



NAIROBI CITY COUNTY ASSEMBLY

OFFICIAL REPORT

Third County Assembly – First Session

Wednesday 30th November 2022

The House met at 2.30 p.m.

[Hon. Temporary Deputy Speaker (Ms. Doreen Mugambi) in the Chair]

PRAYER

STATEMENT

Hon. Temporary Deputy Speaker: Hon. Emily Oduor!

BUSINESS APPEARING BEFORE THE ASSEMBLY FOR THE WEEK

Hon. Emily Oduor: Thank you, Madam Speaker, and congratulation. I wish you all the best in that seat, it is sometimes a hot seat but I know you are up to the task.

Hon. Speaker, pursuant to Standing Order 47 (2) (a), on behalf of the Assembly Business Committee, I rise to give the following Statement regarding the business appearing before the Assembly for the week, beginning today, Wednesday, 30th November 2022.

Hon. Speaker, the Assembly Business Committee met yesterday, Tuesday, 29th November 2022 to allocate the business for the week for consideration by this Assembly. In that regard, Hon. Speaker, allow me to brief the Assembly as follows:

1. Today, Wednesday, the 30th Day of November 2022, this Assembly will be considering the following business;
 - a. Under Order No. 8, the Committee allotted the Motion by Hon Chege Mwaura, a Member of Ngara Ward, urging the County Executive to develop the Wards Equitable Development Fund.
 - b. Under Order No. 9, the Committee allotted the Motion by Hon Davidson DNG Ngibuini, Member for Woodley/Kenyatta Golf Course Ward, urging the County Executive to develop regulations on virtual public participation.

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2. Further, on Thursday, 1st December 2022, this Assembly will be considering the following business;
 - a. Under Order No. 8, the Committee allotted the Motion by Hon. Waithera Chege, Member for Nairobi South Ward, urging the County Executive to develop strategies and programmes on climate change within the County.
 - b. Under Order No. 9, the Committee allotted the Motion by Hon. Perpetua Mponjiwa, Special Elect Member, urging the County to deploy traffic marshals near schools for school-going children's safety.
 - c. Under Order No. 10, the Committee allotted the Motion by Leader of the Majority Party and Member of Makongeni Ward, who shall be moving an Adjournment Motion pursuant to Provision of Standing Order No. 30 on Regular Sessions of County Assembly, which does not require putting of the question.

Subsequently, Hon. Speaker, I urge Members of this Assembly to familiarize themselves with the aforementioned Motions and prepare accordingly for debate, courtesy of our Research Department, which has been facilitating Members in the recent past pragmatically. Details of the Motions can be obtained in the Notice Paper, being the last page of the day's Order Paper.

Hon. Speaker, in addition to my duties in this Assembly, as a designated Member for the conveyance of the allotted Business on behalf of the Assembly Business Committee, pursuant to Standing Order No. 47 (2) (a), I am requested to register the Assembly Business Committee's dismay on absenteeism by various Committee Chairpersons and Vice-Chairpersons from plenary sittings and failure to honour undertakings, particularly in response to the Statement that due before this Assembly.

Hon. Speaker, I trust the Liaison Committee shall look into that.

I shall be informing this Assembly every Wednesday during the Statement Hour on the allotted Business for timely preparation.

Finally, Hon. Speaker, unless otherwise, the Assembly Business Committee shall, pursuant to the provisions of Standing Order No.167(1) (g), meet on Tuesday, 14th February 2023 at the rise of the First Sitting of the Second Session of the Third Assembly to consider business for the commencing subsequent week then and Members shall be informed accordingly.

Hon. Speaker, I now wish to lay the Statement on the Table of the House. Thank you, Hon. Speaker.

Hon. Temporary Deputy Speaker: I commit this to the Research Department for research purposes.

MOTION

RESOLUTION TO PETITION THE NATIONAL ASSEMBLY ON COUNTY WARDS EQUITABLE DEVELOPMENT FUND

Hon. Chege Mwaura: Madam Speaker, first, let me congratulate you because I have never been in the House when you are presiding. I hope that you will get the best out of that position. God bless you.

Having said that, I beg to move a Motion:

THAT, pursuant to Articles 37 and 119 of the Constitution of Kenya, this County Assembly resolves to petition the National Assembly individually and collectively as the County Assemblies Forum (CAF) vide the annexed draft petition for the National Assembly to intervene and ensure:

1. That, the County Wards Equitable Development Fund be incorporated in the proposed Constitutional Amendment Bill, before the National Assembly by the Hon. Stephen Mule, MP and the Hon. Gichimu Githinji, MP alongside other proposed funds namely the National Government Constituencies Development Fund (NGCDF), National Government Affirmative Action Fund (NGAF), the Senate Oversight Fund and the Economic Stimulus and Empowerment Fund either before the publication of the said Bill or before it is referred to the Senate in accordance with rules of procedure of Parliament.
2. That, the proposed Constitutional Amendment Bill in amending Article 204 of the Constitution should provide for the following with respect to County Wards Equitable Development Fund:
 - i. That each County Government shall allocate funds comprising a certain percentage of the respective total County's Annual Budget Estimates or as shall be advised by the Commission on Revenue Allocation (CRA) during the enactment of the County Allocation of Revenue Act to cater for County Wards Equitable Development Fund;
 - ii. That all monies allocated to County Wards Equitable Development Fund shall be considered as funds allocated to Wards pursuant to Article 206 (2) (c) to be administered in accordance with the provisions of an Act of Parliament, and
 - iii. That Parliament shall enact legislation to provide for the administration of the County Wards Equitable Development Fund

Hon. Speaker, let me start by saying that the development in the County was premised on the issue of devolution. The issue of the Ward Development Fund is a journey that started in 2013 and it has been a progressive discussion. For Nairobi County Assembly, we have had numerous discussions of budget. We have reorganized our Ward Development Fund to fit and suit what the requirements of the law require.

The current status is that counties have their own arrangements of how they want money to go down and get to the local mwananchi as far as possible. But it is important if there is a conversation about getting that piece of legislation enacted in the Constitution so that whoever becomes County Executive Governor, will never come and change that piece of legislation or provide a situation where any ward in the County will have been disadvantaged. I will be honest with you that usually in Nairobi a Governor will win but not all the wards are going to support him. Therefore, it is important that we cushion all the wards so that at any given time, they have at least a certain amount captured and we have done this in Nairobi. So, what we are pushing for is to ensure that piece of legislation is the law.

Hon. Speaker, it is also important to understand that the Judiciary declared that National Government Constituency Development Fund was unconstitutional. Based on that, they have now come up with a good plan of ensuring that they capture issues that were raised and then find a way, together with the National Government Affirmative Action Fund, the Economic Stimulus Fund and Senate Oversight Fund, by amending Article 204 of the Constitution, which talks about Equalization Fund and attach the Consolidated Fund so that

the funds that are going to be taken out from the exchequer are going to capture what they want in the NGAF, the NGCDF and the Senate Oversight Fund.

It is also interesting to realize that with all these funds and having the persons or the leaders at the local and grassroots level, there is no fund that is going to cater for that category. Article 1 of the Constitution talks about the delegated powers between the national and the counties. At what point then was the NGCDF, NGAF or Senate Oversight Fund going to get to the local area without having the local area representatives on board? So, it is important for county assemblies to capture this mood of proposed motion so that we petition the National Assembly to capture County Ward Equitable Development Fund in their discussion.

Further, Hon. Speaker, it is important to note again that Article 1 of the Constitution talks about how the governance structure is going to be of concern. They also talked about the level of legislative powers that are given to the National Assembly and the counties. It is also interesting that we see all these funds that are being created without creating an avenue of Ward Development Fund.

The days of the councilors ended and we decided as the county assemblies that we would no longer be on the menu. We shall no longer be discussants in a national conversation that will never be part of. If there is a discussion about funds going to the normal mwananchi to whichever level, county assemblies must be involved. It is because of this reason that this time round, we have fought so hard that if you look at the salaries of members and any issues that concern the county assemblies vis-à-vis the National Government, we are greatly disadvantaged. That is why we felt that from now moving forward, counties assemblies will be looking at anything that is going to be national in nature and replicate it to the counties. We will no longer be menus and will be no longer be served things that are done at the national level without having a percentage or sitting on what needs to happen.

Further, Hon. Speaker, they are proposing 5% of the CDF to the ordinary level. Because the counties have different allocations, we have not proposed any percentages. In Nairobi, the Executive and the Assembly will agree on their own, so as all other counties.

Finally, Madam Speaker, as we speak now, it is important that I mention to the House that the same Motion is being discussed in almost the entire country. Of the 47 county assemblies that we have, in my latest count, we have about 28 counties assemblies that have passed this piece of legislation. Nairobi should not be left behind; it needs to be together with these other counties so that when we petition the National Assembly, we shall be petitioning them requesting to be enjoined in that piece of legislative proposal that they are going to make amendments to the Constitution. It is important that we be in solidarity with other counties and show unity of purpose as we move.

Madam Speaker, as I conclude, I wish that the House also takes advantage of the discussion that is happening in the country on one singular event that is going to unify all the county assemblies. I wish that you enrich the debate. If we pass this Motion, we are going to attach the HANSARD Report, the Petition and signatures from the Members. I would like the Serjeant-at-Arms to make sure that the Members who agree with us to sign the Petition that will accompany our documents to the National Assembly. So, if you see a document passing, please sign so that when we are taking these documents, we know that we have captured the views of the Members through the HANSARD, through the petition and through the signing.

Hon. Speaker, as I urge Members to see the necessary need for us to go to the National Assembly as among the 2,237 members countrywide. This debate is important to all of us. Let us find a way to be put in the discussion table and to agree when it comes to matters that are going to affect all the 1450 wards in the country.

With that, I beg to move and request the Chair of the Ward Development Fund to second. Thank you.

Hon. Dabar Mohamed: Thank you, Hon. Speaker, I beg to second the Motion. It is important to include the WDF in the Constitution so that we can be able to have our Ward Development Fund projects implemented without any hiccups.

Hon. Speaker, the County Assembly passed the Ward Development Fund Act in 2014. However, there have been hiccups in implementing the said Act, making the County Assembly Members not to be able to implement their projects.

Hon. Speaker, this Motion is very timely and I beg all Members of this House to support this Motion for the good of our Nairobians and all Members of this County Assembly. I Second this Motion.

(Question proposed)

Hon. Temporary Deputy Speaker: Members, you can debate.

Hon. Peter Imwatok: Hon. Speaker, it is a privilege you are the Chair of this honorable House today and it is your birthday. I request all Members in the House to stand up wish the Speaker happy birthday. Happy birthday, Madam Speaker. As a sign of respect, let us wish her a happy birthday.

(Members stood up and sang a birthday song to Hon. Speaker)

Hon. Temporary Deputy Speaker: Thank you, Members. You can now take your seats.

Hon. Peter Imwatok: Hon. Speaker, allow me to stand now authoritatively to support my mentor in terms of procedures, the Secretary General of our CAF, the Chair of PAC and the elder of this House. I can tell you for free, those who are in the Assembly for the first time, we started this House sitting on Complast plastic chairs and the Mace was a jembe stick in the Charter Hall. But the person who encouraged us to be good debaters and leaders, is Chege Mwaura. Today, I am happy that he is the Secretary General of more than 2200 member of the counties assemblies across the country.

(Applause)

The Agenda before us is not to gratify himself or to make him popular, it is an agenda that is carrying the aspirations of the 2200 MCAs across the country, both elected and nominated. You may be a special elect now and next time you are elected to this House. Hon. Rose Masista was a special elect in this House and now today is the elected Member of this County Assembly.

(Applause)

Hon. Chege, I have never known you to surrender. I know on this quest you have started will succeed. The history of WDF was born in Chester House at the poolside by a tiny man called Maish. I saw him today

as one of the board members of the Liquor Board from Umoja. If you don't know him, Hon. Roro replaced him. That is the man who brought up WDF, together with the smallest on this side who is now the Majority Whip, Hon. Ogeto, Hon Chege Mwaura and myself. When the idea WDF became, it spread like fire all the 47 county assemblies, everyone came to either Chege Mwaura, Hashim, or Maish just for consultation on how the Nairobi came up with the Ward Development Fund. When Hon. Kangata passed this Bill in the Senate, parliamentarians decided and said that it was not worth MCAs having WDF. But, with time, the Supreme Court declared the CDF null and void. Now, there is no CDF and WDF. They have come now with an amendment to the Constitution to enshrine the CDF in exclusivity of the Ward Development Fund.

A week ago we were in Mombasa during the inauguration of our SG. One of the noisiest Member of Parliament then when this Act was brought before parliament, he is now the Speaker of a county assembly. I am happy my SG reminded him that he was in the Parliament when the WDF Act came but he refused to support it. Now, he is leading honorable Members of the county assembly as the Speaker and supporting the cause of the WDF. How does he feel?

On this quest, Hon. Chege and the entire House, we are asking Members of parliament that life is an episode. You may be a Member of parliament today; you never know tomorrow you will be the Speaker of the county assembly. Please, enroll the WDF as part of your amendment to the Constitution.

During the BBI time, we fought so hard as Members of Azimio and as the rest of Kenyans to enshrine the WDF in the Constitutional amendment. But the current Government said that does not need an amendment in the constitution, it only needs a proclamation by the Executive. Before even parliament make the amendments, I implore to His Excellency William Samoei Ruto to keep his word and to marshal all the Members of the parliament from Kenya Kwanza –the Azimio side in the Parliament do not have problem with WDF, I believe so. If there is any, Hon. Chege, let me know because I am the Majority Leader of the capital city, I can handle them.

However, I believe we are on course, Hon. Chege and the entire Assembly by resolving this. We will give the equal task to other 46 county assemblies, which are looking onto Nairobi. This gentleman distributed this Motion to all county assemblies in Mombasa and it is being debated today. It must be passed today and transmitted tomorrow to the Parliament before they start playing their games as usual. I hope the Speaker of the National Assembly, Hon. Wetangula knows the importance of enshrining the WDF into a constitutional amendment because he was in the Senate when the amendment was sent to the Senate.

Therefore, honorable Members, I beg to support and ask the entire House to support this Motion for a cause of justice for all Members of county assemblies across the country. Thank you, Hon. Speaker.

(Applause)

Hon. Temporary Deputy Speaker: Hon. Samora Mwaura.

Hon. Samora Mwaura: Thank you, Madam Speaker for the opportunity to support this very critical Motion that I believe every elected Member and any other Member aspiring to be elected in future, must and should support.

Hon. Speaker, I am the Vice Chairperson of the WDF Committee. I was also the Vice Chairperson of the WDF Committee in the Second Assembly, where I was honoured to serve with the mover. I was part

of the team that took the presentations to the Senate. The Senate passed but the MPs shut it down. I tried to investigate through my MP the reason why the MPs were so hostile to this critical fund. I was amazed by the pettiness of their reason. They were saying that was detrimental to their careers if MCAs have a fund that they can operate as it will challenge them in the coming election.

Hon. Speaker, this Motion is important to the MCAs on two counts. First, we were the last line in devolution. Actually, we are the ones on the ground and understand the immediate development in our wards. If every ward is allocated some percentage of the County budget, it will help us solve a lot of immediate issues like roads, footbridges, bursaries and all that.

Second, when the Governor is elected, he needs to do development in all the 85 wards. However, there is nowhere that says that he must bring development to all those wards. He does development according to what he feels it best in his manifesto. It means that if you are a MCA and you cross paths with the Governor, you are doomed as your ward will never see any development. But if this fund is in place, the MCAs will be able to do their oversight without any fear. Whether you are at a crossroads with the Governor not, you are assured of development to your people. Therefore, it is very important as it will help the MCAs to do their oversight.

Thirdly, the Ward is the last line of devolution, it is the standard unit of devolution. So if you want to actualize devolution in its true sense, we must allocate a fund that deals with the ward, and that fund is WDF.

I urge this House to support this Motion in its entirety. I also to urge our honorable Member, who is also the SG of CAF together with other leaders of CAF, to ensure this thing is anchored in the Constitution so that it will no longer be a favour from the Executive. In most counties where WDF is actualized, it is done as a favour to the members of the Executive, where it is the prerogative of the Governor to decide whether to give the WDF to the Members or not. But if it is anchored in the Constitution, you can actualize your manifesto knowing in your ward, you have certain amount of budget.

I rise to support and I ask all Members to support. Thank you.

(Applause)

Hon. Temporary Deputy Speaker: Hon. Diana Katile.

Hon. Diana Mwangangi: Thank you, Hon. Speaker. First, let me start by appreciating the efforts by the SG of CAF, Hon. Chege Mwaura. I also take this opportunity to officially congratulate you for being elected to that position. Secondly, let me also appreciate the historical background that has been laid before this House by my friend, the Majority Leader Jateso. I am happy that he has mentioned my big brother from Umoja, Njoroge G. Maina, who also played an instrumental goal in ensuring that we have a devolved fund.

In supporting this, I would like to bring to the attention of this House how important it is to have this fund anchored in the Constitution. It will breathe life into the fund. Once life has been breathed there, no one will be able to change it unless again by another constitutional amendment. The parliament has provided a good opportunity, though it came through karma, as Jateso said. It has provided a good opportunity for our fund to be regulated, regularized and anchored into the law. The constitution has different functions that are performed on the two levels of government; the national and county government. All members will be able to actualize this mandate as depicted in the 4th Schedule of the Constitution by having their decentralized funds

anchored into law. When they have these funds at the grass root level, then they will be able to perform their functions effectively.

An important note that has been pointed out by Mheshimiwa Mwaura Samora, that it will ensure that Members are able to oversight effectively. Once this is anchored in the Constitution, then as MCAs we will not be at the mercy of anyone for development to take place at the grass root level and we will conduct oversight without fear. I beg to support this Motion.

Hon. Temporary Deputy Speaker: Hon. Jared Akama.

Hon. Jared Ondieki: Thank you very much, Madam Speaker. I want to join the honorable Members in congratulating you. I know your capacity and dare say that you are equal to the task.

Having said that, I support this Motion and also would like to recognize the Members of parliament who are supporting this Motion. It is important because our biggest hurdle has been the Members of parliament. Our special regards go to Hon. Stephen Mule and Hon. Githinji for accepting to be part of this noble cause. We have seen what CDF has done and a lot was achieved. Therefore, I want to believe that with the support of the equitable development fund, funds will now be brought down to the ward level. I support this and look forward to having us all support it. Thank you very much.

Hon. Temporary Deputy Speaker: Hon. Martin Mbugua.

Hon. Martin Mwangi: Thank you, Madam Speaker and congratulations to you. I want to support the Motion and congratulate Hon. Mwaura for spearheading this initiative to ensure that MCAs not only get the Ward Development Fund but also that development gets to the deepest end of the wards, county and country at large. If we want to ensure there is development in every part of this country, then we must support this plan. MCAs are the people who are on the ground and know the needs of the people hence we are best placed in understanding what they need and get the same to them. For that reason, I urge the Members of parliament to support this drive because we are not in competition on who delivers more to the people. We are going to complement each other and make sure that the people are getting the best from the national and county cakes. I support.

Hon. Temporary Deputy Speaker: Hon. Emmy Khatemeshi Isalambo

Hon. Emmy Isalambo: Thank you, Madam Speaker. From where I sit, I am still the chair of 'JSC Committee' and I can see the bar is very high. Congratulations, honorable Member. I want to support this Motion by saying that when I first watched news on this issue, I wrote a message to our Majority Leader asking him to look into the matter. I believe that the SG for CAF will do his best to make sure that this matter is handled well. With those few remarks, I beg to support the Motion. Thank you, Madam Speaker.

Hon. Temporary Deputy Speaker: Hon. Eric Kiogora

Hon. Eric Murigu: Thank you, Madam Speaker. First, allow me to wish you a happy birthday, I would have sung you Ameru song, but this is a House of rules and order. I want to support this Motion because as elected Members, it is very important that we have the Ward Development Fund. Yesterday, I received a call from my electorates telling me that the streetlights were not functioning, but if you call the people working in the electrical section, probably they are committed somewhere else. If we had this fund, then I could have sorted out this issue. Two weeks ago, when it was raining our drainages were blocked, and so you had to contract some youths. If we will get this allocation, then some of the problems that we are facing at the ward

level will be a thing of the past. I urge all the honorable Members to support it because it is good one. Thank you, Madam Speaker and have a nice day.

Hon. Temporary Deputy Speaker: Hon. Perpetua Mponjiwa.

Hon. Perpetua Mponjiwa: Madam Speaker, let me take this opportunity to congratulate the Secretary General for CAF, Hon. Chege Mwaura. You have done a good job and we commend you for that and give you strength to continue with the good work that you are doing. We must support this fund because it is going to have an impact that will be felt in many generations to come. I pity the elected Members because the Wanjiku in the wards do not know that we only oversee and legislate. When they see you, then they know that all their problems will be sorted such as having a sick child, funeral expenses, water leakages and lack of school fees. Therefore, if this fund goes through, it will sort this mess and eradicate poverty. It starts from the grassroots. With that, I fully support this Motion. Thank you very much.

Hon. Temporary Deputy Speaker: Hon. Maragu

Hon. Anthony Maragu: Thank you, Madam Speaker. I also take this opportunity to congratulate you and wish you a happy birthday. I want to thank Hon. Chege Mwaura for having taken it upon himself to run with this issue on WDF. I believe that when the books of history will be written, he will have a chapter there. This is something that will be felt in every ward, starting from here in Nairobi to where our grandparents are, whether Nyeri or even Marsabit.

As Members were contributing to his Motion, my attention was drawn to Meru County where the Governor has refused to have conversations with Members of the County Assembly on how they can make arrangements for the Ward Development Fund. It will be very unfortunate if we saw the other 46 counties taking such a route just because few Members of parliament are ignorant to the fact that indeed MCAs are representatives to the people in the same way as they are.

Madam Speaker, this is not going to be an easy fight but I wish to encourage our Secretary General that we are behind him and we are going to rally our Members of parliament to support this Bill. I am looking forward for a chance where we can have a sit down to look at the current arrangement of the Ward development fund, I am sure that some Members are wondering what we mean by the Ward Development Fund. We were recently asked to write down priority projects to the CEO Ward Development Fund and we did that with a lot of excitement. Then after consultation with my senior, Hon. Akama, I got informed that for four years, the contractors who have undertaken projects in his ward have never been paid hence the projects have not been finished.

I do not want to dwell much on this matter but we shall come back here to deliberate even as we wish our Secretary General the very best. Thank you.

Hon. Temporary Deputy Speaker: In the interest of time, I will call Hon. Mark Mugambi to debate

Hon. Mark Mugambi: Thank you, Madam Speaker. Happy birthday to you. We not only share a birthday but a name as well. Allow me to congratulate my senior, Hon. Chege for coming up with this Motion. As an elected leader of this House for the second term, I can attest to the fact that the equalization fund is of utmost importance to the 85 wards that we have. The development budget that we pass in this House is a small portion of the entire budget because most of it is usually recurrent expenditure and so you find out that the development budget cannot cut across all the 85 wards. This fund will therefore enable the Members of

this House have at least a project every year. During the 2nd Assembly, I can say that only a third of us managed to come back because of the projects accomplished. This good motion---

(Point of Order)

Hon. Temporary Deputy Speaker: Honorable Minority Leader!

Hon. Anthony Karanja: Point of order, Madam Speaker. I can see that most Members are in support of this Motion and I see no point in further discussing it when we have a very important Motion coming up by Hon. DNG. Therefore, in the interest of time, we should support it so that we proceed to the next one. Thank you.

Hon. Temporary Deputy Speaker: I had already directed on that.

Hon. Mark Mugambi: Thank you, Hon. Speaker, those are the effects of coming late for plenary. Allow me to finish on this; I was saying that just as the Members of parliament are fighting for CDF to be enacted in the Constitution, we should also fight or lobby for the WDF to be part of the same amendment. With few remarks, I wish to support.

Hon. Temporary Deputy Speaker: Hon. Silas Matara.

Hon. Silas Matara: Thank you, Hon. Speaker. Congratulations to you, Madam Speaker on your task and to Hon. Chege Mwaura on his election as Secretary General. I rise to support this Motion for two simple reasons. One, laws cannot be selectively applied, especially when you talk about the supreme law, the Constitution. In principle, MCAs and MPs undertake the same duties and obligations, that is representation, legislation and oversight. So, it is important that Members have taken cognizance of the fact that MCAs do similar work with the MPS. When MPs get their Constituency Development Fund, then it is only appropriate that MCAs get the same because what is good for the goose is good for the gander.

Secondly, we realize that once this is anchored on law, then we will be assured of funds every year hence Members will be able to undertake development in their respective wards. The reason we have a high turnover of elected leaders in the House is because most Members do not get to deliver on the promises made to their wananchi.

Lastly, Hon. Speaker, my prayer is that the journey that has started gets to see the light of day and receives the full support of the National Government. With those few remarks, I beg to support.

Hon. Temporary Deputy Speaker: Mover.

Hon. Chege Mwaura: Thank you, Madam Speaker, I rise to reply. But before I do that, let me thank you for guiding the debate in a very informative manner. I also want to thank the Members for sitting in until now and the ones who contributed and supported this. I am really impressed. I am happy to see honorable Members of the WDF Committee, the Chair, and his Deputy, Hon. Matara and Hon. Samora, who I was with in the last committee. Also, I am happy to see Hon. Diana, Hon. Akama, Hon. Maragu, Hon. Kiogora, Hon. Perpetua and Hon. Emmy. I am also happy for the leadership for ensuring that they are present.

I will say two things before I sit. First, I thank you for your signature. I met with the Deputy Speaker of the Senate, Hon. Kathuri Murungi, who is also the Senator Meru County and we were talking on these issues and he promised that they will help wherever they can. The governance structure of this Country has changed and if we interact with the counties, much can be achieved. We now have about seven former MPs

who are now Speaker. Today, you are here and tomorrow you are on the side. So, it is good to do whatever you can be able to do where you can. So, I am happy and hope that once we get the petitions that we are going to have countrywide, I will request the Members of the Ward Development Committee and Members who can get time, to help escort this Motion to the National Assembly so that it can see the light of day. Thank you so much and God bless you.

(Question put and agreed to)

(Applause)

DEVELOPMENT OF REGULATIONS ON VIRTUAL PUBLIC PARTICIPATION

Hon. Temporary Deputy Speaker: Hon. Ngibuini

Hon. Davidson Ngibuini: Thank you Madam Speaker, congratulations and happy birthday. Thank you for the opportunity to rise and table my motion. I wish to move the following Motion:

THAT, aware that Article 196 of the Constitution of Kenya 2010 provides that the County Assembly shall facilitate public participation and involvement in the legislative and other business of the assembly and its committees; further aware that Section 87 of the County Governments Act, 2010 provides for the principles of public participation which include reasonable access to the process of formulating and implementing policies, laws, and regulations, including the approval of development proposals, projects and budgets, the granting of permits and the establishment of specific performance standards; noting that Section 115 of the Act provides that public participation in the county planning processes shall be mandatory and be facilitated through provision to the public of clear and unambiguous information on any matter under consideration in the planning process, including clear strategic environmental assessments; clear environmental impact assessment reports; expected development outcomes; and development options and their cost implications; concerned that there appears to be little improvement in overcoming challenges faced in citizen participation due to resource and capacity constraints, poor bureaucratic coordination, late and bulky communication as well as a limited understanding by both local officials and citizens regarding the new roles and mechanisms for participation; perturbed that lack of timely information, feedback mechanisms and poor coordination of public participation meetings has negatively affected conduct of public participation in the County; noting that a serious limitations in terms of access to timely information and the lack of adequate civic education has resulted in citizens not taking part in public participation events; acknowledging that the County Assembly enacted the Nairobi City County Public Participation Act, 2016, which provides for regulations for effective implementation of the Act, this Assembly urges the County Executive to urgently develop regulations to provide for:

1. Mandatory sharing of the Ward-specific documents to be discussed in public participation forums well in advance and in a concise and easily-understandable manner to enable members of the public to peruse the documents and adequately prepare for the public participation forums; and
2. Mandatory virtual public participation in all County Government public participation operations across the County to complement the usual physical public participation forums.

Hon. Speaker, one of the major milestone of our Constitution is the inclusion of public participation in government decision making. Article 1 (1) vests the sovereign power to the people. As Members of this County Assembly, we exercise the delegated and donated power from the people as enshrined in Article 1 (2) and should subsequently strive to create an enabling environment for the involvement and participation of members of the public in the development of policies from the initial stages up to the final stages.

Hon. Speaker, public participation is critical and the way it is handled must be fair to ensure we have optimum participation for all the residents of our wards. If you look at the public participation forums, allow me to bring to your attention to the one we did a few weeks back for the CIDP, the attendance was very low. We need to ask ourselves the big question, why? The reason is, many people do not attend because they have more pressing or urgent issues to attend to. For example, there are those who are working from 8 a.m. to 5 p.m. and those in business and cannot leave their shops unattended. These stakeholders have been left out of our public participation. But by ensuring the Executive is mandated to facilitate its online public participation as a mandatory element, we will ensure that we accommodate everyone.

Public participation forums have a major advantage in the sense that we can increase the number of participants attending as well that the geographical regions that these forums can reach within our wards. We can scale up these numbers quite easily. This will not only provide for flexibility when it comes to crowd sourcing and ensuring that people attend, but we can be able to break the logistical barriers associated with physical travel, which comes at an extra cost to the participants. For those of us who have coordinated some of these public participation exercises at the ward level, know that there is absolutely no facilitation from the County Executive.

For those who would wish to join these public participation forums can do it online via various web conferencing platforms that are available, for example, Teams, Google Meet, Zoom, and many others that are free for all the participants. One just needs dedicated internet connection, and at the public participation venue, the County only needs to provide free Wi-Fi via single internet modem or bundles via tethering and laptop power connection and a free conferencing link so that this forum does not time out.

Apart from the online element. Hon. Speaker, our residents need to receive the documents, for example, if it is the CIDP or ADP public participation, we need to receive the data well in advance. In my ward for example, I received a 216-page document from the public participation officer one day to the public participation exercise---

Hon. Temporary Deputy Speaker: Hon. DNG, please stick to the moving of the Motion, we will come to the debate.

Hon. Davidson Ngibuini: I am actually moving the Motion. I stand guided, Hon. Speaker. So, I beg to move the Motion. I call upon Hon. Anthony Maragu, the MCA for Karen Ward to second the Motion.

Hon. Antony Maragu: Thank you, Hon. Speaker and Hon. DNG for giving this opportunity to second the Motion. As you are all aware, the Constitution of Kenya, 2010 vests all sovereign power to the people. It is that spirit of the Constitution to ensure that we move with everybody on board in matters governance directly or indirectly. Directly, through elections, like we are here today representing our people and indirectly through public participation.

The spirit of our Constitution and its tone seeks to ensure that public participation is conducted from the national government and the county governments. I was privileged to participate in the most recent public participation for the County, the CIDP. I heard officials from the Executive saying that the Karen one was highly attended. This was due to the efforts that we made. I am sure even the other Members did the same in their wards for the residents to come and air their views and have a say in the running of Nairobi County.

Madam Speaker, the Motion before us is timely. It had to take the COVID 19 pandemic to show us that we can work from our homes or have a board meeting with people from other continents. This Motion is timely so that we can give people a chance to have a say on how the governance and the management of their resources is going to be done.

We are in the 21st Century and the technology is here with us. This is an opportunity for all Members to support this Motion so that in future when doing a public participation, technology will be deployed so that even my people of Karen, who may find it chaotic to come to the social halls, can sit at the comfort of their homes and make contributions in terms of the directions that they would like the County to take. I implore all Members to support us, and I beg to second. Thank you.

(Question proposed)

Hon. Temporary Deputy Speaker: Hon. Emily Oduor.

Hon. Emily Oduor: Thank you, Madam Speaker and Hon. DNG for bringing this Motion. I witnessed a number of public participations in the city and they have been wanting. If you look at some of the documents, they are voluminous yet you expect the public participation to start in the morning and end in the evening. There are documents that must be read, you must go through the projects that need to be done within a duration of time, for example, this CIDP covers what is to be done for five years. But with the over 200 pages to be done within one day, I think this Motion has come at a very good time.

Most of the public participations are done in social halls and you can imagine how many people the hall can hold. This means that there is a number of Nairobians who will not take part in the public participation exercise. This is why when a project is being implemented, you will hear residents saying; that was not our priority. This is because they did not attend the public participation as they did not get the documents on time or they did not have time to participate. I think this information should be disseminated early enough. I also think that the public participation is not given enough time, for example, starting from 10 a.m. and end at 4 p.m., the mover of the Motion should also include the number of days.

Public participation is very important because it helps Nairobians to decide which other projects they want. You may think that the road is their priority, but they have other projects like health, and through public participation they will be able to tell you. If people do not attend, the Executive will end up doing what they think is right. We normally do our public participation immediately after the Executive have done theirs. When we go there and tell them that the Executive has already done their public participation, they normally tell us that they did not hear from them. There are a lot of problems surrounding this public participation and it is a high time it is done in a proper manner and enough time is given so that Nairobians would be able to grasp what is public participation and its importance. Thank you, Madam Speaker, I support.

Hon. Temporary Deputy Speaker: Hon. Deonysias Mwangi.

Hon. Deonysias Waithera: Thank you, Madam Speaker. This is the disadvantage for some of us who are tall, you have to bend to use the mic. Happy birthday, Madam Speaker and congratulations. To Hon. DNG, from where I sit, I salute you. This is a very important Motion and I fully support it. We have seen public participation dying because most people are not attending since they lack proper guidance and management and proper results at the end.

Public participation exercise should be allocated adequate budget so that they do not rush the programme. If the budget is enough, they can even serve the participants lunch so that they can participate fully in the exercise. As the honorable Member has said, public participation should be rotational so that it can be done in every ward. Public participation has been done in the same venues and that is why most residents have never attended any public participation. With those few remarks, I beg to support the Motion. Thank you.

Hon. Robert Alai: Thank you, Hon. Speaker. I also want to join the other Members who are congratulating you for assuming the honorable seat and happy birthday. Secondly, I want to support this Motion, which has come at the right time when we are to entrench the use of public participation as a tool of development. We, the new Members find it challenging that there is no provision of ample resources or investment for the public participation by the County

I wish to inform this House that the government has an entity called National Fiber Optic Backbone, which is a key national resource but it is underutilized. The government also has enough resources through the Universal Service Fund domiciled at the Communication Authority to ensure that those people that cannot be reached can be reached in instances like public participation. Through the use of Fiber Optic Backbone, we can be able to host virtual sittings and seamlessly take the views of the public using SMS, e-mails and so on. This will ensure that people who are not able to attend physically are able to submit their views virtually.

One of the key hindrances for members of the public not participating in such platforms is the employer culture in this country. Employer have not embraced Kenyan politics in a positive way. This virtual meeting, which the honorable Member has brought to the floor of this Assembly, is a very welcome initiative. In this County under the ICT Sector, we have public communication and the e-Government department which is underutilized. They are supposed to do a lot of public participation, information and education, which is not happening as it should. I think if we use the department well, some of these things will be disseminated to the public. The virtual public participation meetings proposed in this Motion are going to be very necessary. Hon. Speaker, I beg to support.

Hon. Temporary Deputy Speaker: Hon. Emmy.

Hon. Emmy Isalambo: Thank you so much, Madam Speaker for giving me a second chance. Mine is to support the Motion by saying that today's government works with the common mwananchi, unless a Member does not want the residents to see what he is doing, especially on matters like public participation. If this sitting was live, I won't mind my voters seeing me debate the way I am doing now. I think this is a very good thing. Thank you very much, Hon. DNG for the Motion. It will help our voters to know what we are debating about. Our voters need to see what we are doing since they are our employers as they voted for us. When they see us debating, they will know how much we want them to be allocated or implement this or that. They will in turn vote for you for the second or third time since they see you have their interests at heart.

This brings your voter closer. If you do not attend plenary sittings, they will know and they will also know when you are pushing for their agenda. With those few remarks, I beg to support the Motion. Thank you.

Hon. Temporary Deputy Speaker: One honorable Member, and then we call the mover.

Hon. Perpetua Mponjiwa: Thank you, Hon. Speaker. I rise to support the Motion by Hon. DNG, it is a good Motion. Hon. Speaker, as it has been said, public participation is mandatory and compulsory. There have been cases where the court has pronounced itself severally by rendering some laws unconstitutional because of lack of public participation.

Hon. Speaker, this is a very good thing and we need to ensure that it works effectively. For example, you can see how the Judiciary sometimes works virtually, may be when you have bulk documents or when a judgement is being made, that is when you go physically to the courts. I think this should apply when it comes to public participation where some members of the public can participate virtually and some physically. There is a provision for written submissions and the only thing that is lacking is the provision for virtual transmission.

With the current government's manifest where they said that they will provide Wi-Fi to the members of the public and especially in Nairobi, I do not think that it would be a problem. I support this Motion, thank you.

Hon. Gerald Mukuru: Thank you, Madam Speaker for this chance. First, I congratulate you for being nominated to the Speaker's Panel and happy birthday. I stand to support the Motion by my neighbor, Hon. DNG. It is a high time that we went digital. Many a times we feel that the people who participate in those public participations are normally mobilized by interested parties. They do not go there to articulate the real issues that pertain to that particular public participation. Most politicians, and I have seen this in my ward, Kariokor Ward, mobilize these people to support those discussions. But if we go virtual, it is possible for somebody in the office, market or anywhere to participate and air his or her views.

We need to support this Motion and it should be budgeted for us to get the best results. Hon. DNG, I support the Motion and urge Members of this House to support it. Thank you very much, Madam Speaker.

Hon. Davidson Ngibuini: Thank you, Hon. Speaker, I rise to reply. Kindly allow me to speak about improving and increasing the participation in this era that we are in. What we have seen in the past is that we converge members of the public to a forum to engage in discussing the CIDP, but later on we found that what has been discussed is not what has been captured but something different.

I want to thank Members of this Assembly for their support for this Motion. Thank you for your vibrant, passionate and informed debate, your suggestions and recommendations have been well noted. With those few remarks, I beg to reply.

(Question put and agreed to)

(Applause)

ADJOURNMENT

Hon. Temporary Deputy Speaker: Honorable Members, this House stands adjourned until tomorrow, Thursday, 1st December 2022 at 2.30 p.m.

The House rose at 4.42 p.m.