

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Tuesday, 20th November, 2018

*The House met at the Senate Chamber,
Parliament Buildings, at 2.30 p.m.*

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

PRAYER

I will now give the Floor to Sen. Olekina.

Sen. Olekina: Thank you, Mr. Deputy Speaker, Sir. I rise to support this important Bill.

In terms of the amendment, I wish that I had the opportunity to look at the Committee Report. In future, I hope that the Committee reports can be circulated so as to give us the opportunity to see what our colleagues thought about.

From the onset, I have to say that the amendments being brought in to introduce county governments are important for we must respect the two levels of governments that we have. As we bring the services to the people, it is important that the people and the county governments, particularly the elected leaders in the county governments, are aware and play a critical role in the development of this country. I am not a big proponent of PPP given that there are many risks involved and I hope that this Committee looked at the risks involved.

Even though I support these amendments, I am a bit apprehensive to support it fully. As my sister from Isiolo County said and based on what happens worldwide, PPP is not for every sector. In the United States of America, PPP can never be introduced in public health. This is because they are never good and there is always the risk of distraction which might make people not focus on the need to provide the true agenda of improving public health.

When the aspect of competition is eliminated, we have certain people being favored which brings competition and certain interests are developed. I do not support PPP in all aspects.

It is important for the public to be aware of the serious risks that are involved in PPP. Sen. Sakaja talked about the issue of garbage collection in this country and Sen. Murkomen talked of how it will be easy for us to resolve the transport issue in this country if we approach it through PPP. Development bidding and the ongoing cost of PPP are likely to be greater than those of traditional Government and that is why we have to be extremely careful when venturing into PPP.

Some people will say that PPP is good for it can help when a public agency needs some money to finance certain projects. They say that the public agency can partner with

a private sector that is looking for an opportunity to make a quick buck which they might consider as a good marriage. However, in my own thinking and based on what I have read worldwide, PPP is not always the best solution.

Therefore, we have to be aware of these risks which are involved and then develop legislation that can cushion citizens of this Republic on those risks involved. Some of those risks include, the issue of the debt incurred; that has got to be paid by somebody. It might be easy for a private entity to get money to finance a project but the risk is that in most cases, the Government, which the public expect to protect their interests will either end up bearing the consequences of a failed project in the event that there are certain risks that the private actor had not taken into consideration, such as fluctuation in exchange rates, where they borrowed money from abroad, and all of a sudden paying back the debt is becoming too expensive. This might render some of these projects as white elephant.

Mr. Deputy Speaker, Sir, it is imperative that we look at the issue of value for money. I would have expected that the Committee while introducing these new amendments now, where they are involving the county governments, should have taken into consideration the citizens and also the lack of expertise.

Currently, we are dealing with issues of financial risks. When you go through the reports of county governments, you find out that there is lack of capacity in these counties. When you allow county governments to enter into public private partnership agreements, you have not looked at the capacity. These amendments which are being proposed here suggest that a certain department will be looking at their needs in terms of what they want to introduce through the public private partnership. However, what about the risk involved in terms of assuming that there is enough expertise?

Mr. Deputy Speaker, Sir, when you look at these public private partnerships, the private sector itself, which is coming in to work with the public, will invest a lot of money and overtime, to those private entities that will have the expertise to control even the data. While they are controlling the data, the public might end up losing big time. Therefore, when we come up with the issue of approving these projects, since the definition of public private partnership really ventures on long term projects, it is imperative to set up legislation that will look at the scope of the projects and give provision for re-negotiations of the terms of engagement. If we do not take those issues into consideration, then we are putting the public at greater risk of losing a lot of money.

The issue of value for money is something which is important. My biggest problem is where a project was designed with the intention of helping the public but the Government is forced by the terms of engagements in this Public Private Partnerships, (PPPs) to raise the tariffs, which will leave consumers suffering. This Bill has got to define what projects county governments can venture in, in terms of their PPPs. Certain projects which might be easy to raise local revenue, for instance, water projects, should be left for local companies that want to venture into projects and partner with the national Government or county governments.

However, any time you are dealing with a project that involves risks of exchange of currencies, then it is important that they are clearly defined. Before a county government submits their list of the approved projects to the Cabinet Secretary for approval, it is important for the public to be involved and to get their views on them.

Mr. Deputy Speaker, Sir, I hope that it will be important to introduce amendments to these amendments, so that we can take care of the public. I am extremely apprehensive because we are a new devolved Government; we are still a baby. We are still going through different challenges in terms of what is acceptable or what is good for the public. This is why when the Committee deleted the amendments which were proposed in Section 54(b); where before a county government---. A county government comprises of both the executive and the Assembly. Before they approve this list, it must be approved by the latter.

Even if the project is of national importance, Section 54(b) (2) states:-

“Where the project requires national Government’s support measures or other project guarantees which cannot be granted at the county level, or exceed the threshold prescribed by the Cabinet Secretary by way of regulation, the county government shall not execute a project agreement without first seeking and obtaining approval from the national Treasury.”

Mr. Deputy Speaker, Sir, once the Committee decides to delete this section or even the one prior to that which seeks to add the voice of the county assemblies, then you are not only doing away with competition but also introducing another element of dictatorship. If there is a CS who decides that this project is only for national projects, we will deal with it from a national perspective; you may not even consider other things like what we were talking about last week on compulsory acquisition of land.

If there are interests on land, that community must be fully involved. It does not matter whether it is gold that you will mine, you must involve that community. We keep on talking about raising local revenue; how do we then expect our citizens from different counties to participate in that process of ensuring that the county government raises more revenue, if we choose what to involve and what not to involve them?

Mr. Deputy Speaker, Sir, given the long-term and complicity of this project - I had mentioned that before, and the fact that there are certain projects, where a lot of political risks are involved - Government policy is not stagnant. It changes over time. When it comes to these PPPs, these amendments should incorporate an element where they take into consideration that other governments would come and decide to change their policies.

Therefore, they should introduce a transitioning clause in the event a Government changes, because this government policy is in terms of agreements and is something which I know from time to time will change. For instance, new governors will come in, they will leave office and others will come in.

Mr. Deputy Speaker, Sir, this is why I insist that a clear legal and regulatory framework must be emphasized on these amendments, because when this Act was in place - I think it was in 2013 - the devolved government structures were new. Therefore, there is much that we have learnt. This House will be debating the fiduciary risk involved.

It is important for the Committee to consider the need to reintroduce Section 54, which they are proposing that it should be deleted, and also come up with a risk mitigation strategy in the amendments that they are bringing in. Tough regulations will ensure that despite the long term aspect of the project, the interests of the public and private sectors are always protected.

I am very worried by the issue of expertise. This is because when the private sector invests a lot of their money, without proper regulations to monitor how they develop their infrastructure, it might force the Government or the consumers to bear more cost because they will not have a lot of information. Therefore, an information sharing policy must be put in place so that the private and private sectors involved can continue to report, on a daily basis, on the improvements that they are bringing and the possible changes that might affect the public. That way, it will be a true partnership between the private and public sector.

In conclusion, Mr. Deputy Speaker, Sir, I reiterate that public participation is missing from the current proposed legislation in terms of discussing and agreeing to have these projects. We also need to ensure that whatever legislation we come up with in this House, we should think about the future and not the current interests.

With those many remarks, Mr. Deputy Speaker, Sir, I beg to support.