

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Wednesday, 7th November, 2018

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

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

PRAYER

PETITIONS

REPORT ON PETITION: PROTECTION OF ABASUBA LANGUAGE, CULTURE AND HERITAGE

Sen. (Dr.) Langat: Mr. Speaker, Sir, I beg to lay the following Petition Report on the Table of the Senate today, Wednesday, 7th November, 2018:

The Report of the Standing Committee on Education and the Standing Committee on Labour and Social Welfare on a petition concerning the historical human rights violation against the Abasuba Community in Western Kenya.

(Sen. (Dr.) Langat laid the document on the Table)

THE PLIGHT OF COFFEE, TEA AND MACADAMIA NUT FARMERS IN KENYA

The Speaker (Hon. Lusaka): Hon. Senators, I have a petition concerning coffee, tea and macadamia nut farmers in Kenya.

Hon. Senators, pursuant to Standing Order Nos.226(1) and 230(2)(b), I hereby report to the Senate that a petition has been submitted, through the Office of the Clerk, by coffee, tea and macadamia nut farmers in Kenya.

In the Petition, the petitioners state-

(1) That tea, coffee and macadamia nut farmers have suffered in the hands of cartels or middlemen who distort market prices, thereby, many farmers have abandoned cash crop farming;

(2) That the above mentioned cash crops are part of the backbone of the Kenyan economy and that it would be important for all stakeholders, including the state to safeguard national interests; and,

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(3) that farming of these cash crops could be revamped to create the much needed jobs in the economy.

The petitioners, therefore, pray that the Senate-

(1) Reviews legislation relating to the cash crops and develops regulations for profit accruing from the sale of these crops to-

(i) protect farmers; and,

(ii) enable the farmers to realise benefits from farming, including setting guaranteed minimum returns.

(4) Reviews the structure of Agriculture and Food Authority (AFA) for the benefit of farmers.

Hon. Senators, pursuant to Standing Order No.231, I shall now allow comments, observations or clarifications in relation to the Petition for not more than 30 minutes.

Sen. (Eng.) Maina: Mr. Speaker, Sir, I rise to support this Petition. Agriculture is the backbone of our economy. The Petition is about coffee, tea, and macadamia nuts, but the problem goes beyond that. I hope that the relevant Committee will go further in looking into the issues raised here.

(Loud consultations)

Mr. Speaker, Sir, protect me from interference.

The Speaker (Hon. Lusaka): Hon. Members, let us consult in low tones.

Sen. (Eng.) Maina: Thank you, Mr. Speaker, Sir. I rose to support this Petition because agriculture is the backbone of this country. Hawking is just a smaller issue in the bigger problem. First of all, the Committee that will be tasked to look into issues raised here should find out why people have resorted to such kind of thing. It could be because there is no system to ensure that farmers have returns to motivate them to continue growing whatever crops they grow.

Secondly, it could be that this is a country of marketeering. Anybody can come here and do whatever they wish because we do not have proper regulations. I may not know how to plan, but if Kenya did agriculture right by having a system that rewards, for example, sugarcane farmers in western Kenya, maize and wheat farmers in Eldoret and Narok and coffee and tea farmers in the former central province, and all other products, this country would be better.

During the colonial days, the settlers did farming and the economy of Kenya was good. In fact, our Shilling was stronger than the British Sterling Pound. Zimbabwe got into the problems it is facing when its agricultural sector collapsed. Besides just looking at the effects of hawking, which I agree with, there are other bad things that may kill this industry. We must ask ourselves questions. Whether a Kenyan farmer or an investor, people should be hopeful that they can put their money into agriculture and get the returns.

In this country, we had something called Guaranteed Minimum Returns (GMR), which made Kenya self-sufficient in food security. These are the kind of policies that we would wish to be restored back, so that we can utilize the solar energy and water that we have. It is mindboggling how countries like Singapore are farming flowers. A Boeing

aircraft leaves Singapore and flies all the way to Europe. It makes money from delivery of flowers three times a week. Why is it that we cannot do it even better?

When the Committee looks into the issue of macadamia nuts, they should broaden the study and see how they can advise and guide this country. We should retrace where we missed our step when exploiting great resources that God gave us, such as water and good climate that make it possible for us to grow certain types of crops four times a year. We should be at that point.

Thank you very much. I beg to support.

The Speaker (Sen. Lusaka): Sen. Cheruiyot Aaron.

Sen. Cheruiyot: Thank you, Mr. Speaker, Sir. I support this Petition and declare that agriculture, as we are aware, is dead in this country. This is because up to now, I do not know of any farmer who still enjoys agribusiness. Coffee, tea and macadamia nuts farmers are not the only ones who are suffering, despite the fact that they are the ones who brought this Petition. They are only a fraction of the millions of frustrated farmers in this country.

On each occasion when you listen to presentations from officials from the Ministry of Agriculture, you read nothing but complete aloofness and detachment from the reality on the ground. Therefore, I want to urge the Committee that will look into the issues being raised by this petitioner to keenly look into the details of this Petition; question after question, crop after crop, so that our farmers can get a solution.

I say so because, not so long ago, I brought a Motion in this House to establish an *ad hoc* Committee which went around the country getting pleas and listening to the plight of tea farmers. It is nothing but desperation, yet the people who were charged with the responsibility - those who can make decisions that can change the livelihood of our farmers - do not seem to care and are not concerned.

We have summoned the Cabinet Secretary, Ministry of Agriculture to solve the issue of Kenya Tea Development Authority (KTDA) with farmers. This is because, in the year 2000, KTDA changed from being a state corporation to a private company. There is no legislation to reverse that and we cannot amend a statute that was established in that format. The only entity that can dissolve this is the Ministry through another Cabinet memo.

To date, five months down the line since that request was made, the Committee has never come back to us. Two weeks ago, they released bonuses to tea farmers but, unfortunately, there is nothing to celebrate. Farmers are sunk in debt, yet we have people here who are running institutions, whose bank guarantee stands at around Ksh100 billion. This is not their money, but belongs to the farmers of Kenya.

I want to leave it at that because I am aware that many of my colleagues want to contribute to this very important matter. If there is a sector that the Senate can streamline through legislation, it is this particular sector. Therefore, let us do justice to this particular Petition.

Thank you.

The Speaker (Sen. Lusaka): Sen. (Prof.) Onger Samson.

Sen. (Prof.) Onger: Mr. Speaker, Sir, I will speak, though my voice is not very perfect. When we talk of coffee, tea, macadamia, pyrethrum and basic cash crops that

farmers have in the past thrived upon, we find misery all around. As you are aware, agriculture is almost a fully devolved system. The policies are with the national Government. However, when they are called upon to account for some of these policies, they do not seem to care. The parastatals that were set and which are directly answerable to them, and not the farmers, are also talking the same language. I think we need to demystify the mentality of parastatals, which think that they are the bosses of the farmers, when actually it is the farmers that have employed them as agents to carry out their functions.

The reason I support this Petition is because I know that the basic farmers at the grassroots level are suffering. They are laden with debts that have accrued as a result of borrowing. In some of the organizations they were incurred for managers to get certain luxuries that may not be able to reach the farmer in any way.

When you consider tea, it is the same story. When you think of pyrethrum, it is the same story. Time has come for the Senate to do something, because we support devolution and are the protectors of devolution. Some of the issues that are brought to this House touch directly on the welfare of farmers.

The maize saga is one of the most painful things, especially when you read the history of the huge sums of money that have been squandered and stolen by known farmers. We cannot continue to go in this direction as a nation. We must put a stop to this matter and the only body that can do so is this Senate, by legislating and innovating various methodologies that will help us to cover these inefficiencies and deficiencies that we notice in the coffee, maize, tea, and pyrethrum sectors, besides other cash crops that Kenyan farmers are engaged in without any reasonable returns.

I would love to contribute more, but because of my voice, I will rest my case and wait for the outcome of this Petition. We will all support it since it deserves the support of everybody who means well for the Kenyan farmer in this country.

I support.

The Speaker (Sen. Lusaka): Sen. Murkomen.

The Senate Majority Leader (Sen. Murkomen): Mr. Speaker, Sir, first of all, I want to thank the petitioners and recognize Mr. Charles Karumba, Mr. Ephantus Maina and Mr. Harrison Mwinyi for this very quality Petition. In fact, out of the many petitions we have received in this House, I can tell you for sure that this is a well-thought-out Petition. This is because the issues that are affecting farmers need to be addressed.

The office of the Legal Counsel of the Senate is helping me at the moment to draft a law that reviews the Food and Agriculture Authorities Act. In the draft Bill, I am answering one of the prayers of the Petition in so far as dealing with this issue. I think we did not think through clearly when we amalgamated various agencies that were dealing with agriculture or food departments like macadamia, coconut, coffee. We created a huge entity called Agriculture and Food Authority that is run by one officer at the top.

Tea, coffee, macadamia and other crops were relegated to be run by a small director down there, and it becomes an amorphous entity. In fact, one of the reasons the sugar sector has a big problem today is because the Kenya Sugar Board, which was dedicated to perform the functions that are related to the sugar sector, is now a small department under the Agriculture and Food Authority (AFA). Under my Bill we go back

to the entities and institutions as they were before, to ensure that we give the necessary attention to agriculture.

Secondly, we cannot do the same thing. The Jubilee Government cannot do the same things that we used to do under former presidents' -*Mzee* Kenyatta, *Mzee* Moi and *Mzee* Kibaki - governments. We have to do things differently and agriculture must be managed differently. If we must make agriculture to become possible to employ so many people in this country, we must commercialize it.

I come from a region that deals with matters of maize. The idea of planting maize in January and waiting until December must come to an end. We must think through and that is why I am saying that the entity that will be in charge of the food sector will now have a greater focus on grains. It will then ensure that in the maize sector, we bring together maize farmers and form cooperative societies that will ensure that farmers can have their own millers.

Mr. Speaker, Sir, just like in the sugar sector, we want to see maize farmers have their own mills. I want to recognise in this House the work that is being done by my friend and Governor of Uasin Gishu County, Gov. Mandago. He is running a very good programme of putting together all farmers in a Savings and Credit Cooperative Organisation (SACCO). He has told farmers that instead of them selling maize to the National Cereals and Produce Board (NCPB) or other millers, they should establish their own milling plant, so that they can have control of the product from when they farm to when they add value. This will ensure that they sell it at a price that will benefit them. That will not be possible if we continue having AFA as a moribund institution that is not targeted to focus on tea, cotton and coffee.

There is the price of Kshs2,300 per bag that that has been set. All of us who come from that region still insist that maize should be sold at Kshs3,500 per bag, but for how long will that be sustainable? We can do that this year and the Government may or may not yield to pressure. They may yield to pressure just before elections.

(Sen. Moi consulted loudly)

Mr. Speaker, Sir, if you may protect me from Sen. Moi.

The Speaker (Hon. Lusaka): Hon. Members, let us consult in low tones.

The Senate Majority Leader (Sen. Murkomen): Mr. Speaker, Sir, I know that many people are excited that he is the House today, but if the consultation can be---

The Speaker (Hon. Lusaka): Hon. Senators, let us consult in low tones.

The Senate Majority Leader (Sen. Murkomen): Mr. Speaker, Sir, I insist that if farmers themselves can control the product from the time it is planted to the time that value is added, we will eliminate the trend where every year we discuss matters---

We want to see Sen. Malalah and his people in Kakamega forming their own cooperative society and work with the sugar policy body at the national level that will assist to give proper research. They will have their own cooperatives and establish their own sugar milling companies. The other day, President Uhuru Kenyatta challenged us that it is impossible to say that private sector is establishing sugar milling companies, like Kabras, the one in Kilgoris and the other one that is almost being established at the Coast, and the

same time, we are complaining that the public owned companies are unable to pay their farmers. There must be something wrong. If we want to cure that disease, let us establish cooperatives, milling institutions and value-adding companies that will be controlled and owned by farmers.

Mr. Speaker, Sir, for all the farmers in the North Rift, the way to go is what Gov. Mandago is starting. Let us establish our own million companies. Let us mill our maize and sell it at a price that we will determine. That will only be possible if we dismantle this AFA that has become a moribund body; just too big for nothing without really targeted to support the farmers.

Mr. Speaker, Sir, I support this Petition.

Sen. Malalah: Thank you, Mr. Speaker, Sir. I stand to support this Petition. As the Senate Majority Leader has alluded, this is a well-thought-out Petition. It does not limit itself to coffee, tea and macadamia. The problem is affects all crops.

I support the sentiments of the Senate Majority Leader that we need to look at agriculture with a microscopic eye. Under the Fourth Schedule of our Constitution, agriculture is a devolved function. However, it is just the functions that have been devolving and not resources. How I wish that the national Government could be serious on the issue of devolving resources down to county governments. County governments are near the farmers and this is the only way we can empower the farmers of the Republic of Kenya.

Mr. Speaker, Sir, on the other hand, I disagree with my friend, Sen. Murkomen, on the issue of us forming one entity that deals with all cash crops. We shall be putting our eggs in one basket. You have seen the way maize and sugar have been mishandled. Therefore, it is not a good idea for us to cluster all crops and farming into one entity. It is important---

The Senate Majority Leader (Sen. Murkomen): On a point of order, Mr. Speaker, Sir. Sen. Malalah may not have listened when I was making my presentation. Is he disagreeing or agreeing with me? My presentation was that we need to dismantle AFA. Is he in order to mislead the House that I could still be supporting the amalgamation, when I spoke for more than five minutes on why I have a Bill that we are drafting to dismantle this moribund institution that has become a liability in the farming sector?

Sen. Malalah: Mr. Speaker, Sir, I thank Sen. Murkomen for that clarification. So long as you agree with me, I am with you.

(Laughter)

I think it is the manner in which he structured his remarks. Sen. Murkomen talks like a speed machine and, therefore, articulates his issues in a manner that we cannot digest quickly. However, he has clarified and I am with him on that.

I am emphasizing on the issue of not having one entity handling all crops. We need an entity to deal with the sugar industry and another one with the maize industry. However, we need to focus on the problems in the agriculture sector. The first problem that our farmers have is lack of market. We do not have a definite market. We need to

encourage contractual farming, in the sense that before a farmer gets into sorghum or sugar farming they should be assured of the market.

Mr. Speaker, Sir, recently, I had a farmers' convention in Lugari Constituency. Since Kenya Breweries Limited (KBL) is opening a plant in Kisumu County, I encourage all the farmers in Kakamega and the western region in general to ensure that they are contracted by the company. Kenya Breweries Limited is willing to contract farmers before we start farming.

Lastly, the second problem that the farmers have is the existence of middlemen and brokers. In the recent maize scandal, a person who does not own a single acre of land supplied 2,000 or 3,000 bags of maize. We need to eradicate the brokers and middle men who are in this business.

Moving forward, I want to take this opportunity to thank the President of this Republic, who has formed a taskforce to handle issues of sugar and maize. This is the only way in which we can have a definite solution to farming in our country. I urge the members of that taskforce, and some of them are in this House, to do their work diligently and ensure that they resolve the quagmire that is facing our farmers.

The Speaker (Hon. Lusaka): Thank you, Sen. Malalah. We have four minutes. I will allow Sen. (Dr.) Langat and probably one more Senator to talk on this matter. Keep it short.

Sen. (Dr.) Langat: Thank you, Mr. Speaker, Sir, for allowing me to add my voice on this. In our country, agriculture is one of the greatest employers hence we should handle it with a lot of seriousness. Most people are self-employed in the agricultural sector and when we allow agriculture to go the direction that we are watching it go right now, we will put our country in a quagmire.

Other than what my colleagues have said regarding what is affecting coffee, sugarcane industry and the rest, I have realized that the research sector was greatly affected when amalgamation took place. One of the areas that is least financed in our agricultural sector is the research sector. As a result of lack of attention on research in our country, agriculture has been left to suffer and it has to use the old outdated technologies of production. A lot of funds should be put into the research sector for our agriculture to operate within the current technology and ensure more production.

The other problem that is fighting agriculture is corruption. The moment we fight corruption in agricultural sector, it will come back to normal.

The Speaker (Hon. Lusaka): Finally, we will have Sen. Olekina.

Sen. Olekina: Thank you, Mr. Speaker, Sir, for allowing me to give my thoughts on this. I rise to support this Petition because of the strength that it has in building our economy.

Protecting farmers is one of the most important things. When we were growing up, we used to read about the coffee farmers. We would also read about children who were going to school because their parents were growing coffee and tea. At the moment, despite the amount of land that the farmers have, they still call us, as leaders, to go and fundraise for their kids to be taken to school. This Petition is timely. I would like to seek that it extends to other farmers, such as the wheat farmers.

One of my pet peeves is that we give a lot of empty promises during the campaign period. Last year, farmers in Narok and Kajiado were promised that those who were affected by the drought situation in this country would have the loans that they had with Agricultural Finance Corporation (AFC) written off. Until today, farmers in Narok and Kajiado are still suffering. Therefore, this Petition is timely.

Agriculture is now a devolved function hence it is imperative for the county governments to develop legislations that will ensure that we look at the entire chain of supply when dealing with farm products and not allow the middlemen, who come from affluent neighborhoods, to kill the small-scale farmers.

I support the sentiments of my colleagues when they said that we have to ensure that the farmers are encouraged to form small cooperatives, where they can learn how best to produce their crop and set up the prices for their crops as they sell them. I hope that the Committee on Agriculture, Livestock and Fisheries will benchmark in other countries. Last year I got an opportunity to go to Brazil---

The Speaker (Hon. Lusaka): Your time is up. I know that our time is up, but the Senator for Mombasa County had pressed his button and it disappeared at some point. Therefore, I will give him two minutes to make his contribution.

Sen. Faki: Asante, Bw. Spika, kwa kunipa fursa hii kuchangia ombi hili kuhusu kahawa, chai na macadamia. Kule Pwani mazao makubwa ni korosho na nazi. Mazao haya mawili yamewekwa katika kaburi la sahu. Tulikuwa na mtambo wa korosho kule Kilifi kwa Sen. Madzayo, lakini mtambo huo umekuwa mahame sasa. Hakuna yeyote ambaye anachukua fursa hiyo kuweza kufufua mtambo ule.

Vile vile, kule Kwale ambako ndugu yangu, Sen. Boy, anatoka, kulikuwa na mtambo wa Bixa, yaani ile mirangi ambayo inatumika kuweka rangi kwenye chakula ama bidhaa zingine tofauti. Tunaunga mkono ombi hili kwa sababu wakulima wengi katika eneo la Pwani wanapata shida ya soko ya korosho na nazi ilhali hayo ndio mazao ambayo yanamea kwa wingi bila juhudi kubwa ya ukulima.

Tangu mazao hayo yaanze kukufa, wapwani wengi wamekuwa maskini na wameshindwa kusomesha watoto wao, kwa sababu ya kukosa ajira na fedha za kuweza kuendesha maisha yao.

Tunaunga mkono ombi hili na kuomba kwamba lipanuliwe ili lihusishe pia korosho, nazi na mazao mengine yanayokuzwa nchini Kenya.

The Speaker (Hon. Lusaka): Hon. Senators, pursuant to Standing Order 232(1) the Petition stands committed to the relevant Standing Committee, in this case, the Standing Committee on Agriculture, Livestock and Fisheries.

In terms of Standing Order 232(2), the Committee will be required, in not more than 60 calendar days from the time of reading the prayer, to respond to the Petitioner by a way of a report addressed to the petitioner and laid on the Table of the Senate.

PAPERS LAID

REPORT ON FINANCIAL STATEMENTS OF VARIOUS COUNTY EXECUTIVES

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Sen. Kihika: Mr. Speaker, Sir, I beg to lay the following Papers on the Table of the Senate today, Wednesday, 07th November, 2018-

Report of the Auditor General on the Financial Statements of the Nyamira County Executive for the year ended 30th June 2017.

Report of the Auditor General on the Financial Statements of the Machakos County Executive for the year ended 30th June 2017.

Report of the Auditor General on the Financial Statements of the Kajiado County Executive for the year ended 30th June 2017.

Report of the Auditor General on the Financial Statements of the Nairobi County Executive for the year ended 30th June 2017.

Report of the Auditor General on the Financial Statements of the Siaya County Executive for the year ended 30th June 2017.

Report of the Auditor General on the Financial Statements of the Busia County Executive for the year ended 30th June 2017.

Report of the Auditor General on the Financial Statements of the Kakamega County Executive for the year ended 30th June 2017.

Report of the Auditor General on the Financial Statements of the Bungoma County Executive for the year ended 30th June 2017.

Report of the Auditor General on the Financial Statements of the Kisumu County Executive for the year ended 30th June 2017.

Report of the Auditor General on the Financial Statements of the Migori County Executive for the year ended 30th June 2017.

Report of the Auditor General on the Financial Statements of the Vihiga County Executive for the year ended 30th June 2017.

Report of the Auditor General on the Financial Statements of the Homa Bay County Executive for the year ended 30th June 2017.

(Sen. Kihika laid the documents on the Table)

The Speaker (Hon. Lusaka): Next Order.

STATEMENTS

INTERIM REPORT ON COMMITTEE VISIT TO MOMBASA, KWALE AND KILIFI COUNTIES

Sen. Sakaja: Thank you, Mr. Speaker, Sir. I have two Statements. With your permission, I will issue them all together.

Pursuant to Standing Order No.51(1)(a), I rise to issue a Statement as the Chairperson of the Standing Committee on Labour and Social Welfare regarding some of the issues that arose during the county visit to Mombasa County, Kwale County and Kilifi County from 28th October, 2018 to 2nd November, 2018.

Mr. Speaker, Sir, during the Senate Standing Committee on Labour and Social Welfare county visit to Mombasa, Kwale and Kilifi counties, a number of issues of

concern were raised by the county governments' workers unions. We met county assemblies, County Executive Committee (CEC) Members as well as the Governor of Mombasa County. While a comprehensive report is being done by the Committee, there are certain issues that need to come to the attention of the Senate urgently. These are-

- (1) Non-recognition of trade unions;
- (2) uncertainty on the county governments' employees retirement pension scheme;
- (3) Different categories of county employees-
 - a) defunct county council's employees;
 - b) employees seconded from the national Government to counties;
 - c) employees employed by the county governments from 2013;
 - d) high numbers of casual workers, which brings a lot of confusion in dealing with the staff in the counties;
 - e) non-payment of statutory deductions such as Pay As You Earn (PAYE), National Hospital Insurance Fund (NHIF), National Social Security Fund (NSSF); and,
- (4) Unavailability of specialised personnel such as architects, quantity surveyors, engineers, doctors in the counties.

(Loud Consultations)

I wish that Senators could listen because this is extremely important.

The Speaker (Hon. Lusaka): Hon. Members, consult in low tones so that you can contribute to the Statement that Sen. Sakaja is raising.

Sen. Sakaja: Mr. Speaker, Sir, these are issues that affect each and every county, and therefore, Senators need to understand. I request the Senate to support the Committee in ensuring the following-

(1) That every county government recognizes a trade union for purposes of collective bargaining if that trade union represents the simple majority of unionisable employees in that county in line with Section 54 of Labour Relations Act.

Many counties have refused to recognize the trade unions in the counties, which is against the law which states that they must be recognized. Therefore, with the support of the Senate, we ask that within the next 14 days, all county governments must recognize those trade unions or they shall be deemed to have been recognized by the Senate for those purposes.

(2) Expedite the enactment of County Government Retirement Scheme Bill, Senate Bills No.6 of 2018 into an Act of Parliament by December. We reported to them that we are expediting the County Government Retirement Scheme Bill, which has come to us. All county governments' workers are expressing uncertainty in terms of their pensions. The county governors are not paying PAYE as required to either Local Authorities Provident Fund (LAPFUND) or Local Authorities Pensions Trust (LAPTRUST). They say that there is no enabling legislation. Therefore, the blame out there in the country is on the Senate because we have not been able to conclude on this Bill.

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(3) Request every county government to harmonize the terms and conditions of employment of all employees working in that county government. We will ask Senators to give us their input on this. There are three categories. There are those who were in the defunct councils and those who were employed by the new governors in 2013. There are also those who were seconded. Therefore, there are people doing the same category of work, but with different terms of reference *et cetera*.

Finally, we have realised the number of casuals is a conduit used by many county governments to pay ghost workers who are gotten every six months, for example, the ones we see in Nairobi City County planting flowers.

(4) Develop a framework together with all the Senators through which counties can share scarce and specialised personnel;

Mr. Speaker, Sir, we have 47 different County Public Service Boards (CPSBs), but have certain skills and competence required. We do not have 47 neurosurgeons or quantity surveyors who are available to the counties. Therefore, we are working with the CPSBs to ensure that we anchor within the County Governments Act a framework through which we can have one umbrella CPSB. This will ensure that employees at the county are not employees of the specific counties, but the CPSB. This will also help us to reduce what we are now seeing happening in our counties that have become ethnic balkans. For a person to get a job in Kitui, they must come from Kitui. For a person to get a job in Vihiga County, they must come from Vihiga. This leaves a huge category of Kenyans whose National Identity Cards (IDs) do not match their places of birth or origin without work. If we can do reshuffles and take people round, in the spirit of building bridges, we will make sure that any Kenyan gets a job and works anywhere in this country.

Mr. Speaker, Sir, I will now move on to my second Statement which also arose during our visit.

PREFERENCES AND RESERVATIONS IN PUBLIC PROCUREMENT AND ASSETS DISPOSAL

Sen. Sakaja: Mr. Speaker, Sir, pursuant to Standing Order No.51 (1) (a), I rise to make a Statement as the Chair of Committee on Labour and Social Welfare regarding the preferences and reservations in public procurement and assets disposal under Section 157 of The Public Procurement and Asset Disposal Act.

Mr. Speaker, Sir, Section 8 of that law establishes the Public Procurement Regulatory Authority which is mandated-

(a) to monitor the implementation of the preference and reservations Schemes by procuring entities; and,

(b) monitor and evaluate the preference and reservations provides for under the Act.

In addition, all procuring entities, Government Ministries, State corporations, parastatals and county governments are supposed to set aside 30 per cent of the value of procurement for young people, women and persons with disability and such reports must be made every six months to the Public Procurement Regulatory Authority. Those reports

are then supposed to be brought to the House through the Committee on National Cohesion, Equal Opportunities and Regional Integration.

Mr. Speaker, Sir, this has not been done. In many counties, we have seen unscrupulous traders purporting to have registered companies under the youth and women banner doing that business, instead of the young people and women of this country.

Mr. Speaker, Sir, we request that the Committee on National Cohesion, Equal Opportunities and Regional Integration--- This is something very close to my heart because I brought these amendments in the last Parliament. We are supposed to, at least, have Kshs330 billion value of procurement circulating amongst our young people, women and persons with disability. This will greatly reduce crime and unemployment. They need to ask because the laws say so. They need to get-

(a) desegregated data indicating the number of youth, women and persons with disabilities whose goods and services have been procured by the national Government and county governments;

(b) micro, small and medium enterprises involved in procurement and assets disposal;

We need to do a forensic audit on that. You might find that many of these companies are connected to procurement officials, Members of Parliament (MPs), governors, *et cetera*.

(c) we need a list of shame of state organs and counties that are not complying with the provisions to give preferences to young people, women and persons with disability;

(d) complaints made on procuring entities; a record of those prohibited from participating in tenders or those debarred;

(e) market prices of goods and services and works procured;

(d) compliance with mandatory requirements within the law;

(e) compliance with the requirement that procuring entities must ensure that the monies paid out to an enterprise owned by the youth, women or persons with disability is paid out to an account where the mandatory signatory is a youth, woman or a person with disability; and,

(f) the extent to which procuring entities have integrated preferences and reservations in their procurement plans and throughout the procurement process.

We will seek the support of every Senator in implementing and getting this done.

Thank you, Mr. Speaker, Sir.

The Speaker (Hon. Lusaka): Hon. Members, I will allow some comments, but let us remain in the Chamber because we shall be voting in a short while.

Proceed, Sen. Mwaruma.

Sen. Mwaruma: Thank you, Mr. Speaker, Sir, for this opportunity. I support the Statement by Sen. Sakaja. In the counties, it is true that we are not recognizing trade unions, which are the defenders of the employees. Most importantly, we do not have a benchmark or regulation for employment across the country. For example, we get some counties employing people of low qualifications to very high job groups. For example, I have seen new graduates being employed as directors in Job Group R. Where on earth

does one complete their degree and become a director? There is need to scrutinize the qualifications of our employees, so that across the country we can have a standard for employing our people.

Secondly, we have employees who are on contractual employment. For example, ward and sub-county administrators are mostly given contractual employment. This is such that if a new governor comes in, he or she comes with new employees, so that they can be loyal to him or her. However, under the national Government employment policy, Deputy County Commissioners (DCCs) and County Commissioners are employed under permanent and pensionable terms. It is time we also recognize the sub-county and ward administrators, so that they are employed under permanent and pensionable terms.

Mr. Speaker, Sir, it is foolhardy to use a lot of money to train administrators during their time of work and sack them after four years. We are wasting a lot of Government money. We need to have permanent employees under those cadres.

Lastly, there are many employees under casual employment. Some counties have not employed people right now, but the wage bills are going up. Why is that so? As the Senator has correctly alluded to, these casual workers are being used as conduits to pay ghost workers and that money is going to corrupt governors. The outcome of this Statement will go a long way in improving employment and the working of our counties.

On the second Statement, when we went to Uasin Gishu County, about the 30 per cent---

The Speaker (Hon. Lusaka): You will have to keep it short.

Sen. Mwaruma: Yes, Mr. Speaker, Sir. I will keep it short and sweet.

(Laughter)

When went to Uasin Gishu, I learnt something which was very important for us to achieve the 30 per cent youth, Persons with Disabilities (PWDs) and women's access to business. They have started cooperatives where money is given. The youth get money to do business and the county government pays through them. The youth, PWDs and women are able to do business. That is also a very good Statement. We will need to do a forensic audit of whether or not our youth, PWDs and women are getting access to the tenders as per the law.

Mr. Speaker, Sir, I thank you.

The Speaker (Hon. Lusaka): Let us have Sen. (Eng.) Hargura.

Sen. (Eng.) Hargura: Thank you, Mr. Speaker, Sir, for giving me the opportunity to comment on these Statements by Sen. Sakaja.

I thank him and Members of the Senate Committee on Labour and Social Welfare for giving us a report of their county visits. That is what we need to be doing in the other Committees.

On the issue of trade unions, there was a time we had nurses' strike that lasted long. I think one of the issues was the way they were being handled at the county level. We need to take into account the fact that we have laws, which allow our workers to form trade unions. It is a better way for them to negotiate. So, we need to recognize them at the county level.

On employment of casual workers, this is a problem that is in many counties. We have some people said to be casual workers for the last ten years. It is against the law because someone is supposed to be a casual worker for only three months. After that, if they are required, then they should be employed permanently or on contract basis. That way, they will get more benefits than when they are casual workers. We need to be sensitive to the plight of our people considering the large number of unemployed people. Around 30 per cent of youth in this country are unemployed. If we treat them this way, we will be denying them the benefits they get when they work.

On the issue of contractual opportunities for women, youth and PWDs, they need to get 30 per cent of the jobs that are available. From our development budget this is about Kshs300 billion. There must be some way of making sure the right people get the jobs. In terms of registration, anybody can register as long as they are women, youth or PWDs. However, those people need to be the greatest beneficiaries and that is why that category is identified.

On the issue of following up on that, the Public Procurement Regulatory Authority should be able to give that report to the relevant Committee, in this case, the Committee on National Cohesion, Equal Opportunity and Regional Integration. I urge the Members of the Committee, and the Chair in particular, to follow up, so that we get this report after every six months and see how the counties and the national Government are doing in implementing this law. This is one way we can loop the women, youth and PWDs into the productive sector of this country by performing the necessary contracts, getting the necessary experience and funding, so that they can contribute to the development of this country.

Thank you, Mr. Speaker, Sir. I support.

The Speaker (Hon. Lusaka): Hon. Senators, for the convenience of the House, I direct that we go to Order No. 8 and 9. We shall come back to Statements.

Order No. 8.

BILL

THE COUNTY PLANNING (ROADS, PAVEMENTS AND PARKING BAYS) (SENATE BILLS NO.18 OF 2018)

(Sen. Olekina on 23.10.2018)

(Resumption of debate interrupted on 6.11.2018)

The Speaker (Hon. Lusaka): We shall now proceed to vote. I direct that the Division Bell be rung for one minute.

(The Division Bell was rung)

The Speaker (Hon. Lusaka): I now direct that the Doors be locked and the Bar drawn.

(The Bar was drawn and doors locked)

The Speaker (Hon. Lusaka): Hon. Senators, I now put the question; that The County Planning (Roads, Pavements and Parking Bays) (Senate Bills No.18 of 2018) be now read a Second Time.

Hon. Senators, confirm that you have logged in. We are now ready for voting. You may now cast your vote.

(The Senators proceeded to vote)

BILL

Second Reading

THE COUNTY PLANNING (ROADS, PAVEMENTS AND PARKING BAYS)
BILL (SENATE BILLS NO.18 OF 2018)

(Sen. Olekina on 23.10.2018)

(Resumption of Debate interrupted on 6.11.2018)

DIVISION

ELECTRONIC VOTING

(Question that, the Planning (Roads, Pavements and Parking Bays) Bill (Senate Bills No.18 of 2018) be now read a Second Time put, and the Senate proceeded to vote by County Delegations)

AYES: Sen. (Dr.) Ali, Wajir County; Sen. Cherargei, Nandi County; Sen. Cheruiyot, Kericho County; Sen. (Prof.) Ekal, Turkana County; Sen. Faki, Mombasa County; Sen. Halake, Isiolo County; Sen. (Prof.) Kamar, Uasin Gishu County; Sen. Khaniri, Vihiga County; Sen. Kihika, Nakuru County; Sen. (Prof.) Kindiki, Tharaka Nithi County; Sen. Kinyua, Laikipia County; Sen. (Eng.) Maina, Nyeri County; Sen. (Dr.) Langat, Bomet County; Sen. Lelegwe, Samburu County; Sen. Madzayo, Kilifi County; Sen. Malalah, Kakamega County; Sen. Moi, Baringo County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Mwangi, Nyandarua County; Sen. Mwaruma, Taita Taveta County; Sen. Ndwiga, Embu County; Sen. Ochillo-Ayacko, Migori County; Sen. Olekina, Narok County; Sen. (Prof.) Ongeru, Kisii County; Sen. Outa, Kisumu County; Sen. Sakaja, Nairobi City County; Sen. Seneta, Kajiado County; Sen. Wako, Busia County and Sen. Wambua, Kitui County.

NOES: Sen. (Eng.) Hargura, Marsabit County.

The Speaker (Hon. Lusaka): Hon. Members, these are the results -

AYES: 29
NOES: 1
ABSTENTIONS: 0
The “Ayes” have it.

(Question carried by 29 votes to 1)

(The Bill was accordingly read a Second Time and referred to a Committee of the Whole tomorrow)

BILL

Second Reading

THE DATA PROTECTION BILL
(SENATE BILLS NO.16 OF 2018)

(Sen. Halake on 6.11.2018)

(Resumption of Debate interrupted on 6.11.2018)

DIVISION

ELECTRONIC VOTING

(Question that, the Data Protection Bill (Senate Bills No.16 of 2018) be now read a Second Time, put and the Senate proceeded to vote by County Delegations)

AYES: Sen. (Dr.) Ali, Wajir County; Sen. Cherargei, Nandi County; Sen. Cheruiyot, Kericho County; Sen. (Prof.) Ekal, Turkana County; Sen. Faki, Mombasa County; Sen. Halake, Isiolo County; Sen. Hargura, Marsabit County; Sen. (Prof.) Kamar, Uasin Gishu County; Sen. Khaniri, Vihiga County; Sen. Kihika, Nakuru County; Sen. (Prof.) Kindiki, Tharaka Nithi County; Sen. Kinyua, Laikipia County; Sen. (Eng.) Maina, Nyeri County; Sen. (Dr.) Langat, Bomet County; Sen. Lelegwe, Samburu County; Sen. Madzayo, Kilifi County; Sen. Malalah, Kakamega County; Sen. Moi, Baringo County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Mwangi, Nyandarua County; Sen. Mwaruma, Taita Taveta County; Sen. Ndwiga, Embu County; Sen. Ochillo-Ayacko, Migori County; Sen. Olekina, Narok County; Sen. (Prof.) Ongeru, Kisii County; Sen. Outa, Kisumu County; Sen. Sakaja, Nairobi City County; Sen. Seneta, Kajiado County; Sen. Wako, Busia County and Sen. Wambua, Kitui County.

NOES: Nil

The Speaker (Hon. Lusaka): Hon. Members, these are the results-

AYES: 30

NOES: 0
ABSTENTIONS: 0
The “Ayes” have it.

(Question carried by 30 votes to 0)

(The Bill was accordingly read a Second Time and referred to a Committee of the Whole Tomorrow)

The Speaker (Hon. Lusaka): Hon. Senators, I now direct that the doors be opened and the Bars drawn.

(The Bar was drawn and doors opened)

The Speaker (Sen. Lusaka): Hon. Members, please, remain in the Chamber so that we prosecute Order Nos. 10 and 11.

COMMITTEE OF THE WHOLE

(Order of the committee read)

[The speaker (Sen. Lusaka) left the Chair]

IN THE COMMITTEE

[The Temporary Chairperson (Sen. Nyamunga) in the Chair]

THE FOOD SECURITY (AMENDMENT) BILL
(SENATE BILLS NO. 12 OF 2017)

(Sen. Murkomen on 24.10.2018)

(Resumption of Debate interrupted on 24.10.2018)

The Chairperson (Sen. Nyamunga): Hon Senators, I now direct that the doors be locked and the bar be drawn.

(The doors were locked and Bar drawn)

Hon. Senators, we will now proceed to vote on the Food Security (Amendment) Bill (Senate Bill No.12 of 2017). We are proceeding with Clauses 6, 9, 12, 14, 23, 25, 31, 32 and 35

(Question of the amendment proposed)

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Hon. Senators, take your seats, please, log in and start voting. If there is any Senator who needs assistance, step forward. Voting starts now.

DIVISION

ELECTRONIC VOTING

(Question, that Clauses 6, 9, 12, 14, 23, 25, 31, 32 and 35 be amended as proposed put and the Senate proceeded to vote by County Delegations)

AYES: Sen. (Dr.) Ali, Wajir County; Sen. Cherargei, Nandi County; Sen. Cheruiyot, Kericho County; Sen. (Prof.) Ekal, Turkana; Sen. Faki, Mombasa County; Sen. Farhiya, Nairobi County; Sen. Halake, Isiolo County; Sen. Hargura, Marsabit County; Sen. (Prof.) Kamar, Uasin Gishu County; Sen. Khaniri, Vihiga County; Sen. Kihika, Nakuru County; Sen. (Prof.) Kindiki, Tharaka Nithi County; Sen. Kinyua, Laikipia County; Sen. (Dr.) Langat, Bomet County; Sen. Lelegwe, Samburu County; Sen. Madzayo, Kilifi County; Sen. (Eng.) Mahamud, Mandera County; Sen. Malalah, Kakamega County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Mwangi, Nyandarua County; Sen. Mwaruma, Taita Taveta County; Sen. Ndwiga, Embu County; Sen. Olekina, Narok County; Sen. (Prof.) Ongeru, Kisii County; Sen. Outa, Kisumu County; Sen. Seneta, Kajiado County; Sen. Wako, Busia County and Sen. Wambua, Kitui County.

NOES: Nil

Hon. Senators, the results of the Division are as follows:

AYES: 28

NOES: 0

ABSTENTIONS: 0

(Question carried by 28 to 0)

The Chairperson (Sen. Nyamunga): Hon. Senators, you can start voting.

DIVISION

ELECTRONIC VOTING

(Question that, Clause 3, 4, 5, 6(as amended), 7, 8, 9(as amended), 10, 11, 12(as amended), 13, 14(as amended), 15, 16, 17, 18, 19, 20, 21, 22, 23(as amended), 24, 25(as amended), 26, 27, 28, 29, 30, 31(as amended), 32 (as amended), 33, 34, 35 (as amended), 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, the First Schedule, the Second Schedule, Clause 2, the Title and Clause 1 be part of the Bill, put and the Senate proceeded to vote by County Delegations)

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AYES: Sen. (Dr.) Ali, Wajir County; Sen. Cheruiyot, Kericho County; Sen. (Prof.) Ekal, Turkana County; Sen. Faki, Mombasa County; Sen. Farhiya, Nairobi City County; Sen. Halake, Isiolo County; Sen. (Eng.) Hargura, Marsabit County; Sen. (Prof.) Kamar, Uasin Gishu County; Sen. Khaniri, Vihiga County; Sen. Kihika, Nakuru County; Sen. (Prof.) Kindiki, Tharaka Nithi County; Sen. (Dr.) Langat, Bomet County; Sen. Lelegwe, Samburu County; Sen. Madzayo, Kilifi County; Sen. (Eng.) Mahamud, Mandera County; Sen. (Eng.) Maina, Nyeri County; Sen. Malalah, Kakamega County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Mwangi, Nyandarua County; Sen. Mwaruma, Taita-Taveta County; Sen. Ndwiga, Embu County; Sen. Ochillo-Ayacko, Migori County; Sen. Olekina, Narok County; Sen. (Prof.) Ongeru, Kisii County; Sen. Outa, Kisumu County; Sen. Seneta, Kajiado County; Sen. Wako, Busia County; and, Sen. Wambua, Kitui County.

NOES: Nil

The Temporary Chairperson (Sen. Nyamunga): Hon. Senators, the results of the Division are as follows:-

AYES: 28

NOES: Nil

ABSENTIONS: Nil

The “Ayes” have it.

(Question carried by 28 votes to 0)

The Temporary Chairperson (Sen. Nyamunga): Hon. Senators, for the convenience of the House, we will proceed to Order Nos. 11 and 12.

THE COUNTY STATISTICS BILL
(SENATE BILLS NO.9 OF 2018)

(Sen. Farhiya on 17.7.2018)

(Resumption of Debate interrupted on 24.10.2018)

DIVISION

ELECTRONIC VOTING

(Question, that Clauses 4, 5, 8, 9, 10, 11, 12, 14, 15, 16, 18, 19 and 2 be amended as proposed, put and the Senate proceeded to vote by County Delegations)

AYES: Sen. (Dr.) Ali, Wajir County; Sen. Cherargei, Nandi County; Sen. Cheruiyot, Kericho County; Sen. (Prof.) Ekal, Turkana County; Sen. Faki, Mombasa County; Sen. Farhiya, Nairobi City County; Sen. Halake, Isiolo County; Sen. (Eng.) Hargura, Marsabit County; Sen. Khaniri, Vihiga County; Sen. Kihika, Nakuru County;

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Sen. (Prof.) Kindiki, Tharaka Nithi County; Sen. Kinyua, Laikipia County; Sen. (Dr.) Langat, Bomet County; Sen. Lelegwe, Samburu County; Sen. Madzayo, Kilifi County; Sen. (Eng.) Mahamud, Mandera County; Sen. (Eng.) Maina, Nyeri County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Mwangi, Nyandarua County; Sen. Mwaruma, Taita-Taveta County; Sen. Ndwiga, Embu County; Sen. Ochillo-Ayacko, Migori County; Sen. Olekina, Narok County; Sen. (Prof.) Onger, Kisii County; Sen. Outa, Kisumu County; Sen. Seneta, Kajiado County; Sen. Wako, Busia County; and, Sen. Wambua, Kitui County.

NOES: Nil

The Temporary Chairperson (Sen. Nyamunga): Hon. Senators, the results of the Division are as follows:-

AYES: 28

NOES: Nil

ABSENTIONS: Nil

The “Ayes” have it.

(Question carried by 28 votes to 0)

DIVISION

ELECTRONIC VOTING

(Question that, Clauses 3, 4(as amended), 5(as amended), 6,7, 8(as amended), 9(as amended), 10 (as amended), 11(as amended), 12 (as amended), 13, 14(as amended), 15 (as amended), 16, (as amended), 17, 18(as amended), 19(as amended), 20,21,the Schedule, Clause 2 (as amended), the Title and Clause 1 be part of the Bill, put and the Senate proceeded to vote by County Delegations)

AYES: Sen. (Dr.) Ali, Wajir County; Sen. Cherargei, Nandi County; Sen. Cheruiyot, Kericho County; Sen. (Prof.) Ekal, Turkana County; Sen. Faki, Mombasa County; Sen. Farhiya, Nairobi County; Sen. Halake, Isiolo County; Sen. (Eng.) Hargura, Marsabit County; Sen. Khaniri, Vihiga County; Sen. Kihika, Nakuru County; Sen. (Prof.) Kindiki, Tharaka Nithi County; Sen. Kinyua, Laikipia County; Sen. (Eng.) Maina, Nyeri County; Sen. (Dr.) Langat, Bomet County ; Sen. Lelegwe, Samburu County; Sen. Madzayo, Kilifi County; Sen. (Eng.) Mahamud, Mandera County; Sen. Malalah, Kakamega County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Mwangi, Nyandarua County; Sen. Ndwiga, Embu County; Sen. Ochillo-Ayacko, Migori County; Sen. Olekina, Narok County; Sen. (Prof.) Onger, Kisii County; Sen. Outa, Kisumu County; Sen. Seneta, Kajiado County); Sen. Wako, Busia County and Sen. Wambua, Kitui County.

The Temporary Chairperson (Sen. Nyamunga): Hon. Senators, the results are as follows:

AYES: 28

NOES: Nil

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ABSTENTIONS: Nil

The Temporary Chairperson (Sen. Nyamunga): The Ayes have it.

(Question carried by 28 votes to 0)

Next order!

THE SALARIES AND REMUNERATION COMMISSION (AMENDMENT) BILL
(SENATE BILLS NO. 12 OF 2018)

DIVISION**ELECTRONIC VOTING**

*(Question, that Clauses 2 (as amended), 3, the Title
and Clause 1 be part of the Bill put and the
Senate proceeded to vote by County Delegations)*

AYES: Sen. (Dr.) Ali, Wajir County; Sen. Cherargei, Nandi County; Sen. Cheruiyot, Kericho County; Sen. (Prof.) Ekal, Turkana County; Sen. Faki, Mombasa County; Sen. Farhiya, Nairobi County; Sen. Halake, Isiolo County; Sen. Khaniri, Vihiga County; Sen. Kihika, Nakuru County; Sen. (Prof.) Kindiki, Tharaka Nithi County; Sen. Kinyua, Laikipia County; Sen. (Eng.) Maina, Nyeri County; Sen. (Dr.) Langat, Bomet County; Sen. Lelegwe, Samburu County; Sen. Madzayo, Kilifi County; Sen. (Eng.) Mahamud, Mandera County; Sen. Malalah, Kakamega County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Mwangi, Nyandarua County; Sen. Mwaruma, Taita-Taveta County; Sen. Ndwiga, Embu County; Sen. Ochillo-Ayacko, Migori County; Sen. Olekina, Narok County; Sen. (Prof.) Ongeru, Kisii County; Sen. Outa, Kisumu County; Sen. Seneta, Kajiado County; Sen. Wako, Busia County; and, Sen. Wambua, Kitui County.

NOES: Nil

The Temporary Chairperson (Sen. Nyamunga): Hon. Senators, I will now announce the results:

AYES: 28

NOES: 0

ABSTENTIONS: 0

The “Ayes” have it.

(Question carried by 28 votes to nil)

Hon. Senators, we will start with The Food Security Bill (Senate Bills No.12 of 2017).

Senate Majority Leader, proceed.

THE FOOD SECURITY BILL (SENATE BILLS
No.12 OF 2017)

The Senate Majority Leader (Sen. Murkomen): Madam Temporary Chairperson, I beg to move that the Committee do report to the House its consideration on The Food Security Bill (Senate Bills No.12 of 2017) and its approval thereof with amendments.

(Question put and agreed to)

THE COUNTY STATISTICS BILL
(SENATE BILLS No.9 OF 2018)

Sen. Farhiya: Madam Temporary Chairperson, I beg to move that the Committee do report to the Senate its consideration of The County Statistics Bill (Senate Bills No.9 of 2018) and its approval thereof with amendments.

(Question put and agreed to)

THE SALARIES AND REMUNERATION COMMISSION
(AMENDMENT) BILL (SENATE BILLS No.12 OF 2018)

Sen. (Dr.) Ali: Madam Temporary Chairperson, I beg to move that the Committee do report to the Senate its consideration of The Salaries and Remuneration Commission (Amendment) Bill (Senate Bills No.12 of 2018) and its approval thereof with amendments.

(Question proposed)

(Question put and agreed to)

(The House resumed)

[The Temporary Speaker (Sen. Lelegwe) in the Chair]

The Temporary Speaker (Sen. Lelegwe): Hon. Senators, we request that you remain in the Chamber because we will still vote in the Third Reading.

I call upon the Temporary Chairperson to report progress on The Food Security Bill (Senate Bills No.12 of 2017)

REPORT AND CONSIDERATION OF REPORTTHE FOOD SECURITY BILL (SENATE
BILLS NO.12 OF 2017)

Sen. Nyamunga: Madam Temporary Speaker, I beg to report that the Committee of the Whole has considered The Food Security Bill (Senate Bills No.12 of 2017) and its approval thereof with amendments.

The Senate Majority Leader (Sen. Murkomen): Madam Temporary Speaker, I beg to move that the House do agree with the Committee on the said Report. I ask Sen. Olekina to second.

Sen. Olekina: Mr. Temporary Speaker, Sir, I second.

(Question proposed)

(Question put and agreed to)

The Temporary Speaker (Sen. Lelegwe): Mover, proceed.

The Senate Majority Leader (Sen. Murkomen): Mr. Speaker, Sir, I would like to move that The Food Security Bill (Senate Bill No. 12 of 2017) be now read a Third Time and request Sen. Wambua to second.

Sen. Wambua: Mr. Temporary Speaker Sir, I second.

The Temporary Speaker (Sen. Lelegwe): Hon. Senators, I will now proceed to propose the question that the Food Security Bill (Senate Bills No.12 of 2017) be now read a Third Time.

(Question proposed)

We have determined that we do not have the required numbers. I order that the Division Bell be rung for three minutes then we proceed.

The Senate Majority Leader (Sen. Murkomen): On a point of order, Mr. Temporary Speaker, Sir. We are confident that we will get the requisite number. The request we are making is that all the other three Bills reach that stage for Division, so that one Division bell is rung for the three Bills.

The Temporary Speaker (Sen. Lelegwe): I order that the doors be locked and the bar drawn.

(The doors were locked and Bar drawn)

(The Division Bell was rung)

The Temporary Speaker (Sen. Lelegwe): Hon. Senators, we have determined that this is a matter that affects counties and we will be voting by delegations. Let us proceed to vote.

THIRD READING

THE FOOD SECURITY BILL (SENATE BILL
NO.12 OF 2017)

DIVISION**ELECTRONIC VOTING**

*(Question, that the Food Security Bill (Senate Bills No.12 of 2017)
be now read a Third Time, put and the Senate
proceeded to vote by County Delegations)*

AYES: Sen. Boy, Kwale County; Sen. Cheruiyot, Kericho County; Sen. (Dr.) Ali, Wajir County; Sen. (Prof.) Ekal, Turkana County; Sen. Faki, Mombasa County; Sen. Farhiya, Nairobi County; Sen. Halake, Isiolo County; Sen. (Eng.) Hargura, Marsabit County; Sen. Khaniri, Vihiga County; Sen. Kihika, Nakuru County; Sen. (Prof.) Kindiki, Tharaka Nithi County; Sen. Kinyua, Laikipia County; Sen. Lelegwe, Samburu County; Sen. (Eng.) Maina, Nyeri County; Sen. Madzayo, Kilifi County; Sen. (Eng.) Mahamud, Mandera County; Sen. Malalah, Kakamega County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Mwaruma, Taita Taveta County; Sen. Ndwiga, Embu County; Sen. Ochillo-Ayacko, Migori County; Sen. Olekina, Narok County; Sen. Omogeni, Nyamira County; Sen. (Prof.) Ongeru, Kisii County; Sen. Outa, Kisumu County; Sen. Seneta, Kajiado County; Sen. Wako, Busia County and Sen. Wambua, Kitui County.

NOES: Nil

The Temporary Speaker (Sen. Lelegwe): Hon. Senators, the results of the Division are as follows-

AYES: 28

NOES: Nil

ABSTENTIONS: 0

The ayes have it.

(Question carried by 28 votes to nil)

(The Bill was accordingly read the Third Time and passed)

REPORT AND CONSIDERATION OF REPORT

THE COUNTY STATISTICS BILL
(SENATE BILLS NO. 9 OF 2018)

The Temporary Speaker (Sen. Lelegwe): Could we hear from the Chairperson?

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Sen. Nyamunga: Mr. Temporary Speaker, Sir, I beg to report that the Committee of the Whole has considered the County Statistics Bill (Senate Bills No. 9 of 2018) and its approval, thereof, with amendments.

The Temporary Speaker (Sen. Lelegwe): Could we hear from the Mover?

Sen. Farhiya: Mr. Temporary Speaker, Sir, I beg to move that the House do agree with the Committee on the said Report.

I request Sen. Seneta to second.

Sen. Seneta seconded.

The Temporary Speaker (Sen. Lelegwe): Hon. Senators, I have determined that this matter does not affect counties.

(Question proposed)

(Question put and agreed to)

The Temporary Speaker (Sen. Lelegwe): Could we hear from the Mover?

Sen. Farhiya: Mr. Temporary Speaker, Sir, I beg to move that the County Statistics Bill (Senate Bills No. 9 of 2018) be now read a Third Time.

I request, Sen. (Dr.) Musuruve to second.

Sen. (Dr.) Musuruve seconded.

(Question proposed)

The Temporary Speaker (Sen. Lelegwe): Hon. Senators, this Bill affects counties and we will be voting by delegation.

Hon. Senators, you can now log in for voting. You can proceed and vote.

Assisted voter, Sen. Farhiya, to approach the Clerks-at-the-Table.

THIRD READING

THE COUNTY STATISTICS BILL
(SENATE BILLS NO. 9 OF 2018)

DIVISION

ELECTRONIC VOTING

(Question that, the County Statistics Bill (Senate Bills No. 9 of 2018) be now read a Third Time put and the Senate proceeded to vote by County Delegations)

AYES: Sen. Boy, Kwale County; Sen. Cheruiyot, Kericho County; Sen. (Prof.) Ekal, Turkana County; Sen. Faki, Mombasa County; Sen. Farhiya, Nairobi County; Sen. Halake, Isiolo County; Sen. (Eng.) Hargura, Marsabit County; Sen. Khaniri, Vihiga County; Sen. Kihika, Nakuru County; Sen. (Prof.) Kindiki, Tharaka Nithi County; Sen.

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Kinyua, Laikipia County; Sen. (Eng.) Maina, Nyeri County; Sen. (Dr.) Langat, Bomet County; Sen. Madzayo, Kilifi County; Sen. (Eng.) Mahamud, Mandera County; Sen. Malalah, Kakamega County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Mwaruma, Taita Taveta County; Sen. Ndwiga, Embu County; Sen. Ochillo-Ayacko, Migori County; Sen. Olekina, Narok County; Sen. Omogeni, Nyamira County; Sen. (Prof.) Ongeru, Kisii County; Sen. Outa, Kisumu County; Sen. Seneta, Kajiado County; Sen. Wako, Busia County and Sen. Wambua, Kitui County.

NOES: Nil

The Temporary Speaker (Sen. Lelegwe): Hon. Senators, these are the results of the Division:

AYES: 27

NOES: 0

ABSTENTIONS: 0

The “Ayes” have it.

(Question carried by 27 votes to 0)

(The Bill was accordingly read the Third Time and passed)

REPORT AND CONSIDERATION OF REPORT

THE SALARIES AND REMUNERATION COMMISSION (AMENDMENT) BILL (SENATE BILLS NO. 12 OF 2018)

The Temporary Speaker (Sen. Lelegwe): Could we hear from the Chairperson?

Sen. Nyamunga: Mr. Temporary Speaker, Sir, I beg to report that the Committee of the Whole has considered the Salaries and Remuneration Commission (Amendment) Bill (Senate Bills No. 12 of 2018) and its approval thereof, with amendments.

The Temporary Speaker (Sen. Lelegwe): Could we hear from the Mover?

Sen. (Eng.) Mahamud: Mr. Temporary Speaker, Sir, I beg to move that the House do agree with the Committee in the said report.

The Temporary Speaker (Sen. Lelegwe): Hon. Senators, this Motion does not affect counties. I now propose the question.

(Question proposed)

(Question put and agreed to)

Sen. (Eng.) Mahamud: Mr. Temporary Speaker, I beg that The Salaries and Remuneration Commission (Amendment) Bill (Senate Bills No.12 of 2018) be now read a Third Time. I ask Sen. (Eng.) Hargura to second.

Sen. (Eng.) Hargura: Mr. Temporary Speaker, Sir, I second.

The Temporary Speaker (Sen. Lelegwe): Hon. Senators, we have determined that this Bill affects counties. Therefore, the voting will be by delegation.

(Question proposed)

The Temporary Speaker (Sen. Lelegwe): Hon. Senators, log in for voting. You may now vote.

(Voting in progress)

The Temporary Speaker (Sen. Lelegwe): Assisted voters kindly come forward and vote.

THIRD READING

THE SALARIES AND REMUNERATION COMMISSION (AMENDMENT)
BILL (SENATE BILLS NO.12 OF 2018)

DIVISION

ELECTRONIC VOTING

(Question that the Salaries and Remuneration Commission (Amendment) Bill (Senate Bills No.12 of 2018) be now read a Third Time put and the Senate proceeded to vote by County Delegations)

AYES: Sen. Boy, Kwale County; Sen. Cheruiyot, Kericho County; Sen. (Prof.) Ekal, Turkana County; Sen. Faki, Mombasa County; Sen. Farhiya, Nairobi County; Sen. Halake, Isiolo County; Sen. (Eng.) Hargura, Marsabit County; Sen. Khaniri, Vihiga County; Sen. Kihika, Nakuru County; Sen. (Prof.) Kindiki, Tharaka Nithi County; Sen. Kinyua, Laikipia County; Sen. (Eng.) Maina, Nyeri County; Sen. (Dr.) Langat, Bomet County; Sen. Lelegwe, Samburu County; Sen. Madzayo, Kilifi County; Sen. (Eng.) Mahamud, Mandera County; Sen. Malalah, Kakamega County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Mwaruma, Taita Taveta County; Sen. Ndwiga, Embu County; Sen. Ochillo-Ayacko, Migori County; Sen. Olekina, Narok County; Sen. Omogeni, Nyamira County; Sen. (Prof.) Ongeru, Kisii County; Sen. Outa, Kisumu County; Sen. Seneta, Kajiado County; Sen. Wako, Busia County and Sen. Wambua, Kitui County.

NOES: Nil.

The Temporary Speaker (Sen. Lelegwe): Hon. Senators, the results of the Division are as follows:

AYES: 28

NOES: 0

ABSTENTIONS: 0

The "Ayes" have it.

(Question carried by 28 votes to Nil)

(The Bill was accordingly read the Third Time and passed)

May the bars be drawn and doors unlocked.

(Bars were drawn and doors unlocked)

The Temporary Speaker (Sen. Lelegwe): Next order.

Sen. Madzayo: Mr. Temporary Speaker, Sir, before we move on to next Order, we were to go back to the Statements. Sen. Sakaja had requested the Speaker who agreed to come back after we were through with Committee of the Whole. That was the position.

The Temporary Speaker (Sen. Lelegwe): Sen. Madzayo, the Chair will still guide the House on that Order. We will go back to the Statements.

Hon. Senators, we proceed to defer Orders No. 13, 14, 15, 16, 17 and 18.

COMMITTEE OF THE WHOLE

THE COUNTY GOVERNMENTS RETIREMENT SCHEME BILL
(SENATE BILLS NO. 6 OF 2018)

(Committee of the whole deferred)

THE RETIREMENT BENEFITS (DEPUTY PRESIDENT AND
DESIGNATED STATE OFFICERS) (AMENDMENT) BILL
(SENATE BILLS NO. 2 OF 2018)

(Committee of the whole deferred)

THE COUNTY GOVERNMENTS (AMENDMENT) BILL
(SENATE BILLS NO. 13 OF 2018)

(Committee of the whole deferred)

THE CARE AND PROTECTION OF OLDER MEMBERS OF
SOCIETY BILL (SENATE BILLS NO. 17 OF 2018)

(Committee of the whole deferred)

THE IRRIGATION BILL (NATIONAL ASSEMBLY
BILLS NO. 46 OF 2017)

(Committee of the whole deferred)

BILL*Second Reading*THE COUNTY OUTDOOR ADVERTISING CONTROL BILL
(SENATE BILLS NO. 19 OF 2018)*(Bill deferred)*

The Temporary Speaker (Sen. Lelegwe): Hon. Senators, we now go back to Order No.7.

*(Resumption of Statements)*PREFERENCES AND RESERVATIONS IN PUBLIC
PROCUREMENT AND ASSETS DISPOSAL

Sen. Madzayo: Thank you, Mr. Temporary Speaker, Sir. It is common knowledge and sad to note that counties do not recognize the trade unions. This is contrary to Article 41 of the Constitution which is very clear that everybody has the right to associate him or herself with any trade union of his or her choice.

We have witnessed that in almost all the 47 counties, trade union leaders get punished for performing their duties in their capacities as leaders in the course of defending an employee. Quite a number of these leaders are suspended, interdicted or dismissed from work. This is also against the International Labour Organization conventions (ILO). We seriously note that the success or failure of any county in this country lies in the workers on the ground. We have many workers in all the counties working in various departments, for example, drivers, farmers, security officers and hospital attendants.

It has now become a tradition that many of the counties do not cloth their employees. For example, mortuary attendants attend to naked bodies without any protective clothing to perform their duties.

Mr. Temporary Speaker, Sir, a happy worker is a productive worker, and, therefore, it is very sad that all workers of the counties are not happy unless they are involved in corruption.

Article 41(2) of the Constitution covers the labour relations in details. It states that every worker has a right-

- (a) to fair remuneration;
- (b) reasonable working conditions;
- (c) to form, join and participate in the activities and programmes of a trade union; and,
- (d) to go on strike.

This Article of the Constitution has been violated.

Mr. Temporary Speaker, Sir, while I support the Chairperson of the Committee on Labour and Social Welfare, we have noted in various Committees that some governors have become law unto themselves particularly in areas where we invite them and they do not turn up. They also punish employees by not giving them proper and fair remuneration.

Mr. Temporary Speaker, Sir, we have noted that there is a serious variance of salaries of employees who used to work in the former county councils and those who have been employed by the county government have not been harmonized. It is important to note that urgent steps must be taken so that those employees do not get unfair treatment from other employees, particularly the ones in the county governments.

We also noticed that there are quite a number of casuals who lead to a bloated workforce. Therefore, a lot of money goes to ghost workers. This has become like a wound that cannot be treated. It is important for the governors and all the people involved in the employment of county employees to observe that it is more important to direct funds to development expenditure than to ghost workers and casual employees.

Mr. Temporary Speaker, Sir, County Government Workers Union represents all the 47 counties. Unfortunately, when it comes to application of the collective bargaining agreement, the union is required to get 47 collective bargaining agreements. This makes it extremely difficult to have all the 47 counties prepare a collective bargaining agreement for purposes of registering them.

I urge the Committee on Labour and Social Welfare to find a solution and have one collective bargain agreement that will cover employees' rights and remuneration. There should be one for all the 47 counties instead of having 47 collective bargaining agreements governing all the 47 counties. This is because it is time-consuming and tedious. These days, people are digital. Therefore, it is important for trade unions to be accorded an opportunity to only sign one collective bargaining agreement that will cover all the employees in the 47 counties.

Sen. Olekina: Thank you, Mr. Temporary Speaker, Sir, for giving me this opportunity to support the Statement by Sen. Sakaja on the issue of trade unions.

From the onset, I am not sure whether I agree with my senior who is also one of the best former justices in terms of trade and labour laws, on the last comment that he made on having one collective bargaining agreement for all trade unions. It would be a violation of the Constitution which is very clear that every trade union, employers and organisations, have a right to engage in collective bargaining. If we limit this to one collective bargaining agreement for all the 47 counties, we will be violating the Constitution. That is a subject for judicial review.

Mr. Temporary Speaker, Sir, one thing is clear that in this country, it is imperative that all county governments must recognize trade unions. When I travelled to Maasai Mara Game Reserve last December, I met groups of young people and women, who were complaining that they had joined a trade union, but their employer was not recognizing its importance.

Mr. Temporary Speaker, Sir, when we were looking at the accounts of the 47 counties, we noted that there were a lot of challenges in terms of human resource

management. It is imperative now that all counties must work with their County Public Service boards to recognize these trade unions.

One of the recommendations that we will make from our findings, in terms of how county governments manage their human resource, is by referring them back to the Salaries and Remuneration Commission (SRC) circular and the Public Finance Management (PFM) regulations, on limiting of wages and benefits as stipulated in sections 107(2) and 25 (a) and (b).

Every person in this country has a right to form a trade union. We have many challenges in most county governments in terms of staff capacity because most of the employees were seconded to the county governments. These employees had their issues that they had agreed upon, but now they have to negotiate all their benefits.

This issue runs across the 47 counties. When you look at their financial audit for Financial Years 2013/2014 and 2014/2015, all those human resource challenges still keep cropping up. It is a very uncomfortable situation for someone who does not know about their future upon retirement.

This statement by Sen. Sakaja is quite timely. I am sure that most counties have gone to the extent of establishing public service boards. However, what is important is that these trade unions should also try to engage with these public service boards so that they can come up with proper legislation that will support these counties.

Some of the challenges that affect these trade unions in Kenya include the issue of technology. Technology is now evolving so fast and some of these trade unionists are still depending on systems which are outdated.

Another challenge is the mismanagement of funds in the trade unions. Most managers in these trade unions fight and this paves way for politicians to come in and politicize the management of these trade unions. Sometimes we would be blaming the county governments, but it becomes difficult for them to determine the trade unions that their members belong to.

We are in agreement that the Constitution gives workers a right to join any trade union, but if a lot of politics is involved in a trade union---. I know one of the Kenya civil servants trade union whose managers are constantly in court and the management is divided. Today, one group can be led by the chairperson of the Civil Society who decides to form his own management unit and this also applies to another group. This brings in confusion in these county governments when it comes to managing these challenges.

Mr. Temporary Speaker, Sir, I am not sure whether this statement was going to be referred to or the Committee on Labour are going to continue discussing it. They have to come up with proper legislation which will help these county governments to know how to deal with these challenges that are facing the trade unions.

Challenges that face these trade unions include, seeking recognition, mismanagement of funds, bad politics involved and membership growth, which leads to division of the union into two groups. It is imperative that in this House, we encourage county governments to develop strong labour legislations that will support the human resource, so that Kenyans working everywhere can engage in activities that will support them and also feel that they are properly organized. A trade union is an association of people coming together to fight for their interests and rights.

I support.

The Temporary Speaker (Sen. Lelegwe): Thank you, Sen. Olekina. Hon Senators, I give one chance to (Sen. (Dr.) Musuruve) to make her contribution. Kindly, limit your contributions because we are over the Statement Hour and we need to proceed.

Sen. (Dr.) Musuruve: Mr. Temporary Speaker, Sir, thank you for the opportunity to support this Statement by Sen. Sakaja. This is a very important Statement that should not just be wished away.

Trade unions are the voice of workers. When we think of the role workers play and the contributions that they make to the economy of this country, it is important that counties allow their workers to join trade unions.

Workers have various rights, for instance, the right to good pay and the right to live. They should be paid according to the task that they have performed. All these rights have to be respected. However, in a situation where an organization is not respecting the rights of workers, they have a right to express themselves.

In Article 33 of the Constitution, expressing oneself is important. Workers cannot express themselves wholesomely, if they are not represented. The trade unions come in handy to represent them.

In any working environment, issues are bound to come up, for example, employment and human relations issues. When the management is not ready to listen to the workers, the productivity of that organization is affected. In such a situation, the trade union can come in handy to ensure that there is good relationship between the management and the workers on the ground. For productivity to be enhanced in any organization, there has to be that good relationship.

Mr. Temporary Speaker, Sir, in many cases, when workers are happy in an organization, the manager can be sleeping as they are working. As a nation, there is need for a mechanism to be put in place in order to ensure that workers are represented by joining trade unions. Even as they join trade unions, they should not be victimized, because it is their constitutional right and they have not committed any crime. Counties should ensure that workers' needs are listened to.

I support.

The Temporary Speaker (Sen. Lelegwe): Next order. Senate Majority Leader, proceed.

BILL

Second Reading

THE COPYRIGHT (AMENDMENT) BILL (NATIONAL ASSEMBLY BILLS NO.33 OF 2017)

The Senate Majority Leader (Sen. Murkomen): Mr. Temporary Speaker, Sir, I beg to move that The Copyright (Amendment) Bill (National Assembly Bills No.33 of 2017) be now read a Second Time.

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This is a very important Bill that is in the purview of intellectual property regime. Intellectual property is intangible. Most of us know property as tangible, which in most cases is land, houses and machinery. However, we have an array of intangible property that is supposed to be protected, that is, the work of the intellect or the mind of a human being. These works are protected in many forms. It can be in the form of industrial property or trademark. I can give an example of goods such as this water here that is written 'Keringet.' This is a registered trademark of a company that sells water by this name. A trademark can be a type of a pen or clothes that we wear. For example, Sen. Wako is well known for wearing Brioni. That is a trademark; a name used for marketing suits and ties of different kinds.

We also have copyright. Copyright law protects literally, musical and artistic works, including audio-visual works, sounds, recordings and broadcasts. Most of these are in published form, either written in a paper or book. It also includes music and artistic works in the form of drawings. For example, we have the famous artist Michelangelo whose works are celebrated up to now. They include the beautiful pictures that always hang in many houses and churches. We have the famous painting of the Last Supper, which also includes the painting of Mona Lisa among others.

Mr. Temporary Speaker, Sir, it can be in the form of sound recordings, broadcasts and songs. As we know, the songs of persons like Michael Jackson were selling more after he died than when he was alive. He was able to bequeath to his estate a lot of resources that came from Sony records that had been sponsors. We have copyright protection for purposes of music, sound recordings and broadcasts.

What you see on our screens here is copyrighted for purposes of Parliament and cannot be reproduced without the permission of Parliament. Depending on the agreement that Parliament has with the Kenya Broadcasting Corporation (KBC), there are shared rights in relation to this very important broadcast material that we have here. Copyright law, therefore, exists for purpose of protecting important work.

Mr. Temporary Speaker, Sir, you just completed your Doctor of Philosophy (PhD) the other day. I know for sure that you may want to publish that material into a book or a chapter in a journal article or as a book chapter elsewhere. Those are protected again as copyright because it is the original works of the author.

The main purpose of this Bill is basically to domesticate the Marrakesh Treaty to facilitate access to published works for persons who are blind or visually impaired. Originally, because of the protection that is given to all copyright work, it was becoming difficult with the learners who are visually impaired or disabled and were unable to read directly. It was becoming difficult for them to access reading material. This law was amended to give room for the publication and distribution of that material, for purpose of access by persons who are visually impaired.

I am saying with because we can write a book, such as the ones than are written in this country in the form that is accessible to persons who have the ability to read, because they are blessed with sight. The translation is now permitted under this law to facilitate access by persons who are visually impaired and make copies for that purpose, so that they can access these very important materials.

Mr. Temporary Speaker, Sir, again, this law is meant to amend the Copyright Act and provide for internet service provider liability. If you are an internet service provider and you allow your site to be misused by propagating material that are, for example, otherwise authored by Sen.(Dr.) Musuruve, but now being pretended to have been authored by Sen. Murkomen, you are now liable under this law for violating the copyright law.

This law also is to provide for resell of royalty rights and, finally, to align the Copyright Act to the Constitution. I say so because there are certain responsibilities, for example, that were for the Commissioner of Police. Under the Constitution there is no Commissioner of Police; we now have the Inspector General of Police. Where it refers to 'Permanent Secretaries' we now say 'Principal Secretaries,' to make it aligned to the Constitution. Since they are not substantial in that nature, I may not come to refer back to them.

I do not want to spend a lot of time because I want to allow other Members to contribute. First of all, the part of definition has given a lot of extensive definition of various issues. Allow me to refer to my notes. In the definition chapter, there is an expansion of what defines copyrighted works, so that it can accommodate matters that are related to new areas, including the internet service providers.

Secondly, there is definition of institutions that are provided for in the Basic Education Act. There are exemptions that are required to facilitate teaching in the university, so that students can photocopy materials for purposes of teaching. A book that has been bought by a university and used for teaching cannot be said to violate the copyright law. The definition of what then is a school has been expanded to accommodate vocational education and training institutions that have been captured in the Basic Education Act. We have so many other definitions that have been provided for there.

The law as of now does not give the Board of Directors of the Copyright Board the responsibility of hiring the Executive Director. The Executive Director will be hired directly by the Copyright Board. The qualification of the Executive Director has been enhanced to ensure that he must be an advocate of the High Court of Kenya of not less than five years standing. He must have at least five years of managerial experience. Also, he must have at least five years of experience in matters relating to copyright and other related matters.

Mr. Temporary Speaker, Sir, this is important so that you have an institution that will be governed by a person that is accountable to a board and not to himself, particularly because we are dealing with intellectual property protection. There is also a provision of all the decisions of the Copyright Board. The law has now been amended to ensure that we have the Copyright Tribunal in the Act. That Tribunal shall issue decisions on appeals that are related to copyright registration or copyright protection within 30 days from the date when a person appeals.

The other very innovative provisions that are necessary – previously under the law, it was not clear whether copyright owners should register. As you know - and this is important for intellectual property or persons who have studied intellectual property law – you do not have to register materials for copyright to get protection in the law. It is

automatic. As soon as it is published by the owner and put in public domain, you do not have to register; but, it has become necessary to give a register of copyrighted materials so that enforcement becomes easy.

There is something unique about protection of intellectual property in Kenya. The civil protection of intellectual property is by the intellectual property owner and the Copyright Board is there to ensure that those intellectual property owners are protected. Criminal enforcement is with the anti-counterfeit agency. For the first time since 2009, Kenya now has an entity that collectively deals with criminal enforcement of intellectual property. I was honoured to be among the first board members who established the anti-counterfeit agency but then, it is important to note here that on matters as to whether who owns this right or the other which has civil matters, the tribunal plays a very important role in the registration or ownership of these rights. Where there is criminal violation of intellectual property, including copyright, the responsibility by law, has been given to another agency which is the anti-counterfeit agency.

Therefore, Clause 2(2)(a) has been reintroduced so that then we can have a register where if you want to know the literary works; who owns which works – perhaps for purpose of even going to request for copying of that material or reusing that material, the register has been provided to be a *prima facie* evidence of the particular assent therein and that the ownership and permission to use that material can only be sought from the owners or the persons who are assigned those rights. This law provides for extent of a fair billing – to what extent can a person who has exclusive rights to control, can act with those rights. This is important. Clause 26 of the Bill provides that intellectual property copyright owner has a right to reproduce the material in the original work form, to translate, distribute to the public by way of sale, rental, lease, hire, loan or similar arrangements.

There is also a provision on how to communicate to the public as a whole on substantial part of that original work; to make available as a whole or substantial part therefore in the original form to any person they want to broadcast. In Clause 26, there is something very interesting about architectural works. It includes, for an architect, exclusive right to control the erection of any building which reproduces the whole or a substantial part of work, either in its original form or any from recognizable derived from the original. This is very important.

First of all, let us agree that if you want our citizens and young people to become rich, we must protect intellectual property and copyright. It is a shame that you find that someone has composed a fantastic song, and, that song becomes so popular. It becomes our cellphone ringtone. It is played in bars, churches, public places and campaigns, and then you find the singer and composer, living impoverished life. Sen. Beth Mugo can remind me the name of the gentleman who was being buried two weeks ago in Murang'a, the famous singer ---

Sen. Mugo: Kamaru.

The Senate Majority Leader (Sen. Murkomen): Yes, Kamaru. Many artists during his funeral complained that they want to meet the President. The reason is, there is a problem in enforcement of intellectual property in the protection of works of musicians.

Mr. Kamaru did a fantastic job, but then, they cannot even afford to pay their hospital bills.

There is another renowned singer in the South Rift. He was called Kipchamba. He sang so many songs. Hon. Senators from the Kipsigis community are here. Sen. (Dr.) Milgo is here. He is renowned but you cannot see the fruits of their labour. There is a gospel singer from the same South Rift called Pastor Kimetto. He sang fantastic songs but all of them are reproduced and sold by people in form of cassettes, tapes, compact discs and flash disks but they are paying nothing. You will find the same *Great Commission Singers* struggling. They have to conduct a Harambee to survive. They do not even have equipment. They are living a very modest life but in the United States of America (USA) it is different.

I had the opportunity to California the other day when we went for a conference with the Senate Minority Leader and a few others. In California and Los Angeles – Sen. Kihika will tell you because she has lived in the USA for a long period of time and even practiced law there – copyright or intellectual property protection is taken very seriously. For example, Justin Bieber is a very young man who just started singing the other day is living in Beverly Hills. If you take a tour there, you will be told, “this is so and so, this is the singer who sang this song, he or she is renowned, this was Michael Jackson’s house -- -.” The celebrities of the USA, the big men there, the Kanye Wests’ of these world, excel because of copyright work. How do we know Beyoncé or her husband? It is because of music. That music is protected and it pays. If Sony Records in the USA has taken rights for recording and distributing music on behalf of a particular musician, the returns are usually enormous. When they say that so and so is number one in the charts, it means something. It means that resources have come to somebody’s pocket. These are the things we need to deal with.

There is an interesting provision that has been put here. There are some people who do not want to visit an architect. They see a beautiful house and instead of asking who the architect is, they look for a shortcut and go to the owner of the house to ask them to give them copies of their architectural work. They use it to reproduce the house. The architect can clearly tell that is his or her thoughts. They are being distributed in a cavalier manner without benefits accruing to the thoughts and minds.

To a great extent, I am very happy with Nairobi. In the new Upper hill, we have new buildings that make Nairobi unique. Counties should provide a law which stipulates that any persons who want to build any commercial structure in our towns – Nakuru, Nyeri or even Ndumberi which is now a big town, Kiambu, Mombasa or Kisumu – must have unique architectural designs that make the towns attractive.

People visit towns around the world to look at beautiful buildings. If you go to Beijing, you will see new architectural designs. We also have the Bird’s Nest Stadium which is beautiful and it looks like a bird’s nest. Next to the Bird’s Nest Stadium in Beijing, you will find the Underpants Building which appears like somebody who is wearing innerwear. There are unique things.

The other day, I saw another building that I do not want to mention. I know that the Kenyatta International Convention Centre (KICC) has a history to do with a donkey according to the architect who drew the plan of the building. There is a new stadium

being designed in Qatar which is beautiful. It looks like something else I do not want to say here. So, the unique architectural structures must be protected by this law to ensure that no one just wakes up and reproduces a building. It is important for us to insist that we should stop this business.

Mr. Temporary Speaker, Sir, if you go to Maralal Town in your county, people are just producing “boxes” or office blocks in the name of buildings. We must insist that people must be imaginative and get architects. Sen. Kihika here must think of how to push for Nakuru to have new buildings.

In Nakuru Town, there is nothing unique. One building or “box” looks like the other. The same applies to Eldoret. If you go to almost every town, there is nothing unique about one building and another. That is why I said Nairobi is the only unique city where we have unique buildings in Upper Hill and also here in town. The KICC and even the Co-operative Bank Building, which is also called Bell-Bottom Building, look different. There are also other buildings like Parliament Buildings, Telekom House and Hilton Hotel that are unique. Such are the kind of buildings that we should have so that when people visit our cities and towns, they can differentiate one place from the other. We should not have the “boxes” we are seeing mushrooming all over the country without even proper architectural designs. Therefore, this law will protect the rights of architects to benefit from their original works. They will have a right to assign, sell or lease their ideas to other persons.

Again, there will be protection of computer programmes under this law. It will ensure that a person in possession of lawful computer programme can make copies, have backup and do other things but they will not be allowed to reproduce computer programming for purposes of selling if they bought or leased from a particular person.

Clause 26 that I was referring to is key. There is an exception that you can reproduce materials for purposes of distribution to persons who are visually impaired. It is also important to mention that the artiste right to resale is absolutely inalienable and shall not be waived under any circumstance. All artistes have a right to resale.

This law also provides for the establishment of collective management organisation. With this law, the corporate body will work together with the copyright owners for royalties to be collected by the Kenya Revenue Authority (KRA) or any other body that shall be designated or agreed on by the owners of the rights.

There are so many things. If I begin talking about intellectual property, I can take the whole day. These are important provisions of the law. There are also provisions of schedules and so on and so forth.

I would like to conclude by saying that as a nation, we must rise to the occasion to save our young people – because most of them are young – from violation of their rights. Many young people do not have title deeds and are unable to get formal employment but they are creative. For those who can draw, let them benefit from their drawings; those who can sing should benefit from the singing and those who can dance should also benefit from dancing and so on and so forth. If we ensure that, it will be easy for us, as a nation, to create employment for many young people just like we need to do for the sportsmen and women.

Mr. Temporary Speaker, Sir, I beg to move and request the Senate Majority Whip to second.

Sen. Kihika: Mr. Temporary Speaker, Sir, I rise to second the Copyright (Amendment) Bill, 2017. It is extremely important and timely and we thank the Senate Majority Leader for his leadership and for bringing this Bill because all of us do not live under a rock. I am sure we have all seen the kind of poverty that some of our biggest stars, be they musicians and other artists---

We went around during the campaigns and I am sure many of you can attest to this. You meet young people who have done incredible drawings which are very artistic. However, they do not seem to get the financial benefit that they should get out of their work. This has been notorious especially in the music industry.

Like the Senate Majority Leader said, we have known musicians who we either grew up hearing about or we have heard their music for a very long time. For example, we had Mr. Kamaru who was buried the other day. I remember the Deputy President and the President went to visit him in hospital about a month or two ago. At that time, there was a rallying cry to support and help him financially. After entertaining us for many years, most of the musicians end up destitute to the extent that even burying them becomes problematic. That should not happen if the Copyright law like this one comes into force, so that we can protect our people.

The world over, artistes have continued earning. Even after their death, their families and generations after have continued to make money out of the relatives' great artistic capacity. For example, we have artistes like Prince and Michael Jackson who I am sure most of you are familiar with. After their death, they even became bigger stars than they were while alive.

We have seen concerts being done in their absence but with a cut-off. Most of you may have seen the technology where they have them appear on stage and their music is played but all the money goes to their estates and beneficiaries, which is really important. We should bring the same concept to our country. That will only be possible through this Copyright (Amendment) Bill.

On the flipside of it, whichever artistic capacity, they should also decide how their image is portrayed using their talent. I do not know if many of us followed, but yesterday elections were held in the United States of America (USA) and results have been trickling in today. One of the famous musicians called Rihanna told the President of the USA not to use her music or songs during his political rallies because she does not believe in what he believes in and his vision is definitely not hers. She said that her music should not be used in that kind of a rally as she is not proud of what they are doing. The same thing applies here. I know we have had musicians who have sung for different sides of the political divide. There are many songs that we can think of *kama* Tano Tena and others. The musicians should benefit from that music since we mobilised and rallied our bases using these talents and gifts. It should never be that we benefit and they do not.

I did not see this in the Bill. Maybe it is somewhere. During the campaign rallies some people would just show up and say: "You have been playing so and so's song. Have you paid?" My question is: Do these musicians get that money? Again, with this Copyright (Amendment) Bill, I am sure they will benefit.

I am also impressed that everything has been quite thought through. There is the exception that is given to those who are visually impaired. The distribution of music is done in a specialised format exclusively to those who are visually impaired or other Persons With Disabilities (PWDs) and they use it without being penalized in any way. I am happy that the Bill has taken this into account.

I am a bit weary of Section 28 of the principal Act which is being amended in Clause 17. It says that the rights of an owner of a copyright in a sound recording are not infringed. This means that the rights of that owner are not infringed by the making of a single copy or the recording for personal and private use of the person making the copy. I do not know but if we give that exception then, that is why we continue to have artists and musicians making peanuts.

I believe that there should be payment even when a single copy is downloaded or a recording is made, even if it is for personal use. In many of these scenarios, the music is for personal use. I am sure for those who have an *i-phone* like I do, we subscribe to Apple music and pay about 99 cents which translates to about a Dollar every month to be able to download whichever number of songs that you want every month. You can save the songs to your Apple phone so that the artistes can get whatever percentage of those cents that I download together with other millions of fans to that artiste.

We should not exempt even for personal use. We should be able to walk to the store and buy a CD recording. That is the only way we can ensure artistes are compensated for their trade. With this exception, I am worried that we may continue to impoverish them.

I have also seen where it is included in the Bill about the architectural copyright. As the Senate Majority Leader moved the Bill, he spoke about quite a bit to this. We have not seen a lot of creativity in that area in this country. Maybe as this amendment Bill becomes law, then the architects will also have to pull up their socks. I am sure most of you have visited many countries in the West. While taking a tour, you have come across these magnificent buildings. You are then told that so and so, an architect back in the 1800s, came up with a particular building. That should also be the case here so that we are able to record, for posterity, who came up with what and the credit is given to the proper people for that.

I see in the Bill also that there is a percentage that has been assigned for the resale royalty, which is five per cent of the net sale price on the commercial resale of an artwork. I also see there are exceptions to this if the sale price is less than Kshs20,000, then there is an exception and the five per cent does not apply.

If it concerns the resale of a building, a drawing plan, mode of a building or an auction for charitable purposes, then there is an exemption. It seems that a lot has been taken into account in coming up with this Bill, including research. The Senate Majority Leader said before me, and I agree with him, that this is an area that has been left without regulations which has led to the despicable conditions that our artistes live in across the country.

I totally support and I second the Copyright (Amendment) Bill (National Assembly Bills No. 33 of 2017).

The Temporary Speaker (Sen. Lelegwe): Thank you, Sen. Kihika. Could we hear from Sen. (Dr.) Musuruve?

Sen. (Dr.) Musuruve: Mr. Temporary Speaker, Sir, I would like to thank you for the opportunity that you have given me to support this Bill.

The Temporary Speaker (Sen. Lelegwe): Order. The Speaker needs to propose the question before you proceed to make your contributions.

(Question proposed)

Sen. (Dr.) Musuruve: Mr. Temporary Speaker, Sir, thank you for giving me the opportunity to support this Bill. I want to commend the Senate Majority Leader for bringing this Bill to the Floor of the House.

As Kenyans and as a nation, we should look for ways of encouraging creativity among our youth and our people. The youths have ideas that you cannot even think of. You cannot know what is in someone's mind but when they bring it out in the public and it ends up being useful, there is need to acknowledge them more so if it is an idea that will go a long way in helping many people.

Idea creation is very important. In some organizations, people actually get jobs because of the ideas that they have and not anything else. One can come up with an idea that can take an organization very far. Therefore, there is need to protect people's ideas and intellectual properties. It is intangible but when people come in the open and share their ideas, we need to encourage them by ensuring that their ideas are protected. When they are protected, there is need for a trademark to show that someone is the brainchild of that idea.

I support the idea of protecting literary work, art work, paint work and so on. We have had cases where people have come up with literary work that is important yet they lack the network to market their products and this includes the young ones. You will find a youngster, who is an artist and does a wonderful job, but does not have the network to sell his work yet there is someone who knows where to get the connection for the idea to be taken very far. This also happens to literary work. One can even come up with a noble idea that can help this nation or people but they do not have people to connect them to the right person to run with that idea.

Mr. Temporary Speaker, Sir, that person will die of poverty. A person will come with the same idea and go far with it. It is very painful for the person who had the original ideal to end up in poverty while the other person swims in money.

The Copyright (Amendment) Bill will ensure that there are no brokers in intellectual property. People need to be compensated for their intellectual property. By the time a person is designing an art work, they have not slept; they have spent a lot of time thinking. A person who thinks for three hours is equivalent to a person who works in a farm for two days because they engage their brains to come up with something innovative. It is painful that once they come up with something innovative, someone else benefits from it. Therefore, there is need for protection of people's intellectual property and appropriate compensation. If a person comes up with their works which support or

develop a nation, they should be compensated so that we support creativity. This will encourage them to develop more content.

It is very painful for a person who does not have networks to come up with something original only for it to be taken by another person who benefits from it. This should stop.

Issues of revenue should be very clear. An artiste should be compensated with a reasonable amount of money. For example, royalties should not be five per cent; they should be 30 per cent. This is for the purpose of whoever is doing the distribution and all that.

Mr. Temporary Speaker, Sir, in many instances, when a person comes up with a song which is played on television, radio and public functions they are not compensated for their work. Therefore, there is need to put mechanisms in place to ensure that people are handsomely compensated for their original works in order for us to encourage creativity amongst people.

The Senate Majority Leader talked about the issue of photocopying work for academic purposes. Photocopying is good if it is used for academic purposes but it should not be from cover to cover; it should only be a section of it to help impart knowledge. If photocopying is done from page to page, then students should buy the books so that original owner of the work is compensated. That Clause needs to come out clearly.

Mr. Temporary Speaker, Sir, Clause 26 of the Bill on translation of work states that the owner has a right to translate and distribute material to the public and he or she has the copyright. This is very good and I encourage it. One comes up with his or her original work, but he or she does not publish it immediately. However, many years down the line, someone else translate it into another language and publishes it claiming that it is his or her original work. That is very wrong and should not be encouraged. If it happens, there is need to compensate the person who came up with the original idea.

It is a good idea that PWDs will easily access literally work and information. In a situation where information will be used for commercial purposes, then this Clause should be amended to provide for the original owner of that information to be compensated appropriately.

I support the idea that we do not have to register published material. This is because some people are crafty and plagiarise your work and publish it and they make money out of it. We must ensure that the original owner of any information does not suffer and that his or her ideas are protected. Idea creation needs to be supported. We need to ensure that we are helping Kenyans, especially our youngsters who are innovative and creative to come up with ideas. Apart from protection, we need to compensate them adequately.

We should laud people who come up with original ideas. For example, they can receive Head of State recognition and commendation. We should not let them languish in poverty because some people somewhere are benefiting from their works. There is a situation where someone has come up with a noble idea that has been protected, marketed and doing very well. In the absence of that person, the next of kin should be able to enjoy the benefits. There are situations where we find original owners of music or artwork, but when they pass on, their families or next of kin languish in poverty. They cannot even

afford a piece of land, medication and school fees for their children, yet, they came up with a noble idea that did not help them in any way. We should not have brokers benefiting from such innovations.

Mr. Temporary Speaker, Sir, once this Bill is enacted into law, I urge that it be implemented immediately.

With those few remarks, I beg to support.

The Temporary Speaker (Sen. Lelegwe): Let us have Sen. Cheruiyot.

Sen. Cheruiyot: Thank you, Mr. Temporary Speaker, Sir, for giving me this chance to share my views and thoughts about The Copyright (Amendment) Bill (National Assembly Bills No.33 of 2017). It is an extremely timely Bill in terms of the challenges that this country continues to face and the things that we need to address, especially those that matter to the constituents and the people that we represent in this House. Matters of copyright are not simple. Fortunately, as a country, we are having this discussion at this point in time so that we can find a way of ensuring that our content creators; first of all, get value for money and secondly, get the due recognition for the work they do.

It is not easy to create anything. The various forms of art; literary works, music and other forms of production are some of the most difficult things to do, especially, for us human beings. It has also been observed that one of the very infinite powers that God shared with human beings and allowed them to have is the ability to create, just like the Almighty created all of us and to generate and produce something that can be used for generations to come.

Unfortunately, due to lack of proper guidance and laws like the one we are discussing this afternoon, many content creators, to date remain uncelebrated. They do not get their place of pride because of the great works they did – one, nobody documented them. Two, we did not have the requisite legislation to enable us preserve these works and give credit to the people who produced them. It is really unfortunate. It speaks even to the history of man.

When you read about the different forms of art, chances are that you will read about the Greek creators. When you go through painters, you will read about the works of different celebrated painters of years gone by. The same passes for music, but one striking thing that will shock you is that, we as Africans, do not feature anywhere in that history. Are we, as Africans, saying that our forefathers did not have the cognitive ability to create and generate any form of art? The answer is no, they did it! They produced great music. They curved out great sculptures. They wrote using different forms of writing that were available to them at that particular time, but, because our society had not matured to the level of providing copyright laws, that is why to date when you read about the history of theatre, all you will read is about the Greek and the different issues that they were speaking to at that particular but nothing will be mentioned about Africa yet it is a known fact that in traditional African societies, one of the ways we use to preserve our custom is through tradition folklores, plays, going for communal gatherings and through afternoon sessions where people will gather after harvesting or after work – they would sit at the village gathering centre, share in song, dance and do various forms of art but none of it was documented.

To date, unfortunately, it is only towards the tail end of the 20th and the beginning of this 21st century that you can find works of literature of African descent. Therefore, it will be a great dishonor to this honorable House, should we let this injustice continue being perpetuated and look as if we, Africans, are children of a lesser god, who cannot create or produce anything.

Mr. Temporary Speaker, it is extremely important for us to put in place legislation that enables us to properly celebrate creators of content that we use for entertainment, learning and other reasons that have been mentioned by speakers who have spoken before me. I want to laud the creators of the initial Copyright Act of 2001, they gave us a good legislation, which we are trying to improve and make better.

There are various things that have emerged, law making as we are all aware, is a never-ending process. That is why we provide for the option of amending any Act of Parliament because, the things that you legislate today, in another five to ten years, especially for us who are living in the information age, they will be obsolete and some of those laws will not be able to serve that which it was set out to achieve. I want to believe that it is in line with that thinking that this amendment has been given to us so that we may consider amending the Copyright Amendment Bill, provide new provisions of this Act and domesticate this Marrakesh Treaty, which will enable us to facilitate access to published works for persons who are blind.

Mr. Temporary Speaker, Sir, I listened to the contribution by Sen. (Dr.) Musuruve and I must say that there are number of things that I learnt from listening to her, on how those who are blind and deaf, appreciate the work of literature and different forms of art. For those of us that are not disabled, we may consider it to be a normal thing; that we listen to good music and nod our heads, watch and enjoy nice movies and read nice work of literature and feel fulfilled as persons without realizing that the disabled would also wish to enjoy this but we had not provided for the same in law.

Therefore, thanks to this Marrakesh Treaty, we are now able to give a platform for them to access these works and even in avenues where there is duplication, it is done within the confines of the law and nobody can accuse them of plagiarism or duplication of the works of art that belong to other people.

Mr. Temporary Speaker, there are one of two things that I have taken note of in the main Bill that is being proposed. While I do not strongly feel that it needs to be changed, I want to just bring one thing to note. First, speaking about the constitution of the board, the Bill says in subsection 11 that-

“A person shall qualify for appointment as the Executive Director of this board if he or she is an advocate of the High Court of Kenya of not less than five years standing; five years in managerial experience and at least five years in matters related to copyright and other related rights”.

I am in agreement with the latter two however, I do not see anything while serving in that capacity that is so legal in its nature, such that for someone to serve as the Executive Director of this board, he or she must be an advocate of the High Court. This is a mischievous provision.

I can see the protest from my good friend and neighbour, Sen. Omogeni. Therefore, I will try and be extremely careful, because I do not want to be in trouble with

him, should I fall afoul with the law one day. Of course, I may need his services or those of the former State Prosecutor, the Deputy Majority Whip, Sen. Kihika. However, I keep telling you, my good friends, that despite the fact that you are advocates of the High Court, when you are making laws, 95 per cent of the people that vote for you and sent you to this House are not lawyers. Therefore, when you create jobs and only limit them to lawyers, you are doing a disservice to the people who sent you to this House. You are being insincere, unless there is a very compelling reason the Executive Director of this board needs to be an advocate of the High Court. I am sure the board has a legal directorate which can provide legal advice if there are any issues that are of a legal nature and advice is needed. It is not something I feel extremely strong about, but it is a complaint and protest that I will continue to issue in this House. It will be my signature protest with regard to every Bill where advocates try and ring-fence jobs for themselves, just as they did with the Constitution.

There is the other issue - at least it was not included in this particular Bill - where we are putting every agency to be headquartered in Nairobi. Those are two things that I will always protest in all my contributions. In all the Bills that I will bring to this House, you will notice that I will not make that mistake. The headquarters will not be in Nairobi and the Executive Director will be from any other profession, unless there is need that they should be from a specific profession.

Under Part VII, in the current law it is provided that the board shall issue a certificate to an organization which intends to carry out businesses of copyright collecting society. This is important because many of the content creators, unless properly organized, do not have the individual capacity to go after the infringers of their rights. Therefore, we have to provide a way for them to organize themselves and ensure that the copyright bodies formed live up to the initial purpose they were created for.

It is unfortunate and disturbing that almost every board that we are creating in this country becomes another toll station, instead of serving the people it was intended to serve. They end up being tax collation centers. What is wrong with us Kenyans? The time has come for us to ask ourselves whether it is within our natural DNA to be corrupt and steal. This is because every other agency we create to provide checks and balances ends up receiving bribes and ensuring that those who break the law get away after paying some amount. Whoever said that we can never legislate good morals was right.

The time has come for us, as a nation, to have a discussion and ask what is it we can do about the challenges that continue to bedevil us. It is my hope that those copyright collecting societies will try and be better than the current Music Copyright Society of Kenya (MCSK). They occasionally stop you on the road and check if your car has a radio. They tell you that if you do not have a certificate, you pay some a huge amount of money. However, the truth of the matter is that when you speak to most of our artistes they say that never see that money.

Most of our artistes, especially musicians, die poor. We see them each and every time. The recent case is that of the late Joseph Kamaru, a celebrated musician. Although I do not speak the Kikuyu language, I used to enjoy his songs. Music is universal; you do not have to understand what a musician is saying. You can feel the beat and rhythm and know that it is a good piece and organization of music. The late Joseph Kamaru was one

such musician, but in his final days, as he lay on his deathbed, he was completely broke and impoverished, yet, we have copyright societies that already exist. I am sure that most of the local stations that speak that dialect play his music. Who takes that money?

The initial thought when the MCSK was created was that they would collect royalties for musicians and ensure that they stop all the other collection points. Immediately after collection, they were meant to channel it to a musician, say, Sen. Okong'o Omogeni, if he is the one who has sung. There should not be other stops in between. The truth of the matter is that it is unfortunate that many of our musicians do not benefit. I hope this law being created today will become better, serve our musicians and provide for them.

Mr. Temporary Speaker, as I almost draw to a close, the Bill also seeks to establish a tribunal responsible for determining disputes over registration of copyright and refusal by the Kenya Copyright Board (KCB) to register a collective management organization. That is another dispute that we need to consider and ensure that the Board that shall carry out this duty shall serve Kenyans diligently and ensure that they are not just another toll station, but they arbitrate where there are disputes and challenges. They should live true to their calling as an institution such that someone will be able to say: "I have a copyright dispute with a certain organization and I know that if I appear before the Board they will make a fair ruling." This will ensure that the first creator of the copyright reserves the right to keep it.

Issues of intellectual property are not so simple. They are difficult because it speaks to the very being. By the time someone spends hours to create something, if you rob them of what they created, chances are they may never get the courage and energy to again work and put out anything useful for this country. Therefore, I hope this Board will be fair, dutiful and serve people honestly.

There is also the provision to amend. This includes dealing with the offences and purposes of ensuring clarity for providing for offences by bodies corporate which are not provided in the current law, like internet service providers. In 2001, this was just at the advent of the internet age. There are now many forms of sharing content and material that is otherwise copyrighted unlike was the case. Maybe in 2001 the only way they would have used was by 'burning music into a CD'. However, with the advent of internet service providers, all this information can find itself around the globe in a very short time. There is need for us to have provisions so that we know that even if a particular musician has their music being played in as far as South America, Australia or whichever part, they get to enjoy and get paid for the work they have done.

Other countries have passed these laws and they ensure that their creators of works of art are well taken care of. Preservation of culture is one of the devolved functions. Therefore, it is important to see how our county assemblies take on and further come up with a Bill that gives meaning at the local level to the provisions of this law. In a County like Kericho, the County I represent, for the things we hold dear, the county assembly could provide for the local musicians and how we honor and celebrate them.

This is an avenue for the creation of jobs as well. If our musicians, actors, poets and writers enjoy value for the work they do, that is a whole industry. We are talking about job creation. There is no better silver bullet of job creation than through these

works of art because the country is not in any shortage of talented people who can give us good content. There are countries that continue to earn--- Look at the amount of revenue that Hollywood generates for America, that Bollywood does for India and that Nollywood does for Nigeria. There is nothing difficult for us to ensure that these industries thrive.

We have developed legislation for copyright for musicians, but where can we house all these creatives? We need to ensure there is a body that will collectively look after rights. We have the Kenya Film Classification Board (KFCB), the Kenya Writers Union (KWU) and others. We need to develop this industry so that it employs many of our men and women.

As I said, we have done a piece of legislation for copyright, film and art. These pieces of legislation are scattered all over without being properly housed. This is one industry that can create jobs and generate revenue for this country.

With those many remarks, I support.

The Temporary Speaker (Sen. Lelegwe): Thank you, Sen. Cheruiyot.

Sen. Omogeni, you may proceed.

Sen. Omogeni: Thank you Mr. Temporary Speaker, Sir.

I want to begin my contribution by saluting the American people for the historic elections that has seen 100 women elected to Congress.

(Applause)

When Congress convenes in January, there will be a woman Speaker, Hon. Nancy Pelosi, the senior most democrat who will be proceeding. That is a message to the world that the American people have shown the way that they can usher in a new generation of women who have stood out to say they will not be shut down and nobody can stand on their way. They have not been elected because of affirmative action, but because they have proved to the American people that they have what it takes.

I look at my two colleagues on the other side of the aisle and urge them that ‘Yes, they can.’ What the American women can achieve, our Kenyan ladies can also achieve. I wish you well.

(Applause)

I am proud to speak as a proud husband who has a woman behind me and father of a daughter. I hope that in the future years, we will see what has happened in America today replicated in our great country, Kenya. I salute all women.

Mr. Temporary Speaker, Sir, today, we are discussing a very important issue. The Constitution that we enacted in 2010 has 264 Articles. Three Articles are dedicated to the issues of intellectual property. What we are debating today is something that has been elevated to the stature of a constitutional matter.

I want to read what Article 11(2)(a) provides. This is what the people of Kenya urged the State to do. On issues of culture, it states-

“The State shall-

- (a) Promote all forms of national and cultural expression through literature, arts, traditional celebrations, science, communication, information, mass media, publications, libraries and other cultural heritage;”

That is in the Constitution.

Another statement in Article 11(2)(c) obligates the State to promote the intellectual property rights of the people of Kenya. That is what the people enacted.

If you read further, in Article 40(5) it is a statement urging the State to do something. It states that-

“The state shall support, promote and protect the intellectual property rights of the people of Kenya.”

Mr. Temporary Speaker, Sir, this is not a simple matter. It is something that Kenyan people need to recognize, that it is of some importance. We, therefore, had to make provisions of it is protection in our Constitution. When you read and define property in Article 260 of the Constitution, intellectual property is one of the properties that is recognized.

If you allow me, I will read Article 260 of the Constitution which states-

“Property includes any vested or contingent right to, or interest in, or arising from—

- (a) land, or permanent fixtures on, or improvements to, land; goods or personal property;
- (b) goods or personal property;
- (c) intellectual property; or
- (d) money, choses in action or negotiable instruments”

Let us accept that the people we are trying to protect are talented Kenyans who invest time and effort in the production of their goods or services. I recall a certain time when a person who may not be a friend to many, called Miguna Miguna, wrote a book. He invested time in writing that book. The book was launched and within one day, that book was all over the internet. Poor Miguna Miguna did not reap any profits from the writing of that book. You can imagine how unfair we can be to a person with such kind of talent.

I am a lawyer by profession, but I have not written a book like he has done. Those brothers and sisters in Kenya who can invest time to write books or produce songs need protection. I, therefore, salute the National Assembly for having proposed amendments to the Copyright Act because this is timely.

Mr. Temporary Speaker, Sir, I echo what other previous speakers have said, that in other countries, there is a concerted effort to protect talent. Not everybody can march up to the stage and sing beautiful songs. This is a preserve for a few within our population who have been given that talent by the Almighty God.

It is a pity that in many parts of this country, musicians die poor. We attend funerals, where we raise money for the upkeep of families of musicians. In my county Nyamira, we had a musician called Christopher Monyoncho. He produced many beautiful songs and we still listen to them even to date. If you listen to our local FM stations in the morning or in the afternoon, his music will be played. It is worth noting

that he died a poor soul, simply because in this country, we have not put in place effective laws to protect these talented Kenyans.

It is not right that we allow Kenyans to steal and commit theft of intellectual property of this talented Kenyans. With regard to what the previous speaker was saying, all the melodies in our phones, we are using them without permission from their owners. In addition, we are not paying them royalties. It is not right.

Every day you will hear people singing *Mwanamburi*. I also ask myself, who sang this great song. If it was to be in other countries, it will benefit not only the musician's children but also the grandchildren. The musician who sang *Malaika*; every tourist who visits Kenya will tell you, that while they were here, they were sang for *Malaika*. We do not know whether the originator who composed and produced that beautiful song benefits in any way from that talent.

Mr. Temporary Speaker, Sir, as we debate these amendments to the Copyright Act, we need to put forward the protection of these talented Kenyans. Going back to the Bill first, I hope---

The Temporary Speaker (Sen. Lelegwe): Sen. Omogeni, you will have a balance of 11 minutes when the Bill appears next in the Order Paper.

ADJOURNMENT

The Temporary Speaker (Sen. Lelegwe): Hon. Senators, it is now 6.30 p.m., time to interrupt the business of the Senate. The House, therefore, stands adjourned until tomorrow, Thursday, 8th November, 2018 at 2.30 p.m.

The Senate rose at 6.30 p.m.