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Wednesday, 6th November 2024

The House met at 2.30 p.m.

[The Deputy Speaker (Hon. Gladys Boss) in the Chair]

PRAYERS

QUORUM

Hon. Deputy Speaker: Hon. Members, there is no quorum. Serjeant-at-Arms, ring the Quorum Bell for 10 minutes.

(The Quorum Bell was rung)

We now have quorum. Let us proceed.

PAPERS

Hon. Deputy Speaker: Deputy Leader of the Majority Party.

Hon. Owen Baya (Kilifi North, UDA): Thank you, Hon Deputy Speaker. I beg to lay the following Papers on the Table:

1. The Agreement for the Establishment of the Africa Finance Co-operation Exploratory Memorandum from the Ministry of Foreign and Diaspora Affairs.
2. Reports of the Auditor General and financial statements for the year ended 30th June 2024, and the certificates therein in respect of the following:
 - (a) The Ethics and Anti-Corruption Commission.
 - (b) Kenya Youth Employment and Opportunities Project Credit Number IDA 5812KE, Micro and Small Enterprises Authority.
 - (c) SC, Reporting Toolkit Project, Ministry of Environment, Climate Change and Forestry.
 - (d) Multinational Lake Victoria Maritime Communications and Transport Project, Kenya Maritime Authority.
 - (e) Coordinate Implementation of Population Policy and ICP25 Commitment Project.
 - (f) GoK UNICEF Education for Young People Program, State Department for Basic Education.
 - (g) Kenya Primary Education Equity in Learning Program, Grant Number D991KE, Teachers Service Commission.

I thank you, Hon. Speaker, and I beg to lay.

Hon. Deputy Speaker: Next is the Chairperson of the Departmental Committee on Finance and National Planning. Hon. Vice-Chairperson, do you have a Report? We can move to the next item as we wait for the Chairperson.

QUESTIONS AND STATEMENTS

STATEMENTS

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Hon. Deputy Speaker: The first request for statement is by Hon. Peter Masara.

Hon. (Dr) Ojiambo Oundo (Funyula, ODM): On a point of order, Hon. Deputy Speaker.

Hon. Deputy Speaker: What is your point of order, Hon. (Dr) Oundo?

Hon. (Dr) Ojiambo Oundo (Funyula, ODM): Hon. Deputy Speaker, as has been the custom in this House since the beginning of the 13th Parliament, a Cabinet Secretary normally comes to answer questions and requests for statements on Wednesday afternoons. The Cabinet Secretary for the Ministry of Roads and Transport was expected to appear here before we went on recess. However, we were informed by the Speaker that he had sought the indulgence of the House to skip that session and attend the first Wednesday when the House resumes.

I have looked at the Supplementary Order Paper, and there is no indication at all that the Cabinet Secretary will be present in the House today. Hon. Deputy Speaker, I seek your guidance on this matter because this is going to be the second time in a row that the Cabinet Secretary in charge of Roads and Transport has missed these sessions. You need to guide us on what to do because these questions are of importance to our constituencies and to the people of Kenya. If cabinet secretaries cannot spare time to come to Parliament, then I do not understand why we had to amend our Standing Order to ask them to come to the House to answer questions.

Thank you.

Hon. Deputy Speaker: Hon. (Dr) Oundo, you are right. I have a letter dated 5th November 2024 addressed to the Clerk of the National Assembly and it is signed by the Cabinet Secretary, Ministry of Roads and Transport, Mr Davis Chirchir. It states: I was scheduled to appear before the Plenary of the National Assembly on Wednesday, 6th November. However, I will be accompanying His Excellency the President to the Republic of Sudan on an official visit on the same day. Owing to this, I will not be able to attend this important meeting. I, therefore, request that the meeting be rescheduled to a date that is convenient to the House.

The Clerk of the National Assembly has communicated the optional dates that he is supposed to appear.

Hon. Kimani Ichung'wah (Kikuyu, UDA): On a point of order, Hon. Deputy Speaker.

Hon. Deputy Speaker: What is your point of order, Leader of the Majority Party?

Hon. Kimani Ichung'wah (Kikuyu, UDA): Thank you, Hon. Deputy Speaker.

It is, indeed, true, that the Cabinet Secretary wrote to us, and I was copied in that letter. We have also since written to him requesting him to appear before the House next week, Wednesday, 13th November 2024, together with the Cabinet Secretary for Education, Mr Migos Ogamba.

Now that I have the opportunity, I would like to point out that several Members whose Questions were supposed to be answered are not present in the House. I cannot see the Member for Gatanga. He is not here and yet, he has a Question to ask. Similarly, the Member for Embakasi West, Hon. Mark Mwenje, is absent. However, I do see the Member for Baringo Central, Hon. Kandie, and we must commend him for his presence.

Hon. Gonzi Rai, the Member for Kinango is not here. The Member for Funyula is always in the House, and he has a Question to ask and he is here.

(Applause)

The Member for Bahati, Hon. Irene Njoki, is not present. The Member for Malava, Hon. Malulu Injendi, is in his usual seat, always present, and he is a Vice-Chairperson of a Committee. I could go on and on and list more names. Hon. Dick Maungu and Hon. Robert

Basil are also absent. However, Hon. Sarah Korere is consistently in the House, and she is present today.

(Hon. Robert Basil stood up in his place)

Oh! The Member for Yatta, Hon. Basil is, indeed, here. My apologies for that. Hon. Rael Kasiwai sits somewhere around there, but I do not see her today.

Hon. Deputy Speaker: Let the Leader of the Majority Party finish his point of order.

Hon. Kimani Ichung'wah (Kikuyu, UDA): Hon. Rael Kasiwai, who sits somewhere there, is not in the House. The Member for Kajiado South, Hon. Samuel Parashina, as always, is never in the House. The Member for Matuga Constituency, Hon. Kassim Tandaza, who is also the Vice-Chair of the NG-CDF Committee, is always in the House just like now. The Member for Igembe Central, Hon. Daniel Karitho, is always in the House and is here.

(Hon. Sarah Korere spoke off the record)

I am on a point of order Hon. Deputy Speaker.

Hon. Deputy Speaker: Hon. Members, the Leader of the Majority Party is on a point of order. Hon. Sarah Korere, you will have an opportunity. Please, hold on.

Hon. Kimani Ichung'wah (Kikuyu, UDA): The Member for Mwingi West Constituency, Hon. Charles Ngusya (CNN), is always in the House, but he is not in. The Member for Ikolomani Constituency, Hon. Shinali, is usually on and off in the House, and he is not here. What point am I making? Last week, we were in a leadership conference under the able leadership of the Chairperson of the Parliamentary Service Commission (PSC), who is also our Speaker. Some of the issues that were raised by Members in that conference is House attendance and, more so, calling on Chairpersons and Vice-Chairpersons.

Hon. Deputy Speaker, this afternoon, you had to sit there and wait for at least 10 minutes for us to garner quorum.

This House has not less than 60 Chairpersons and Vice-Chairpersons of Committees. We only need 50 Members to transact business. If we add the leadership of the House, we have 70 Members. I counted the Chairpersons who were in the House at the time you asked for the Quorum Bell to be rung, and only five were present and about seven Vice-Chairpersons. Where were the other 43? Hon. Deputy Speaker, as we said in Naivasha, we only have another four weeks of reckoning before we go for a long recess. If you are a Chairperson or Vice-Chairperson of a Committee, you must be in the House at 2.30 p.m. There is no reason for the Speaker to sit and wait for quorum when there are Members with business to be transacted on the Floor. When we have Chairpersons who should be responding...

(Hon. Moses Kirima walked into the Chamber and spoke off record)

This kind of behaviour where the Member for Central Imenti walks in and shouts that he is here... He should know that he should have been here at 2.30 p.m. We are not in a market place in Central Imenti. Hon. Deputy Speaker, as I was saying, it is imperative that you reiterate from your seat, the need for Members to be in the House, especially Chairpersons and Vice-Chairpersons of committees. If all the Members who were to ask questions and requests for statements were in the House, then we would need the Chairpersons and Vice-Chairpersons to respond and tell them when to expect an answer. Probably, that is why the Members who were to ask questions are not here. They know there is nobody to respond to them.

I want to tell Chairpersons from both sides of the House to take their work seriously. If you do not, we have another 280 Members who can take those positions. Do the honourable thing if you do not have time for the House. As Hon. Junet Mohammed says, we are in a season of impeachment. I am not encouraging anyone to impeach them but, if need be, please, impeach these Chairpersons and Vice-Chairpersons if they cannot be in the House.

(Laughter)

Thank you, Hon. Deputy Speaker.

Hon. Deputy Speaker: Hon. Members, what the Leader of the Majority Party has said is part of what was resolved during the leadership retreat in Naivasha. I know that Members have proposed that Chairpersons be changed. I will restrain myself from putting that question until the substantive Speaker is in the Chair.

Hon. Clive Gisairo (Kitutu Masaba, ODM): On a point of order, Hon. Deputy Speaker.

Hon. Deputy Speaker: Meanwhile, before we proceed, Member for Kitutu Masaba, what is your point of order?

(Hon. Parashina Sakimba stood up in his place)

No! Please, sit down. There is someone else on their feet.

Hon. Clive Gisairo (Kitutu Masaba, ODM): Thank you, Hon. Deputy Speaker. With all due respect to the Leader of the Majority Party, I was worried whether he is in order, knowing very well that our constituents are watching us on television. Is it in order for him to name individuals and read a list whereas some of the Members he has named were here during the morning session all the way to the end? They are on their way coming and so, they have not missed their attendance! That naming can be very damaging!

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

Yes, the Order Paper is a public document and today there is no Cabinet Secretary who is coming here. No one is under obligation to be here to create quorum. If you have a problem with your Chairpersons, deal with them. If you want us to impeach them, we will do so. But you cannot name us on live television for not attending. We are answerable to our people who elected us. So, the Leader of the Majority Party is not the prefect to read the names.

Thank you, Hon. Deputy Speaker.

Hon. Deputy Speaker: Member for Kitutu Masaba, I do not think any of the Chairpersons have given you a brief to be their advocate. They will speak for themselves.

(Hon. Clive Gisairo stood in his place and spoke off the record)

Member for Kitutu Masaba, please, be seated. Yes, you do not hold brief for them. They shall respond on their own behalf. I now give this opportunity to Hon. Sarah Korere.

Hon. Sarah Korere (Laikipia North, JP): Thank you, Hon. Deputy Speaker. I agree with the Leader of the Majority Party that the people who are bestowed with leadership must be held accountable. Regarding the Cabinet Secretaries, our very good friend and sister, Hon. Soipan Tuyu, lost her brother and he was being buried today. I was to attend the funeral, but I cancelled. This is because the Cabinet Secretary was to appear before this House to answer many Questions, among them the issue of the Doldol-Nanyuki Road. It has been a pain in our flesh for a very long time.

It would be good if the cabinet secretaries notified us of the cancellation in good time. We have just heard he is not coming and yet, we had the whole of yesterday. Last time, before we went on recess, the Question Time was cancelled on the last day. They should try to be sensitive because we have a lot of things to do. I know some Members who are appearing on that list are not here today because they are in Narok attending the burial. The Leader of the Majority Party should be a bit sensitive and kind to Hon. Members.

Hon. Deputy Speaker: I think the Leader of the Majority Party has noted that.

(Hon. Parashina Sakimba stood up in his place)

Member for Kajiado South, you are out of order for standing up before I give you an opportunity to speak. I am following the order of requests. Before you placed your request, the Member for Kitutu Masaba and Hon. Sarah Korere had already requested. So, you were third in line.

(Hon. Parashina Sakimba spoke off the record)

When you decide to request properly, press the intervention button and I will give you an opportunity. As long as you heckle from your seat and wave your hands at me rudely, I will not give you an opportunity. Let us proceed. Hon. Tandaza Kassim, you are next.

Hon. Kassim Tandaza (Matuga, ANC): Thank you, Hon. Deputy Speaker. My point of order is about the Office of the Clerk. We are the representatives of the people and so, when you have a Question to be answered by the Cabinet Secretary, it is from our constituents. In most cases, I alert them that on a particular day, I will be on the Floor of the House articulating the issues that have been paining them. It would be in order that once you receive the communication from the Cabinet Secretary of their unavailability, you also inform those with Questions. It is so that they can also tell their constituents that their Questions will not be answered.

Otherwise, you put us in a difficult situation when we have told our people that we will represent them and it does not happen. It looks like we do not know what is supposed to happen or we are lying to them. They think we are not representing them and yet, the Office of the Clerk got the information, but it was not shared.

Hon. Deputy Speaker: Hon. Kassim Tandaza, Member for Matuga, you have made a valid point. The Leader of the Majority Party has taken note of that. The fact that Members have said it is good for them to know in due time is noted. The Leader of the Majority Party will communicate that to the members of the Executive.

Hon. Members, allow me to re-order the Order Paper so that we go to Order No. 8 and then come back to Statements. Before I do that, allow me to make an announcement.

Hon. Members, I wish to introduce to you a delegation of eight members of staff from the Suna West National Government Constituency Development Fund (NG-CDF) Office, who are seated in the Public Gallery. On my own behalf and that of the National Assembly, I welcome them to Parliament and wish them fruitful deliberations. Thank you.

Next Order.

(Hon. Junet Mohamed spoke off the record)

Hon. Deputy Speaker: Hon. Members, before we go to Order No. 8, I will allow the Member for Suna East to welcome our guests on our behalf. Please, make it brief.

[The Deputy Speaker (Hon. Gladys Boss) left the Chair]

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

Hon. Junet Mohamed (Suna East, ODM): Hon. Deputy Speaker, I want to seek your indulgence on a matter that...

Hon. Temporary Speaker, when I saw a black man, I knew there was a change of the Chair. I want to bring to the attention of the House a matter that is very important.

As you are aware, our main business is legislation. One of the biggest predicaments we have faced on issues of legislation is public participation. I want the House to take note of the Supreme Court ruling which happened the other day, on the Finance Bill, which had been suspended by the courts. The Bench at the Supreme Court did some thorough work. I want to congratulate them because they laid the basis and foundation for proper public participation.

I want to urge Hon. Members to read that judgement because it has helped this country. It has cleared the path for Parliament to do proper legislation. For the last 10 years or so, since the new Constitution was enacted, Parliament could not do its business. For any legislation or Act of Parliament that was assented to by the President, somebody would go to the High Court which then would declare that Act unconstitutional. In actual sense, an Act can have 73 or 80 clauses but, instead of a judge declaring that 10 or 15 clauses have a problem, many a times, judges would declare Acts of Parliament unconstitutional. I read the judgement of the Supreme Court last night and it gave me a lot of hope.

I must bring to the attention of Hon. Members that the country is going in the right direction in terms of legislation. One of the best things the Supreme Court said is that Parliament does not have to convince the public on what they are doing. They just need to inform them.

We do not have to convince them because we are here to legislate on behalf of Kenyans. We are exercising the sovereign power that is delegated to us. The Supreme Court judges, in their own wisdom, said that we just need to inform the public. They do not have to agree with you because legislation is not done in public. It is done on the Floor of this House. One thing that shocked me about public participation is that a judge declared an Act of Parliament unconstitutional. He said that the advert that was released to the public was done in English and not Kiswahili and yet, he was delivering his judgement in English. He did not do it in Kiswahili. Without belabouring the matter, it is time for the Public Participation Bill to come to this Floor of the House. The Supreme Court has spoken on it. It has cleared the path. Now we need to get a proper Public Participation Bill on the Floor of the House so that we can dispense of that matter once and for all.

Kenyans have suffered in the sense that any legislation that is made by their representatives is normally declared null and void by the courts. The courts are legislating through the back door. That matter must come to a rest. I want the Leader of the Majority Party to weigh in on this matter.

I am also concerned about the issue of femicide. Our women are being killed *kienyeji*. Today, one has been killed and her body parts thrown in Lang'ata, though she resided in Eastleigh. We also need to talk about that matter. Let the Leader of the Majority Party leader pronounce himself on the issue of the Supreme Court and public participation.

Thank you, Hon. Temporary Speaker.

Hon. Kimani Ichung'wah (Kikuyu, UDA): Thank you, Hon. Temporary Speaker. Let me first commend the Leader of the Minority Party, Hon. Junet Mohamed, for raising this issue on the matter of the judgment. I also take this opportunity to commend the Supreme Court. The architecture of our Constitution, and we must thank God that under the 2010 Constitution, the Supreme Court came into being. As an advisory court, they have now set the pace, as Hon. Junet Mohammed has said, for us to enact substantive legislation to guide our public

participation exercises in the legislative processes of this House, the Senate, and our county assemblies.

I want to agree with the Leader of the Minority Party that in line with Article 2 of our Constitution, the people may exercise their sovereign power either directly or through their democratically elected representatives, and those democratically elected representatives are the men and women who sit in this House and the Senate but, more so, in this House because this House represents the people. That is why you will find also in this Constitution, that many of the Bills that emanate from this House can become law without going to the Senate. We represent the people while our Senate colleagues represent our counties. That is why the Constitution provides that Bills that touch on counties and county governments go to the Senate. They may also emanate from the Senate but must be completed in this House.

I have always argued, since 2013, when we adopted the bicameral Parliament system, that we do not need to belabour which House is superior to the other. If one House can enact legislation and it becomes law by itself, and the other House cannot enact legislation and it becomes law by itself and it has to go to the other House, then it goes without saying which House is the Upper House. That is not the point though. The point is that public participation has been abused by a number of our judges, especially in the High Court. I must commend the Supreme Court and those other judges who have exercised judicial restraint in determining what constitutes good public participation. I have read previous judgments on qualitative and quantitative analysis of what is good public participation, but the Supreme Court now has put it very well. I want to agree with Hon. Junet that it was misconstrued that public participation is a referendum. During the public participation exercise of the impeachment process of the former Deputy President, some argued that way. Some believed that we were going to carry out a referendum exercise. Public participation involves going to the public to collate the views of the public, but it is still up to the Members of Parliament to consider the views of the members of the public, and they may not necessarily be the right views. It is said that opinions are as many as.... I do not want to say what they say out there. You know what they say, that opinions are as varied as you know what, and everybody has theirs. Therefore, regardless of the many views we collect from the public, the onus is still on us as lawmakers to consider all those views and balance them against what the legislation that we are making seeks to achieve.

I will take you back to the Finance Bill, 2024. I have seen the Cabinet Secretary for National Treasury and Economic Planning bring several proposals. They were very good proposals that were carried in the Finance Bill 2024. We went out to collect views and the Member for Molo, Hon. Kimani Kuria, spent, I think, close to 14 days seated in County Hall, listening to Kenyans. They came in their numbers to give views. They said they do not want taxation on bread. They also said they do not want to see taxation on motor vehicles. Kimani Kuria and the Departmental Committee on Finance and National Planning did a Report which was tabled and adopted by this House in the Second Reading, agreeing with members of the public that there should be no taxation on bread and motor vehicles.

Kenyans from the manufacturing industry appeared before the Departmental Committee on Finance and National Planning and told them that we are killing our manufacturing industry in Kenya because we are encouraging more imports than local manufacturing. It was players in the manufacturing industry, through the Kenya Private Sector Alliance (KEPSA) and the Kenya Association of Manufacturers (KAM), that brought proposals that would protect our local manufacturing industry. They made proposals to levy excise duty on completed or finished products being imported from China, the Far East and Europe, including diapers and sanitary towels. But what happened?

The public was incited to believe that this House was levying tax on all diapers and sanitary towels. Our young daughters were telling us in their parlance out there that: “*Hawa Wabunge hata hawataki tunyeshesasa*”. It was embarrassing to watch our teenage daughters

tell us that: “*Hatutaki wanyeshe*”, while it was them that we sought to protect. It is our young mothers, daughters, our sisters we sought to protect from cheap, finished products of sanitary towels, which nobody can authenticate how hygienic they are in terms of the standards that they have been manufactured under in the West and the Far East. Some of those Far East countries have no standards. You get what you pay for. That is what we sought to levy excise duty on so that we protect that local manufacturer who is manufacturing sanitary towels in Mlolongo, Ruiru, Juja or Nakuru. It is the farmer in Western Kenya and parts of Nyanza, that we sought to protect, who have now been given BT cotton seed to produce cotton for the value addition of those manufacturing industries.

It is the Kenyan youth who are on the streets we sought to protect to create jobs for them in those factories, but what did we do? We were told to reject. We rejected it, and we lost jobs. We exported jobs to the Far East. No wonder when the Cabinet Secretary for Labour and Social Protection, Dr Alfred Mutua, announced 3,000 jobs in Qatar, 30,000 Kenyans turned up at Kenyatta International Convention Centre (KICC).

I want to plead with Kenyans and, more so, our fourth estate to be responsible in how we communicate with our people. We end up misleading our people. At times, even political leaders are guilty of this. We end up saying what we think is popular with the public, but not what is right. I have said this before that what is right is not necessarily what is popular.

With regard to public participation, I want to ask all our committees that when we embark on public participation, our work is to listen to the views of the public, balance them against the legislative proposals that we have and the policies that we seek to anchor that legislation on. It is upon a Member of Parliament, upon being elected, for example, the Member for Kajiado South, the people of Kajiado South believe that he is the best among their people and they entrusted him to come and legislate on their behalf. Therefore, they expect the Member for Kajiado South or the Member for Kikuyu to know better. By knowing better, they should know a certain legislative proposal that is before the House is anchored on the policy of import substitution. Therefore, you must balance the question of import substitution and the policy of import substitution against the legislative or the tax proposals that are being made, vis-a-vis the interests of business people who are importing cheap products that endanger our women and young girls. It is only these honourable men and women in this House who can do that.

In conclusion, let me inform the Leader of the Minority Party that the Office of the Attorney-General is in the wee hours of finalising the Public Participation Bill. A substantive Bill that is now even further informed by what the Supreme Court has said will guide our public participation exercise moving forward, so that we do not find many of the statutes that we enact into law in both Houses being rendered unconstitutional based on public participation.

With those few remarks, let me conclude by commending the honourable ladies and gentlemen in the Supreme Court who rendered that judgement that was very well informed. We can now comfortably say that the Supreme Court has men and women who weighed in on the issues that will guide our country very well moving into the future.

Thank you, Hon. Temporary Speaker.

Hon. Silvanus Osoro (South Mugirango, UDA): Thank you very much, Hon. Temporary Speaker. I also want to join the Leader of the Minority Party and the Leader of the Majority Party in commending and appreciating the judgement that was made by the highest bench — the Supreme Court — regarding public participation.

Just like the Leader of the Minority Party has said, this can only be compared to a study in jurisprudence that you and I know on a particular case, the Spelunking Explorers. Due to lack of written law and quality jurisprudence that would have either convicted or acquitted the Spelunking Explorers, there arose confusion in the bench. The Chief Justice could hardly make

decisions in that case. We found a positivist on the bench - and I think it was Justice King. We also found a clear naturalist and one we even never wanted to touch.

This question of public participation has brought a lot of confusion within our courts. There are differences in views of the judges. One judge's view in Kajiado High Court differs from the one in Kisii, Kerugoya, Mombasa, and another one in South Mugirango — and very soon we will get to a High Court. We are lucky to have a magistrate's court at the moment. When you read such judgment, you will then be left wondering which particular judgment to refer to when you are creating your jurisprudence in terms of making public participation worthwhile. That is why the Supreme Court needed to come up with a clear distinction on what this House ought to do in terms of public participation. What we are suffering from is what I would call judicial activism, and I say this with tremendous respect to members of the Judiciary, where some members of the Judiciary decided to be activists and start making populist decisions. In fact, you would even be forgiven if you actually predict the outcome and then it comes exactly as it is. You would even have seen conversations on social media on how a judge would interpret this public participation direction and the following day, when you read that judgment, it turns out exactly as it was written by some people on social media. That is mere judicial activism!

The direction the Supreme Court has actually given us, as far as public participation is concerned, the right jurisprudence. But, again, I challenge this House to expedite the process of creating this law on public participation and create parameters; in as much as now we are using the jurisprudence that has been created. It is important for this House to expedite such laws and the Chairman of the Departmental Committee on Justice and Legal Affairs is here and is well noting. We should expedite such a process so that we do not have similar confusions in future where the same procedure used on a particular Bill is rendered mute while a similar procedure that has been used on a different Bill has gone through a similar procedure and is passed and enacted into law. That kind of confusion could not be explained. We had lost quality on making our jurisprudence in courts and we really must commend the honourable judges for coming up with such very serious directions as far as this jurisprudence is concerned.

Thank you very much.

The Temporary Speaker (Hon. Peter Kaluma): Chairman of the Departmental Committee on Justice and Legal Affairs.

Hon. George Murugara (Tharaka, UDA): Thank you very much.

(Hon. Parashina Sakimba spoke off the record)

The Temporary Speaker (Hon. Peter Kaluma): I have not allowed you to speak. It takes the Speaker to recognise you. When the Speaker does not allow you and you insist, you become disorderly and it may cost your presence this afternoon. So, you are not yet recognised. Let Hon. Murugara proceed.

Hon. George Murugara (Tharaka, UDA): Thank you, Hon. Temporary Speaker. The issue of public participation is a very important issue in this country. We laud the Supreme Court for the interpretation and the guidance it has given to the House and to Kenyans as regards what exactly is public participation, and to what extent should this House consider views that are collected from the public during public participation.

Indeed, it is true that many people think that when we go for public participation, we should be collecting views and votes from the public so that if the public votes against whatever it is we are proposing, then it fails. Nothing is far from the truth because the fact remains public participation is purely to ensure that our public is well-informed as regards the legislative proposals we have here or whatever action Parliament is taking so that the public does not plead ignorance at any time.

I have two very important things to say. The Departmental Committee on Justice and Legal Affairs has two drafts of public participation Acts which we are looking at. In fact, we had scheduled December to be our deadline so that we are able to produce something for the House to look at, but we are happy to hear the Hon. Leader of the Majority Party say that they are also working on an Act of Parliament which will be coming to us in due course and which we will be debating when the right time comes. Part of public participation is the question which recently, on Monday, the newly appointed Deputy President of the Republic of Kenya Prof. Kithure Kindiki posed to the Judiciary. What is the difference between public interest and national interest, and which of the two is higher than the other?

As far as public interest is concerned, and that goes with public participation, there may be an element of mobilisation towards rejecting a popular idea of the Government. Is that what you should be calling public participation and public interest? Or we should be looking at the bigger good of the country. What is beneficial to the country? We should be carrying that as actually what entails public interest. All this is going to come before the House. We have to prepare ourselves so that we can enact one of the best laws in the country. It should be guided by the Judiciary so that we produce an Act of Parliament on Public Participation which is acceptable across the board.

Thank you very much.

The Temporary Speaker (Hon. Peter Kaluma): Hon. Kimani Kuria, you want to speak to this? I hope you are not laying.

(Hon. Kimani Kuria spoke off the record)

Okay.

Hon. Kuria Kimani (Molo, UDA): Hon. Temporary Speaker, I want to join my colleagues in celebrating the Solomonic wisdom of the ruling by the Supreme Court of the Republic of Kenya. The reason why the Finance Bills for the last two years have become a subject of discussion in the whole country is because the Departmental Committee of Finance and National Planning made a deliberate decision that we would engage members of the public to seek their views and to have their voices heard on the matters that are going to affect their lives and matters that are going to affect our economy. I, however, noticed that during the process, perhaps, what we should have started with was civic education on what a law-making process is and how it is done. We even saw very educated people display their ignorance on the process of law-making. I dare say that we had one of the most progressive reports that the Departmental Committee on Finance and National Planning tabled in this House and was approved at the Third Reading.

The issues that members of the public were raising had sufficiently been addressed in our Report. We are finding now that those matters that should have been passed then, for example, reducing the weight of taxes on payslips by making those statutory deductions like Social Health Authority (SHA) and Housing Levy become tax allowable for PAYE, were matters that we had considered. We have thousands, if not millions, of Kenyans that were locked out of the tax amnesty. It is a matter that we had considered and extended the tax amnesty to next year. We said that you pay your principal tax or you have a commitment to your principal tax and you have your interests and penalties all forgiven. Those matters were left and we are hoping that, as we consider the several other legislative proposals that are coming to this House, both the House and the members of the Executive should consider civic education. I am happy because civil societies, activists, and even upcoming politicians have now taken upon themselves to understand how laws are made in this country.

Even as we had the previous discussion about the impeachment of the Deputy President, there were questions about comparing how the process of assumption of Office of a Deputy

President was compared to that of the President of Botswana. The difference is we have our 2010 Constitution. We have several laws in this country that spearhead such a programme and until the time when we change our Constitution or we change those particular statutes and laws, then that will be the procedure.

Therefore, I am urging Kenyans that during our deliberation on the various legislative proposals and Bills that are coming to this House, let us follow our Constitution and laws. Let us take time to understand the law-making process because, unfortunately, we have no shortcut. We must adhere to our 2010 Constitution as passed by the majority of the people in this country.

I beg to submit.

The Temporary Speaker (Hon. Peter Kaluma): I will only give two more Members the opportunity to comment and then we can go back to the main business. The Hon. Deputy Leader of the Majority Party followed by Hon. Beatrice Elachi.

Hon. Owen Baya (Kilifi North, UDA): Thank you very much, Hon. Temporary Speaker, for giving me an opportunity to weigh in on what Hon. Junet has said about the ruling of the Supreme Court. It asserted the doctrine of separation of powers. It has simply demonstrated that Parliament has its work cut out for it and it should be allowed to do it. Equally, the Judiciary also has its work cut out for it and it should be allowed to do it. This is a landmark ruling as delivered by the Supreme Court. That ruling will allow this country and Government programmes to move forward. The Article on public participation became a waterloo in the Constitution itself. The implementation of laws could not move forward because it was always taken back by the issue of public participation.

The High Court has continuously abused Article 165(3)(d)(i) of the Constitution which states that the High Court has jurisdiction on the interpretation of laws, including whether a law is inconsistent with the Constitution. That Article has been abused by the High Court such that they have become a supervisor of the Legislature, which is not the role of the courts in this country. The courts cannot be supervisors. They have been given the mandate under Article 165 of the Constitution to check and interpret the extent to which a law is inconsistent with the Constitution.

The principle of separation of powers must be respected. Parliament must be given an opportunity to work. Parliament cannot be supervised by the High Court. However, the High Court has a role to ensure that what we pass here is consistent with the Constitution. They picked the issue of public participation and wanted every law to fall on its sword. I thank the ladies and gentlemen of the Supreme Court for asserting that Parliament should be given an opportunity to work. We also need to ensure that the courts conduct public participation on each ruling that they make to ensure that it is cross-cutting.

I want to thank Hon. Junet for bringing up this matter. I also thank the courts and the Chief Justice for ensuring that public participation is not used to abuse Parliament's authority.

Thank you, Hon. Temporary Speaker.

The Temporary Speaker (Hon. Peter Kaluma): Hon. Members who are leaving, I request for your patience because we need your numbers in Order No.8. Remember, we altered the order of business to await some good numbers. So, I request that we allow Hon. Beatrice Elachi to say something on this, and then we go back to the Orders which require your numbers. I ask for your patience to stay within the Chamber.

Hon. Beatrice Elachi (Dagoretti North, ODM): Thank you, Hon. Temporary Speaker. Let me also appreciate the Leader of the Minority Party for bringing up this matter. I thank the Supreme Court because they have gone back to the Supreme Court Act. Indeed, the purpose of the Supreme Court is to deal with public interest. Our aspiration for this country was to have such a court. Under Section 3(c) of the Supreme Court Act (Cap.9B), the objects of the Supreme Court include the development of rich jurisprudence that respects Kenya's history and traditions, and facilitates its social, economic and political growth. Looking at all the cases

that have gone to the courts, one of the things that the High Court has always disregarded is public interest. What is public good? The Judiciary is an arm of Government that utilises public resources. They receive and spend the resources, and then nullify a whole Bill and yet, they have benefited from that same law. That makes one wonder what happens in our country.

We have gone through a rough time on matters of public participation. The last ruling from the Kerugoya High Court forced us to conduct public participation at the constituency level. At least, we have now come to an agreement between the two arms of Government that we just need to notify the public on public participation. Remember that Kenyans are not the type of people who you can force to attend public participation. Some will come but demand facilitation to attend. It is not something that they participate in willingly. That has really hurt many of the decisions that we have made. Just as I said in the morning, we also need to speak to the Senate. That is because most of those cases are not about the courts, but about us as Parliament. We have to re-think the issue of suing each other in court.

Lastly, we also need to appeal the case of the National Government Constituencies Development Fund (NG-CDF) at the Court of Appeal. As much as we know that we will change the law, it is important to appeal to a court that understands public interest. This is a law that has served Kenyans for more than 25 years. What else can you do if you are a court of law? Going through the NG-CDF judgment, you wonder what the judges were reading. It is a very unfortunate judgment. I wish that we could go back and re-look at the judgment on the NG-CDF and deal with it once and for all.

Thank you, Hon. Temporary Speaker.

The Temporary Speaker (Hon. Peter Kaluma): Hon. Eckomas Mwengi Mutuse.

Hon. Mwengi Mutuse (Kibwezi West, MCCP): Thank you, Hon. Temporary Speaker, for giving me the opportunity to contribute on the important issue that has been brought by Hon. Junet Mohamed. In my understanding, the Supreme Court is supposed to balance between the philosophical, technical and political interests of a country. If you look at the historical foundations of the creation of the Supreme Court, right from the United States of America, you will realise that it is supposed to create stability in a country. Therefore, for that particular purpose and historical understanding, allow me to join the rest of the Members of this House in congratulating our Supreme Court Judges for balancing the philosophical, technical and political interests to determine the place of public participation in our governance system.

Having said that, and having taken a cursory look at the decision of the Supreme Court, I realise that it laid grounds, factors, and the tests to be relied upon in terms of initiating public participation for legislative work and decisions on policy matters in terms of how those decisions will be processed through the legislative system. Most importantly, it laid grounds for the tests which courts of law will use to determine whether public participation has been applied satisfactorily, both qualitatively and quantitatively. Therefore, the invitation to this House to swiftly enact a law on public participation is most welcome.

As my Chairman, Hon. George Gitonga Murugara, has said, in the Departmental Committee on Justice and Legal Affairs, we had begun looking at ways of closing this gap. As the Committee of the House which is involved in matters of justice and law, we were also aware that we cannot continue having a legal lacuna in terms of public participation. As Members have aptly put it, a lot of good legislation for the country has been shot down because of misunderstandings where different judges read from different scripts, as to the place of public participation. Therefore, I will be very supportive when the State finally publishes the public participation law in line with the decision of the Supreme Court.

As this House considers the issue of public participation, we may also need to consider the issue of a referendum law. This is because hand-in-hand with public participation is the place of a referendum in our governance system. Therefore, I urge the Leader of the Majority Party to also liaise with the Government so that even as we enact a law on public participation,

we also enact one on referenda. This will ensure that our country is adequately resourced legally to deal with those two issues.

Thank you, Hon. Temporary Speaker, for giving me the opportunity to contribute. I also assure the House that having successfully impeached the former Deputy President, I will not impeach any other person soon because we cannot go lower than that.

The Temporary Speaker (Hon. Peter Kaluma): Hon. Members, I think we will allow the Members who have spoken on the matter to have done so on behalf of the whole House.
Call Order 8.

MOTIONS

CONSIDERATION OF REPORT ON THE KENYA DRUGS AUTHORITY BILL

The Temporary Speaker (Hon. Peter Kaluma): Order, Hon. Members. I will proceed to put the Question.

THAT, this House do agree with the Report of the Committee of the whole House on its consideration of the Kenya Drugs Authority Bill, (National Assembly Bill No.54 of 2022) up to Clause 79, and seek leave to sit again.

(Question put and agreed to)

Next Order.

ADOPTION OF FIRST REPORT ON IMPLEMENTATION STATUS OF REPORTS AND PETITIONS AND RESOLUTIONS PASSED BY THE HOUSE

THAT, this House adopts the First Report of the Select Committee on Implementation on the Implementation Status of Reports on Petitions and Resolutions passed by the House, laid on the Table of the House on Thursday, 26th October 2023.

The Temporary Speaker (Hon. Peter Kaluma): The Chairperson of the Select Committee on Implementation to reply as briefly as possible because we want to put the Question on this one too.

Hon. Raphael Wanjala (Budalangi, ODM): Thank you, Hon. Temporary Speaker. I beg to reply and thank the Hon. Members for their contributions. The most important thing that I want to ask the Cabinet Secretaries and departmental heads, is that, when they do budgeting, they need to include some monies to enable the implementation of some of the resolutions.

I wish to donate two minutes to Hon. Mwenje.

The Temporary Speaker (Hon. Peter Kaluma): Hon. Raphael Wanjala, the Chairperson, Select Committee on Implementation, if you intend to donate some of your minutes, you do so before you reply. Unfortunately, those Members have now been overtaken. Therefore, go ahead and just reply.

Hon. Raphael Wanjala (Budalangi, ODM): Hon. Temporary Speaker, I beg to reply.

(Question put and agreed to)

The Temporary Speaker (Hon. Peter Kaluma): We had re-organised the Order Paper. Could you now go back to Order 7? We pended the laying of Papers and some Statements.

PAPER

The Temporary Speaker (Hon. Peter Kaluma): Chairperson, Departmental Committee on Finance and National Planning.

Hon. Kuria Kimani (Molo, UDA): Hon. Temporary Speaker, I beg to lay the following Paper on the Table:

Report of the Departmental Committee on Finance and National Planning on its consideration of the Equalisation Fund (Administration) Bill, (Senate Bill No.14 of 2023).

The Temporary Speaker (Hon. Peter Kaluma): Thank you very much. Please, go ahead and lay the Paper.

(Hon. Kuria Kimani laid the Paper on the Table)

STATEMENTS

The Temporary Speaker (Hon. Peter Kaluma): Hon. Peter Francis Masara, Member for Suna West.

DEMISE OF VETERAN MUSICIAN, PRINCESS JULIE

Hon. Peter Masara (Suna West, ODM): Hon. Temporary Speaker, allow me to first welcome the delegation from Suna West National Government Constituency Development Fund (NG-CDF), both the committee and staff, who are today's guests of this august House. I appreciate even those who are not here, for working so hard to make Suna West shine the way it has.

Hon. Temporary Speaker, pursuant to the provisions of Standing Order 43, I wish to make a Statement regarding the untimely passing-on of a veteran musician, Mrs. Lillian Auma, popularly known as Princess Jully Alilly Nyajogina, on Saturday, 12th October 2024, while undergoing treatment at the Migori Referral Hospital.

The late Princess Jully was a veteran Luo Benga singer who hailed from Suna West and became popularly known for the viral song *Dunia ni mbaya*. The song that became a social national anthem was used to create awareness regarding HIV and AIDS. She highly contributed to the society through her music and fought against the stigma that is associated with the disease.

On my behalf and that of the people of my Constituency, I take this opportunity to condole with the family and friends of the Late Mrs. Lillian Auma popularly known as Princess Jully, the musical fraternity, and the people of Kenya at large for the loss of a veteran musician.

May her soul rest in eternal peace. Amen.

The Temporary Speaker (Hon. Peter Kaluma): Leader of the Minority Party.

Hon. Junet Mohamed (Suna East, ODM): Hon. Temporary Speaker, I wish to give my condolences to the family of the late Princess Jully.

Migori County has lost a very serious artist who used her music to teach people many things. Princess Jully, at the height of her career, when Kenyans were faced with the scourge of HIV and AIDS, came up with a set of music that has taught people how to behave and also how to make sure that Kenyans can live in a manner that they can stay away from that kind of a disease.

Her burial is tomorrow and I say *pole* to the family. We have lost a great artist in music. I hope and believe that one day, somebody like her will emerge from our county and who is going to be useful to the population.

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With those few remarks, I thank you.

The Temporary Speaker (Hon. Peter Kaluma): Thank you, Hon. Peter Masara, for your Statement, and thank you Leader of the Minority Party for your recognition of the late Princess Jolly.

On behalf of the National Assembly, we record our condolences and pray for God's comfort and strength to the family of Princess Jolly.

Hon. Julius Sunkuli.

STATUS OF TWO ORGANISATIONS OPERATING IN
KILGORIS CONSTITUENCY

Hon. Julius Sunkuli (Kilgoris, JP): Hon. Temporary Speaker, pursuant to the provisions of Standing Order, 44(2c), I rise to request for a statement from the Chairman of the Departmental Committee on Administration and Internal Affairs regarding two organisations known as SOS Mission and SOS Adventure, that are operating in Kilgoris Constituency.

Several concerns have been raised regarding those organisations that have established themselves near River Ole Ntore in Kilgoris Town under the names of SOS Mission and SOS Adventure. It is unclear whether those two entities are distinct or a single organisation.

Presently, majority of their employees appear to be foreigners. The organisations operate numerous heavy commercial lorries and other vehicles. Additionally, they have constructed a large warehouse and taken up premises to operate a restaurant. The objectives and activities of those two organisations are not clear to the local community; thus, raising security concerns regarding their presence in the area.

It is against this background that I request for a statement from the Chairman of the Departmental Committee on Administration and Internal Affairs on the following:

1. A comprehensive report on the foreigners who have settled in Kilgoris under the auspices of the SOS Mission and SOS Adventure.
2. Provide information on whether the two organisations are duly registered and licensed to operate in the county, and whether their employees have valid work permits.
3. Details regarding the operations and activities of those organisations in Kilgoris.
4. The exact relationship between SOS Mission and SOS Adventure.

Thank you, Hon. Temporary Speaker.

The Temporary Speaker (Hon. Peter Kaluma): Is the relevant Committee Chair in the House? The Hon. Gabriel Tongoyo is not there. The able Vice-Chair, Hon. Dido Raso, is present. Would you commit on when you can give the statement?

Hon. Ali Raso (Saku, UDA): Thank you very much, Hon. Temporary Speaker.

I believe the matter raised by Hon. Sunkuli is a national security concern. Going further, it is within the realm of NGOs. Most likely, they might have been allowed to operate in Kenya by the NGOs Coordinating Board. We will give a brief to the House within two weeks.

The Temporary Speaker (Hon. Peter Kaluma): Hon. Julius Sunkuli, are you satisfied with the commitment? No doubt.

Hon. Julius Sunkuli (Kilgoris, KANU): Yes. Of course, the two weeks. I am not looking at it from the NGO angle but from the security angle. We do not know what those people are doing. Two weeks is a good time to do that research.

The Temporary Speaker (Hon. Peter Kaluma): Thank you for indulging the Committee to that extent. I will go back to the Order Paper. There was a response to the statement requested by Hon. Mohamed Adow. The Chairman of the Departmental Committee on Agriculture and Livestock, do you have the response? Is the Chair or Vice-Chair in the House? Do you have the report ready? Give him the microphone.

Hon. Brighton Yegon (Konoin, UDA): Yes, Hon. Temporary Speaker, I have a Statement regarding the status of the strategic promotion and development of dry land agriculture in Kenya.

The Temporary Speaker (Hon. Peter Kaluma): Is Hon. Mohammed Adow in the House? That is good then. We have a response to his request of Statement.

STATEMENTS

STATUS OF STRATEGIC PROMOTION AND DEVELOPMENT OF DRY LAND AGRICULTURE IN KENYA

Hon. Brighton Yegon (Konoin, UDA): On the general overview of the agricultural sector, dry land agriculture in Kenya is vital for enhancing food security, improving livelihoods and promoting sustainable development in arid and semi-arid areas. Over 75 to 80 per cent of the land in Kenya is classified as dry lands. Initiatives focussing on that sector have been essential for addressing challenges that are posed by climate change, land degradation and population growth.

There is something in the policy and strategic plans that is aimed at promoting dry land agriculture in arid and semi-arid regions and a clear framework to guide the investment and interventions, including the development of water infrastructure for irrigation purposes. The Ministry of Agriculture and Livestock Development has developed the following policies and strategies to promote dry land agriculture:

1. The National Agriculture Policy that aligns dry land agriculture initiative with Kenya's Vision 2030.
2. The agricultural sector transformation and growth strategy emphasises sustainable agricultural practises that enhance food security through transformation of agricultural sector for growth.
3. Climate change policies integrate dry land agriculture into National Climate Change Action Plan, the Kenya Climate Smart Agriculture Strategy, the Climate Smart Agriculture Implementation Framework, the Climate Smart Agriculture Monitoring and Evaluation Framework to enhance resilience to climate impacts. This includes promoting adaptation with mitigation benefit strategies and sustainable land management.
4. Financial support and investment is done through public-private partnership to implement or invest in infrastructure and technology for dry land agriculture. This includes access to credit facilities and insurance products that are tailored to farmers in dry land areas.
5. On research and development, agricultural research institutions are supported to do research that is focussing on locally unique challenges and opportunities within dry land agriculture, fostering innovation and development of locally adopted solutions.
6. Social safety nets and food security programmes are done by ensuring alignment with programmes that are aimed at improving food security such as National Safety Net Programme. The programme supports vulnerable populations in dry land regions during periods of drought, crops failure such as crops and livestock insurances and subsidies such as fertiliser seeds and breeds.

We have initiatives the Government has put in place to support farmers in Arid and Semi-Arid Lands (ASALs) and regions, including the provision of knowledge and tools needed to engage in sustainable and productive agricultural activities. The Government is implementing several projects that are aimed at supporting farmers in ASAL regions. One of

the projects is Small-Scale Irrigation and Value Addition Project (SIVAP) which covers Tana River, Machakos, Makueni, Kitui, Murang'a, Nyeri, Meru, Tharaka Nithi, Nyeri, Nyandarua and Bomet counties. The project period started in 2016 and continues up to 2025.

We have the Drought Resilience Sustainable Livelihoods Programme (DRSLP) which covers Turkana, Baringo, West Pokot, Samburu, Marsabit and Isiolo counties. The project period is between 2013 June and it ended in 2023. We have Build Resilience for Food and Nutrition Security (BREFONS) which covers Turkana, Baringo, West Pokot, Samburu, Marsabit, Isiolo and Garissa counties. The project period is between 2022 and 2027.

The Kenya Climate Smart Agriculture Project (KCSAP) covers Marsabit, Isiolo, Tana River, Garissa, Wajir, Mandera, West Pokot, Baringo, Laikipia, Machakos, Nyeri, Tharaka Nithi, Lamu, Taita Taveta, Kajiado, Busia, Siaya, Nyandarua, Bomet, Kericho, Kakamega, Uasin Gishu, Elgeyo Marakwet and Kisumu counties. This project was started in 2014. It will end this year 2024.

There are specific steps being taken to address challenges of water scarcity, poor infrastructure and high cost of accessing input in dry land areas, particularly roads and water supply infrastructure. The challenges are addressed by implementing soil fertility, soil and water management, irrigation and drainage management, agroforestry systems, and bio-energy systems.

On SIVAP, the Project has implemented the following activities in ASAL areas: 11 irrigation schemes, 19 micro irrigation schemes, 48 water pans or earth dams, 49 boreholes and shallow wells, 41 additional boreholes under construction, 18,087 hectares catchment/watershed under development, 419 kilometres of rural roads under rehabilitation and 45.9 additional kilometres of roads under construction. Seven post-harvest handling/marketing and grading sheds have been constructed. Three additional grading sheds are under construction. Three livestock sale yards have been constructed. Four additional livestock sale yards are under construction; 12 processing facilities; 11 for honey and one for mango processing; two pasture reseeding plots of 200 acres; 205 Income Generating Activities (IGA) groups supported with assorted equipment to boost production and value addition.

The Drought Resilience and Sustainable Livelihood Program (DRSLP) has implemented a number of projects, including:

1. Seven irrigation schemes.
2. 27 water pans/earth dams.
3. 110 boreholes.
4. 10 shallow wells.
5. Five sub-surface dams.
6. 25 livestock sale yards.
7. 25 hay sheds/stores.
8. 910 hectares of commercial pasture plots.
9. Six vet laboratories have been equipped.
10. Four cattle dips have been constructed/rehabilitated.
11. 40 groups supported with value addition equipment of honey production and marketing for income generating activities.

Planned and ongoing intervention by Build Resilience for Food and Nutrition Security (BREFONS) has done the following:

1. 28 water pans.
2. 28 boreholes.
3. 28 shallow wells.
4. 28 sub-surface dams.
5. 21 Livestock markets upgraded and equipped with disease surveillance, (14 livestock markets are under construction).

6. 28 fodder banks (16 fodder banks are under construction).
7. Seven pasture demonstration plots (350 hectares) – (18 pasture plots under construction).
8. Seven irrigation schemes (800 hectares).
9. Seven Irrigation Water Users Association (IWUAs) formed and strengthened.

On the request for a provision of a report on the current agricultural policies that align with National Development Agenda, particularly Vision 2030 and the Big Four Agenda, with respect to and how the Government intends to balance investment between wetland areas and dry land regions to ensure equitable and sustainable agricultural growth across the country, I wish to respond as follows:

The agricultural policies that align with national development agenda are:

1. Agriculture Sector Transformation and Growth Strategy, (ASTGS);
2. Kenya Climate Smart Agriculture Strategy and its Implementation Framework (KCSAS, KCSAIF); and,
3. Agriculture Mechanization policy.

Hon. Temporary Speaker, that is the end of the response to a statement that was sought by Hon. Mohamed Adow.

Thank you, Hon. Temporary Speaker.

The Temporary Speaker (Hon. Peter Kaluma): Hon. Mohammed Adow.

Hon. Mohammed Adow (Wajir South, ODM): Thank you very much, Hon. Temporary Speaker. I would like to thank Hon. Brighton Yegon for attempting to answer the questions that I had asked. However, that is not the statement I sought. That is a very shallow statement that does not meet the requirements of what I had requested. The Member has just read an enumeration of what the Ministry of Agriculture and Livestock Development has done in different parts of the country.

About 80 per cent of the landmass of this country is in the arid areas, but we have continued to concentrate agriculture only in the wetlands. I also refuse the notion that terms Nyeri, Nyahururu, Meru, Bomet and Murang'a as arid or semi-arid lands. So, I am totally dissatisfied with the answer that has been provided by the Ministry. They have just enumerated projects here, including 11 irrigation schemes, 19 micro-irrigation schemes, 48 pans and earth dams, 49 boreholes, and so many others. They are not saying where exactly those projects have been initiated.

I am aware that there are farmers who are very eager to grow their own food and sell the surplus. Those farmers are struggling with lack of water. They have the land and the human resource, but they get very little help from the county governments and the national Government. That is why I brought the request for statement to the Floor of this House. I am deeply dissatisfied.

The Temporary Speaker (Hon. Peter Kaluma): Hon. Dido Raso.

Hon. Ali Raso (Saku, UDA): Thank you very much, Hon. Temporary Speaker. I represent the pastoralists in this Parliament; and over 90 Members of Parliament who come from the Arid and Semi-Arid Lands (ASALs). There is a lot of money in the Ministry of Agriculture and Livestock Development in the ASALs name, but it is not really used in the Arid and Semi-Arid Lands (ASALs). It is being used elsewhere.

I wish the Chairman of the Budget and Appropriations Committee was in the House to get it very clear from us - as Members of the Pastoralist Parliamentary Group - that if money is being borrowed from the World Bank (WB) and the International Monetary Fund (IMF) to support ASALs, it should cease because that money is not doing what it is supposed to do. Somebody is even saying that Nyeri is an ASAL. I know that some parts of Laikipia falls in the ASAL category. Some of those so-called arid areas is a new founded thing. It is fashionable to call yourself a pastoralist or you come from an ASAL area just because you want to dip your

hand into the pocket of what should help those marginalised and far-flung areas. We have been around in this country for a while. Even when you go to Nyanza, there are areas that are ASALs. However, it is a deliberate effort by those who are cutting the cake to help some for their people.

Hon. Adow's request for statement was very clear, but what has been read by the Vice-Chairman is quite dissatisfying. As Members from ASAL areas, we want to sit with the Principal Secretary and the Cabinet Secretary for the Ministry of Agriculture and Livestock Development so that they can tell us about those projects that the Chair has read because none of those irrigation projects are in the ASALs. There are very few boreholes that are there.

The response is quite dissatisfying. We cannot kill the messenger because the Chairman is just reading what the Ministry has written down. We need to cause a more deliberate meeting for the Members of the Pastoralist Parliamentary Group to sit with the Ministry and get satisfying answers.

The Temporary Speaker (Hon. Peter Kaluma): Hon. (Prof.) Jaldesa.

Hon. Prof. Guyo Jaldesa (Moyale, UPIA): Thank you, Hon. Temporary Speaker. I want to add my voice that the response given by the Departmental Committee on Agriculture and Livestock is unsatisfactory. If you tell them to list those 18 irrigation schemes and 28 boreholes, you will realise that they are not there, particularly in the ASAL areas. So, the Hon. Member was given a report that he has struggled to read in Parliament. He needed to have read it and convinced himself that what he is reading to the House is reasonable. Unfortunately, there are many people who do not live in Arid and Semi-arid Lands (ASALs) but, because they want to take advantage of affirmative action which is provided for in the Constitution, everybody wants to claim that they are in ASALs. That is why they talk of Bomet, Nyeri and Murang'a being ASALs. What ASAL is there in Nyeri? Have you seen an arid and semi-arid land in this country? Why should people who live in good climatic condition areas want to claim that they are also in ASALs? It is so that they can benefit from the little that is meant to be allocated to the people who have been marginalised since 1965 by Sessional Paper No.10 of 1965. They want to continue reaping from the little benefit that we are supposed to get as provided for in the 2010 Constitution. So, Nyeri Town cannot be an ASAL. I do not know why the tallest man wants to talk about those things.

Hon. Duncan Mathenge (Nyeri Town, UDA): On a point of order, Hon. Temporary Speaker.

The Temporary Speaker (Hon. Peter Kaluma): Hon. Mathenge, I hope you are not insisting that Nyeri Town is an ASAL.

(Laughter)

What is out of order? Under which Standing Order are you rising?

Hon. Duncan Mathenge (Nyeri Town, UDA): Hon. Temporary Speaker, I rise under Standing Order 95.

Hon. Jaldesa cannot come to this House and pretend that the classification of ASALs is based on his definition. It is a well-documented policy in this country. Kieni Constituency in Nyeri County, which occupies 52 per cent of the county, is an ASAL. In case the Hon. Member has not gone there... But I know he passes there on his way to his constituency. I have offered to give him a tour.

The Temporary Speaker (Hon. Peter Kaluma): Hon. Mathenge, that is a point of argument. You should ask for an opportunity to tell us about how those regions could be affected. Can you be done?

Hon. (Prof) Guyo Jaldesa (Moyale, UPIA): We have the Equalisation Fund which was created by the 2010 Constitution to look after those who were marginalised by the 1965

Sessional Paper. Now, everybody wants to be marginalised and everybody wants to feed on the school programme because they think...

(Loud consultations)

The Temporary Speaker (Hon. Peter Kaluma): Order. What is happening between the Members of Parliament from Meru County and the Members of Parliament from the ASAL areas? Let us allow each one of us to make their contributions. That is how we sustain a good debate. Hon. Jaldesa, be done.

Hon. (Prof) Guyo Jaldesa (Moyale, UPIA): Hon. Temporary Speaker, there are areas which have been suffering from hardships and they have been categorised as hardship areas and the people who have been working there have been given hardship allowances. Those are actually the ASALs. Even the ones from Kisii, because they get too much rain, say they are in a hardship area. Let us be fair.

(Hon. Mugambi Rindikiri consulted loudly)

The Temporary Speaker (Hon. Peter Kaluma): Order, Hon. Rindikiri. Hon. Rindikiri, you are running afoul of our Standing Orders. You can consult at a tone that allows us to debate. Be done, Hon. Jaldesa.

Hon. (Prof) Guyo Jaldesa (Moyale, UPIA): Thank you, Mr. Speaker.

The Temporary Speaker (Hon. Peter Kaluma): Do not be bowed or cowed. I was personally asking myself why Homa Bay Town Constituency is getting Ksh6 million from the Equalisation Fund. So, do not be worried. Make your points because when you make them, Members can resolve better for the good of the entire country.

Hon. (Prof) Guyo Jaldesa (Moyale, UPIA): Hon. Temporary Speaker, let us be sympathetic and considerate to the people who have been marginalised and have suffered hardship of all forms since Independence. If there are 28 boreholes, we want to know exactly where they are. If there are fodder farms, we need to know exactly where they are so that the people can know that they have benefited. But when it is on paper and people have a tendency of using that money...

The Temporary Speaker (Hon. Peter Kaluma): Hon. Jaldesa, you have 10 seconds.

Hon. (Prof) Guyo Jaldesa (Moyale, UPIA): The Committee Report is unsatisfactory. And I request, through you, Hon. Temporary Speaker, that they give us a better report on the question that was asked. Thank you.

The Temporary Speaker (Hon. Peter Kaluma): Before we give final directions, let me allow Hon. Keynan, because of rank, and Hon. Beatrice Elachi, to tell us how Nairobi is an ASAL.

Hon. Aden Keynan (Eldas, JP): Thank you, Hon. Temporary Speaker. I empathise with Hon. Mohamed Adow for bringing this very important question. Equally, I also appreciate the answer that has been brought by Hon. Yegon. We can see the confused role of a Member of Parliament in this constitutional infrastructure which actually is clouded and does not make any sense at all. We asked a question to the honourable colleague who is disadvantaged because he is denied the right information by those who are tasked with it; that is, the Cabinet Secretary and the Principal Secretary.

I request Hon. Adow, first of all, to direct this question to the Cabinet Secretary in charge of Agriculture so that he comes here and we can direct the question.

The Preamble of the current Constitution says, acknowledging the supremacy of the Almighty God.

(Hon. Anthony Oluoch and Hon. Charles Nguna consulted loudly)

Hon. Temporary Speaker, request the Hon. Members to consult silently.

(Hon. Anthony Oluoch and Hon. Charles Nguna discussed in high tones)

The Temporary Speaker (Hon. Peter Kaluma): Hon. Antony Oluoch and Hon. Charles Nguna, you are disrupting the contributions of Hon. Keynan.

Hon. Adan Keynan (Eldas, JP): The Preamble of the current constitution says:

“We the people of Kenya-

ACKNOWLEDGING the supremacy of the Almighty God of all creation:

HONOURING those who heroically struggled to bring freedom and justice to our land:

PROUD of our ethnic, cultural and religious diversity and determined to live in peace and unity as one indivisible sovereign nation.”

This preamble is not out of the blue. The framers of the current Constitution had in mind what can bring together, under the sovereign Republic of Kenya, the membership of the 42 nation states including the Somali nation state, the Luo nation state and many other nation states. That being the case, there is no country that does not have a disadvantaged region because of nature. Even at the end of the Second World War, the Marshall Plan was a product to uplift the economic, social and political status of those vanquished nations. In our case, after we got our Independence, Sessional Paper No.10 of 1965 was a product of petty bourgeoisie, the privileged individuals, who wanted to further sideline those who were already sidelined. That is why when that Paper is mentioned, those of us from disadvantaged regions feel that, that is the second attempt in...

Hon. Omboko Milemba (Emuhaya, ANC): On a point of order, Hon. Temporary Speaker.

The Temporary Speaker (Hon. Peter Kaluma): Hon. Omboko Milemba is on a point of order, Hon. Keynan. Just take your seat for a minute.

Hon. Omboko Milemba (Emuhaya, ANC): I have had a very keen interest in this matter, Hon. Temporary Speaker. More often than not, whereas I want to stand with the people and the citizens within ASALs, and I will be speaking on this later to support, I do not believe that it is in order for an Hon. Member - and which they do often time... I was a teacher of History and Government. They keep on referring to Sessional Paper No.10 of 1965 as a very weak document and as a basis of the argument's *locus standi*. The man behind that Sessional Paper was Tom Mboya, a brilliant son of Kenya who Kenyans do not want to forget. Let us indicate that things have since changed but Sessional Paper No.10 of 1965 is not a document to vilify on the Floor of this House simply because we want to achieve what we are now intended to achieve.

The Temporary Speaker (Hon. Peter Kaluma): Hon. Omboko, that is a point of argument. I will give you a chance to give us further perspectives. Hon. Keynan.

Hon. Adan Keynan (Eldas, JP): I want to amplify something. I plead with the patron of the Pastoralist Parliamentary Group (PPG). The era of lamentation is gone. Let us forget about that. The framers of the current Constitution gave us an opportunity to catch up with other Kenyans by providing the Equalisation Fund. It has not been implemented and yet, we are over 105 Members of Parliament in this august House. We need to go back to the drawing board. Let me finish this. We need to go back to the drawing board and deal with it decisively, legally and constitutionally, and with those who want to further marginalise us. You know them. They are in office. Those are the technocrats.

Under the leadership of the PPG, this is a very important issue. We will not allow us to go to the next decade under this marginalisation. I am in receipt of a document. It is not only the Ministry of Agriculture and Livestock Development. In fact, irrigation and livestock are not defined. If you go to the Bretton Woods institutions, you will realise that all the funds that are meant - and I want Hon. Adow to hear this - for the disadvantaged regions are diverted by the technocrats. It is not the mistake of the Members of Parliament, but of the technocrats in the ministries. Hon. Adow should bring a Motion so that we can censure the person who is in charge of this particular phenomenon. Bring a Motion or a question, so that the Cabinet Secretary can be taken to task. We also need to amplify our role. I feel so sad today.

Hon. Temporary Speaker, you are around today. Let me repeat this, and it will be my final comment. Under the current constitutional infrastructure, there were four contending groups. You fit in one of them. One group wanted a pure parliamentary system, and you know the component. Another group wanted a pure presidential system. Another group wanted devolution. Finally, those who are disadvantaged said they wanted equalisation and devolution. Those two are not working today. We need to go back to the drawing board and address our challenges within the Constitution so that we shall never be at the mercy of a particular individual again. We will not claim to be marginalised again and cry for the mercy of individuals who are not better than us. I resist. That is not the approach. Let us deal with the technocrats who want to use cocoon approaches to further marginalise us. They should remember that in this modern-day Kenya, my rights will not be at the mercy of any individual. The rights of my constituents should not be at the whims of any individual. It should be a God-given right. It should be constitutionally placed, driven and centered right. That is why the framers of the Constitution were very generous.

I plead with you, my patron here and other colleagues that we can have a crisis meeting to address this issue and dissect the budget? The budget phenomenon is being used to further marginalise regions. Every Kenyan has the right to get a portion of the national cake. It is not a favour or privilege. It is not something that we should go to offices to demand for it. Bring that report or question to the Floor of the House and, certainly, we will take those individuals to task.

Thank you, Hon. Temporary Speaker.

The Temporary Speaker (Hon. Peter Kaluma): Hon. Beatrice Elachi.

Hon. Beatrice Elachi (Dagoretti North, ODM): Thank you, Hon. Temporary Speaker. I appreciate that each region must find itself on the table to ensure that equitable distribution of resources is done. However, honestly, it is the leaders who have let down our people. Since we started devolution, a lot of money has been taken to counties. As a country, we agreed that devolution money in Arid and Semi-Arid Lands (ASALs) will be more than any other region, so that our brothers and sisters from there can also grow based on that and also the Equalisation Fund. Today, we are here on the same issue.

We have the same amount of money in the National Government Constituencies Development Fund (NG-CDF). If you talk about poverty, people sleep hungry in Nairobi City County. If you walk into houses in Nairobi, you will find that. We should not close our eyes and assume that it will always be business as usual. Very soon, we shall say that every constituency should have a share from the division of revenue, so that we can see the development that we always talk about. I tell my brothers that their governors have also failed them. They need to have developed those areas for the last 14 years. I do not support this request for a statement.

The Temporary Speaker (Hon. Peter Kaluma): This was a request for a statement. We neither require support nor opposition to it. We have done enough with it.

Hon. Sarah Korere, what is burning so much? I have only allowed this debate because the matter is important. However, I want to give directions on it. I have also allowed it only

because the Cabinet Secretary is not coming and we have an extended sitting. Members, agree that we are beyond our deliberation on statements for the time. Therefore, proceed Hon. Korere.

Hon. Sarah Korere (Laikipia North, JP): Shukrani, Mhe. Spika wa Muda. Nakubaliana na ndugu yangu, Mohammed Adow. Pia, namsikitikia sana mwenzetu aliyejaribu kujibu hilo swali kwa niaba ya idara husika. Nimesikiliza majibu yake na ni ya kukasirisha kidogo. Ukweli ni kwamba kuna fedha taslimu ambazo zimeachwa katika idara hii ili kushughulikia maneno ya sehemu kame katika kukuza chakula ili tusiwe watu wa kuombaomba. Saa zingine, watu wetu wanawekwa kwa aibu. Kila siku wanasimama na gunia kungoja kupewa kilo moja au mbili za mahindi. Majibu waliyopeana yanakera sana na haina msingi yeyote.

Saa zingine pia, wenyeviti wa kamati wawe waangalifu wasije wakadhalilishwa na hawa mawaziri kwa kupeana majibu kiholelaholela ambayo hayajibu chochote ambacho kimeulizwa.

Ahsante, Mhe. Spika wa Muda.

The Temporary Speaker (Hon. Peter Kaluma): Hon. (Dr) Jackson Kosgei

Hon. (Dr) Jackson Kosgei (Nominated, UDA): Thank you, Hon. Temporary Speaker. The issue of ASALs and marginalisation has been a theme since Independence. It is about time we revisit the definition of the terms we have used over time.

After 60 years of Independence in this country, and even through our constitutional guidance as established by Article 204 of our Constitution where the Equalisation Fund is domiciled, it is about time we think ASALs could be richer than all the other parts of the country. They have 88 per cent of the land mass. We have natural resources which need to be exploited for the interest of our people. In fact, we have minerals. We need to improve from 0.5 per cent for sinking boreholes and doing those mitigating projects into real survey of our natural resources that are lying underneath. In fact, marginalised areas and ASALs have wealth which can run the economy of this country for more than 100 years to come. We have oil and minerals. Some people have gone into those areas for speculation, and bought land and privatised it. That is because they know that it is quite rich. We would like to redirect those resources of 0.5 per cent and enhance and use them in discovering how to help our people in the ASAL areas. Let us advance this argument better and make it useful for our people.

Thank you, Hon. Temporary Speaker.

The Temporary Speaker (Hon. Peter Kaluma): Hon. Members, we have other statements to deal with. This was not a call for debate. I want to give directions which will enable us to participate better and come up with a more workable solution. I know Hon. Oluoch wants to speak about Mathare North as an ASAL. Hon. Ruweida Obo also wants to speak about Lamu East as an ASAL. There is a part in my constituency which does not receive enough rain but it is not ASAL.

I direct as follows: We have other business to transact and reports to receive. The manner in which this matter was approached is a bit restrictive because it was brought by way of a request for a statement. It is raising fundamental policy questions around agriculture in ASAL areas which is a vast part of our country. It covers over 80 per cent.

I want to direct that with the interest shown and the potential in those regions if they were to be harnessed in terms of agricultural production, Hon. Brighton should go back to his Committee and sit with the Chairperson. Then, they can invite all the interested Members. Give them due notice, call the Cabinet Secretary involved and undertake an enquiry. So, that you look at how the policy, if existent, is working and, if not, how to make one that will ensure this country is food sufficient.

Hon. Members, we leave it at that. Do you have the report in respect of the statement by Hon. Robert Gichimu ready?

Hon. Brighton Yegon (Konoin, UDA): Yes

The Temporary Speaker (Hon. Peter Kaluma): Is Hon. Robert Gichimu in the House?

Hon. Members: Yes.

The Temporary Speaker (Hon. Peter Kaluma): Hon. Rindikiri, be assured that if you have something to talk about this, you are duly recognised. Proceed.

Hon. Brighton Yegon (Konoin, UDA): Thank you, Hon. Temporary Speaker. We are well guided on how to approach the issue of promoting development of agriculture in ASAL areas. The Ministry brought four projects they are working on in those areas. We need to instruct them further to give us the specific names of areas where they are implementing those projects. They have given us many projects for example, 49 boreholes in small scale irrigation and value addition projects, but they have not stated their location. Also, there 419 kilometres of road networks that they are rehabilitating, but they have not given us the names. We will tell them to expound more on the same so that the affected Members from ASAL areas can know where those projects are being implemented.

The Temporary Speaker (Hon. Peter Kaluma): As a Committee, you can move faster and call the Cabinet Secretary. Just ensure that the interests of the Members that have been put forth are duly catered for.

Hon. Brighton Yegon (Konoin, UDA): Yes. Those projects are worth billions of shillings and we must account for them and give farmers value for their money.

PAYMENT OF TEA BONUS FOR KIMUNYE AND
THUMAITA TEA FACTORIES FOR FY 2023/2024

I have a response for a request for statement regarding payment of the tea bonus from Kimunye and Thumaita tea factories for the Financial Year 2023/2024.

The Temporary Speaker (Hon. Peter Kaluma): Hon. Brighton, have you given Hon. Robert Gichimu a copy of that Statement?

Hon. Brighton Yegon (Konoin, UDA): Yes, he has a copy.

The Temporary Speaker (Hon. Peter Kaluma): Then, I request for the sake of time that you move to the material parts.

Hon. Brighton Yegon (Konoin, UDA): Okay. This is a long response concerning Kimunye and Thumaita tea factories discrepancy with regards to the tea bonus. Tea bonus is a second payment to tea farmers that is payable at the end of each financial year. Every month, the tea farmers in Kimunye and Thumaita tea factories are paid an initial amount of Ksh25, which is an advance against their green leaf delivered. This is because the proceeds from the tea are only realised 45 days from the delivery of green leaf to the factory, due to processing and sale activities.

Tea bonus is also called the second payment. This is the net of the price realised minus the cost of production, including the monthly payment. There is an analysis to that effect between the two factories, which is Kimunye Tea Factory and Thumaita Tea Factory. The price realised at the tea auction is dependent on the quality of the tea that is produced by each factory. This is dependent on many factors including the quality of green leaf, post-harvesting handling and manufacturing practices at the tea factory. In addition, the price of tea is also influenced by the historical tea buyer's perception regarding the quality of tea that is produced by a specific tea factory. Also, there are other factors like prevailing demand, political situation in the market and effects of global and economic shocks. In this regard, the average price varies from factory to factory.

There are other issues like cost of production, which also varies from factory to factory, depending on the cost within the factory, transport, labour, administrative cost and energy, among others. Factories with efficient machinery and operations are able to realise lower cost of production. Also, the tea bonus is usually calculated at the end of the financial year after all revenue and cost have been determined and financial statements prepared and audited by an

external auditor. The financial statements are then presented to the factory boards for approval, together with the proposed rate of bonus. Subsequently, the directors disseminate the same to the factory and shareholders.

Clarification was also sought on the amount reserved or retained from farmers' payment per kilogram of green leaves and specific purpose of those reserves or retentions and whether they can be disbursed as part of additional payment to farmers beyond the declared bonus. The response from the Ministry is that from the above analysis, the only amount that has been retained and can be distributed is Ksh4,887,044 million for price stabilisation in Kimunye Tea Factory.

There is a comparison between the retention of capital expenditure for the two factories. Kimunye Tea Factory set aside Ksh54.3 million for replacement of various machines that are critical to the functioning of tea factory like boilers, Ksh40 million, pre-sorter machine Ksh1.5 million, bin elevator Ksh1.4 million, replacement of withering ferns Ksh3.6 million, withering steam valves upgrade Ksh3 million, disposal of asbestos Ksh2 million and storage bins Ksh4.5 million.

Thumaita Tea Factory, through an irrevocable resolution, agreed to retain Ksh11.5 million for the tea packing machine costing Ksh2 million, winnower Ksh4.5 million and manual latte, among other machines. This amount was set aside for those machines to be purchased. Proposed dividend relates to the returns to the holders of commercial shares in accordance with the articles of association. Retention of price stabilization at Kimunye Tea Factory is a provision to cater for future negative price fluctuations of the factory teas in the market.

Number four is the basis in which the KTDA national Chairman, Mr. Enos Njeru, publicly declared that the bonus payment for the period will be at least Ksh60 per kilogram of green tea leaves.

Hon. (Dr) Robert Pukose (Endebess, UDA): On a point of order, Hon. Temporary Speaker.

The Temporary Speaker (Hon. Peter Kaluma): What is out of order, Hon. Pukose?

Hon. (Dr) Robert Pukose (Endebess, UDA): I did not want to interrupt or disrupt the presentation by the Vice-Chairman of the Departmental Committee on Agriculture and Livestock, but you gave a directive that he goes into the material in terms of response because the Hon. Member has read the response. Therefore, I thought Hon. Brighton could restrict himself to the guidance of the Temporary Speaker.

The Temporary Speaker (Hon. Peter Kaluma): Hon. Brighton, why can you not go to the specifics in terms of the statement requested?

I was in a Parliament, Hon. Members, in the Philippines, and where a report or a statement has been given to the Members seeking it and they are satisfied, it is just passed. Where a Member has something to raise further, the Member indicates before the statement is called by the House. So, why can you not just go to the specific responses straight away so that we can save time?

Hon. Brighton Yegon (Konoin, UDA): Thank you very much, Hon. Temporary Speaker. Sometimes, the farmers are following this. This matter of discrepancy of the bonuses between different factories of KTDA is a thorny issue. In fact, in my area, we lost one life because of agitation over the discrepancy between the bonus from the West and the East.

The Temporary Speaker (Hon. Peter Kaluma): You are right. Proceed.

Hon. Brighton Yegon (Konoin, UDA): That is why this matter is being followed by the farmers so that they can be able to account for where their bonuses went to. I am in the final response.

Number four, during the last election for directors that was held in July 2024, candidates for the position of tea factory directors - including Mr. Enos Njeru who is also the zonal board

member of KTDA - used the rate of bonus payment as a bait to persuade tea farmers in voting for them. In that regard, Mr. Enos Njeru had promised tea farmers in Kirinyaga County that they would be paid Ksh60 per kilogram of green leaves that is delivered to the factory. The promise was supposedly made based on the nine months accounts which is from July 2023 to March 2024, which usually has not taken into account certain expenditures like external audit fees, depreciation and amortisation, taxation and dividends. In addition, the factory tea prices declined from US\$3.2 in March 2024 to US\$2.8 in June 2024, while the exchange rate also declined from Ksh139 to Ksh129 per US Dollar over the same period.

Consequently, the farmers in the region have been boycotting plucking of tea agitating for an increase of bonus from the declared Ksh46 to Ksh60 as promised during the campaigns.

However, normalcy has been resumed in the factory. There was an attempt to hold a Special General Meeting on 15th October 2024 to remove the current directors who were voted into office in July 2024. Of course, there is a summary of payment of green tea leaves by KTDA-managed factories for the Financial Year 2023/2024.

With those few remarks, that is the response by the Ministry concerning the two factories – that is Kimunye and Thumaita.

The Temporary Speaker (Hon. Peter Kaluma): Hon. Robert Gichimu is no doubt satisfied.

Hon. Gichimu Githinji (Gichugu, UDA): Thank you, Hon. Temporary Speaker. Let me start by thanking the Vice-Chairman and the Departmental Committee on Agriculture and Livestock for coming up with that response. Tea matters in my constituency are very important for almost half of the population who entirely rely on the crop. I sought this statement so that I am able to relay to the farmers that I represent, who sell their tea at Kimunye and Thumaita tea factories.

Since the facts have already been given and since there is also a pending comprehensive audit report from the Tea Board of Kenya, and those farmers will also be holding an Annual General Meeting before the end of this year, I think this information will be very important for them to ask all the relevant questions in respect of the tea bonus payment. I am happy that all the farmers from Kimunye and Thumaita tea factories have resumed tea plucking so that they do not lose. I advised them to continue plucking tea as I follow up on this Statement. I will relay to them, but there are pertinent issues that will be raised from this response. Amongst the machines that have been listed to be bought by one of the factories called Thumaita Tea Factory, there is an amount of Ksh22.5 million that has been set aside for various machines. I think those are some of the clarifications my farmers will be seeking from the directors of those factories.

Finally, Hon. Temporary Speaker, I think it is important for the directors, when they are seeking for their votes, to be very cautious and very sensitive on finance matters and especially on tea bonus payment. They should not use figures as a bait for them to be elected, and which might also not be achieved as it happened on this matter. This is because most of the issues that were raised were based on what had been promised. And if they have not verified on the issues of the sales, the issues, the dollar and all those manners of things, I think I would advise them to be very cautious, including the Chairman of the Kenya Tea Board of Kenya. It has already been admitted in the response that he used the promise that tea factories would be paying not less than Ksh60 in Kirinyaga so that he could be elected. The Chairman of KTDA, Mr. Enos Njeru, please do not mislead farmers. Give factual information on figures. Where you do not know, leave it. The market will determine the figures that the farmers will be paid. Do not mislead the farmers.

Thank you, Hon. Temporary Speaker.

The Temporary Speaker (Hon. Peter Kaluma): Thank you, Hon. Robert Gichimu. The Hon. Vice-Chairman of the Departmental Committee on Agriculture and Livestock, do you have the response for Hon. Sarah Korere?

LEASE OF AGRICULTURAL DEVELOPMENT
CORPORATION LAND IN RUMURUTI

Hon. Brighton Yegon (Konoin, UDA): Yes, I have a response concerning the lease of Agricultural Development Corporation (ADC) land in Rumuruti in Laikipia County. The response from the Ministry is as follows:

The Agricultural Development Corporation (ADC), through its subsidiary land limited, owns approximately 63,220 acres in Rumuruti, Laikipia County. Out of those 63,220 acres, 15,000 acres were leased to a company called Waragus Limited. The particulars of Waragus Limited directorship are as per the reference in the attached CR12 document, and the report has been shared with Hon. Sarah Korere.

Number two, a Report of the procedure followed by ADC in leasing of the said property, including the report on public participation that was conducted, if any. The response from the Ministry is as follows: The lease of property to Waragus Limited was conducted under the authority of Agricultural Development Corporation Act (CAP 444), specifically Section 13. Section 13 empowers the Agricultural Development Corporation (ADC) Board to engage in commercially viable ventures and also to enter into all such transactions as it deems necessary for conducive performance of its function. The Board has the mandate of managing ADC resources, including leasing land to enhance economic benefits.

In line with this mandate, the Board followed the rules and procedures to ensure transparency and accountability in the investment of the project, which include leases, joint ventures and consensual arrangement. Public participation in the ventures is facilitated through open tendering as required by the procurement laws, ensuring fairness and openness with regard to decision-making processes. Therefore, in this case, the leasing process involved public participation through open tendering mechanism, fully complying with the relevant procedures, regulations and maintaining the transparency that is expected in the ADC commercial ventures. There is an attached extract dated 14th September 2015 in Annex 2, which has been given to Sarah.

The final question is on the steps to be taken to reverse the lease if it is determined to have been pre-arranged. The response from the brief is that the lease agreement between ADC and M/s Waragus Limited provides for a termination and exit clause, which outlines the conditions under which either party can end the lease. If it is determined that the lease was pre-arranged, or that any party has failed to meet its obligation under the terms of the agreement, a notice of termination can be issued in accordance with the provisions of the lease agreement.

The termination process would begin by issuing a formal notice specifying the grounds for termination based on the failure of one or both parties to fulfil their obligations. This allows the reversal of the lease through mutual agreement or, if necessary, through legal channels. If a dispute arises regarding compliance with the terms of the agreement, should both parties agree, the lease can be terminated amicably or further legal procedures may be pursued if contested.

That is the response from the Ministry, Hon. Temporary Speaker.

The Temporary Speaker (Hon. Peter Kaluma): Hon. Sarah Korere.

Hon. Sarah Korere (Laikipia North, JP): Thank you. I want to thank the Vice-Chair of the Departmental Committee on Agriculture and Livestock for attempting to respond to the statement request. However, again, it goes without saying that the response is shallow and annoying. This is because ADC Mutara is a 63,000 acres piece of land in Laikipia. Clearly, the

intention of the Government, in having such a parastatal there, was to undertake breeding and upgrading of the breeds of the neighbouring communities. It is an open secret that, as we speak, the ADC Mutara Farm does not have a single cow.

A whole parastatal that is being run using taxpayers' money has less than 1,000 goats. It does not make sense to have it there. To make the matters worse, the Corporation has leased the land to M/s Waragus Limited, who purported to be livestock keepers, but who are now sub-leasing grass to the local community. If my constituents want to graze their livestock in ADC Mutara, they have to pay some money to that company. If ADC really had to lease that land to livestock keepers, did they have to look for livestock keepers elsewhere when we have livestock keepers in the immediate neighbourhood? I am not satisfied with the response. In fact, the reply is clouded in a lot of mischief. Something is being hidden. I will redraft this statement request into a question for direct response by the Cabinet Secretary (CS) for Agriculture and Livestock Development. That is because if we continue with this manner of responding to statement requests, we will not get to the bottom of this matter.

I am saying that because Laikipia is a place where the locals have always been marginalised by their land being taken away in the name of investments. Recently, someone was given 400 acres of land to build a centre for rehabilitation of drunkards. A whole 400 acres? I do not know why those guys have to go there and graze their livestock literally while the indigenous people of Laikipia remain squatters. The ADC has leased out 20,000 acres to M/s Waragus Limited, and has given another 400 acres to a former Second Lady to build a rehabilitation centre. I am in support of rehabilitating our youth but 10 acres is enough to up a state-of-the-art rehabilitation centre. That is why we cannot just sit here and see land being leased out left, right and centre in the name of investing when the reality is that people are stealing it from the local people.

The Temporary Speaker (Hon. Peter Kaluma): Hon. Brighton, do you want the Committee to move on its own Motion and interrogate the matter deeper or would you prefer that Hon. Sarah Korere raises a question? It clearly appears that there are some issues beyond the statement.

Hon. Brighton Yegon (Konoin, UDA): Hon. Temporary Speaker, Hon. Sarah Korere has raised issues other than those that are contained in the statement request. There are very serious issues which needs more investigations. Therefore, we will take it back to the Committee to conduct further investigations on the matter of the land that she says has been leased out irregularly. Maybe, she can also pursue the other route of raising a substantive question for the Cabinet Secretary to answer.

The Temporary Speaker (Hon. Peter Kaluma): It is not necessary. Take it up on your own Motion. You know the inadequacies of statements but, ultimately, we are resolving issues of concern to Kenyans, whom we represent here. So, take up the matter. Invite Hon. Sarah Korere, invite the sectoral heads and the Cabinet Secretary involved. You will be undertaking an inquiry on every case. Conduct your investigation expeditiously and ensure that you bring a report to the House. The report will be debated for enrichment and coming up with a proper policy direction.

Hon. Caroli Omondi, we want to go into other business.

Hon. Caroli Omondi (Suba South, ODM): I will be very brief, Hon. Temporary Speaker. Thank you for giving me this opportunity. As a matter of fact, and law, the lease of Government land, whether owned by a parastatal or directly by the national Government, is actually privatisation. So, when the Committee investigates this matter, it should tell us how the leasing of that land fits within the Privatisation Act and within the privatisation process. That is because when ADC leases part of its land to a third party – in this case a private party – they have actually undertaken privatisation. I am sure that when the land in Laikipia was leased out, there was no privatisation plan that was brought to this House.

There was no scheme that was brought to this House. There was no approval of this House. So, all those leases are illegal. Anybody who is holding ADC land under lease is actually somebody who has committed a crime. That is the position in law. So, when you do the investigations, be very clear. Tell us when the privatisation plan was approved by this House for the leasing of ADC land. The same applies even to the land at the University of Nairobi and Moi University. We need to be very clear instead of abetting all those crimes against our university.

The Temporary Speaker (Hon. Peter Kaluma): Hon. Brighton Yegon, do you now see the reason as to why I said you should come up with a report to be debated in this House? If knowledgeable persons like Hon. Caroli Omondi do not come to the Committee, they can speak to whatever report you will bring to the House. We are ultimately operating under Article 95(2) of the Constitution to resolve issues of concern to the people.

Hon. Francis Sigei (Sotik, UDA): On a point of order, Hon. Temporary Speaker.

The Temporary Speaker (Hon. Peter Kaluma): What is out of order, Member for Sotik?

Hon. Francis Sigei (Sotik, UDA): Hon. Temporary Speaker, I would like to revisit the issue of tea. I raised my hand but you completely refused to see it. I want to request for an opportunity to make a few comments on the tea issue.

The Temporary Speaker (Hon. Peter Kaluma): Hon. Sigei, there is something in law called *functus officio*. Parliament is functionally out of that business for now.

Hon. Francis Sigei (Sotik, UDA): So, I stand down?

The Temporary Speaker (Hon. Peter Kaluma): I can assure you that these are not matters where I can permit you to deal with us the way you used to when you were a Commissioner.

(Laughter)

Hon. Members, we will go into Committee of the whole House to complete the Kenya Drugs Authority Bill.

COMMITTEE OF THE WHOLE HOUSE

(Order for Committee read)

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

IN THE COMMITTEE

[The Temporary Chairman (Hon. Omboko Milemba) in the Chair]

THE KENYA DRUGS AUTHORITY BILL
(National Assembly Bill No.54 of 2022)

(Resumption of consideration interrupted on 6.11.2024 – Morning Sitting)

The Temporary Chairman (Hon. Omboko Milemba): Hon. Members, you can now resume your seats. We are back in the Committee of the whole House to continue with the consideration of the Kenya Drugs Authority Bill, (National Assembly Bill No.54 of 2022). We had gone all the way to Clause 79. I would just like to update the Chairperson that we shall begin with Clause 80.

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Clause 80

Hon. Robert Pukose (Endebess, UDA): Hon. Temporary Chairman, I beg to move:
THAT, Clause 80 of the Bill be amended—

- (a) in subclause (1) by—
 - (i) deleting the word “article” wherever it appears and substituting therefor the words “health product or technology”; and,
 - (ii) inserting the words “or any other vessel” immediately after the word “vehicle” appearing in paragraph (b).
- (b) in subclause (6) by deleting the word “article” and substituting therefor the words “health product or technology”;
- (c) in subclause (7) by deleting the word “article” wherever it appears and substituting therefor the words “health product or technology”;
- (d) in subclause (8) by deleting the word “article” wherever it appears and substituting therefor the words “health product or technology”;
- (e) in subclause (9) by deleting the word “article” wherever it appears and substituting therefor the words “health product or technology”;
- (f) in subclause (10) by deleting the word “article” wherever it appears and substituting therefor the words “health product or technology”;
- (g) in subclause (11) by deleting the word “article” and substituting therefor the words “health product or technology”;
- (h) in subclause (12) by deleting the word “article” and substituting therefor the words “health product or technology”.

The amendment seeks to harmonise the terms used in the Bill with the Title of the Bill as proposed for amendment. This is to expand the scope of the Bill to include all other means of conveying health products and technologies.

(Question of the amendment proposed)

(Question, that the words to be left out be left out, put and agreed to)

(Question, that the words to be inserted in place thereof be inserted, put and agreed to)

(Question, that the words to be inserted be inserted, put and agreed to)

(Clause 80 as amended agreed to)

The Temporary Chairman (Hon. Omboko Milemba): Hon. Chairperson, you must get your Committee Members in place so that we proceed faster like we were in the morning. Let us proceed.

Clause 81

Hon. (Dr) Robert Pukose (Endebess, UDA): Hon. Temporary Chairman, I beg to move:

THAT, the Bill be amended by deleting Clause 81.

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This clause infringes on the exercise of the functions of the Authority, contrary to the recommendations of the World Health Organisation (WHO).

(Question of the amendment proposed)

(Question, that the words to be left out be left out, put and agreed to)

(Clause 81 deleted)

Clause 82

Hon. (Dr) Robert Pukose (Endebess, UDA): Hon. Temporary Chairman, I beg to move:

THAT, the Bill be amended by deleting Clause 82.

This regulation is a function of the national Government under the Fourth Schedule of the Constitution.

(Question of the amendment proposed)

(Question, that the words to be left out be left out, put and agreed to)

(Clause 82 deleted)

Clause 83

Hon. (Dr) Robert Pukose (Endebess, UDA): Hon. Temporary Chairman, I beg to move:

THAT, the Bill be amended by deleting Clause 83.

This clause infringes on the exercise of the functions of the Authority contrary to the recommendations of WHO.

(Question of the amendment proposed)

(Question, that the words to be left out be left out, put and agreed to)

(Clause 83 deleted)

(Clause 84 agreed to)

Clause 85

Hon. (Dr) Robert Pukose (Endebess, UDA): Hon. Temporary Chairman, I beg to move:

THAT, Clause 85 of the Bill be amended by deleting the word “article” wherever it appears and substituting therefor the words “health product or technology”.

This is to harmonize the terms used in the Bill with the Title of the Bill as proposed for amendment.

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(Question of the amendment proposed)

(Question, that the word to be left out be left out, put and agreed to)

(Question, that the words to be inserted in place thereof be inserted, put and agreed to)

(Clause 85 as amended agreed to)

Clause 86

Hon. (Dr) Robert Pukose (Endebess, UDA): Hon. Temporary Chairman, I beg to move:

THAT, Clause 86 of the Bill be amended in subclause (1) by deleting paragraph (b) and substituting therefor the following new paragraph (b)—

“(b) in the case of a subsequent offence, to a fine not exceeding one million shillings, or to imprisonment for a term not exceeding two years, or to both.”

This is to enhance the general penalty for offences committed in relation to this Bill, and to make the fines payable commensurate with the imprisonment terms.

(Question of the amendment proposed)

(Question, that the words to be left out be left out, put and agreed to)

(Question, that the words to be inserted in place thereof be inserted, put and agreed to)

(Clause 86 as amended agreed to)

Clause 87

Hon. (Dr) Robert Pukose (Endebess, UDA): Hon. Temporary Chairman, I beg to move:

THAT, Clause 87 of the Bill be amended in subclause (1) by deleting the word “article” wherever it appears in paragraph (c) and substituting therefor the words “health product or technology”.

This is to harmonise the terms used in the Bill with the Title of the Bill as proposed for amendment.

(Question of the amendment proposed)

(Question, that the word to be left out be left out, put and agreed to)

(Question, that the words to be inserted in place thereof be inserted, put and agreed to)

(Clause 87 as amended agreed to)

Part XIV

Hon. Robert Pukose (Endebess, UDA): Hon. Temporary Chairman, I beg to move:
THAT, the Bill be amended in the title of Part XIV by deleting the expression “PART XIV” and substituting therefor the expression “PART XII”.
This is meant to correct the minor error in numbering of the parts of the Bill.

(Question of the amendment proposed)

(Question, that the words to be left out be left out, put and agreed to)

(Question, that the words to be inserted in place thereof be inserted, put and agreed to)

(Part XIV as amended agreed to)

Clause 88

The Temporary Chairman (Hon. Omboko Milemba): There is an amendment. Hon Chairman.

Hon. Robert Pukose (Endebess, UDA): Hon. Temporary Chairman, I beg to move:
THAT, Clause 88 of the Bill be amended by deleting paragraph (a) and substituting therefor the following new paragraph (a)—
“(a) such monies as may be appropriated by the National Assembly for the purposes of the Authority”.
This is for proper drafting and consistency in the wording used in the statute book.

(Question of the amendment proposed)

(Question, that the words to be left out be left out, put and agreed to)

(Question, that the words to be inserted in place thereof be inserted, put and agreed to)

(Clause 88 as amended agreed to)

(Clause 89 agreed to)

Clause 90

Hon. Robert Pukose (Endebess, UDA): Hon. Temporary Chairman, I beg to move:
THAT, Clause 90 of the Bill be amended in subclause (2) by deleting the words “think fit” appearing in paragraph (f) and substituting therefor the words “consider appropriate”.
This is necessary for grammatical flow.

(Question of the amendment proposed)

(Question, that the words to be left out be left out, put and agreed to)

(Question, that the words to be inserted in place thereof be inserted, put and agreed to)

(Clause 90 as amended agreed to)

Clause 91

Hon. (Dr) Robert Pukose (Endebess, UDA): Hon. Temporary Chairman, I beg to move:

THAT, Clause 91 of the Bill be amended—

(a) in subclause (3) by deleting the words “Kenya National Audit Office” and substituting therefor the words “Auditor-General”; and,

(b) in subclause (4) by deleting the words “Kenya National Audit Office” and substituting therefor the words “Auditor-General”.

This is for proper reference to the Auditor-General as designated under Article 229 of the Constitution, and which is the successor of the Kenya National Audit Office.

(Question of the amendment proposed)

(Question, that the words to be left out be left out, put and agreed to)

(Question, that the words to be inserted in place thereof be inserted, put and agreed to)

(Clause 91 as amended agreed to)

Clause 92

Hon. (Dr) Robert Pukose (Endebess, UDA): Hon. Temporary Chairman, I beg to move:

THAT, Clause 92 of the Bill be amended in subclause (2) by inserting the phrase “with the approval of the Cabinet Secretary of the National Treasury” immediately after the word “may”.

This amendment provides that the Authority may invest its funds only with the approval of the Cabinet Secretary for the National Treasury.

(Question of the amendment proposed)

(Question, that the words to be inserted be inserted, put and agreed to)

(Clause 92 as amended agreed to)

(Clauses 93 and 94 agreed to)

Part XV

Hon. (Dr) Robert Pukose (Endebess, UDA): Hon. Temporary Chairman, I beg to move:

THAT, the Bill be amended in the title of Part XV by deleting the expression “PART XV” and substituting therefor the expression “PART XIII”.
This is to correct a minor error in numbering of the parts of the Bill.

(Question of the amendment proposed)

(Question, that the words to be left out be left out, put and agreed to)

(Question, that the words to be inserted in place thereof be inserted, put and agreed to)

(Part XV as amended agreed to)

Clause 95

The Temporary Chairman (Hon. Omboko Milemba): There is quite a number of amendments on this clause. Therefore, deal with all of them.

Hon. (Dr) Robert Pukose (Endebess, UDA): Hon. Temporary Chairman, I beg to move:

THAT, Clause 95 of the Bill be amended—

(a) in subclause 2 by—

- (i) deleting the word “drugs,” in paragraph (a)(i);
- (ii) deleting the words “any drug” in paragraph (a)(ii);
- (iii) deleting the word “product” and substituting therefor the word “products” in paragraph (d);
- (iv) deleting the word “drugs” wherever it appears and substituting therefor the words “health products or technologies” in paragraph (h);
- (v) deleting the word “article” and substituting therefor the words “health product or technology” in paragraph (k);
- (vi) deleting the word “articles” and substituting therefor the words “health products and technologies” in paragraph (m);
- (vii) deleting the words “drugs, medical devices” and substituting therefor the words “health products and technologies” in paragraph (o);
- (viii) deleting the word “medicines” and substituting therefor the words “health products and technologies” in paragraph (v);
- (ix) deleting paragraph (x) and substituting therefor the following new paragraph (x)—
“(x) governing administration of clinical trials of health products and technologies;”

- (x) deleting the words “medicine, medical device” and substituting therefor the words “health product or technology” in paragraph (aa);
- (xi) deleting paragraph (bb) and substituting therefor the following new paragraph—
“(bb) providing for the manner in which a pharmacist, an enrolled pharmaceutical technologist or a person otherwise authorized under this Act may dispense health products or technologies”;
- (xii) deleting paragraph (dd) and substituting therefor the following new paragraph (dd)—
“(dd) the compounding of health products and technologies and the dispensing of health products and technologies”
- (xiii) deleting the words “generally, for giving effect to this Act” appearing in paragraph (ii);
- (xiv) inserting the following new paragraphs immediately after paragraph (ii)—
 - “(jj) on pharmacovigilance and post market surveillance;
 - (kk) official regulatory lot release of vaccines and other biological products imported and manufactured in Kenya;
 - (ll) pricing of health products and technologies;
 - (mm) good practices in the regulation of health products and technologies;
 - (nn) inspections, licensure and certification of the manufacture of health products and technologies by health facilities;
 - (oo) inspections, licensure and certification of manufacture of health products and technologies and other regulated products by facilities not directly regulated by the Authority including steel industries and sugar industries;
 - (pp) inspection and recognition of pharmaceutical quality control laboratories;
 - (qq) to regulate licit use of narcotic and psychotropic substances; and,
 - (rr) to regulate parallel importation of health products and technologies;”

(b) by renumbering subclause (2) as subclause (3).

This is for inclusion in pharmaceutical technologists who are currently involved in the dispensing of medicines and medical devices, pursuant to the Pharmacy and Poisons Act, Cap 244 and their scope of training.

Part XII, is to harmonise the terms used in the Bill with the title of the Bill as proposed for amendment. Part XIII, is the general provision on the making of regulations which is set out in subclause 1. Part XIV, which has paragraphs (a) and (b) provides for the making of regulations on licit use of narcotic and psychotropic substances, parallel importation of medicines, safety monitoring, pharmacovigilance and post-market surveillance.

Thank you, Hon. Temporary Chairman.

(Question of the amendment proposed)

The Temporary Chairman (Hon. Omboko Milemba): Hon. Elachi, you were very active in the morning.

Proceed.

Hon. Beatrice Elachi (Dagoretti North, ODM): Thank you, Hon. Temporary Chairman. The Departmental Committee Chairman should explain this amendment properly. We have so many chemists all over the country. You will find a chemist in every two blocks. It is very crucial to put all this together so that those pharmacists and chemists can be regulated in this manner.

While we try to prescribe the standards, compositions and all those things, how do we assure the public that we have quality on some of the drugs? Additionally, what measures are we giving some of those chemists where you find only five drugs and you are left wondering if the chemist is really in operation? What quality controls do we have when we give them all these, Hon. Chairman?

Hon. Chairman, just guide the country on why you are amending number “i” to “n”. When you walk into some chemists, you wonder whether they are indeed chemists as prescribed in law, and whether they subscribe to the controls and quality assurance standards that people would want to see.

The Temporary Chairman (Hon. Omboko Milemba): Hon. Chairman, remember that in the morning we said you have to speak to both the House and the country about these amendments because they are very important.

Proceed.

Hon. (Dr) Robert Pukose (Endebess, UDA): Thank you, Hon. Temporary Chairman.

Clause 95 talks about many issues, amongst which is compounding of health products and technologies and dispensing of health products, technologies and by qualified personnel. This Bill provides for what we call pharmacovigilance and post-market surveillance. It also provides for regulations on release of vaccines and other biological products that are imported or manufactured in Kenya. That means those are going to be regulated to meet internationally accepted standards, whether you are manufacturing locally or bringing them from outside the country. When you go to some chemists, you might find unqualified people dispensing drugs. This Bill tries to make sure that we regulate the people who are dispensing drugs. They must be qualified and be able to understand the product they are dispensing, be it a technology, medicine or vaccine.

Thank you.

The Temporary Chairman (Hon. Omboko Milemba): Hon. Elachi, I believe you were here in the morning when the presiding Chair spoke on this matter when Hon. Dawood raised it. The presiding Chair then spoke of achieving certain international standards so that the medicines and drugs we manufacture in this country can attract markets beyond Kenya’s borders. I hope that answers it.

(Question, that the words to be left out be left out, put and agreed to)

(Question, that the words to be inserted in place thereof be inserted, put and agreed to)

(Question, that the words to be inserted be inserted, put and agreed to)

(Clause 95 as amended agreed to)

Clause 96

Hon. (Dr) Robert Pukose (Endebess, UDA): Hon. Temporary Chairman, I beg to move:

THAT, Clause 96 of the Bill be amended—

(a) in subclause (1) by-

i. deleting paragraph (d) and substituting therefor the following new paragraph (d)-

(d) all members and staff of the former Board shall be deemed to be members and staff of the Authority, and subject to the provisions of any rules made under this Act, shall continue in office for the period for which they were appointed as members and staff of the former Board.

ii. inserting the following new paragraph immediately after paragraph (d)-

(e) the staff of the Pharmacy and Poisons Board for the time being working in the directorate responsible for the regulation of health products and technologies shall be deemed to be staff of the Authority, and subject to the provisions of any rules made under this Act, shall continue in office for the period for which they were appointed as staff of the Pharmacy and Poisons Board.

(b) by deleting subclause (2) and substituting therefor the following new subclause (2)-

(2) In this section, “the former Board” means the Board of the National Quality Control Laboratory established under the Pharmacy and Poisons Act, Cap. 244.

(c) in subclause (3)-

i. by deleting the word ‘twelve’ appearing in the opening sentence and substituting therefor the words ‘twenty-four’;

(a) by inserting the following new paragraph immediately after paragraph (b)-

“(c) after the expiry of the period of twenty-four months-

i. the Pharmacy and Poisons Board shall be dissolved, and the provisions of subsection (1)(a), (b) and (c) shall, with the necessary modifications, apply; and,

ii. the remaining members and staff of the Pharmacy and Poisons Board shall be deemed to be members and staff of the Authority, and subject to the provisions of any rules made under this Act, shall continue in office for the period for which they were appointed as members and staff of the Pharmacy and Poisons Board.

Clause 96(a)(i) and (ii) and (b) provides for the transition of both the Pharmacy and Poisons Board and the Board of Management of the National Quality Control Laboratory because we are creating a new board. We are amending Clause 96(3) with (c), which has (a) and (b) and provides sufficient time to facilitate conducting extensive stakeholder participation on regulation of pharmacy practice regulations. The amendment further seeks to ensure that the Pharmacy and Poisons Board shall continue to exist.

The Temporary Chairman (Hon. Omboko Milemba): Order, Hon. Chairman. I think you moved faster than you should have. Had I proposed the question?

Hon. (Dr) Robert Pukose (Endebess, UDA): Yes.

The Temporary Chairman (Hon. Omboko Milemba): Are you still moving?

Hon. (Dr) Robert Pukose (Endebess, UDA): Yes.

The Temporary Chairman (Hon. Omboko Milemba): Proceed.

Hon. (Dr) Robert Pukose (Endebess, UDA): Thank you, Hon. Temporary Chairman.

Clause 96(3), which has (a) and (b), provides sufficient time to facilitate conducting extensive stakeholder participation on the regulation of pharmacy practice regulations. The amendment further seeks to ensure that the Pharmacy and Poisons Board shall continue to exist for a period of two years after the enactment of the Bill. That is for regulation of the pharmacy profession and pending the enactment of legislation by Parliament to regulate the pharmacy profession.

The Temporary Chairman (Hon. Omboko Milemba): Very well.

(Question of the amendment proposed)

(Question, that the words to be left out be left out, put and agreed to)

(Question, that the words to be inserted in place thereof be inserted, put and agreed to)

(Question, that the words to be inserted be inserted, put and agreed to)

(Clause 96 as amended agreed to)

Clause 97

Hon. (Dr) Robert Pukose (Endebess, UDA): Hon. Temporary Chairman, I beg to move:

THAT, Clause 97 of the Bill be amended by inserting the words ‘with reference to Section 96(3)’ immediately after the words ‘that Schedule’ in subclause (1).

This is to prevent a lacuna in respect of a regulation of a pharmaceutical practice.

Thank you.

(Question of the amendment proposed)

(Question, that the words to be inserted be inserted, put and agreed to)

(Clause 97 as amended agreed to)

The Temporary Chairman (Hon. Omboko Milemba): Hon. Temporary Chairman, move the New Clauses. Remember it has A, B, C and D. We shall deal with them one by one.

New Clause 27A

THAT, the Bill be amended by inserting the following new clause immediately after Clause 27–

Application for product licence.

27A. (1) A person who intends to import, manufacture or sell a health product or technology shall apply to the Authority for the registration of the health product or health technology, in the prescribed form.

(2) An applicant under subsection (1) shall—

- (a) specify the particulars of the person with appropriate knowledge of all aspects of the health product or health technology who shall be responsible for all communication between the applicant and the Authority in the declaration page of the application form; and
- (b) where the applicant is not a citizen of Kenya or is a company incorporated outside Kenya, appoint a local representative who shall be a citizen of Kenya, a person who is or has permanent residence or a company incorporated in Kenya.

(3) The application made under subsection (1) shall be accompanied by—

- (a) a proposed label for use on the health product or technology;
- (b) a copy of the manufacturing licence of the health product or technology, where applicable;
- (c) a copy of the good manufacturing practice certificate from the Authority and the regulatory authority of the country where the health product or technology is manufactured;
- (d) a copy of a certificate of analysis from a quality control laboratory recognized by the Authority, where applicable;
- (e) a copy of the marketing authorization or certificate of registration of the health product or technology from the regulatory authority of the country where the health product or technology is sold;
- (f) the available data on the quality, safety, efficacy and performance of the health product or technology submitted in a common technical dossier format;
- (g) a sample of the health product or technology;
- (h) proof of ownership of the site for the manufacture of the health product or technology, where applicable;
- (i) where the applicant is not a citizen of Kenya or is a company incorporated outside Kenya, a copy of the agreement appointing the local representative;
- (j) where the application relates to a health product or technology which is registered with a foreign regulatory body—
 - (i) a copy of the certificate of registration;
 - (ii) the professional information relating to the health product or technology; and
 - (iii) the conditions of the registration of the health product or technology;

- (k) proof that the applicant holds—
- (i) a valid practising licence issued by the body responsible for the profession of pharmacy;
 - (ii) a valid wholesale dealer's licence issued in accordance with this Act;
 - (iii) a valid licence to sell poisons issued in accordance with this Act; or
 - (iv) a valid manufacturing licence issued in accordance with this Act; and
 - (v) proof of payment of the application fees as prescribed by the Authority.
- (4) An applicant shall notify the Authority of any variation to the agreement appointing the local representative within seven days of the variation.

(The new clause was read a First Time)

Hon. (Dr) Robert Pukose (Endebess, UDA): Hon. Temporary Chairman, I beg to move that New Clause 27A be now read a Second Time.

In New Clause 27A, a person who intends to import, manufacture or sell a health product or technology shall apply to the Authority for the registration of the health product or health technology in the prescribed form. I move.

The Temporary Chairman (Hon. Omboko Milemba): Hon. Chairman, to ensure that Members understand, you will, in future, be summarising and speaking on them because they are quite a number.

(Question, that the new clause be read a Second Time, proposed)

(Question, that the new clause be read a Second Time, put and agreed to)

(Question, that the new clause be added to the Bill, put and agreed to)

New Clause 27B

THAT, the Bill be amended by inserting the following new clause immediately after Clause 27A—

Processing of application for registration of health product or technology. 27B. (1) The Authority shall consider the application made under section 27A, and, shall, if it is satisfied of the safety, efficacy, quality, performance and economic value of the health product or technology, register the health product or technology and issue a certificate of registration in the prescribed form.

(2) The Authority may, while considering the application, approve the details as supplied by the applicant or approve it with such amendments as it may consider appropriate in respect of the following particulars—

- (a) the name under which the health product or technology may be sold;

- (b) the labelling of the health product or technology;
- (c) the statement of the representations to be made for the promotion of the health product or technology regarding—
 - (i) the claim to be made for the health product or technology;
 - (ii) the route of administering the health product or technology;
 - (iii) the dosage of the health product or technology;
 - (iv) the storage conditions of the health product or technology;
 - (v) the contra-indications, the side effects and precautions, if any of the health product or technology; and
 - (vi) the package size of the health product or technology.
- (3) When evaluating an application, the Authority may—
 - (a) subject a sample of the health product or technology to an evaluation by an analyst; and
 - (b) consider the evaluation report of the analyst that has evaluated the health product or technology.
- (4) Where the Authority is not satisfied as to the quality, safety efficacy, performance or economic value of the health product or technology, it may, after providing an opportunity to the applicant to be heard, reject the application and inform the applicant the reasons for rejection in writing.

(The new clause was read a First Time)

Hon. (Dr) Robert Pukose (Endebess, UDA): Hon. Temporary Chairman, I beg to move that New Clause 27B be now read a Second Time.

The Authority shall consider the application made under Section 27A. The Authority shall register the health product or technology and issue a certificate of registration in the prescribed form. That is if it is satisfied of the safety, efficacy, quality, performance and economic value of the health product or technology.

*(Question, that the new clause
be read a Second Time, proposed)*

*(Question, that the new clause be read
a Second Time, put and agreed to)*

*(Question, that the new clause be added to
the Bill, put and agreed to)*

New Clause 27C

THAT, the Bill be amended by inserting the following new clause immediately after Clause 27B:

Registration during
emergency.

27C. (1) The Authority may, where it considers it necessary to protect public health or in the event of a threat to life or health, issue a provisional certificate of registration for a health product or technology.

(2) A person who intends to obtain the provisional certificate of registration for a health product or technology under subsection (1) shall apply to the Authority in the prescribed form.

(3) Where the applicant is not a citizen of Kenya or is a company incorporated outside Kenya, the applicant shall appoint a local representative who shall be a citizen of Kenya, a person who is or has permanent residence or a company incorporated in Kenya.

(4) An application under subsection (2) shall be accompanied by—

(a) such documents as may be necessary to support the application;

(b) where the applicant is not a citizen of Kenya or is a company incorporated outside Kenya, a copy of the agreement appointing the local representative;

(c) proof that the applicant holds—

(i) a valid practising licence issued by the body responsible for the profession of pharmacy;

(ii) a valid wholesale dealer's licence issued in accordance with this Act;

(iii) a valid licence to sell health products or technologies issued in accordance with this Act; or

(iv) a valid manufacturing licence issued in accordance with this Act; and

(v) proof of payment of the application fees as prescribed by the Authority.

(5) When determining an application under this section, the Authority shall consider the facts established from the valid marketing authorization for the health product or technology and the report on the assessment of the health product or technology obtained from the authority competent for health products and technologies, if available.

(6) The person to whom the certificate of registration is issued under this section, shall be responsible for the labelling, packaging, advertising and pharmacovigilance system of the health product or technology.

(7) A provisional certificate of registration issued under subsection (1) shall be valid for two years from the date of issue or until the declaration made under section 35 of the Public Health Act is revoked.

(8) Any variation to the agreement appointing the local representative to the application made under subsection (2) shall be notified to the Authority within seven days of the variation.

(The new clause was read a First Time)

The Temporary Chairman (Hon. Omboko Milemba): Mover, you can summarise it.

Hon. (Dr) Robert Pukose (Endebess, UDA): Hon. Temporary Chairman, I beg to move that the new Clause 27C be now read a Second Time.

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*(Question, that the new clause
be read a Second Time, proposed)*

*(Question, that the new clause be read
a Second Time, put and agreed to)*

*(Question, that the new clause be
added to the Bill, put and agreed to)*

New Clause 27D

THAT, the Bill be amended by inserting the following new clause
immediately after Clause 27C:

Cap. 242.
Authorization of
unregistered health
product or
technology.

27D. (1) The Authority may, in writing, authorize a person to import or distribute for a specified period to a specified person or institution a specified quantity of a particular health product or technology that is not registered.

(2) A health product or technology distributed pursuant to authorization granted under subsection (1) may be used for such purposes and in such manner and during such period as the Authority may in writing determine.

(3) A person who intends to obtain the authorization under subsection (1), for purposes other than a clinical trial, shall apply to the Authority in the prescribed form.

(4) Where the applicant is not a citizen of Kenya or is a company incorporated outside Kenya, the applicant shall appoint a local representative who shall be a citizen of Kenya, a person who is or has permanent residence or a company incorporated in Kenya.

(5) The application made under subsection (3) shall be accompanied by—

- (a) a product brochure containing relevant chemical, pharmaceutical, pre-clinical pharmacological and toxicological data and where applicable, human pharmacological and clinical data related to the health product or technology for which authority is sought;
- (b) written consent of the applicant, where applicable;
- (c) details of registration or pending registration of the health product or technology with any other regulatory authority, where applicable;
- (d) evidence of compliance by the manufacturer of the health product or technology with good manufacturing practice standards as determined by the Authority;
- (e) reasons why a registered health product or technology cannot be used;
- (f) where the applicant is not a citizen of Kenya or is a company incorporated outside Kenya, a copy of the agreement appointing the local representative;
- (g) proof that the applicant holds—

- (i) a valid practising licence issued by the body responsible for the profession of pharmacy;
 - (ii) a valid wholesale dealer's licence issued in accordance with this Act;
 - (iii) a valid licence to sell health products or technologies issued in accordance with this Act; or
 - (iv) a valid manufacturing licence issued in accordance with this Act; and
 - (v) proof of payment of the application fees as prescribed by the Authority.
- (6) Where the Authority issues an authorization under subsection (1), the person to whom the authorization is issued shall submit to the Authority—
- (a) progress reports after every six months from the date of issuance of the authorization;
 - (b) any adverse event report, where an adverse event occurred; and
 - (c) a progress report within thirty days after the completion or termination of the use of the health product or technology.
- (7) The Authority may, where it is of the opinion that the safety of any patient is compromised or where the scientific reasons for administering the unregistered health product or technology have changed—
- (a) impose any additional conditions;
 - (b) request additional information;
 - (c) inspect the site where the unregistered health product or technology is manufactured, stored or administered; or
 - (d) withdraw the authorization to treat the patient.
- (8) The Authority may, by notice in writing withdraw the authorization issued under subsection (1) if any of the purposes or the manner specified in subsection (2) is contravened.
- (9) A health product or technology authorized under this section shall be labelled in accordance with this Act.
- (10) An applicant shall notify the Authority of any variation to the agreement appointing the local representative within seven days of the variation.
- (11) The requirements in this section shall apply to applications for donations of health products and technologies.

(The new clause was read a First Time)

The Temporary Chairman (Hon. Omboko Milemba): Mover.

Hon. (Dr) Robert Pukose (Endebess, UDA): Hon. Temporary Chairman, I beg to move that the New Clause 27D be now read a Second Time.

This is to provide new clauses to guide the handling of applications or product licences by the Authority.

Thank you, Hon. Chairman.

(Question, that the new clause

be read a Second Time, proposed)

*(Question, that the new clause be read
a Second Time, put and agreed to)*

*(Question, that the new clause be
added to the Bill, put and agreed to)*

New Clause 29A

THAT, the Bill be amended by inserting the following new clause immediately after Clause 29:

Authorization of
health products
and technologies.

29A. (1) A person shall not import any health product or technology unless—

- (a) the imported health product or technology has been authorized through issuance of an import permit or a written authorization by the Authority; and
- (b) the imported health product or technology is inspected and verified by an inspector of the Authority at the ports of entry prior to its release.

(2) A batch or lot of any registered product shall not be released by the manufacturer prior to the completion of tests for conformity with standards applicable to such product and official batch or lot release by the Authority in cases of biological therapeutics.

(3) Each applicable test conducted by the manufacturer under subsection (2) shall be made on each batch or lot after completion of all processes of manufacture and such test may affect compliance with the standard applicable to the product.

(4) The manufacturer or marketing authorization holder of any registered biological therapeutic shall submit lot summary protocol for each lot that contains registered tests and results of tests performed and, such manufacturer or marketing authorization holder may be required to submit samples of product from the specified lot to the Authority for official batch or lot release in accordance with the prescribed regulations.

(5) Every batch or lot of a registered biological therapeutic imported into Kenya or manufactured in Kenya shall be evaluated and, on being satisfied of conformity with prescribed standards and payment of prescribed fees, the Director-General shall approve its release into the market and issue a certificate of official batch or lot release in the prescribed format.

(6) The Authority may recognize and accept official lot release certificates issued by other national regulatory authorities of other countries for a specific batch or lots of biological therapeutic manufactured within the territories of those national regulatory authorities, in issuance of a certificate under this section.

(7) A person who contravenes this section commits an offence and shall on conviction be liable—

- (a) in the case of a first offence, to a fine not exceeding one million shillings or to imprisonment for a term not exceeding two years, or to both; or
- (b) in the case of a subsequent offence, to a fine not exceeding two million shillings or to imprisonment for a term not exceeding five years, or to both.

(The new clause was read a First Time)

The Temporary Chairman (Hon. Omboko Milemba): Mover.

Hon. (Dr) Robert Pukose (Endebess, UDA): Hon. Temporary Chairman, I beg to move that the New Clause 29A be now read a Second Time.

This is to provide for authorisation of health products and technologies imported into the country, including the requirement for batch or lot release in line with World Health Organisation (WHO) requirements.

Thank you, Hon. Temporary Chairman.

(Question, that the new clause be read a Second Time, proposed)

(Question, that the new clause be read a Second Time, put and agreed to)

(Question, that the new clause be added to the Bill, put and agreed to)

New Clause 29B

Parallel importation of health products and technologies.

No. 17 of 2015.

29B. (1) A person shall not engage in the parallel importation of a health product or technology into Kenya unless—

- (a) the person is incorporated as a limited liability company under the Companies Act;
- (b) the person has been granted a certificate of parallel importation;
- (c) the person is licensed to parallel import the health product or technology;
- (d) the health product or technology has a valid registration in Kenya under this Act; and
- (e) the health product or technology has a valid market authorization in the country of origin.

(2) A person who wishes to undertake parallel importation of a health product or technology shall apply to the Board for a certificate of parallel importation in the prescribed manner.

(3) The Board shall establish and maintain a system that ensures that a registered parallel imported health product or technology can be traced from its sourcing, manufacturing, packaging, storage, transport to its delivery to the health facility, institution or private practice where the health product or technology is intended to be used.

(4) A person who—

- (a) is the holder of a certificate of parallel importation or licensee and fails to comply with any requirement or obligation in this Act;
 - (b) contravenes any prohibition prescribed by the Authority; or
 - (c) fails to comply with any requirement imposed on that person by the Board pursuant to this Act,
- commits an offence and is liable, upon conviction, to a fine not exceeding one million shillings or to imprisonment for a term not exceeding two years, or to both.

(The new clause was read a First Time)

The Temporary Chairman (Hon. Omboko Milemba): Mover.

Hon. (Dr) Robert Pukose (Endebess, UDA): Hon. Temporary Chairman, I beg to move that the New Clause 29B be now read a Second Time.

This is to make provision for parallel importation of health products and technologies.

(Question, that the new clause be read a Second Time, proposed)

(Question, that the new clause be read a Second Time, put and agreed to)

(Question, that the new clause be added to the Bill, put and agreed to)

New Clause 36A

THAT, the Bill be amended by inserting the following new clause immediately after Clause 36:

Clinical trials.

36A. (1) A health product or technology shall not be used for clinical trial unless an approval is granted by the Authority.

(2) An approval under subsection (1) shall only be granted by the Authority after approval by the relevant ethics body has been granted.

(3) A person who intends to commence a clinical trial on a health product or technology shall make an application to the Authority in the prescribed form and the application shall be accompanied by the study protocol in the prescribed format and the prescribed fee.

(4) The study protocol submitted under subsection (2) shall include a post-trial access programme to ensure access of investigational medicinal substances by participants in the trial before grant of marketing authorization by the Authority.

(5) The Authority shall prescribe guidelines for evaluation of applications made under subsection (2) to be implemented for accelerated evaluations during emergency situations, epidemics and outbreaks.

(6) A person granted an approval under this section shall put in place a robust quality assurance system to ensure that the clinical trial is

carried out in a manner that ensures the integrity of data generated and the safety and well-being of the participants of the study.

(7) The Authority shall carry out inspection of the clinical trials and monitor compliance of the clinical trials with the prescribed requirements.

(8) Any amendments to clinical trials protocols shall be submitted to the Authority for approval before implementation.

(The new clause was read a First Time)

The Temporary Chairman (Hon. Omboko Milemba): Mover.

Hon. (Dr) Robert Pukose (Endebess, UDA): Hon. Temporary Chairman, I beg to move that the New Clause 36A be now read a Second Time.

This is to provide for effective regulation of clinical trials by the Authority.

(Question, that the new clause be read a Second Time, proposed)

(Question, that the new clause be read a Second Time, put and agreed to)

(Question, that the new clause be added to the Bill, put and agreed to)

New Clause 46A

THAT, the Bill be amended by inserting the following new clause immediately after Clause 46:

Dietary supplements.

46A. (1) A dietary supplement shall—

- (a) have a stated or implied therapeutic purpose; and
- (b) not contain a scheduled substance.

(2) Where a supplement contains a dietary ingredient, the maximum daily dose for the dietary ingredient shall be as per the guidelines prescribed by the Authority.

(The new clause was read a First Time)

The Temporary Chairman (Hon. Omboko Milemba): Mover.

Hon. (Dr) Robert Pukose (Endebess, UDA): Hon. Temporary Chairman, I beg to move that the New Clause 46A be now read a Second Time.

This is to provide for dietary supplements which will enhance the regulation of food supplements by the Authority

(Question, that the new clause be read a Second Time, proposed)

(Question, that the new clause be read a Second Time, put and agreed to)

(Question, that the new clause be added to the Bill, put and agreed to)

New Clause 50A

THAT, the Bill be amended by inserting the following new clause immediately after Clause 50:

Information that is required to be displayed on the pack.

- 50A.** (1) A person dealing in a therapeutic cosmetic shall indicate—
- (a) the common name of the therapeutic cosmetic;
 - (b) the net weight of the therapeutic cosmetic;
 - (c) all the cosmetic ingredients in the order of prominence but not including flavours or fragrances;
 - (d) the name and address of the manufacturer of the therapeutic cosmetic;
 - (e) a warning statement; and
 - (f) a statement that the therapeutic cosmetic is capable of curing or treating any disease or medical condition.
- (2) The Cabinet Secretary shall make regulations for the effective implementation of this section.
- (3) The regulations made under subsection (1) may—
- (a) require manufacturers of cosmetics to register with the Authority; and
 - (b) impose restrictions, requirements or other conditions on manufacturers of cosmetics, if such restrictions, requirements or conditions are necessary to protect public health.

(The new clause was read a First Time)

The Temporary Chairman (Hon. Omboko Milemba): Mover. New Clause 50A on Page 2932.

Hon. (Dr) Robert Pukose (Endebess, UDA): Hon. Temporary Chairman, I beg to move that the New Clause 50A be now read a Second Time.

This is to enhance transparency on the ingredients used in therapeutic cosmetics in line with the good manufacturing practices.

(Question, that the new clause be read a Second Time, proposed)

(Question, that the new clause be read a Second Time, put and agreed to)

(Question, that the new clause be added to the Bill, put and agreed to)

New Clause 59A

THAT, the Bill be amended by inserting the following new clause immediately after Clause 59—

Registration of
medical devices
establishment.

59A. (1) An application for registration of a medical devices establishment shall be submitted to the Authority in the prescribed format and shall be accompanied by the prescribed fees.

(2) An importer, distributor or dealer will establish a system of notification of field safety corrective action and shall notify the Authority of such system.

(3) Where the Authority is satisfied that the application under subsection (1) meets the prescribed requirements, the Director-General shall issue a registration certificate for the medical devices establishment in the prescribed format.

(4) A medical devices establishment registration certificate issued under this section shall be valid for a period of one year, renewable annually upon application in accordance with the prescribed conditions.

(5) The registration certificate for manufacturers shall be valid for five years following a successful reinspection.

(6) The Authority may refuse to issue a medical devices establishment registration certificate where—

- (a) an applicant has made a false or misleading statement in the application;
- (b) the Authority has reasonable grounds to believe that issuing the medical devices establishment registration certificate will constitute a risk to the health or safety of patients, users or other persons; or
- (c) an applicant has failed to meet the prescribed conditions for medical devices establishment registration.

(7) Where the Authority does not issue a medical devices establishment registration certificate under subsection (6), the Authority shall—

- (a) notify the applicant in writing of the reasons for refusing the registration of the establishment; and
- (b) cause the applicant to be notified that the applicant may, within a period of three months from the date of notification, furnish the Authority with additional relevant documentation or evidence in support of the application.

(8) After the issuance of a medical devices establishment registration certificate, where there is a change to any of the information submitted at the time of application, the holder of the registration certificate shall submit the new information to the Authority within ten working days of the change.

(The new clause was read a First Time)

The Temporary Chairman (Hon. Omboko Milemba): Mover.

Hon. (Dr) Robert Pukose (Endebess, UDA): Hon. Temporary Chairman, I beg to move that the New Clause 59A be now read a Second Time.

This is to make provision for the registration of medical devices establishment.

*(Question, that the new clause
be read a Second Time, proposed)*

*(Question, that the new clause be read
a Second Time, put and agreed to)*

*(Question, that the new clause be
added to the Bill, put and agreed to)*

New Clause 59B

THAT, the Bill be amended by inserting the following new Part immediately after the new Clause 59A—

Pharmacovigilance.

59B. (1) The Authority shall establish a National Pharmacovigilance Centre which shall set up and manage the national pharmacovigilance and post marketing surveillance system.

(2) The Centre established under subsection (1) shall receive and maintain all relevant information about suspected adverse drug reactions and adverse events to health products or technologies which have been authorized by the Authority.

(3) The Authority shall conduct both passive surveillance and active surveillance of health products and technologies.

(4) The Authority shall carry out pharmacovigilance audits and inspections in order to ensure compliance with good pharmacovigilance practices and the prescribed requirements.

(5) All entities responsible for placing a health product or technology in the market shall establish and maintain a pharmacovigilance system for managing safety information of health products and technologies.

(6) The entities referred to in subsection (5) shall submit safety information to the Authority in the prescribed manner.

(7) The consumers, general public and health care professionals shall report adverse reactions and adverse events to the Authority in the prescribed manner.

(The new clause was read a First Time)

The Temporary Chairman (Hon. Omboko Milemba): This is another new clause. Mover, go ahead and move Second Reading.

Hon. (Dr) Robert Pukose (Endebess, UDA): Hon. Temporary Speaker, I beg to move that the new Clause 59B be now read a Second Time.

This is to anchor the role of the Authority in the regulation of pharmacovigilance in the country.

Thank you.

*(Question, that the new clause be
read a Second Time, proposed)*

*(Question, that the new clause be read
a Second Time, put and agreed to)*

(Question, that the new clause be added to the Bill, put and agreed to)

The Temporary Chairman (Hon. Omboko Milemba): Hon. Members, we move to Schedules. There is no amendment to the First Schedule.

(First Schedule agreed to)

Second Schedule

The Temporary Chairman (Hon. Omboko Milemba): There is an amendment. Mover, proceed.

Hon. (Dr) Robert Pukose (Endebess, UDA): Hon. Temporary Chairman. I beg to move:

THAT, the Bill be amended by deleting the Second Schedule.

This is because the chairperson, board members and director-general of the Authority are not State officers hence do not need to subscribe to an oath.

(Question of the amendment proposed)

(Question, that the words to be left out be left out, put and agreed to)

(Second Schedule deleted)

Third Schedule

The Temporary Chairman (Hon. Omboko Milemba): Mover, proceed.

Hon. (Dr) Robert Pukose (Endebess, UDA): Hon. Temporary Chairman, I beg to move:

THAT, the Bill be amended by deleting the Third Schedule.

The matters of tenure of office, allowances, protection from liability and disclosure of interest by board members are already provided for in the main Bill. The issue of approval of the board members by Parliament has been proposed for deletion as the Authority's board members are not State officers.

(Question of the amendment proposed)

(Question, that the words to be left out be left out, put and agreed to)

(Third Schedule deleted)

Fourth Schedule

The Temporary Chairman (Hon. Omboko Milemba): There is an amendment. Mover, proceed.

Hon. (Dr) Robert Pukose (Endebess, UDA): Hon. Temporary Chairman, I beg to move:

THAT, the Bill be amended by deleting the Fourth Schedule and substituting therefor the following new Schedule—

**FOURTH SCHEDULE (s. 21 (2))
SCIENTIFIC ADVISORY COMMITTEES**

1. Human Health Products and Technologies Committee.
2. Pharmacovigilance Committee.
3. Cosmetics and Borderline Products Committee.
4. Clinical Trial Scientific Technical Advisory Committee.
5. Dietary Supplements Committee.
6. Digital Health and Technologies Committee.
7. Veterinary Health Products and Technologies Committee.

The scientific advisory committees are amended to take into account all aspects of health products and technologies and to delete the scientific advisory committees on food, which is outside the scope of the Bill, as amended.

(Question of the amendment proposed)

(Question, that the words to be left out be left out, put and agreed to)

*(Question, that the words to be inserted in
place thereof be inserted, put and agreed to)*

(Third Schedule as amended agreed to)

(Fifth and Sixth Schedules agreed to)

Seventh Schedule

The Temporary Chairman (Hon. Omboko Milemba): Mover, proceed.

Hon. (Dr) Robert Pukose (Endebess, UDA): Hon. Temporary Chairman, I beg to move:

THAT, the Seventh Schedule of the Bill be amended by—

- (a) deleting the word “Board” in the paragraph on Cap.244.
- (b) deleting the phrase “(s.116) and substituting the phrase (“s.97”).
- (c) deleting the paragraph on Cap.254.

This is for proper cross-references of the Farmers and Poisoners Act, Cap.244 and Clause 97 on repeals. Food is outside the purview of the Bill.

Thank you, Hon. Temporary Chairman.

(Question of the amendment proposed)

(Question, that the words to be left out be left out, put and agreed to)

*(Question, that the words to be inserted in
place thereof be inserted, put and agreed to)*

(Seventh Schedule as amended agreed to)

Clause 2

The Temporary Chairman (Hon. Omboko Milemba): There were quite a number of amendments here, including the amendments by Hon. Oluoch. Hon. Chairman, you may have dealt with it during the winnowing. Is Hon. Oluoch in the chamber? He is not in the chamber. His amendment, therefore, stands dropped.

(Proposed amendment by Hon. Anthony Oluoch dropped)

Hon. Members, we were able to achieve this because of the winnowing process that was ordered by the Speaker. There were many proposed amendments to this clause by Hon. Oluoch, Hon. Kaluma and Hon. Millie, who was here in the morning. She is back in the House. Proceed to move all the amendments, Hon. Chairman.

Hon. (Dr) Robert Pukose (Endebess, UDA): Hon. Temporary Chairman, I beg to move:

THAT, Clause 2 of the Bill be amended—

- (a) in the definition of “article” by—
 - (i) inserting the words “dietary supplement” immediately after the words “therapeutic cosmetic” appearing in paragraph (a); and,
 - (ii) inserting the words “dietary supplement” immediately after the words “therapeutic cosmetic” appearing in paragraph (b);
- (b) in the definition of “Authority” by deleting the words “Kenya Drugs Authority” and substituting therefor the words, “Kenya Health Products and Technologies Regulatory Authority”;
- (c) in the definition of “chemical substance” by deleting the words “or detergent”;
- (d) in the definition of “drug” by deleting the word “if” appearing in paragraph (b)(ii) and substituting therefor the word “of”;
- (e) by deleting the definition of “enrolled pharmaceutical technologist”;
- (f) in the definition of “health products and technologies” by inserting the words, “dietary supplements” immediately after the words, “therapeutic cosmetics”;
- (g) by deleting the definition of “herbal medicine or product”;
- (h) by deleting the definition of “medical device”;
- (i) by deleting the definition of “medicinal substance”;
- (j) in the definition of “package” by inserting the words “dietary supplement” immediately after the words “therapeutic cosmetic”;
- (k) by deleting the definition of “pharmacy”;
- (l) by deleting the definition of “pharmaceutical technologist”;
- (m) by deleting the definition of “registered midwife”;
- (n) in the definition of “scheduled substance” by deleting the phrase “in the relevant schedule under this Act” and substituting therefor the phrase “in the list published by the Cabinet Secretary under section 37”;
- (o) by deleting the definition of “therapeutic cosmetic”; and,
- (p) by inserting the following new definitions in their proper alphabetical sequence—

“active surveillance” means prospective measures taken to detect adverse drug reactions and adverse events and involves active follow-up during and after treatment of patients where the

events may be detected by asking the patient directly or screening patient records;

“adverse drug reaction” means a response to a drug which is noxious and unintended, and which occurs at doses normally used in humans for the prophylaxis, diagnosis or therapy of disease, or for the modification of physiological function and is characterized by the suspicion of a causal relationship between a medical product and an occurrence;

“adverse event” means any untoward medical occurrence that may present during treatment with a pharmaceutical product, but which does not necessarily have a causal relationship with the treatment;

“alternative medicine” means complementary medicine and includes a broad set of health care practices that are not part of Kenya’s tradition and are not integrated into dominant health care system;

“biologicals” means a diverse group of medicines which includes vaccines, growth factors, immune modulators, monoclonal antibodies and includes products derived from human blood and plasma;

“Board” means the Board of the Authority established under section 8;

“Centre” means the National Pharmacovigilance Centre established under section 59B;

“clinical trial” means any systematic study on pharmaceutical products in human subjects, whether in patients or other volunteers, in order to discover or verify the effects of, identify any adverse reaction to investigational products, study the absorption, distribution, metabolism and excretion of the products with the object of ascertaining their efficacy and safety;

“dietary supplement” means a product taken by mouth that is added to the diet to help meet daily requirements of essential nutrients, and which usually contains one or more dietary ingredient and includes vitamins, minerals and herbs;

“enrolled pharmaceutical technologist” means a person enrolled as such by the body for the time being responsible for the enrolment of pharmaceutical technologists;

“falsified medical product” means a product that is deliberately or fraudulently misrepresented in relation to its identity, composition or source;

“Field Safety Corrective Action” means any action taken by a product owner to reduce a risk of death or serious deterioration in the state of health associated with the use of a medical device, and includes—

- (a) the return of a medical device to the product owner or its representative;
- (b) device modification which may include—
 - (i) retrofit in accordance with the product owner’s modification or design change;

- (ii) permanent or temporary changes to the labelling or instructions for use;
- (iii) software upgrades including those carried out by remote access;
- (iv) modification to the clinical management of patients to address a risk of serious injury or death related specifically to the characteristics of the device;
- (v) device exchange;
- (vi) device destruction; or,
- (vii) advice given by product owner regarding the use of the device.

“health product” includes a medicine, medical product, medicinal substance, vaccine, diagnostic, medical device, blood or blood product, herbal medicine, therapeutic feed and nutritional formulation, cosmetic and related products;

“health technology” means the application of organised knowledge and skills in the form of medicines, devices, vaccines, procedures, and systems developed to solve a health problem and improve the quality of lives, and includes radiation-emitting devices and related products;

“herbal medicine or product” means a plant derived material or preparations with claimed therapeutic or other health benefits, which contain either raw or processed ingredients from one or more plants or material of inorganic or animal origin and includes herbs, herbal materials, herbal preparations, finished herbal products that contain active ingredients, parts of plants or other plant materials or combinations;

“Inspector of Drugs” means a person who is competitively recruited by the Authority as a drug inspector under this Act;

“lot” or “sub-lot” means a defined quantity of starting material, packaging material or product, processed in a single process or series of processes so that the quantity is expected to be homogeneous; and in the case of continuous manufacture, the lot corresponds to a defined fraction of the production characterized by its intended homogeneity;

“lot release” means the process of the evaluation of an individual lot of a licensed biological product by the Authority before giving approval for its release onto the market;

“marketing authorisation” means the certificate of registration issued by the competent health product regulatory authority in the country of origin for the purpose of marketing or free distribution of a health product after evaluation for safety, efficacy and quality;

“medical device” means any instrument, apparatus, implement, machine, appliance, implant, reagent for in vitro use, software, material or other similar or related article, intended by the manufacturer to be used, alone or in combination, for human beings, for one or more of the specific medical purposes of—

- (a) diagnosis, prevention, monitoring, treatment or alleviation of disease;

(b) diagnosis, monitoring, treatment, alleviation of or compensation for an injury;

(c) investigation, replacement, modification or support of the anatomy or of a physiological process;

(d) supporting or sustaining life;

(e) control of conception;

(f) disinfection of medical devices;

(g) providing information by means of in vitro examination of specimens derived from the human body;

(h) disinfection substances;

(i) aids for persons with disabilities;

(j) devices incorporating animal or human tissues;

(k) devices for in-vitro fertilization or assisted reproduction technologies, and does not achieve its primary intended action by pharmacological, immunological or metabolic means, in or on the human body, but which may be assisted in its intended function by such means;

“medicinal substance” means a substance, the origin of which may be human, animal, vegetable or chemical, including human blood and human blood products, micro-organisms, whole animals, parts of organs, animal secretions, toxins, extracts, blood products, micro-organisms, plants, parts of plants, vegetable secretions, extracts, elements, naturally occurring chemical materials and chemical products obtained by chemical change or synthesis;

“passive surveillance” means that no active measures are taken to look for adverse effects other than the encouragement of health professionals and others to report safety concerns;

“parallel importation” means importation into Kenya, by a licensed importer of a health product, other than the marketing authorization holder or his or her technical representative, of the following health products which require marketing authorization in Kenya—

(a) patented health products under the applicable law;

(b) non-patented health products; or,

(c) branded generic health products;

“parallel imported medicinal substance” means a medicinal substance imported into Kenya under this Act;

“pharmacovigilance” means the science and activities relating to the detection, assessment, understanding and prevention of adverse effects or any other possible health product related problem;

“premise” includes any land, building, dwelling-place or any other place whatsoever; and includes stand-alone community retail pharmacy, private hospital pharmacy,

public health facility pharmacy, wholesale pharmacy or distribution outlet, where health products and technologies are stored, handled or distributed;

“Registrar” means the Director-General of the Authority appointed under section 6;

“scheduling” means, in relation to a substance, the determination of the schedule or schedules to the current poisons standard in which the name or a description of the substance is to be included;

“therapeutic cosmetic” means a product with the ability to trigger biological actions on the dermis, skin, eyes or teeth, to prevent future damage and contains ingredients that are usually not found in regular cosmetics or at higher strengths than could be sold safely over the counter;

“traditional medicine” includes the knowledge, skills and practices based on the theories, beliefs and experiences indigenous to different cultures, whether explicable or not, used in the maintenance of health as well as in the prevention, diagnosis, improvement or treatment of physical and mental illness;

“unregistered medical product” means a product that has not undergone evaluation and approval by the Authority subject to permitted conditions under the Act and the rules therein;

“vessel” means a truck, van, bus, minibus, car, trailer, aircraft, railway carriage, boat and other means that are used for purposes of conveying health products and technologies;

“wholesale dealer” means a person who is licensed to carry out a business where health products and technologies are stored, distributed or sold in bulk to persons other than individual consumers and includes registration, importation, warehousing, good distribution practices and pharmacovigilance;”.

In (a) under (1) and (2), this is for inclusion of dietary supplements which are part of health products and technologies, while ((b) is to ensure harmony with the Title of the Bill as proposed for amendment. Part (c), is to exclude detergents which are used for cleaning inanimate objects and does not fall under the purview of the regulation of health products and technologies.

The amendment in (d), is to correct a minor typographical error whereas that in (e) is the current definition cross-references the Farmers and Poisoners Act, Cap244, which will be repealed as provided under Clause 97, and a new definition proposed.

The amendment in (f) is for inclusion of dietary supplements which are part of health products and technologies, while (g), (h) and (l), are new definitions that are provided for those terms. These new definitions expand the scope to cover all aspects of the use of medical devices and medicinal substances in relation to health and to include herbal materials and herbal combinations.

Part (j) is for inclusion of dietary supplements which are part of health products and technologies. With regard to the amendment under (k), the current definition is inadequate

and, therefore, the term is to be defined in the proposed Pharmaceutical Practise Bill. In (l), the Farmers and Poisoners Act, Cap 244, provided that a pharmaceutical technologist must be enrolled in the role established under this Act.

With regard to the amendment under (m), the term is no longer used in the Bill in line with the proposed amendment of Clause 43(1)(c). In (n), there is no schedule on scheduled substances. The cabinet secretary will publish the list of scheduled substances in the gazette. Under (o), the current definition defines cosmetics in general that are meant to provide the body with the appropriate aesthetics, texture, pH, colour and smell. It is not specific to special cosmetics.

In Clause 2(p) of the Bill, we are giving various new definitions which are internationally recognised by the World Health Organisation (WHO). They are critical for the execution of regulatory functions of the Authority, to further identify the Board as used in the Bill, and to provide new definitions for the world's enrolled pharmaceuticals technologists, therapeutic cosmetics, herbal medicine, medical devices and medical substances. The amendment also introduces the definition of the registrar to mean the Director-General of the Authority, as the term is used in various clauses in the Bill.

Thank you, Hon. Temporary Chairman.

(Question of the amendment proposed)

*(Question, that the words to be inserted
be inserted, put and agreed)*

*(Question, that the words to be left
out be left out, put and agreed to)*

*(Question, that the words to be inserted in
place thereof be inserted, put and agreed to)*

(Clause 2 as amended agreed to)

Long Title

The Temporary Chairman (Hon. Omboko Milemba): Hon. Chairman.

Hon. (Dr) Robert Pukose (Endebess, UDA): Hon. Temporary Chairman, I beg to move:

THAT, the Bill be amended by deleting the long title and substituting therefor the following new long title—

“An Act of Parliament to establish a comprehensive legal framework for the regulation of health products and technologies; to safeguard public health through development of a regulatory system to ensure safety, quality, efficacy, effectiveness and performance of health products; to establish the Kenya Health Products and Technologies Regulatory Authority and for connected purposes”.

This amendment accords with international best practices and sets out the main purpose of the Bill, which is to establish a centralised regulatory Authority for health products and technologies.

(Question of the amendment proposed)

(Question, that the words to be left out be left out, put and agreed to)

(Question, that the words to be inserted in place thereof be inserted, put and agreed to)

(Long Title as amended agreed to)

Clause 1

The Temporary Chairman (Hon. Omboko Milemba): There is an amendment. Hon. Chairman.

Hon. (Dr) Robert Pukose (Endebess, UDA): Hon. Temporary Chairman, I beg to move:

THAT, Clause 1 of the Bill be amended by—

- (a) deleting the phrase “Kenya Drugs Authority Act, 2022” and substituting therefore the phrase “Kenya Health Products and Technologies Regulatory Authority Act, 2022”;
- (b) deleting the words “and commencement” in the marginal note.

The amendment in (a) accords with international best practices and comprehensively covers the mandate of the proposed Authority. The amendment in (b) limits the marginal note to the content of Clause 1, which only sets out the name of the Bill. The Clause does not make any provision regarding the commencement of the Bill.

Thank you, Hon. Temporary Chairman.

(Question of the amendment proposed)

(Question, that the words to be left out be left out, put and agreed to)

(Question, that the words to be inserted in place thereof be inserted, put and agreed to)

(Clause 1 as amended agreed to)

The Temporary Chairman (Hon. Omboko Milemba): Mover.

Hon. (Dr) Robert Pukose (Endebess, UDA): Hon. Temporary Chairman, I beg to move that the Committee do report to the House its consideration of the Kenya Drugs Authority Bill, (National Assembly Bill No. 54 of 2022), and its approval thereof with amendments.

(Question proposed)

(Question put and agreed to)

(The House resumed)

IN THE HOUSE

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

MOTION

CONSIDERATION OF REPORT ON THE KENYA DRUGS AUTHORITY BILL
(National Assembly Bill No. 54 of 2022),

The Temporary Speaker (Hon. Peter Kaluma): Hon. Temporary Chairman.

Hon. Omboko Milemba (Emuhaya, ANC): Hon. Temporary Speaker, I beg to report that the Committee of the whole House has considered the Kenya Drugs Authority Bill, (National Assembly Bill No. 54 of 2022), and approved the same with amendments.

The Temporary Speaker (Hon. Peter Kaluma): The Mover to move agreement with the Report.

Hon. (Dr) Robert Pukose (Endebess, UDA): Hon. Temporary Speaker, I beg to move that the House do agree with the Committee in the said Report. I also request Hon. Osoro, Whip of the Majority Party, to second the Motion for agreement with the Report of the Committee of the whole House.

The Temporary Speaker (Hon. Peter Kaluma): Whip of the Majority Party.

Hon. Silvanus Osoro (South Mugirango, UDA): Hon. Temporary Speaker, I beg to second.

(Question proposed)

The Temporary Speaker (Hon. Peter Kaluma): For the convenience of the House, I will defer putting of the Question on the matter to a future date.

(Putting of the Question deferred)

Next Order.

BILL*Second Readings*

THE HIGHER EDUCATION LOANS BOARD (AMENDMENT) BILL
(National Assembly Bill No. 58 of 2022)

(Moved by Hon. Joyce Kamene on 18.10.2024 – Morning Sitting)

(Resumption of Debate interrupted on 18.10.2024 – Morning Sitting)

The Temporary Speaker (Hon. Peter Kaluma): Is Hon. Kamene, Member for Machakos County, in the House to move the Bill? We will step down this particular Order to a future date when the House Business Committee will next schedule it for consideration.

(Bill deferred)

Next Order.

THE LAND CONTROL BILL
(National Assembly Bill No.39 of 2023)

(Moved by Hon. (Dr) Ojiambo Oundo on 18.10.2024 – Afternoon Sitting)

(Resumption of Debate interrupted on 18.10.2024 – Afternoon Sitting)

The Temporary Speaker (Hon. Peter Kaluma): Hon. Eve Obara had a few minutes remaining to contribute. Is she in the House? I cannot see any interest in contributing to this Bill. Is there any Member who is keen to contribute to it? Chairman of the Department Committee on Finance and National Planning, Hon. Kimani Kuria.

Hon. Kuria Kimani (Molo, UDA): Hon. Temporary Speaker, one of the issues that we were discussing earlier on the absenteeism of Members is that you prepare for one Bill only for it to be stepped down because the Mover is not there. You have to recollect where you were in the other Bill.

I rise to support the Land Control Amendment Bill, (National Assembly Bill No. 39 of 2023). This Bill is seeking to replace the Land Registration Act (Cap. 300) with this current provision. One of the few things that I noted that are going to be very consequential in terms of this particular amendment is the change in the composition of the land board committees at the constituency level. Every time there has been any need for a change, those particular committees have been met with a lot of bureaucracies. I am particularly impressed by the inclusion of members of the private sector, not necessarily the appointees of Government, in the appointment to those particular committees.

I am also very impressed with the new role in this amendment in giving the land control committees at the constituency level the power to investigate any matters relating to fraud or any misallocation of land to individuals who may not be the ones that should be accorded that land. If you look at the data from our law courts, especially the land court, the number of cases involving matters of land is immense. Many court processes are used to try to cure and resolve those land matters. Most of the time, those courts are disadvantaged in terms of their access to information, considering most of those parcels of land in this country do not have valid title deeds. An honourable court has to dig into the family history and find out who had the first letter of allotment, and to whom the transfer was made of those letters of allotment because the only valid document most people have in their possession of land is a sale agreement. Some of those sale agreements are so old that they were handwritten, and appending the signature was by way of fingerprints, as it were for most of the informally uneducated parents. Therefore, when the honourable courts try to investigate those particular matters and give justice to the owners of those particular lands, they face all those challenges administratively. With those committees at the constituency level being given the extra duty to investigate and determine those specific cases of fraud, they will be able to trace the history. If you go to a particular village or community of a particular town and ask the residents of that town, including our villagers and the *nyumba kumi* committee members, they will give you a proper history of how that land changed hands from so and so, to so and so. However, that particular evidence is not usually available in a way that is palatable to a judicial system. Thus, this particular change in the combination of those particular committees is crucial to ensure a fastened solution to the conflict in terms of land in our Republic.

Most importantly, those committees are given the responsibility of safeguarding public utilities across the country. One of the abuses is the stealing of public utilities. You will find in a particular village or ward that there is always land that is allocated for the construction of a school or a dispensary. With time, the trend in our villages is that young people move to town and the older people are left in the village. When the older people pass on, those who are left behind take advantage, sub divide that land and sell it. When you try to find out what land was available as a public utility in that area, you find people have already processed documentation,

either fraudulently, and acquired title deeds or sale agreements for land that is purely meant for the use of the public.

For example, Hon. Temporary Speaker, in Molo Town, we have two very interesting cases where a court case has been going on for the last 20 years. One case is of someone who owns a piece of land inside a police station and lives inside there, while the other case is about one who is living in a school. We also have another one that has land in the middle of a church compound and possesses valid title deeds on that particular parcel. Those cases have dragged on in court because of the unavailability of an alternative solution to that conflict. If those land committees at the constituency level were given that mandate or jurisdiction, those would be some of the cases that would be fast-tracked.

The Bill also proposes to digitise title deeds across the country. Digitisation is the way to go. I like the words of my colleague, Hon. KJ, who keeps telling us that it is no longer finance; it is fintech. It is no longer education; it is edu-tech. It is no longer medical; it is meditech because we are moving everything that exists to the digital space. All the services that you need and that are available to mankind are technology-based. That is why even this House has had to adopt other technological means when it is receiving views from the public or how we conduct our meetings.

Therefore, the digitisation of title deeds, if my memory serves me correctly, started when Hon. Ngilu was the Minister for Lands. It is interesting that since Hon. Charity Ngilu was the Minister for Lands, the process of digitisation of title deeds has never been fulfilled. When such a process takes so long, your guess is as good as mine. There could be some technical officers somewhere who do not want to see the digitisation of that particular process. If we can digitise our vehicles... For instance, if you notice any vehicle on the road, just by the click of a button on a system by the use of an Unstructured Supplementary Service Data (USSD) code on the phone, you can tell who owns that particular vehicle. You are able to tell a child by their birth certificate when you search for it and see who that person is. If you are searching through an Identity Card (ID) or through all the other cards that we have, including *Maisha* Number, it is possible to digitise all our title deeds. Once we are able to digitise those title deeds, we will unlock great potential, including access to credit. We have many people, especially in the village, whose only collateral they can use to access credit is a title deed. So, when you do not avail that title deed to those people, we deny them economic progress.

As I wind up, in economics, the four factors of production are land, entrepreneurship, capital and labour. All of those cannot function without land. If you take capital, for example, that capital investment, apart from the coming of digital technology where you can put that capital in a technology and host it in space, that labour must live. The mobility of labour is dependent on infrastructure, which is developed on land. Those people who drive that factor of production called labour must live. One link that links all the three other factors of production is land. We need to make sure that land lives to its potential in ensuring that there is economic development by ensuring mobility of that land. Because land will not physically move, we can only ensure that we facilitate ease of transfer of land from one entity to another and, where possible, and even that charging when you want to access credit.

Lastly, Hon. Temporary Speaker, with the coming of securitisation, we have technologies that, through securitisation, we can have an investor across the globe using digital technology and be part of a coffee farm in Meru or a tea farm in Thika or be part of a potato farm in Molo. That securitisation can only be done if we digitalise our title deeds across the country.

With that, I beg to support.

The Temporary Speaker (Hon. Peter Kaluma): Thank you very much. Hon. Rindikiri Mugambi, do you want to contribute to this?

Hon. Mugambi Rindikiri (Buuri, UDA): Thank you, Hon. Temporary Speaker. As articulated by our Chairman, matters of land in our country are very emotive. We have had many challenges in the management of land in this country. We have so much land and yet, many conflicts are associated with it. This Bill addresses matters of land arbitration. Land control boards are very essential for land matters in the village. I am glad that those boards are being given an opportunity to investigate certain matters relating to land. My constituency is among the three rural constituencies with a large number of slums. We have slums in Timau Town in an area called Machaka. We also have areas that require land adjudication, where people are given numbers and allotment letters. They now need to be given title deeds.

The transfer or consolidation of those parcels of land can create a lot of discontent among the people who want to inherit that land. I am aware that many conflicts arise because of land inheritance. We have seen situations where widows are disadvantaged when it comes to land matters, particularly in the transfer of land. We have seen orphans being mistreated and, sometimes, those matters are not handled properly. If I am able to go to court and present my matter, I carry the day. Currently, I know of three families who are fighting for their small pieces of land, but there is nobody with the power to deal with the matter on their behalf.

Hon. Temporary Speaker, this Bill has come at the right time because, as other Members have said, those boards have the power to investigate a matter when it goes to court. The boards are constituted of people of independent minds and various professions. We need to support this Bill. As other Members have said, there is a lot of public land. Who protects that land? That is the biggest question. I know of an area where the cemetery land has been grabbed in my constituency. That is how bad land matters are. It is not just where we come from; it is all over the country. Why is that the case? It is because there are no proper records.

I know of a school in my constituency called Sirimon Mixed Day Secondary School, where six title deeds were issued for the school land. I know of a lady who has been told to move out of the land she has occupied since 1986. I know of a church in my constituency, the African Independent Pentecostal Church of Africa (AIPCA), whose land has been grabbed. If we have land control boards that are empowered by the law, we will be able to safeguard the rightful ownership of those lands.

I am very concerned about land inheritance. On many occasions, when one takes their case to the land control boards, they can manipulate the outcome. Now that you can just walk into the Survey of Kenya or the land registries in many counties, you can manufacture your own title deed, the deed plan, or even the map of the area. When those matters are presented to a land control board with the mandate to investigate, arbitrate, and recommend prosecutorial actions, we all need to support this Bill.

There are many slums in my constituency, including Riverside, Kailili, Kwa Joshua and Machaka. Many of those disputes cannot be handled by the courts. This is because there are slums where the home sizes are 30 metres by 40 metres or 40 metres by 50 metres. Those people have lived together for a long time. A capable person like Rindikiri will go there and say that, that land belongs to them. Who is supposed to investigate that? Who will arbitrate on that? In many cases, they go to the chiefs or the local deputy county commissioner (DCC). However, the local DCC is most likely unaware or has no information about that land. I believe a land control board with the power to investigate and make recommendations is the way to go.

I support this Bill. This is the way to go. Land is becoming scarce in this country. The scarcer the land becomes, the more the cases require a lot of investigation, adjudication, arbitration and dispute resolution. I urge Members to support this very important Bill and implement it as soon as possible.

Thank you, Hon. Temporary Speaker.

The Temporary Speaker (Hon. Peter Kaluma): Next is Hon. Francis Sigei, Member for Sotik.

Hon. Francis Sigei (Sotik, UDA): Thank you, Hon. Temporary Speaker, for giving me this opportunity. This is a very important Bill.

At the outset, I want to state that I have chaired many land control boards. Land control boards have played a vital role in stabilising land management in this country. I am very happy that we are now validating and modernising this Land Control Bill. Land control boards have existed for a long time, and they have done a wonderful job.

I want to speak on two things. First, the members of land control boards, whom I have worked with in many areas, are people of integrity. They are reliable people who understand what happens in the villages. Going forward, we will digitise land records. I have heard the Chairman saying that we must digitise that information. One of the problems we have had in this country is the issue of title deeds.

Hon. Temporary Speaker, you remember that, at one time, a Minister said in this House that a title deed is just a piece of paper. Title deeds became useless. What we are now doing is to make sure that the title deeds in this country are made to be legal and valuable so that any investor who wants to come can know that they are investing in something that will last for a long time.

There are problems with public utilities in this country. Land that is allocated to schools, sports and playing grounds have been taken, not through the land control boards, but by people who go to the Ministry of Lands to manufacture title deeds and get them through fraud. I hope this Bill will cure that problem.

Another issue I want to mention is the power to investigate. This is a milestone. If those boards can be given some legal backing and particularly have powers to investigate and recommend prosecution, it will go a long way in making sure that land title deeds in this country are of value.

Another thing I want to mention is the kind of allowances those older men and women who sit in the boards are paid. They are paid peanuts. If we can enhance the allowances of those honourable people who sit in the land control boards, it will avert the issue of corruption and make it respected. We also want to inject professionals who will support those land control boards in technical issues. I am sure those land control boards in the country will play a significant role.

On the issue of land cases in court, I hope this Bill, after discussions, will assist in making them move faster. This has been a mining area for lawyers, who have made much money at the expense of the poor people. If you look at the cases in the rural areas, those local people cannot even afford to pay the legal fees, I hope this Bill will address this issue so that our people can be saved from that problem.

I support this Bill because it will go a long way in making work easier, making the issue of land ownership very easy to access and, even more importantly, solve the issue of succession which has been a problem. If you look at the land cases in our place and even in Kisii, Kericho and Sotik, the people are being killed because of them. We would like to make those cases easier to handle at the land control board level so that the people can save their lives.

I support the Bill. Thank you.

The Temporary Speaker (Hon. Peter Kaluma): In ordinary circumstances, I would have called the Mover to reply, but this particular Bill is very critical. I, therefore, defer further debate on it to a future date.

(Bill deferred)

Call the next Order.

MOTIONADOPTION OF SECOND REPORT ON EMPLOYMENT
DIVERSITY AUDIT IN PUBLIC INSTITUTIONS

THAT, this House adopts the Second Report of the Select Committee on National Cohesion and Equal Opportunity on the Employment Diversity Audit in Public Institutions, laid on the Table of the House on Thursday, 21st March 2024.

(Moved by Hon. Yusuf Adan on 5.11.2024)

(Resumption of Debate interrupted on 5.11.2024)

Are any Members interested in contributing further? Hon. Kakai Bisau, you had six minutes left on this particular one. Please proceed if you have more contributions to make. It is the one on the Report of the Select Committee on National Cohesion and Equal Opportunity on the Employment Diversity Audit in Public Institutions, the one the House rose when you had done four minutes.

Hon. Bisau Kakai (Kiminini, DAP-K): Thank you for remembering that I had my six minutes. From the onset, I support what has been tabled. However, what has been a disappointment is the little interest in this issue. It would be good to start cohesion with the Parliamentary Service Commission. As they always say, charity begins at home. We need to see the distribution of numbers within the Parliamentary Service Commission. I would also like to highlight that the problem begins from here, as well as the Executive. It even starts from our own NG-CDF offices. How do we do geographical distribution of community origins?

Additionally, I sit in the Public Investments Committee on Education and Governance. You will find that certain provinces pick vice-chancellors from that area. In the process, there is tribalism and lack of cohesion. Regional balancing is not considered. I gave an example of my previous work in the United Nations (UN), where we had what we called a quota system. In the system, they distribute jobs by looking at a country's population and then lock out the percentage there.

An example is the Kenyan situation. We can say that the Agikuyu community has the highest population, corresponding to 17 per cent. When jobs are being distributed in the civil service, for example, you freeze employment once you reach that 17 per cent so that you also allow in other communities. That is the only way to try to balance it out.

Another example from educational institutions is that job advertisements propel a lack of cohesion such that they do not attract people from outside certain regions. We would like to have a situation where we head-hunt whoever is appointed to positions like vice-chancellors or the Public Service Commission. After freezing a covered community, you have to work out and even target people like the 43rd community of this Republic and persons with disabilities. I expected that to come out very strongly in the Report. Additionally, the Report has just given recommendations. We even want to have some punitive measures. For example, if you are working in an area where you have the responsibility to ensure equal opportunities but fail to meet that threshold, some punitive measures can be taken.

In a nutshell, the problem begins here. We have even seen situations where Members of this House and other elected leaders literally physically eject people who are picked from their backyards into institutions. We need to walk the talk. We should not preach water and take wine.

By and large, it is a very good submission by Hon. Abdi. I support it. However, we need punitive measures to ensure that whoever is given an opportunity walks the talk. Thank you, Hon. Temporary Speaker.

The Temporary Speaker (Hon. Peter Kaluma): Hon. Liza Chelule.

Hon. Liza Chelule (Nakuru County, UDA): Ahsante sana, Mhe. Spika wa Muda, kwa kunipa nafasi hii nchangie mambo yanayohusu nafasi za kazi katika nchi yetu ya Kenya.

Kwanza, ningependa kumshukuru *Chairman* wangu aliyeleta mjadala huu katika Bunge jana. Ripoti hii ilisikilizwa sana na Wajumbe waliokuwa ndani ya Bunge wakati huo. Ningependa pia kuipongeza Kamati yangu ya *National Cohesion and Equal Opportunity* kwa kufanya kazi kubwa ya kutengeneza Ripoti hii iliyoletwa Bungeni jana. Kamati iliamua kuchunguza kinachoendelea katika Wizara mbalimbali kuhusiana na mambo ya nafasi za kazi.

Tulipoanza uchunguzi, tulikutana na Wizara 18. Baada ya kufanya mikutano nao na kuuliza sababu ambazo zimepelekea kabila zingine kukosa kazi, walitaja mambo mengi sana. Mengine yalikusiana na namna taarifa hufikia wananchi mashinani. Kuna watu wanaokaa sehemu fulani, na inakuwa vigumu kwao kujua kinachoendelea nchini Kenya, hususan mambo ya nafasi za kazi. Watu wengi hawapati habari kwenye magazeti kuhusu kazi ambazo zimetangazwa, au kazi zinazohitaji watu fulani. Watu tunaowatetea ni akina mama, wale wanaoishi na ulemavu na vijana. Wengi walilalamika sana na kusema ya kwamba hawapati taarifa ya kutosha. Tuliifikiana ya kwamba ni lazima tupitische Ripoti hii. Kama Wabunge, ni muhimu tujielimishe kuhusu mambo kama haya yanayoendelea nchini Kenya, na ni lazima tutafute suluhisho.

Namuunga mkono Mheshimiwa kutoka eneo Bunge la Kiminini. Amesema ya kwamba tuanze na sisi wenyewe kama Wabunge na sehemu zetu. Katika ofisi zetu, tumeandika watu kwa njia gani? Je, tumefuata sheria ambayo imewekwa katika Katiba yetu? Tuna Katiba na sheria kuhusu mambo ya ugavi wa nafasi za kazi nchini Kenya. Kwa hivyo, tumeileta Ripoti hii ili tujielimishe na tuanze na ofisi zetu.

Kuna muda tuliuliza Wizara mbalimbali maswali mengi, na wakasema ya kwamba hakuna *structure* ya kutosha kuhakikisha taarifa zinafika mashinani zaidi ya kutumia magazeti. Tunajua bayana kwamba kuna watu ambao hawawezi hata kununua magazeti, na wengine wao hawana redio au namna yeyote ya kupata taarifa hizi. Hata ofisi ya Mbunge kule mashinani inaweza kupitisha habari hizi. Ningependa kuwaeleza Wabunge wanaonisikia kwa sasa ya kwamba ofisi zao zinaweza pia kuwa *structure* ya kutuma taarifa hizi.

Kama viongozi, ni lazima tuonyeshe ya kwamba tunajali na tungependa watu mashinani wapate taarifa za nafasi za kazi katika wizara mbalimbali. Tunahitajika kuwa tayari kusikiliza kinachoendelea. Kama wawakilishi wa wananchi, ni lazima tuangalie na tuwawakilishe ili wapate taarifa.

Kuna ofisi mbalimbali, na sio ya Wabunge tu peke yao. Kuna pia ofisi za *County Women Representatives, Governors and Members of County Assemblies (MCAs)*. Ofisi ya *MCA* ndio ya mwisho katika utaratibu wa uongozi nchini Kenya.

Ripoti tuliyoileta hapa ni ya kueleza kila mmoja ya kwamba kuna shida, na kama viongozi, tunafaa kuirekebisha. Kwa niaba ya watu wa Nakuru na wananchi wote wa Kenya, ningependa kuomba Wabunge wenzangu tusaidiane na tuhakikishe ya kwamba taarifa imefika mashinani, na tutekeleze Kipengele cha 232 cha Katiba yetu.

Kwa hayo machache, Mhe. Spika wa Muda, ahsante sana kwa fursa hii kuchangia Ripoti hii kuhusu ugavi wa kazi nchini Kenya. Ahsante.

The Temporary Speaker (Hon. Peter Kaluma): Given that there is no more interest in this particular Motion, I call upon the Mover... Hon. Rindikiri Mugambi, do you want to speak to this? Proceed.

Hon. Mugambi Rindikiri (Buuri, UDA): Thank you, Hon. Temporary Speaker. This is a critical topic for discussion in this country. As it is right now, the situation may look like a few are getting while others are not.

But, we must not lose sight of some historical factors that have led to where we are and how we have created a bit of disparities. The Constitution has brought a bit of checks and balances on how we have been employing people in this country. We should also not lose sight that this Report is biased in the sense that they have only brought in the public sector. They have not addressed the private sector. I do not know what they will do or why they avoided consulting the private sector. I know some of the private sector and NGOs will practise what our Constitution dictates. From that perspective, when we are talking about cohesiveness in terms of employment, it needs to be very broad. Even if it means finding a way of addressing the same matter with the private sector, so be it.

We should look at why people are employed in a particular place. Specialised institutions, whether private or public, look at qualifications and not where a person comes from. If you go to Nairobi Hospital, you will meet many professors and doctors from Nyanza. That is common sense. If they specialise in that area, we cannot say: "Let us go and get some other people so that they can fill the gap." So, qualification is key, and some of our public institutions dictate that we look at that.

I come from a very highly cosmopolitan constituency. My constituency has all the 44 tribes, or whatever we call them. It has Luos, Kikuyus, Merus from Tigania, Igembe, Tharaka and Chuka. We also have the Embu. I have people from everywhere in the country. I cannot say I will not employ a particular individual because I am supposed to fulfil a certain aspect. I have to be careful because there are certain tribes in my constituency with a large population. The diversity of my community dictates how people will be absorbed in the private or public sector that is operating in my constituency.

On the issue of information, there are very many people who do not get a lot of it. Currently, the Public Service Commission (PSC) is setting up its website. How many people have the digital capacity to access the PSC portal to learn about the kind of employment that exists? People in Nairobi will get it very fast. People with iPhones and smartphones, relatives in Nairobi, and Members of Parliament will get it. But there are those poor kids out there in villages who have no information. This means that those who are digitally enabled are the ones who are going to get that information and apply. The Committee needs to be sensitive to such matters. High-population areas with high population densities are natural. We cannot ignore it. If we have to put weight on some measures, some will be more than others. I believe we have not reached a point where we have to say we have 100 per cent of it. We can try to play politics with some of those things. The Committee Report needs to address those factors, not the obvious ones. You walk into an institution, and then ask how many Luos, Kambas, Merus and Luhya are there, and you are given the report. I do not believe that will sort out the problem.

Hon. Temporary Speaker, some of those things require long-term thinking. Our economy is growing, and the public sector is shrinking every day in this country. Sooner or later, we will find ourselves with a very small public sector. Will we be fighting and saying the Constitution will address a very small sector? With all due respect, we have to start looking at other things from another perspective.

There are some jobs which people who believe in some religions cannot do. Some people cannot work in some sectors because of their religion. Others do not work on Saturdays because of their religion. Other people have to dress in a certain way. Please, let us have a comprehensive report. Let us not look at numbers and names like O, K, Kamau, Otieno and Kiplagat. Let us try to avoid that kind of conversation. Going forward, we need to expand our private sector to create more jobs and opportunities so that people will not be fighting for the small and shrinking public sector. The wage bills in some of those private institutions are so

large that they are collapsing. Even counties have a lot of wage bills. If we talk about employment, I believe the framers of the Constitution did not say we should follow a specific rule. They said we should try a balancing act that is dictated by so many factors that we cannot avoid.

This is a good Report, but we have to be just in this country. Please, let us do more things. Some of the private and public institutions are dying because some of the tribes are managing them. This is bad by all standards. We even have some institutions like universities with the same tribe from top to bottom. All the heads of departments come from the same tribe. That is wrong. If that is what we are talking about in this Report, I agree with it. But there are some other jobs that you look at factors like qualifications and region. Let us not play politics with some of those Reports to prove that there are many Merus in a certain institution, and they need to be removed so that we can have people from other regions. Those are not the politics and discussions we want to engage in this House.

I thank you, Hon. Temporary Speaker.

The Temporary Speaker (Hon. Peter Kaluma): Hon. Rindikiri Mugambi, you are done. Do you want to be informed? In fact, that question does not arise because you have ended your contribution. Hon. Duncan Mathenge, Member for Nyeri Town, do you want to contribute to this Motion?

Hon. Duncan Mathenge (Nyeri Town, UDA): Thank you, Hon. Temporary Speaker. I am a member of the Committee on National Cohesion and Equal Opportunity. The representation by my friend, Hon. Rindikiri, is far from the truth in terms of the depth of involvement that the Committee engages in with different Government institutions, commissions and Semi-Autonomous Government Agencies (SAGAs). We not only looked at the numbers, but also asked for documents. The mandate of the Committee extended beyond looking at employment diversity, which is the representation of all Kenyan communities in public employment. It is imperative to note that the threshold that is set in law is not more than 30 per cent. Largely, from a historical perspective, the benchmark of when we started this audit is 2012. After that year, COVID-19 happened. There have been freezes in employment, and the requirement is for us to put in place some measures that accord the under-represented or un-represented communities to have affirmative action for on-boarding. Those measures cannot be set only by the Committee; it is the responsibility of this House.

Hon. Temporary Speaker, as my friend, Hon. Rindikiri, has put it, employment in the public sector has been shrinking. Therefore, the Question we need to ask as a House is whether we want to look at public sector employment only because jobs are shrinking. What about the reality of digital space or digitisation? The framers of our Constitution in 2010 never thought about the digital space and the disruptions that COVID-19 came up with. As a Committee, we have made recommendations to amend the National Cohesion and Integration Act so that the realities of the circumstances under which we operate are aligned with the current realities in the job space. It is true there is a requirement that we advertise all jobs online. While it is good in creating transparency, it is also disenfranchising many Kenyans who cannot access the internet.

Currently, we require every Kenyan to register themselves in the Social Health Authority (SHA) system, which includes being sent a short code. The problems that people have faced are to bring to the fore the challenges of accessing opportunities online. We have encouraged Government agencies to consider using local media and constituency offices of Members of Parliament in advertising vacancies so that they can reach the people everywhere across the country.

Another challenge is the 5 per cent reservation for all public appointments to persons living with disabilities. Yet, looking at the state of the education institutions for persons living with disability, we should all be ashamed. We have not developed any new institutions. The

old ones are all dilapidated and in shambles. The teachers and instructors for those institutions are demotivated and demoralised. The institutions are not equipped. How can those people access employment opportunities and yet, they cannot access education opportunities in this country? I ask us to use this Report to open our eyes as Parliament. Let us support the recommendations in the Report on developing educational institutions for persons living with disabilities and better equipping them.

Hon. Temporary Speaker, I support the Report of the Committee.

The Temporary Speaker (Hon. Peter Kaluma): Hon. Kakai Bisau, you cannot inform a Member who has ended their contribution. I wish you intervened before he confirmed he had finished making his contribution. Secondly, you can also not inform him when he does not agree to be informed. He cannot agree because he has ended his contribution.

Hon. Ambassador Francis Sigei.

Hon. Francis Sigei (Sotik, UDA): Mhe. Spika wa Muda, ningependa pia kuchangia mjadala huu kuhusu Ripoti ya Kamati siku ya leo. Ningependa kwanza kushukuru Kamati kwa kazi iliyofanya. Wamechukua muda mrefu kutafuta *information* na mambo yaliyotakikana katika hii Ripoti. Mimi ningependa kuunga mkono mjadala huu, na kuipongeza Kamati.

Mhe. Spika wa Muda, ningependa tujue kwamba Kenya imebadilika. Katiba ni tofauti, na watu ni lazima wawajibike na wahakikishe kwamba mambo yalio kwenye Katiba yanatimizwa ipasavyo.

Mhe. Spika wa Muda, naunga mkono.

The Temporary Speaker (Hon. Peter Kaluma): Hon. Johana Ng'eno, Chairman of the Departmental Committee on Housing, Urban Planning and Public Works.

(Hon. Wanami Wamboka spoke off the record)

Hon. Johana Kipyegon (Emurua Dikirr, UDA): Thank you, Hon. Temporary Speaker. I can see my brother, *Mhe. Wamboka*, signalling me. I do not understand why but, maybe, it is because of time. I want to give some flesh to this Report. From the word go, I truly support this Report. It is a very important Report because it looks into several issues that are affecting the Public Service. It is not only the Public Service. I wish the Hon. Chair had looked at the Private Sector. This is because the rule of law in this country is not meant only to affect the public service. It affects even the private sector because when you look at employment in this country, the private sector employs almost 40 per cent of the employees. Therefore, *Mhe. Chairman*, in your next course of action, you should also look at how discrimination, the terms of employment, regional balancing, and all those things are done in the private and public sectors. This is because we are all under one Constitution, and we need to abide by it. We need to abide by the law. We need to re-look at how our people are being employed.

So, I want to say that I support this Report because it looks into the details. We will still interrogate it. So, we need to come up with ways other than what the Constitution states and make sure that not only particular people in particular sectors are lined up for employment. This country needs everybody. Even if your tribe or community is small or not even recognised in the bigger positions, I think there should be a way to make it mandatory for every sector of employment - whether it is the Public Service Commission, county public service boards, or private sector - to look into exactly how they can involve everybody so that we do not have imbalances and injustices to some other communities, people, persons living with disabilities and also other areas.

Hon. Temporary Speaker, that is my contribution. I wish we would look at it because this country has so many communities. Very small communities may not have representation in this House. They may also not have representation in senior positions like cabinet secretaries, principal secretaries, and chief executive officers (CEOs) of various parastatals. Those are

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people who determine who to be employed and where. Communities that do not have representation in those senior positions are usually marginalised and disadvantaged. This Report will go a long way in ensuring that we have a balance in this country in terms of employment.

The Temporary Speaker (Hon. Peter Kaluma): Mover, please reply now.

Hon. Yusuf Adan (Mandera West, UDM): Thank you, Hon. Temporary Speaker, for giving me this opportunity. I beg to reply. The Committee not only looked at employment on ethnic basis, but it also looked at employment diversity in public institutions and not private because the Constitution is slightly silent on the mandate of this Committee as to whether we are also able to look at the private sector. But since we are coming up with an amendment to the Bill, the House can guide and also include the private sector. The Committee looked at employment diversity in terms of age, gender, ethnicity, race, religion, disability and socio-economic backgrounds. That is what is envisaged.

Yesterday, as Members were contributing, they talked a lot about the levels or classes of employment. If you look at the complete Report, we have senior level, middle cadre level and lower level. So, when we talk about a university somewhere in Western Kenya which I mentioned yesterday and raised some very hot discussions, 78 per cent of the staff come from one ethnic community. If somebody wants to look at the levels, it is there in the full Report. Please check. You will find that probably, the majority are in the lower cadre. But what the Constitution says is diversity and equal opportunity in all cadres. It does not tell us about lower or the higher cadre.

This is the second Report. I tabled the first Report before this and it is still in the process somewhere. That first Report is the one that covers majority of the bigger institutions such as KRA.

Yesterday, there was debate on statistics of merging communities like the Mijikenda. We derive our levels of ethnic communities from the Kenya Bureau of Standards.

The highest community in terms of population ratio in Kenya, as far as the national population is concerned, is 17 per cent. The law allows up to 30 per cent of employment opportunities to be taken up by one community. We are coming up with an amendment of the law which says that the maximum a community can take is 20 per cent. If the highest is 17 per cent in terms of population ration and we have even added 3 per cent, there should be no complaint if we are looking at equity and equality.

We are going to have more reports. We are going to have at least one report every quarter and see. I am also requesting this House to support the National Cohesion Integration Bill, 2023 when it comes up for discussion here. Let them support it and include whatever small issues like private sector by decreasing or increasing the quota system.

Hon. Temporary Speaker, today, we have a crisis of employment. It is a time bomb we are sitting on, particularly for the youth. Trying to expand employment should be our priority. Otherwise, it is very dangerous. You saw what Gen-Zs did to us the other day. It is because majority of them are unemployed. If they were employed, they would not have had time to come and attack Parliament.

With those few remarks, I beg to move.

The Temporary Speaker (Hon. Peter Kaluma): A matter arose yesterday during debate. This had something to do with the business Parliament transacted around the Motion. Do you remember the matter of the Kenya Revenue Authority (KRA) officers? You remember the Cabinet Secretary was privileged to answer in Parliament. Yesterday, it was alleged that the matter went to court. The court nullified those employments on account of the matters you are dealing with. Despite even the court order, those people are all working. That is in defiance of the Article 232 of the Constitution that you are pushing through this Motion. What do you say to that? How do you want to deal with that as you reply?

There was balance in public service within the Parliamentary Service Commission. How soon are you doing a Report around that? I can tell you that members of various communities outside here are murmuring about it. For obvious reasons, you know they cannot speak aloud lest they face consequences that may not be good. There are communities saying they are not being employed in Parliament and those in Parliament are not being promoted. Promotions come where they are qualified and yet, they are just stagnant. We have the Wamakonde within Parliament. You need to make a comment on how fast you want to go into the Parliamentary Service Commission. Have a report here so that we can be a good example as the institution that helps implement the laws we make.

What do you say to those two?

Hon. Yusuf Adan (Mandera West, UDM): The KRA is the first. I think this Committee raised the first red flag. There were even attempts by bigger authorities to stop the KRA from coming to this Committee. We did it ultimately. We were the first to raise the alarm and it went to the papers. That is where whoever took them to court got the information from. It is true that the court has ruled that, that recruitment was illegal. It was actually illegal. They appealed. The court gave them time. Status quo remains until the matter is concluded. That is why those employees are still there. You know the court takes too long, sometimes. We could have concluded it a long ago if it was within the powers of this Committee. However, it is now within the court. We were also told not to indulge in matters that are in court so much.

The Temporary Speaker (Hon. Peter Kaluma): Okay. There is a Report on the Parliamentary Service Commission. Particularly, staff from the community I come from are lamenting a lot.

Hon. Yusuf Adan (Mandera West, UDM): Yes. You know the Committee writes to institutions through Parliament. I do not sign the letter when we are writing to the KRA or any other institution. The Clerk of the National Assembly signs the letter. I have already written to the Clerk of the National Assembly to write to the Parliamentary Service Commission to appear before the Committee so that we do what we have done to all the other institutions. I am waiting for feedback. I will walk to the Clerk's office tomorrow because of the curiosity in the House today. I will make sure we first track it. We will have a meeting with the Parliamentary Service Commission and then table a report as soon as possible.

Thank you.

The Temporary Speaker (Hon. Peter Kaluma): Thank you very much, Chair. Thank you for a very good Report that has been well-presented before the Floor by your Committee and yourself on their behalf.

Next Order.

Before I call for the next Order...

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

Hon. Chairman of the Committee on National Cohesion and Equal Opportunity, for the convenience of the House, I will defer the putting of the question to this particular Motion to a future date, when it will be scheduled by the House Business Committee. Possibly even tomorrow.

(Putting of the Question deferred)

Next Order.

MOTION

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ADOPTION OF REPORT ON FINANCIAL STATEMENTS OF
STATE CORPORATIONS (NYANZA REGION) FOR FINANCIAL YEARS 2018/2019,
2019/2020 AND 2020/2021

The Temporary Speaker (Hon. Peter Kaluma): The Chairperson of the Public Investments Committee on Governance and Education.

Hon. Wanami Wamboka (Bumula, DAP-K): Hon. Temporary Speaker, I beg to move the following Motion:

THAT, this House adopts the Report of the Public Investments Committee on Governance and Education on its Examination of the Reports of the Auditor-General on the Financial Statements of State Corporations (Nyanza Region) for the financial years 2018/2019, 2019/2020 and 2020/2021, laid on the Table of the House on Thursday, 25th July 2024, but subject to:

1. deletion of Paragraph 212 appearing on Page 41 of the Report and substituting therefor with the following new paragraph:
“The Committee recommends that the regular cash payments made for the casual works done amounting to Ksh2,308,996, be surcharged to the governing council of Kisumu National Polytechnic. The amount is to be paid within six months after the adoption of the Report by this House.”
2. deletion of Paragraph 216 appearing on Page 41 of the Report, and substituting therefor with the following new paragraph
“The Committee recommends that the long-standing imprest of Ksh37,800, be written off from the institution’s books of accounts since no money was lost. It was as a result of the demise of the employee.”
3. effecting the consequential amendments in the Report.

Hon. Temporary Speaker, I will start by appreciating the Members of this Committee because they have been very committed. We have never lacked quorum. I know very many of my colleagues have suffered quorum issues, including on the Floor of the House. Some of whom, including today, have moved very crucial Bills, but the Members are not in. We have never suffered from that. I thank our Vice-Chairperson, Hon. Naisula Lesuuda, Hon. (Amb.) Francis Sigei, our Provincial Commissioner (PC), Hon. Mark Mwenje, my Whip, Hon. (Eng.) Thuddeus Nzambia, Hon. James Wamacukuru, Hon. Maurice Bisau Kakai, Hon. Rebecca Tonkei, Hon. Alfah Miruka, Hon. Shadrack Mwititi, Hon. Moses Kirima, Hon. Daniel Karitho, Hon. Chiforomodo Munga from Lungalunga and, last but not least, Hon. Joseph Tonui. Those people have done a good job. I just want to note that because of the commitment of my Members, I think we are the leading Committee in terms of delivery in this House. We are at the tail-end of finishing our agencies. We will be done in a week’s time. The Committee is ready with seven reports.

Hon. Temporary Speaker, you know and you have been around to understand that it is not a mean feat. Indeed, those Members, have done a good job. I also want to appreciate our Secretariat under the leadership of Ms Christine Ndiritu Gloria, together with her team that has given us good service to be able to do what we do. I also want to thank our officers from the Office of the Auditor-General, led by Mr Tonkei.

Hon. Temporary Speaker, the Committee is established under Standing Order 206 of the National Assembly Standing Orders. Public Investment Committee Governance and Education is responsible for the examination of the workings of public investments based on their audited reports and accounts. It is mandated:

1. To examine the reports and accounts of the public investments.

2. To examine the reports, if any, of the Auditor-General on public investments.
3. To examine, in the context of the autonomy and efficiency of the public investments, whether the affairs of the public investments are being managed in accordance with sound financial or business principles and prudent commercial practices.

In this Report, the Committee handled the following agencies that are domiciled within Nyanza regions: Kisumu National Polytechnic, Ugenya Technical and Vocational College, Asumbi Teachers Training College, Maberu Technical and Vocational College, Rangwe Technical and Vocational College, Omuga Technical and Vocational College and Seme Technical and Vocational College.

The others that we handled are: Kakrao Technical and Vocational Training College that is domiciled in the Leader of the Minority Party's Constituency, Nyakach Technical and Vocational College, Siaya Institute of Technology, Ugunja Technical and Vocational College, Sikri Technical and Vocational College, Keroka Technical Training Institute, Siala Technical Training Institute, Ramogi Institute of Advanced Technology, Maseno University, Rongo University, Mawego Technical Training Institute, Tom Mboya University College and Jaramogi Oginga Odinga University of Science and Technology.

The Committee examined the audited financial statements of the State corporations that I have listed. In examining the accounts of the Auditor-General, the Committee invited accounting officers in each of the State corporations under review to adduce evidence before it.

The Report contains observations, findings and recommendations arising from the examination of the reports of the Auditor-General for the 20 State corporations for three financial years running to the latest 2020/2021 Financial Year. For the benefit of Members, the Report is structured as follows:

1. General observation arising from recurring and cross-cutting audit queries.
2. Recommendations to each of the above.
3. Audit queries identified by the Auditor-General, in the audit reports of each state corporation.
4. Management responses to each of the queries.
5. Committee observations and findings on each query.
6. Recommendations of the Committee to each query raised.

Hon. Temporary Speaker, the Committee proposes policy recommendations that are aimed at addressing financial audit challenges. At the same time, it recommends specific action against officers who may have acted contrary to the recommendations. It further recommends additional investigations of certain matters by the relevant investigative bodies such as Ethics and Anti-Corruption Commission (EACC) and the Directorate of Criminal Investigations (DCI).

Some of the things that are being committed in some of those institutions are worrisome. Some of them are deliberate. The House should understand or take notice that most of those institutions had never been audited. They were doing things the way they wanted; which has led to the collapse of our institutions. We have incompetent officers that engage in issues that are blatantly against the law. We have far-reaching recommendations.

Hon. Temporary Speaker, we want some of those people to be investigated immediately by our investigative agencies like Ethics and Anti-Corruption Commission (EACC) and Directorate of Criminal Investigations (DCI). We urge them not to compromise their investigations. At the end of the day, we want to see those perpetrators behind bars, and justice for *mwananchi*. All that is geared towards ensuring prudent use of public resources and holding all persons who have misappropriated public funds accountable, in accordance with the Constitution of Kenya 2010. If those observations and recommendations are considered and

implemented, they will enhance accountability, effectiveness, transparency, efficiency, prudent management, commercial viability and value for money in the State corporations and public investments in the governance and education sectors.

Our key mandate is the person at the centre of this audit, that is the student. He or she matters because we are the protectors of public interest. We have funny stories in those institutions where students are disadvantaged every other day. As we speak, students of Moi University who went to a Government school in good faith, and went through their education for four, five or six years, have not and cannot graduate. We discussed the matters of Moi University here the other day. Students are suffering, but they are not supposed to suffer. It is the responsibility of the Government. That is why we place the student at the centre of our service to humanity. We call upon all those universities to ensure that the student is not disadvantaged in any way. Once the student and parent meet their part of the bargain, the student is supposed to have his legitimate share.

We also have workers who work for those institutions. They have gone for many years without salaries. They are employed on permanent and pensionable terms. It is a shame that most of those institutions cannot and are not paying salaries. They are not fulfilling their obligation in statutory deductions. Workers work for an agency and you have been deducting their monies. Once they retire, there are no benefits. Those people will die. Our retirees are dying because of the mismanagement in those institutions. This should not be allowed.

Most of them go without insurance. Moi University workers do not have insurance. Why does this happen? Just the other day, that institution was doing very well. But because of tribalism, it is now on its knees. When they picked their new Vice-Chancellor, Prof. Ayiro, he was doing a very good job. His only sin was that he was a Luhya. You saw elected Members of Parliament and the Governor walking to that institution to eject him out. He left because he is not a Kalenjin. But because he does a good job, he is on demand. Look at Daystar University today where Prof. Ayiro sits. It is enjoying profitability. If you look at where he was rejected because of his ethnicity, it is dead! I want to appeal to the Members of this House. Let us not look at education through the lenses of tribalism because we are killing it. Let the right people do the right things. We are proposing that those people who have been found to be incompetent should never hold public office at least so that they serve as a lesson to others.

Hon. Temporary Speaker, we realize that most of those officers have questionable competencies. They lack exposure to the audit processes as most of those officers are ignorant or non-compliant with various provisions of the Public Finance Management (PFM) Act, 2012 and the Public Audit Act of 2015. We are proposing and recommending that the National Treasury and the Office of the Auditor-General conduct annual sensitization and capacity building for all accounting officers and finance staff in State corporations on their responsibility during the audit cycle and adherence to the International Public Sector Accounting Standards (IPSAS). It is very important.

Further, it is crucial for the Ministry to employ competent staff who are able to deliver on their mandate efficiently, so as to avoid unnecessary errors which could potentially be a loophole to the embezzlement of funds.

Hon. Temporary Speaker, we have a problem. Most of those officers cannot even comply with the audit cycle framework. All the time, those members are submitting their reports and responses late, which makes it very difficult for the audit staff to do their work. Some even try to doctor those documents. That is why we are proposing far-reaching measures. They must comply henceforth with the relevant articles of the Constitution and Section 68(2) of the PFM Act, 2012, by providing supportive documentation in time.

Another big challenge that our Committee faces in the line of our duty is that most of those institutions do not have title deeds for their land. The things that have been going on will shock Members of this House. An example is Kiambu Institute of Science and Technology.

Our fore fathers came together, did *harambees* and purchased land for the purpose of the community. Then, they decided to start a school through *harambee*. With the introduction of Technical and Vocational Education and Training (TVET) Act of 2013 which did away with the trustees, those people who had in good faith come together, raised funds, started *harambee* schools, which later became TVETs and universities, were now required to surrender every bit of that land and every other material they were holding in trust for the public. Some of them, especially the second and third generations of such leaders, decided to be greedy.

In the case of Kiambu where land is in excess of thousands of acres, they say they are donating a little bit of it to the institution. No! That land was bought by our fathers and grandfathers who came together in the interest of wanting their children to acquire education. Why do you want to take that land for commercial purposes? That is why we have been very critical on that and say you shall and must return the land that is belonging to the public.

Our Committee went to Kiambu Institute of Science and Technology (KIST) and, in fact, ejected those people and said: “You are *persona non grata* on the public land of the Kiambu people! We will not allow you to continue interfering in its affairs.” We will be pleading with this House to honestly deal with such matters. I do not want to call them thieves because that is a heavy word. We will be pleading with this house to firmly deal with such people who want to take that which belongs to the public. We are also urging the accounting officers to move with speed, work with the National Lands Commission, the Ministry of Lands and Physical Planning and the Ministry of Education, to ensure that they have secured land for those institutions.

Many people are invading public land because of lack of title deeds. It is the same story at Kenyatta University and Maseno University. Some accounting officers have engaged in fraudulent activities of selling public land that is belonging to those institutions; which they are supposed to protect. The Committee recommends that the NLC, as entrenched in Article 67 of the Constitution, and the relevant ministries like the Ministry of Lands, Public Works, Housing and Urban Development, co-jointly with the county governments, as elucidated under Paragraph 8(b) and (c) of Part 2 of the Fourth Schedule of the Constitution, immediately ensure that all State corporations secure title deeds to all their parcels of land. Those institutions and the National Treasury must also prioritise the fencing off of all land holdings to forestall further encroachment. The Committee recommends that land encroachers face the full extent of the law, be evicted and charged in court.

Another issue that we have encountered is outstanding construction works. We are in the process of coming up with a law that must safeguard those institutions. Look at the Jaramogi Oginga Odinga University of Science and Technology where five buildings are undergoing construction that is involving big monies. You are told that a building will cost a few billion shillings. Monies in billions! Why start the construction of many new buildings instead of finishing one, and then going to another? Honestly, we do not know. Because of this, the institutions end up suffering. Mischievously, the heads of those institutions sign contracts that do not protect the institutions. They expose those institutions to fraudulent contractors. Because the institutions have to keep on extending the deadlines, those contractors have included very unimaginable fees in the contracts. If the institution extends the construction for a certain period of time, they must pay. We ask: Why? Why?

The Temporary Speaker (Hon. Peter Kaluma): Are you talking of Kenyatta University?

Hon. Wanami Wamboka (Bumula, DAP-K): No! I am talking about Rongo University. It has four on-going construction projects. The Jaramogi Oginga Odinga University of Science and Technology has five stalled projects over a span of six years. They stand incomplete to date. That results in loss of Government funds and no value for money in the long run as a result of inflation. The Committee recommends that the National Treasury should

only approve projects whose funding it can guarantee and whose completion is within the medium-term economic framework.

The Committee further recommends that the said projects should only be approved after existing projects are completed to avoid the lumping of stalled projects in institutions. The policy should be: One project at a time. I want to report to this House that we are in the process of coming up with a law that will force both the National Treasury and the Ministry of Education to adhere to that policy together with the accounting officers.

Fifth, is on expensive consultancies where accounting officers are syphoning public money. Notorious on the list is the State Department for Public Works. I do not understand why an engineer, architect or quantity surveyor who is employed and paid by the Government must use a Government car, fuel it, drive to a Government project and still be paid when they earn salaries.

In fact, when they work for longer hours, they have extra allowances like overtime allowances. This must come to a stop. We want to work in consultation with the Departmental Committee on Housing, Urban Planning and Public Works to come up with a policy that will safeguard and deter such officers from syphoning public funds. The Committee recommends that the Ministry responsible for Public Works revamps the Public Works Department and employs adequate and competent staff.

In most cases, leaders of those institutions do not go for public consultancies but private ones. Yes, the State Department for Public Works has problems. Those officers choose to go for very expensive consultancies. You wonder why? When you go to an institution, you are told that a certain project was to cost Ksh600 million but to date, they have paid consultants Ksh400 million. Initially, they were to be paid Ksh50 million. Where are we headed to as a nation?

Moreover, certain technical institutions like the Kenya Technical Teaching College (KTTC) train on technical skills and can deliver Government projects, undertake technical training in public works related skills and assist in the management of those projects. In fact, technical training is offered by most institutions if not all, like Technical and Vocational Education and Training Institutes (TVET) or universities. Jomo Kenyatta University of Agriculture and Technology (JKUAT) and the University of Nairobi offer technical training. Why do they not use students who are almost completing their courses so that they can cut on the costs.

The relevant Departmental Committee should consider amending the Public Procurement and Asset Disposal Act of 2015, so that the first priority is given to Government agencies that can provide certain services. I believe those services can be provided by them. We only need a framework on how they will operate.

Sixth, is failure to adhere to gender, ethnicity, regional balance and other considerations. There is a lot of nepotism and tribalism in those institutions. You find an institution has an ethnicity ratio towards a dominant community in excess of 90 per cent. You wonder what the problem is. I was conversing with my brother who suffers wisdom because he has white hair. He told me that Meru University was collapsing. It had a Vice-Chancellor from Meru and after they appointed one from the Luo community, it is doing very well. Kenya Methodist University (KEMU) was doing very badly until they appointed a Vice-Chancellor from the Luhya community.

There are many people who can be vice-chancellors, but we have to give the right people the job. We should stop nepotism and tribalism because it is killing this country. We appoint people who eat the profit, interest and capital. In my community we say: "*Khulia nende chimawe*". You eat everything. *Kula kuku na vifaranga*. This is what we are experiencing.

Firstly, the Committee recommends that all public agencies must comply with the constitutional provision on equality and inclusiveness as buttressed by the National Cohesion and Integration Act No. 12 of 2008.

The Committee also recommends amending the TVET Act, 2013 to grant those institutions the authority to engage with the Public Service Commission during the hiring process of the 50 per cent that is allocated to the board of governors.

Further, the Committee recommends that the National Cohesion and Integration Commission (NCIC), together with the Inspectorate of State Corporation, conduct an annual examination of ethnic composition in those state-owned enterprises to confirm incremental address of the matter. All of us know that Moi University is suffering due to lack of finances. They decided to do a Human Resource (HR) Audit. We have Public Service Commission which is rated highly across the Continent and the world, but they bypassed it and brought in a private auditor whose name I have forgotten. Those people are charging them very expensively. The Public Service Commission can do that work without charging them. We had to stop it and told Moi University that it is joking and to go to Public Service Commission and ensure they undertake that audit through the Government framework.

Another issue is under-staffing in the TVET institutions. Under this, and you will bear me witness, the Ministry of Education is not serious. It not addressing the challenges in the education sector the way they are supposed to be addressed. Start even from primary schools with the new Competency Based Curriculum (CBC). It is falling apart. Go to TVETs, they do not have teachers and yet, the Government is not taking any steps to address that. Talk about university education and funding. It is now in shambles.

Hon. Temporary Speaker, Members of Parliament interact at the grassroots level with parents. They will bear me witness that parents are suffering more than any other time in the history of education in this country. Even when Kenya was going to the dogs; Kenya was in the red and when Kenya had crossed the Rubicon during President Moi's time, we never experienced non-conformity with admission to universities like now. Students are at home. They introduced something called a module. Module Z, Y or whichever it is, is not understood by a poor guy from the village. He cannot. You tell him to raise Ksh500,000 and yet, that man has never seen Ksh1,000 in his life. My neighbour who is called Marima Pesa has children at home. He does not know what to do with his children. Every time I go home he tells me: "Mheshimiwa nisaidie. Watoto ni wa university." Five children with Ksh400,000 for each, that is Ksh2 million. That man has never seen that kind of money. We must come up and ensure that we help those institutions. Otherwise, they are going to collapse.

The Committee observed that TVETs are facing an acute shortage of both teaching and non-teaching staff. The ideal trainer to trainee ratio as recommended by the World Bank is 1:25, while the Ministry of Education recommends a ratio of 1:30. Unfortunately, in certain instances, the ratio in some courses has reached as high as 1:130. That situation significantly impacts the quality of education and training that is offered to the students.

The Committee also noted unequitable allocation of resources to TVETs, with some regions having well equipped institutions while others have dire situations with limited and deteriorating facilities.

Hon. Temporary Speaker, we are urging fairness even from the Budget and Appropriations Committee of this House. We are urging fairness. We have young institutions that have not even started walking. A case in mind is my own institution called Cardinal Maurice Otunga Technical and Vocational College that is located at Tulumba, and which has been in existence for two years.

Normally, they are supposed to receive infrastructure money. But they have not and yet, they have admitted students. How are they going to do that? The Government will continue pumping money to an institution that has equipment, is well financed and well-resourced. We

are asking for fairness. Incidentally, those that have resources are given more. I do not know if they are applying the biblical wisdom that whoever has more will be given more, and they will live in abundance. Whoever does not have, even what they have will be taken from them. That is because if you look at the poverty index of some of the communities in this country, they are so poor that they have not even started any development. However, you do not allocate them the money. Instead, you give to the most developed. Just like we were arguing here earlier on, money that is allocated to roads is given to more developed regions while those that do not even have a murram roads, receive nothing. That is unfair even before God.

The Committee, therefore, recommends that the Government halts the establishment of new TVETs until the existing ones are adequately equipped and upscaled to address the disparities in resource allocation. The Committee further recommends that the sector-working group targets marginalised regions in order to close the resource distribution gap. It also recommends that the sector-working group gives priority to the TVET sectors during resource allocation. They propose an increased allocation of resources to address the long-standing issue of under-funding that has hindered the growth and development of those institutions. Adequate funding would not only enable the enhancement of infrastructure, but will also attract and retain high qualified instructors, further elevating the quality of the education that is provided.

Hon. Temporary Speaker, the Committee wishes that the House adopts this Report with amendments to recommendations regarding Kisumu National Polytechnic that irregular cash payments appearing on Page 41, Paragraph 2.12, that was made for cash or works done amounting to Ksh2,308,996, be surcharged to the governing Council and the long-standing interest of Ksh37,800, appearing on Page 41, Paragraph 2.16, be written off from their books of account since no money was lost. It was as a result of demise of an employee.

Hon. Temporary Speaker, the Committee further acknowledges that penalties be rendered to various institutions, including Kisumu National Polytechnic where the governing Council was disbanded and surcharged for irregular excess expenditure of Ksh14 million without approval. Further, the Council of the same institution had an un-authorized expenditure totalling to Ksh1,150,000, which the Committee surcharged the Council Members for the monies that were misappropriated. We are taking those punitive measures so that even the councils of those institutions become serious. They go to those institutions just to fleece the money. Councils take money without approval in the name of allowances. They approve things that do not exist. In some instances – like in Moi University - the Council collected money from the bank and gave to it one individual to pay people as and when they feel like it. Like in Kisumu National Polytechnic, we have recommended harshly that the Council be disbanded, and action taken. We are inviting EACC and DCI to move with speed so that those culprits can start to respect public finances. You are taken to an institution to help it and not to collapse it. This must be approved so that it serves as an example and a deterrent to those crooked council members and officers who have been called to serve and yet, they take advantage of the public.

Further, there are cases of delayed completion of projects of some TVETs by their mentor institutions like Rongo University, which failed to complete workshop classrooms and offices for Kakrao Technical and Vocational College. I commend our Leader of the Minority Party, Hon. Junet Mohammed. We called him to say we needed his help when we realised that there was a problem. He agreed. The college is to be completed by the National Government Constituencies Development Fund (NG-CDF) of Suna East Constituency. The Committee has banned Rongo University from undertaking any projects within the institution. It should fully hand over to institutions such as Kakrao Technical and Vocational College to initiate their own projects. We are doing this to put an embargo on the university not to start any new project until they complete the existing projects.

The books of accounts of Jaramogi Oginga Odinga University of Science and Technology disclose a dinner allowance of Ksh55,250 paid to an officer who was involved in the preparation of data with the Commission for University Education within the university precincts. That is contrary to Section 21(11) of the University Collective Bargain Agreement of 2013-2017, that states that meal allowances shall be paid to members of academic staff who are working out of their duty station where half of subsistence allowance is not paid. The Committee finds that expenditure unlawful and surcharges the accounting officer at the time the Ksh55,250 was given.

Having noted the proceedings of the Public Investment Committee on Governance and Education and the examination of the Report of the Auditor-General on the financial statements of State corporations for the 2018/2019, 2019/2020 and 2020/2021 financial years, I beg to move and urge the House to adopt this Report. We are coming up with a Bill to address the gaps in education funding.

Hon. Temporary Speaker, I am sure you have seen the Bill in the Order Paper. I beg to move and call upon my leader, my Deputy Whip of the Minority Party, Hon. Mark Mwenje, who is our wakili in the Committee, to second.

Thank you.

The Temporary Speaker (Hon. Peter Kaluma): Hon. Mwenje, who is the Deputy Whip of the Minority Party, to second.

Hon. Mark Mwenje (Embakasi West, JP): Thank you, Hon. Temporary Speaker. I thank the Hon. Chairman together with my colleagues in the Committee for a job well done.

From the get-go, I want to just highlight the issue of education. When he talks about education, you realise that it empowers individuals. Education is all about economic growth and stability. Education is all about poverty reduction. It improves health, promotes equality, encourages civil participation, fosters peace and stability, and drives technology and scientific progress. In a nutshell, it sets the groundwork for a better life. That is the mandate that all those institutions that have been discussed by the Chairman are mandated to do for the great people of western region, Homa Bay, Kisumu, Siaya, Kisii and Nyamira.

I want to mention TVETs because they will play a key role in providing practical skills. As you have noticed from the Report, those TVETs have been facing numerous challenges. There is this negative perception that at times we found out there, where people think that TVETs are inferior institutions. No! Those institutions offer meaningful skills to our youth. We can use the skills from day to day. I have realised that getting a good carpenter, electrician or plumber is a big problem nowadays. Those are institutions that should assist us with such professionals. We must fight such vices because if there is a negative perception, then there will be less funding and support for those institutions.

We have noticed that there is inadequate infrastructure. As the Chairman pointed out, there are un-qualified instructors. As a Member of Parliament from Nairobi, I would like to say from the get-go that I represent a constituency that has over 400,000 people. There are five constituencies that were split from the greater Embakasi Constituency. But if you count part of Kasarani Constituency, then there are six. If you look at the original five 'Embakasis', only one has one of those institutions that we are talking about, a Technical and Vocational Education and Training (TVET). The rest do not have. Embakasi West, Embakasi Central, Embakasi East and Embakasi South all rely on one institution that is in Embakasi North. We know the importance of those institutions. And from the get-go, we must distribute that national cake equally, even here in Nairobi, so that we can educate our young people.

Hon. Temporary Speaker, I will now focus on the main issues that have been raised, although I will try and avoid some of them. The first one is poor funding to those institutions. We have many stalled projects. When we visited some of those institutions, including Rongo University, we noticed that there were projects worth Ksh1.2 billion. Monies that were

disbursed were to the tune of Ksh800 million, but the project is incomplete. Why can we not do those projects in phases? If that money had been spent in phases, we could have partially opened some of those lecture rooms, libraries and have an ongoing project. That is something that the Ministry must look into. They must ensure that we do not have wastage where you just pour in Ksh800 million and if the funding does not come, then you just have an incomplete project that is not benefiting the students from that region.

The other issue is on the staff. Every time we sit in a committee, there must be somebody who comes in and say that they are the acting vice-chancellor, human resource or finance manager. We basically have people in acting capacity in those institutions, and it is okay to be acting because it happens. But what happens when we go to an institution where somebody has been acting for six years? That means we have a problem right there. We faced a situation where people have been acting for such a long period of 22 years, as I am being advised by my Chairman. That is madness! There are times you find un-qualified staff who have been recruited. We had one institution where somebody said they are the accounting officer and when we asked for their qualifications, they told us they have a CPA II. They were claiming to be qualified and yet, we required a certified accountant to hold that position.

We even noticed the lack of diversity in those staff. That is something that is choking those institutions. We were proud to see some institutions in that region that have actively tried to reduce that. You could see that four years ago, they had maybe 95 per cent staff from one community, but now they have 60 per cent. So, they were gradually moving there. But more needs to be done. Institutions with more than 90 per cent of staff from one community do not work. We noted that they fail. We must check on that. As Members of Parliament, we must be careful not to kill the institutions that are in our constituencies simply because we want to help our constituents. We should avoid damaging an institution that is likely to create more economic and employment opportunities for your constituents or region if it succeeds. We have faced that issue especially at Moi University. I am sure the Chairman will be alluding to this at a later date.

Because of un-qualified staff, there is production of poor documents. Even the tendering documents for some of those institutions were pathetic. There was just no excuse for it. We could see a lot of illegalities have been done and more importantly, public money has been lost. That is obvious because of what we have seen. And this must change. Even on matters of audit, we have areas where we could not account and not just for hundreds, but millions of shillings. That is because there are no documents. There is money that was withdrawn and paid to people as sitting allowances and siphoned through one or more members of staff. There was no way to account for it. Therefore, those are the issues that we faced.

There is an issue that was raised by the Chairman about consultants. One of the issues that I would want to raise is that consultants ensure that the first money that is paid out is always paid to them. Therefore, if a project is at 50 or 60 per cent complete, the consultant is paid 100 per cent. Later on, the same consultant comes up with a variation and the money has to be increased. Once again, he is the first person to be paid. We saw that at the Ronald Ngala Institute in Kilifi. A lot of money has been spent because it is a project that has gone on since the time when the Late Mwai Kibaki was the President. In fact, I was still at the University when some of those institutions began. I am now here as a Member of Parliament, two Presidents later - the Late President Kibaki and former President Uhuru Kenyatta - and now we have President Ruto. But we are dealing with the same issues. What we have seen with those consultants is unacceptable.

We must ensure that any variation that is done must be supported with the right documents. We must ensure that if we are going to vary a contract and especially before its completion, we do not waste a lot money with the consultants.

The support from the National Government Constituency Development Fund (NG-CDF) has been amazing as has been mentioned with the situation in Suna East. We were able to reach out as a Committee, engaged the Committee there, together with the area Member of Parliament who immediately was able to support us. I encourage all those institutions to engage the NG-CDF. It must also be made clear that NG-CDF is not under the purview of Member of Parliament, but it is money that belongs to the people. We, however, intervened as a Committee to ensure that the people of Suna East get an institution.

Finally, we found out that a lot of land is held by those various institutions and especially the Technical and Vocational Education and Training (TVET)s. (I request for an extra minute or two as I second.) Let us allow land that was set aside by communities or individuals for the institutions to be transferred as per the new TVET Act.

It is important to clarify an issue that was raised and that was touching on the Moi family. That there was a summon regarding a piece of land because of other issues, or regarding the impeachment that were going on. That is wrong. We invited the family, and in particular, former Senator Gideon Moi, purely on the issue of clarifying the ownership of a parcel of land that is supposed to be for a certain institution in the Rift Valley. It is important to make those issues quite clear. That is the issue we faced with quite a number of TVETs that were started by the communities.

With that, I kindly request that this House and the Budget and Appropriations Committee consider supporting those institutions so that we can ensure that TVETs that are based in our constituencies and communities continue to progress, and that those children, young men and women who are there continue to be equipped with the right skills. With that, we will be able to firmly give a proper foundation to the young men and women of this country.

With those remarks, I beg to support this amended Motion.

I beg to second. Thank you.

(Question proposed)

The Temporary Speaker (Hon. Peter Kaluma): Hon. Kakai Bisau.

Hon. Bisau Kakai (Kimini, DAP – K): Thank you very much, Hon. Temporary Speaker, for giving me this opportunity to contribute.

Hon. Mugambi Rindikiri (Buuri, UDA): On a point of order, Hon. Temporary Speaker.

The Temporary Speaker (Hon. Peter Kaluma): Hon. Rindikiri, what is out of order?

Hon. Mugambi Rindikiri (Buuri, UDA): Thank you, Hon. Temporary Speaker. This is a very important Report which requires the attention of all Members of this House. It has raised very weighty issues that are touching on various factors like mismanagement, investigations, audit and regional issues.

To give this Report justice, the entire House needs to be present for sizeable deliberations. I stand under Standing Order 35. We need to have a serious discussion on it.

The Temporary Speaker (Hon. Peter Kaluma): What does Standing Order 35 state?

Hon. Mugambi Rindikiri (Buuri, UDA): It is on lack of quorum, Hon. Temporary Speaker. This is a very substantive Report.

The Temporary Speaker (Hon. Peter Kaluma): Ring the Quorum Bell for 10 minutes.

(The Quorum Bell was rung)

ADJOURNMENT

The Temporary Speaker (Hon. Peter Kaluma): Hon. Members, the time being 8.09 p.m., this House stands adjourned until Thursday, 7th November 2024, at 2.30 p.m.

The House rose at 8.09 p.m.

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