

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Thursday, 14<sup>th</sup> February 2019

The House met at 2.30 p.m.

*[The Speaker (Hon. Justin Muturi) in the Chair]*

### PRAYERS

### COMMUNICATION FROM THE CHAIR

#### DELEGATION OF MAU MAU WAR VETERANS ASSOCIATION

**Hon. Speaker:** Hon. Members, I wish to recognise a delegation from the *Mau Mau* War Veterans Association seated in the Speaker's Gallery. The delegation is led by the Secretary-General, *Shujaa* Hon. (Dr.) Gitu wa Kahengeri, and comprises of 14 other members of the association. They are in the National Assembly to observe the proceedings of the House, and particularly the presentation of a Public Petition regarding the welfare of the *Mau Mau* Liberation Struggle Movement which I will be presenting on their behalf when we get to Order No.4. The delegation is welcome to observe the proceedings of the National Assembly.

*(Applause)*

### PETITION

#### INTRODUCTION OF MAU MAU LIBERATION STRUGGLE MOVEMENT PRIVATE BILL

**Hon. Speaker:** Hon. Members, this is Public Petition No.2 of 2019. Standing Order No.225 (2)(b) requires that the Speaker reports to the House any Petition other than those presented through a Member. I, therefore, wish to convey to the House that my office is in receipt of a Petition from members of the *Mau Mau* War Veterans Association seeking for leave of the House for the introduction of a Private Bill.

You may wish to note that this Petition is not an ordinary one as the petitioners are asking for leave of the House to introduce a Private Bill aimed at providing for the recognition of the role of the *Mau Mau* Liberation Struggle Movement. The draft legislation attached to the Petition proposes, among other things, to acknowledge in law, the role of the Movement in the fight for Kenya's independence and to provide for the documentation of the history and activities of the movement for posterity.

The Petition complies with the provisions of Standing Order No.159 (1) which states:

"No private Bill shall be introduced unless a Petition for the same, headed by the short title of the Bill, and signed by the parties, being promoters of the Bill, or some of them, has been previously presented to the House with a copy of the Bill annexed."

You all appreciate that the *Mau Mau* veterans played a key role in the liberation of this country from colonialism. Therefore, it would be appropriate to recognise and appreciate their efforts in the fight for the country's independence. Pursuant to the provisions of Standing Order No.227, this Petition now stands committed to the Departmental Committee on Sports, Culture and Tourism for consideration. The Committee is advised to prioritise the Petition, accord a hearing to the Petitioners and assist the House to determine whether the prayers by the Petitioners would properly be addressed by way of a Private Bill in terms of Part XX of the Standing Orders. Should the Committee find that a Private Bill is the appropriate way to address the prayers sought; the Committee should, upon tabling the Report, move a Motion asking the House to grant leave for the introduction of a Private Bill on the subject.

Let us move to the next Order.

### PAPERS LAID

**Hon. Aden Duale** (Garissa Township, JP): Hon. Speaker, I beg to lay the following Papers on the Table of the House:

Draft 2019 Budget Policy Statement (BPS) from the National Treasury and Planning.

Draft 2019 Medium Term Debt Management Strategy from the National Treasury and Planning.

Draft Division of Revenue Bill, 2019 from the National Treasury and Planning.

Draft County Allocation of Revenue Bill 2019 from the National Treasury and Planning.

At this juncture, I thank the Cabinet Secretary for the National Treasury and Planning for complying with the Constitution in making sure that these important budget documents are available to the House before the deadline.

The Reports of the Auditor-General on the Financial Statements in respect of the following institutions for the year ended 30<sup>th</sup> June, 2018, and the certificates therein:

- (a) National Safety Net Programme;
- (b) State Department for Social Protection;
- (c) Ministry of Agriculture, Livestock, Fisheries and Irrigation;
- (d) Sunset Hotel Limited;
- (e) Tom Mboya University College;
- (f) Moi University;
- (g) Inter-Governmental Relations Technical Committee;
- (h) Tana Water Services Board;
- (i) Kenya Development Response to Displacement Impacts Project;
- (j) Jomo Kenyatta Foundation;
- (k) Kenya Literature Bureau; and,
- (l) Rivatex East Africa Limited.

### COMMUNICATION FROM THE CHAIR

GUIDANCE ON THE SUBMISSION OF THE 2019 BUDGET POLICY STATEMENT

*(An Hon. Member interjected)*

**Hon. Speaker:** The Member is not a regular face in the House apparently.

Hon. Members, following the tabling of the 2019 Budget Policy Statement (BPS), the 2019 Medium Term Debt Management Strategy Paper and the Draft Division of Revenue and County Allocation of Revenue Bills, I wish to inform the House that the said documents have been submitted pursuant to the Public Finance Management Act (PFM), 2012 and in accordance with the Standing Orders as stated by the Leader of the Majority Party. The BPS and accompanying documents now stand committed to each Departmental Committee to consider and make recommendations to the Budget and Appropriations Committee within seven days of committal. The Budget and Appropriations Committee is expected to submit its report within seven days thereafter. This is to allow the House to consider the BPS within the 14 days limit set by Section 25 (7) of the PFM Act, 2012 and Standing Order No.232.

It may be noted that the Draft County Allocation of Revenue Bill which is submitted pursuant to the provisions of Article 218 of the Constitution will first and foremost be considered by the Senate. As you know, even under that Article, it may not be proceeded on until after both Houses have passed the Division of Revenue Bill. The House is accordingly guided.

Hon. Members, before we proceed, allow me to recognise students and pupils from the following institutions:

- (a) In the Speaker's Gallery, pupils from Little Bees Primary School, Mavoko Constituency, Machakos County and those from the Catholic University of Eastern Africa within Lang'ata Constituency, Nairobi County;
- (b) In the Public Gallery, pupils from Jonathan Gloag Academy from Lang'ata Constituency, Nairobi County.

*(Applause)*

They are all welcome to observe the proceedings of the House this afternoon.  
Let us move to the next Order.

### QUESTION BY PRIVATE NOTICE

**Hon. Speaker:** The first Question is by the Member for Ndhiwa Constituency.

*Question No.013/2019*

#### CROCODILE ATTACKS AT RIVER KUJA

**Hon. Martin Owino** (Ndhiwa, ODM): Thank you, Hon. Speaker. I rise to ask this Question with a very heavy heart. This is Question No.013/2019 and it is to the Cabinet Secretary for Tourism and Wildlife.

(a) Is the Cabinet Secretary aware that on 8<sup>th</sup> February, 2019, one Veronica Aching, aged 7 years, was attacked by a crocodile at River Kuja in Ndhiwa Constituency and to date, she is yet to be found?

(b) Are there any measures being put in place by the Ministry to contain the crocodile menace in River Kuja?

(c) Could the Cabinet Secretary provide a detailed report of cases of crocodile attacks in River Kuja for the last one year, with a list of all victims, and state whether they have been compensated?

**Hon. Speaker:** Due to part (a) of that Question, the Question has been listed to be responded to by way of Private Notice. It, therefore, means that the Departmental Committee on Environment and Natural Resources should urgently prioritise the Question to be responded to. It talks about a child who is said to have been attacked by a crocodile and has not been heard of since the date quoted.

### ORDINARY QUESTIONS

**Hon. Speaker:** The next Question is by the nominated Member, Godfrey Osotsi.

#### *Question No.007/2019*

#### UPDATE ON UNDISCLOSED FUNDS HELD IN FOREIGN BANK ACCOUNTS

**Hon. Godfrey Osotsi** (Nominated, ANC): Thank you, Hon. Speaker. I wish to ask Question No.007/2019 and is directed to the Attorney General:

(a) Could the Attorney General provide the latest update on undisclosed funds held in foreign bank accounts outside Kenya; including in Switzerland, Japan and the United Kingdom, and the details of the accounts, the principal amounts held and interest earned?

(b) In view of the numerous past undertakings made by various Government agencies regarding recovery, when will the Attorney General publish the names of persons with undisclosed and illicit money held in foreign bank accounts?

(c) What is the progress of the tax amnesty issued to Kenyans with undisclosed and illicit monies in foreign bank accounts by the Cabinet Secretary for Treasury in the 2017/18 Budget Statement?

(d) What tangible measures is the Government putting in place to stop any future illicit money transactions in secret foreign accounts?

**Hon. Speaker:** Very well. That Question, as Hon. Osotsi has indicated, is not to be sent to any Committee because it requires a written reply from the Attorney-General. It is, therefore, directed to the Attorney-General to do as requested.

The next Question is by the Member for Mathare Constituency.

#### *Question No.008/2019*

#### POSSESSION OF LAND FOR DEVELOPMENT OF MATHARE YOUTH POLYTECHNIC BY PRIVATE ENTITY

**Hon. Anthony Oluoch** (Mathare, ODM): Thank you, Hon. Speaker. I rise to ask Question No. 008/2019 and it is directed to the Cabinet Secretary for Lands.

(a) Could the Cabinet Secretary explain the circumstances under which a private entity has taken possession of public land set aside for purposes of developing Mathare Youth Polytechnic in Mathare Constituency?

(b) Are there plans in place to ensure that the said parcel of land reverts to public ownership?

(c) Could the Cabinet Secretary provide the status of issuance of title deeds to all public and private land owners in Mathare Constituency?

Thank you, Hon. Speaker.

**Hon. Speaker:** The Question is referred to the Departmental Committee on Lands to prioritise.

I hope what I have directed the staff is happening. On all public notices, every Tuesday, they should screen all the Questions to be responded to on particular days, indicating the time, Committee and the particular Ministry the Question is addressed. I hope the Clerk's Office is executing that so that, as Members walk into Parliament and other such places where there are television screens, they should be able to know, without going to various places, where particular Questions are being responded to, before which Committees and by which ministries. I hope that is being implemented.

The next Question is by the Member for Navakholo.

*Question No.009/2019*

OVERCHARGING OF FEES AT KABARAK UNIVERSITY

**Hon. Emmanuel Wangwe** (Navakholo, JP): Thank you, Hon. Speaker. I wish to put my Question to the Cabinet Secretary for Education.

What action is the Cabinet Secretary taking against the management of Kabarak University who are now charging the regular students who joined the institution through the Kenya Universities and Colleges Central Placement Service the same amount of fees as privately self-sponsored students?

Thank you, Hon. Speaker.

**Hon. Speaker:** The Question is referred to the Departmental Committee on Education and Research to prioritise for response.

The next Question is by the Member for Sigowet/Soin, Hon. Kipsengeret Koros.

*Question No.010/2019*

IMPLEMENTATION STATUS OF SOIN IRRIGATION PROJECT

**Hon. Kipsengeret Koros** (Sigowet/Soin, Independent): Hon. Speaker, my Question 010/2019 goes to the Cabinet Secretary for Water and Sanitation.

Could the Cabinet Secretary give the implementation status of Soin Irrigation Project Contract No.NIB/T080/2015-2016 in Sigowet/Soin Constituency, the total budget allocated, funds released so far, and the completion timeline for the project?

Thank you, Hon. Speaker.

**Hon. Speaker:** The Question is referred to the Departmental Committee on Environment and Natural Resources to prioritise.

The next Question is from the Member for Githunguri Constituency, Hon. Kago.

*Question No.011/2019*

IMPLEMENTATION STATUS OF COFFEE TASK FORCE REPORT

**Hon. Gabriel Kago** (Githunguri, JP): Hon. Speaker, I direct my Question No.011/2019 to the Cabinet Secretary for Agriculture, Livestock, Fisheries and Irrigation.

(a) Is the Cabinet Secretary aware that the task force constituted to look into coffee matters and come up with coffee regulations concluded its mandate and prepared its report over three (3) years ago?

(b) What is the implementation status of the said report?

Thank you, Hon. Speaker.

**Hon. Speaker:** Hon. Kago, your Question is referred to the Departmental Committee on Agriculture and Livestock.

The last Question is from the nominated Member who is not known by his name here officially. He is known as 001: Hon. David ole Sankok.

*Question No. 012/2019*

COMPLETION STATUS OF NAROK-MAASAI MARA ROAD

**Hon. David ole Sankok** (Nominated, JP): Thank you, Hon. Speaker. Happy Valentine everybody, specifically my crush of today, Hon. Dennitah Ghati.

My Question 012/2019 goes to the Cabinet Secretary...

**Hon. Speaker:** You almost thought that the Question is also 001 in keeping with what you have just said about today.

**Hon. David ole Sankok** (Nominated, JP): My Question is directed to the Cabinet Secretary for Transport, Infrastructure, Housing and Urban Development. There is a major scandal here.

(a) What is the status of construction of the 89-kilometre Narok-Maasai Mara Road?

(b) Could the Cabinet Secretary explain the measures the Ministry has put in place to ensure that the said road is completed on time?

Thank you very much Hon. Speaker.

**Hon. Speaker:** You started by saying that there is a major scandal. The Question is referred to the Departmental Committee on Transport and Public Works and Housing to deal with what you already refer to as a scandal.

Hon. Members, for avoidance of doubt, I am now told the Members of the *Mau Mau* have arrived. They had been taken to have a quick bite. This is to inform them that their Petition has already been read out and referred to the relevant Committee.

Leader of the Majority Party.

**STATEMENT**

BUSINESS FOR THE WEEK COMMENCING ON 19<sup>TH</sup> TO 21<sup>ST</sup> FEBRUARY, 2019

**Hon Aden Duale** (Garissa Township, JP): Hon. Speaker, pursuant to the provisions of Standing Order No. 44(2)(a), on behalf of the House Business Committee (HBC), I rise to give a Statement on the business agreed upon by the HBC when we met this week on Tuesday.

I wish to officially welcome Members back from the long recess. It is important for Members to note that the first part of the Session will be very busy. The Budget cycle is about to

begin. It will entail review of the Budget Policy Statement, the Division of Revenue Bill, 2019 and the County Allocation of Revenue Bill, 2019, which we have just tabled this afternoon. Some have been tabled and then referred by the Speaker to the relevant Departmental Committees.

There are some key businesses that ought to be concluded by 30<sup>th</sup> April 2019. The Budget Estimates for the Financial Year 2019 will also be received before the long recess in May, following which the relevant Committee will undertake public hearings and stakeholder engagement.

On Tuesday next week, we shall consider the Second Reading of the following Bills, should we not conclude them today:

The Insurance (Amendment) Bill, No.21 of 2018; the Sports (Amendment) Bill, National Assembly Bill No.25 of 2018; the National Flag, Emblems and Names (Amendment) Bill, Senate Bill No.8 of 2017; the County Governments (Amendment) Bill No.2, Senate Bill No.7 of 2017 and, finally, the Pharmacy and Poisons (Amendment) Bill No.8 of 2018.

Through you, Hon. Speaker, I urge all Chairs of relevant Committees to expedite consideration of the mentioned Bills and table any pending reports to enable Members to acquaint themselves with the contents of the Bills before we subject them to the Committee of the whole House. The HBC will reconvene on Tuesday 19<sup>th</sup> February 2019 at the rise of the House to consider business for the coming week.

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

*(Hon. A.B. Duale laid the document on the Table)*

**Hon. Speaker:** Very well. I hope Members have taken note of that Statement by the Leader of the Majority Party that, indeed, the much anticipated Budget cycle has effectively kicked in.

Because I know Members have been pursuing a number of issues, we are also obviously alive to certain other considerations as to what happens to resources that this House approves and allocates to various Government agencies. This is the appropriate time for each departmental committee to apply itself fully so that those to whom you will be allocating resources appreciate that they come through you. They must, obviously, show what it is they have done with resources that you have allocated in the past before you approve any other request that they will be coming up with. Please, every Member is encouraged to make sure that they get copies of the Budget Policy Statement (BPS) and interrogate it appropriately.

Next Order!

## BILLS

### *Second Reading*

#### KENYA ACCREDITATION SERVICE BILL

*(Hon. A.B. Duale on 13.2. 2019)*

*(Debate concluded on 13.2.2019)*

**Hon. Speaker:** Order, Members. Debate on this Bill was concluded yesterday and what remained was for the Question to be put which I hereby do.

*(Question put and agreed to)*

*(The Bill was read a Second Time and Committed to a Committee of the whole House tomorrow)*

*Second Reading*

THE PUBLIC FINANCE MANAGEMENT (AMENDMENT) BILL

*(Hon. A.B. Duale on 13.2. 2019)*

*(Resumption of Debate interrupted on 13.2.2019 – Afternoon Sitting)*

**Hon. Speaker:** Hon. Members, I wish to inform the House that as at the time the House rose yesterday, a total of 13 Members had contributed. For avoidance of doubt so that those who have contributed do not seek to contribute again, the Bill was moved by the Leader of the Majority Party, seconded by Hon. Limo, Chair of the Departmental Committee on Finance and National Planning, followed by Hon. (Dr.) Makali Mulu, Hon. Chepkut Chirchir, Hon. Odhiambo Akoth, Hon Kubai Iringo, Hon. Naomi Shaban, Hon. Oduol Adhiambo, Hon. Ali Athman, Hon. Oundo Ojiambo, Hon. John Bunyasi, Hon. (Dr.) James Nyikal and Hon. Waihenya Ndirangu who had finished his time. It means that any other person who has not heard their name is at liberty to contribute. I am assuming that the names I see on the screen are Members desirous of contributing. Member for Makueni.

**Hon. Daniel Maanzo** (Makueni, WDM-K): Thank you, Hon. Speaker, for giving me an opportunity to contribute to the Public Finance Management (Amendment) Bill of 2017. I have looked at these amendments. They seek to clean up the Public Finance Management Act so that it becomes more useful when it comes to public finance management. There are many definitions which have been made clear. It is also clear that there is no delegated power to the Cabinet Secretary in this Act. The Bill has also handled the matter of finance dealing with counties.

There are quite a number of important amendments as to how county governments will conduct their affairs when it comes to managing public finances in the country. Generally, the amendments are good and also seek to make definitions where there were none and clarities where issues conflicted. Definitely, this will make the management of finances in the country much better. I have looked at definitions and also how the counties deal with finances. You will find that the county executive in charge of finance has clear mandate as to what to do and there is no conflict of interest. Also, there is real clarity especially in some of the earlier amendments like Section 144 of No.18 of 2012 which has a new proposal to allow county governments to issue securities whether for money that it has borrowed or for any other purpose only in one or more series in accordance with the Act and regulations.

Earlier on, our question was whether county governments can borrow money or not. There was no law guiding county governments if they needed to borrow money from whatever source. Now, it is clear what should happen and the procedure to follow. The County Executive



Committee Member for finance is the one given that mandate and is the one held accountable under this Act.

The issue of county governments' securities has also been defined. That has not been the case before. Therefore, these amendments will go a long way to make sure that in this era where corruption is being fought left, right and centre, the monies Kenyans have raised in form of taxes are secured, properly used, and people who are in charge of that money are held accountable. Therefore, I support these amendments and I urge Members to support them.

Thank you.

**Hon. Speaker:** Member for Igembe North.

**Hon. Maoka Maore** (Igembe North, JP): Thank you, Hon. Speaker, for giving me the opportunity to contribute to this very important Bill. For many years, this has been the backbone of our financial system. The Bill wishes to do omnibus amendments to public finance management. Almost every sector or office is touched by this amendment. I would propose that when we go into the Committee stage at the Third Reading, Members should take into account that nearly all the offices that deal with finance are being affected: from the Central Bank of Kenya; the Cabinet Secretaries' powers when it comes to public finance management; the Kenya Bureau of Standards (KEBS) and the planning they do for us to be able to do the financing; the Controller of Budget Office and the Auditor General's Office. This is a second omnibus after the Statute Law (Miscellaneous Amendments) Bill.

What is contained is very crucial for those Members who would wish to push in reforms on various sectors of our financial systems. I was gossiping with the Leader of the Majority Party after he tabled the PFM (Amendment) Bill. We said that most of the Members in this House will have a fight with the Budget because of mismanagement of public finances in the last three or four years. We are being affected as the 12<sup>th</sup> Parliament when it comes to new projects. There is this issue of financing the old projects before we touch on the new ones. I think it is wise if we can strike a balance of 50/50. Fifty per cent should be for the new projects and the other 50 per cent should go for other projects which should be staggered for the next three years. For most Members, the first one year is over. We are going to the second year and there are no new Members who can say that they have initiated a new project in their various constituencies. So, when it comes to this public finance management system, when those mega projects were conceived, the assumption was that there was money then to complete them. Apparently, we are short of cash and then we are caught up in this dilemma. We need to ensure that people run public offices the way they run their private business. If it was a private business we were running, by now it would be filing bankruptcy proceedings and that is not fair. We, therefore, want Members to take this PFM (Amendment) Bill seriously. Those are my few contributions.

Thank you, Hon. Speaker.

**Hon. Speaker:** Member for Muhoroni.

*(Hon. Onyango Oyoo spoke off record)*

**Hon. Speaker:** But you have placed a request. How is it that you have your card and it shows that you have placed a request? It means that your card needs to be investigated now that we are in the era of investigations. I think tomorrow being a Friday, it will be a good day.

*(Laughter)*

**Hon. Onyango Oyoo** (Muhoroni, ODM): Thank you very much, Hon. Speaker. May I first take this opportunity to thank Members and thank God for taking care of all my colleagues during the long recess. Long ago, we used to have incidences of deaths and bad accidents during the long holidays. This is not the case anymore.

I was not prepared to speak to this Bill; I thought we were going to revisit the previous Bill. I want to thank you for your consideration and wish everybody a good Valentine.

**Hon. Speaker:** Hon. Oyoo, there is need for a check-up where you normally sit. Even now, your card still shows that you are still requesting to say something beyond what you have just said in 30 seconds.

Member for Ndhiwa.

**Hon. Martin Owino** (Ndhiwa, ODM): Thank you, Hon. Speaker. I rise to support this Bill. Where there is borrowing and repayment, there are stakeholders. In these arrangements, the 45 million Kenyans are represented. I can see in the amendments, Parliament is given more powers to oversee borrowing. When we do the oversight, we look at the borrowing wherever it is in the eyes of the voters. I think that will bring sanity in debt management.

I would also like to support this Bill especially where it talks about the publication of a debt register. The office of the debt management currently as it is in the PFM Act 2012, does not give powers to the office to do this. When we publicise the debt, it will be a wake-up call so that we do not over-borrow. Right now, the projection of our debt is Kshs7 trillion. That will entangle even our children's children. So, I support this Bill because it will bring a lot of sanity in our financial management, especially if we get more authority to oversee the borrowing, whether it is locally or abroad. So, I support.

Thank you.

**Hon. Speaker:** Member for Kwanza.

**Hon. Ferdinand Wanyonyi** (Kwanza, Ford-K): Hon. Speaker, I rise to support this detailed PFM (Amendment) Bill. However, my concern is on Section 38 of this Bill. I have two or three comments to make. We have had quite a number of programmes in the past. At times, we find programmes where the estimates sent to Treasury from Ministries and State departments are cut. We have had detailed programmes for development on various Ministries and State departments but, when they are forwarded to the Exchequer, they are cut without due reference to the people who have made those estimates. I think this Report makes it nice and I hope that the past will be forgotten because we have had cases where estimates by the Ministries are cut without reference to them.

Secondly, I have also looked at the financial reporting by the county governments. My concern is this: Before devolution, both county councils and municipal councils used to collect a lot of revenue. But I am surprised that, currently, what we are getting is very little. So, the reporting and the banking of the revenue is not clear. No wonder we have a lot of corruption in the county governments and, therefore, the revenue collected does not reflect what is happening on the ground. I hope that this proposal particularly on Section 163 of this Act will be able to cure that. Otherwise, I support the Bill as it is today. Those are the major things that I have seen that we need to emphasise on particularly on receipts and disbursement of funds that are collected by various county governments. My concern is that money collected in various counties does not reflect what in on the ground. There is a lot of stealing and I hope this will reduce it.

Thank you, Hon. Speaker.

**Hon. Speaker:** Member for Embakasi East.

**Hon. Babu Owino** (Embakasi East, ODM): Thank you, Hon. Speaker. I rise to support the PFM (Amendment) Bill. In addition, I would like to wish the Members of the National Assembly and my wife a happy Valentine.

**Hon. Aden Duale** (Garissa Township, JP): On a point of order, Hon. Speaker.

**Hon. Speaker:** What is it Leader of the Majority Party?

**Hon. Aden Duale** (Garissa Township, JP): Hon. Speaker, you have heard my good friend Hon. Babu Owino. We are dealing with a serious Bill, the PFM (Amendment) Bill. But because he has not read it, he is wishing Members a happy Valentine's Day and sitting down. This is an abuse of the House process. It is even an abuse to the people of Embakasi East.

**Hon. Babu Owino** (Embakasi East, ODM): Hon. Speaker, I was up to support the Bill.

**Hon. Aden Duale** (Garissa Township, JP): It is good for Members to research and read. You can even pick the Bill and read its principal objects at the back page and make some contribution. You cannot talk about public finance management and just come to wish us happy Valentine's Day. Some of us are too old to participate in Valentine's celebrations. We love our wives every day, every evening and every morning. So, it is not only for a particular day. Going forward, if somebody has not read this Bill, he should not wish us a happy Valentine's Day.

**Hon. Speaker:** Hon. Members, I think in fairness, unless you are not alive to the comments that sometimes Kenyans make about the quality of contributions, the Bill before the House is on proposed amendments to the PFM Act of 2012. It has nothing to do with Valentine's Day or such like casual things of the streets. You want to bring matters of night clubs to the Floor of the House. Surely?

Also, it is clear that a majority of Members who walked in this afternoon did not know what Bills were coming up for debate. That is why the one who has spoken longest, I was checking, is the Member for Makueni, who spoke for two-and-a-half minutes. This is about public finance management law. We can even clear this. If you are perhaps prepared for the other Bills which are listed, then we can get to them. We cannot just sit here and everybody rises in their place and claims to wish everybody happy Valentine's Day and such like nondescript stuff. Surely, this is not right. Hon. Babu, I am sure you may be prepared to contribute to some other Bill. You are the Secretary-General of Kenya Young Parliamentarians. You are not being fair to the voters, because they will say: "Oh! This is what we elected you to go and do in the House! Valentine's stuff!" This is not a place for Valentine's. It is only that I was consulting with the Member for Tharaka. Otherwise, I would have outrightly ruled you out of order for introducing strange and extraneous matters to the Bill.

There being no other Member desirous of contributing...

*(Hon. Kimani Ichung'wah interjected)*

Where? The Member for Kikuyu, do you want to contribute to this Bill?

**Hon. Kimani Ichung'wah** (Kikuyu, JP): Yes.

**Hon. Speaker:** Very well. Proceed.

**Hon. Kimani Ichung'wah** (Kikuyu, JP): Hon. Speaker, thank you. My apologies. I misplaced my card in the suit that I wore yesterday. If you allow, even in regard to what Hon. Babu Owino has just done, I want to recognise the *Mau Mau* war veterans you had recognised before they came in. These are men and women who played a very critical role in the fight for the Independence of our country.

There are two salient issues that are in this Bill: One, it allows Parliament to be involved when county governments are creating entities. They have not been involving Parliament in the establishment of many of these entities, many of which are fashioned as government parastatals. They have done this without any approval or ratification by either the Senate that oversees county governments or the National Assembly. Therefore, the amendment that will now make it compulsory for county governments to involve Parliament is a very good thing for our country. Since we are the ones who appropriate money even for the county governments, we shall be able to provide meaningful oversight. More so, Senators, who largely may not be very busy, will at least find something to keep them busier in offering meaningful oversight of the county governments.

The other salient issue in this Bill is the question of when and who is allowed to borrow short-term loans. The fact that now the Central Bank of Kenya (CBK) will be the only institution that can offer short-term overdraft borrowing... This is something that has been largely abused in the past when government parastatals and even ministries at times, not to mention the county governments, went out to take overdrafts from the banking industry. The short-term overdrafts that county governments and government ministries and departments take from the banking industry in a large way distort the interest rate market and, in a way, stifle credit that would otherwise be available to private sector business players.

I do not want to say much, because a lot had been said by the Leader of the Majority Party when he moved this Bill. I think those are two very critical issues that I did note and will help in financial management in our country to ensure that the overdrafts that go out to government entities are with the approval of the CBK, and to ensure that the National Assembly and the Senate are involved in the creation of all entities by the county governments to ascertain that the entities are not being created to duplicate functions that are being carried out by other entities at the national government level. I have seen in very many county governments the creation of entities and funds that are basically duplicating what is being done by parastatals at the national level, thereby creating unnecessary conflict. It is good to point out such issues.

I also take this opportunity to recognise the *Mau Mau* War Veterans; people who played a very critical role. We would not even be here amending the PFM law today without the freedom that we got, courtesy of these old men and women who fought for our Independence. We honour and value them and we thank God for the life that He has given those who are here today and others across the country.

Thank you, Hon. Speaker.

**Hon. Speaker:** What I can see is that the Member for Embakasi East still has his card logged in, but he has already contributed to the Bill, whatever he said. So, that occasion is gone.

Leader of the Majority Party, the Mover, to reply.

**Hon. Aden Duale** (Garissa Township, JP): Hon. Babu Owino has contributed to the Bill by saying his bit on Valentine's Day. I really want to thank, yesterday afternoon and part of this afternoon, Members who have contributed immensely to this very important Bill. But to make a highlight, one of the amendments in this Bill that we have introduced, is to strengthen and give more functions to the Parliamentary Budget Office.

The Parliamentary Budget Office will have more powers to undertake Monitoring and Evaluation (M&E) of Government programmes and projects in order to inform the legislative budget and economic analysis, produce what we will call Budget Options Paper. So, the PBO will have more powers and functions to do M&E of what we do and even tell us about the status such that even today, as we refer to the Budget Policy Statement, the PBO can give us an

independent opinion from the Legislative arm of Government that this is what there is as our debt level *vis-a-vis* the Gross Domestic Product (GDP). So, in this amendment, we are giving the PBO more functions.

The other important thing is the issue of giving powers to the National Treasury in creating Treasury single account by having all the county exchequer accounts maintained at the Central Bank of Kenya as opposed to the current situation where the accounts are in all manner of commercial banks, and then lose much money when banks such as Chase Bank and Imperial Bank go under. I am sure those comments from Members will enrich the Bill when we reach the Committee of the whole House stage and I am sure in the coming weeks, we will have to dispense with this Bill which has stayed in the House since 2017

Hon. Speaker, I beg to move.

**Hon. Speaker:** Very well! I have confirmed that we have quorum even though there was the Member for Cherangany who came in and just ticked in as present and then walked out. Hon. Members, we still have quorum and I will put the Question

*(Question put and agreed to)*

*(The Bill was read a Second Time and committed to a Committee of the whole House tomorrow)*

Next Order

### *Second Reading*

#### THE INSURANCE (AMENDMENT) BILL

*(Hon. Isaac Ndirangu on 6.12.2018)*

*(Resumption of Debate interrupted on 6.12.2018)*

**Hon. Speaker:** Order, Hon. Members! This is again shown as the resumption of debate. I do not know how much time was left. You have the records.

Hon. Waihenya Ndirangu, Member for Roysambu, you were the one moving. You were the one on the Floor, you had spoken for 17 minutes. That means you have a balance of 43 minutes because the House adjourned for lack of quorum. Are you still moving? Please proceed.

**Hon. Isaac Ndirangu** (Roysambu, JP): Thank you, Hon. Speaker. It is true I was on my feet on the last sitting day of the second Session.

Hon. Speaker, I beg to move that the Insurance (Amendment) Bill No. 21/2018 be now read for a Second Time.

Hon. Speaker, I would like to keep Hon. Members abreast of this Bill by informing them that the insurance industry in Kenya has an asset base of about Kshs624 billion as at close of the year 2018/2019, and it is growing annually by the rate of about 100 million.

The insurance industry is regulated by the Insurance Regulatory Authority (IRA), which is a State corporation whose mandate is to regulate, supervise and promote the development of the insurance industry in Kenya. The key players that are regulated by that authority are underwriters who are the main insurance companies, brokers, agents, motor assessors, insurance investigators, insurance surveyors, loss adjusters, claim settling agents and other risk managers.

Hon. Speaker, insurance today in the new millennium is also regarded as a factor of production adding to the other three which are land, labour and capital. In the same industry, we have important players called the insurance brokers who number over 4,000 in this country.

This Bill was brought into the House to streamline the operations and the relationship between the underwriters who are the main insurance companies and their counterparts who trade together, and who are the insurance brokers and agents.

Hon. Speaker, I would like to generally take my colleagues through the clauses that needed to be amended and their import.

We have Clause 2 which is generally the introduction of new definitions. Clause 3 provides for the supervision of insurance companies and groups, Clause 4 removes the requirements of the approval of the Cabinet Secretary before the Commissioner of Insurance issues directives. The board as mandated by Section 31 is to approve application for registration. Also, there are amendments that are going to create offences related to the insurance industry.

Hon. Speaker, according to our Constitution, it is critical that every law that is going to be made in this country be subjected to public participation. Hon. Speaker, our Committee went ahead as per the Constitution to seek views from the public. Among the participants who came to give their views are Bima Intermediaries Association of Kenya which is an association of insurance brokers, APA Insurance Limited, Britam Holdings, PLC and Association of Insurance Brokers of Kenya.

Hon. Speaker, the Insurance (Amendment) Bill was published on 19<sup>th</sup> June 2018 and was read the First Time on July 2018 and committed to our Departmental Committee of Finance and National Planning. We have done the prerequisite and held public hearings.

Hon. Speaker, the Bill seeks to amend the Act by introducing legal provisions creating offences on insurance fraud, including penalties intended to address the problems of insurance fraud that continue to be a major challenge to the stability of the insurance industry in Kenya.

These amendments also ensure that the Act complies with the International Association of Insurance Supervision Standards on countering insurance fraud.

This Bill is also intended to delegate powers to the CS to make rules governing the insurance industry and in processing this Bill, we have ensured we have reached all the important stakeholders.

I will point out the important contentions about this Bill and what the stakeholders had to say. On one hand, we have the main underwriters, who are the main insurance companies, and on the other, we have the insurance brokers. The Bima Intermediaries Association of Kenya and the Association of Insurance Brokers of Kenya said that this Bill seeks to cut them off their business of insuring or being agents of insurance companies.

The main insurance companies agreed that most insurance brokers misuse funds which are meant to pay premiums to Kenyans. The amendment which was most contentious is Clause 10(156). The clause is seeking that:

“(1) No insurer shall assume a risk in Kenya in respect of insurance business unless and until the premium payable thereon is received by the insurer.

(2) An intermediary shall not receive any premiums on behalf of an insurer.

(3) An intermediary who contravenes subsection (2) shall be liable to a penalty of one million shillings on each contravention, payable to the Policy Holders Compensation Fund.

(4) Any officer or director of an intermediary who contravenes subsection (2) shall be guilty of an offence, and upon conviction should be liable to a fine not exceeding one hundred thousand shillings or to an imprisonment term of three months, or to both.”

When we called the insurance companies, they regretted that some of the insurance brokers are dishonest. They receive payments from clients, sit on them and fail to submit the fees. This becomes like a con game where a client pays for insurance, but the broker, through whom he has obtained the insurance, does not remit the premiums. Due to this concern by insurance companies or underwriters, they wanted an amendment to this clause to go through.

However, after having a sitting with them, we sought to get a middle ground between the insurance brokers and the main underwriters. We made recommendations which will be effected through the amendment. These amendments are as follows: The contentious Clause 10(156) should be reworded to state that: “No insurer shall assume a risk in Kenya in respect of insurance business unless and until the premium payable thereon is received by him or is guaranteed to be paid by such person in such manner and within such time as maybe prescribed or unless and until a deposit of a prescribed amount is made in advance in the prescribed manner”.

This provision enables clients to pay through the brokers, trust them and know that their premiums will reach the underwriters. We have also recommended that contracts be established between the underwriters and intermediaries so that the underwriters are assured that the intermediaries or insurance brokers selling their insurance have a contract with them and can pay insurance premiums.

We have also attempted to decriminalise the handling of premiums by insurance brokers. When you criminalise handling of premiums by insurance brokers, it means you are getting them out of business. Therefore, thousands of insurance brokers will be rendered jobless. So, we have to appreciate that some insurance brokers have sustained the insurance companies because they are able to reach clients in small and big enterprises and also carry out marketing.

As a Committee of Parliament, we are begging not to be the ones killing the relationship between the underwriters and insurance brokers. Let no one put this relation asunder. They should continue to work together by ensuring that insurance brokers are allowed to handle premiums. However, we added a rider that a premium collected by an intermediary or cheque received shall be deposited and received by the insurer within 30 days of receipt by the intermediary.

This is intended to cure the mischief of insurance brokers who receive premiums from clients, sometimes in liquid cash, but sit on it as if they are entitled to use that amount. It is true that in the insurance brokers industry, there are many quacks whose companies have gone under because every time they receive insurance premiums from clients, they speculate, put it to their own use or invest it elsewhere. Thereby, making insurance companies to register losses and accumulated premiums deficits.

So, among our propositions is that any agent, insurance broker or intermediary who receives on some amount or premium on behalf of a company, will pay within 30 days. Failure to which, there will be sanctions as follows: That an intermediary who contravenes sub-section 4 shall be guilty of an offence, and shall pay a penalty equivalent to 20 per cent of the unlimited premiums on each contravention payable and this money will be payable to the policy holder compensation fund.

Equally, there are insurance companies and underwriters who delay to pay commissions to the insurance brokers. We have recommended to subject them to Section 156(a), which proposes that an insurer shall pay an intermediary an insurance commission within 30 days of receipt of premiums. The import of this is to compel insurance companies and underwriters who delay commissions up to two or three months to pay the insurance brokers who have taken business or premiums to them to ensure that they pay up the commissions within 30 days. So, we have said that what is good for the goose is also good for the gander such that insurance companies and brokers will operate in mutual understanding and respect according to their slogan of utmost good faith, also known as *Uberrimae Fidei*.

The perennial problem of outstanding premiums has led to financial instability and some of the insurance companies have gone under. The cause of these companies going under is chiefly because insurance brokers who brokered their premiums did not remit the money or premiums from the clients as they were supposed to do. We have also recommended in this Bill that all queries and complaints to the insurance industry shall be in a written form. Another requirement that we have put in the Bill is that insurance industry and its clients can connect. You can obtain premium through an electronic contract unlike before when you had to go and write a policy with the insurance broker or the company. This will enable the companies to reach many people and reduce costs of doing business.

These are among the highlights of this Bill and many more will be said by my distinguished Chair, who I am calling to second the Bill.

With that, I beg to move.

**Hon. Speaker:** Let us have Hon. Joseph Limo, the Member for Kipkelion East, to second.

**Hon. Joseph Limo** (Kipkelion East, JP): Thank you, Hon. Speaker, for giving me this chance to second the Insurance (Amendment) Bill. As I start, I want to say that this Bill, as my Vice-Chair has rightly said, is an amendment Bill which seeks to amend certain sections of the Insurance Act, to among others, bring stability to the insurance industry by dealing with various teething problems which they have been having.

Without repeating myself, I want to say that we did public participation as required by the law. During our public participation, a number of stakeholders came before us, especially those who were really very active in the insurance industry, including some lawyers. One of them is Kipkenda and Company Advocates, which is one of the few legal firms which have participated in public participation especially in the Second session of Parliament. They have been contributing a lot and we encourage other legal players to come and help this country during legislation. The Constitution requires that one of the key ingredients in law-making is public participation. The other one was Bima Intermediaries Association of Kenya. Some insurance companies which came before us were APA Insurance Limited, Britam Holdings and the Association of Insurance Brokers of Kenya. We also had a presentation by the regulator, the Insurance Regulatory Authority, who came before us during public participation.

This Bill proposes some very important changes to the insurance industry. I wish our farmers wherever they are could listen to what we will be talking about in this Bill. Farmers have suffered in this country. They have been suffering losses especially on livestock and failed crops due to inadequate rain or erratic rainfall. This Bill introduces what we are calling index-based insurance, which will enable insurance companies to deal with the compensation bit. It has been very difficult for insurance companies to deal with compensation when it comes to losses of crop or animals. It has been difficult to establish the value. When you plant maize and you lose in the



first three months, it is difficult to establish facts because the farmers will say they normally harvest 100 bags. However, to what level of expenditure had the farming gone before the loss occurred? So, this index-based insurance concept will cure that and it will ensure that most insurance companies will take this as one of the key viable insurance options. Therefore, after we enact this Bill, our farmers should ensure that they insure their animals and crops.

The Bill proposes to reduce exposure to policy holders. Previously, there have been tussles between insurance companies and brokers when it comes to compensation. You will find maybe the premiums have not been remitted or sometimes there are problems even in establishing at what time they should remit the premiums. Therefore, as a Committee, we are proposing a very good way to make sure that insurance brokers and insurance companies relate well. At the same time, we are proposing to introduce, as the Vice-Chair said, very stringent penalties for those who are going to fail to follow the arrangements as per the insurance policy.

This particular Bill is also introducing a new term in insurance called the “micro-insurance business,” which seeks to provide insurance policies for the low-income population in the country. In the traditional way, insurance policies have always been seen to be for the people who are endowed. However, the Bill is introducing micro-insurance, which will be available for the low-income population. This will enable recognition of a new category of insurers and allow for the development of regulations for the operation of micro-insurance.

At the same time, we have also included the National Hospital Insurance Fund (NHIF) in our amendments. It plays a key role in giving medical insurance, but it has never been regulated. Therefore, we will bring an amendment to bring in the NHIF as one of the players, which will be regulated by the Insurance Regulatory Authority (IRA), so that they will be brought into a level playing ground with other insurance companies, so that they do not have undue advantage. This will also reduce exposure in case of any problems because they will be required to comply with what IRA requires from all insurance companies. I want to urge the Members of this House to support this Insurance (Amendment) Bill, and more particularly during the Third Reading when we will bring our amendments, which will sort out some of the very controversial clauses in the Bill. I want to urge Hon. Members to support the Bill.

Hon. Speaker, I beg to second the Bill.

*(Question proposed)*

**Hon. Speaker:** Member for Ruaraka.

**Hon. T.J. Kajwang’** (Ruaraka, ODM): Thank you, Hon. Speaker. I was worried that this Committee wanted to kill the intermediary services, brokers or commission agents. I am satisfied now. I am reassured because they have done a report in which they have examined Clause 10 of the Bill and they are wording a responsive amendment to Section 156 of the Act.

Commission agency or insurance agency is known all over the commonwealth countries as a commercial contractual practice. It is ingrained in all the businesses that you do with all the insurance companies. It is unthinkable that you can do away with this practice which is many years old. It is the agency or commission broker who approaches a customer and explains the product. He is able to adapt himself depending on what the customer wants. He reassures or tells the underwriter exactly the needs of a product. If you had a situation in which the agencies were not provided for, underwriters would do a job which is not theirs and do things which do not reflect the wishes of the consumer. They would be doing the agency work plus the underwriting

work. So, I was very apprehensive. That is why I waited for so long to have a chance to contribute. They want to criminalise intermediary services in place of the underwriters.

Having heard the text that has been read to us by the Committee, it seems that it is now bearable. They can now start from there and see how to improve it. I also think that to criminalise commercial transactions is not the way. One has to get a more proactive approach to get people to do business and make it easy for them. I have a comment. I have looked at Clause 10. We need to look at these underwriters because I had an opportunity to look at many of the contracts which are being given by county governments. They specifically say that it is only limited to underwriters. That is a source of corruption. They want to limit it to underwriters as though they are brokers. This is the problem that we have because the national Government or county government is the only market where people trade. When few underwriters have conspired and they want to limit the practice of insurance to only underwriters, it means that they want to do the things they want and set prices the way they want. This is not right. If you look at the insurance companies, you see all of them are foreign owned. What we have here is a conspiracy of some international contractors to kill what is indigenous, which are the brokerage agencies.

Another comment I must make is how this Bill has been presented. First of all, I congratulate the Committee because this Bill is a product of the Committee. It is not quite a Cabinet Bill. I looked at the objects and reasons of the Bill. I did not see any of the objects or reasons that reflected Clause 10 of the principal Act, which was in the heart of this Bill. They say other things, but they are not brave enough to say that they want to kill the industry. They should have said that, so that we meet it the way it is. That being the case, they have presented it.

I have a comment to do with the Policy Holder Fund. First of all, I was in the Departmental Committee on Justice and Legal Affairs that drafted the Insurance Act. I have looked back at the Act, which prescribes the policy holders, but it does not give regime for regulations. It is just fun. It does not have regulations. The Committee intends to take the penalties to this Fund. This is not correct. If this is meant to be a fine to dissuade these people from not remitting money within 30 days, then we need to make it a fine, which is payable to the Judiciary. If you want to cause that it is some kind of a feat to build the Fund, then that is not punitive. The Committee should re-look at this and see that the Policy Holders Compensation Fund is ingrained in the law in the first place with sufficient regulations and the fines should be punitive and those that dissuade the object of that legislation.

It is a good law subject to the amendments that will be brought by the Committee. If they do not bring them, we can assure them that we will bring those amendments because we cannot allow this Bill to go the way it is. Otherwise, it will be the death of all insurance companies. You can imagine that you have a situation in which you have a car accident and you still have to wait for the insurer to make this compensation, and yet you have the broker who is at your door who can write his own cheque and take it to the industry and wait until you get the money to repair it. This is what is happening even in the agricultural industry. The kind of policy which was proposed here was very dangerous, but we are still waiting. I have looked at the Report and it says so. However, we will be very watchful to bring amendments that will safeguard the brokerage firms.

Thank you very much, Hon. Speaker.

**Hon. Speaker:** Member for Tharaka.

**Hon. George Gitonga** (Tharaka, DP): Thank you, Hon. Speaker. I rise to support this timeous Bill that has been brought to ensure that the Insurance Act and the insurance industry are

streamlined so that it complies with loss of contract and loss that pertains to indemnity in case of loss and damage that is insured.

The Committee has done a good job, for which I commend them. I particularly agree with them on the proposed amendments and possibly others that are going to come to us during the Committee stage regarding the safeguarding of the intermediaries who are properly known as insurance brokers. Insurance contracts are quite intricate in that sometimes they involve three parties instead of two. A party may look upon either of the parties for settlement where there is a dispute. An insured may look at a broker for remedy. He may also look upon the insurer, while the broker will ordinarily look upon the insurer for remedy. The insurer may look upon the two for whatever remedy is necessary in case of being aggrieved. Therefore, it is important that we protect the insurance brokerage industry, which is also an industry of its own, as we seek to protect the insurance industry at large.

*[The Speaker left the Chair]*

*[The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya) took the Chair]*

It is also important that we have indices. They are going to set guidelines on compensating where a party has suffered a loss. In most cases today, we rely on quantifications of damage as the basis of values that are given to compensate parties that have suffered loss.

**Hon. (Ms.) Odhiambo-Mabona** (Suba North, ODM): On a point of order, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): What is out of order, Hon. Millie Odhiambo?

**Hon. (Ms.) Odhiambo-Mabona** (Suba North, ODM): Thank you, Hon. Temporary Deputy Speaker. Welcome back and congratulations. For a while, I did not notice you are the one.

My concern is that before I came to the House, I noticed on the media that there was an on-going conference that began yesterday where all men were to attend. It said that they will attend the conference yesterday, today and tomorrow. When I look around in this House, the majority of the Members present are men. I do not know if I am in the wrong place with Hon. Cecily Mbarire. I do not know whether we were conned. Is the National Assembly Chambers where the international conference on men is being held? We should be guided.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Hon. Millie, I do not know about the conference. There is a lot of talk about it. So, the men here must have missed the memo or there could be some miscommunication. So, let us allow them to stay with us. Hon. Murugara can tell us why he is here and there is a conference going on.

**Hon. George Gitonga** (Tharaka, DP): Thank you, Hon. Temporary Deputy Speaker. I began by thanking the Speaker when he was on the seat, but we now have the Hon. Temporary Deputy Speaker. Welcome back. We are happy to have you back.

I have also read about the conference Hon. Millie has mentioned. I saw the programme. Possibly, the men who are here would be attending the evening session because it is important that we discharge national duties that have brought us here. Then after that, we can also go for those other secondary duties which we must also fulfil.

Regarding the Bill before us, it is also important that we look at the offences that are proposed to be introduced. We know very well that there is always clamour when it comes to insurance companies, especially regarding quick enrichment at the expense of probity and ethics. There is temptation, especially by brokers, to try and pocket some of the proceeds of insurance which they are supposed to send to insurance companies. It is important that we introduce penalties in this Bill to curb fraud, especially now that we are introducing agricultural insurance. A while ago, we used to have lawyers known as “ambulance chasers”. Their work was to run around and get accident victims to represent in court. That seems to be far gone, but when we bring in insurance for our farm produce, farms and livestock, we may also get farm chasers. So, definitely, we must have penalties for people who flout the law regarding insurance. It is vitally important that we comply with international standards; especially the International Association of Insurance Supervisors, which governs insurance contracts internationally. Kenya is part of the international community. Our laws are supposed to conform to international standards. That is why the Committee has done a fantastic job to harmonise the laws.

With those remarks, I support. I submit that when it comes to the Committee stage, we will look at the proposed amendments to see whether they are valid or not.

Thank you, Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Let us have Hon. Nyikal Wambura.

**Hon. (Dr.) James Nyikal** (Seme, ODM): Thank you, Hon. Temporary Deputy Speaker. May I also take this opportunity to congratulate you. You have done a great job for the country.

I support the Bill. As the Memorandum of the Bill indicates, it is trying to reduce fraud and make sure that similar crimes do not become rampant and hinder business of insurance. The Bill is more far reaching than that. It introduces index-based insurance. To me, it looks doubtful. Index-based insurance, to some extent, will hinder payments that otherwise insured persons would have got unless it is now triggered by the indices that are not so far clear in the Bill. Probably, it is clear in the industry. But it looks to me like if an insurer has admitted liability, ordinarily, the insured would get their dues. It looks like when we take this direction, that will not be the case.

However, there are some parts of it that I think are good for the industry. A clear definition of insurance fraud is extremely important in the industry. In some industries like health, fraud has literally made it impossible for insurance to operate and for people who deserve health cover to get it. People may think that when they defraud and get services that they should not get, or get payments that are not deserved by the service providers, they are making some gains. In fact, they are killing a service that is important. To that extent, I support the Bill.

The Bill also introduces micro insurance. This is important. Like many other finance-based services, insurance has been a preserve of the rich. If we bring it to a level where people with limited resources can also get access to it, that is extremely important. But I am worried that we will have to look at it in the Committee of the whole House to see what “insurance index” means because it may take away the advantage that micro insurance brings in.

I also notice that this Bill gives the commissioner a lot of powers. As it may be good, I am also concerned that the power may be too much. In most cases, what would have been done by the minister is now being given to the commissioner. That is good in terms of independence, but we also need to have some checks and balances. Again, when we come to the Committee of the whole House, we will look at that aspect.

Clause 17 of the Bill deals with the issue of orders, which was with the approval of the minister before. Now the Cabinet Secretary's approval is not required. The commissioner can issue orders on what should be done to persons who are being investigated or how they should be handled.

Again, it may give autonomy and make work faster, but it may also bring a lot of authority on the commissioner, which if there are no checks and balances, may again be misused. You will see the same on approval of registration. This now goes directly to the authority and removes the need for the approval by the Cabinet Secretary. Even approval of deposits and the power of giving deposits has been removed. Even the refund where somebody ceases to run the business of insurance and seeks back his deposit, that goes to the authority. This is good if the authority works well and we hope it will. Again, one starts to worry that we may have removed a lot of checks and balances that were in place.

The main contention in this Bill, and this is the main point that I will make, was the issue the insurers had with the brokers. If you look at the amendment to Section 156, Clause 10, it says no insurer shall assume a risk in Kenya in respect of insurance business unless and until the premium payable thereon is received by the insurer. Absolutely, you do not need a broker. You need to go directly and make payment because if and until they receive the money, you do not have any cover and there is no point of having the brokers.

Under Clause 10(2), an intermediary shall not receive any premiums on behalf of an insurer. If they are not receiving any payments and even if they do, the insurer will not take any responsibility until that is received. Do you need the intermediary? The question that was in this is whether we need the intermediaries at all. It goes on in 2, 3, and 4 to prescribe penalties for that. In my view, that was not desirable. I must congratulate the Committee for looking at that and in the amendments that they will bring we hope we will cure that.

There was an element of payment of the brokers by the insurer. While I thought that would be okay, the arguments they have had is that within 30 days, the insurer will pay the intermediary. I do not see a problem with that, but there seems to be an issue. We will look at it when the time comes. That looks reasonable to me. My worry, as I said earlier, is this issue of index-based insurance. We have to look at it carefully. If you are looking at payment particularly in micro-insurance that have been introduced, it is close to this index-based insurance. I am concerned that we may be giving it with one hand and taking away with the other.

I appreciate that perhaps when the main Act was being promulgated, the writers of the Act and the Legislature then may have been tired because in Section 204, they just said that in case of dispute, the Director of Public Prosecutions (DPP) will appoint a prosecutor and left it at that. This Bill states clearly how this matter shall be handled. Then the rest of it is prescribing penalties. We will look at the penalties, but it is important that any issues that deal with fraud, and seem to be detrimental to the insurance industry must be dealt with proper sanctions.

With that, I support the Bill.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): You will definitely have an opportunity in the next stage to prosecute all the issues you are raising. Let us have Hon. Wambugu Ngunjiri.

**Hon. Ngunjiri Wambugu** (Nyeri Town, JP): Thank you very much, Hon. Temporary Deputy Speaker. May I also take this opportunity to congratulate you for keeping our country moving forward. I rise to raise concerns with the Bill.

First and foremost, let me acknowledge the work the Committee has done by bringing this Bill. The Bill introduces some very useful products and services into the insurance industry.

Introduction of an index-based insurance is very important. The issue of structuring micro-insurance and giving it a platform and a structure is also very important. Of course, what seems to have been the fundamental objective was to reduce fraud.

I stand as a minority listening to what the other speakers have been saying. I have quite a problem with the issue of brokers keeping premiums. There is a very big difference between an insurer and a broker. An insurer undertakes to compensate a client in case of loss. A broker sells or advises clients on the most appropriate policies for the risks they have.

For insurers to do their work, for them to be effective and for us to reduce fraud, the insurers need to get the premiums for whatever risks they have undertaken to take before they offer a policy. I hear my colleagues arguing that if we get brokers not to deal with premiums, we are going to kill the industry. Brokers do not earn premiums, they earn commissions. If brokers were arguing that they should be allowed to hold their commissions and then pay the difference to the insurance company, I would have no problem. What I have seen as a problem is where the brokers argue that they should be allowed to hold the premiums while the insurer undertakes covers. They argue that they hold the premiums for 30 days. When you take an insurance policy, you are on cover the minute you get the contract, meaning that in case a loss happens that night or the next night, the insurance company has to pay you. First and foremost, I do not understand why the broker is holding premiums for 30 days because that money does not belong to him. It belongs to the insurance company.

Two, during this period when the broker is holding premiums, if a loss happens, the insurance company is obliged by law to pay the policy holder for that loss. However, the insurer has not received premiums for that policy since the premiums are still with the broker. This is my problem with this Bill. I am quite concerned. The initial Bill was fine as far I am concerned. The amendments I hear being proposed are my problem. The initial Bill said that an insurer would not go on cover until they have received their premiums. That makes sense because we need to distinguish between an insurer and a broker. We need to give the insurer what belongs to the insurer and give the broker what belongs to the broker. For the brokerage industry to argue that if they are not allowed to hold premiums, they will collapse is to confirm to us that the reason we are having a problem in the insurance industry is because brokers are retaining premiums. The work of a broker is to advise the client, give him a policy, take it to the insurer and earn his commission. I am hearing arguments saying that if the broker does not keep the premiums, the industry is going to collapse. That tells me where the problem is in this industry.

The problem in this industry is that brokers are holding premiums that belong to the insurance companies. In my opinion, I do not think it is good for this House to support a Bill that is basically making it legal for brokers to hold money that does not belong to them. As a House, we are passing a law that gives brokers authority to stay with money that does not belong to them for 30 days. Then we are telling the insurance companies that you have to take cover even if you have not been given the premium. We are hurting the insurance companies and that is part of the reason this country has less than 10 per cent insurance penetration. We are hurting the insurance companies because we are telling them... For example, if you take a policy like for this House of 400 Members, pay about Kshs100 million to a broker, you tell the broker to hold that money for 30 day, so he has a couple of million shillings in his account for 30 days which he can trade with or even go and buy a Government bond for 30 days. So, he traded with money that does not belong to him. Meanwhile, the insurance company has cover effective immediately, so that if a Member here has to go to hospital, the insurance company has to pay. However, they

have not received the premium. I think we are doing a great disservice to the insurance industry by passing a law like this.

I think what we need to do is to create direct structures that indicate that this is the work of an insurance company. Their work is to undertake compensation for losses. This is the work of a brokerage firm. Brokerage company's work is to advise. They get clients by giving the best advice. They do not make money by retaining premiums. The minute they retain premiums, they are hurting the insurance companies. They are weakening the insurance industry in the country. As far as I am concerned, I would not support the proposed amendments that are going to be brought by the Committee when they get back. I would strongly urge my colleagues to support the fact that we need to distinguish which money goes to who. Premiums need to go to insurance companies. I have not even heard anybody here talking about what brokers earn. When I listen to us speaking, I get the impression that we assume that brokers earn premiums. Brokers do not earn premiums. That money belongs to the insurance companies. That is the money that insurance companies collect so that they can give cover. If you are going to say that a broker can stay with that money for 30 days or for whatever number of days, then the insurance company has to take cover immediately, you are actually going against the basic natural laws of how insurance is supposed to work. It will be very sad if this House would endorse that kind of structure. What we will be doing is breaking a natural law of how the insurance industry is supposed to work. So, now I am stuck.

I do not know whether I need to support the Bill as it is. The Bill as it is, is fine. The proposed amendments I hear are coming are what I do not agree with. So, I do not know whether I should say I support this current Bill as it is and oppose the amendments by the Committee.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Hon. Ngunjiri, you are well within your rights and I think you are making some concrete suggestions and contributions to the Bill. You have an opportunity to engage the Committee and of course, at the next stage of the Bill, you will have more time to know where you stand. But you are within your rights.

Let us have Hon. Abuor Peter, Member for Rongo.

**Hon. Paul Abuor** (Rongo, ODM): Thank you, Hon. Temporary Deputy Speaker. My name is Hon. Paul Abuor, not Peter. I rise to support the Insurance (Amendment) Bill.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): What is your name again?

**Hon. Paul Abuor** (Rongo, ODM): Paul Abuor, not Peter.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Then clerks, you need to check on that. We have the wrong name here. It is well noted.

**Hon. Paul Abuor** (Rongo, ODM): Thank you, Hon. Temporary Deputy Speaker. I rise to support the Insurance (Amendment) Bill, which seeks to amend the Act by introducing legal provisions creating offences on insurance fraud. As we all know, fraud has been a very big challenge to the insurance industry. Recently, we had a case where someone working in the insurance company, took an insurance cover for a relative without the knowledge of the relative and went ahead and conspired to have the relative murdered just to gain compensation. Apart from that, we have seen a lot of people faking deaths. So, insurance fraud has been a challenge to the industry.

I support this Bill because Clause 10 of the amendment Bill makes changes to the Act by inserting a new Section 2 and 4. This section will go a long way in deterring people who want to commit fraud. If you commit an offence under the new Act, you will be liable to pay a fine which is 10 times the amount you have defrauded. Apart from the fine, whoever commits an

offence will be imprisoned for a term not exceeding five years. So, these proposed changes will go a long way in deterring people who want to commit fraud.

I also wish to comment on Clause 10, which seeks to amend Section 156 by replacing it with a new section concerning agents and brokers. From where I stand, this is a good amendment because agents and brokers have made people lose their claims. I have had a personal experience where I was driving a vehicle thinking that I was fully insured, but when I was involved in an accident and sought compensation, I realised that the agent had not remitted that money to the insurance company. So, I fully support the amendment in Clause 10 and say that once the Bill gets to the Committee of the whole House stage, I will seek to have that section retained the way it is in the proposed Act. The proposed amendment says that an intermediary shall not receive any premiums on behalf of the insurer.

With those few remarks, I support the Amendment Bill.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuyu): Hon. Member for Kwanza, Wanyonyi Kevin.

**Hon. Ferdinand Wanyonyi** (Kwanza, Ford-K): Thank you, Hon. Temporary Deputy Speaker for the opportunity. From the outset, I want to congratulate the Committee for coming up with this amendment in the Insurance Act. The amendments, in my opinion, will definitely bring some stability and sanity in the industry, which has not been doing very well. I am also impressed by the public participation in this amendment Bill which involved a number of big insurance companies, save for the fact that while it was happening, they did not include farmers. The Insurance (Amendment) Bill should have taken into account farmers. Given the climatic changes that we are experiencing the world over, we needed to have some amendments where farmers are involved. I am sure farmers are looking forward to having their products in the farms and in the dairy farming insured.

The Ministry of Agriculture, to the best of my knowledge, has had the opportunity to do pilot trials both in maize and livestock farming. So during public participation, the Committee lacked one thing; they should have included farmers. I am also happy that NHIF, which is a very big player in terms of ensuring Kenyans have good health should be regulated by the IRA. Again, this is something that has not come out very clearly. They should get NHIF involved so that they are regulated by IRA.

The brokers and so-called agents, to me, are advisers, and the previous speaker just mentioned that. We have realised that there is lack of discipline. There are brokers and agents who receive money and sit on the money until – as the previous speaker said – you find you have a problem. When you realise that the same man has done some shoddy job with insurance clerks and they have given you a fake insurance cover so that when you get into trouble they run away or start chasing things that are not workable. So, this amendment which says that you have to have the contract signed by various agents or brokers is something that I support wholly.

I had a case, as the previous speaker mentioned, where my vehicle was involved in an accident. It took me almost four months to have my vehicle fixed because the broker of the insurance company had not remitted the money I had paid despite my having received a receipt from the broker. So, the agents' and brokers' work should be cut out. They should be there to advise whoever wants to get insured, but they should not be involved in getting money. That should come out very clearly so that brokers' work is cut out and we know what they are supposed to do rather than assuming the work of the insurer and getting people into trouble.

Secondly, I want to agree with the amendment which says that if a broker does not within 30 days... During the Third Reading, I think we should talk about 10 days or less. Once a broker



or agent of an insurer has received money from whoever he has advised to get insurance... They are basically salesmen; they go looking for business. Once you pay, 30 days is too long. They can divert that money elsewhere, given the economy is now doing very badly. So, we should give them as less as 10 days within which they are supposed to have remitted the money to the insurer so that we do not have this problem. I think 30 days is too long. There is temptation of thinking you will get some money to replace that and then you realise you are not able to get the money within the 30 days and so the money is not remitted. You would find the person who looked for the insurance is actually at risk of losing the whole business. So 30 days are too many. We should give them a week. Once you get the money you should be able to remit it within a week.

The underwriters should be able to pay the so-called agents or brokers within the time the Committee has suggested, the 30 days, failure to which they should pay a penalty as well, so that brokers are also in business. I know of some young man who is a broker for some big insurance company and he has not been paid for six months yet he has been remitting money. So, 30 days for underwriters to be able to pay brokers is reasonable timeframe. If we do that and have discipline, the question of insurance, like some insurance companies going under because of relaxed rules of the game, will be a thing of the past. Therefore, there will be some sanity and certainty in the insurance industry rather than what we see today where insurance has problems because underwriters do not remit money and the insurance companies do not pay the insured. Given the dishonesty with brokers, we should be able to discipline them and have a proper way of doing insurance business. Otherwise, in the Third Reading we should be able to come up with amendments that will bring sanity in the insurance industry.

With those few remarks, I also want to congratulate you and thank you for coming back and making Kenya a bigger country than it was the other day.

*Asante sana.*

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Thank you Members for your kind words. We have no more interest registered. In that case, I call upon the Mover to reply. Hon. Ndirangu.

**Hon. Isaac Ndirangu** (Roysambu, JP): Thank you, Hon. Temporary Deputy Speaker. I want to thank the Members who have contributed to this Bill. I, specifically, want to thank the Member for Ruaraka, Hon. 'CJ'; Member for Tharaka, Hon. Murugara; Member for Seme, Hon. Nyikal; Hon. Ferdinand Wanyonyi; and the Member for Nyeri Town, my home constituency, and any other Member.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Hon. Ndirangu, did you say Hon. 'CJ'? That needs to be clear.

**Hon. Isaac Ndirangu** (Roysambu, JP): Hon. TJ, Hon. Temporary Deputy Speaker. In the backstreet we call him "CJ".

I also want to thank the secretariat which worked day and night and all members of the Departmental Committee on Finance and National Planning for working round the clock to make sure that this Bill is completed and presented to this House. I invite Members to also support our amendments during the Third Reading of this Bill.

I want to hail this particular Bill because it introduces index-based insurance which will require an insurer to make payment to a policyholder without the need for an actual assessment of the loss once they have agreed at the time of taking such a cover. This will enable insurers to provide coverage based on a particular index, such as rainfall or crop insurance and foliage in the

case of livestock insurance. Such insurance will protect farmers from poor crop yields and from the vagaries of weather. Rainfall is quite erratic these days.

Currently, policyholders are required, at the maturity of policy terms, to publish in the *Kenya Gazette* where policy document is lost before they can be compensated. This leads to delayed settlement of claims and reduced benefits to the policyholder, especially where the amount claimed is relatively low. So this Bill, in order to address the situation, seeks to remove this requirement and replace it with swearing of an affidavit by the claimant. This will facilitate expeditious settlement of claims and protection of the policyholder's benefits.

As I close my reply, I wish to also recognise and thank the Speaker who was in the Chair before you for welcoming the land and freedom fighters who were seated in the Speaker's Gallery and to hail them for working tirelessly during the freedom struggle.

Recently, when the Head of State was awarding honours and national commendation, he also honoured the widow of Field Marshal Dedan Kimathi. I have also learnt that recently the Government of Theresa May released the papers for prosecution of the late Field Marshal Dedan Kimathi and are now with the Judiciary. I am making an appeal to His Excellency the President of the Republic of Kenya....

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Hon. Ndirangu, are you replying or you have moved to something else?

**Hon. Isaac Ndirangu** (Roysambu, JP): I am replying. I am just making this note because our freedom fighters are sitting in the Galleries and I wish to thank them.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): That becomes very confusing.

**Hon. Isaac Ndirangu** (Roysambu, JP): Hon. Temporary Deputy Speaker, I am appealing to the Head of State, being the Commander in Chief of the Kenyan Defence Forces, to ensure that within his term, the remains of Dedan Kimathi Waciuri are recovered from his graveside in Kamiti Maximum Prison so that his widow can pay last respect to her husband.

With those few remarks, I reply.

I also request you to invoke Standing Order No.53 and defer putting of the Question to this Bill until our next sitting when we have quorum.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Okay. Fair enough, Hon. Ndirangu. I, thereby, defer putting the Question on this Bill until such time as the House Business Committee will bring it up for business.

*(Putting of the Question deferred)*

Next Order.

### *Second Reading*

#### THE SPORTS (AMENDMENT) BILL

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Hon. Munyaka.

**Hon. (Dr.) Victor Munyaka** (Machakos Town, JP): Thank you, Hon. Temporary Deputy Speaker. I seek your indulgence because the Committee is actually retreating this weekend so that we can finish up with the report which will be tabled on Tuesday. We have talked with the

Leader of the Majority Party so that we can have the Bill in the Order Paper by Thursday next week.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Fair enough Hon. Munyaka.

*(Second Reading of the Sports (Amendment) Bill deferred)*

Next Order.

*Second Reading*

THE NATIONAL FLAG, EMBLEMS AND NAMES (AMENDMENT)  
BILL (SENATE BILL NO.8 OF 2017)

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Chair, Departmental Committee on Administration and National Security.

**Hon. Paul Koinange** (Kiambaa, JP): Hon. Temporary Deputy Speaker, I beg to move that the Report on the National Flag, Emblems and Names (Amendment) Bill, Senate Bill No.8 of 2017, laid on the Floor of the House on Wednesday 14<sup>th</sup> November 2018, be now read a Second Time.

Hon. Temporary Deputy Speaker, this report contains the Committee's proceedings during the consideration of the National Flag, Emblems and Names (Amendment) Bill, Senate Bill No.8 of 2017. With regard to participation, the Committee wishes to confirm that the Clerk published an advertisement on print media inviting members of the public to present submissions and memoranda on the National Flag, Emblems and Names (Amendment) Bill, Senate Bill No.8 of 2017. The Committee having considered this Bill will be proposing amendments. In consideration of the Bill, the Committee recommends the following:

One, there is need to only limit the flying of the flag to substantive office holders as provided for under Section 4(a)(ii) of the Act. The Committee observes that the office holders listed in the Bill, that is, the Deputy Speaker of the Senate, the Deputy Speaker of the National Assembly and the Deputy Chief Justice deputise the substantive office holders. In the perspective therefore, they only exercise the authority of the office holder in the absence of the substantive office holder.

Two, there is need to limit persons authorised to fly the flag, other than the President, to fly only one flag at any given time.

Three, there is need to allow Kenyans to fly the flag during national holidays, at business premises, residential places and on a motor vehicle as a sign of patriotism if they so wish.

Hon. Temporary Deputy Speaker. We should respect our symbols of national unity including our emblems, flags and national anthem because these symbols epitomise our freedom; freedom for which our forefathers shed blood; freedom for which some of us suffered as children and freedom that we must guard jealously. By respecting the national flag and other symbols, we pay tribute to the sacrifices and struggles that our freedom fighters made in order for us to reach where we are today as a nation. Whatever these national symbols stand for was written using our freedom fighters' lives.

The flag symbolises us as one people and one nation. We should treat our national flag with much more respect than we are currently doing. I pray that we will avoid flying the national

flag at night whenever. The stated issues shall be brought by the Committee as amendments to the Bill when it comes to the Third Reading.

With those few remarks, I beg to move and call upon. Hon. Kaunya to second. Thank you.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Let us have Hon. Kaunya.

**Hon. Oku Kaunya** (Teso North, ANC): Thank you, Hon. Temporary Deputy Speaker. I second the National Flag, Emblems and Names (Amendment) Bill, Senate Bill No.8 of 2017. As has been indicated, this Bill has the main purpose of allowing members of the public to fly national flags in their places of residence, work and businesses, and for other connected purposes. It is an amendment to the National Flag, Emblems and Names Act. Some of the highlights, as has been indicated, are under Sections 2 and 3 which focus on the change of the use of the word “Cabinet Secretary” from the “Minister.”

The second major amendment is New Section 4B which is to provide for flying the flag in private residences during holidays because flags are flown during national holidays. In the past, flags were flown in official places, shopping centres and other public places. This particular amendment now includes flying flags at home or other places, but this will be regulated according to this amendment.

The flag is mainly a sign of national unity and patriotism. In the past, flying flags at home or private places was not provided for. Therefore, this Bill seeks to promote patriotism; the feeling of pride of our nation. This to a large extent, in other nationalities, is expressed whenever they have occasions of national importance. For private use it will be regulated and that is what is provided for in New Section 4B, that the Cabinet Secretary may make rules in the display of the national flag.

As you are aware, the offices allowed to fly the flag have specifications for the particular flag to be flown. These specifications will be in the rules that the CS will set. The size of the flag will be specified and the place it can be flown. This amendment to this section seeks to specify which rules, what type and size of national flag can be flown and where.

The other part of the amendment in Section 5 of Cap 99 of the National Flag, Emblems and Names Act seeks deletion of the words ‘local authorities’. This term was used before the new Constitution was promulgated. Currently, that is to be replaced with the words ‘county government’. The final part is Sections 8 and 9 which are seeking replacement of the word ‘Minister’ with ‘Cabinet Secretary’ in line with our new constitutional titles.

Considering the fact that the flag also has other roles apart from patriotism, a certain designation of a flag symbolises some authority and that is why we have the Speaker of the National Assembly and that of the Senate, and certain offices designated in this Act flying the flag. It is a symbol of unity and authority given to those who are responsible for those offices. So, I stand to second these amendments because they will clarify and provide for regulated use of the flag and it opens up opportunities for citizens to express their patriotism.

Thank you, Hon. Temporary Deputy Speaker, I second.

*(Question proposed)*

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): I see very minimal interest, maybe because of the forthrightness and size of the Bill. Let us have Hon. Millie Odhiambo.

**Hon. (Ms.) Odhiambo-Mabona** (Suba North, ODM): Thank you, Hon. Temporary Deputy Speaker. I want to thank the Chair of the Committee for the proposed amendments. I was just having an informal discussion with the Chair because I generally have a totally different view on the issue of national flags and emblems.

It is just that today I had a bit of challenge in the morning because of some medical crisis which did not end well. Therefore, I was not able to adorn what I have been adorning the whole week, which is a flag on my head. I was wearing something which in my mother tongue is known as *aligisa* which is an emblem of leadership. But, the one I was wearing has the Kenyan flag. If you travel to countries like United States of America (USA), people are very proud of their flag. It is a symbol of patriotism, love and unity.

Unfortunately, in Kenya because of the way we have misused power, people tend to associate the flag with power and authority. That is why you see governors have their county flags and they also want to fly the national flag as a symbol of authority and power. How I wish we would start seeing the flag as a symbol of patriotism and unity so that everybody can fly it! My suggestion is totally outrageous, that everybody should fly the flag because it is something we should be proud about.

We should be adorning our flag when we come here and making dresses of it, if we love our country. However, I guess the reason why sometimes people do not see this is because of how the symbol of authority associated with the flag has been used. We have seen people who are given authority of the flag misusing and abusing it. That is why even today there is a decision in the court that is holding some officers accountable because they killed baby Pendo, they misused the flag.

I think this is an example which everybody needs to know, that even when you have that authority, you need to use it to serve the people and not to step on them because when you have that authority it is for a short time. It is donated by the public and we need to start inculcating that in us. For me, I think we are splitting hairs on things we should not, on whether the governors should fly national flag or not. It is either that we should all fly it or not because it is a unifying factor.

With those few remarks, I will reserve my comments. I do not want to say whether I support it or not because my ideology about it is outrageous. However, I think that sometimes what is sober is what sounds outrageous. So, I think this is a more sober approach. Let us love our flag and country.

Thank you, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Well said, Hon. Millie. Let us have Hon. Mbarire.

**Hon. (Ms.) Cecily Mbarire** (Nominated, JP): Thank you, Hon. Temporary Deputy Speaker. First let me congratulate and welcome you back to the Chair and this House, we are proud to have you back.

I want to add my voice to what Hon. Millie Odhiambo has said. There is an extent to which a nation shows patriotism and pride in being who they are through adorning the national flag.

If you look at most nations, especially on important national days or a major event that brings the nation together, like a sporting activity or some big event, they pride themselves and stand out by adorning their national flag. I know that we have come from a past where there was a lot of dictatorship, and harboured the belief that the national flag is untouchable. It is like it belongs to those who are in power and not to ordinary Kenyans or the citizenry, who are the real

Kenyans. So, I would want a situation where we begin to get away from that attitude and allow ourselves to pride ourselves of our country using our national flag. How I wish we would have a situation where we are going to watch matches at Kasarani and everybody is holding the national flag or wraps oneself with apparel bearing the national flag, as long as it is not being used for the wrong reason! I think we have reached there as a nation. We have come a long way in terms of our democratic growth. I think it is now time we allowed Kenyans to enjoy themselves for being Kenyans. I think there will be those national flags like the one flown by the President, the Cabinet Secretaries, the Deputy President and the Speakers of the National Assembly and the Senate but there is another type of Kenyan flag that every Kenyan should feel proud of. People should be allowed to even fly it outside their houses. I see that in the United States of America. Bringing it closer home, I see it in South Africa. You find that the citizens of those countries are extremely proud of their countries and they are very patriotic. Maybe it is time to begin creating that kind of unity amongst our citizens so that everybody can feel that a piece of Kenya belongs to them. This country belongs to all of us. I think that will help in creating national unity.

With those few remarks, I beg to support but request that at the appropriate time, the Committee should consider giving that opportunity to Kenyans to show their patriotism through the national flag.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Well said, Hon. Mbarire. Let us have Hon. Kevin Wanyonyi, Member for Kwanza.

**Hon. Ferdinand Wanyonyi** (Kwanza, FORD-K): Thank you, Hon. Temporary Deputy Speaker. I think this is something we all have to be proud of. In those days when I used to go to primary school – and I agree with Hon. Mbarire – on Fridays, you would see the national flag flying. Recently, I went to a school and I was honoured when the head teacher requested the pupils to sing the national anthem. I was disappointed as a Kenyan. I was very disappointed that the pupils could not sing our national anthem. As it was fading towards the end, they could not even finish singing it. Therefore, it is good to be proud to be Kenyans. As a Kenyan, I want to say that the national flag was meant to bring unity amongst the diverse ethnic communities of this country. Therefore, I ask the Chair to get this to the Ministry of Education: that, school children should be able to sing our national anthem, for heaven's sake, to bring people together. I am sure when adults like you and I hear our national anthem being sang somewhere in a function, like at Kasarani Stadium, as the previous speaker said, and when our athletes actually do us proud out there and you hear it, you feel proud. What astonished me is that our own children cannot sing our national anthem, leave alone enjoying the national flag.

Therefore, I agree that on national holidays, Kenyans should be free to fly the national flag. However, that has limitation. If we do not have limitation, people will misuse it and abuse our patriotism. Therefore, strictly on national holidays, let it be free. People can do what they want to do. They can fly the national flag. I will be proud to see people on the road and on *matatus* fly the national flag regardless of where they are going. That is okay. I will put the national flag on my house. That is okay. However, let us not go beyond that because we will not be able to identify where a government building is. This is because government buildings are supposed to host the national flag. That is the rule of the day.

Therefore, on this particular day, I agree that we actually fly our national flags. We are proud to see that. I think it is okay but let us limit that to people who can fly the national flags. As contained in the proposal, we have the Speaker of the National Assembly and the Speaker of the Senate. I do not know about their deputies, and I will not agree because that is one sign of us having it abused. I do not know about the Deputy Speaker. I have no disrespect for anybody.

Who knows who is what? What is the difference between the Speaker and the Deputy Speaker? Some people are likely to use it for the wrong reasons.

Therefore, I agree and I support this amendment. Flying the national flag on the national holidays will make us proud. I was in South Africa and I saw that. Recently, I saw China was having a national holiday in this country. They did not work. I know the Chinese work very hard; they work for 24 hours in a day. On that particular day, their national day, the Chinese did not work despite the fact that they work very hard for 24 hours a day. I can tell you they were flying their national flag in this country. Let us support this amendment. Our children and grandchildren should be able to sing the national anthem as well.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Well said. You seem to be having quite some radical proposals around this one. I think in the next stage, we might be having an overhaul but I am sure the Chair is listening keenly, and I think the contributions are very well placed.

Next is Hon. Ndirangu.

**Hon. Isaac Ndirangu** (Roysambu, JP): Hon. Temporary Deputy Speaker, I think this is a more appropriate time for me to talk about the freedom fighters, thinking about our Independence and our Independence heroes who graced Parliament Buildings and the Speaker's Gallery in the National Assembly. As we pass this Bill, I want to make a passionate appeal to the President of this Republic to do what his predecessors were unable to do. We had President Kenyatta, the founding father of this nation. We had retired President Moi and retired President Kibaki. None of them ordered a decent burial for the remains of our fallen hero, Field Marshal Dedan Kimathi Waciuri. I make this passionate appeal because the remains of Dedan Kimathi are buried somewhere in my constituency, at Kamiti Maximum Prison.

The greatest wish of Mrs. Mukami Kimathi, the widow of the deceased field marshal, is to bid a peaceful farewell to the remains of her husband. We thank the President because he awarded honours to the widow recently, recognised her in one of the national days and invited her to State House. Former presidents acknowledged her contribution. She has been honoured, respected and even assisted together with her family.

Hon. Temporary Deputy Speaker, what does it cost the Government of Kenya to respect and honour Field Marshal Dedan Kimathi? Do we have the resources and capacity to go and check the spot where he was buried? Do we have the sovereignty to engage the Government of the United Kingdom (UK) to show us the spot where they buried Mr. Kimathi? The red colour in our flag talks about the blood that was shed during the fight for Independence. I am talking to the President because Field Marshal Dedan Kimathi occupied a similar position in the land defence forces that liberated this country. His Excellency the President is also the Commander-in-Chief of the Kenya Defence Forces (KDF) of this country. These are almost similar positions. I plead with him to do what all the other former presidents were unable to do and give Mr. Kimathi a decent burial.

Sometimes, I feel like going to crash the gates of Kamiti Prison and personally trace the remains of Mr. Dedan Kimathi. I also hail from Nyeri County where I was born and brought up. The uncle I am named after was one of the young security personnel who was working with Mr. Dedan Kimathi. He also perished in the war. I plead with the President when he is in office to do this country the honourable thing of ordering the remains of Mr. Kimathi to be given a State burial in the State triangle. If we cannot bury him in this Parliament or the Heroes Corner, his home in Karunaini, Nyeri, is still available. His ancestral land is still available. He still remains our hero.

With those few remarks, I support this Bill.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Member for Kibwezi West, Hon. Musimba.

**Hon. (Dr.) Patrick Musimba** (Kibwezi West, Independent): Thank you, Hon. Temporary Deputy Speaker. At the outset, I want to support this Bill in its form and content. The national flag remains a huge symbol for us. It rekindles the moments in 1963, although we all watch them in documentaries. When you look at the faces of the people as the Union Jack was being lowered and the Kenyan flag was raised after a long struggle that went through the emergency period, this remains a symbol that needs to be at the heart of every Kenyan. As we look at our great nation, its essence, power and above all what God has bestowed upon us which are great blessings, we need to all have great ownership of our flag.

Most countries take this for granted. From the time of the Ottoman, their flag has remained a symbol of bringing people together, direction and hope. It is one of those things in this 21<sup>st</sup> Century that the only place where we all stand at 6.00 p.m. in the evening when our national flag is lowered is in our police stations. This needs to be a moment that every single Kenyan upholds. The national anthem needs to be sung in the morning at the start of national radios in remembrance of what our great flag portends to all us, which is the sacrifice of our forefathers, those who have come before us and those who stand here. Our able friend talked about the sacrifices that many people endured in life. We need to remember all of them. We do this ably during the national holidays. My call which is within the Bill is that the flag needs to be with all of us and held with great reverence. As our KDF are fighting in Somalia and in far flung places and as our people and soldiers are executing their duties all over the world to protect humanity and the values that we stand for, the Kenyan flag remains an emblem. As much as we are giving it to our governors to put in their vehicles and we want our State officials to uphold it, we need to always remember that the foundation of our flag is one of sacrifice. This nation needs to move and grow.

*[The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya) left the Chair]*

*[The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu) took the Chair]*

In our parliamentary Standing Orders, our prayers before a sitting ought to change and become the national anthem in reverence of our national flag. It is a prayer that upholds each of us, binds and reminds us of our call to duty as each individual Kenyan and our call towards patriotism and what we need to give back to this great nation. This august House remains the epitome of that sacrifice in the modern times. Members of Parliament come here through a rigorous democratic process, so that we keep upholding the spirit, law and letter of what we stand for, and more importantly build a foundation for future generations that will come. We need to keep seeing beyond 100 years. That is why men like Mr. Dedan Kimathi and others laid their lives on the line. They did not do it for their individual families because their families bled for them on a day to day basis. They did it for greater generations of Kenyans who are currently at 45 million but we have moved past a 100 million mark if you talk about all the births which have taken place. As we espouse and reflect upon this great Bill, we need to look at the emblems of Kenya like our coat of arms which is above the Hon. Temporary Deputy Speaker. This remains a loud symbol that each of us should uphold strongly. As we wear the lapels which are



in honour of all these great sacrifices and in the context of our Bills, we need to go through and say what is good for this great nation.

As we even move forward towards our East African integration and embracing the national anthem and those symbols of their flags, it has to be on the basis of a foundation. We know it is a great journey which we have walked and we will continue to walk. We want to look at our visions like Vision 2030 and build our political, economic and social pillars. This has to remain a profound thing for each of us, so that these symbols do not just become a passage of time but become an epitome. I heard a question on whether the Deputy Governors should fly the flags. We should allow them. It is how you reverence our flag. Our military holds its flags dearly. Look at the march-past like the one which was ably unveiled by His Excellency the President on 12<sup>th</sup> December last year during our national celebrations. It was an elaborate exercise which ought to be repeated over and over again in all our institutions, parastatals and county governments. In all our places, we ought to treat the national flag with the greatest reverence possible.

As I close my remarks, I echo to all Kenyans in the country and all over the world to please uphold our flag with the greatest dignity because it is, indeed, our symbol wherever we go.

May God bless Kenya and may He bless this House as we continue to serve. Thank you, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Well said, Member for Kibwezi West.

Hon. Mulyungi, I saw your request.

**Hon. Gideon Mulyungi** (Mwingi Central, WDM-K): Thank you, Temporary Deputy Speaker. I rise to support the National Flag and Emblems (Amendment) Bill.

The national flag is a symbol of unity and ownership. We all own it and we identify ourselves with it wherever we go all over the world. It is our pride and our symbol.

I feel the amendments in the Bill are long overdue. When I look through the Bill, I realise that some clauses are inconsistent with the Constitution of Kenya. It is time we aligned them with the Constitution. I see the title “Minister” being used as opposed to “Cabinet Secretary”.

I support the amendments and, indeed, if it were possible, every Kenyan - if it will not cause confusion - should be allowed to fly the national flag on their cars to show patriotism. In that spirit, and I am sure it has been going on, every school and every public institution should maintain a national flag to display during national events and holidays.

I support.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Hon. Members, there being no any expression of interest to speak to the National Flag, Emblems and Names (Amendment) Bill, Senate Bill No.8 of 2017, I therefore call upon the Mover to reply.

**Hon. Paul Koinange** (Kiambaa, JP): Hon. Temporary Deputy Speaker, I beg to reply.

I thank Hon. Members. There were quite a number of concerns raised by Hon. Members. However, some restrictions are very important for security reasons because there are people who would like to use the national flag for reasons which are not good for this country. Some people use the flag in demonstrations to the extent of burning it in a way to say no to the State which is very wrong. We also know there are groups like the *Al Shabaab* which would like to use the flag of this nation against the sovereignty of this country. That is why it is important to restrict the flying of the flag to people who are rightly supposed to fly it.

I support the sentiments aired by Hon. Waihenya regarding Dedan Kimathi. I am sure when the time comes what has not been done will be done for the family and that will also be good for the freedom fighters.

Thank you, Hon. Temporary Deputy Speaker. With those few words, I request that you invoke Standing Order No. 53 (3) because we do not have enough people right now.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): As much as you invite me to use the Standing Order, we do not use the word “people” in the House. We refer to them as Hon. Members.

Hon. Members, guided by our Standing Orders and as requested by the Chairperson, the Mover, I am not in a position to put the Question. I order that the Question to the National Flag, Emblems and Names (Amendment) Bill, Senate Bill No.8 of 2017 be put at the next sitting as it will be slotted in our Order Paper.

*(Putting of the Question deferred)*

Next Order.

*Second Reading*

THE COUNTY GOVERNMENTS (AMENDMENT)  
NO.2 BILL, SENATE BILL NO.7 OF 2017

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Chairperson Departmental Committee on Administration and National Security.

**Hon. Paul Koinange** (Kiambaa, JP): Hon. Temporary Deputy Speaker, I request that because of the way we are, we move it to Tuesday.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Is it because you are not ready or is it the way we are? How are we?

**Hon. Paul Koinange** (Kiambaa, JP): I am not ready.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Thank you.

**Hon. Paul Koinange** (Kiambaa, JP): Most obliged.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Following the request from the Chairperson, and of course to the effect he will move it when he will be ready, I order that Order No.13 be stood down.

*(Bill deferred)*

Next Order.

*Second Reading*

THE PHARMACY AND POISONS (AMENDMENT) BILL

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Chairperson, Departmental Committee on Health.

**Hon. (Ms.) Cecily Mbarire** (Nominated, JP): Hon. Temporary Deputy Speaker, I wish to request that you step down this particular Order because the Chair of the Committee is not here and the Committee itself is not ready until the next allotted day.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): That is advice from the Deputy Whip of the Majority Party of the National Assembly, Hon. Cecily Mbarire. Due to the commitment of the Chairperson of the Departmental Committee on Health, and I am sure dictated by the standing down of Order No.13, I order that Order No.14 be stood down.

*(Bill deferred)*

### ADJOURNMENT

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Hon. Members, there being no other business in our Order Paper today, and the time being 5.38 p.m., the House stands adjourned until Tuesday, 19<sup>th</sup> February 2019, at 2.30 p.m.

Thank you, and I wish you a nice Valentine.

The House rose at 5.38 p.m.