



REPUBLIC OF KENYA

THIRTEENTH PARLIAMENT

NATIONAL ASSEMBLY

THE HANSARD

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THE HANSARD

Tuesday, 11th June 2024

The House met at 2.30 p.m.

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

PRAYERS

Hon. Speaker: Do we have quorum? Hon. Members, we have quorum to transact business. Clerk-at-the-Table.

PAPERS

Hon. Speaker: Where is the Leader of the Majority Party and his team? Let us have the Chairperson of the Departmental Committee on Agriculture and Livestock, Dr Mutunga. The Chairperson of the Public Petitions Committee, Hon. Nimrod, go ahead.

Hon. Nimrod Mbai (Kitui East, UDA): Hon. Speaker, I beg to lay the following Papers on the Table:

Report of the Public Petitions Committee on its consideration of:

1. Public Petition No.7 of 2023 by Mr Fredrick Gaya regarding Gazettement of Rachuonyo North as a hardship area.
2. Public Petition No.14 of 2023 by Hon. Baya, Deputy Leader of the Majority Party, regarding delayed adjudication and settlement of residents of Mnarani Sub-Location in Kilifi County.
3. Public Petition No.36 of 2023 by Hon. Baya, CBS, MP, regarding delayed adjudication and settlement of residents of Misufini, Vibandani and Kibarani sub-locations, Tezo Location in Kilifi North Constituency.
4. Public Petition No.57 of 2023 by Hon. Tom Odege, MP, regarding the Gazettement of Nyatike West, Nyatike North and Nyatike South as hardship areas.
5. Public petition No.70 of 2023 by Hon. Ken Chonga, MP, regarding hardship allowance and affirmative action for teachers in Chonyi Sub-Location.
6. Public Petition No.71 of 2023 by Hon. Victor Koech, MP regarding Gazettement of Chepalungu Sub-County as a hardship area.

Thank you, Hon. Speaker. I beg to lay.

With your indulgence, I wish to appreciate your noble office for enhancing the capacity of the Public Petitions Committee which I chair by posting competent staff who have been able to process these reports and Motions on time. It is why we have the zeal. We wish to present more of the reports so that we can solve the petitioners' requests.

Hon. Speaker: Thank you, Chairman of the Public Petitions Committee. Is the Office of the Leader of the Majority Party in the House now? Leader of the Majority Party, I have called you twice under Order No.5 on Papers.

Hon. Kimani Ichung'wah (Kikuyu, UDA): Thank you, Hon. Speaker, for your indulgence. I was watching from the office as I attended to other business and I have come running. I beg to lay the following Papers on the Table:

Reports of the Auditor-General and financial statements for the year ended 30th June 2023 and the certificates therein in respect of:

1. Jomo Kenyatta University of Agriculture and Technology Industrial Park Limited.
2. Jomo Kenyatta University of Agriculture and Technology Enterprises Park Limited.
3. Chuka University.
4. Co-operative University of Kenya.
5. University of Nairobi.
6. Thogoto Teachers Training College.
7. Sunset Hotel Limited.
8. Tom Mboya University.
9. Lafey Technical and Vocational College.
10. Kisumu National Polytechnic.
11. Mandera Technical Training Institute.
12. Machakos University.
13. Maasai Mara University, and
14. Kenyatta University.

Thank you, Hon. Speaker.

Hon. Speaker: Chairperson of the Departmental Committee on Agriculture and Livestock. Is there any Member from that Committee with a brief from their Chairman? Leader of the Majority Party, where is the Chairman of the Departmental Committee on Agriculture and Livestock?

Hon. Kimani Ichung'wah (Kikuyu, UDA): Hon. Speaker, I know they had a Committee meeting. I do not see any Member of the Committee here. It is most likely that they are not yet through. You can seek their indulgence.

Hon. Speaker: Sorry, we have Justice Kemei here. Are you a member of the Committee?

Hon. Justice Kemei (Sigowet/Soin, UDA): Yes.

Hon. Speaker: Do you have your Chairman's brief?

Hon. Justice Kemei (Sigowet/Soin, UDA): Hon. Speaker, I do not have the brief. I was with him in two Committee meetings earlier in the day. He mentioned that he was going to be in the House this afternoon. I do not have any brief.

Hon. Speaker: Go look for him. Capture and bring him here.

Hon. Justice Kemei (Sigowet/Soin, UDA): Okay. I will do so.

Hon. Speaker: Next Order.

NOTICES OF MOTIONS

Hon. Speaker: Hon. Nimrod, give your notices.

Hon. Nimrod Mbai (Kitui East, UDA): Thank you, Hon. Speaker. I beg to give notice of four Motions...

Hon. Speaker: Order! You say, "I beg to give notice of the following Motion:" Give each notice on its own.

Hon. Nimrod Mbai (Kitui East, UDA): Thank you, Hon. Speaker, for your guidance.

ADOPTION OF REPORT ON GAZETTEMMENT OF RACHUONYO NORTH
AS A HARDSHIP AREA

Hon. Nimrod Mbai (Kitui East, UDA): Hon. Speaker, I beg to give notice of the following Motion:

THAT, this House adopts the Report of the Public Petitions Committee on its consideration of Public Petition No.7 of 2023 by Mr. Fredrick Gaya regarding Gazettement of Rachuonyo North as a hardship area, laid on the Table of the House on Tuesday, 11th June 2024.

ADOPTION OF REPORT ON GAZETTEMMENT OF CHEPALUNGU
SUB-COUNTY AS A HARDSHIP AREA

Hon. Nimrod Mbai (Kitui East, UDA): Hon. Speaker, I beg to give notice of the following Motion:

THAT, this House adopts the Report of the Public Petitions Committee on its consideration of Public Petition No.71 of 2023 by Hon. Victor Koech, MP regarding gazettement of Chepalungu Sub-County as a hardship area, laid on the Table of the House on Tuesday, 11th June 2024.

ADOPTION OF REPORT ON HARDSHIP ALLOWANCE AND AFFIRMATIVE ACTION
FOR TEACHERS IN CHONYI SUB-COUNTY

Hon. Nimrod Mbai (Kitui East, UDA): Hon. Speaker, I beg to give notice of the following Motion:

THAT, this House adopts the Report of the Public Petitions Committee on its consideration of Public Petition No.70 of 2023 by Hon. Ken Chonga, MP regarding hardship allowance and affirmative action for teachers in Chonyi Sub-County, laid on the Table of the House on Tuesday, 11th June 2024.

ADOPTION OF REPORT ON GAZETTEMMENT OF NYATIKE WEST, NYATIKE NORTH
AND NYATIKE SOUTH AS HARDSHIP AREAS

Hon. Nimrod Mbai (Kitui East, UDA): Hon. Speaker, I beg to give notice of the following Motion:

THAT, this House adopts the Report of the Public Petitions Committee on its consideration of Public Petition No.57 of 2023 by Hon. Tom Odege, MP regarding the gazettement of Nyatike West, Nyatike North and Nyatike South as hardship areas, laid on the Table of the House on Tuesday, 11th June 2024.

For accountability, I wish to notify the Leader of the Majority Party that when he was away, I tabled six reports, including two from the Deputy Leader of the Majority Party. Thank you, Hon. Speaker.

Hon. Speaker: Let us go back to Order No.5.

The Chairperson of the Departmental Committee on Agriculture and Livestock, Dr Mutunga.

PAPER

Hon. (Dr) John Mutunga (Tigania West, UDA): Hon. Speaker, I beg to lay the following Paper on the Table:

Report of the Departmental Committee on Agriculture and Livestock on its consideration of Senate Amendments to the Sugar Bill (National Assembly Bill No. 34 of 2022).

QUESTIONS AND STATEMENTS

REQUEST FOR STATEMENT

PROPOSED TRANSITION FROM TWO-TEST TO THREE-TEST ALGORITHMS FOR TESTING IN KENYA

Hon. Speaker: Hon. Kibagendi, Member for Kitutu Chache South.

Hon. Antoney Kibagendi (Kitutu Chache South, ODM): Hon. Speaker, pursuant to the provisions of Standing Order 44(2)(c), I wish to request for a Statement from the Chairperson of the Departmental Committee on Health regarding the proposed transition from two-test to three-test algorithms for HIV testing in Kenya.

On 22nd August 2023, the acting Director-General for Health in the Ministry of Health, vide a circular Ref: MOH/ADM/1/1/12 directed the National AIDS and STI Control Programme (NAS COP) to prescribe three-test algorithms for HIV testing both in the general population and the antenatal setting to replace the two-test algorithm. The NAS COP was further directed to coordinate a comprehensive transition plan with a target of site-level implementation by January 2024 and oversee dissemination and publication of the HIV testing algorithm study findings in a taskforce report. The transition plan and toolkit were to include information communication and education materials; comprehensive training and capacity building for healthcare workers; quality assurance plans; supply chain considerations and management, including standardised technical specifications of the algorithm kits; and risk mitigation measures to ensure service continuity during transition period.

It is against this background that I request for a statement from the Chairperson of the Departmental Committee on Health. Could the Chairperson—

1. provide a report on the status of transitioning from two-test to three-test algorithms for HIV testing in Kenya, including whether the site-level implementation earmarked for January 2024 took off, and the progress made so far?
2. provide details on dissemination and publication of the HIV testing algorithm study findings and the release of the taskforce report as directed in the named circular?
3. explain the status of development and implementation of the transition plan and toolkit by NAS COP, including measures taken for information communication and education, training of health workers, quality assurance, supply chain management, and risk mitigation?

4. provide a report on the progress made on procurement process for new kits and the extent of adherence by NASCOP to procurement laws and the transition plan in initiating procurement of the new kits?
5. provide an update on the revision of relevant programme documents related to HIV testing to align them with the three-test algorithm and assurances put in place to ensure service continuity with no stockouts of test kits during the transition period?

I thank you, Hon. Speaker.

Hon. Speaker: Chairperson, Departmental Committee on Health. Were you listening to that?

Hon. (Dr) Robert Pukose (Endebess, UDA): Thank you, Hon. Speaker. I request that you give us two weeks to respond to the request for statement by Hon. Kibagendi.

Hon. Speaker: Okay, two weeks is ordered. Hon. Rozaah Buyu, Member for Kisumu West. Leader of the Minority Party, where is your Member? You are not the keeper?

Hon. Opiyo Wandayi (Ugunja, ODM): I have no idea.

Hon. Speaker: No idea? Okay.

Hon. Speaker: Chairperson, Departmental Committee on Environment, Forestry and Mining.

Hon. David Gikaria (Nakuru Town East, UDA): Hon. Speaker.

Hon. Speaker: Yes, Hon. Gikaria?

Hon. David Gikaria (Nakuru Town East, UDA): I am ready with the response to request for Statement.

Hon. Speaker: You are ready?

Hon. David Gikaria (Nakuru Town East, UDA): Yes.

Hon. Speaker: Go ahead.

STATEMENT

ALLEGED DUMPING OF TOXIC WASTES IN NORTH-EASTERN REGION

Hon. David Gikaria (Nakuru Town East, UDA): Thank you, Hon. Speaker. First of all, let me thank you, Hon. Speaker. I am sorry last week we were not able to read the response to the request for Statement. I thank you for giving us an opportunity to do that. The response is as follows:

The Ministry is aware that in the 1980s and early 1990s, the Government embarked on oil exploration activities in the northern region of Kenya, namely, parts of the present Wajir and Marsabit counties. Findings of the exploration indicated that there were no oil deposits of economic viability to justify further drilling activities. Thereafter, the National Oil Corporation of Kenya (NOCK) required the oil exploration companies to de-commission their activities after closure of their drilling exercises.

At the time of exploration, there was no legal framework to support the environmental impact assessment report and, therefore, no environmental impact assessment was conducted. The Environmental Management and Coordination Act (EMCA) came into being in 2000. In January 2004, media reports emerged about possible water poisoning in north-eastern Kenya when the *Daily Nation* newspaper published the death of over 7,000 livestock, which had died after drinking water from a borehole in the Kargi area of Marsabit County. The committee that had

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been formed collected water samples from the boreholes and wells for the affected region and conducted scientific investigations, which revealed that the water contained elevated levels of nitrites and nitrates above those permissible for drinking. Further studies were carried out in a water sample collected from shallow wells and deep boreholes in Kargi Village as well as solid samples from the sites that were de-commissioned by Amoko Oil Company being Bellatrix 1 and Silas 1.

In their report, other than observing that the de-commissioning procedure had not been followed at Bellatrix 1, the expert concluded that there was no clear relationship between the presence of bentonite at the well site and the contamination of water in the borehole and the shallow wells. The report indicated radioactivity levels of bentonite and bentonite at 0.104 and U238, as a reference of the permissible levels set out by the Radiation Protection Board. The committee, therefore, recommended that NOCK organise for removal and disposal of abandoned scrap metal and obsolete drilling chemicals as indicated in Annex 1. NOCK engaged Abasai Technical Investment Limited to remove and dispose of the abandoned scrap metal and obsolete drilling chemicals in 2005 and later submitted a report on the same to the Authority. All the time during the said exercise, NOCK was in constant communication with the Authority through correspondence while sharing information on the progress made at the sight.

The taskforce collected fresh water samples from shallow wells and boreholes together with abandoned drilling chemicals for analysis. Their report also concluded that the water had concentration of sulphites, acetic, nitrites and nitrates above permissible levels for drinking water. The taskforce recommended short-term action at Kargi to include removal of bentonite at Bellatrix 1 oil exploration well; provision of alternative sources of water to the locals, and need to carry out studies on the cancer cases.

In an endeavour to dispel the fears of dumping of toxic and carcinogenic substances, the National Environment Management Authority (NEMA) organised for dissemination of information among local communities on the findings of various investigations carried out within the region. NOCK carried out detailed assessment of the requirement of disposable bentonite at Bellatrix 1 well, including the estimated cost of works at the site. The assessment indicated that there was no appropriate 1,000 tonnes of bentonite at Bellatrix 1 and NOCK was expected to propose to NEMA the disposal options for ease of collaboration. After careful evaluation of the disposal option proposed by NOCK, NEMA approved and proposed options under the following conditions:

1. NOCK undertake an Environmental Impact Assessment (EIA) on selected sites, incorporating risk assessment and management (Annex 4 has an EIA report license).
2. NOCK ensure the position of the mediation, post-care and maintenance plan (I have confirmed with the Ministry this has not been done).
3. NOCK notify NEMA on completion of the mediation works and submit a mediation report for evaluation and that sampling and analysis of appropriate parameters be provided.
4. NOCK involve the community and project-affected persons during the execution of the mediation post-care and maintenance.

The NOCK submitted the Environmental Impact Assessment report on disposal of bentonite at one of the sites to NEMA, which NEMA reviewed and issued NOCK with a licence, No. NEMA/EIA/PSL/15977, on 20th December 2021 as indicated under Annex 1.

Hon. Speaker, I thank you for giving me this opportunity to give the response.

Hon. Speaker: Thank you, Hon. Gikaria. Who was the questioner? Member for Wajir South. Is he in the House?

Hon. Mohammed Adow (Wajir South, ODM): Yes.

Hon. Speaker: Do you have any clarification to seek?

Hon. Mohammed Adow (Wajir South, ODM): Yes.

Hon. Speaker: Go ahead.

Hon. Mohammed Adow (Wajir South, ODM): Thank you, Hon. Speaker. I am surprised because the Statement does not address the questions I raised. It is a clear case of evasion. It beats about the bush and this is the challenge we have had with successive governments over the years when it comes to atrocities committed against the people of North Eastern Kenya.

Hon. Speaker, what I had sought to know from the Committee was about the alleged dumping of nuclear and other toxic wastes in North Eastern Kenya. According to the people from that part, this is something that has given rise to the number of cancer patients in the region. They keep on increasing. There is environmental degradation and other issues. What I had sought from the Committee was to find out if it could undertake an inquiry into the illegal dumping of hazardous nuclear waste in the North Eastern part of Kenya, including the environmental effects and the association with high cases of cancer reported in that part of the country.

I also wanted the Ministry to state the measures it had put in place for the residents of the region whose land was illegally used for dumping hazardous nuclear waste and whose health has been adversely affected by the harmful chemicals, and that they are fully compensated.

I also sought to know what regulatory measures the Government of Kenya had put in place to ensure that all hazardous waste and material, including nuclear waste, are securely disposed of without causing harm to humans, animals, and the environment. This is a grave matter that needs to be addressed with the seriousness it so much deserves. If the Committee gives us answers, I will appreciate it.

Hon. Speaker: Member for Wajir South, I gave you an opportunity to seek clarification on the Statement. You are now debating it. Hon. Gikaria.

Hon. David Gikaria (Nakuru Town East, UDA): Thank you, Hon. Speaker. I have heard the Member. This Statement was sought under Standing Order 44(2)(c). It is about the toxic waste that was dumped in the early 1980s and 1990s. To be honest, when I read the request by the Member, it is true that we have given a lot of emphasis to (i) only but not to (ii) and (iii). We have not concentrated on (ii) where he sought whether there was any compensation. Lastly, we have also not concentrated on (iii) where he has some requests.

This House has passed too many ratifications on these hazardous wastes. We had the Minamata Convention on Mercury. That is what we expected in this Statement as a response. If the Member is dissatisfied—as he has indicated—we, as a Committee, can inquire on it. He sought the Statement under Standing Order 44(2)(c). As a Committee, if we can be allowed, we can investigate and give a proper response.

Thank you, Hon. Speaker.

Hon. Speaker: I will give an opportunity to two more Members. Hon. (Major) Bashir.

Hon. Major (Rtd) Abdullahi Sheikh (Mandera North, UDM): Thank you, Hon. Speaker, for granting me this opportunity to contribute. The Chairman of the Committee has confirmed that the response provided on this issue of toxic waste is not what we expected. I urge this House, and with your indulgence, that we form a special select committee of Parliament to look into this matter. That is the only way we can get to the bottom of it.

Hon. Speaker: Major Bashir, you know what to do. If you want us to form a select committee, bring a Motion. We cannot form it by your intervention.

Hon. Major (Rtd) Abdullahi Sheikh (Mandera North, UDM): Thank you, Hon. Speaker. We will do what is necessary and ensure that we bring a Motion to have a select committee so that this matter is dispensed with once and for all. The lives of the people of Northern Kenya, and Kenyans at large, are at risk because of what was done in the previous years. The drilling of oil and wells happened. It is important to have a conclusion on this matter. In my capacity as the Chairman of the Pastoralist Parliamentary Group, I will bring a Motion to have a select committee for this matter to be concluded.

Hon. Speaker: Member for Mandera South, go ahead. Give him the microphone.

Hon. Abdul Haro (Mandera South, UDM) Thank you, Hon. Speaker. The issue raised by the Member for Wajir South is very important. The Chairman of the Departmental Committee on Environment, Forestry and Mining only dwelt on a specific area of Kargi. The issue was on Northern Kenya. I have an issue of the same nature in my constituency where wells were drilled. If you listened to him when he reported to this House, these things happened in the late 1980s and early 1990s. However, the environmental impact assessments were done in the year 2000 and 2021. This Committee should have gone into detail about every region in Northern Kenya where wells were drilled, so that they come out with a comprehensive report on what happened.

Our people live in fear. There is so much panic on this issue. People already know that there is a problem of cancer in the area. When this allegation on toxic wastes which were dumped in those areas came up, it brought up more fear and panic in northern region. The Chairman should go back and get a comprehensive report on this issue, so that we address it once and for all.

Hon. Speaker: Member for Isiolo County and then Hon. Farah Maalim. Contribute for one minute, *Mheshimiwa*.

Hon. Mumina Bonaya (Isiolo County, JP): Thank you, Hon. Speaker. This is a matter that we have experienced in terms of the impact that our people have encountered as a result of the waste that was dumped in Northern Kenya. We have a number of people who are suffering from cancer as a result of that. It all happened between 1980s and 1990s. It is not something you can deny. We, as a country, require to investigate it thoroughly and conclude it. Even if we try to run away from this matter, we will not do it. We will keep on experiencing a burden in our health sector because it continues to affect us every other day.

If you look at the number of people who are suffering from cancer in that part of the country, it is too much that it should concern everybody in this part of the country. We must investigate to get to the bottom of the matter. Hon. Speaker, kindly guide us on the same. As Members of Parliament from that part of the country, we are concerned.

Hon. Speaker: Thank you. Farah Maalim, you are the last one to contribute to this matter. Give him the microphone.

Hon. Farah Maalim (Dadaab, WDM): Hon. Speaker, thank you very much for giving me this opportunity to add my voice to this matter.

When you and I came to this House in late 1992 and as early as 1993, I brought up this matter on the Floor of the House. The strangest thing about this—and I want to get the attention of my colleagues in plenary—is that there were American soldiers, in some cases, in uniform, who were moving around with drilling rigs and very big containers that were in vehicles. Everywhere they went to drill a borehole, they cordoned off that area. The impression given was that they were drilling water wells to assist the community. However, they drilled wells, put something and then

capped them. Then, we have this epidemic of people around that place all ending up with cancer cases.

This issue has a serious responsibility. I remember very well that the Minister for Energy was the late Nicholas Biwott. There is need for us to get to the bottom of this issue. It is my considered conviction that serious money changed hands between interests outside the country and people who were in the system at the time from our country. People decided to dump the wastes in this country because it was easier for them to do it.

Hon. Speaker: Seek a clarification from Hon. Gikaria.

Hon. Farah Maalim (Dadaab, WDM): My position to the Chairman is that we should lift the veil on this matter and get to the bottom of it. If we do not do it, any Government in place will do the same things to different sections of the country. This problem will be with us for hundreds of years, if not thousands of years, to come.

(Loud consultations)

Hon. Speaker: Order, Members. Hon. Gikaria, in your preparation of this response, did you visit the affected areas or you just listened to public officers? I have listened to your Statement. There is a total variance with allegations being raised by Members. Did you visit the affected areas?

Hon. David Gikaria (Nakuru Town East, UDA): Hon. Speaker, this is just a response which was given by the Cabinet Secretary for Environment and Forestry. When the Statement was sought by the Hon. Member, it was taken to the Ministry. That is why I said that we were also dissatisfied with the response based on the request made.

I agree with the Members on some of the issues they have talked about like cancer. When you consider NOCK, which explores oil and NEMA, which is just concerned with environmental matters, without involving the Ministry of Health to check the cause of the cancer-related diseases, then there were so...

As a Committee, we did not visit the area. This is just a response from the Ministry.

Hon. Speaker: I will give you direction. Take time and interrogate this Statement from the Cabinet Secretary. As a Committee, visit the affected areas and bring back a comprehensive report in the next one month.

Hon. David Gikaria (Nakuru Town East, UDA): Most obliged, Hon. Speaker.

Hon. Speaker: Hon. Members, before we go to the next Order, allow me to acknowledge students from the following schools in the Public Gallery: Isiolo Boys Secondary School from Isiolo North, Oshwal Academy from Mombasa, Nyali; and Rubate Secondary School from Igambang'ombe, Tharaka-Nithi. Students from Ngurubani Secondary School from Mwea, Kirinyaga County and Ngururumo High School from Laikipia West, Laikipia County, are in the Speaker's Gallery.

I have been requested by the Member for Isiolo County and the Member for Mwea to welcome the schools from their counties. Take one minute each to welcome your students.

Hon. Mumina Bonaya (Isiolo County, JP): Thank you, Hon. Speaker. I stand here as the Women Representative of Isiolo County to welcome all visitors here, especially my boys from Isiolo Boys Secondary School. Their Deputy Principal, Mr Mohamed Godana, accompanied them. I assure them that, as a Parliament, we are fighting to provide the best education policies for all. We ask all of you to focus on your education. We need to see a continuous increase in academic performance in our county, as recently witnessed—an increase from 90 students to a whopping

264 students going to university. My message to you is that you should never be afraid to ask questions. Reach out and get support along the way. I am proud of what you have accomplished so far. I believe in you. Never forget that there is more to come. You are the dream of our nation.

Hon. Speaker: Member for Mwea.

Hon. Mary Maingi (Mwea, UDA): Thank you for giving me this chance to welcome all students to this House today.

In a very special way, I would like to welcome the students from Ngurubani Secondary School, which is one of the best schools in Mwea Constituency. I encourage them to work very hard. I hope their visit to this House will inspire them to return to this House as honourable Members and produce serious leaders of this country. The future of this country is dependent on them. I wish the students of Ngurubani Secondary School success. As you promised me earlier, I know you are going to work very hard in your studies to pass with flying colours.

Hon. Speaker: I welcome the students to the House of Parliament on my behalf and the whole House. Additionally, students from the following schools are in the Public Gallery: Anderson High School, from Endebess Constituency in Trans Nzoia County; Samoei Boys Secondary School from Nandi Hills Constituency of Nandi County; and, Kiambere Secondary School from Mbeere South Constituency, Embu County. The Women Representative of Nandi County and the Member for Nandi Hills Constituency have requested me for a chance to welcome the students from Nandi Hills. One minute each. Give her the microphone.

Hon. Cynthia Muge (Nandi County, UDA): Thank you, Hon. Speaker. I take this opportunity to welcome all students visiting the 13th Parliament where I am privileged to sit. Specially, I invite and acknowledge the presence of Samoei Boys Secondary School. We call them ‘the Spartans’ back at home. They have done us proud. I note that we have serious big schools in our county—Kapsabet Boys High School and the likes. Samoei Boys Secondary School is the local school growing bigger seriously. Local means the admissions of students to that school are 90 per cent local. This is the pride of Nandi. We are proud of ‘the Spartans’ of Samoei Boys High School. I wish them the very best.

I was in their school two weeks ago. We managed to speak about very many matters including and not limited to doing the best in their studies so that they become whatever they want to become. Samoei Boys High School led by their teachers and the very able principal, Mr. Kimosop, we welcome you to Nairobi and the 13th Parliament. Your Women Representative wishes you the very best.

Hon. Speaker: Hon. Kitur.

Hon. Benard Kitur (Nandi Hills, UDA): Thank you very much Hon. Speaker. As we welcome all students who have come to visit Parliament, Samoei Boys Secondary School, is in particular... They call themselves ‘the Green Commandos’. All the 289 students of this institution were posted to university last year, with a mean of 9.6. They have been growing. Indeed, this institution can only be in level with institutions like Alliance Boys High School and Moi High School Kabarak where I studied, and any other best institution. In fact, they have invited all Members of Parliament. On 22nd June 2024, they are inviting you to a great celebration of their great performance. I wish you well. You are all welcome to Parliament.

Hon. Speaker: Hon. Pukose MP of Endebess.

Hon. (Dr) Robert Pukose (Endebess, UDA): Thank you, Hon. Speaker. I join my colleagues to welcome Anderson High School from Endebess. It is a school at the border of Kenya and Uganda. This school is the best school in Endebess and number four within Trans Nzoia County in the last Kenya Certificate of Secondary Education (KCSE). The school represented

Kenya in the East African volleyball competition. It is also representing Kenya in a chess game in South Africa. Four athletes from this school are international athletes and they will be representing the country in various athletic competitions continentally and outside.

Hon. Speaker, I thank the House and you in particular. You know you are from that region and we appreciate your service. I encourage Anderson High School and welcome them to Parliament. I hope they will perform well this year.

Hon. Speaker: Hon. Zamzam, is it about the students? Go ahead for one minute.

Hon. Zamzam Mohamed (Mombasa County, ODM): Asante sana Mheshimiwa Spika. Nami kama Mama Mombasa County ninawakaribisha rasmi watoto wangu wa shule ya Vishal Leshan. Ninawaambia kuwa wametuinua sana katika anga za Kenya; mmetuinua sana katika ramani ya Kenya kwa kutoa wanafunzi bora sana katika Kenya hii. Mmetoa madaktari na ufundi mwingi. Kwa hivyo, ninawaasa mzidi kushika kasi katika masomo. Kama ni wasichana, mcheze boli; msishike boli. Tujenge taifa pamoja na *mfocus* na masomo yenu.

Hon. Speaker: Thank you. We still have Hon. Rozaah Buyu on Order No.7.

REQUEST FOR STATEMENT

COMPENSATION OF LAND OWNERS FOR LAND COMPULSORILY ACQUIRED TO CONSTRUCT KISUMU NORTHERN BYPASS

Hon. Rozaah Buyu (Kisumu West, ODM): Thank you, Hon. Speaker, for your indulgence. I was slightly held up in the office attending to a constituent who had come from Kisumu. I have a request for a Statement regarding compensation for land compulsorily acquired to construct Kisumu Northern Bypass.

Pursuant to provisions of Standing Order 44(2)(c), I request for a Statement from the Chairperson of the Departmental Committee on Lands regarding the inordinate delay in compensation of land owners for land compulsorily acquired to construct the Kisumu Northern Bypass.

In 2015, almost 10 years ago, the Government undertook major road infrastructure developments, including the construction of the Kisumu Northern Bypass to ease congestion in Kisumu City. Owing to unavailability of a road reserve, the Government compulsorily acquired land from some residents to construct the bypass.

Article 40(3) of the Constitution obligates the Government to promptly pay full compensation to any person whose land is acquired for public purpose. It is unfortunate that the Government is yet to compensate some landowners who ceded their land to the State for the noble project, for close to 10 years. It is against this background that I request for a Statement from the Chairperson of the Departmental Committee on Lands. Could the Chairperson:

1. provide a report detailing all persons whose land was compulsorily acquired for construction of the Kisumu Northern Bypass in 2015? Also, provide the value of the acquired land and the status of compensation in respect of each of the affected landowners?
2. explain the reasons for delayed compensation of eighteen affected landowners despite numerous follow up initiatives made through the USOMAKI Social Justice Centre, a Community-based Organisation?

3. state the plans the Government has put in place promptly to compensate affected landowners, including interest for lost earning over the years since they handed over their land to the Government, and state when the compensation will be settled?

Hon. Speaker, I thank you.

Hon. Speaker: The Chairperson of the Departmental Committee on Lands.

(Hon. Joash Nyamoko stood in his place)

Hold on, Hon. Nyamoko. What is it Hon. Jared?

Hon. Jared Okello (Nyando, ODM): Thank you very much Hon. Speaker for allowing me to joyride on the Statement as read by Hon. Rozaah Buyu.

Hon Speaker, the situation is uglier than she is putting it. When the idea of coming up with the Kisumu Northern Corridor that joins the Airport Road to Mamboleo, Muhoroni and ultimately Londiani Junction was birthed in 2015, the owners of parcels of land along that corridor were forcefully evicted from their homes to create a pathway. It was done under the promise of compensation which has not happened to this very day, almost 10 years down the line. Some of the family members were plugged to relatives' homes, overstretching budgetary allocations for individual families with the hope of getting compensation at the end of the day. They have been waiting for 10 years until the host families have got tired with the family members and relatives. Most of them do not have a place to stay because their abodes were demolished by the Government. Even as the Chairman of the Departmental Committee on Lands undertakes to carry out a comprehensive investigation that will lead to compensation, we ask that it be expedited. Otherwise, we are losing lives as a result of frustrations and depression by these families.

I thank you, Hon. Speaker.

Hon. Speaker: Thank you. You have made your point. Chairman of the Departmental Committee on Lands, when can you bring the response? Two weeks?

Hon. Joash Nyamoko (North Mugirango, UDA): In the next two weeks, Hon. Speaker.

Hon. Speaker: Thank you, for that. Hon. Members, before we resume debate, at Order No.10, we will go into Committee of the whole House to consider Senate amendments to the National Rating Bill, (National Assembly Bill No.55 of 2022) and the Kenya Drugs Authority Bill (National Assembly Bill No.54 of 2022). With regard to the Kenya Drugs Authority Bill...

(Hon. Major (Rtd) Abdullahi Sheikh and Hon. Kimani Ichung'wah consulted loudly)

Order, Hon. Bashir. The Hon. Member you are talking to should be listening to this because he is the Leader of the Majority Party.

When we get to the Kenya Drugs Authority Bill, the view of the House Business Committee is that we step down this Bill for a while pending consultations because I have a report that indicates that the Bill has been amended too much to the extent that it has lost its original character. You have amended until you are amending the Long Title, the Short Title, the definitions and virtually everything. Under our Standing Orders, you cannot amend a Bill until you negative the original intention. So, we will talk to Hon. (Dr) Pukose, the Chairman of the Committee. If we are satisfied that the amendments are so far reaching that they have altered the intent and the character of the Bill, then Dr. Pukose may be advised to republish a fresh Bill to capture what the

amendments are looking for. That is the law, both in our jurisdiction and in comparable jurisdictions around the Commonwealth.

(Applause)

BILL

Second Reading

THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL
(National Assembly Bill No.67 of 2023)

(Moved by Hon. Owen Baya on 25.4.2024)

(Resumption of debate interrupted on 6.6.2024 – Morning Sitting)

The next Order has been called out. Who was on the Floor?

(The Hon. Speaker consulted the Clerks-at-the-Table)

Hon. Malulu Injendi, you have five minutes.

Hon. Malulu Injendi (Malava, ANC): Thank you, Hon. Speaker.

Let me continue to say that this amendment was even opposed by the Departmental Committee on Energy. It was also opposed by the Ministry itself through a letter that was sent to the National Assembly.

Hon. Speaker, the Committee recommended that the Nuclear Power Energy Agency (NuPEA) should be adequately funded. It also recommended that the Agency should continue discharging its mandate as required under Section 56 of the Energy Act. Therefore, I oppose this based on those facts.

However, after I developed keen interest in the main Act and also the amendments, I found out that Section 54 of the Energy Act of 2019 that establishes NuPEA had no amendments with regard to what was said on the Floor by the Mover of the Motion. As much as the Memorandum of Objects and Reasons indicates the winding up of this Agency, when we look at the amendments in the Miscellaneous Amendments Bill that is on the Floor, we do not have any amendments to that effect. This leaves me wondering why it was mentioned by the Mover and yet it appears in the Memorandum of Objects and Reasons. The main amendments do not reflect what was argued by the Mover. As I had said earlier, that is the only amendment I oppose. Otherwise, I support the rest of the amendments.

I am particularly impressed with the amendment that includes Kenya Power and Lightning Company in the membership of the Rural Electrification and Renewable Energy Corporation (REREC). This will ensure effective collaboration between REREC and KPLC because we have had a lot of challenges on the ground and in the field when it comes to lighting in our villages and constituencies.

Hon. Speaker, we are aware that REREC is really doing good work in terms of last mile installation of electricity in our villages. We have noted that because of the disconnect between KPLC and REREC. REREC does the installation of last mile, identifies homesteads and houses

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and it constructs a power line up to the point of a transformer. After commissioning by REREC and handing over the power to KPLC, it can take six months, two years or even three years before KPLC does the metering in homes. This results into a lot of complaints and vandalism of property that belongs to REREC. At the end of the day, when the meters are finally installed, KPLC or REREC spend further in repairing and purchasing infrastructure that was destroyed. This will enable us not to lose any opportunity in using the power that is at our doorsteps but we do not enjoy it because of lack of metering.

We have also had a lot of challenges. After REREC installs power to the transformer but it takes time to put meters in people's homes, unscrupulous contractors start laying illegal lines. Many homes get connected outside the 600-metre requirement. When the time comes for metering, we have conflicts where Members of Parliament are involved. Households complain that they have meters installed but they are not connected to the power line. Therefore, I support all the amendments except the one on winding up the NUPEA and transferring its resources to the Ministry of Energy.

Thank you, Hon. Speaker.

Hon. Speaker: Hon. Didmus.

Hon. Didmus Barasa (Kimilili, UDA): Thank you, Hon. Speaker, for this opportunity. From the very beginning, I support the Statute Law (Miscellaneous Amendments) Bill.

The proposed amendment to the Children Act seeks to enable the courts to allow an application by a man to adopt a child. You understand that in this country, there are many men who are single handedly taking care of their families and should be allowed to adopt children.

With regard to the Copyright Act, it is very important that the too many artistes or content creators in this country be remunerated from the same level. We must have some clear management policies to guide the Copyright Board in ensuring equity and fairness in sharing royalties.

Amendment No.1 to the Scrap Metal Act, 2015, is very good because it will protect the very critical infrastructure in the energy sector in this country, which has been suffering from people vandalising and stealing transformers and cables. This amendment will ensure that for anyone to deal with copper and aluminium, they must have a special licence which I am sure, will undergo some type of vetting. This will ensure that before a firm is given a licence to begin dealing with scrap copper and aluminium, they must demonstrate where they get it from, to ensure that they are not the ones vandalising copper in this country.

Basically, these miscellaneous amendments are just to clean up various statutes and realign them with our Constitution, and the very many changing policies in this country. It is a good thing that will move us forward. Kenya is run on policies, and when a government implements a policy or law, we have a team, both in Government and outside Government that has a responsibility of monitoring and evaluating how those policies and statute laws are beneficial to the country, in terms of how much budgetary allocation they are receiving and how much value Kenyans are getting. As a country, and as a House, we have a responsibility to either terminate the various policies or improve them so that Kenyans can continue to benefit from these very many laws.

Even as I support these laws, we must be aware that at times these Miscellaneous Amendment Bills can be brought in for misuse. But I have gone through this document and can confirm to this House that each and every proposed clause is beneficial to this country. Once these amendments are approved, this law will ensure that the Children Act is beneficial to the country, and the Copyright Act benefits the very many artistes and local content creators in this country. It will also ensure that scrap metal misuse through vandalising bridges, guardrails and electrical power lines, will stop. The Fisheries Management and Development Act will also ensure that

fishing, which is one of the key economic activities for majority of Kenyans, benefits people who engage in that trade.

With those very many remarks, I unequivocally support this Statute Law (Miscellaneous Amendment) Bill, 2023. Thank you, Hon. Speaker.

Hon. Speaker: Hon. Samuel Atandi, are you queuing for this? This is what I keep on telling you Members.

Hon. Samuel Atandi (Alego Usonga, ODM): Hon. Speaker, I am waiting to comment on the Equalisation Fund Appropriation Bill.

Hon. Speaker: Hon. Kibet Komingoi. Absent. Hon. Moses Kirima? Hon. Kaluma?

Hon. Peter Kaluma (Homa Bay Town, ODM): Thank you, Hon. Speaker. I support...

Hon. Speaker: Just before you go on Hon. Kaluma, Clerk-at-the-Table, can you wipe the screen? Those who want to speak on this Bill, put in your requests. I see Hon. Thuku Kwenya and Hon. Samuel Atandi. If you have changed your mind, remove your card.

Hon. Peter Kaluma (Homa Bay Town, ODM): Thank you, Hon. Speaker for the opportunity to address the matter of this Bill. I support the proposed amendment to the Judicial Service Act, just as I support the proposed amendments to the Parliamentary Service Act. I support them because the mandates of these particular commissions are in the Constitution. The Parliamentary Service Commission has to deal with matters of facilities and welfare of Members. We have had situations in the past where sister commissions are encroaching into the mandate of the Parliamentary Service Commission. This amendment would make it clear the matters which the Parliamentary Service Commission and the Judicial Service Commission should be dealing with.

We must remember there is a good reason as to why we have a Parliamentary Service Commission for this arm of Government, and also a Judicial Service Commission for the other arm of Government. We need those commissions to protect these two arms within the scope of their constitutional mandates.

Hon. Speaker, I oppose amendments proposed to the Children Act, as I do also to the amendments proposed to the Adoption Act. It is proposed to amend the Children Act by deleting Section 186(4). Just to put Parliament in good light, let me read what Section 186(4) deals with. The subject under Section 186 is who may apply to adopt a child. At Subsection 4, it says:

“The court shall not make an adoption order in favour of a sole male applicant, unless the applicant is a blood relative of a child.”

We are proposing to delete this provision, to allow any male applicant, even if not related to a child, and in spite of the gender of that child, to adopt a child. That is a very dangerous proposal. Why would I, as a male person, seek to adopt a child I am not related to, while I am sole and not living with a female? What am I to do with the child if there is no distinction as to the gender of the child?

I am addressing a proposed deletion of Section 186(4), which is a very dangerous proposal coming through this Statute Law (Miscellaneous Amendments) Bill. Section 186 (4), which is proposed to be deleted, says, on page 1815 of the Bill, that the court shall not make an adoption order in favour of a sole male applicant, unless the applicant is a blood relative of the child. We know what it takes to take care of a young child. How can a sole male person who is not married or living with any other person, adopt a child? We are not talking about the gender of the child. How can I be allowed to adopt a girl I am not related to and go with her? This provision is very dangerous. We took a lot of thought into the current Children Act, 2022 and we had very good reasons to have this provision. We could risk giving children to defilers.

(Hon. TJ Kajwang 'spoke off record)

Hon. Speaker: Order, Hon. Kajwang'. Stop cheering. Go on Hon. Kaluma.

Hon. Peter Kaluma (Homa Bay Town, ODM): Thank you, Hon. Speaker. People who are not related to a child the gender notwithstanding, can mess up a child beyond measure and the control of the courts. There is a good reason as to why we prescribed Section 186(4) which they seek to remove. So, I ask Hon. Members to oppose.

Secondly, this particular provision is quite substantive to be considered casually within the context of the Statute Law (Miscellaneous Amendments) Bill. Again, in the same page 1815 of the Bill you will see a deletion being proposed for Section 186(6)(f). This is very serious. I wish Members of Parliament would look at this provision because it is very critical for the family. Hon. Speaker, it deals with adoption of a child and the provision which they seek to remove is 186(6)(f) which states—

“(6) The Court shall not make an adoption order in favour of an applicant or joint applicants if the applicant or joint applicants, or any of them—

(f) is a foreign applicant except where the applicant is a biological relative of the child.”

What is the problem with this provision? It is protecting our children. We have had cases of child trafficking and organ harvesting sourced from children being moved from one jurisdiction to other. We have cases of child pornography. Why do you want to delete a provision which is securing our children from foreigners unless, they are biological relatives? What protection do those children have after they have moved out of this jurisdiction? These are very fundamental provisions. We are dealing with the rights of a child as protected under Article 53 of the Constitution. So, if we read it keenly, we cannot delete these provisions. I oppose these two proposed deletions but support other provisions even though they are substantive.

Thank you, Hon. Speaker

Hon. Speaker: Hon. Kwenya Thuku. Is he in the House?

Hon. Kwenya Thuku (Kinangop, JP): Thank you, Hon. Speaker, for this opportunity to contribute on the Statute Law (Miscellaneous Amendments) Bill. From the outset, I am in support of some of the amendments herein but I also want to give my thoughts and those of the people of Kinangop.

I support the inclusion of Kenya Power in the membership of REREC. We have electrification issues in our constituencies and once REREC has done the work, there is no proper transition to the body in-charge of power lines and connecting our people with electricity. The lack of proper transition is because Kenya Power is not represented in the REREC Board. Therefore, inclusion of Kenya Power in the same will be a step in the right direction.

Of importance, I wish to give my thoughts on the proposed amendments to the Scrap Metal Act, 2015. I see a lot of mischief in this Bill. The reason being there is a proposal that scrap metal dealers especially, those dealing with copper and aluminium alloy will have special licences to export copper, aluminium and the two combined. This should worry everybody. Today, one of the biggest issues we are dealing with is transformer vandalism in as far as, extraction of copper is concerned because it is pricey.

We all know that the Republic of Kenya does not produce copper. Why are we licensing people to deal with copper? The best thing is to ban the export of copper completely and leave the two business entities mentioned here; Numerical Machining Complex Ltd (NMC) and Kenya

Shipyards Limited. In as far as the two metals are concerned, they are consolidated, melted and have billets that are under the custody of the two public entities. Then, they should be auctioned in public as opposed to giving special licences. This is being left in the hands of a Cabinet Secretary who will decide whom to issue licences. We may be forming cartels that will be responsible for vandalising our transformers. This is a challenge we have been having every year.

I had a conversation with an officer who works for REREC and he brought this issue to my attention. We represent people and we know the kind of losses that this country is running into because of this illegal trade whereby we license vandals. I oppose this amendment. In fact, I am going to bring amendments to delete any form of licensing of scrap metal dealers in as far as copper is concerned. We do not produce the same and therefore exporting it is a question we need to answer as a House. Let us leave this to the two public entities mentioned in this Bill to deal with the consolidation of the same and maybe sell it in public auctions.

Thank you, Hon. Speaker. I support everything else in this Bill but oppose this one and I will bring amendments.

Hon. TJ Kajwang' (Ruaraka, ODM): On a point of order, Hon. Speaker.

Hon. Speaker: Order. What is your point of order?

Hon. TJ Kajwang' (Ruaraka, ODM): Thank you, Hon. Speaker. Something is troubling me. Bills come before us, we process them in Second Readings and it appears as though the normal situation is to pass them. We have spoken about this ever since I came to *Bunge* in 2013. The Statute Law (Miscellaneous Amendments) Bill should only focus on correcting minor issues of law.

Hon. Speaker, you are a doyen of authority and the Chairperson of the Procedure and House Rules Committee. If we are unable to tame the Executive from where this Bill is coming from, can we change our rules so, that when the Clerk of the National Assembly is perusing a Bill, under the Speaker's discretion and finds out that a legislation is so fundamental and substantial that it requires policy, the Speaker or the Clerk can refuse to process that kind of Bill? In spite of what Hon. Kaluma and other Members have said that in the Committee of the whole House, we still pass Bills notwithstanding, if there is a policy or they have not been clearly thought of..

Hon. Speaker, I want to harvest from your experience. Is it possible for the Procedure and House Rules Committee to change our Standing Orders because presently, nothing like that appears?

Thank you, Hon. Speaker.

Hon. Speaker: Bring your Petition to the Procedure and House Rules Committee and it will be looked out. I have no reason to believe that this Bill will go through or not until you vote. So, we leave it there.

Hon. Thuku Kwenya.

Hon. Kwenya Thuku (Kinangop, JP): Hon. Speaker, I am opposed to this amendment and I will bring in further amendments so that we align it. We should make sure there is no trade that will happen in this country as far as the exportation of copper is concerned.

I support with reservations.

Hon. Speaker: Hon. Zamzam Chimba.

Hon. ZamZam Mohammed (Mombasa County, ODM): Mhe. Spika, katika marekebisho ya Sheria ya Watoto (Children Act) No.29 of 2022, napigia pondo ndugu yangu Mhe. Kaluma. Amesema watoto wamepewa ulinzi katika Katiba. Kama wamama, ni vizuri tujue kuwa mtoto anapotaka kuchukuliwa na mzazi mwingine, iwe ni kutoka katika familia ya mtoto. Mataifa ya nje yameweza kupitisha Mswada wa kununua watu. Watu watakuwa wananunuliwa kama peremende au maziwa dukani na hii inatupa wasiwasi. Huo Mswada umepita Marekani na tukitoa hiki

kipengee cha kuweza kuwalinda watoto wetu, kutakuwa na mwanya. Mtu yeyote kutoka sehemu yoyote ataweza kuchukua mtoto kwa jina la *adoption* na pengine wanaenda kutumika kwa njia zingine. Hasa, kipengee kile kimelinda mtoto kwa kusema kuwa mwanamume asiweze kuchukua mtoto. Mwanamume hajapewa nguvu ya kulea mtoto kama vile mama. Ningependa hiki kipengee kisiguzwe, ili watoto wetu waweze kupata ulinzi na wasijipate katika mikono ya watu ambao sio wazuri.

Watu wengi wanaingia na jina la *adoption* lakini mwishowe, wanaenda kutumia watoto au kutoa viungo vya mwili. Huwezi kujua kama mtoto anakaa vizuri kwa kuwa hakuna anayefuatilia kule mtoto alipoenda. Ni vizuri mtu wa karibu na wa damu ya mtoto ndio aweze kuchukua mtoto. Naonelea hiki kipengee kisibadilishwe.

Asante sana Mhe. Spika.

Hon. Speaker: Hon. Marwa Kitayama.

Hon. Maisori Kemero (Kuria East, UDA): Mhe. Spika, ingawaje nilikuwa ninataka kuchangia Hoja ambayo inafuatia, ni wazi kwamba kuna matatizo.

Hon. Speaker: Kama hii sio ile ambayo ulitaka, yield the Floor to someone else.

Hon. Maisori Kemero (Kuria East, UDA): Well guided, Hon. Speaker.

Hon. Speaker: Hon. Paul Nabui, Turkana North.

Hon. Paul Nabui (Turkana North, ODM): I was not keen on which one was coming through.

Hon. Speaker: Hon. Members, let me repeat what I have been telling you. If a Motion is on the Floor, by way of a Bill, such as this, if you have no intention of contributing, do not log in. You fill the screen and make it difficult for whoever is in the Chair, including the Hon. Speaker, to know who wants to speak on this and who does not.

Hon. Wilberforce Oundo, are you on this or anticipating something else?

Hon. (Dr) Ojiambo Oundo (Funyula, ODM): Yes. I had been checking on the status. I was on top then lost my position all of a sudden.

Hon. Speaker: Go ahead.

Hon. (Dr) Ojiambo Oundo (Funyula, ODM): As a matter of principle, since I came here in the 12th Parliament, I have always had reservations about Miscellaneous (Amendment) Bills. They are miscellaneous but mischievous. The mischief has always been apparent once the Bill is completed as required by the law. The Bill as published has very fundamental amendments to the law. Some go to the core of various Bills of rights and the Constitution of Kenya. It does not meet the threshold of a miscellaneous Bill to rectify minor changes.

Let me start with the Amendment to the Children Act No.29 of 2022, which proposes to delete Section 186(4) of the Principal Act. I totally oppose it on the following grounds. First, the way Section 4 is styled gives some kind of protection against child abuse. Ordinarily, child abuse is inevitably in many cases perpetuated by men. Allowing the courts to allow a sole applicant who is a male to adopt a child regardless of whether it is a relative or not is a precursor for abusing that child. I cannot fathom why a drafter would want to do this and put a Kenyan child in harm. I oppose and will make amendments to that law accordingly.

The amendments to the Scrap Metal Act are long overdue because of the issue of critical national infrastructure. The definition of critical national infrastructure has been inserted and expanded. Many Kenyans suffer vandalism, either of the railway line, guard rails, electrical installations and all those kinds of things. Styling them as national critical infrastructure and burying their trade other than the designated state agencies is the right way forward. We conversely introduce the issue of monopolistic practices in the market. In the wisdom of the Departmental

Committee on Energy, we need to style this in such a way that the Cabinet Secretary can license any competent national state agency instead of restricting it to the Numerical Machining Complex and Kenya Shipyards Limited.

The amendments under the National Employment Authority Act are sad reading. In this Bill, we perpetuate the old stereotype, that a job must be one in which someone is formally employed. That is why we are introducing a job seeker instead of what was there, a youth. Having a job seeker now means that even a 70-year-old person could still be categorised as a job seeker. That will defeat the essence of the National Employment Authority Act whose focus was on the youth. When you read other provisions, by changing the word “youth” to “job seeker”, you defeat the amendments contained in Clause 2. Section 37 states thus:

“The authority shall establish incentives to reward a private institution that employs Kenyans within six months of completing the certificate or undergraduate studies and does not possess more than five years’ experience.”

Inevitably, those are the youth who are in active training.

If you introduce the words “job seeker”, you expand the application of this incentive to anybody else. The danger here is that we are perpetuating that a job seeker must have a 'written job'. Under Vision 2030, the Third Medium Term Plan (MTP III) as expanded in the Fourth Medium Term Plan (MTP IV), a job does not need to be formal employment. You can run your own job or be a self-entrepreneur and not be a job seeker. We are stereotyping that old mentality that a job has to be a white-collar job in the definition of a job seeker. We will move to amend that and erase any reference to a job seeker but retain the youth.

The amendments in the Energy Act 2023 are good and progressive. However, there is a provision that says, any vessel that is used to convey the vandalised or stolen equipment or appliance referred to in subsection (1) shall be forfeited to the State. There are forgeries, car thefts, misuse of cars, wear and tear, and unauthorised use of motor vehicles. Why would you punish an owner of a motor vehicle for reasons that he does not even know? If I may give an example, last year there was a contractor who brought materials and some people came to see the materials. The vehicle they used was a stolen vehicle with a forged number plate. Probably, we need to put a provision that says: “As long as the owner of the vehicle can prove that he did not authorise his vehicle for use...”

Allow me to make a comment on the Parliamentary Service Act and the Judicial Service Act. On these, we are trying to legislate matters that are purely administrative in nature. If it were not for the intransigency of the Salaries and Remuneration Commission (SRC), we would not have gotten to this level. These epitomises misuse of powers conferred to any particular state agency in the Constitution or in an Act of Parliament. The SRC to a layman's and a lawmaker's understanding was to basically deal with salaries. The basics of mileage, sleeping allowance and daily allowances are mundane matters that a constitutional commission such as the SRC should not go into. However, we are forced to legislate on this because the SRC has become rogue, so to speak. It has usurped powers beyond the powers that it has been given.

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

[The Temporary Speaker (Hon. Martha Wangari) took the Chair]

As I conclude, a Statute Law (Miscellaneous Amendments) Bill is always a mischievous amendment to show that there is less focus on some important matters, so that they get through.

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However, I want to caution my colleagues who are here that the amendments on the Children Act are extremely dangerous. I would request the Departmental Committee on Justice and Legal Affairs Committee (JLAC) to disallow those amendments since they will endanger the Kenyan children. We will allow the Kenyan children to be in the hands of abusers. These are people who are going to abuse these children regardless of whether their relationship is by blood or not.

With those three remarks, I support the Bill but with reservations that I will move during the Committee of the whole House. Thank you.

The Temporary Speaker (Hon. Martha Wangari): Thank you. The Member for Narok East, Hon. Aramat.

Hon. Lemanken Aramat (Narok East, UDA): Thank you, Hon. Temporary Speaker. I rise to support the Statute Law (Miscellaneous Amendments) Bill. There is a proposed amendment to wind up the Nuclear Agency. As a Committee, we feel that winding up of the Nuclear Energy Agency would not be of interest to this country. This Agency is a State corporation established under the Energy Act of 2019. It is charged with the responsibility of promoting and implementing the nuclear programmes in Kenya. Kenya has been a member State of the International Atomic Energy Agency since 1965. This is a United Nations specialised agency responsible for safety, peaceful and secure use of nuclear technology. As a Committee, we saw it fit that the NUPEA should be funded adequately by the Ex-chequer. We also agreed that the NUPEA should continue to discharge its mandate as stipulated under Section 56(1) of the Energy Act. We request this House to support the Nuclear Agency so that it is not wound up.

In our recommendation that we intend to bring on the Floor of this House, the Committee proposes amendments to Sections 2(10), 12(1)(e) and (20). We intend to table them during the Committee of the whole House so that they can be taken into consideration.

Thank you.

The Temporary Speaker (Hon. Martha Wangari): Thank you. The Member for Marakwet West, Hon. Timothy Toroitich.

Hon. Timothy Kipchumba (Marakwet West, Independent): Thank you, Hon. Temporary Speaker. I rise to comment on this proposed legislation. From the outset, I associate myself with the sentiments of Hon. Kaluma and Hon. Oundo that, sometimes it seems like we are sneaking in substantive amendments to certain legislations using a Statute Law Miscellaneous Amendment Bill which is an omnibus. I believe that this kind of Statute Law (Miscellaneous Amendments) Bill is only meant to deal with certain minor amendments. Looking at this Bill in its entirety, it introduces substantive amendments which ideally should be amendments in the parent legislations. For example, the amendment to the Children Act that touches on adoption should be brought under the Children Act and not under a Statute Law (Miscellaneous Amendments) Bill. It speaks to the core of the Children Act.

If you look at the provision on adoption, it provides for deletion of Section 186(4) of the Children Act. That provision provides that the court shall not make an adoption order in favour of a sole male applicant unless the applicant is a blood relative of the child. The wisdom behind that provision in the Children Act was to protect the best interests of a child. We now want to delete that particular provision and give sole male applicants the ability to adopt children. The reason I read the report is because it says that that provision is discriminatory. That provision was put in the Children Act to protect the best interests of a child. We will, for example, be giving a sole male applicant a girl to adopt and we are not sure whether the best interests of that child will be protected by that sole male applicant. When the time comes, I will propose that provision to be deleted.

Subsequently, the provision provides that Section 186(f) be deleted. Section 186(f) says that the court shall not make an adoption order in favour of an applicant or joint applicants if the applicant or joint applicants or any of them is a foreign applicant, except where the applicant is a biological relative of the child. We are opening up adoption to foreigners. This must be with exemptions. If we open up adoption for foreigners to our children, then it must be with moderation. We must look further. If, in the unlikely event we adopt this amendment and allow foreigners to adopt our children, then we must set up exceptions to that. As we speak, there are no exceptions to foreigners adopting our young children. So, I oppose those two provisions but there are others that I support.

There is a provision to amend the National Youth Employment Act by deleting the word “youth.” I support this amendment because the said law should not only be in respect to the youth. Unemployment in Kenya is something we need to address. The wisdom behind that law was to address the issue of youth unemployment. However, this country is churning out many graduates from universities, some of whom do not get jobs even after the age of 35 years, which is outside the youth bracket.

I support the amendment to the effect that the title be amended by deleting the word ‘youth’ to become the National Employment Act. This will ensure that it does not confine itself to the youth. Some Kenyans are aged 38, 40, 45 or 50 but have not been employed. If this Act only applies to the unemployed youth, it is discriminatory against those above 35 years. This law would not only apply to them. I, therefore, support the amendment to the extent that the word ‘youth’ is deleted to become the National Employment Authority. I rise to express my mind on this particular Bill to the extent that we will have opportunity to express our reservations during the Committee stage.

Thank you, Hon. Temporary Speaker.

The Temporary Speaker (Hon. Martha Wangari): Member for Aldai.

Hon. Marianne Kitany (Aldai, UDA): Thank you, Hon. Temporary Speaker. I stand to support the amendments to the Scrap Metal Act with reservations. As discussed by the Committee, the first reservation is the composition of the Scrap Metal Council. The Council, as proposed, does not take care of all the players. For instance, this composition does not include the Ministry of Trade and Industry. It just talks about industrialisation and recognises a person nominated by the Scrap Metal Dealers Association, which is not recognised as a body corporate in law. Therefore, the Departmental Committee on Trade, Industry and Cooperatives that had considered this amendment should bring further amendments.

Second is the amendment on the restrictions of dealing with scrap metal. The restrictions shall only be given to people who are members of the Kenya Scrap Metal Dealers Association. As I mentioned, the Kenya Scrap Metal Dealers Association is not a registered body corporate recognised by law. Therefore, the Committee will be bringing an amendment to have the Kenya Scrap Metal Dealers Association registered by the Scrap Metal Council as opposed to the Kenya Scrap Metal Dealers Association.

Third is the issue of export of scrap metal. I think the Committee considered this and proposed that exports be allowed for certain metals except for restrictions on rare metals like copper. That should come out clearly because those metals are precious to our country. If we allow the export of rare metals, it becomes expensive to bring them back into the country.

Another issue is the Scrap Metal Council. The proposal was to change the name to Metal Recycling Agency. The reason for this is the bad name, image and reputation that has always been held by the name ‘Scrap Metal Council.’ An Hon. Member raised the issue of restricting dealership in scrap metal to certain institutions and opening it to all institutions, especially scrap metal from

our natural assets. The restriction envisaged aims at having scrap metals only dealt with by the Numerical Machine Complex Limited, and the National Shipping Council. The Committee maintained that these two institutions should be the only ones to purchase scrap metal from public entities. This is a way of protecting natural assets. The Committee felt that if this sector is left unprotected, it can give us many problems.

There are some amendments already in the Bill that support the protection of these natural assets. For example, under Clause 24, there is a requirement for provision of information regarding stolen or lost property and licensing restrictions on who should deal with scrap metal. The provisions in these amendments will go a long way in protecting national assets and infrastructure in the electricity, water, sewerage and telecommunication sectors. This country has spent a lot of money to develop the infrastructure in these sectors. If we do not put restrictions in place, we will be allowing our infrastructure to be destroyed. My Committee will be proposing amendments during the Committee of the whole House.

Thank you, Hon. Temporary Speaker.

The Temporary Speaker (Hon. Martha Wangari): Hon. Millie, are you on this one? You have the Floor.

Hon. Millie Odhiambo-Mabona (Suba North, ODM): Thank you, Hon. Temporary Speaker, for this opportunity. I will be brief. I know that several Members have spoken to the amendments on the National Youth Authority Act. However, I wish to disagree with them. Hon. Sakaja brought the Bill due to the concern over the issue of youth unemployment. We acknowledge the fact that there are many people who are not in the youth age bracket who are unemployed. In fact, we know many people who have qualified as teachers, and have retired before being employed by the Teachers Service Commission (TSC).

Having said that, the greatest challenge we are facing in the country is youth unemployment. We can see this with the rising cases of insecurity, violence and theft. Yesterday, in my constituency, a woman was abducted from Ogongo Market, and last week, a boda rider was killed. The perpetrators had already stolen his first motorcycle and were coming for his second after killing him and gang raping his wife, who had given birth 15 days earlier. The reason we have these kinds of situations is because we have many idle youths. They have no opportunities in life, and have become desperate. They become thieves and even get into other evil activities. The challenge is that sometimes we think common sense is common yet it is not. If we open this up to all unemployed people, a retired person in his or her 70s would be deemed unemployed and therefore given a job because he or she falls within that category. I do not support such situations.

I support the amendment to the Copyright Act, especially the inclusion of equitable remuneration for performance and production of sound recordings, including collective management organisations towards the authors and performers. It is very difficult to be in the creative industry. I speak as an author. I know what it takes to publish. Because we are in the creative industry, we compete a lot with the dotcoms. Some of us sit for hours and years to produce a book. The younger generation just sit for a minute and imitate what Hon. Millie Odhiambo is doing, get a million followers and make money. We are not lucky enough to do that. We have to do strenuous work to achieve the same.

I also support the proposed amendments to the Fisheries Management and Development Act. However, I want to encourage the Leader of the Majority Party that other than these miscellaneous amendments, he should bring a more comprehensive amendment to the Fisheries Management Act because we are facing several...

(Hon. Kimani Ichung'wah spoke off the record)

Thank you. He has alerted me that there is a Bill. I will look at it. We are facing very serious challenges in the fishing industry. There are always clashes with the fisher-folk. More recently, people from Homa Bay Town Constituency went to my constituency and killed people. They were fighting over different fishing methods and spaces. Unlike in the case of land, where people have title deeds, there are no title deeds in the lake. We have different kinds of fishing that require people to fish at different times. This was never foreseen in the past because we have always thought that the waters are infinite. We have, however, discovered that it is now limited as the population has increased and many people have moved to fishing.

As a matter of fact, the persons who are playing a very significant role in fisheries in my constituency are Somalis. We are not against them but it shows you that this is a small resource that people from Northern Kenya, Uganda and Tanzania are coming to use. Conflicts are bound to arise and we must, therefore, come up with laws that deal with those issues.

Finally, I agree to some extent with Hon. Kaluma on the issue of adoption. I am saying to some extent because you have to carefully look at the Constitution and presume the persons who are seeking this amendment are looking at discrimination. If you are looking at a single female applicant who can be allowed to adopt a child, I am sure they are thinking 'What about a single male applicant?' I would propose that there should be a further amendment – whether for female or male – to look at the best interests of the child any time we deal with adoption. We have unique and special circumstances relating to children in the adoption spectre. As a person who brought the Bill on counter-trafficking in persons, as a consequence of being the Director of the Cradle of the Children Foundation then, even though I am not the director now, I still dealt with many cases of trafficking. One such case even forced us to exhume a body to confirm whether one of the children was a child to the alleged parents. If you want to stem that, it is important that we stem the issues of trafficking in persons.

(Hon. Kimani Ichung'wah spoke off the record)

Hon. Ichung'wah, you know you cannot harass me here. I know you have missed me, but if you want me to deal with you, I will deal with you perpendicularly. I am sorry, I do not want to deal with you today.

I want to indicate that because of that, I do support but with proposed further amendments. You must look at unique circumstances as specific situations relate to specific children and their circumstances.

I support it with amendments.

The Temporary Speaker (Hon. Martha Wangari): Hon. Ichung'wah, Hon. Millie says she is in a good mood today. She is not willing to deal with you.

There being no further requests on this one, I call you to reply.

Hon. Kimani Ichung'wah (Kikuyu, UDA): Thank you, Hon. Temporary Speaker. As I reply, I do not know if you also heard the first sentence from Hon. Millie. She said she knew I missed her, but she was not going to deal with me today. As you know, I was not harassing her because I know how passionate Hon. Millie is on child welfare and childcare matters and, indeed, matters touching on women's rights and gender equality. Therefore, I cannot harass her. I know she was also missing me. She is happy to see me, just as I am happy to see her.

Hon. Temporary Speaker, as I reply, allow me to begin with the issue of provisions relating to the Childcare Act. As Hon. Owen Baya mentioned when he was moving this Bill on my behalf, this emanated from a court ruling that allowed single males to adopt children. However, there are concerns. I agree with many Members who have raised this issue. Indeed, there is a major concern on matters touching on child trafficking. There are also issues touching on...

Hon. Peter Kaluma (Homa Bay Town, ODM): On a point of order.

The Temporary Speaker (Hon. Martha Wangari): Hold on, Hon. Ichung'wah. Hon. Kaluma, what is out of order?

Hon. Peter Kaluma (Homa Bay Town, ODM): Hon. Temporary Speaker, the Leader of the Majority Party, whom I respect very much, has mentioned that the proposed amendments to the Children's Act in this Bill arise from some court ruling. Could we have that court ruling so that we are rightly informed? I am not aware of any such court ruling. I doubt any legitimate or proper court – and we have very competent courts – can make such a ruling in light of the provisions of Article 53 of the Constitution.

The Temporary Speaker (Hon. Martha Wangari): Hon. Ichung'wah, do you have the court ruling?

Hon. Kimani Ichung'wah (Kikuyu, UDA): Yes, Hon. Temporary Speaker. If Hon. Kaluma was here when the Deputy Leader of the Majority Party moved this Bill, if you go back to the *Hansard*, you will see that he quoted the actual case and court ruling that exists. That, however, is not to say that there are no concerns even without the court ruling. We can get the *Hansard* for Hon. Kaluma, who is a very polished lawyer, to go through the ruling. He can tell us whether they can challenge that ruling in court. Members have also raised the same issues, and I agree with them. There are major concerns, especially touching on child trafficking, even as we allow single males to adopt children. There are also issues touching on the care of children that I do not want to mention.

However, it is okay for a single male to adopt a relative. For instance, if I was not married or if Hon. Kaluma was not married and by bad luck lost a relative who has a child, he should be able to adopt the child. If you have no relation to a child, it is only right that we do not allow single males to adopt them, as it were in the original Act. During the Committee of the whole House, we will move amendments to drop this proposed amendment to allow the House to consider bringing a substantive Bill, rather than just what is in this Statute Law (Miscellaneous Amendments) Bill, to cater for all the provisions that have been nullified by our courts. We can do this through a substantive childcare Bill.

Hon. Temporary Speaker, you have also heard the concerns raised by the Departmental Committee on Trade, Industry and Cooperatives on certain provisions of the Scrap Metal Act. Again, we have been moving to put into effect the necessary amendments during the Committee of the whole House.

Some concerns have been raised by Hon. Aramat during the debate on provisions that relate to winding up of the Nuclear Power Energy Agency and transferring most of its functions to the Ministry. We will also consider those concerns in the Committee of the whole House.

On the Fisheries and Management Development Act, as I mentioned to my good friend, Hon. Millie, there is a substantive Bill on matters touching on fisheries management that I know is currently in the Senate. When it comes here, it will cover many issues that touch on our fisheries management.

Hon. Temporary Speaker, I beg to reply and request you to indulge the House to have the Question put later rather than now, for obvious reasons.

The Temporary Speaker (Hon. Martha Wangari): Thank you. The request is assented to.

(Putting of the Question deferred)

Hon. Members, we now move to the next Order. Chairman of Departmental Committee on Lands, Hon. Nyamoko, are you ready?

MOTION

SENATE AMENDMENTS TO THE NATIONAL RATING BILL (National Assembly Bill No.55 of 2022)

Hon. Joash Nyamoko (North Mugirango, UDA): Hon. Temporary Speaker, I beg to move: THAT, the Senate amendments to the National Rating Bill (National Assembly Bill No.55 of 2022) be now considered.

This Bill is coming back to the House a second time. To jog the memories of the Members of this House, the Bill aims to create a comprehensive legislative framework for imposition of property rates on land and buildings by county governments. Secondly, it provides for valuation of rateable properties. Thirdly, it provides for appointment of property valuers. Lastly, it provides for establishment of the National Rating Tribunal.

The National Assembly considered and passed the Bill with amendments on 11th October 2023, following which the Speaker forwarded it to the Senate for consideration. The Senate considered the Bill and passed it with further amendments on 9th May 2024. In total, the Senate amended 11 clauses of the Bill, of which the Committee adopted five and rejected eight. Without necessarily going to the details of the clauses which the Committee adopted and those which were rejected, the Committee carefully studied the amendments and had enough time to engage with the Ministry of the National Treasury and Economic Planning, because this Bill originated from them. This Report contains the wishes of Members in the interest of the nation.

We are seeking the support and concurrence of Members to adopt the Bill by accepting the three amendments and rejecting the eight. This will give us an opportunity to proceed on mediation to engage with the Senate.

With those remarks, I beg to move and request the Leader of the Majority Party to second the Motion.

The Temporary Speaker (Hon. Martha Wangari): Leader of Majority Party.

Hon. Kimani Ichung'wah (Kikuyu, UDA): Thank you, Hon. Temporary Speaker. I beg to second the Motion. As the Chairman has said, the Committee considered all the amendments by our colleagues in the Senate and agreed with a number of them.

*(Hon. Johana Kipyegon and Hon. Njuguna Kawanjiku
consulted loudly)*

Hon. Temporary Speaker, protect me from the Member for Emurua Dikirr and the Member for Kiambaa. The laughter is from the Member for Emurua Dikirr. These people, who purport to be kingpins, have a problem. You have seen the problems we have in the Mount Kenya region because of this kingpin syndrome. The Member for Emurua Dikirr, who purports to be the Kipsigis

kingpin, is now harassing Hon. Kawanjiku because he is able to withstand kingpins from the Mount Kenya region.

The Temporary Speaker (Hon. Martha Wangari): Leader of the Majority Party, we will ask the Member for Emurua Dikirr to keep the consultations low. That is it.

Hon. Kimani Ichung'wah (Kikuyu, UDA): Hon. Temporary Speaker, the laughter is choking. When the Departmental Committee on Lands considered the amendment, it agreed with a number of them.

Hon. Peter Kaluma (Homa Bay Town, ODM): On a point of order, Hon. Temporary Speaker.

The Temporary Speaker (Hon. Martha Wangari): What is out of order, Hon. Kaluma? Is it on that same matter? Hold on, Leader of the Majority Party.

Hon. Peter Kaluma (Homa Bay Town, ODM): Hon. Temporary Speaker, I hope you were attentive to Hon. Ichung'wah, who is the Leader of the Majority Party and a leader of the House. Did you hear Hon. Ichung'wah say that the Member for Emurua Dikirr is purporting to be a kingpin, when it is something of which judicial notice can be taken and acknowledged that Hon. Johana Ng'eno is the kingpin of Rift Valley, something which was done in public with all elders and he was duly enthroned? Why should the Leader of the Majority Party, who is our leader, undermine our exploits in leadership?

The Temporary Speaker (Hon. Martha Wangari): Hon. Kaluma, on whatever floor that was agreed on, it was not the Floor of this House. Leader of the Majority Party, kindly focus on the Bill.

Hon. Kimani Ichung'wah (Kikuyu, UDA): Thank you, Hon. Temporary Speaker. Hon. Kaluma knows I said 'purporting' because as you rightly said, all kingpins purport to be kingpins but are never appointed by anybody.

The Departmental Committee on Lands has substantially disagreed with a number of amendments and, therefore, it would only be right that we allow the House to have a second shot at this Bill, and specifically on the amendments that have emanated from the Senate, so as to agree with the Senate on the amendments that the Committee has approved and rejected the others. This will give us an opportunity, through the mediation process provided for in our Standing Orders and the Constitution, to interact with the Senate on the other amendments that have been rejected by our Committee.

I am certain that the Members that this House will appoint to mediate on this matter, without pre-empting debate, will sit with our colleagues in the Senate and agree on the contentious amendments, so that we may consider a mediated version of the Bill.

With those remarks, I beg to second and request the House to disagree with the Senate amendments that have been contested by our Committee so that we may cause the setting up of a mediation Committee.

Thank you.

(Question proposed)

The Temporary Speaker (Hon. Martha Wangari): Hon. Members, please, note that if this Motion is lost, Order No. 10 (i) on Committee of the whole House will not happen since Order No.10 (ii) on the Kenya Drugs Authority Bill has already been stepped down by the Speaker. However, if the Motion is passed, we will go on with Committee of the whole House. Member for Funyula.

Hon. (Dr) Ojiambo Oundo (Funyula, ODM): Thank you, Hon. Temporary Speaker, for giving me this opportunity to say one or two words on the Senate amendments. I remember very well the acrimonious way we passed this Bill in this House in October last year when, together with other technical professionals in this field, we raised some far-reaching amendments that would have enriched the Bill. I am afraid that when it went to the Senate, they also failed to pick out the genesis and gist of the Bill. Nevertheless, what has come here is what we now have. We have to pass it and then indulge in any necessary amendments after the requisite time provided for in the Standing Order.

I join the Committee in rejecting some of the amendments proposed by the Senate. They were done in ignorance, impunity or lack of due diligence on how rating and valuation for rating ought to be done in accordance with the international best practices. The Senate amendment to Clause 12 is unconstitutional because the mandate conferred on the National Land Commission by Article 67 of the Constitution is exclusive. That mandate cannot be shared by an amorphous body calling itself ‘Council of Governors.’ There is no way a body that has a passing mention in legislation can purport to share mandate with a constitutional commission. On that amendment, I totally disagree with the Senate. That also applies to Clause 20 and other clauses. I totally agree.

I also agree in entirety with the Committee on the proposed inclusion of new Clause 24(A). You cannot purport to create an office in the public service through such a Bill. Those positions ought to be created either under the Valuers Act or pursuant to amendments to respective Acts of Parliament. I totally agree with them that; that cannot happen.

Hon. Temporary Speaker, in Clause 30(a) of the Bill, there are circumstances that require a supplementary valuation roll to be prepared. As a professional practice, it should be done at the date of valuation. You cannot backdate it. You cannot purport to insert a clause that says preparation of a supplementary valuation roll can only be done dependent on the date that is available at the time the valuation role is undertaken. If that is done, it means you miss the professional and academic purposes of a supplementary valuation roll. I agree with the Committee on this one.

I also agree that in the proprietary right of ownership of a property, there is no person called an ‘occupier’. Who is he? He connotes an unauthorised invasion. So, to purport that an occupier can become a rateable owner is a way to legitimise unlawful occupation of any parcel of land or property for purposes of conferring an illegal title deed.

In seconding the amendments, rejections or proposal by the Committee, we also beseech that when they go for mediation, they need to be very clear so that we do not allow any form of coercion to get into this. It is totally agreeable that rating is a preserve of the county government, whose structure is very clear. The mandate of the county governments should remain so. The mandate of the national Government, as set out in the Constitution, should remain so. In essence, it is only the position and collation of the rates that are denoted to the county governments. However, preparation of the valuation roll is a matter domiciled at the National Land Commission (NLC). It has the powers and authority to delegate them to any specific and competent office in the national Government. That should never be lost to the Chairman of the Committee when he goes for mediation.

I hope the technical team in the Committee will aptly and appropriately guide the Committee, so that we do not lose the gist of rating and valuation. This will ensure that nobody moves to court and say that Parliament seems to lack competent technical legislators to guide in such a specialised area.

Hon. Temporary Speaker, with those few remarks, I support the Report of the Committee.

The Temporary Speaker (Hon. Martha Wangari): Thank you.

(Hon. Elijah Kururia and Hon. Njuguna Kwanjiku walked into the Chamber without bowing to the Chair)

The Temporary Speaker (Hon. Martha Wangari): Member for Gatundu North, Hon. Kururia, and Hon. Kwanjiku, you are out of order. Go back to the Bar, bow and then come in. You know how to do it.

Member for Emurua Dikirr and Member for Sotik, do you want to contribute to this Motion?

Hon. Johana Kipyegon (Emurua Dikirr, UDA): Hon. Temporary Speaker, I spoke to this Motion earlier on.

The Temporary Speaker (Hon. Martha Wangari): Hon. Ng'eno, you have inserted your card, which is an indication that you would like to speak.

Hon. Johana Kipyegon (Emurua Dikirr, UDA): Hon. Temporary Speaker, I was anticipating a very serious debate ahead of this one. That is why I had to put myself ahead of everyone.

The Temporary Speaker (Hon. Martha Wangari): So, you do not wish to speak on this Motion.

Member for Sotik, would you like to speak on this Motion?

Hon. Francis Sigei (Sotik, UDA): Hon. Temporary Speaker, I have just come in. I need time to plan.

The Temporary Speaker (Hon. Martha Wangari): Hon. Ng'eno, you had a very long *Kamukunji* there. We are already done with the Statute Law (Miscellaneous Amendments) Bill. You missed it. We are now on the Motion on the Senate Amendments to the National Rating Bill.

(The Temporary Speaker consulted with the leading Clerk-at-the-Table)

Hon. Members, there being no further interest on this Motion, I call upon the Mover to reply. Chairman of the Departmental Committee on Lands, please, reply to the debate.

Hon. Joash Nyamoko (North Mugirango, UDA): Thank you, Hon. Temporary Speaker for giving me the opportunity to reply. I thank all the Members who have contributed to this Motion. As we go to engage with the Senate, we will make arrangements so that we can consider the comments which have come from the Floor of the House. We will also consider the deliberations which we, as a Committee, had.

With those remarks, I reply and as per Standing Order 53(3), I request that you defer putting of the Question to a later date.

The Temporary Speaker (Hon. Martha Wangari): Your request is assented to.

(Putting of the Question deferred)

Next Order!

BILL

Second Reading

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THE EQUALISATION FUND APPROPRIATION (NO. 2) BILL
(Senate Bill No. 30 of 2023)

The Temporary Speaker (Hon. Martha Wangari): Vice-Chairlady of Budget and Appropriations Committee, Hon. Mary Emaase.

Hon. Mary Emaase (Teso South, UDA): Hon. Temporary Speaker, I beg to move that the Equalisation Fund Appropriation (No.2) Bill (Senate Bill No.30 of 2023) be read a Second Time.

The Bill was published on 20th July 2023 and introduced in the Senate. It was considered and passed with amendments on 21st February 2024. Consequently, it was referred to the National Assembly for concurrence, as per Article 110(4) of the Constitution and the Senate Standing Order 161.

The Equalisation Fund is established under Article 204(1) of the Constitution, which requires that 0.5 per cent of all the revenue collected by the national Government each year be paid into the Fund. The amount is calculated on the basis of the most recent audited accounts of revenue received, as approved by the National Assembly.

Article 204 (2) of the Constitution provides that the national Government shall use the Equalisation Fund only to provide basic services including water, roads, health facilities and electricity to marginalised areas to the extent necessary to bring the quality of those services in those areas to the level generally enjoyed by the rest of the nation.

Allocation from the Fund to the marginalised areas is undertaken in line with a per-determined policy developed by the Commission on Revenue Allocation (CRA) as mandated in Article 216(4) of the Constitution. Currently, the second policy which identifies 1,424 marginalised areas across 34 counties is under implementation. Each marginalised area is allocated a share of the Equalisation Fund based on an allocation factor as determined by CRA. The Equalisation Fund Appropriation Bill for the Financial Year 2023/2024 proposes to appropriate a total of Ksh10.87 billion. Out of this, Ksh8.57 billion are allocations for the Financial Year 2023/2024, and Ksh2.5 billion are arrears. Out of this amount, Ksh10.54 billion will be shared among marginalised areas in the 34 counties for development expenditure.

There is an allocation of Ksh326 million for recurrent expenses of the Board, which is in line with Regulation 10(3) of the Public Finance Management (Equalisation Fund Administration) Regulations of 2021. The Equalisation Fund Advisory Board will use the Ksh326 million as recurrent expenditure. The law provides that the Board's expenses shall not be more than 3 per cent of the annual approved Equalisation Fund. Therefore, the Ksh326 million is the 3 per cent of the total proposed amount of Ksh10.87 billion.

Hon. Temporary Speaker, the Equalisation Fund Appropriation (No.2) Bill outlines the conditions for usage and operation of the Fund in the 2023/2024 Financial Year. The conditions include exclusion of funds from being paid into the County Revenue Fund. This condition is anchored in the provisions of Article 207(1) of the Constitution and Section 109 (2) (c) of the Public Finance Management Act of 2012. In conformity to this condition, the Bill provides that each beneficiary county to which the funds are to be transferred shall open an account with the Central Bank of Kenya and such funds shall be utilised for development expenditure and shall stay in that account until those projects are completed.

Secondly, the approval granted shall not lapse until the projects identified in each of the counties specified in the First Column of the Bill are completed. The import of the amendments to the Bill by the Senate is to safeguard the monies in the Fund from lapsing until the identified

projects are completed. The amendments also capture the Board's expenditure of the Ksh326 million. The published Bill omitted that. They further differentiate the Act from the Equalisation Fund Appropriation Act of 2023 for financial years 2021/2022 and 2022/2023, enacted in June 2023. That is the import of the amendments.

Our Budget and Appropriations Committee observed, while considering the Equalisation Fund Appropriations Bill, as amended by the Senate; that, while the Bill intends to appropriate a total of Ksh10.87 billion to the Fund, the money available in the approved Supplementary Estimates of 2023/2024 is Ksh10.077 billion. This translates to a shortfall of Ksh790 billion, a budgetary reduction undertaken due to a significant delay in the passage of the Bill into law. That caused resource constraints because of revenue under performance. The Committee noted that it would be a challenge to reinstate this amount into the Budget.

Secondly, the Equalisation Fund Appropriation Act of 2023 did not appropriate or allocate the Ksh10.33 billion in the Supplementary Estimates II. That is the allocation for 2021/2022 and 2022/2023 Financial Years even though the Act is already in place. This is despite a commitment from the National Treasury to allocate this amount in the Supplementary Budget for 2023/2024 Financial Year, after the allocation was revised to zero in Supplementary Estimates II of the 2022/2023 Financial Year.

Thirdly, the Committee observed that the total allocation to the Fund as approved by Parliament since its inception is Ksh22.7 billion. That is against a total entitlement of Ksh62.4 billion to the Fund. Thus, there are arrears of Ksh39.7 billion. The Budget and Appropriations Committee urges the National Treasury to adhere to the plan it presented to Parliament. The plan indicated that the arrears would be cleared in four financial years, starting with the 2024/2025 Financial Year, with an allocation of Ksh9.98 billion in each financial year. Notably, the National Treasury allocated Ksh3.5 billion as arrears to the Fund in the 2024/2025 Financial Year; not Ksh9.98 billion as earlier committed.

The Committee noted that the allocation in the Equalisation Fund Appropriation Bill of 2023 for the 2023/2024 Financial Year will be utilised to implement the second marginalisation policy. However, the second policy lapsed in June 2021. The third policy is yet to be implemented. Considering the above matters, the Committee recommends:

Non-financial recommendations

1. That, by 30th September 2024, the National Treasury submits to Parliament a revised plan for clearance of arrears of the Equalisation Fund.
2. Within six months upon adoption of this report, the Commission on Revenue Allocation in consultation with relevant stakeholders submits the third marginalisation policy recommendations to Parliament pursuant to Article 216(5) of the Constitution.

Financial recommendations

1. Having examined the Equalisation Fund Appropriation Bill (No.2) of 2023 vis-à-vis the current fiscal framework, the Committee recommends that this House approves the Bill with amendments as proposed in the attached Schedule.

With those remarks, I beg to move and request Hon. (Dr) Makali Mulu to second.

The Temporary Speaker (Hon. Martha Wangari): Thank you. Hon. (Dr) Makali Mulu.

Hon. (Dr) Makali Mulu (Kitui Central, WDM): Thank you very much, Hon. Temporary Speaker. I start by thanking the Vice-Chairlady of our Committee for moving this Bill effectively, which I stand to second.

As I do so, I observe that the Equalisation Fund was a very good idea. That is why it is part of our Constitution. The idea was to ensure that areas marginalised by earlier development programmes and policies catch up with the rest of the country. That is why the allocation of 0.5 per cent of the audited revenue is supposed to go to the Equalisation Fund. Looking at the Constitution, this Fund was supposed to be running for 20 years from 2010.

Over time, this Fund has faced a number of challenges. They have made the Fund ineffective in achieving the intended objectives. Delayed funding is one of the challenges. Just as Hon. Emaase has said, looking at what should have been allocated as of now verses what has been allocated, you realise that we have many years without allocating as per the Constitution. That is why the balance of that Ksh39.7 billion, which has not been allocated, is a disservice to marginalised areas. As we debate this Bill, it is important that this House seriously takes the matter of budgeting for and releasing the arrears.

Initially, 14 counties had been identified to benefit from this Fund. The counties have since increased to 34. That has caused the money to be thinly spread to many counties. As a result, we end up having micro-projects that do not have the huge impact we would have if we had 14 counties. As we spread these resources thinly, it is important for us to think about their impact. Initially, they were supposed to cater for infrastructure, electricity and health issues. In situations where we now start addressing dispensaries all over the country, the Fund might not have as much impact as it should.

The other important thing is the serious implementation challenge the Fund has faced. We thought that by having a Board, things would move smoothly. But over time, we have realised that the Board is also a major hindrance to the implementation. We need to streamline the implementation process. We might have no choice, as a House, but to extend the allowed period of 20 years beyond that. We have done over 10 years, yet nothing is moving on the ground, and even if there is anything moving, it is very little. Just imagine if we will be able to capture all these resources in the next 10 years. Implementation matters should be taken up seriously by this House. That is why I support the recommendation that we approve this Bill and within 30 days, we come up with a very clear framework of releasing the arrears and also implementation.

On the issue of the Ksh790 million, which the Senators are proposing, it is caused by the practice of the National Treasury of always reducing resources of the Equalisation Fund to sort out other problems in the country with a claim that they would replenish the money in the following financial year. The law says that once the money is allocated, it should not be touched. This is a serious matter. As a House, we need to make sure that we strictly adhere to the financial requirement that once the money is allocated or appropriated to the Equalization Fund, those resources remain there, and we make sure that we push the National Treasury for the resources to be released. As a result of that, we will realise the intended objectives of this Fund.

As a Committee, we had said that we will provide about Ksh3.5 billion this year, which is part of the arrears, and that will come to Ksh11 billion. We now see that the figure has been reduced a bit to Ksh10.87 billion. These small changes are the ones which affect this Fund. My plea to this House is, Hon. Members, let us support this Bill to pave way for utilisation of these resources. By doing that, we will be helping other parts of this country which were marginalised. The origin of this marginalisation can be traced to Sessional Paper No.1 of 1965 that focused the country on using its resources to develop high potential areas. Thus, we left the Arid and Semi-Arid Lands (ASALs) and other areas marginalised. With that background, it is very important for this House to facilitate utilisation of these resources in the marginalised areas. As a result of that, we will be able to move them to catch up with the rest of the country in terms of development.

With those many remarks, Hon. Temporary Speaker, I second and urge the House to support this Bill. Thank you very much.

(Question proposed)

The Temporary Speaker (Hon. Martha Wangari): I can see there is some interest on this. I will give the Member for Mwingi West this chance.

Hon. Charles Nguna (Mwingi West, WDM): Thank you Hon. Temporary Speaker for giving me this opportunity to add my voice on this matter that is immortal in this country. First, I would like to thank the Committee for the work it has done. I also thank the Senate, where the Bill originated. I recall the CEO of the Fund, Mr Guyo, met our Committee on this matter. Some of the challenges he told us touch on many aspects. This Fund was established constitutionally in 2010 to address disparities among counties in terms of development, on issues to deal with water, electricity, healthcare, and roads. We have heard there are challenges of implementation. The delay in release of funds by the National Treasury has been the main issue. As we speak, in less than six years, we have a deficit of Ksh40 billion, which has not been remitted to counties. We need to address this issue and also inform the National Treasury that this is a constitutional Fund and its implementation must be done to avoid a lacuna in our Constitution.

Another issue, in terms of implementation, is that we need to challenge the CRA to come up with a proper marginalisation policy. From this list, some of the counties that benefit have similar characteristics like those of my Constituency of Mwingi West, but we do not benefit from the Equalisation Fund. We need to come up with other criteria of selecting areas that are marginalised. Without argument, Mwingi West is one of the most marginalised areas in this country. There is no explanation why Garissa, Tana River and most of the constituencies surrounding Mwingi get the Equalization Fund, but Mwingi West does not. We have been told that we are developed. The majority of the population in my constituency lack access to good roads, clean water, electricity and health facilities. We need to come up with a clear policy of adding more areas that are marginalised. We need to press the National Treasury hard for the arrears to this Fund to be fully remitted to benefit Kenyans, without necessarily delaying them.

With those few remarks, I support, Hon. Temporary Speaker.

The Temporary Speaker (Hon. Martha Wangari): Hon. Michael Muchira.

Hon. Michael Muchira (Ol Jorok, UDA): Thank you, Hon. Temporary Speaker. Let me start by supporting the Equalisation Fund Appropriation Bill as laid by the Vice-Chairperson of the Budget and Appropriations Committee.

This Fund, as everybody knows, is important in taking care of marginalised counties. As I support, I would wish this House considers the effectiveness of the Fund. It was meant to bring the marginalised counties at par with other counties in the country. Looking at it critically, as the Report states, we started with 14 counties. One would expect that with time, as we bring the marginalised counties at par with others, the counties would reduce to below 14. But as we can see, the marginalised counties continue increasing. That means that, probably, this Fund is not being used effectively.

Hon. Temporary Speaker, we have seen some of the counties advertising projects that are not of any significant importance or that are not likely to create any impact to those counties. When this Fund is used to do a road of Ksh5 million and things that are not sustainable, we wonder whether these marginalised counties will ever be removed from that bracket of marginalisation. Having said so, now that the Commission on Revenue Allocation is preparing the third

marginalisation policy, I would ask the Commission to do a proper study. We would like to know the 14 counties that were being considered since 2010 and how far have they come out of the marginalisation. Speaking of Nyandarua, we have an area called Ndaragwa, which is marginalised. I have always wondered why the CRA has never considered Ndaragwa, which is completely dry. Relief food is distributed to the people in that area. It is a very marginalised constituency in Nyandarua.

Therefore, I wish the CRA considers Nyandarua as a marginalised area in the third marginalisation policy, specifically Ndaragwa Constituency, and not even my constituency.

With those few remarks, I support.

The Temporary Speaker (Hon. Martha Wangari): Hon. Naisula Lesuuda.

Hon. Naisula Lesuuda (Samburu West, KANU): Thank you, Hon. Temporary Speaker. I also join my colleagues in supporting the Equalisation Fund Appropriation (No.2) Bill as tabled by the Vice-Chair, Hon Emaase, of the Budget and Appropriations Committee.

I just want to point out some issues regarding the Equalisation Fund. We all know that there was a conversation in 2010 when we were coming up with our Constitution. It was agreed that there are some areas in our country which have been left behind in terms of development since we got Independence. This is something that was canvassed across the country and it was agreed, and the Equalisation Fund was captured in the Constitution.

It is unfortunate that since the realisation of the Equalisation Fund, this is just the second time that funds have been released to the counties that are supposed to benefit. We have had a lot of pull and push in this House, pushing for the release of this money. I am happy that recently, Ksh10 billion was released to the 14 counties.

It is unfortunate that when we still have a balance of Ksh39.7 billion, CRA opened a Pandora's Box of going against the 14 counties, and now there are 34 counties. We are going to the third-generation formula, and I do not know how many counties again. There was a reason, and a well thought process why we had the 14 counties.

My colleagues talk about pockets of underdevelopment in their counties, while some of us talk about underdevelopment in an entire county. For example, in Samburu County, we got tarmac just two years ago to get Maralal Town, our headquarters, while some people are talking about tarmac roads connecting villages. It is important for us, as a country, to appreciate the role that the Equalisation Fund plays and why these counties were thought through when the Constitution was being drafted.

I want to talk about the money that has been released to the counties. The challenge that we see is that the Committee or the people who sit at the county level come up with minute projects that should be funded by the Equalisation Fund. For example, a road of Ksh8 million, Ksh10 million, or Ksh11 million. Those are functions that the county governments can do. The reason the country thought about the Equalisation Fund was to do mega projects that uplift the lives of people in those counties, such as a major dam, a water supply project, a road connecting one sub-county to another, or even an inter-county. Otherwise, the lapse of this Equalisation Fund will get here and if you look at our counties, you will see that we are still at the same place.

I urge the governors and even ask the Members of Parliament, because we have representatives in those boards, to look at the bigger picture. The talk about marginalisation in our counties will not fly again in another 10 or 20 years. Kenyans will say we have had the Fund and time, and ask what visible thing the funds have done in our counties.

I would urge the governors, who are currently controlling most of these funds, to refrain from revising the priorities agreed on by the board. Governors should avoid sitting with their

finance teams and a select few to re-arrange the priority areas identified by people on the ground for the Equalisation Fund. I want our governors to look at the bigger picture and see to it that this Equalisation Fund deals with critical issues affecting us.

Finally, and this is what I want to conclude with, as a country, we often see something working for others and decide we want the same for ourselves. I keep telling some of my colleagues, "Please, come and be a Member of Samburu and stay one day there." They will not survive. First, from the heat, lack of roads, and no water. They will not survive there. Let the people who benefit from the Equalisation Fund benefit until we reach a certain level of development.

Hon. Kwenya Thuku (Kinangop, JP): On a point of order, Hon. Temporary Speaker.

The Temporary Speaker (Hon. Martha Wangari): Hon. Naisula, hold on. Hon. Kwenya what is out of order?

Hon. Kwenya Thuku (Kinangop, JP): Hon. Temporary Speaker, the gracious Member should be seated when I am on a point of order so that I can address you effectively.

The Member for Samburu is insinuating that we do not have the capacity to represent people anywhere in this country. I do not know from what premise she is speaking from because she does not have the measure to know what we go through.

The Temporary Speaker (Hon. Martha Wangari): Hon. Kwenya, you are totally out of order.

Hon. Kwenya Thuku (Kinangop, JP): I come from a cold area and I believe that any Member who is in this House can represent members of Kinangop because...

The Temporary Speaker (Hon. Martha Wangari): You are totally out of order. Hon. Kwenya, when your time comes, you can also mention that they cannot survive in the cold of Kinangop. It is a point of debate. Hon. Naisula, continue.

Hon. Naisula Lesuuda (Samburu West, KANU): Thank you, Hon. Temporary Speaker. I just wanted to say that even as we raise our issues of the different counties and constituencies that we come from, we should do it appreciating the diversity of our country and the different challenges that we face in different parts of the country, not fight or look like we are talking to each other in a demeaning way. There is a certain narrative that has been going across this country that all the funds that go to the north eastern region are just being embezzled; it is the one building Nairobi County. I do not think corruption is reserved for a certain part of this country. Corruption cuts across the national Government to all parts of this country. So, when you talk about issues of your region, please, leave the counties that benefit from the Equalisation Fund to benefit because there was a reason why the drafters of the Constitution and Kenyans put it there. Thank you for the opportunity.

The Temporary Speaker (Hon. Martha Wangari): Thank you, very much. Hon. Jackson Kosgei.

Hon. (Dr) Jackson Kosgei (Nominated, UDA): Thank you, Hon. Temporary Speaker. While I support this Bill, I think it is about time we, as a country, revisited the term "marginalisation". If Equalisation Fund was given for 20 years, the question that follows is: What happens after that? What is being done so that within 20 years, the issue of marginalisation is solved? As I scanned through this Bill from the Senate, I was looking for one thing - the long-term solution. For instance, we need to devote sizeable resources to exploit the potential in these areas. According to the Natural Resources Defence Council (NRDC) which is an international body, most of the areas that we refer to as marginalised have immense natural resources underneath. As a country, do we think we can develop a programme to exploit these natural resources within the period given and complement our economy? I think we also need to define the nature of

marginalised areas, so that we can avoid a moving target in terms of defining the purpose of this Fund. This will make it predictable and manageable.

Thank you, Hon. Temporary Speaker. With that, I support the Bill.

The Temporary Speaker (Hon. Martha Wangari): Member for Tinderet.

Hon. Julius Melly (Tinderet, UDA): Thank you, Hon. Temporary Speaker. I rise to support the Equalisation Fund Appropriation Bill from the Senate. This Bill is timely, noting that the drafters of the Constitution looked at the problems in our country with a very objective mind. As you will realise, the Equalisation Fund was put forward by the drafters of the Constitution, so that at the end of the day, the whole country is at the same level.

The issues raised about the Equalisation Fund by various Members from ASAL regions which are less developed and marginalised, are very important. Being marginalised or less developed is not measured by the amount of the sun's heat. There are too many other factors put into consideration like the inaccessibility of places, level of development, poverty index and many others.

The drafters of the Constitution realised that for us to be one nation and one people, the country must have an equitable level playing field, so that Kenyans in all parts of this country feel they are one people, society and nation. Therefore, this Fund will assist areas that are poorly developed in terms of infrastructure like roads and water networks to homes, schools, colleges and hospitals.

In some areas especially the northern part, hospitals are more than 20 kilometres apart, while in other regions, hospitals and schools are less than three or four kilometres apart. It will be good if this Fund is enhanced, disbursed on time and managed well, so that the intention of the drafters of the Constitution is realised earlier than scheduled because this Fund is supposed to be utilised within 20 years. As Members have said, for the last ten years, it has not been disbursed or utilised well. So, the intentions cannot be realised.

This means there is need to extend the timeframe beyond the scheduled 20-year period. The drafters felt that if this Fund is well utilised, the less developed parts of the country will be at par with the developed parts. My constituency is a beneficiary, but not the whole of it. This is because it is very hilly and does not have good roads, the standards of living are quite low and many other factors. I want to discuss the administration of the Fund. In as much as the money has been disbursed, it will be prudent for the county governments, which are the administrators to ensure that there is value for money. The funds allocated for roads, hospitals and water should be well utilised.

This Fund is very important for areas without bridges, roads, hospitals and dispensaries. I heard the Member for Samburu talk about the under development in her region. Let us look at the regions which are less developed as part of our country. The people living in those areas are also our people and should be brought at par with those in developed regions.

Let me give an example of the United States of America (USA) where in the 1920s and 1930s, they had dry under developed regions like the Tennessee Valley and Nevada. China and many other parts of the world had the same issue. So, this is not from the blues. Any national leader who wants to bring his country to the same level should embrace the Equalisation Fund, so that when Turkana and Mandera are doing well, everyone feels part and parcel of this country. In effect, let these funds be increased, disbursed on time and administered in a well-managed and efficient manner. This way, it will achieve the intended benefits like construction of hospitals, roads, water and electricity connections at a faster rate. If this is done, Kenyans will be at the same level as one people.

Thank you, Hon. Temporary Speaker. I support.

The Temporary Speaker (Hon. Martha Wangari): Hon. Ng'eno.

Hon. Johana Kipyegon (Emurua Dikirr, UDA): Thank you, Hon. Temporary Speaker, for allowing me to also ventilate on the Equalisation Fund. As my colleagues have said, the drafters of the Constitution looked into three entities where money was supposed to be divided. That is the national Government, county governments and the Equalisation Fund.

Hon. Temporary Speaker, the reason why the drafters of the Constitution looked at the Equalization Fund was because of many reasons. I think one of the reasons is that if you look at the concept of the colonial wars or even the colonialists invading other countries, it was because of resources. If you look at tribal wars wherever they are, whether from time immemorial to the current, it is because of resources. Even the political contests that we have in every country, the bottom line is that everybody is fighting for resources. That is the reason why we have all these contests.

The reason the drafters of the Constitution felt we should have an allocation called the Equalization Fund is because they realised that from time immemorial, there are areas which have been marginalised both by governments and nature. When I speak of governments, I mean there have been successive governments in this country from the colonial governments to the pre-Independence or after Independence. When the drafters of the Constitution were looking at this Equalization Fund, they meant, and their major intention was to look at the areas which have never had favour from any Government. That was meant to be equalised with the rest of the country. There are also areas which have been marginalised by nature, which are not able to support agricultural or economic activities that can help the people.

This is an area where the drafters of the Constitution intended to allocate this money. In the Constitution, Article 204 states thus:

“There shall be one-and-a-half per cent of allocation to the equalisation.”

It also talks about marginalised areas and communities. When the CRA started working on these marginalised counties, it picked 14. The reason why they picked 14 was based on several issues just like what my brother has said here, namely, poverty index and many other issues. The 14 were supposed to be allocated money from 2010 immediately after the promulgation of the Constitution. My Constituency was one of the beneficiaries because it was falling under Narok County, but we benefited five years after the promulgation of the Constitution. After that, no other money has been allocated. The only other time it has been allocated is now.

We have had two allocations and if you read Section 5 of Article 204, it states that the unspent money is supposed to be kept and utilised. If you are to do a simple mathematics, from 2010 to 2024, which is 14 years, how much money is that? Who has been spending that money? Where is that money? We are almost six years to the sunset of this particular Fund. The CRA introduced another model of allocating this money because initially the 14 counties which were benefiting only benefited once. By the time they introduced 34 counties, what happened to the money that was supposed to be spent on the 14 counties because they came up to late 2020? These 14 counties which were supposed to benefit from 2010, 2011, 2012 to 2020 have never benefited. What will happen to the money that is supposed to be sent to these counties?

Even when I look at the current allocation done by the CRA, it is alarming. It has never assisted anybody because the 14 marginalised counties have never risen from where they were. In fact, just like what my colleague has said, the number of marginalised counties is increasing. They increased from 14 to 34. What does that tell you? It tells you that the Government is doing nothing to alleviate the poverty level of our people, so that instead of 14, we now have 34 counties that are

marginalised. Who is marginalising these counties? So, I support this amendment by the Senate, but I wish the Budget and Appropriations Committee would re-look into the money which has not been spent from 2010 to date and ensures that the 14 counties which were allocated the money from 2010 to 2020 are given their money, so that they can spend it on the right projects which they had stated.

As a beneficiary of this allocation, I wish to also state that inside the marginalised counties, the Equalization Fund that was meant to cure marginalisation, there is also serious marginalisation inside the picked counties. If you look at how the disparities were done, you start identifying using sub-locations or even wards so that if this money was allocated to one constituency, you will realise that they are allocating to only two or three wards. What will the rest of the wards say? It is causing a lot of turmoil.

Hon. Temporary Speaker, my contribution is that the Committee on Budget and Appropriations which is concerned, should look into the money or the balance which was not allocated to these marginalised counties so that they can get their fair share. Secondly, The CRA should use a model that will purely identify the areas which were marginalised both by the Governments and by nature so that we can bring these people to an equal level. Otherwise, we would be saying that we are allocating Equalization Fund and not doing what is supposed to be done.

So, I wish to support and ask the Committee that is concerned to implore upon the CRA so that they can do proper allocation of these funds.

Hon. Temporary Speaker (Hon. Martha Wangari): Hon. Rozaah.

Hon. Rozaah Buyu (Kisumu West, ODM): Hon. Temporary Speaker, I want to thank you for this opportunity. At the outset, I would like to lend my support to the Equalization and Appropriations Bill from the Senate. I stand on the strength of our Constitution which was promulgated in 2010. The Constitution dictates that every Kenyan is equal to every other Kenyan which means that every area in this country is as important as any other. Because of that, in the Constitution, you find very many affirmative action programmes, either to bring people who are otherwise undermined to the same level as any other Kenyan or bring areas that are underdeveloped to the point that they are nearly as equally developed as all the other areas in Kenya. That is where the Equalization Fund comes in to bring up those areas that are underdeveloped in key elements that are necessary for human life like education, infrastructure, hospitals, schools and roads so that we all feel equal as Kenyans.

I served as a Commissioner in the Interim Independent Boundaries Review Commission (IIBRC) also known as the Ligale Commission, and I went around the country. There are parts of this country that are very remote, and without roads. Many children in those parts of the country have not even seen cars. The Equalization Fund was meant to make people in such parts of the country feel like they are Kenyans too. For this reason, I support this Bill.

This Bill will bring those areas that are undermined or underdeveloped to the fore so that they are also developed nearly as the other parts of this country. It is a shame that we are almost getting to the 20-year time limit for the Equalization Fund. What will happen when ten years lapse and we have not benefited because the money appropriated has never been used toward this effort?

Hon. Temporary Speaker, I support this amendment Bill from the Senate because it locks in the money that is meant for the Equalization Fund, so that if one financial year passes, it will still be locked for the intended purpose. That is the only way to go to ensure that those areas that are underdeveloped are brought to par with others.

I believe that the whole country is not equal. For that reason, I will never support this one man, one shilling, one vote ratio because there is a lot of discrepancy when it comes to development. We, therefore, need the Equalization Fund and the Affirmative Action Fund to bring every other Kenyan to the fore so that they can also enjoy.

I support this Bill.

The Temporary Speaker (Hon. Martha Wangari): Majority Whip, have the Floor.

Hon. Owen Baya (Kilifi North, UDA): On a point of order, Hon. Temporary Speaker.

The Temporary Speaker (Hon. Martha Wangari): I will first give the Member for Marsabit County, the Deputy Whip an opportunity before you raise your point of order.

Hon. Owen Baya (Kilifi North, UDA): How do you contradict your party leader?

(Laughter)

The Temporary Speaker (Hon. Martha Wangari): Hon. Waqo, you have the Floor.

Hon. Naomi Waqo (Marsabit County, UDA): Hon. Temporary Speaker, thank you for allowing me to contribute to this Equalization Fund Appropriation Bill No.2.

From the onset, I confirm that I fully support this. It is unfortunate that many years down the line, we are still debating, and not much progress has been recorded as a result of this.

Hon. Temporary Speaker, we should be guided by the purpose of the Equalization Fund. Many Hon. Members have already said that this was meant to address the marginalised areas. When we talk of marginalised areas, many people do not understand the situation in those areas. This Fund was initially meant to bring to par the 14 counties, namely, Turkana, Mandera, Wajir, Marsabit, Samburu, West Pokot, Tana River, Narok, Kwale, Garissa, Kilifi, Taita Taveta and Lamu. Unfortunately, the number of counties that need to come to par with others have grown because others want to compete with areas that have been marginalised since Independence. The Equalization Fund is meant to improve the road networks, water, electricity, and hospitals.

I come from Marsabit County which is part of the initial 14 marginalised areas. Seven years ago is when we saw tarmac passing through our county. To date, we do not even have connecting roads to our villages. We are still struggling. Water is a real problem even where I come from yet I live in town. Many people are still experiencing the same problem as we did because they do not have electricity connectivity to the villages which is considered a necessity. Any responsible Government has to work hard to ensure that every part of the country is at the same level, progressing and developing at the same rate.

Unfortunately, for over 50 years, most of these counties have been marginalised. These funds have been sitting somewhere without supporting any county nor individual. That is why today, we are debating the same. The unfortunate bit is that the counties that needed to benefit from this have grown from 14 to 34 in number. This means that the funds that were meant to support and help the real marginalised areas are now scattered and distributed among the many counties, and therefore, would not make any positive impact on the counties that have suffered since Independence.

We need our services to be improved. These include the education system, infrastructure, water, roads and hospitals. Up to today, many people in our counties travel for over 300 kilometres. Imagine an expectant mother who is in labour on a rough road travelling for 300 kilometres. Most of them have lost their lives as they struggle on the roads. Majority of them have also delivered on the roads. Is that what we want to hear in the 21st century? No. That is why many counties need

this money. However, we should go back to the original 14 counties so that we can enable them grow and bring them at par with other counties.

Hon. Temporary Speaker, any Fund that is allocated to counties is mostly mismanaged in most cases. It is unfortunate because we fight for more resources to go to the counties. Unfortunately, at the county level, corruption is practiced at a very high level. The money that is meant to bring development and growth go into people's pockets. Most of the time, does not even benefit the counties because there are individuals who invest outside their counties. That is why we should demand proper usage and accountability of any funds that would be released in disguise of the Equalization Fund.

Again, when it comes to the implementation of this, the usual practice is to give people tenders and contracts to do any development. The experience is that these tenders are given to close friends or relatives or even people from outside those counties. That is why as Members of Parliament, we should ensure that these tenders get into the hands of individuals working and living in those counties so that that money can be generated and be of benefit to the local business people. Many local business people have lost their businesses because they have not been supported. Even if they do business, they have not generated good income because of the poor economy. That is why we need to support people already doing business at the local level, ensure the profits they get circulate, and assist people within their counties.

The National Treasury should devise a plan to release the Ksh22.7 billion arrears of the Fund. It will not have any positive impact if we do it over many years. It will be like a drop in the ocean. Let the National Treasury make sure that these monies are released on time and provide proper guidance so that any project done with this money will positively impact the growth of our people and counties.

I have mentioned about usage. There is a lot of wastage in using money from the national Government to county governments. It is upon us and the responsible people holding different offices to be good stewards. Every coin meant for any progress—be it water, roads, or hospitals—should be used for what it is intended so that we elevate and improve the lives of our people. We shall reduce the hospital bills we incur once we get proper healthcare facilities. Today and over weekends, people normally request politicians to do fundraising. We will overcome that once we invest in hospitals and health centres. Proper roads will reduce the many accidents that occur, especially after the rains destroy roads. We can reduce the suffering of the people at the grassroots.

Hon. Temporary Speaker, I support. I believe Kenyans will make good use of the money and plan well so that county governments benefit from transforming lives.

Thank you.

The Temporary Speaker (Hon. Martha Wangari): The Deputy Leader of the Majority Party.

Hon. Owen Baya (Kilifi North, UDA): Thank you very much. I am one of the proponents of this Fund because it is one of the very important Funds in the Constitution. The Constitution is very clear. It talks about how funds should be given to county governments, the national Government, and the Equalisation Fund. Those are the three division levels. However, only two levels have been very important. The Equalisation Fund has been neglected yet it is a constitutional provision.

This House has the Constitutional Implementation Oversight Committee (CIOC), whose role is to ensure the Constitution is implemented in spirit and letter. However, that Committee has never spoken about the Equalisation Fund for the many years I have been in this House. It has neither brought a Motion in the House nor interjected during budget making to say that it is

important to give money to the Equalisation Fund as county governments. The Equalisation Fund is given to counties earmarked for equalisation. That is the tragedy of the Committee here. That is the tragedy of Kenyans.

All Kenyans who voted in the referendum, including people from my constituency who woke up very early in the morning to vote for the Constitution, agreed to this Constitution. It was for knowing there is something called the Equalisation Fund inside that Constitution. Kenyans knew it would take care of those that have been marginalised and underserved for many years. No meaningful development has taken place there for many years. A sessional paper was allowed in this country in 1963/65 to deliberately and systematically marginalise certain communities, including communities in the Coast Region. We are at that crossroads today. The crossroad is, is this Equalisation Fund not as important as the money sent to county governments and the national Government?

Hon. Ndindi Nyoro here will tell us about money that goes to county governments and the trillions that go to the national Government. However, he lays the least emphasis on the Equalisation Fund. When the does not come, we all in this House make noise in solidarity that the Ex-chequer must be released. The Council of Governors (CoG) is there to make noise about money when county governments do not receive their money.

Hon. Temporary Speaker, the question is: What organ is mandated to safeguard and ensure the Equalisation Fund is in place? There was a time when I wasted my shoes walking to the Office of the Principal Secretary of the National Treasury every day. Until today, he is supposed to be the person in charge of distributing those monies. However, on Ex-chequer releases, the Principal Secretary is a culprit even when it comes to the National Government-Constituencies Development Fund (NG-CDF) and county government money. What will he do if he is under pressure from county governments? He will release the money. He will release the money for NG-CDF when under pressure from the National Assembly. However, who puts pressure on behalf of the Equalisation Fund? Such a structure is missing in the implementation of the Equalisation Fund.

I remember Hon. Kamket tried to propose some changes. We even looked at the Act and agreed to form a board like the NG-CDF and the Council of Governors' boards. Who will ensure that the Equalisation Fund is disbursed at the same time the NG-CDF is disbursed? However, there has been a lot of politics about the Equalisation Fund. This is why I challenge the lawyers in this House, including Hon. Millie Odhiambo. We need to amend the law so that, at the end of the day, people marginalised systematically in this country get a fair share of what the Constitution intended.

(Applause)

[The Temporary Speaker (Hon. Martha Wangari) left the Chair]

[The Temporary Speaker (Hon. Peter Kaluma) took the Chair]

I heard Hon. Mary Emaase say that we have a balance of Ksh62 billion that has not been paid systematically over the years. You cannot have that if it is a Fund. The Constitution calls it a Fund. If it is allocated Ksh100 billion a year, it means that the money must be paid within that year. We should not have a balance. If there is a balance, it should be cumulated and sent to that account. That is what it is. If it is a Fund, it must have an account into which money must be put because it is a Fund. Where is the account for the Equalisation Fund? Where is it domiciled? We

want to see how much money is in there. Otherwise, we should have a lot of money because we have finished eight years out of the 20 years the Constitution provides.

Money is set for the Equalisation Fund in the Budget each year. That money needs to be accounted for systematically. Where is it? Where is that Ksh62 billion? In which account is it? Why is it that the National Treasury never puts that money there? I have projects that were started in 2017 in my constituency when these things started. They have not been completed. If you ask the ministry, it says the National Treasury has not released money. This is until now that county governments have come. They say they must implement the Equalisation Fund after the court ruling. Certain functions are for the national Government. I do not begrudge that. However, my problem is that I want to see a systematic account for the Equalisation Fund in county governments—an account we can audit as Members from those areas. We do not have that opportunity. So where does this Fund go? It comes in as part of the grants from the national Government, and the governors can use it even for functions that are not listed. The Equalisation Fund has only four functions in the Constitution: roads, health, water, and infrastructure. However, what stops a governor from using this money from the Equalisation Fund to buy a red carpet for his functions when he receives it as bank money? What will stop the governor from using this Fund to do things not stipulated in the Constitution? How do we audit the Equalization Fund? Where is the law? What has the Constitutional Implementation Oversight Committee (CIOC) done to ensure this money is properly accounted for?

Kilifi is among the areas identified as marginalised in the Coastal Region. We voted for the Constitution, knowing we had money to fast-track our county to be at the same level as Kiambu, Kakamega, and others. This dream is buried in the soil because the previous governments have systematically ensured that there is no proper law to audit the use of the Equalization Fund.

(Applause)

I believe this has been the trick all along. Without a specific law in place, they can avoid distributing the Fund. For instance, you cannot fail to allocate money to the Consolidated Fund and the County Revenue Fund (CRF). However, instead of allocating money to the Equalization Fund, we tend to allocate funds to other areas, neglecting the Equalization Fund. This reflects a belief that the people from marginalised areas such as the Coast and the north are not as significant. We are perpetuating the same approach outlined in the 1963 Sessional Paper despite being bound by the Constitution. However, we have a Constitution that we must obey. Just as we allocate funds to the counties, we are obligated to do the same for the Equalization Fund. This is a constitutional obligation.

(Applause)

We stand here and swear to uphold the Constitution and any other office, but why are we failing to implement it for the people who have been systematically marginalised in this country? Is it because these people are not important? It is time for the marginalised to stand up and say no. If money for counties and the NG-CDF is released, then money for equalisation must also be released.

The Temporary Speaker (Hon. Peter Kaluma): Hon. Owen Baya, why are you looking at me like you want more minutes?

(Hon. Owen Baya spoke off the record)

Next is Hon. Millie Grace Akoth Odhiambo-Mabona, the Member for Suba North.

Hon. Millie Odhiambo-Mabona (Suba North, ODM): Thank you, Hon. Temporary Speaker, for giving me this opportunity. I wish to support this Bill because, for many years, I have worked on the issue of equality. Equality is ensuring that everyone is at par, while equity is about bringing those left behind to the same level as the ones ahead of them. The Equalization Fund seeks to realise equity. I am proud that I and others played a big role in the provision of this Fund in the Constitution.

While I agree with some of my colleagues, I would like to disagree in some respects, particularly concerning the statement made by the Member for Samburu County. The initial policy included 14 counties, as repeatedly mentioned by a fellow Member here. However, it is important to note that the current Constitution no longer recognises 14 counties. The first policy identified 14 counties based on the history of marginalisation in this country. However, after the implementation of these counties, it became evident that there were still pockets of marginalisation. I will give an example from my constituency. I am glad that Mfangano, now a sub-county, and Gembe Ward have been included. Mfangano Island was included because the only means of reaching the island was by water; there were no roads or government-provided public transport. Therefore, if you have no money, you cannot access the island.

Secondly, the ring road on Mfangano Island has been constructed for the first time. The President inaugurated it despite being a murrum road because there has never been a murrum road in the area before. Therefore, making generalisations about counties is unfair. When will we ever reach Mfangano Island, where there are not even gravel roads? Sometimes, when I take pictures in my constituency, I see people ignorantly claiming that I am doing Public Relations (PR) when I am on a motorbike or walking. To get to the island, I have to use four means of transport: a boat, a four-wheeler up to a certain point, a motorbike up to another point, and in some areas, I have to walk because even a motorbike cannot access them. When we discuss marginalised counties, why do we only consider them in general terms? When will we ever reach Mfangano Island?

The same can be said about parts of Gembe that have been included as marginalised. Some areas in Gembe without schools or roads have been perennially cut off. Recently, during heavy rains, a place in my constituency called Sikri was completely cut off. People had to use boats, and schools closed until the rains stopped. If we keep waiting for the generally marginalised counties, when will we ever get to such areas? Are we creating new areas of marginalisation? We must carry everybody on board. I know that some areas are experts in pushing their agenda and screaming marginalisation. That is okay because they are marginalised. We do not scream marginalisation; we tend to scream democracy. However, we will now be screaming both. I apologise for using the word 'Luo Nyanza,' but there are areas in Luo Nyanza that have been marginalised over the years because of our political leanings.

The opposition areas never get money. I am happy that we get NG-CDF. Before I became a Member of Parliament, I was amazed to see a well-built school in our constituency funded by the NG-CDF. I was proud to discover that my grandfather had donated the land for that school. Without the NG-CDF, many schools in our areas would still be in poor condition due to opposition politics. It is important to note that even in the United States, some people are in government and others in the opposition, which is the essence of democracy.

Having said that, it is crucial that we also consider the Constitution's stance on marginalisation rather than just referring to it without fully understanding its implications. The interpretation clause of the Constitution says—

"Marginalised community" means—

(b) a traditional community that, out of a need or desire to preserve its unique culture and identity from assimilation, has remained outside the integrated social and economic life of Kenya as a whole;

(c) an Indigenous community that has retained and maintained a traditional lifestyle and livelihood based on a hunter or gatherer economy; or

(d) pastoral persons and communities, whether they are—

(i) nomadic; or

(ii) a settled community that, because of its relative geographic isolation, has experienced only marginal participation in the integrated social and economic life of Kenya as a whole;"

This would include the Suba people and the fishing community. So, it actually talks to very many areas of the country, not just Northern Kenya, which I agree is marginalised; but so does my constituency. If we look at the same interpretation section, it says that a marginalised group is a group of people who, because of loss or practices before, on, or after the effective date, were or are disadvantaged by discrimination on one or more of the following grounds in Article 27(4) of the Constitution. That includes race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language, or birth.

Marginalisation is much bigger than what we are trying to limit it to here. I agree that some areas have been marginalised including Northern Kenya, Coastal Region, and Suba. That is why we see both Suba North and South and Ndiwa are marginalised. In fact, other parts of Nyanza, like Homa Bay, would have been marginalised, but it is only because God was gracious and they have fine weather that they do well economically. One Hon. Member said that the weather is not included as one factor that leads to marginalisation. Having said that, I encourage and agree with my Committee, the Budget, and Appropriations that the arrears should be released to see the effective use of this Fund.

Again, when we give this money like Panadol to a person who has Malaria, we will not cure such a person. We need to give medicine like Chloroquine. (I do not know the current medicine because I do not get Malaria anymore). Because of that, we need to provide more money for my constituency. For now, we have Ksh19 million. What can this amount do in Mfangano Island together with Gembe? It is not much, but we appreciate it because we are included. Even when that third policy is drawn, we must include those pocket areas of marginalisation and remain true to the constitutional definition of marginalisation. We are not marginalised because we speak loudly, but we are, as a matter of fact.

I also want to agree with the Hon. Members who said that we must take into account what people are getting because this is not the only money people earn. We get the NG-CDF and allocations from ministries. I sit in the Budget and Appropriations Committee, and I can tell you that there are areas that are getting funding for marginalisation, public participation, direct allocations from ministries, and many others.

My time is up, but a lot needs to be checked when dealing with marginalisation. I support.

The Temporary Speaker (Hon. Peter Kaluma): Hon. Joshua Kimilu, Kaiti Constituency.

Hon. Joshua Kimilu (Kaiti, WDM): Thank you, Hon. Temporary Speaker, for allowing me to contribute to this important Bill on the Equalisation Fund. This Fund is very important to

marginalised areas. However, as I support, I have to say that a lot has to be done because some areas are marginalised but do not benefit from the Fund. Early this year, I travelled to Wajir County. I was shocked to find a country without electricity network. These are the areas we need to fight for so that they benefit from the Fund.

As Kenyans, we need to be mindful of marginalised areas. Money from the Equalisation Fund should be given to the marginalised counties to construct health centres. There are some areas where one can travel more than 20 kilometres to look for a health centre. Such areas need to benefit. Health centres are key. In my constituency, going from one health centre to another is challenging because of lack of transport. To get to a murrum road, you need to travel more than 50 kilometres. This money can help construct roads to improve the transport sector in our areas.

The money should be increased and also released at the right time because it is very important to help our people who are languishing in poverty. There are some counties in which people live in very low status. The money from the Fund can assist in setting up health centres, roads, and water. For example, in my county, there are some areas where one can travel for more than 10 kilometres to access water. With this money, we can build boreholes and water pans to alleviate poverty in our areas.

The money can also help in community mobilisation and capacity building. If capacity building is done in an area, it will help a community to alleviate poverty and improve education. Although we have the NG-CDF, it is not enough to improve education in our constituencies. This is because there are some areas where there are no schools and no infrastructure. With the little money they get from the NG-CDF and the Equalisation Fund, a child of this country can benefit. I support this Bill. As Kenyans, we need to stand with this Fund. When it comes to accountability because the counties are the custodians of this money, checks, and balances should be put in place to ensure that the money is well spent and goes to the right people.

Thank you.

The Temporary Speaker (Hon. Peter Kaluma): Hon. Francis Sigei, the Member of Parliament for Sotik.

Hon. Francis Sigei (Sotik, UDA): Hon. Temporary Speaker, thank you for giving me this opportunity to talk on this topical issue and support it. It takes a person who has worked in a marginalised place or visited such an area to understand the problems they face.

(Applause)

I know the Members from those areas, and those like me who have worked there for many years.

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

The Temporary Speaker (Hon. Peter Kaluma): Hon. Francis Sigei, until the Temporary Speaker stops you, you should be speaking.

Hon. Francis Sigei (Sotik, UDA): I worked in Garissa for five years and understand the problems the people there are facing. If you go to a place like Kakuma and Kalmagala in Garissa, you will understand this problem.

I want to say two things. First, I thank the framers of this Constitution, which is very important and leading in Africa. They thought very clearly, with a lot of wisdom, that we must bring up underdeveloped areas to be at par with other parts of the country. We need to address the issue of legal framework. This is like a free-for-all Fund because there is no legal framework governing its use. I want to recommend that we ring fence the Fund so that when it is disbursed to

the counties, it is known that it is going to particular areas — education, infrastructure, roads, and health. We need to be specific about where this money is going.

Hon. Temporary Speaker, we also need to address the issue of corruption. We need to know how much money has gone there before we ask for more. Of course, we need to ask for more money, but how has the money disbursed a while ago been spent in these counties? Therefore, I want us to address the issue of wastage. It is a major problem that needs to be addressed. We also need to ask ourselves what the problem is with disbursement. Once Parliament has approved money for the counties, what happens to the National Treasury? Can we now address this issue of non-disbursement so that we can establish the problem?

This House is the final authority to appropriate and disburse money, but there is a problem of bureaucracy that must be addressed. The money which this House has appropriated should be released without any delay. That will address that issue. Again, we must admit that we have had problems with disbursement and inadequate funds. How do we address the issue of the youth disparities in these counties? This country belongs to all of us and must be developed in equal measure for our people to be at par in terms of development.

Hon. Temporary Speaker, I support this Bill. I want to thank the Budget and Appropriations Committees for a job well done. We need to see this money going to the people.

Thank you, Hon. Temporary Speaker.

The Temporary Speaker (Hon. Peter Kaluma): Hon. (Dr) Eve Akinyi Obara, Member of Parliament for Kabondo Kasipul Constituency.

Hon. Eve Obara (Kabondo Kasipul, ODM): Thank you very much, Hon. Temporary Speaker, for giving me the opportunity.

At the outset, I would also like to support the Budget and Appropriations Committee for this Report. Our colleagues have already said a lot on this matter. I want to thank the drafters of the Constitution for coming up with the Equalisation Fund to address the marginalised areas. They were clear on what it was supposed to be by ensuring that 0.5 per cent of the national Government revenues were allocated to the marginalised regions.

Hon. Temporary Speaker, we have seen in the Report what has been disbursed to date and what arrears are due. Unfortunately, even as this is happening, they are telling us in the Report that not much has been achieved in the areas where work was supposed to have been done. However, it would have been nice if they had come up with a clear evaluation of the projects done over the years in these areas to see where the focus was and why they are saying it has not helped. Even Ksh22 billion that has been allocated to date is not small money. It was allocated to the 14 original counties, and they are still saying that the money is not enough and it was not enough to go around because of how it was being disbursed. At this point, I want to call upon the National Treasury to prioritise the Equalisation Fund so that the counties can carry out their programmes as planned.

Hon. Temporary Speaker, we have been told that we now have 34 counties, and the list is here, yet at the same time, the sunset clause is soon to set in on this Fund. The Fund has only six years to go. So, it may be prudent to come up with another Bill to extend it because, as we have been told, not much has been done.

Looking at the areas they touched on, I sat here wondering what their priority was when they were disbursing the funds for the programme. Did they do public participation so that the people could tell them what they wanted? I support the Senate recommendation that the Board has been ineffective. Therefore, something should be done so they can have a more focused Board, which will work in the best interests of the people in those regions. Also, it is important for the list

to be reviewed to see if the status is still the same. Some areas may have developed through other funds and should not be on this list.

(Applause)

Finally, as we sit in this House, we have seen ourselves being marginalised from other regions in allocating certain programmes.

(Hon. Lilian Gogo spoke off the record)

We have seen one constituency taking Ksh400 million for power and another taking a lot of money for roads. In other words, this is marginalisation. Let us address these issues and be fair because each of us pays taxes and deserves services.

Thank you very much, Hon. Temporary Speaker. Once again, I support.

The Temporary Speaker (Hon. Peter Kaluma): Hon. Geoffrey Mwangi, Member for Tetu.

Hon. Geoffrey Wandeto (Tetu, UDA): Thank you, Hon. Temporary Speaker, for allowing me also to lend my voice to this very important Bill.

From the outset, addressing issues of marginalisation and equalisation is important. This is one way to achieve national unity. Today, it is sad to learn that there are arrears many years after this Fund was conceptualised, and the disbursements have been minimal. It is only reasonable that going forward, the National Treasury ensures that the monies earmarked for this Fund are released and used for the interventions intended.

I applaud the Senate for doing two very important things in this Bill. The first is to ensure they safeguard it from the usual cycles of Government expenditure, whereby the allocated funds lapse. Also, by ensuring they include the administration of the Fund by operationalising the Equalisation Fund Advisory Board.

Having said that, I think a good thing can be made better. There are many opportunities to improve this Fund going forward. I wish to submit that as we come to the third comprehensive review by the CRA. It is time we ensure that the formula we are using is looked at very closely so that the interventions intended by this Fund bear fruits.

Some people have said we should extend the number of years the Fund has been given. I do not think that is the solution. We should be talking about how effective the interventions have been. We need clear documentation, monitoring, and regular reports to this House and the Senate regarding the results we are getting from these interventions. Otherwise, we can spend much time discussing these marginalisation interventions without getting any results. These interventions must be time-bound, and the data must be accurate. Also, giving counties the full leeway of how this Fund is utilised may not be the most appropriate channel.

Hon. Temporary Speaker, we are all struggling with how counties are using the little resources we are giving them. How do we come up with a hybrid solution where Members of Parliament, parent ministries and counties through the NG-CDF come together so that the interventions envisaged in this Fund can be more effective? If you look at the money that has been provided, you will find that it is a drop in the ocean. We cannot provide solutions that we are looking for by allocating only Ksh10 billion. For some of these counties, the Equalization Fund were an unnecessary measure and may not necessarily be the solution we are looking for. We require a marshal plan to also ensure that we can accelerate the development that we are looking at these marginalised areas.

Having said that Hon. Temporary Speaker, we also need to think about what the definition of marginalisation is. For example, my own constituency Tetu does not appear in this list. It does not have a Level IV hospital. From a health point of view, we are marginalised. I would expect that such intervention is included. I have not seen any sub-county from Nyeri County where I come from. Kieni is a very dry area almost the same as Samburu or Wajir and it requires intervention for water, schools and electricity.

As we expand it from 14 to 34, it is time we took it to 47 and then look at specific areas and issues of marginalisation because every county in this country has some level of marginalisation.

I rise to support, and it is important that we get it right going forward.

Thank you.

The Temporary Speaker (Hon. Peter Kaluma): The Member of Parliament for Wajir West.

Hon. Yussuf Farah (Wajir West, ODM): Thank you, Hon. Temporary Speaker for giving me this opportunity to support this...

(Inaudible)

Thank you, Hon. Temporary Speaker for giving me this opportunity to contribute to this Equalization Fund Appropriation (No.2) Bill (Senate Bill No.30 of 2023). At the outset, I support this Bill. The essence of this Bill was to give 0.5 per cent of the annual revenue of the budget specifically allocated to marginalised areas. The question begs Hon. Temporary Speaker, where are these marginalised areas and how did it come about to the minds of the drafters of the Constitution during 2010?

The Constitution of Kenya 2010 was drafted by brilliant minds who went all over this country and came to understand where it is marginalised and where it is not marginalised. They included this Fund to bring some parts of this country at a par with the rest of the counties. It becomes very worrying when all the counties in this country are classified as marginalised in the same marginalisation fund which never grows from the 0.5 per cent.

Thirty four counties have been indicated in this Bill to benefit from the marginalisation fund. I request Hon. Members to change the name "Equalisation Fund" to something else because this is not equalisation any more. This is like appropriating a parallel budget afresh for each and every county.

I have been hearing some Members saying that some parts of their constituencies are dry. We are not talking about the climate but the problems and challenges that is in that particular constituency. In Wajir West Constituency, for example, one health centre is 200 kilometres away from another. When a mother is taken to the hospital which is from one village to another, she dies in the middle if she does not get a private vehicle or an ambulance. Someone who has a health centre which is two kilometres away is telling us that they are marginalised. I appeal to the Members of this House to visit my constituency at my expense so that they see and appreciate the problems that the people of the North have. Northern Kenya is ongoing as we speak. People are talking about North Eastern region being given more share than theirs. We get even less because the trillions that are appropriated by the National Government do not trickle down to Northern Kenya.

Recently, one of the constituencies in this country got Ksh1.5 billion for roads while my constituency got none. If we go through the budget line by line to see how much allocation is meant for the Northern Kenya, most of the Members of this House will be shocked beyond words.

We should increase the amount of allocation from 0.5 to 100 per cent so that everyone can benefit. Alternatively, we can reduce the counties listed in the Appropriations Bill so that the marginalised areas can be at par with the rest of Kenya. I do not have a single tarmacked road, a Level 4 Hospital or tap water anywhere in my constituency. I am sure each household has running tap water in the other constituencies. The difference is as clear as broad daylight.

We should not be talking about something that we do not know. People should go to these constituencies, appreciate the challenges and talk from an informed position. There was deliberate attempt from 1963 to date, from particular individuals to marginalise a specific area, further. There is also deliberate attempt by those who hold high offices in this country to remove some counties from the map of Kenya. I am sorry to say so but from the look of things, it might happen sooner or later.

There was a debate on the one man, one shilling, one vote; equalisation and other things that target specific areas yet people cannot even see small amounts of money trickling down to those areas. When we are in the Committee, and my brother, Hon. Okelo, is a witness that whenever we appropriate money, not a single coin is allocated to those areas. Every day we fight so that we allocate some percentage to those areas. I beg the Members of this House to understand the dynamics, problems and challenges that some constituencies are facing so that we do not politicise the lives of Kenyans because we are here to represent them.

All of us are here to represent the people of Kenya. If, for example, today there is a Miraa farm that is allocated to miraa farmers and I who is not a miraa farmer from Northern Kenya says I also want to be allocated a miraa farm, will that be appropriate? It will not be. We should differentiate things. There are coffee and tea farmers who are given a lot of money whereas the livestock farmers are left in the middle with no appropriation. I want to thank the Committee. Recently in the budget estimate proposals, they allocated Ksh1 billion for restocking. I want to appreciate and thank the Chairman and the Committee Members for doing a great job for that programme.

It hurts me – as a Member who represents the people from Northern Kenya – when I see some Members mocking us by telling us to our faces that we are getting more funds than our share. That is unfortunate. I wish the Speaker could constitute a committee to research and verify the budget allocations so that we see how much goes to each and every county and constituency, so that we share equally.

Thank you.

The Temporary Speaker (Hon. Peter Kaluma): We shall now have Hon. (Dr) Joyce Osogo Bensuda, followed by Hon. Umulkher Harun. Why can you not use less than three minutes? What is this new information you are talking on Equalisation Fund? Proceed, Hon. Bensuda.

Hon. Atieno Bensuda (Homa Bay County, ODM): Thank you very much, Hon. Temporary Speaker. I do not need more than three minutes. What I want to talk about is very specific and it is all about facts. First, I rise to support the Equalization Fund Appropriation Bill that has been tabled by the Budget and Appropriations Committee. I want to start by highlighting that in this country we have what we call a rogue National Treasury. To me, the definition of a rogue person is somebody who takes the law in his or her own hands and does not conform to the existing laws. This House, any Member of Parliament and county governors, should not march to the National Treasury for it to affect anything in terms of disbursement.

I take note that when we were investigating the Telkom saga, the National Treasury was implicated negatively. I sit in the Decentralised Funds Account Committee where we oversee what

has been done and reported by the Auditor-General. We have realised that there are issues with disbursement from the National Treasury in terms of the NG-CDF funds and the National Government Affirmative Action Fund (NGAAF). This House is not junior to the National Treasury that it must beg, crawl or kneel before the Treasury to releases funds.

On the Equalisation Funds that were tabled, we noticed that only Ksh22 billion was released. The Report says that there is laxity in the disbursement of funds from the National Treasury. I would like it to be on record that the Principal Secretary (PS), National Treasury should appear before this House and be given a clear explanation on the fact that we are begging – seemingly singing a lullaby – that funds must be released. The PS, National Treasury must respect this House and the formula used to disburse funds. It is quite hurting.

If 14 counties were identified as marginalised, then I take cognisance of the fact that the Constitution respects what marginalisation is. I want to uphold the Committee that increased the number from 14 to 34. In fact, they ought to have increased it to a total of 47 because this country is seriously undergoing economic marginalisation. I am just from the rural areas in Homa Bay County. I visited a number of markets and most of them do not have electricity. They are crying about transformers. Members of Parliament cannot implement without funds. Equally, the governor cannot implement what is not straight.

The National Treasury must be disciplined and stop being rogue. Regulations and frameworks must be put in place. We need a clear tabling of the projects that are supposed to be undertaken in the 14 counties. During the floods, we watched on television how farmers suffered and how their produce rotted. There are no roads or schools. As much as the equalisation funds were supposed to address issues of infrastructure, education and health, we do not want to beg anyone over this. The same way we are budgeting and fixing issues, when the budget of this financial year is tabled in this House, we must rise to maturity and not focus on the political divide. This House must know that they have a choice to put Kenya on the right track or lead Kenya down the drain.

As legislators, we must stand firm to ensure things are done the right way. We must not rise up for NG-CDF and NGAAF to be disbursed. Even the Women Representatives of this country are marginalised in a way. There are no funds yet we are expected to work. We are waiting for the Ksh1 billion in the budget cycle that the President had promised. We had been given Ksh1 billion for sanitary towels which we are still waiting for. We do not need to kneel unless we do not know why we were elected here. The Principal Secretary of the National Treasury should take charge, be disciplined and serve this nation. He must be brought to the Floor of this House.

Thank you, Hon. Temporary Speaker.

Hon. Umulkher Harun (Nominated, ODM): Thank you, Hon. Temporary Speaker, for granting me this opportunity. The issue that we are discussing today touches close to my heart because I come from a region that owns the crown of marginalisation. We might hear many people saying that they are also marginalised but it is after devolution that we got the first national school. I had to travel all the way to Kiambu County to attend a national school. Rarely do we see students being placed in national schools in Garissa County. This is the challenge that we are addressing in marginalisation. The reason this money was set aside was to bring these counties to the same level as other regions.

We have heard a ‘one man, one shilling’ debate going around. This discussion will further divide our country. We do not want to add any more wounds because when I hear ‘one man, one shilling’ I will stand here and say ‘one shilling, one kilometre’ so that every county from the marginalised areas gets an equal share of the national resources because we all pay taxes. We are

not anyone's guests. We deserve to get the resources. The only discussion that should be on the Floor of this House is to audit how the monies were utilised and how the Equalisation Fund will be managed under the county government when national Government projects are proposed.

Two months ago, people from my region were washed away on a boat because they were attempting to cross a road. When I heard my colleague, Hon. Wandeto, saying that his constituency is also marginalised, I went there and saw that even the roads leading to the cattle dip were tarmacked, fully marked and had zebra crossings when I have never seen a tarmac road with my eyes. I come from a constituency where when it rains, I do not even make plans to go.

Currently, I am not able to access my own constituency because I need to get a chopper. I do not have money to get a chopper. I am only paid enough to fuel my car in order to visit my home. When the floods come, we do not get budgets for dams. If this money is released and utilised appropriately, we will get dams so that the issue of floods in my region does not recur.

The farmers keep investing every rainfall season. By the time the drought comes, the floods have washed away our resources. We have livestock. Money meant for livestock is never seen in my region. Such debates should not be politicised. This should be about equality. You cannot govern a country that is poor or does not receive equal share of resources. It is very unfair for the debate to go beyond this. The focus should be on how to empower existing marginalised communities. Some Members from regions which have hospitals per two kilometres have told us they are marginalised. We cannot stomach such debate because it is unreasonable. I use a boat every time it floods, while somebody else drives. This conversation must take a different angle. We need to audit what is released and how the funds are allocated. So, we can get an equal share.

For example, Members from Central Kenya or other regions that have always enjoyed a monopoly of getting national resources are telling us they are marginalised yet in my region we need to build schools. The NG-CDF is building high schools and nursery schools. There is a demand for more schools because of population increase.

I come from a family with over 20 people and my mother has 30 sisters and uncles. Resources need to be distributed equally. The population in ASAL areas is increasing because men have more than four wives. So, there is a high demand for nursery schools. Some places are closing their nursery schools because they have no children to attend. So, they should not get these resources. We have to fight for what is ours and have a conversation that brings unity. One man, one-shilling is a distraction because it brings hatred and a lot of negativities. If it is brought, we will say one-shilling, one-kilometre.

Thank you, Hon. Temporary Speaker.

(Hon. Jared Okello spoke off the record)

The Temporary Speaker (Hon. Peter Kaluma): Hon. Jared Okello, what is the matter?

Hon. Jared Okello (Nyando, ODM): Thank you very much, Hon. Temporary Speaker. Even though you have called me at the tail-end of the session, I have a few remarks to make with regard to the Report on Equalisation Fund. A quick background over the same, when the drafters of our Constitution came up with this idea, it was premised on the fact that certain regions had been alienated for way too long. They needed to catch up with the rest who were regarded to be in the first league of development in this country.

Since time immemorial, and this took a lot of precedence during the Moi era, there was a very backward and foolish mantra – *siasa mbaya, maisha mbaya*. That, if you had a contrary view to that of the Government of the day, then your region was side-lined on matters development.

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Where I come from, Nyanza Province to be specific, all successive regimes have given us a wide berth. We have tried as much as we can with the limited resources generated by our people to make ends meet. We have met headwinds along the way. At times we have succeeded while at others we have failed because of lack of resources which are channeled to other regions. Anyway, here we are, just like anybody else.

When the drafters of our Constitution came up with this idea, it was infused into law. The CoG thereafter went to court and challenged who ought to superintend these funds. Was it the national Government or county governments? This matter has dragged in our courts of law for over 10 years. The only time these monies were expended to deserving counties was once. The projects that were earmarked to be funded by the Equalisation Fund are only 20 per cent done. In the last Parliament, I sat in the Special Funds Accounts Committee and we visited a few. Only 20 per cent had been done, 11 years down the line. This money had a timeframe which was not open-ended. This has delayed it from being fully implemented. As we talk about marginalisation, to date six schools in my constituency are still marooned as a result of flooding by River Nyando, together with the lake that is coming out...

The Temporary Speaker (Hon. Peter Kaluma): Hon. Basil you have two minutes then the Mover can prepare to reply.

Hon. Robert Basil (Yatta, WDM): Thank you, Hon. Temporary Speaker. I will move very quickly.

At the outset, as much as I support the Equalisation Fund, I am very much disappointed with the level of biasness in the distribution of resources under this Fund. I do not understand why Yatta is missing from this list, considering that 99.5 per cent of my roads are weather roads, electricity connectivity is below 40 per cent and teachers employed by Board of Management are about 55 per cent.

We need to shun negative ethnicity and tribalism which is contributing to the level of disparity that we see. This Fund should be managed by national Government and baseline data should be one to guide distribution of resources but not tribalism. If we continue this way, we will be like what Obama, the former President of the United States of America, metaphorically said that it is easier for a child from Central Kenya to celebrate the fifth birthday, compared to a child from North Eastern Kenya.

This has been witnessed because of continued skewedness of resource distribution based on where people who are in centres of authority come from. This gap must be breached by ensuring that there is equity in the distribution of resources to mitigate competition that has been witnessed when people in power or those looking for power are inspired. This is because most of them are doing it simply because resources are not fairly distributed across the country.

I support.

The Temporary Speaker (Hon. Peter Kaluma): Hon. Zamzam Chimba, can you say what you want to say in two minutes.

Hon. Zamzam Mohammed (Mombasa County, ODM): Ahsante sana Mhe. Spika wa Muda, nami niweze kuunga mjadala huu wa leo wa ugavi wa mgao kwa zile familia ambazo zimetengwa.

Nilikuwa ninaangalia katika Waraka huu ulioko hapa na ningependa kuungana na wenzangu kuwa kuna sehemu ambazo mpaka sasa, baada ya kupata uhuru, hasina barabara, maji, wala stima. Ningependa kuwaambia wenzangu ambao wanaoupinzani katika mgao huu, kwamba Kenya ni moja. Hata Garissa ikipata na kuweza kuundelea, na wewe waweza kutoka kule uliko na

kuenda kufanya kazi Garissa, ikawa maendeleo yameenea Kenya nzima na watu wakaweza kukaa kwa ufanisi.

Mahali kama Ganze na sehemu zinginezo za Pwani ambazo ziko nyuma sana, kwa maana hakuna barabara, maji wala mahospitali, kisha najiuliza, ikiwa hizi pesa zilibaki Ksh62 billion, katika akaunti, kisha ni akaunti ya nani na zafanya nini kule wakati wanainchi wanashida?

Ni dhahiri kuwa Wabunge wenzangu waweze kukubali kuwa hizi pesa, hata mimi ningeweza kusisitiza kuwa ziingie kwa mikono za Wabunge wetu ili waweze kuingia kule sehemu ambazo zimetengwa na waweze kufanya maendeleo. Garissa na Tana River wakipata, na Kwale wakifanya maendeleo, hata mimi Mama Mombasa nitakuwa na wepesi wa kutembea zile sehemu ikiwa barabara iko sawa, kuna maji na maendeleo. Pia, mimi ninaweza kutoka nikaingia katika Kaunti zile nikafanya kazi. Kwa hayo, ninaunga mkono. Ahsante sana.

The Temporary Speaker (Hon. Peter Kaluma): Mover. Why is the Member for Fafi looking at the Mover in that manner?

Hon. Mary Emaase (Teso South, UDA): Thank you, Hon. Temporary Speaker. Next to me is a Member for Narok South and he has been here for a long time. Allow me to give him one minute.

The Temporary Speaker (Hon. Peter Kaluma): You want to donate some time to the Member for Fafi?

Hon. Mary Emaase (Teso South, UDA): It depends on how many minutes I have.

The Temporary Speaker (Hon. Peter Kaluma): You will have less than four minutes.

Hon. Mary Emaase (Teso South, UDA): Then I can only donate one minute.

The Temporary Speaker (Hon. Peter Kaluma): Proceed Member for Narok South.

Hon. Kitilai Ntutu (Narok South, Independent): Thank you Hon. Temporary Speaker. I rise to support this Motion.

The intention of introducing the Equalisation Fund to the Constitution was to elevate the marginalised areas for example Narok South to the level of where other Kenyans are. There are areas in this country where road networks are almost non-existent. Other developments like construction of schools and hospitals, and availability of water to the people also need to be looked into. Electricity connectivity in Narok South is only at eight per cent while some constituencies are connected 100 per cent. I am remaining with only a minute. Thank you, Hon. Emaase for donating it. The Ksh62 billion arrears of the Fund should, therefore, be released immediately. The amount should also be increased from 0.5 per cent to one per cent.

The Temporary Speaker (Hon. Peter Kaluma): Mover, utilise your remaining two minutes.

Hon. Mary Emaase (Teso South, UDA): Thank you, Hon. Temporary Speaker. From the onset, I appreciate and acknowledge all the Members who weighed in on this Bill. Indeed, the Fund was established so as to address specific objectives. I support all the Members who have already alluded to the aspects of the specific projects namely: roads, water, electricity and health that this Equalisation Fund is supposed to address. Members have raised critical questions, even with respect to the impacts. Going forward, an assessment should be done on all the Equalisation Fund Projects so that we can ascertain whether it realised the intended objectives.

Further, Members have also raised concerns with respect to the management of the Fund and how the beneficiary counties or pockets were identified. During our engagements with CRA, I took them to task to explain how some constituencies like Teso South, missed out. Busia County is one of the poorest counties. We rank at the bottom in the poverty index. No area in Teso South Constituency was picked yet there are areas in the constituency where when we have a sick person

or someone dies, we prepare wooden carriers to transport them. We also use logs to prepare bridges to enable our kids cross from one area to the other. Therefore, I support those who have alluded to the principle of equity and equality so that as we distribute this money, and as we wait for the time...

The Temporary Speaker (Hon. Peter Kaluma): Let me add you another 30 seconds to wind up.

Hon. Mary Emaase (Teso South, UDA): Thank you, Hon. Temporary Speaker. The third-generation revenue sharing formula should address real marginalisation as per the definition. Those living in areas with favourable climate should not claim marginalisation.

Hon. Temporary Speaker, I beg to reply.

ADJOURNMENT

The Temporary Speaker (Hon. Peter Kaluma): Hon. Members, for the convenience of the House, the Question to this Bill shall be put when it will be listed next by the House Business Committee.

Hon. Members, the time being 7.08 p.m., this House stands adjourned until Wednesday, 12th June 2024 at 9.30 a.m.

The House rose at 7.08 p.m.

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