuses, by the third time you should write a report to the Clerk who will bring up the matter to me so that we can issue summons. Since that has not happened and all you wanted is my direction, then I direct that the said officers who you have invited to appear before your Committee should appear at such time as you shall appoint as a Committee.

But, of course, being mindful of the complaints we have received that invited persons come and stay on the corridors waiting for the Committee to quorate, we should avoid a scenario where they write to complain of being kept waiting. In the next few days our instruction will be when a Committee does not sit or form quorum at the appointed time, 30 minutes thereafter, the invited people are at liberty to disperse. In fact, the Committee will be debarred from purporting to invite such persons again.

It is within your right under the Constitution to invite people. Let a person appear before any Committee and make excuses, defenses or explanations. It is for the Committee to make a decision based on the information which the person proffers. So, it is not fair for persons to just ignore invitations to appear before a Committee thereby assuming the Committee will know about it through social media or probably they might have seen some of you who prosecute matters on television stations on a regular basis, sometimes, even at 5.00 a.m. I do not know who you are usually addressing at that hour.

At the very least, they should appear and explain themselves. Kenyans are encouraged to know that Parliamentarians are not impervious to reasoning. When given good reasons they will make an appropriate decision which upholds the dignity of both the institution and the person appearing before them. So, if you appoint a date, the Clerk is instructed to write to them and they must appear without fail. The other excuses they may have are immaterial. Let them come and give those reasons to the Committee. The Committee then, being seized of those explanations will make a decision.

Let us proceed. Next Order!

MOTIONS

REPORT ON AUDITED FINANCIAL STATEMENTS FOR CONSTITUENCIES IN NAIROBI COUNTY

THAT, this House adopts the Second Report of the Special Funds Accounts Committee on Audited Financial Statements for the National Government Constituencies Development Fund for constituencies in Nairobi City County for the Financial Years 2013/14, 2014/15 and 2015/16, laid on the Table of the House on Wednesday, 3rd October 2018.

(Hon. Kathuri Murungi on 16.10.2018)

(Debated concluded on 18.10.2018)

Hon. Speaker: Hon. Members, including the Member who is trotting, do not just look down, or maybe you are being careful not to slip. Hon. Members, debate on this Motion was concluded last Thursday. What remained is for the Question to be put, which I hereby do.

(Question put and agreed to)

Next Order!

BILL

Second Reading

THE WAREHOUSE RECEIPT SYSTEM BILL

Hon. Speaker: The Leader of the Majority Party maybe you can use the Dispatch Box.

Hon. Aden Duale (Garissa Township, JP): Thank you, Hon. Speaker. As the Chair of Parliamentary Service Commission, you need to crack the whip on the Information, Communication and Technology (ICT) Department. Even the purported iPads, I doubt if they use them. We need to find out so that they can be replaced.

Hon. Speaker, I beg to move that the Warehouse Receipt System Bill (Senate Bill No.10 of 2017) be read a Second Time. The House Business Committee (HBC) made a deliberate attempt to ensure that we deal with all the few Bills we have received from the Senate. This is so that they do not complain and keep the 15 National Assembly Bills which are important to Government.

The Senate Bill was read the First Time on 19th March 2018. It was considered and passed with amendments by the Senate on 29th March 2018. It is one of the Bills on Ways and Means. The objective of this Bill is to provide a legal framework for the development and regulation of our warehouse receipt system for agricultural commodities with the sole purpose of addressing the marketing challenges associated with the grain sub-sector.

If Members have a copy of this Bill, Part I deals with preliminary issues such as short title of the Bill and definition of terms as used in the Bill. For example, it defines a warehouse receipt system as part of the whole process of depositing commodities in a licensed warehouse, the issuance of the warehouse receipt reflecting the quantity and quality of the deposited commodity. It also deals with the management of the transfer of these receipts as a document of title. It includes, but of course, not limited to the regulations of warehouses and actors associated with this process including other players such as transporters and fumigation companies.

In Part II, if the House agrees, the Bill provides for the establishment of what will be referred to as the Warehouse Receipt System Council as a body corporate. This council will have full membership. In this section we are dealing with the qualification of the members and the function and powers of the council. It provides for the office of the Chief Executive Officer of this council who shall be responsible for the day-to-day management of the activities.

Part III of the Bill provides for the process of application for a licence for one to operate within a warehouse receipt system. The procedure and the processes are well documented in Part III. In the same part, we have provided for a revocation or suspension of a licence or the operations within the warehouse receipts system. Part III also provides for the Warehouse Receipt Appeals Committee that will hear and make a determination on the appeals relating to the refusal of an entity to grant a licence, the imposition of any conditions when granting that

licence, the revocation and the suspension or, all together, variation of the warehouse receipt licence and a decision of a warehouse inspector and any other decision of the council. So, the Warehouse Receipt Appeals Committee will deal with where, in the opinion of an individual or a corporate entity, the council made a decision contrary to law.

Part IV of the Bill provides for the issuance of the warehouse receipts for agricultural products deposited in a particular warehouse and the information that the receipt must contain. So, there will be a document known as the warehouse receipt that must be provided to the vendor or the person who wants to deposit goods or cereals in the warehouse. The information that the receipts must contain is provided for in Part IV of the Bill. The receipt must contain the establishment of a central registry operated by the council for the purpose of registering all the transactions that take place within the process of the warehouse receipt system, the replacement of lost goods; the replacement of stolen or destroyed receipts and the status of duplicate receipts issued.

Part V of the Bill provides for the obligation of the warehouse operator upon the receipts including the liability for loss of goods. It basically deals with the obligation that the operator of that warehouse is vested with in the event that, for example, there is liability for loss of goods to those which are not lawfully entitled to those goods and, of course, whether the goods were covered within the procedure of the warehouse receipt or proceeds of goods for the lawful charges in the storage contract. So, there will be a contract between the warehouse operator and the people who will use that system.

Part VI of the Bill provides for negotiation and transfer of receipts by endorsement and delivery to another person. It gives the right acquired after the negotiation that will take place within the warehouse receipts system.

Parts VII and VIII of the Bill provide for penal provisions such as when one issues a fraudulent receipt. We are in an era where people create their own receipts and documents which are not owned or recognised by the warehouse receipt system. So, there are certain penalties that are provided for in Parts VII and VIII.

Finally, in this Bill, we have the miscellaneous provisions on regulations and the powers of the Cabinet Secretary that he will make in consultation with the Warehouse Receipts Council.

It is a small Bill but very important for the economy and for better storage of grain in our country. It is the first time. This Bill was passed by the National Assembly in the 11th Parliament and, of course, like many other Bills, it collapsed in the Senate. However, this time, the Senate had the chance to publish it afresh and now I am sure if this House agrees with the amendments of the Senate, we will push for it to be concluded before we go for the short recess.

Hon. Speaker, those are the highlights of this Bill. The Chair of Departmental Committee on Agriculture and Livestock will second it. Of course, he has engaged the stakeholders concerned with this Bill and I am sure in seconding, he will give us the views, concerns and the additions that the stakeholders, when they were engaged, had to say in making sure that this piece of legislation is enriched as we debate and prepare it for Committee of the whole House.

I beg to move and ask Hon. Adan, the Member of Parliament for Mandera South and the Chair of Departmental Committee on Agriculture and Livestock, to second.

Hon. Speaker: Let us have the Chair of the Departmental Committee on Agriculture and Livestock

Hon. Ali Adan (Mandera South, JP): Thank you, Hon. Speaker. At the outset, I rise to second this Bill. As a Committee, we had a look at it in detail and we are of the view that it is

long overdue. It is very important to the economy of this country, especially the agriculture sector.

The Warehouse Receipt System Bill, 2017 was sponsored by the Leader of the Majority Party in the Senate. The Bill, having been considered and passed in accordance with Senate's Standing Orders, was forwarded to the National Assembly for consideration. This Bill seeks to provide a legal framework for the development and regulation of a warehouse receipt system for agricultural commodities for the purpose of providing for the establishment of a warehouse receipt council to oversee and regulate the implementation of the warehouse receipt system. The Bill further sets out the process of depositing commodities, issuance and transfer of receipts to regulation of activities involving agricultural produce. It also provides for the establishment of the council and Warehouse Receipts Appeals Committee, which make up the warehouse receipt system.

Over the years, the major problems we have had which have been identified as affecting small-scale farmers has something to do with storage. As a result of poor storage, we have commodity losses. This Bill seeks to mitigate on the post-harvest loss as well as mitigate on price fluctuations.

Hon. Speaker, warehouse receipts are documents issued by a warehouse operator as evidence that a specified commodity of a stated quantity and quality has been deposited at a particular location. That simply means that a depositor, farmer or trader would bring in the commodities into a registered warehouse, deposit the wares for a fee, leave the commodity in the warehouse and the warehouse operator grades and then keeps the commodity on behalf of the farmer. The title of the product or the commodity is with the depositor. In that case, he is issued with a warehouse receipt which is transferrable and the farmer can take it to the bank. He can also take it to any other person who would give him money on the basis of the receipt so that he can meet his long-term or short-term obligations.

The warehouse operator holds the stored commodity by way of safe custody implying that he is legally liable to make good on any value lost through theft or damage by fire and other catastrophes, but has no legal or beneficial interest in it. The receipt may be transferrable. It allows the new holder to use it as security for a loan upon presentation at the warehouse. In relation to this, Part IV of the Bill provides for the negotiations and transfer of receipts. Clause 38 of the Bill provides that a warehouse receipt issued to a person may be negotiated by endorsement and delivery to another specified person. Upon deposit of the commodity to a warehouse, the depositor can give this warehouse receipt which is endorsed to a third party to obtain a bank facility, for example.

The prospective benefits of this system would include the following: Warehouse receipt system encourages the flow of trade. It also enhances market efficiency. That means that once the product is stored in a warehouse, it can be traded efficiently between persons who are willing to trade with the commodity and thus increase the flow and frequency of business in the economy. The other benefit that we get out of this warehouse receipt system is that it mitigates on price fluctuation. The farmer would bring the commodity into the warehouse. If he is not in need of the cash immediately, the commodity would be deposited and remain in the warehouse. It does not need to be transferred or sold at a throwaway price. It can be kept in the warehouse until such a time that the prices are right and the producer can sell it at the prevailing market price at a premium.

The warehouse receipt system also provides or facilitates trade by enabling nondescript commodities to be assembled at a stated location. A warehouse receipt system facilitates

impersonal trade by reducing information asymmetry between counter-parties. Clause 20 of the Bill provides for the grading and weighing of products stored in a warehouse.

Further, it stipulates that grading of agricultural commodities shall be undertaken by agricultural commodity graders certified by the Agriculture, Food and Fisheries Authority (AFFA). This means that once the commodities are brought to a warehouse, they are graded by certified graders and kept in the store. It does not matter whether it is yours. The next time you come and you want to trade with your commodity, you may get the commodity of another trader provided that it was graded and found to be exactly the same quality like the grains you deposited. They may use an inventory system where they can keep track of the commodities. They may use what we call the first-in, first-out (FIFO) or last-in, first-out (LIFO) systems to dispose of the commodities that have been stored in the warehouse. Once you bring your commodity into a warehouse and it is graded and checked by certified graders, you would not need to get the same one that you had initially brought into the warehouse. You can get any other because after all, all of them are of the same quality.

Hon. (Dr.) Otiende Amollo (Rarieda, ODM): On a point of order, Hon. Speaker.

Hon. Ali Adan (Mandera South, JP): Hon. Speaker, the warehouse receipt system also enhances market efficiency.

Hon. Speaker: There is a point of order from the Member for Rarieda.

Hon. (Dr.) Otiende Amollo (Rarieda, ODM): Thank you, Hon. Speaker. I am acutely aware that the Member is seconding a Bill. But Standing Order No.80 also prevents a Member from reading a speech. I am aware that the Member has been reading the speech in secondment of the Second Reading of the Bill. Is that in order?

Hon. Speaker: It is certainly not in order. A Member may make references to whatever notes there may be but should not read. That is why we also insist that... Do not read.

Hon. Ali Adan (Mandera South, JP): Hon. Speaker, I was only quoting Clause 20 of the Bill. I was explaining for those who are very keenly looking at me.

Hon. Speaker: If you are just referring to that clause and quoting it, then proceed.

(Laughter)

Hon. Ali Adan (Mandera South, JP): Hon. Speaker, as I conclude, I just want to take you through how the warehouse receipt system works. The depositor takes commodities to the warehouse. The operator assesses the commodities that have been brought to the warehouse; depositors pay storage fees or a consideration for the commodity that has been brought; the warehouse operator guarantees delivery of the commodity described on the receipt; the buyer receives the commodity in the quality and quantity indicated on the receipt and then you are issued with a receipt which is transferrable. This receipt can be traded just like any other instruments which are traded in the capital markets in order to help farmers meet their short-term obligations.

The warehouse receipt system is long overdue. It will help the farmer to mitigate the price fluctuation and reduce post-harvest loss. I beseech this House to support and endorse this Bill.

With those few remarks, I second.

(Question proposed)

Hon. Speaker: Let us have the Member for Tigania West.

Hon. John Mutunga (Tigania West, JP): Thank you, Hon. Speaker, for giving me an opportunity to contribute to this Bill. Warehouse receipt system consolidates products into a warehouse. A warehouse is a large unit or a building. It can also be considered as a store. In agricultural terms, a warehouse is supposed to house agricultural products.

Warehouses should not be confined to agricultural products only but any products of any nature. So, warehouse receipting is a system of capturing products in a warehouse. First of all, the kind of product to be taken into a warehouse is determined then there is cleaning, grading and ensuring the value of the products is done. The products are stored for or on behalf of the person who has deposited them. The person who runs the warehouse maintains a record of the amount of products that have been taken into a warehouse.

The warehousing and receipting system gives people an opportunity to trade their commodities when they are in the warehouse. The warehouse receipt is recognised by banks. It is a product that is also recognised by other institutions which lend money or give any form of support in a production process. Warehouse receipting enables smallholder farmers in a country like Kenya to consolidate their commodities. It therefore gives regions possibilities to determine what they can produce in large amounts. You can know the potential of different regions. For instance, if producers are producing sorghum, we can have a warehouse to collect the varieties or types of sorghum that is produced in a given area by farmers taking the product to the warehouse.

There are several advantages of warehousing. One of the advantages is having commodities in their geographical locations. There is a geographical indication in agricultural production. Different commodities are produced in certain areas based on the agricultural potential of those areas. Therefore, through warehouse receipting, it is possible for us to know the potential of an area. Therefore, it is possible for us to focus a lot more in developing these areas.

It also enables determination of prices. Commodity prices fluctuate because farmers meet at the market place after producing their products at the same time. So, there is a temporary glut that is created and therefore prices go down. Warehousing takes control of this. Through it, products are not released to the market at the same time. They are contained in the warehouse and sold progressively. It also enables price determination. Various areas produce different products and the products are contained in the warehouses and progressively released to the market depending on the need. Products released upon demand will therefore maintain prices at a stable level.

Different areas declare their potential and products because of warehousing facility. We can ensure availability of different products at different times. This has a connotation of supporting focused investments. As a country, we can know through warehouse receipting the way we want to organise our industrialisation or manufacturing. Investment in agriculture will mainly be driven by availability of raw materials. Being the key to investment, it is possible for us to determine the quantities of a given product in a given area. Knowledge of the quantities of products in a given area enables investors to make very wise decisions in terms of the kind of investments to make. Through warehousing, we are able to know the kind of product that is produced in a given area and the amounts of the said product over time. The investor then makes an informed decision on how much of the product will be available across the year. Warehousing will enable the farmer get better stable prices. Better prices will enable farmers to buy inputs, increase the acreage and farm the land well. Therefore, we shall increase productivity. When we

increase productivity, we shall increase money to the farmer. Once the money to the individual farmer is increased, we shall grow the resource base of our people.

Warehouse receipting comes with many advantages. It is not only going to enable the national Government to make its statement in investment promotion, but it will also help county governments to implement investment promotion conventions. Different county governments will have an opportunity to say what they can do best based on the experience of how much is contained in their warehouses and the growth potential that is realised in terms of what is produced and what the county is capable of producing. It is, therefore, possible to sell their counties as investment destinations based on the agricultural products they can produce.

We can increase the quality of the products because of warehousing. When products are received at the warehouse, first of all, they are checked for cleanliness upon harvesting. Then they are sorted, graded, labeled and packaged for the warehouse storage. It is also possible for us to know that certain grade of a product is available in what warehouse at any one point in time. So, being able to determine the quality of the products is advantageous to us because we can tell the products we have in different parts of the country.

Warehouse receipting also gives possibility for a country like Kenya to capture regional potentials. Planning in agriculture sector could be easier if we are clear of regional potentials. The National Cereals and Produce Boards (NCPB) were created basically to even out grain management. The NCPB collects produce from production areas and has outlets in consumer areas. Therefore, you find NCPB stores all over the country but they only cater for grains. In warehouse receipting, we are looking at a wide variety of products. It is therefore possible for us to know the potential we have in different areas.

We may also indirectly trigger regional specialisation focus on what to produce by assessing warehouse receipting. In this country, we are not able to tell how much of a product we have from a particular region. When we are not able to tell what we can produce from a region in terms of quality and quantity over time, then it is not possible to advise correctly on investment. So, through warehouse receipting, it is possible for us to know the kind of products we can guide our potential investors to find in a given area so that they can know the kind of processors they need to fit in their investments.

Warehouse receipting will also enable us to organise industrialisation. Industrialisation basically focuses on transformation in agricultural production. The European countries, the Americas and the young industrialised countries of the East did agrarian reforms. Through these reforms, they were able to consolidate and determine what to be produced in an area. They were also able to determine the quantities they had at any one point in time. They were, therefore, able to collate investment information on industrialisation in those areas. So, through this warehouse receipting, it is possible for us to organise our industrialisation through promotion of the potential produce from a given area.

The use of the warehouse receipt system would also help us to cause investment promotion. Right now, our investment promotion brief as a country does not give the possibility for farmers to produce raw materials for investors. Warehousing, indirectly, can enable Kenyan farming community to declare what they have and the country can promote those areas as possible areas for investment.

Warehouse receipting is also a form of security. Farmers can use the warehouse receipt to secure loans from banks and to secure inputs from different outlets.

Hon. Speaker: Member for Seme.

Hon. (Dr.) James Nyikal (Seme, ODM): Thank you, Hon. Speaker, for giving me an opportunity to contribute.

This is an extremely important Bill that will drastically change the management of agricultural produce, particularly maize. The warehouse receipt system is basically two things: it is farmers who have the produce, which is maize or any other cereal for that matter, and the private people who are licensed to run warehouses. The farmers take their produce to the warehouse and they get receipts showing the quantity and quality of their produce. That receipt becomes like a title deed for the grain that is in the warehouse, on behalf of the farmer but being looked after by the warehouse operator.

The warehouse receipt itself becomes a very valuable document that can be used as collateral in banks for quick sale and to procure farm equipment. Therefore, the farmer instead of keeping the grain in his farm has a document which says, "I have this amount of grain." The benefit is that, first of all, the farmer saves on storage. Also, it avoids postharvest loss while waiting. It also ensures that the grain that is there on this receipt is insured. It, therefore, gives the farmer access to finance easily and enables quick transfer without moving the commodity. It also stabilises the price of the commodity because quite often, farmers harvest at the same time, leading to glut of the commodity at the market. With the warehouse receipt system, the farmer can choose when to sell, depending on the market prices. It is an extremely important thing, but remember the warehouses are private. The conditions that will make this system work are the grain for which the receipt is given and the warehouse and the legal framework that make it possible that farmers do not lose in any way. So, the condition for this process is that there must be a guarantee of availability of commodities like maize in Kenya.

The fact that farmers harvest and sell maize at the same time makes them fetch low prices. Availability of potential users like maize farmers, traders and millers can entice financial institutions to support this system. More importantly, we should ensure that the quality and reputation of the storage facilities are above board. They must have financial viability because the farmer will, definitely, at the point of depositing his produce, pay some fee to the warehouse owner or operator.

The current situation in our country is that the National Cereals and Produce Board (NCPB) is not a warehouse receipt; it is a Government warehouse that buys and sells. We know the problem that farmers have faced. It has been a monopoly. The farmers have not had an opportunity to sell their produce when they want. Because of that, farmers have incurred a lot of losses. We have had issues of corruption in the system and great losses of farmers' stocks. So, this is a system that will make the big change in the management of farm produce in this country. This thing has worked well in India. South Africa, Tanzania and Ethiopia are trying the system.

In Kenya today, the World Bank is supporting the system. I am almost certain that they have made some contribution to this Bill. At least, they are working on three countries in Africa to introduce this system. Do we need it in Kenya? My answer is 'yes.' Why do we need it? We have a major challenge with our grain storage facilities. We lack places to store our produce as we look for markets. The only purchase facilities we have been relying on are those of the NCPB, through which farmers have lost so much.

There is the issue of control of export and trafficking. We know the problem we have had with trafficking in this country. There is monopoly with the NCPB, which is not a proper warehouse receipt system; it is just a warehouse. If this system comes into being, it will obviously be of great value to farmers. More important is to get a regulatory framework that will support everybody: the farmer, the warehouse operator, the financial institution interested, the

processors and the traders who will be buying the cereal. I support this Bill because, first and foremost, it seeks to establish a council that will oversee the whole process. The Bill proposes how the council will be formed, its functions, how its members will be appointed, how the officers will be picked and what they will do.

Again, as is required, the warehouses where farmers will store their produce must be licensed, and must be inspected from time to time to confirm that they are being run in accordance with the law. That aspect has been included in this Bill. There is need for an elaborate system to make sure that the receipt that the farmer is issued with is valid all the time, and that it cannot be used for theft.

It is also important that a system is established to ensure that warehouse receipts can be negotiated. A farmer will not need to carry the produce; he just walks around with the receipt. In that case, there must be a way of handling that receipt. That is provided in this law. The warehouse operators will have a big responsibility. Therefore, their obligations to the farmers must be in law. Also, there must a negotiation system of how the receipts can be transferred or even used in banks or cooperative societies to secure loans. That is in place. They have even established an appeals committee so that if there is any dispute between a farmer and a warehouse owner or trader, it can be resolved.

I support this Bill, but I must caution that it is a very complex system. When we put it in place, the systems must work. If it works well, the NCPB will definitely die. I do not think we need it. In my view, it has given us a lot of problems.

Thank you.

Hon. Speaker: Member for Westlands.

Hon. Tim Wanyonyi (Westlands, ODM): Thank you Hon. Speaker for giving me this opportunity to contribute to this Bill.

The agriculture sector in Kenya is dominated by small-scale farmers. Records show that those small-scale farmers contributed 32.6 per cent of the Gross Domestic Product (GDP) in 2016. Kenya has, in recent years, experienced a food deficit resulting from low production and post-harvest losses. A majority of that is caused by poor storage. This leads to huge income losses by small-scale farmers and higher prices. This Bill is going to address some of those vices to reduce the wastage and also improve the storage.

The warehouse receipt documents that provide proof of ownership of commodities stored in warehouses will allow farmers to avoid selling after harvest when the prices are depressed. It will enable them deposit their commodities in certified warehouses which issue them with receipts that serve as documents of title. This can in turn be used as security for short term credit and help them mobilise funds. The Bill proposes a mechanism for certification of warehouses and sets a regulatory institutional framework. It stipulates standards for warehouse receipts and establishes a central registry system where users confirm the validity of receipts issued. This same Bill provides for negotiation and transfer of receipts - this being negotiation by endorsement.

When this Bill is enacted and implemented well, this proposed law has the potential to create a stable warehousing receipt system in Kenya. This will include allowing the NCPB to avail their excess storage capacity to farmers and other grain sectors.

This Bill is very important and I believe that its passage will lead to good legislation. It is going to address various gaps in our food security. We have seen farmers crying. They are doing so even at the moment because NCPB is unable to accommodate them. Also, there is a glaring gap in addressing ownership. Some farmers end up losing their commodities because they cannot

access storage. Poor storage causes wastage and destruction to most of the commodities. This Bill will address the gap that exists in our current storage system and also the security of the farmers. The issue of markets to farmers is incorporated in this Bill.

I support the Bill. I believe the system that will be established will address those glaring gaps and the issue of food security. When we do not have proper storage, poverty will be created, there will be an increase in the prices and that will bring a lot of complications to the farmers.

Hon. Speaker: Let us hear some voice not similar to that one. Member for Migori County.

Hon. (Ms.) Pamela Ochieng (Migori CWR, ODM): Thank you very much, Hon. Speaker. I appreciate you for being gender sensitive. As mothers, we are keener on food issues than anybody else. I rise to support this Bill and add my voice to that of colleagues who have spoken.

I think it is in the common or public domain that Kenyans struggle every year to produce food – all sorts of food ranging from vegetables to cereals to cash crops and so on. The greatest challenge that we have always had as a nation facing farmers is the post-harvest handling of agricultural produce. This Bill as outlined seems to provide a solution so that we are able to handle our produce from the farm once it is ready. Most farmers, especially small-scale ones, would harvest and get worried thereafter because they do not have proper storage for their produce. Most of them end up selling their produce at throwaway prices. If we have a good warehousing system where those farmers are assured of storing those goods in a professionally managed environment, they will have a lighter duty and fewer worries as they look for market for their produce. This will not only solve the issue of food security, but also value that our farmers get from the produce that they have.

The concept of warehousing, especially if it spread all over the country, will also facilitate better knowledge and capacity of our farmers. They will be able to own and manage their own produce in a way that will always make sure that they are together and can raise a stronger bargaining power, especially when it comes to the time of disposing those goods to buyers. This will, definitely, raise their financial income. If the receipting of those goods is properly managed and followed up, farmers will have security. For example, I have seen that people who own pieces of land have some letters of allotment, even before they are given title deeds. That still gives them the entitlement to transact business using those documents.

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

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

They will transact business in a lighter way without having to look for transport to carry their produce to the market, back and forth, and end up raising the cost of production as opposed to raising their profit margins.

I really appreciate the drafter of this Bill because it looks fully comprehensive. It addresses the component of value chain management right from the farm up to the time those goods will be disposed in the market to the end users. I think it is a good Bill that if implemented, our farmers will have relief.

(Hon. Member walked in the aisle)

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Order, Ochieng Awuor, Member for Migori. A Member is out of order. This time it is not Hon. Millie Odhiambo. You are crisscrossing the Floor.

Hon. Millie Odhiambo, you can walk in. Hon. Member, you do not cross from one side to the other. Please go back, bow and cross over to speak to the Member.

(The Hon. Member bowed and crossed to the other side of the Floor)

Thank you. Carry on, Member for Migori.

Hon. (Ms.) Pamela Ochieng (Migori CWR, ODM): Thank you, Hon. Temporary Deputy Speaker. This House sometimes confuses Members.

I was saying that if we allow farmers to be owners of their own produce in their own warehouses, then we will see a scenario where losses such as the ones that have been experienced in the past by members of the public, when the NCPB takes their produce and they are not paid on time, will not arise. We will encourage our farmers to be better managers of their own produce. I would, therefore, like to support this Bill and only request that upon its implementation, farmers are more empowered to manage the whole process. Whichever bodies that will be put in place should work with a lot of transparency and accountability, so that we do not end up with scenarios where we have losses in those warehouses. I want to submit that it is a good Bill. It can solve many problems for the farmers. It will add value to our crops and our farm produce so that we do not throw them away when the prices are low. That is because our farmers do not have places to store them. My only prayer, as we move on, would be that, as we implement it, we should make sure that those warehouses are spread all over the country. They should not be brought to Nairobi again but in the farms where our farmers are living and can access them.

Thank you, Hon. Temporary Speaker. I support.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Thank you, Member for Migori County. Member for Ndhiwa, Hon. Martin Owino.

Hon. Martin Owino (Ndhiwa, ODM): Thank you so much, Hon. Temporary Deputy Speaker. At the outset, I rise to support this Bill. Ndhiwa, as a Sub-county, is a food basket for the whole County of Homa Bay. It is only that it has not been enhanced in the past year because we do not have warehousing system. If this is put in place...

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): There is an intervention by Hon. Hon. Millie Odhiambo who has just walked in.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): On a point of order, Madam Temporary Deputy Speaker. Is the Hon. Member who is my neighbour and friend in order to mislead the House that Ndhiwa is the food basket of the county when it is Suba North that is the food basket? It is supplying fish to the whole county!

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Hon. Millie Odhiambo, you like pronouncing yourself in style. We are all aware that you are the Member for Suba North. When you get the chance to speak, you will let the House know. Let the Hon. Member for Ndhiwa debate.

Hon. Martin Owino (Ndhiwa, ODM): Thank you, Hon. Temporary Deputy Speaker. At one point, Suba was in Ndhiwa. She could be right but that was before it was divided. Ndhiwa has small-scale farmers who are struggling and working hard to produce their crops for food and

also for commercial purposes. We have bumper harvest right now, but it is being sold cheaply. A tin of corn is going for about Kshs40 because there are no storage facilities for the farmers. When this is introduced, I think the rate at which the crops are getting spoilt will go down and the household income will rise. That is because they will be having those receipts which will stand in for their security. This can cascade to paying school fees and children will not drop out of school, poverty will reduce and destruction by pests that we now see will go down drastically.

We believe that in Ndhiwa, we can export beyond Homa Bay County if this system is introduced. I, therefore, support this with a caveat that it should be well regulated so that it does not lead to another corruption in the store house. It should also have insurance. Should the warehouse system be gutted down by fire, then the farmer does not lose.

I also want to add that this will improve the value system for the crops. In my constituency, we are very optimistic that the corn and nuts that we grow will get good value. In turn, we will have value addition to all the crops that we produce. I support this and thank you, Hon. Temporary Deputy Speaker, for giving me the time. May the Mover and the Seconder be blessed for this.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Very well. The Member for Mwea.

Hon. Josphat Kabinga (Mwea, JP): Thank you, Hon. Temporary Deputy Speaker for giving me this opportunity to contribute to this very important Bill. I come from a constituency that would greatly benefit from this Bill. This Bill has the potential to address some of the challenges that our farmers have been experiencing when it comes to selling their produce in haste. Through this Bill, farmers will have an opportunity to store their produce and sell when prices stabilise or when the need arises. Farmers will also be able to store their produce, walk into banks and negotiate for some facilities to enable them wait until prices stabilise.

In the past, farmers, especially where I come from, would sell their rice at a throwaway price because by the time they harvest their rice, they would have exhausted all their resources within the period of planting and taking care of that rice to harvesting. It will now be an opportunity for them to store their rice in groups, in co-operatives, in a well taken care of warehouse and be able to wait until prices stabilise.

I support this Bill hoping that a number of things will be done. We hope that there will be a clear and deliberate way of educating our small- scale farmers in the warehouses, so that they can take advantage of them. We should not create another layer of brokers who would benefit from such warehouses, who would be buying rice and other produce from farmers and quickly take them to warehouses and then rush to banks to get money to trade. I am hoping that some measures will be put in place to ensure that we create awareness and properly educate our small-scale farmers to be able to benefit from those warehouses.

The other area that I hope the implementing agency will be looking into is licensing. Although this is left in the hands of the county executive officers, I hope that there will be proper procedures and mechanisms to ensure that we license only people of integrity, people who are out to help our farmers and people who are not out to just enrich themselves. I hope that strict measures will be put in place so that only those people who produce serious bonds and insurance from reputable insurance companies and banks are licensed.

The provision of the county executive officers licensing and notifying the warehousing council after seven days is a good one, but it is not enough. We need to be very clear on that. We have had banks going down with people's money. We do not want warehouses that will come, collect farmers produce and run away, close down or mishandle the produce and when they are

asked to pay, they cannot. These are areas that we must be very keen to look into. The issue of comingling the same type produce is a good one but, again, it has to be handled with care. Otherwise, we are going to compromise on the quality of produce that has been delivered by farmers.

If these issues are properly taken care of, we will see a clear improvement on farmers' economic welfare. The situation out there is pathetic. For the record of the House, for example, we are just about to harvest rice. The prices will go as low as KShs35 or KShs45 per kilogramme, when the actual price is supposed to be about KShs80 per kilogramme. From the difference, one can tell the kind of exploitation that farmers undergo out there. The same farmers suffer in the hands of people who are supposed to take care of them. I know I have a question on delivery of subsidised fertiliser. I hope that with these warehouses, farmers can walk into NCPB and declare, through their receipts, what they have in the warehouse to be given subsidised fertiliser. As it is now, farmers walk into private shops and they are given fertilisers at very high costs and they end up incurring losses.

People out there take advantage of our farmers who probably are not able to calculate their production costs. They have been there over time, with no one taking care of them. I would want to see a situation where NCPB and other agencies like the National Irrigation Board (NIB) work together with the warehousing receipt system through the council to clearly help farmers to enjoy the fruits of their work. This can work if there is goodwill. It is in the subsidiary legislation where the rubber meets the road. I am hopeful that the Committee on Agriculture and Livestock, which has been quite active in this area, will work with the Ministry to come up with proper subsidiary legislation to regulate the warehousing receipts and ensure that they do not come to enrich the already rich, but to take care of the small-scale farmer who has been suffering over the years.

With those few remarks, Hon. Temporary Deputy Speaker, I fully support this Bill. Thank you.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): The Member for Kathiani.

Hon. Robert Mbui (Kathiani, WDM-K): Thank you, Hon. Temporary Deputy Speaker, for giving me this opportunity to contribute to this Bill which seeks to provide a legal framework for the development and regulation of a warehouse receipt system for agricultural commodities. Agriculture is very important in Kenya because, generally, we are an agricultural economy. In fact, just by Googling, I noticed that agriculture is the largest contributor to our GDP; that half of Kenyan farmers do subsistence farming and the other half do it for commercial purposes; and that we are a leading producer of coffee and tea in the world. But Kenyan farmers are some of the most overworked, underpaid, under-utilised people in this country. They are also among the poorest. That is why there is a lot of exodus from the rural area to the city, because they expect that in the city, they will be able to earn more. So, this Bill is extremely important. It tends to look for solutions for our farmers. Some of the things it will assist our farmers with are surplus.

Recently in Kitui County, the Governor did an excellent job. I went and marketed growing of green grams. Many farmers there were given seeds and fertiliser and went ahead and planted. But after they harvested, there was a problem. They had a surplus. Getting a market to sell was difficult. There were no warehouses where they could take the products to, and which could have helped them in future. Unfortunately, because this kind of system is not there, many farmers had to sell their produce at throwaway prices. So, this law will be able to deal with that.

On the issue of marketing, it is important. When you put commodities together, it helps the farmers to market. You cannot market your green grams alone. But when you put them together in a warehouse, it becomes easier because you are trading together with others and the idea of economies of scale kicks in. This is excellent. In fact, it will be able to create a perfect situation for farmers, where they grow crops, take them to the warehouses, get their receipts which they can trade with and they can access that product in whatever way that this Bill allows. It is definitely a good thing.

I have noted a few issues in the Bill that need to be addressed by this House. First and foremost, it is important to note there are other pieces of legislation coming up on different commodities. Coffee will have its own Act. Tea will have its own Act and many other agricultural commodities. This Bill has put them together. I do believe that when it comes to handling coffee, tea and other commodities, there might be differences here and there. So, it is important for the Bill to address itself to what happens when we are dealing with coffee or tea. It is silent on that. It has just grouped them together and we know that there might be specialised needs for different commodities that we will be trading in.

The other issue I have noticed is that of the warehouse receipt system council. It is very important and it has very good work. But I have seen one of the members is supposed to be a person representing farmers in Kenya. I do not know how they will be able to identify that person. Tea farmers will expect to have a member. Coffee farmers like myself will expect to have one. Sugar-cane farmers will expect to have someone there. Livestock farmers from the arid areas will expect someone to represent them. So will even fish farmers, maize farmers and chicken farmers. So, when we say there is going to be a person representing farmers, how are they going to identify that person? We either have several people or we are very specific - maybe a farmers' association and we specify which one so that it does not end up that the representation is not fair for some farmers in the country.

I support the idea that the chair and vice-chair of the council cannot be of the same gender. That makes a lot of sense. I have also noticed the requirement of one-third gender rule in the membership. How again are we going to address this, considering that those people will be sent to the council from different offices?

The Principal Secretary (PS) for Agriculture and Irrigation will either be there or have a representative, so are the PS for Finance and the PS for Foreign Affairs and International Trade. Two persons from the Council of Governors (CoG) is fair because one will be from either gender. But then again we have the Director General of Agriculture, Food and Fisheries Authority - that is only one gender. Then we have a person from the financial sector, a person representing farmers as I mentioned, a person from the Eastern Africa Grain Council and one person from the consumer federation. What formulae are they going to use so that in the appointment of those individuals to sit in that council, they can be sure that by the time we are through, the membership will adhere to the one-third gender rule, which is a requirement in law? I think it is important to point this out so that by the time the council is formed, it will conform to the Constitution of the Republic of Kenya.

The third issue that I have noticed is that when the warehouse receipts are traded, it means that the farmer will deposit his produce at the warehouse and will be given a receipt either in hard copy or in electronic form.

There is important information that will be on that receipt about the ownership and quality because different agricultural commodities have different qualities. It will have the quantity but if we are going to have this in hard copy, then chances of manipulation, forgery and

exploitation become high. I would have proposed that if we want to move this country and we are coming up with systems that are developed, why do we not just encourage the use of the electronic form? If we do so, identification of ownership becomes biometric and we ensure that whatever we put in the systems cannot be manipulated easily. It is easier to manipulate physical documents than it is to manipulate electronic ones, other than in the last general elections. I think it is important that we address these issues so that by the time we pass this Bill, it supports our people.

Finally, it is the issue of who manages the warehouses. We are coming up with a situation where all the important produce from our farmers goes into warehouses to be managed there. Have we thought about the vetting of the people that will be managing those warehouses? We have allowed the authority to give those licences to the county governments which is okay because, within the law, this is a devolved function. But what kind of vetting systems have we put in place so that we are sure that the people who will be managing our produce in the warehouses are people who can be trusted? Otherwise, we may be jumping from the pan to the fire.

I support this. Thank you.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Before I give to the Member for Makueni, I give to the Member for Funyula.

Hon. (Dr.) Wilberforce Oundo (Funyula, ODM): Thank you, Hon. Temporary Deputy Speaker. I rise to support the Bill basically because it is long overdue and it has tried to bring to force what has happened with other commodities such as the stock exchange, properties and other derivatives in the market. I support the warehouse receipt system considering Kenya is primarily an agricultural country and considering that the people of Funyula who elected me depend on agricultural products for their survival. I must also commend the drafters, the Senate, the Mover and the proposer of the Bill for having had the time to bring the Bill to this House for deliberations.

That said and done, the warehousing system gives farmers several advantages. While not trying to repeat what my colleagues have said, first, it stabilises prices of goods - agricultural commodities. For some strange reason, our season for production is almost at the same time in the whole country. In the western region, we produce at the same time. The law of supply and demand, where supply exceeds demand, prices plummet below the production cost occasionally. For example, in my constituency, we have a bumper harvest this year and a 2 kilogramme tin of maize which ordinarily would cost as high as Kshs35 has been retailing at Kshs15. That is below the cost of production but since farmers have to dispose in order to get cash, they have no choice but to dispose.

Secondly, it will reduce the cost of storage that farmers have to incur. Many times, one of the greatest challenges we have in the agriculture sector is the post-harvest loss. We trust and believe that the warehouses will be run professionally and they will minimise the loss of agricultural products as a result of bad storage facilities or inadequate storage facilities.

Thirdly, I trust that the central registry as proposed in the Bill will try as much as possible to allow the certificates issued by the warehouse operators to become security for financial facilities. Unfortunately, looking through the Act, that particular aspect has not been expressly stated as it is in the Lands Act. The only reference which gives an indication that they need to securitise these certificates is the membership of the council which has one person nominated by a financial sector regulatory forum. We would wish, at the Third Reading, to introduce amendments that reinforce the use of those certificates as security for acquisition of loans and

other financial facilities from the Agricultural Finance Corporation (AFC) and other mainstream financial sectors.

I have my reservation about the management of the warehouses. My colleague has mentioned it. Probably, just like we do for SACCOS and co-operative societies, other than the investor in the warehouse system itself, the managers must be tested and found fit to manage those warehouses. Otherwise, we are going to have a situation like the public service vehicles where the losses are going to be massive and insurance underwriters will start avoiding the warehouse receipt system in the issuance of insurance facilities.

As a country, we also need to invest in these issues. I can see we have the council and another registry maintained by county governments. My fear is that we are going to have unnecessary duplication. Being a country that is riddled with corruption, we hope and pray that the two levels of registration and inspection will not be an avenue for corruption.

As I conclude, the penalties provided for under Clause 48 of the Bill seem to be too lenient, providing for only a penalty of Kshs100,000 for any breach of the provisions of the Act. I would request, at the Third Reading, that we enhance it so that we enforce professionalism, integrity and avoid cases of corruption. The issue of electronic systems needs to be seriously considered because this country, again, is beset with cases of forgery, misappropriation and misinterpretation. We need a fool-proof system that avoids cases where farmers would make loses or where warehouse operators would be saddled with very many claims and take so much time to litigate and ascertain the true position.

With those few remarks, I support.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Next on my request list is Hon. Maanzo Kitonga.

Hon. Daniel Maanzo (Makueni, WDM-K): Thank you, Hon. Temporary Deputy Speaker, for giving me an opportunity to contribute to this very important Bill. I am familiar with it because in the 11th Parliament, I was a member of the Departmental Committee on Agriculture, Livestock and Co-operatives and we brought this Bill. In fact recently it appeared on the Order Paper but before it was reached, the Senate, which killed our 11th Parliament Bill, had already copied it and debated it quickly.

It has now come back and it is like a crossbreed. It has been seconded by the Chair of the Departmental Committee on Agriculture and Livestock. This means he agrees with the Senate in totality, though he previously brought a similar Bill to this House. It has proper jurisdiction in the Senate because it is addressing matters to do with the counties. Kenyans are very lucky since they have an opportunity to address the perennial problems of the National Cereals and Produce Board. Those problems range from theft and irregularities which are happening under the management of the Ministry of Agriculture, Livestock, Fisheries and Irrigation.

This Bill is two-tier. It can be handled by the national Government and also counter-checked by the county governments. There are many gaps because we have copied this system from the Indian experience. It has a lot of challenges on how it will fit here in Kenya. I am aware of the Eastern Africa Grain Council which has been doing a similar thing, but has lacked the support of the county and national Government. This is because it is being operated by private business entrepreneurs together with farmers in this country. Therefore, it has had its share of problems, failures and successes.

Many Kenyans have complained about this system because they would surrender their grains and wait for the council to sell so as to get payment. It has faced the normal problems we have in the country. Therefore, we can make this law better instead of copying the Indian

experience which has been very successful. We can only improve it in the Third Reading to the extent of killing the NCPB Act under the National Cereals Board Act. This is because we will have two parallel systems doing the same thing and they should be synchronised by law.

There are other Acts of Parliament, like the Crops Act which deals with the same thing. We now have the Coffee Tea and Sugar Acts with their regulations. All these Acts will end up in warehouses and this will have serious financial implications because who will develop the warehouse system? How is it going to be managed? This must come out in this law so that we can avoid the cartels and the systems we have had before.

We have heard of an electronic system versus a manual one. I believe the two should complement each other and tie-up. The farmers should keep their manual and electronic records which can be accessed in the system. So, at any one given time, they can know how much of their produce is still in the store, how much has been marketed and what is sold. The issue of marketing farmers' produce and co-operatives then comes back.

In the counties, there are many co-operative warehouses which the county governments are managing very well. For example, in Makueni, we have one in Kathonzweni, Ukia and a very beautiful one at Mukuyuni where they also store fertilisers. We also have a grain storage which was built by the national Government. How will the existing infrastructure be utilised because part of it was funded by the Government? Also private entrepreneurs have come up with the new business system of building warehouses all over the country. Kenya is an agricultural country and we have grains everywhere. The rains are about to start and so, in a few months, we will need storage and marketing for our grains.

Recently, there were heavy rains and a lot of food was produced. We should have quality storage of food which will ensure it does not become moldy or gets aflatoxin. Also, it should process the grains so as to add value. We have the Galana Kulalu Maize Irrigation Scheme. I remember President Uhuru Kenyatta challenged the team when we went to launch the scheme that they should not follow him back to Nairobi. His dream is that it should grow up to one million acres.

I believe this will be realised with the construction of Thwake Dam in Makueni. We will have a lot of produce but how will we manage it for the benefit of the farmer? I have not seen that answer in this Bill. How are we going to solve the problems we have seen in Eldoret? Farmers there are wishing they are dead other than living in a country where their seed is stolen. People have forged papers to show that they have supplied up to 200 million kilogrammes of grain to warehouses owned by NCPB. This is theft and it squeezes Kenyans.

This law should address the problem which the Senate went to witness in the Rift Valley. We should improve the lives of farmers in this country using this law. National Assembly and the Senate have the opportunity to solve farmers' problems once and for all. If we do not amend this law, seriously and substantially at Third Reading, it is as useless as the NCPB Act. It will not be useful to the country and it will result to the same failure mainly because of corruption and systems which are loosely tied, such that people can maneuver and con farmers.

We need to address these matters once and for all by using this law. I will be one of the Members in this House who will be bringing amendments in the Third Reading to strengthen it. I will make proposals to amend and delete the NCPB Act which does not conform to the Constitution. Agriculture and its products are devolved and, therefore, what is the role of counties in the current grain storage system? Our farmers are suffering because the national Government is handling it, but the county governments are not counter-checking.

We should ensure that, at any one given instance, our farmers know the status of their produce and whether it has been sold. What should we do with the grains that are brought into the country irregularly through our porous borders and ports? We have grains being imported and yet, our own farmers in the Rift Valley have kept their grains in the barns. We want a situation whereby farmers will no longer store food in their farms but take it to a warehouse where it is receipted. It can be sold immediately or later but they should know the value of their grain because it will be useful to them soon or later.

Many farmers are unable to pay school fees and yet, they have worked very hard and produced food worth a lot of money. They are suffering. The same is happening to those who are living in areas which do not have enough rainfall. In Makueni, they are also receiving food rations from the Government popularly known as *mwolio*. We now have a new policy called “Operation *Mwolio Out*” through irrigation, so that no one will be given relief food again. In some areas, farmers work very hard to produce food and their sweat is not rewarded. They are suffering as farmers in any other parts of the country from Ukambani, Wajir and North Eastern. They are in the same status. I urge Members to look at this law critically. It should not be a duplicate borrowed from Indian experience to be practised here and then it fails to bear fruits.

Thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): The Member for Isiolo North. Order! What is wrong with you Member for Kwana? You are on intervention and there is nothing out of order.

Hon. Hassan Hulufu (Isiolo North, KPP): Thank you, Hon. Temporary Deputy Speaker, for giving me this opportunity to contribute to this very important Bill, which I support. Generally, as a country, most of our people rely on agriculture. As much as there is lack of a legal framework to guide commodity trade, what is being proposed to be regularised and to be legalised through this Bill is already happening informally.

Looking at the various provisions of this Bill, there is no doubt that it will contribute greatly towards agribusiness in our country. It will boost agricultural business. The proposed Bill will also enable farmers to earn better prices from what they produce. Most of our farmers rely on rainfed agriculture. Our cropping seasons are the same. Therefore, we have times when we have a lot of produce on the market and most of it goes to waste simply because we lack efficient storage infrastructure in the country. In some counties in lower eastern Kenya, where you come from, Hon. Temporary Deputy Speaker, there is what is referred to as ‘*ndengu* revolution’. I am sure that if we had a warehouse receipt system in place with adequate, efficient and safe warehouses where farmers could keep their surplus produce, farmers would earn more and the *ndengu* revolution would have transformed the lives of farmers as a result of what they earn from the parcels they have planted.

I think it is only the Eastern Africa Grain Council which has tried to implement the warehouse receipt system in Kenya. However, because it is not backed by any law, they have been facing challenges. If we pass this Bill into law, it will enable farmers to use the receipts that they will receive, once they deposit their produce in registered warehouses, as collateral to even access loans which they can use, for example, to pay fees, purchase farm inputs and meet their medical needs, among others.

I am looking at the various provisions of the Bill. There is the proposed council. The membership is so broad and in tandem with the provisions of our Constitution. All the key stakeholders are members, including the key private sector actors. Of course, when it comes to selecting certain members, as proposed in this Bill, there may be challenges. I have the example

of the farmers' representative. However, I am sure that in our country, we have a federation of farmers' organisations. Therefore, it is good that, even if that is done through regulations, some specificity will be introduced so that when it comes to picking those members there will be no controversy and very many people scrambling for those positions. This is because, as Kenyans, we are very good at rushing to courts and saying that, probably, those are not the right people to represent us.

Agriculture is a devolved function and the Bill provides some function to the County Executive Committee Member (CEC) for Agriculture. But unless the gap that I have seen is going to be addressed through regulations, when the Bill proposes that the CEC, among many other things that are listed as his or her functions, includes issuance of licences...

(Hon. Daniel Maanzo consulted loudly)

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Order! Order! Hon. Maanzo and the other leader, can you please consult in low tones.

Hon. Hassan Hulufu (Isiolo North, KPP): Among the various functions listed in the Bill as functions of the CEC for agriculture in the county, is issuance of licences. My only concern is this: Is he going to make that decision as an individual or is there going to be some kind of a committee at that level also? Probably, those could be some of the things that could be provided for in the regulations when the council comes up with regulations guiding its operations. We know that if we leave the supervision of such a system – the licensing and the revocation if the licensed warehouses do not comply with the conditions of the licences – to the council and we expect that those warehouses will be spread across the county, it will not be easy. Therefore, bringing in the role of the county governments, especially the Department of Agriculture and the CEC is something which is very positive.

Another important thing is that if a warehouse operator takes in the goods and issues receipts, and sometimes accidents can happen and those stored commodities can be destroyed through fire or other accidents, there is a provision of ensuring that the warehouse operator again insures whatever is stored in their warehouses. This is a good thing. Generally, I think if the system is implemented properly for the farmers of Kenya, especially now that the warehouses will not be public-owned warehouses but private sector-owned, it will serve them well. I am sure that the system will go a long way in helping farmers to earn more from their income. It will also help us to stabilise prices of agricultural goods because, at the moment, during the harvest seasons, because the market is flooded, the prices are suppressed and then there are times when the prices go up. Because they do not have good storage facilities, they are forced to dispose of their produce and earn less. This warehouse system is going to help us to store the surplus during bumper harvests. Across the seasons, it will help us stabilise the prices of agricultural goods.

Another key thing about those warehouses, once the Bill is passed into to law they will help us reduce post-harvest losses. At the moment, post-harvest loses range between 15 to 20 per cent depending on the commodity that you are looking at, and those are very heavy losses. Therefore, with efficient, safe and a properly managed warehouse system, as a country, we are going to avoid those losses.

The other issue which this Bill, once it is passed into law, will help us achieve is to make sure that our agricultural goods are graded properly and the proper weights and measurements are done properly. Again, this will make sure that our farmers are going to earn more from their

produce. Therefore, I support this Bill. I wish we could come up with something similar to this for livestock farmers.

Thank you very much for giving me the time.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Hon. Members, before I give the Floor to the Member for Kwanza, there is a Member who wants to negate. Let us have the Member for Tongaren.

Hon. (Dr.) Eseli Simiyu (Tongaren, FORD-K): Thank you, Hon. Temporary Deputy Speaker. Since the debate started, everybody has supported the Bill. However, I want to alert the House that this is a wrong-headed legislation. I do not fear standing alone on this one. I stood alone in this House in the 11th Parliament and warned the country about the Standard Gauge Railway (SGR) while everybody was supporting. I want to alert you that this legislation is headed in the wrong direction. You will completely finish the small farmers. We will clear them completely with this legislation from where the NCPB left them. It is like somebody set out to make a three-legged stool but forgot to put on the third leg and so, that stool cannot stand. This law cannot help the farmer in this country, unless there are guaranteed minimum returns for the farmer.

If the farmer takes his grain to that storage and waits for the prices to stabilise and then they sell the grain on his behalf and he gets the money, how have you guaranteed that farmer that the prices will not fall further? They will put the grain in those stores. The importers, who are influential enough to get the National Treasury to open up importation as much as they want, will import that grain and flood the market. That farmer will suffer. It might work for the large-scale farmer who for example, has 1,000 or more bags of maize. This might be useful for that farmer.

The problem of the small-scale farmer who only gets about 50 or 70 bags a year is cash. It is not storage. The moment he harvests, he dries the grain, sells it and gets money. That is the only money he gets in a whole year to pay fees for his children and pay hospital bills. That farmer has no time to take this grain to be stored somewhere and wait for the prices to improve. What will the farmer do? He will take it there and instruct them to sell it immediately. That will not benefit that farmer. He will sell it at that low price. That farmer cannot wait. This does not help that farmer.

This Bill helps the businessmen who have been fleecing the farmers all along. They are behind this Bill. They want to now be licensed with warehouses so that they can now fleece the farmer legally with the backing of the law. That way, the small-scale farmer who has 50 bags will be forced to take his maize there. He cannot wait. The person who will eventually profit is that warehouse owner who will pay that farmer quickly. We are legalising those fellows who keep on damaging the roads in my constituency with huge lorries. Currently, they are carrying away the maize and, in the process, damaging my roads. Now we are legalising them to construct a warehouse and do it properly.

This legislation is headed in the wrong direction and should be thrown out. If we want to rectify the situation of farmers in this country, let us look at subsidies for farmers. Western countries subsidise their farmers to ensure that food becomes cheap and affordable for everybody. They are subsidised to the extent that they continue planting that food and are paid for it so that if it is in the market, it is enough for everybody and the price goes down. For us, instead of looking in that direction, we are even importing fertiliser and calling it subsidised fertiliser when it is just stones. It is fake! We are messing up the farmer. This same House agreed

on an 8 per cent Value Added Tax (VAT) on diesel. Farm machineries use diesel. Have we subsidised the farmer? Let us not cheat ourselves.

I told this House before that the SGR was headed in the wrong direction. They did not believe me. Look at what the SGR is doing to Mombasa. Mombasa business is dying because of SGR. This one will finish the farmers who are left standing. This Bill is wrong. My dear colleagues, throw it out. It is not worth the paper it is written on. In fact, whoever tabled this Bill should be surcharged for the cost and time that the two Houses of Parliament have taken to debate such an incorrect Bill. Does one size fit all? Because it worked in India, does it mean that it should work here? No way. This is a licence to finish our farmers.

I oppose it.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): That was the Member for Tongaren. This is a House of debate. You can oppose or support. That is his position. I gave him a chance because he was negating the rest who were supporting. For any other Member, I do not want to say who is opposing or supporting but when you get your position to speak, you can put forth your opinion.

Let us have the Member for Kwanza. He is next on my request list.

Hon. Ferdinand Wanyonyi (Kwanza, FORD – K): Thank you, Hon. Temporary Deputy Speaker for deliberately giving me a chance to speak after my senior. I support this Bill. I would like to allay the fears of my senior. He is also my party Secretary-General. We have to advance as a country.

First and foremost, I agree with him that this is a new system. At the same time, I also want to make it very clear that the farmer has a choice to either take his grains to the NCPB or to some other place. He can sell whatever he has. The choice is his. The system we are trying to introduce has worked elsewhere. It has worked in India. I also want to declare my interest. I had the time and patience to go to four warehouses. I saw that the system works. First, you choose to sell your wares or take them to the warehouse receipts system and you are issued with a receipt. It has been explained.

I agree with my colleague that it has worked in India, Brazil and Holland. Those are three advanced countries. We cannot lament that we cannot move just because of the corruption in this country. In fact, the previous Member must be the one who talked about the penalty. Instead of charging those people who mess up the system Kshs100,000, the penalty should be increased to Kshs5 million or a five-year imprisonment.

As we consider how this system works, we have to ask the Cabinet Secretary for Agriculture, Livestock and Fisheries to appoint a substantive board of the AFFA because its objective or mandate is to promote, develop and regulate the agricultural activities in the country.

We also want to see if we can reintroduce the levies on tea, coffee and sugar which we did away with. We want to reintroduce them so that we can do more research on the products. The Kenya Seed Company is introducing a new hybrid seed. This is something that will improve our products. We should not fear this. We should introduce a system because the small-scale farmer can store the grain when the prices are not good and use the same receipt which is like a title deed to do business. Instead of going to the bank, he can engage in business using the title deed which is the receipt which is issued.

There was the issue of who is supposed to do what. This warehouse receipt system is bringing in the Ministry of Agriculture, Livestock, Fisheries and Irrigation, and the Ministry of Industry, Trade and Co-operatives. The Bill also brings in the National Treasury and AFFA. I ask the Ministry of Agriculture, Livestock, Fisheries and Irrigation to appoint a substantive board

to assist in this. The composition of the council should also be broad-based so that the issue of the structure being lenient or corrupt will not work. This is because the council running the system is broad-based and includes people appointed by their respective ministries. Therefore, this is a restructured way of doing business in agriculture. So, we should not fear that the system is new. It works elsewhere. We should establish it so that we move on.

Last but not least, the licensed warehouses will be built across the country. For example, in dry areas where we have millet or sorghum grown, there will be a warehouse. Inspection will be routinely carried out on the warehouses to make sure that they are well maintained and the storage of commodities is well done. Therefore, there should be no fear of the whole system. We have a choice.

The NCPB which we have said has done a disservice to farmers will just be another warehouse. We will have licensed private warehouses and Government warehouses. We are trying to cure the small farmers' problems. Even large-scale farmers will use the warehouses for business. So, we should not say that it will not work. I have had the benefit of seeing the system work and I assure the House that it will work and that it will be a very good system that will help our farmers, who end up selling their produce to third parties. I am told - and my colleague has said it - there is maize being imported from Uganda in my area. A lot of maize is being imported from Uganda and Tanzania. There is freedom of doing business among the Common Market for Eastern and Southern Africa (COMESA) countries. There should be no fear about the system.

This is a good system and it works. I am a farmer and I see this to be the best way of dealing with price fluctuation. It will stabilise the price of cereals. It also comes in handy when you do not want to sell your wares. You can wait until the prices are good and then sell your product. Nobody will force you to sell at whatever price. You can use the warehouse receipt as a title deed.

With those few remarks, I support the Bill. I want to allay the fears that we are introducing a system that is going to hurt the common man. It is advancement and has worked in South Africa, North Africa, Brazil, Holland and India.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Member for Kimilili, Hon. Mutua Barasa.

Hon. Didmus Barasa (Kimilili, JP): Thank you, Hon. Temporary Deputy Speaker for giving me this opportunity. I want to make it clear that I support the Bill even though I have reservations. I am one person who believes that if a document is good, it can be made better. I will wait for such a time when we can propose amendments and pass the Bill.

The Bill will make this country join the rest of the world. It is not mandatory for every farmer to take his produce to the warehouses. It is important to understand that our farmers have been exploited by middlemen. With agricultural products kept in warehouses, they can use the receipts to mobilise credit. They could get loans. It already works. We have the Eastern Africa Grain Council that has engaged in some contractual arrangement with some banks like the Equity Bank and members of that council mobilise credit to improve their products.

The system is also going to increase productivity in the country. We will keep our produce very well, because the Bill provides for a standard that all warehouses must comply with before they are licensed. Therefore, post-harvest losses will be avoided. This will encourage farmers because they will mobilise credit to improve their agricultural productivity.

It is also very important to note, as a House, that we represent the interests of our people. I know that farmers are suffering in the country. We cannot say that we do not want to pass the Bill because farmers are suffering. We can look into other ways of supporting them through

subsidies of fertilisers. Some of the problems that affect our farmers are administrative or small things which can be avoided. For example, every person knows that farmers in North Rift and western Kenya plant at the beginning of the year. Therefore, fertilisers like DAP need to be made available at the beginning of the year because it is used for planting. But, at times, you find that that fertiliser is available in May which is not useful because people would have planted agricultural products.

As we debate the Bill, it is not final. We have other avenues - whether through legislation or amendment of existing laws - to protect farmers in the country. I urge Members, especially my neighbour who is opposed to the Bill that we can improve it and I assure him that it will be beneficial to farmers in this country. The fact that corruption exists does not mean that we should develop cold feet in passing legislation. I am sure that other agencies will ensure the laws are clear on what happens to a corrupt person. If we have an individual who does not take action against cartels, we pray that one day such an office will be occupied by a man or woman who will implement the law and root out corruption from the country.

With those few remarks, I support the Bill. Thank you.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Member for Nambale.

Hon. Sakwa Bunyasi (Nambale, ANC): Thank you, Hon. Temporary Deputy Speaker. I stand to give my views on this. I am really conflicted on this Bill. I am aware of the textbook advantages of warehousing. They are mostly the arguments being espoused in the Bill and which Hon. Members have repeated over and over.

The success of this kind of experiment depends on other contexts. One of them is the legal contractual type of culture they have. They operate well in situations where contracts are respected, are enforceable and where compensation is liquid, easy enough to achieve; where systems work as expected. So, the countries that have been mentioned, be it Holland or United States of America, have that kind of environment. India has a very strong judicial system. In India, you can sue anybody in the Republic and the court will listen to you with great keenness following the law. So, they can more easily enforce the law through the court system and provide arbitrations that are reasonably sound.

Again, the environments are managed. In India, the movement of commodities in and out is highly regulated, including the currency. The proportion of resources that are circulated in the warehouse system is small relative to the aggregate production. We need to keep that in mind.

Further, while we worry about questions of environment and particularly think of a country like India that we have mentioned, it has a strong institutional basis as the United States of America and Holland have in their co-operatives and associations. There are risks and gains in this system. The gains occur along the value chain from the time they leave the farmer to the time the last bag is sold. They internalise that through their co-operative system. That co-operative system, as it happened when warehouse systems were being developed, owns that chain. Whenever along that chain the benefits occur, they are internalised. We have a *mafia* in this country that owns those warehouses. You might wait thinking that you will go and draw down the benefits of the maize or whatever crop you had put in six months down the road when, in fact, the warehouse is empty - the goods have been sold at the secondary market. There will be litigation in courts which will take 10 years to settle. There are risks here. It is a great idea but the wrong time in a country that does not respect contracts; a country that doubts the Judiciary. We shall not be able to get anywhere. Our cases are taking too long.

I am aware of this system. Global institutions had been pushing for this when they felt that the public sector management system of grain handling - although cotton has also been used

- had heavy financial losses for the taxpayer. Instead of collecting losses to the taxpayer, they use market-like systems that spread the risks and put that risk back in the private sector through some systems of this nature. That then is going to spread along many producers and so on. Here we are. We are farmers who produce the surplus for the market, but who are living at the poverty level. That is why my colleague, Dr. Eseli, was saying that we should subsidise farmers. They are living at the poverty level even though they are producing surplus relative to their needs.

So, how do you ensure that you do not push them further down? We have to think through those risks. They are major risks and you do not want to end up with the system that is benefiting that large-scale producer of 5,000 or 10,000 bags who would otherwise insure that risk himself through financial systems.

I understand all this textbook argument and I see it every day in my own community. In Nambale, for example, throughout the month of August and September, the price of a kilogramme of locally produced maize in the area was about Kshs15. They sell it as a two-kilogramme unit called *gorogoro* – the two-kilogramme tin that used to be a *Kimbo* tin. Half of it is a price of a kilogramme. It is as low as Kshs15 a kilogramme but it rises in some bad years to about Kshs120 per *gorogoro*. That is four times more. The theory is why sell when it is at the minimum? Give it to the warehousing management system. You can draw down a little cash if you need it or simply borrow against it, and when the price goes up, you can repay your loan comfortably, and you will draw down the money when the price is at the peak or near the peak. The warehouse system does not take the risk. They all manage that risk. You still have the risk that you face. The key thing is that you can only do that. You can put your 50 bags or 10 bags, whatever you have put in there, you take a bit of the cash or borrow against it and you go home with trust that when the prices truly rise in the market as you expect they will, you can go back and cash it out.

Let me remind you that we used to be major cotton producers in Nambale. Our cotton was one of the best back then in 1950s and 1960s. There was such trust at the time initially that you could deliver your cotton and go back a month later when funds had been released from the Cotton Marketing Board through the banks and collect your money. There are farmers who have died with those receipts in their pockets. If the money ever came, they never saw it. So, we have a risk here of setting up a system, giving it a legal cover and selling as the best thing beyond sliced bread and then setting up a system that will become a collector system that benefits itself. We may get uncontrolled imports because we do not control the global system of marketing. When prices are supposed to have risen from Kshs15 a kilogramme in Nambale to Kshs30 a kilogramme you get huge imports and they fall back to Kshs20. We have seen that with other commodities. We have a major risk. So, it may be a great idea but it is not the right time for Kenya. It is not in the right context in the way we manage our institutions. I do not believe that we will be able to manage the trust that the farmer will have placed in this.

Finally, this system is espoused greatly because it is a collateral system to the dipping of the financial systems. It is a collateral system because through improvements like this, through the real economy like that of commodities, you can develop the rural financial intermediation systems. Instead of the farmers selling their entire grain at the beginning, they will rely on the financial system where they can borrow from against the collateral of their commodity - that is storage. That way, you are dipping the financial system bringing even those little producers who otherwise would not have been operating in that system.

But now, we have huge problems, for example, the capping of interest in the financial system. They are reluctant to go there. Are we going to sustain the system? All these good ideas

around this have been brought into this Bill, but the guys have gone to the internet, they have visited, they have benchmarked, they have seen what is happening in other places but the environment is not right. I have worked in India a lot. Only a few states have adopted and only a small proportion of the aggregate commodity is going through that system. Let us think about it carefully before we bring a good idea in a system that is going to fleece our farmers.

Thank you.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Hon. Sitienei Jepkemoi, Member for Turbo.

Hon. (Ms.) Janet Sitienei (Turbo, Independent): Thank you, Hon. Temporary Deputy Speaker, for giving me this opportunity to add to the voice of my other colleagues. I stand here to support this Bill on warehouse receipt system. It is estimated by the Food and Agriculture Organisation (FAO) that a third of food produced for consumption is lost along the food value chain. That is through the pre-harvest, harvest and post-harvest losses. Therefore, it directly impacts negatively on food and nutrition, security and livelihoods of our people. I come from Uasin Gishu County that is referred to as a food basket alongside Trans Nzoia County. Most of our small-scale farmers incur a lot of losses through post-harvest. This Bill will go a long way in assisting the small-scale farmers. FAO also estimates that 1.3 billion metric tonnes of food produced is lost globally. Proportionately, we lose about US\$1 trillion.

This Bill is going to ensure that small-scale farmers are safeguarded from post-harvest losses. Therefore, they will increase the prices of the products through increase in the quantities they hold at the warehouse. It will also ensure quality of the grain because they will go through training before they deposit their produce or commodities into their warehouse. The warehouse will ensure that there is quality and that measuring the commodity is done and safeguarded for speculation of better prices for our small-scale farmers who form the majority of farmers in this nation.

I also support the Bill. It will help our farmers to use the receipts provided by the warehouse operators as collateral in banks and request for funds for fees or whatever other activities they want to undertake as part of their livelihoods. This is a very good Bill that will go a long way in supporting our farmers. Our farmers will also be able to transfer the receipts to another person and use them to collect funds to do whatever they want to do as they wait for prices to improve. This will enable them to access better prices for their produce. The Bill is really going to assist our farmers.

The quality of produce from our farmers is also going to improve. Improved market prices will improve the livelihoods of our farmers. It will enable them to even request organisations like FAO to purchase their commodities, cereals or grains from the warehouses. Therefore, farmers will get better returns from it. I support the Bill knowing that it will go a long way in safeguarding our farmers and ensuring that there is value for their produce. As I speak, our farmers are selling their maize at around Kshs800 for a 90-kilogramme bag because the biggest challenge that they have is lack of storage facilities.

I want to speak to my colleague who said that this is going to benefit only the large-scale farmers. That is not true. The people with the biggest challenge are the small-scale farmers. Their challenge is lack of storage facilities. They harvest, but they have nowhere to store their produce. Therefore, they incur a lot of post-harvest losses through handling of the produce in the value chain up to the NCPB. Even in terms of quality and quantity, they incur a lot of losses through change of the moisture content and handling of the produce. Since the Bill provides for the

warehouse receipt system, they can transfer their produce and keep it as they wait for better prices. This way, they will benefit.

Thank you for the opportunity.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Very well. Member for Kitui West.

Hon. (Ms.) Edith Nyenze (Kitui West, WDM-K): Thank you, Hon. Temporary Deputy Speaker for giving me time to contribute to this important Bill.

I note that the warehouse receipt system will enable farmers to deposit goods, usually grains or coffee, in exchange for warehouse receipts. A warehouse receipt is a document issued by warehouse operators as evidence that specific commodities of stated quantity and quality have been deposited with them. This kind of system has some advantages and one of them is storage. Some farmers may not have proper storage facilities. Another advantage is improved prices. The goods are stored as the warehouse keepers look for improved prices in the market. There is also an advantage of value addition to the commodities. For example, in my county, farmers planted a lot of green grams last season which were issued by the county government which thought that this would improve the economy of the county. The prices were very low after the harvest and this discouraged the farmers even though they had harvested in plenty. If there was such a system, the farmers would have stored the green grams as they wait for the prices to improve. Since such arrangements were not there, they sold at a throwaway price of Kshs30 per kilogramme to brokers. This has really discouraged the farmers.

As I speak, farmers have also harvested a lot of pigeon peas or *nzuu*. Kitui is known as a very dry area. When farmers harvest, they look forward to solving their economic problems, but it gets very discouraging when a kilo of *nzuu* is going for only Kshs15, which is very low.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): *Nzuu* is in vernacular.

Hon. (Ms.) Edith Nyenze (Kitui West, WDM-K): Oh! Sorry. I mean the pigeon peas.

(Laughter)

That is a very common name. Anyway, it is *nzuu* in brackets. They are known as pigeon peas. The peas are being sold for only Kshs15 a kilogramme, which is very discouraging. If we had such an arrangement like the warehouse receipt system, farmers would have stored their grains as they wait for the prices to improve. They may be discouraged from even planting in future because of the poor prices yet the cost of farming is quite high compared to what they are getting in exchange.

We also have a problem with mangoes which ripen at the same time. This also gives farmers a problem. They are many at one time and the prices are so low. If there could be value addition in the warehouse system, the mangoes could even be dried and stored as we wait for the prices to improve. There is fear that this system may turn out to be like the cooperative movement, which only enriched a few officials. Some officials of the cooperative movement were enriched by the system. Since we are fighting against corruption, we should have a mechanism in place of making sure that farmers benefit from this arrangement if it is put in place. First, this will be achieved through fighting corruption and having something like a supervisory body to oversee all the warehouses which will be reporting to it. Then, audits should be carried out regularly to ensure that goods are in good condition and there is no stealing or corruption in the warehouses. If it is a well-managed system, our farmers will seriously benefit from it instead of just farming and all their goods going to waste because of poor prices.

With that, I support the Bill, but propose some amendments like ensuring that there is no corruption.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Thank you. Your proposed amendments are welcome at the right stage in the law-making process. Member for West Mugirango, Hon. Mogaka Kemosi.

Hon. Vincent Kemosi (West Mugirango, FORD-K): Thank you, Hon. Temporary Deputy Speaker, for this opportunity.

The warehouse receipt system is an idea whose time has come. If you look at the whole world, that is the way. That is where we are headed to.

The purpose of a warehouse receipt system...

(Loud consultations)

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Hon. Members, you do not need to come and consult here. The next on my request list is the Member for Masinga. Coming here will not help you. Just resume your seats.

Hon. Vincent Kemosi (West Mugirango, FORD-K): The purpose of the system is to ease pressure on the farmer. After the farmer has harvested his produce, he or she is not under pressure to sell the produce at a throwaway price. Therefore, warehouse receipt system is ideal because it will regulate the health conditions of the warehouses where the produce will be stored. This is important. The Bill provides for a council to regulate the health conditions of the warehouses. The current position is that we have warehouses which are unregulated. During the probe on the sugar saga, we realised that some warehouses were in very poor conditions. With the council being in place, we will be assured that the warehouses will be regulated and the health conditions will be proper.

Secondly, with the system in place, farmers will be assured that their produce will be kept properly. It talks about the quantity and the quality of the commodities to be stored in the warehouse. That, therefore, means that the operator has to take into consideration the fact that proper quantity is taken down and the proper quality is stored. This will go a long way to ensure that the produce or the commodities in the warehouses are insured. The Bill talks about insurance. The operator will take insurance. Therefore, the commodity of the farmer will be insured. The receipt system will also go a long way to benefit the farmers because it will serve as a collateral in which farmers can get short-term loans while waiting to sell their produce. This way, they can expand their farming activities.

This system will also assist to store perishable commodities. I come from an area where we have plenty of bananas. In Kisii, we are unable to store bananas for a long time because it is a perishable commodity. If we have a cold warehouse, then the people of West Mugirango and the entire Kisii will be assured that their commodity will be stored in a warehouse from where they can obtain good prices for the commodities.

I have some reservations on the pillars drafted, particularly on the area that talks of the CEO, who will be hired for a term of three years and upon satisfying his performance, the term can be extended for another five years. I will propose an amendment to that provision when the right time comes.

Finally, the Bill has gone further to prescribe various penalties or legal consequence on the operators in the event they do not comply with the law. Some of these include the fact that

they will be held liable when there are fraudulent receipts and when receipts have false information. All those penalties will ensure that the operators comply.

I support the Bill.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Member for Masinga.

Hon. Joshua Mwalyo (Masinga, WDM-K): Thank you, Hon. Temporary Deputy Speaker for giving me this opportunity to air a few words on this Bill. Warehousing is not new in other countries. It is good that it has been brought to this country. We can store our goods and commodities in a warehouse and get receipts in exchange for our money. According to this Bill, warehousing in conjunction with relevant Government agencies will improve efficiency of the commodity, quality and quantity. It will also ensure that we are competitive if the goods are going to be exported.

Having been in the private sector, I know many of the warehousing commodities. If you go to South Africa, you will find that apples that are exported to Kenya are harvested and put in warehouses between six and eight months before they are exported. That means that the produce is exported when there is market and farmers can get value for their money. I, therefore, support the warehousing system so that our farmers can get quality and value for their money. If you go to companies like Delmonte, you will learn that they store their juices in warehouses for a year or two before they are processed, so that the market is able to receive the juices when the value is high. Therefore, they are able to get value for their money.

I support this Bill. If you go to Njoro and Molo, you will find that the Agricultural Development Corporation (ADC) is trying to store potatoes in warehouses and sell them when time is ripe and value is correct. I support this Bill because it is good. The only thing is that the small-scale farmers who are not able to wait until the prices are good should be given receipts and get money from financial institutions so that they can solve their problems. This is a good system and it should be encouraged.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Very well. The nominated Member, Hon. Shamalla Jennifer.

Hon. (Ms.) Shamalla Jennifer (Nominated, JP): Thank you, Hon. Temporary Deputy Speaker. I rise to support this Bill with a few amendments, more specifically with regard to the definition of “holder” in the interpretations. I am concerned that a holder is described as somebody who is the holder of the receipt defined as a holder to mean a payee or endorsee of a negotiable or non-negotiable warehouse receipt who is in possession of this receipt. I think the Bill must be precise as to how one comes to possess this receipt. Maybe that could be dealt with by regulations, but specified in the Act.

Clause 17(3) states that the county executive committee member may grant or refuse to grant a licence to an applicant and may issue a licence subject to any such conditions as it may consider necessary. This is in regard to a licence to be a warehouse operator. It is open ended and it can become the subject of a lot of controversy. It gives almost dictatorial powers to a county executive committee member when it says “subject to conditions that they consider necessary” unless these conditions are subject to regulations.

With regard to typing style, in Clause 18, they talk about fires, floods *et cetera*. I shall forward more of my comments to the Committee before we proceed to the Committee of the whole House.

With those few remarks, Hon. Temporary Deputy Speaker, I support with the suggested amendments.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): The Leader of the Majority Party is the Mover of the Bill and he is around. Thank you for those observations. The Member for Rongai, Hon. Moi Kipruto.

Hon. Kipruto Moi (Rongai, KANU): Thank you, Hon. Temporary Deputy Speaker, for the opportunity to speak on this Bill. It is a very important Bill and I support it. As we know, agriculture is the backbone of many economies in Africa. In Kenya, it accounts for about 30 per cent of the GDP and it employs close to 75 per cent of the population. So, it is a very important sector of the economy. While agriculture remains a key economic sector and a key link to food security, only about 5 per cent of lending by banks in this country goes to the agriculture sector and yet it contributes close to 30 per cent to the economy. So, it is skewed in that regard.

The warehouse receipt system will give access to finances to small-holder farmers. It will have the ability to transform agriculture from subsistence and low value to innovative, commercially-driven and internationally competitive. The practices of small-holder farmers are extremely fragmented and unpredictable. So, the warehouse receipt system offers a very good solution to the small-holder farmers. After harvesting, the farmer or trader can deposit the goods to a warehouse and get a title document called a warehouse receipt, which the farmer can use to apply for a short-term credit facility to gain access to seed and fertiliser. This, in turn, will increase the productivity of small-holder farmers.

The warehouse receipt system also reduces pressure on the farmers to sell immediately. Most of these goods will be locked in a warehouse. The farmers will then have to wait for the prices to go up and sell their produce as opposed to the case where they harvest and flog their produce to any buyer, whatever the prices. The warehouse receipt system will greatly change their lives.

The warehouse receipt system also allows sales to continue from one harvest to another. This in effect will stabilise prices. It will reduce post-harvest losses because the warehouses are certified, equipped with appropriate facilities and expertise to ensure that the quality is right. This will certify the quantities too. The losses in certified warehouse receipt system warehouses are very minimal. If you were to go to the non-certified warehouses, namely, the ones owned by the NCPB, the losses at times can be 30 per cent. That is extremely high.

For the warehouse receipt system to work there needs to be a legal framework and I think this Bill provides that. The current warehouse rules are just simply contracts, which cannot do much. The Bill establishes rules governing the participants. The rules also regulate all parts of the warehouse receipt system, namely, registration of storage facilities, operational requirements and insurance, which is extremely important. They also regulate safety measures, procedures for finance, audit and inspection requirements. These are the rules that govern how the warehouse receipt system will operate. These rules are meant to protect the farmer, the depositor, the warehouse operator and all those who will be doing business with the warehouses. Currently, operations of commodity warehouses in Kenya are governed by ordinary laws of contract, which is not adequate.

An area of uncertainty, which I think needs to be addressed when we get to the Committee of the whole House stage, is the relationship the warehouse receipt system will have with the proposed commodities exchange system. Will it be possible to trade the warehouse receipts at the commodities exchange? Will the Capital Markets Authority (CMA) that supervises the Nairobi Securities Exchange (NSE) have an oversight role as part of its regulatory mandate? These are questions we need to ask.

Finally, in the last few months, farmers in the Rift Valley have suffered greatly. One, because we did not have a warehouse receipt system and two, because of corruption. If we had this system in place, farmers who could not take their produce to the NCPB would have put their commodities in the warehouse and waited until the imported maize was sold and then they would get better prices for their commodities. But this is not the case because of corruption. This monster called corruption will have to be tamed or killed. I prefer the latter. Corruption has brought misery to many farmers in the Rift Valley. The other day, we heard the President speak about maize that originates from outside Kenya and that those who were paid by the NCPB were not farmers but traders. Farmers were left out. This monster must be killed. In order for this Bill to be effective, corruption must be tamed.

With those few remarks, I fully support.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Let us have the Member for Mogotio.

Hon. Daniel Tuitoek (Mogotio, JP): Thank you. I support this Bill. As many speakers have said, warehouse receipt system is an innovative one in which a receipt is given to farmers for the produce or goods they deliver to a particular licensed warehouse to be stored in a good condition. The farmer will then receive a receipt which he can use to leverage with regard to farm inputs and loans from financial institutions.

This is a good system through which farmers can be assisted to get better prices for their goods. It will also help farmers to reduce losses associated with storage, for example, the issue of pests. We know many farmers do not have the financial might to keep the produce, especially cereals, in good condition. The system will also remove the monopoly of the NCPB which has been the main storage facility for the country's strategic food reserve.

We know that many times farmers have been asking the Government to come to their aid to buy their produce. With this system in place, we believe there will be a series of licensed warehouses across the country where farmers will store their cereals. The system will assist farmers to store their produce in good condition. Again, the farmers will be protected from the fluctuation of prices of cereals. At harvesting time, the price of most cereals goes down. That is when the farmers do not get value for their harvest given the fact that they use a lot of farm inputs during the planting season. It costs farmers a lot of money to purchase farm inputs such as fertilisers. Therefore, this warehouse system will come to the aid of the farmers in terms of protecting them from excessive fluctuation of prices due to excessive production.

This system has a sound legal protection in the sense that it can be used as an instrument of bargaining or be traded even in commodity exchange. I am impressed that this system will be driven by the private sector as opposed to the Government which is associated with low efficiencies. So, this system will assist the farmers to achieve value for their products.

I support.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Finally, let us have the Member for Keiyo North. He is the final Member on my request list and then the Mover shall be called upon to reply.

Hon. James Murgor (Keiyo North, JP): Thank you, Hon. Temporary Deputy Speaker for giving me an opportunity to put my voice to this Bill and also give my views. This Bill, on the face value, looks very good. When you look at this Bill, you would think it is the solution to our problems. However, there is something that we should not forget. Hon. Members that have contributed have said it has worked in many countries such as Brazil and India, but those are other countries and this is Kenya.

This idea of copy and paste simply because others are doing it is not the right way to go. In Kenya, our biggest problem is corruption. Even at one time, the late President Nyerere said that Kenya is a man-eat-man society. I think he was right to some level. With this man-eat-man society, I would have been convinced that we should pilot it with what we have. The NCPB is a problem. It is a Government institution, which we could clean up and start piloting to see if the system being proposed can work for us. I think we are jumping into this thing like we did with our Constitution. We copied and pasted a Constitution similar to the American one and that is why we have challenges now.

I am a maize farmer. What assurance can I have that when I take my maize to a warehouse, leave it there and get somebody to sell it for me, I will get value for it? A farmer will put his harvest in a warehouse. Cartels will cheaply import maize - like they did this year - into the warehouse. What will happen to that farmer's maize? The farmer's profit will drop. So, this thing, as I said before, looks very good, but...

I know there will be other challenges concerning regulations. Insurance, I know, is a disaster even though it can be done. As long as corruption persists and Kenya being a man-eat-man society, I doubt whether this thing is going to be of any help. When I was going through this Bill, I kept wondering whether or not it has been proposed with cartels in mind. I do not know, but all in all, it is a fair Bill if it is thought out well and piloted.

With those few remarks, I support, but with those many reservations.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Your amendments are welcome. Hon. Members, there being no other requests by the Members to speak to this, I call upon the Mover of the Bill to reply.

Hon. Benjamin Washiali (Mumias East, JP): Thank you, Hon. Temporary Deputy Speaker. I have sat through the entire debate on this Bill. For the information of Members, in the 11th Parliament, I was a Member of the Departmental Committee on Agriculture and Livestock together with Hon. Maanzo and we thoroughly went through this Bill.

If Members remember very well, this Bill was passed here. This House made its opinion on this Bill, but when it went to the Senate, it had a problem. It is good the Senate has thought through it and given it back to us. It is important for this House to look at what we had approved earlier and then decide.

Members have spoken a lot about storage, which is supposed to save us on post-harvest challenges. Members have also talked about giving farmers an opportunity to store grains as they speculate on prices. The Member for Kitui spoke on the bumper harvest of green grams and pigeon peas which they had. I also heard a colleague speak on something different about the storage of apples in South Africa which takes about eight months. He proposed that we should replicate the same for our English Potatoes so that we can store them for a longer period as we speculate on prices.

Therefore, all said and done, we heard what Hon. Eseli and the Member who have spoken last have said. We appreciate they come from maize growing zones, but it is high time they consulted with the Departmental Committee on Agriculture and Livestock so that they that can read from the same page. I have heard Members speak on corruption. I was left wondering because some people who spoke on it do not qualify. It is an issue we can discuss at length. You cannot speak about corruption while you were corrupt the other day. Therefore, I want us to be honest with what we are saying.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Hon. Washiali, you have freedom of speech, but you do not have approval to speak of someone in that manner.

Hon. Benjamin Washiali (Mumias East, JP): I want to withdraw, but of course, the culprit has heard me. I, therefore, wish to reply and request you under Standing Order No.53(3) to postpone putting of the Question to a later date.

Thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Order Members! Pursuant to Standing Order No.53(3) and guided by the rules, regulations and procedures of the House, I order that putting of the Question on the Warehouse Receipt System Bill (Senate Bill No.10 of 2017) be deferred until when next slotted on the Order Paper.

Next Order!

REPORT ON PUBLIC FINANCE MANAGEMENT
(SPORTS, ARTS AND SOCIAL DEVELOPMENT FUND)
REGULATIONS 2018

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): The Chairperson, Committee on Delegated Legislation to move the Report.

Hon. (Ms.) Gladys Boss Shollei (Uasin Gishu CWR, JP): Thank you, Hon. Temporary Deputy Speaker. I beg to move the following Motion:

THAT, this House adopts the Report of the Committee on Delegated Legislation on its consideration of the Public Finance Management (Sports, Arts and Social Development Fund) Regulations, 2018 (Legal Notice No.174 of 2018), laid on the Table of the House on Wednesday, 17th October 2018, and pursuant to the provisions of Section 15(1) of the Statutory Instruments Act, 2013 and Standing Order 210 (4)(b) annuls in entirety the said Regulations.

Hon. Temporary Deputy Speaker, this is the 11th Report of the Committee before the House for consideration out of the 63 that have since been approved. From the outset, I wish to acknowledge with thanks the word of the Speaker commending the Committee on several occasions for its diligence to duty. Indeed, even the Leader of the Majority Party in his statement to the House on 4th October, 2018 acknowledged that the House Business Committee noted with appreciation that the Committee on Delegated Legislation is amongst the committees that concluded and tabled the highest number of reports in the current session.

Having said that, allow me to reiterate the mandate of the Select Committee on Delegated Legislation. This Committee is established pursuant to the Standing Order No.210(4)(b) and has the power to scrutinise and certify that all regulations submitted to the National Assembly are in compliance with the Constitution and all other Acts of Parliament.

On the Regulations before us, the Public Finance Management (PFM) Act, 2012, Section 2(4), allows the Cabinet Secretary of the National Treasury to establish a national Government public fund with the approval of the National Assembly. In exercise of these powers, the CS of the National Treasury gazetted the current Regulations, the Public Finance Management (Sports, Art and Social Development Fund) Regulations, 2018 through the Legal Notice No.174 of 2018 on 10th August 2018.

Following the gazettelement, these Regulations were tabled in the House on 15th August 2018 in compliance with the Statutory Instruments Act, 2013 Section 11(1). The House then committed these Regulations to the Select Committee on Delegated Legislation for review and scrutiny and to ensure compliance with the Constitution and the law. I will just highlight two important parts of these Regulations that are in question.

Regulation 3 provides for the establishment of Sports, Arts and Social Development Fund for providing funding to support the development and promotion of sports, arts and social development including universal health care. Regulation 6 also provides for initial capital of Kshs20 billion to be provided by the National Assembly in the 2018/19 Financial Year.

The last Regulation I will refer to is Regulation 4, which provides for the various sources of the fund being *inter alia* proceeds required to be paid into the fund under the Betting, Lotteries and Gaming Act. Proceeds which are required to be paid into this fund were under the Income Tax Act as appropriated by the National Assembly including other grants, donations and income generated from those particular proceeds.

The Committee then considered these Regulations during its sitting on Thursday, 11th October against the provisions of the Constitution, the PFM Act, Statutory Instruments Act and the Interpretation and Gender Provisions Act to ensure that they met the scrutiny criteria. The Committee found that the Regulations complied with the statutory timeline as per the Statutory Instruments Act because it came within seven days and was published within the statutory period as required. Therefore, the Committee had no adverse finding in terms of time compliance. However, the Committee found that the Regulation was inconsistent with an existing parent Act, namely, the Sports Act, 2013. Clearly, the Statutory Instruments Act states and provides that no regulation can contravene a parent statute in this case the Sports Act of 2013.

The parent statute, namely, the Sports Act, establishes another fund and, therefore, the Committee found that there would be duplication should this happen. However, we understand the challenge that was faced by the National Treasury in passing these Regulations. The problem lies in the fact that the Finance Act 2018, in which the current proposed Regulations are anchored, came into effect on 21st September 2018 yet the Regulations were before the Committee and had already been gazetted by 14th August 2018. One came before the other and, therefore, made them inconsistent with both laws.

As I have said before on the Floor of this House, annulment of these proposed Regulations does not prevent the resubmission of the same once the shortcomings have been rectified. Therefore, it was a view of the Committee that this annulment is an opportunity for the CS for the National Treasury to republish these Regulations, but ensure that they cure the mischief and properly invoke the authority granted under the Finance Act so that this money can rightly be within the particular fund that would have been created. Therefore, as our Committee has confirmed many times, the annulment is a safer way of dealing with the problem or the inconsistency with the law and the contravention of the parent statute. Because the Finance Act is now properly a law, then the CS has the opportunity to publish the Regulations again, but now anchor them in the Finance Act.

If I may just say this for the record, the Finance Act 2018 in Section 69(a) states that the collector shall pay all the proceeds of the tax paid under Sections 29(a)(2), 44(a)(2), 55(a)(2) and 59(b)(2) into the Sports, Arts and Social Development Fund established under Section 24 of the Public Finance Management Act. Unfortunately, when the Regulations came before us, this section was not in effect yet. Now that it is in effect, they do have the opportunity.

Therefore, because of the reasons that I have given and the Committee having considered all these Regulations, it is the recommendation of the Committee that the Public Finance Management (Sports, Arts and Social Development Fund) Regulations, 2018 be annulled in their entirety for those reasons.

With that, I call upon a Member of the Committee, Hon. Jennifer Shamalla, to second the Motion.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Let us have Hon. Shamalla to second.

Hon. (Ms.) Shamalla Jennifer (Nominated, JP): Thank you, Hon. Temporary Deputy Speaker. I rise to second the Motion. After going through the Regulations and noting that the fund intended to support the promotion of sports, arts and social development, it was striking to actually observe that there are no existing regulations more specifically on arts and culture. The only two existing legislation surrounding arts and social development are:

1. The Macmillan Memorial Library, which commenced in 1938, almost 80 years ago and addresses the management of a trust deed set up by Lady Macmillan.
2. Then you have the Kenya Culture Centre, whose date of commencement was 1951. It incorporates the Nairobi War Memorial which commemorates 477 men who died from the UK, South Africa, the East African Forces and whose graves could not be identified. It is situated within the Nairobi War Cemetery along Ngong Road. It is really a grand tribute to the heroes of time gone by.

It is needless to say that both these legislations are pre-independence legislations. We must ask ourselves what laws we have that are going to contribute to social development. These two particular legislations contributed to the social development through reading and history, and the knowledge of history. While the intended purpose of the proposed fund was positive, had there been public participation, I am absolutely certain there would have been a robust discussion around what contributes to social development.

One cannot deny the immense contribution of sports. Of course, we always have sports coming before the other important aspects such as social development and culture. We recognise the immense contribution of sports specifically in athletics and social development. It is evident that every morning when you go through the source of champions, the house of champions, the neighbours of champions in Kapsabet, Iten and Kericho, as they refer to themselves, you see young people getting up, exercising and running wanting to emulate the “Eliud Kipchoges” of the world. However, we must ask ourselves: What else is there towards our social development besides athletics? We are known as magical Kenya, but what is this magic of Kenya? Is it just about the animals or is it just about our scenic and epic landscape? What do we know about the people of Kenya? It is this social development that begins to identify who the people of Kenya are. We talk about national characters of countries like Great Britain, the United States of America or even Pakistan or India, but what is the national character of this nation? What are its values, beliefs and aspirations? It is through this fund, once it is set up properly, that we will promote social development and have a more vigorous social development programme in place. As Kenyans, we will be able to better define our national character as a nation and then move collectively.

With those few remarks, it is my considered opinion that it is important that these Regulations be brought back in consultation with the Committee on Delegated Legislation.

With those few remarks, I second the Motion.

(Question proposed)

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Member for Makueni.

Hon. Daniel Maanzo (Makueni, WDM-K): Thank you, Hon. Temporary Deputy Speaker, for giving me an opportunity to contribute on this very important Motion. I agree with

the Chair, my Professor, Hon. Shollei, on the annulment and also Hon. Shamalla, who is a senior lawyer, for seconding.

In addition to the reasons which have been advanced, we must go back to history. Social development is important. We also encourage the National Treasury to be consistent. I would like to meet their lawyer because many times it is being misadvised on many pieces of legislation. This is not an isolated case. What has happened in this particular matter is that they put the horse before the cart. First, they go and make the proposal to set up this fund ignoring the original Sports Act. I am very proud to say that when I worked for the Ministry of Sports, Culture and Heritage I participated in drafting the Act and you know the many challenges which have been with raising funds for sports in the country. At that particular time, betting and control was specifically to raise money to develop sporting activities in the country. However, it has now involved other social activities including housing, which is very far from real sports such that if you do not concentrate on promoting sporting activities through betting and control, which is a sport in itself, then you divert to other matters which can be developed through a budget.

This particular kitty was specific under the Sports Act. This Report wants to amend the Finance Act. They have first tabled this proposal before Parliament to create this fund without a law and then later on, follow up and amend the law to suit it. Later on, they will realise it is still insufficient and go on to table the Sports (Amendment) Bill, which is before this House and has not been passed. It is not known when it will become law. Although there is a way you can get around the Finance Act and create this fund, it is still related to sports activities. In the new amendments, we are taking everything back to the Sports Act. There are a lot of afterthoughts.

They also missed a very important aspect and requirement of the Constitution. Before you come up with these sorts of Regulations, you have to consult the stakeholders, namely, the betting companies, sports organisations and the Ministry in charge of sports, culture and heritage. At times, it is prudent to consult the relevant Committee on Delegated Legislation such that if you have a challenge of getting sufficient lawyers, like the case of the National Treasury which I stated before, you are well-advised even from Parliament on the best way to improve the sports activities in the country.

We must still come up with Regulations which are specific. Even if you combine all the social activities, what is the stake for sporting activities? What percentage will go to housing and other arts? This is so that it is specific from the beginning and can serve the original purpose which is already in the Sports Act, 2013. We worked on that law for quite some years and consulted widely to come up with it. It would be prudent for the National Treasury to consult further before coming back with this legislation. That is why the annulment is in good faith and in good order. They can put their house in order and come back to Parliament using the proper path. Parliament will approve and continue financing the activities.

In the Budget this year, we set aside Kshs20 billion for this activity even without a law. That tells you the aggressiveness of the people concerned with fundraising for sporting activities and social services. Hon. Shamalla mentioned that there are other Acts of Parliament which, although obsolete by virtue of independence of the new Constitution, are still operational and are not being used. We need to further amend and synchronise all the activities in this particular respect so that we can make sure that we create a law and form a fund which serves the young athletes in this country.

I have been in that industry and it has a lot of challenges. Currently, you have heard that good people have been charged because of mismanagement of those particular activities. We want to make sure that there is no corruption and opportunities to misuse the money. Sporting

activities are very expensive, especially the Olympics, in which we shine very well as a country. There is an Olympic camp where sportspeople stay when they go to the Olympics in whatever country. That is very expensive because they are hired for that particular period, which takes almost a month. The expenses are humongous. If we have a particular law and a specific fund - because there are many other funds in the country - there would be no duplication. If we follow the Constitution and the laws which exist and amend the laws accordingly, then we will serve the sportsmen of this country who have suffered for a long time.

We also want to make sure that from the taxes that we will collect after recently passing the Bill on the 8 per cent VAT that has been signed into law, the money will be specific. The Betting, Lotteries and Gaming Act also appeared in the miscellaneous amendments. We have made sure that there are taxes. When the taxes go to the National Treasury, it should be specific by law that the taxes collected proceed to serve a specific purpose.

Looking at the composition of the board as proposed previously and what currently exists in the law, the National Treasury is represented. The National Treasury does not miss a single detail of what is happening in that fund. We want to make sure that there is no mischief. As a Committee, we are very firm and serious with what we do. We are very specific. We look at the law very keenly and make sure that it is followed by our institutions which propose the laws on the Floor of the House and in the Committee so that Kenyans can be better served.

I support the Motion.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Thank you, Hon. Maanzo. Let us have the Chairman of the Departmental Committee on Sports, Culture and Tourism, the Member for Machakos, Hon. Munyaka Kioko.

Hon. (Dr.) Victor Munyaka (Machakos Town, JP): Thank you, Hon. Temporary Deputy Speaker.

From the outset, I would like to congratulate the Chair and the Committee on Delegated Legislation for their work, which will correct a lot of anomalies in the Regulations. As the Chair of the Departmental Committee on Sports, Culture and Tourism, it is very unfortunate that funds which were very important for the functioning of sports and arts in Kenya will be affected by some delays because of poor Regulations. This House has to accommodate what is legal. That is why I congratulate the Committee for forcing the Executive to table before the House the correct and legal Regulations.

This fund is supposed to solve the historical underfunding especially in the sports department. Taxes from betting run into billions of shillings. Currently, we lack sports facilities and sponsorship of sports activities in Kenya. You can imagine that even as Kenya is doing very well in sports especially in athletics and rugby and even of late, football - the national team, the Harambee Stars is almost qualifying for next year's Africa Cup of Nations (AFCON) 2019 - there is no funding. Our sportsmen and sportswomen are excelling so much yet Kenya has very few modern sports facilities. This fund will help the youth of our country. If we create sports academies across the country, we would be able to nurture talent found there. This fund will assist our youth and our sportspeople. It will make Kenya shine across the world in the field of sports.

Last Sunday but one, when Harambee Stars was playing against Ethiopia, I saw the passion of Kenyans. The Kasarani Stadium was full to capacity. An equal number had been locked out of the stadium because of lack of space. As I congratulate the boys who won three nil against Ethiopia, I wish the Government can come up with a modern stadium with a big capacity to accommodate all the fans who would wish to come and support our teams. At the same time,

we would like the Sports Department to come up with facilities and infrastructure funding to control crowds. Crowd control in sporting activities is usually very important to avoid violence and injuries.

Generally, I want the National Treasury and the Ministry of Sports, Culture and Heritage to consult with the relevant House committees, as Hon. Maanzo has said, before they bring Regulations to the House. We have legal officers and researchers in our committees. We would have noticed the errors in those Regulations before they were forwarded to the Committee on Delegated Legislation. So, in future, we will request the Ministry to use relevant committees so that we do not have such nullification of Regulations before the House.

The fund is important in the running of sports. We are still behind in most sports activities. I am very happy with the Chair. I consulted her this morning and the Principal Secretary and the proposal they want to bring should be fast-tracked within seven days, so that this amount can be unlocked and our youth do not suffer any more.

I support the Motion.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): You have talked about public finance and issues of development. The next Member is the Chair of the Public Accounts Committee (PAC) who examines accounts, Hon. Wandayi Opiyo.

Hon. Opiyo Wandayi (Ugunja, ODM): Thank you, Hon. Temporary Deputy Speaker. At the outset, I am very proud of the work the Committee has done. The Committee on Delegated Legislation has long been made to appear simply as a conveyor belt for Regulations emanating from the Executive. Therefore, the bold move by the Committee ably chaired by Hon. Shollei is laudable. It is laudable in the sense that sports, arts and social development issues are important. Sports specifically has the potential of not only empowering our people economically, but is also a vehicle the country can market itself globally. But for a long time, we have had serious challenges in terms of funding sports and related activities. Therefore, it is important that Regulations meant to guide sports funding need to be crafted and enacted in a transparent, consultative manner with the involvement of key players and key stakeholders. Short of that, the Committee has done the right thing.

For a long time, Kenya has been known for matters sports. Indeed, again, for a long time, the sports sector has been neglected totally. In fact, the other day I was impressed when listening to President Uhuru Kenyatta lamenting about people craving for results and pushing their children to get good results in school yet every person is endowed differently talent wise. This country has shown that men and women can excel in sports and succeed in life. Therefore, it is important the country puts in more emphasis in addressing the sports sector and support those who participate in sporting activities as a way of encouraging or enhancing or nurturing new talent.

It is also unfortunate that when you talk about sports in this country, what comes to mind is corruption. It has been proven that many people get involved in sports management with a specific agenda of reaping unfairly. In the fullness of time, the House needs to guide the country in putting in place mechanisms and systems to ensure that sports activities and sports in general are not misused by a few connected people who misuse them for their benefit at the expense of the country. So, sports still have a lot of potential if tapped and can take the country forward.

What is the way forward? I suggest that the relevant Cabinet Secretary and the State Department take it up to ensure that the process of putting in place the Regulations is reopened or restarted and open to stakeholders to give their views so that at the end of the day, we can come up with Regulations that are watertight and that will help enhance the sports sector. I also

encourage and thank my colleague and friend Hon. (Dr.) Victor Munyaka. He has really made a lot of progress in guiding his Committee in addressing sports issues. In fact, it was important that the House created a committee responsible for matters sports. Hon. Victor Munyaka has been equal to the task. We need to encourage him to continue in that spirit so that we do not move forward as a country while ignoring very critical sectors which can help the country turn around.

Thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Member for Likuyani.

Hon. (Dr.) Wamalwa Kibunguchy (Likuyani, FORD-K): Thank you, Hon. Temporary Deputy Speaker. I thank and congratulate the Committee on Delegated Legislation for having read, what appears to me, something deliberately done by the National Treasury. As you well know, and it is common knowledge, there has been push and pull between the National Treasury and the Ministry of Youth, Sports, Culture and Heritage as far as money coming from betting and gaming is concerned.

For us to realise the full potential of our youth, we must start tapping their talents when they are still very young. We must all embrace the idea of having youth academies in every constituency because the theme running throughout the Constitution is one of fairness and equity. We know what youth academies have done the world over. Most of you might not know, but the great football player called Lionel Messi was tapped while he was still very young in the Barcelona Youth Academy.

At that time, he was not growing very well. So, the doctors realised what the problem was and started giving him some injections of a growth hormone when he was in the youth academy. We can see what a great player he is in the world now. All our youth want to emulate him.

Finally, as I talk about fairness and equity in the country, we must borrow from what has been successful. The Government came up with the idea of starting Technical and Vocational Education and Training (TVET) centres in every constituency and this is an idea that is going on very well. That is an example of equity and fairness. I know the whole concept of the National Government Constituencies Development Fund (NG-CDF) is an example of equity and fairness. So, if we go the way of starting youth academies in this country, it is also in the same way of equity and fairness.

I know there is movement for us to finish this Motion. Let me stop there and again congratulate the Committee for the work it has done. Thank you.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): The Leader of the Majority Party, Member for Garissa Township, Hon. Duale.

Hon. Aden Duale (Garissa Township, JP): Thank you, Hon. Temporary Deputy Speaker. I had to rush from my office to make sure that I make certain information very clear about these Regulations that are being annulled on the PFM with regard to sports, arts and social development. The bulk of the money, 45 per cent, will go to universal healthcare.

I listened to the Chairman of the Departmental Committee on Sports, Culture and Tourism and I want to bring to the attention of the House the fact that in the controversial Finance Bill that was passed, people were only busy looking at the fuel levy, but there was an amendment that was putting this fund under the National Treasury. The proceeds of this fund are coming from a number of areas like lotteries and gaming, but some part of it will come from the Income Tax, money appropriated by the National Assembly, grants and donations. I am sure, having consulted the Chairperson of the Committee on Delegated Legislation, we will bring back to the House better Regulations that conform to the Constitution and to the intended purpose.

With regard to the sentiments of the Chairman of the Departmental Committee on Sports, Culture and Tourism, there is a lot of controversy in the Ministry of Sports, Culture and Heritage because of the amount of money that will be allocated to this fund. There are three aspects that the fund will deal with. These aspects are sports, arts and social development. The social development aspect will mainly be the universal healthcare for all for the next five years. Please, pass the message to the Ministry of Sports, Culture and Heritage that this fund, based on the amendment that was passed in the Finance Act, will be managed and regulated by the National Treasury.

I wish to encourage the regulatory-making authorities to, as much as is practicable, consult with Parliament, this Committee and the leadership, before the publication of any Regulations. I say this because this dialogue will as far as possible assist the authorities and impact awareness so that we do not use the Floor of the House or its committees to annul Regulations. If we consult before the Regulations are published, we will have a better consensus between Parliament and the authorities, bodies or institutions that own the Regulations.

I beg to support.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): I now call upon the Mover to reply.

Hon. (Ms.) Gladys Boss Shollei (Uasin Gishu CWR, JP): Hon. Temporary Deputy Speaker, I wish to thank all the Members here who have robustly contributed to this particular Motion. I also appreciate Members of my Committee who have worked very hard on this. I must say that the Sports Fund became very emotive. Each of us knows many young people who can benefit from this kind of fund. Recently, I held the first ever arts exhibition in Uasin Gishu County and I do not think there has been any held in the country ever. I believe in sports and arts as a person besides being the Chairperson of the Committee on Delegated Legislation. This is something that needs to be dealt with urgently. I urge the National Treasury to ensure that they rectify the errors and immediately bring it back to the House so that we do not have any of our sportspeople and the people involved in arts suffer for lack of funds yet there is a mechanism through the Finance Act for them to have resources.

I think this is the first time ever in 25 years that we have this kind of fund. That was the challenge. I urge the ministries to consult with the Committee in advance and most importantly make sure that they undertake some cross-referencing.

As I reply, I would like to donate two minutes of my time to...

Hon. Aden Duale (Garissa Township, JP): On a point of order, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Hon. Gladys Shollei, just a moment for a point of order. Let me hear what is out of order by the Leader of the Majority Party. Resume your seat.

Hon. Aden Duale (Garissa Township, JP): I wanted to cite the provisions in the Standing Order where donation is provided for. After you have replied, you cannot donate. Hon. Shollei is not in Uasin Gishu County where she donates cows and goats.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): It is usually provided for, Leader of the Majority Party, when debate has maturely ended. Hon. Shollei was not philanthropic at the start of her replying. However, you had a very good intention to donate. You have already replied.

Hon. (Ms.) Gladys Boss Shollei (Uasin Gishu CWR, JP): Hon. Temporary Deputy Speaker, I stand corrected and guided accordingly. Unfortunately, I got the eye of Hon. Seroney after I began speaking hence the error.

With those few remarks, I beg to reply.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Hon. Members, allow me to appreciate all of you for the good work. Given and guided by the rules of the House, I am not in a position to put the Question to the Motion. It will be done in the next sitting.

(Putting of the Question deferred)

ADJOURNMENT

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Order, Members. The time being 6.59 p.m., this House stands adjourned until Wednesday, 24th October 2018, at 9.30 a.m.

The House rose at 6.59 p.m.