

# PARLIAMENT OF KENYA

## THE SENATE

## THE HANSARD

Wednesday, 29<sup>th</sup> May, 2019

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

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

### PRAYER

### COMMUNICATION FROM THE CHAIR

VISITING DELEGATION FROM KANGARU GIRLS  
HIGH SCHOOL, EMBU COUNTY

**The Speaker** (Hon. Lusaka): Hon. Senators, I would like to acknowledge the presence in the Public Gallery this afternoon of visiting students and teachers from Kangaru Girls High School in Embu County.

In our usual tradition of receiving and welcoming visitors to Parliament, I extend a warm welcome to them. On behalf of the Senate and my own behalf, I welcome and wish them a fruitful visit.

I thank you.

*(Applause)*

Kindly proceed Sen. (Dr.) Zani.

**Sen. (Dr.) Zani:** Mr. Speaker, Sir, I join you in welcoming Kangaru Girls High School to the Senate of Kenya. As they might know, we are in a bicameral system now where we have the National Assembly and the Senate. The Senate debates various issues touching on the counties. We are the guardian angels of the counties. We take care of the interests of the counties regarding various issues.

I am just from a meeting of the Committee on Tourism, Trade and Industrialization where we were looking at a Bill that has been sponsored by Sen. Nyamunga that is looking into the formation of regional economic blocs, authorities and bodies to form more impactful blocs in terms of economic outcomes and resources. We are keen to ensure that devolution works by ensuring that the social and economic advantages that are there and should be there for all Kenyans get to them.

Mr. Speaker, Sir, we process various Bills, some of which include the Public Participation Bill (Senate Bills No.4 of 2018). We are keen on strengthening the counties by making amendments to various Bills to ensure that counties run. We look into the affairs of the counties to ensure that the resources that they get are utilized well. We ensure that enough resources go to the counties. At the moment, we are looking at the Division of Revenue Bill (National Assembly Bills No. 11 of 2019) through a mediation process to ensure that the money that goes to the counties is increased.

As young girls, I urge you to take leadership seriously. More women are making changes in the lives of people in their communities. I know you are hardworking young ladies. We wish you well as the Senate. Make yourselves proud as the women of Kenya.

I thank you.

**Sen. (Prof.) Onger:** Mr. Speaker, Sir, I join you in welcoming the students and teachers from Kangaru Girls High School. You are in a proper place at the proper time. Learning is an experience and a process. In my previous position as the Minister for Education, I have known Kangaru Girls High School because they used to perform very well. I hope that they continue performing well.

You are welcome here to see the Senate at work particularly how we process the Bills that relate to devolution. The Senate ensures that the resources that flow to the county governments are properly used. You are always an interface between yourselves and the family units at home. Therefore, when you go home, you can tell them what happens in the Senate. You can explain to them some of the things that may appear complex.

Mr. Speaker, Sir, I welcome Kangaru Girls High School here and look forward to seeing more of them even if it is not in this place but in high places in the national Government or the county governments.

I thank you.

**Sen. Seneta:** Mr. Speaker, Sir, I join you in welcoming the girls from Embu County to this House. I wish them a fruitful visit. As my fellow colleagues have said, the Senate transacts business in the form of Bills, Motions, Statements and policies that affect county governments which are our smallest units. I wish them all the best and hope that they take their studies seriously. They should also take leadership very seriously even in the smallest levels that they hold such as school captains or student leaders. The girls should take their responsibilities seriously by giving direction on issues that can help their school, communities and the country at large.

I thank you.

**Sen. Pareno:** Mr. Speaker, Sir, I join you in welcoming Kangaru Girls High School. We used to hear about Kangaru Girls High School when we were in secondary school. We all hoped that we would join Kangaru Girls High School but ended up in different schools. I am happy that they are here today. I am sure that they are here to learn about leadership and Parliament; particularly the Senate. Please, pick out what you can learn and promise yourself that one day, you will be somebody in this country. Whatever you learn today will be of help to you.

I thank the administration of Kangaru Girls High School for deeming it fit to bring the girls here to see how the Senate works. I welcome them and wish them well.

**The Speaker** (Hon. Lusaka): Next Order.

### PETITION

#### REPORT ON PETITION: INSECURITY CAUSED BY CAMEL HERDERS IN TERI B RANCH, TAITA-TAVETA COUNTY

**Sen. Sakaja:** Mr. Speaker, Sir, I join you in welcoming Kangaru Girls High School.

I beg to lay the following Report of a petition on the Table of the Senate, today, Wednesday, 29<sup>th</sup> May, 2019.

This is a report by the Standing Committee on National Security, Defence and Foreign Relations on the consideration of the Petition on insecurity caused by camel herders in Teri B Ranch, Taita Taveta County. My Committee visited the area and came up with this report.

I thank you.

**The Speaker** (Hon. Lusaka): What is it, Sen. Mutula Kilonzo Jnr.?

**Sen. Mutula Kilonzo Jnr.:** On a point of order, Mr. Speaker, Sir. The rules of this House allow the Chairperson with your leave to highlight the salient issues in the Report. The issue about camel herding not only affect Taita-Taveta County. They affect my colleague and friend from Kitui County. The salient issues that they have identified are cross-cutting and can be addressed to the nation and not only Taita-Taveta County. There are many people who are finding it very difficult to deal with camel herders.

**The Speaker** (Hon. Lusaka): Kindly, proceed, Sen. Mwaruma.

**Sen. Mwaruma:** Mr. Speaker, Sir, I thank you for giving me the opportunity to contribute to the petition by the residents of Teri B Ranch. The petition was brought through me, and I am happy that the Committee on National Security, Defence and Foreign Relations has worked expeditiously to look at the issues that were raised by the residents of Teri B Ranch.

I must say that I have not read the Report. Apart from the fact that the Committee on National Security, Defence and Foreign Relations visited the residents of Teri B Ranch, I have not been invited to any other meeting to look into the matter. I expected them to invite the Committee in charge of security in Taita-Taveta County to inquire why there has not been any prosecution despite the fact that people have lost lives and others maimed. It just confirms my fears that the people who are herding and causing insecurity in that region of Taita-Taveta County could be above the law and are protected by the law.

Mr. Speaker, sir, I will not comment so much on this Report. I will look at the recommendations raised by the Committee. If they will not be satisfactory, I will request the Senate to look into the issues into details. As Sen. Mutula Kilonzo Jnr. has correctly put it, the issue of camel herders does not only affect Taita-Taveta County but other counties like Kitui.

**The Speaker** (Hon. Lusaka): I can see the Chairperson of the Committee on National Security, Defence and Foreign Relations reading the Report now. Therefore, in

line with what Sen. Mutula Kilonzo Jnr. has said, you will get a copy of the Report then we can reschedule the reporting on the petition to tomorrow.

**Sen. Sakaja:** Mr. Speaker, Sir, that is in order. Sen. Mwaruma can confirm that I personally went to meet the residents of Teri B Ranch. I interacted with the people there and heard their issues. I have stayed in touch with the new county police boss and our recommendations are far-reaching. Once these recommendations are adopted by the House, they will no longer be just an opinion of the Committee but a resolution of the Senate of the Republic of Kenya not just on Taita-Taveta County but all the areas that are faced with the issues of ranchers versus the herders and farmers. I will be very happy to give a brief summary tomorrow as directed by the Chair.

## COMMUNICATIONS FROM THE CHAIR

### VISITING DELEGATION OF STUDENT LEADERS FROM THE UNIVERSITY OF ELDORET

**The Speaker (Hon. Lusaka):** Hon. Senators, I have a communication to make.

Hon. Senators, I would like to acknowledge the presence, in the Speaker's Gallery this afternoon, of visiting student leaders from the University of Eldoret in Uasin Gishu County. I request the students to stand when called out so that they may be recognized in the Senate tradition.

- (1) Samuel Mwangi Njuru
- (2) Regina Gitau
- (3) John Karanja
- (4) Judy Mwendu
- (5) Joy Gracious
- (6) Auma Belinda
- (7) Julius Mungai; and
- (8) Steve Njihia.

In our usual tradition of receiving and welcoming visitors to Parliament, I extend a warm welcome to them. On behalf of the Senate and my own behalf, I wish them a fruitful visit.

I thank you.

*(Applause)*

Proceed, Sen. M. Kajwang':

**Sen. M. Kajwang':** Mr. Speaker, Sir, allow me to join you in welcoming the student leaders from the University of Eldoret. I am grateful that you gave me the first opportunity because, many years ago, I was the Secretary-General of the Moi University Students Organisation (MUSO). However, after my time, Moi University broke up into a number of universities and campuses.

At that time when we had the Moi University, the Minority Leader; Sen. Orengo, used to visit us in Eldoret. Even though he never used to come in a peaceful manner, he used to come in the form of *Muungano wa Mageuzi*. Every time he came, we were sure

that there would be teargas. We were also sure that we were going to commandeer the tractors and university buses to go and attend the rallies at 64 Stadium.

*(Laughter)*

Mr. Speaker, Sir I just want to encourage the young leaders from the University of Eldoret that we are going to leave this Chamber to them. When I was at the University, I never fathomed that, at some point, I was going to be a Member of this House. I, therefore, encourage them to think beyond their current positions. When I was at the university, I never believed that I was going to be sitting in the same House with Sen. Orengo and several other Members in this House.

*(Loud consultations)*

Mr. Speaker, Sir, if you may protect me from the Members---

**The Speaker** (Hon. Lusaka): Order, Members! Let us consult in low tones. Sen. M. Kajwang is making a very pregnant point.

*(Laughter)*

**Sen. M. Kajwang:** Members must allow me to prosecute it. Sen. Sakaja should not strut around. We were in leadership with him, although at different times, and we also went to the same school.

Mr. Speaker, Sir, I just want to finalise by encouraging the student leaders from the University of Eldoret. This Parliament has taken note of the various legislative amendments that have had the effect of neutering student leadership in this country. This concept of subjecting student leaders to a college that, in many cases, is handpicked, has had the effect of producing weak leaders. I assure these young men and women that, as Parliament, we shall review the laws that amended the procedures for election of student leaders. This is because we cannot make laws with one Babu Owino in mind; we must make laws with posterity in mind. As the Caucus of Kenya Young Parliamentarians, which is ably led by Sen. Sakaja, we are seized of this matter. We are going to look into this matter. We want to assure these young men that we are going to give them a path that will ensure that they come to this House one day, sit with Sen. Orengo, Sen. Mutula Kilonzo Jnr. and others at the same level.

Thank you, Mr. Speaker, Sir.

**Sen. Mutula Kilonzo Jnr.:** Mr. Speaker, Sir, allow me to join you in welcoming the students; only that I think one of the names is not correct. You read Regina Gitau, and yet it is a man who stood up; somebody must have made a mistake. Allow me to welcome them.

Yesterday, Mr. Speaker, Sir, I had the privilege of sitting with some students. Maybe I am going to suggest, now that Kangaru Girls High School is here, that they are famous for many things. The Senate should champion a case where both universities and high schools can set up a Senate of 47 of 67 Senators representing various regions, where

they can have a mock Senate in the universities. We should do this so that we can start having this leadership out there in the public, because when I asked these students which county is Number 001, they remembered; but when I asked about County Number 047, they did not know.

I, therefore, thought that there must be some reasons why they could identify some governors and Senators. I think one of the lessons is to have our students from all over the Republic setting up a Senate where there is a representative of every county. If we are going to preach cohesion and one nation, let us do it in Kangaru Girls High School. I am prepared to be a Speaker temporarily in one of the universities so that maybe I can practice what you do once in a while.

**The Senate Minority Leader (Sen. Orengo):** Mr. Speaker, Sir, I was not going to say anything until Sen. M. Kajwang' mentioned me. The last time I was a president was when I was a president of the student union with a very strong government and cabinet ministers, including a Minister for Foreign Affairs. We used to go for delegations to Dar es Salaam where we met with the Africa Liberation Union, which was based there.

At that time, at least the student leadership was properly recognized in terms of the laws that were in place. In fact, it was during my presidency that the term 'president' was banned. Legislation was brought by the then Attorney-General, hon. Charles Njonjo, that you could not refer to anybody as 'president.' This was because President Kenyatta would make a speech somewhere, and the students would also make a speech somewhere, led by their president.

Putting that aside, Mr. Speaker, Sir, I commend the students and emphasize that hard work and being conscious of their environment is very important in this country. This country has many problems, but with young like them, we are going to make a difference. I hope that with the commitment that they had, in rising to the high office of student leadership, that they will continue to rise and one day--- I think it is more likely to find Sen. M. Kajwang' and Sen. Sakaja here; but it is highly unlikely that you will find me sitting in this Senate. However, you are welcome.

Thank you, Mr. Speaker, Sir.

**Sen. (Dr.) Langat:** Thank you very much, Mr. Speaker, Sir, for also allowing me to join you in welcoming the students from Kangaru Girls High School and the student leaders from the University of Eldoret. I want to congratulate the students from Kangaru Girls High School for visiting the Senate. I remember very well my first posting as a teacher in the Republic of Kenya was in Kigari Teachers College, and Kangaru Girls High School were always our friends. They were very tough in ball games and academics. I still believe that, that tradition is still strong. Discipline is the highway to this place. Once you are disciplined, there is nothing else that will hinder you from coming this far.

As for the students from the University of Eldoret, before it became a university of its own, it used to be a constituent college of Moi University. We used to refer to it as Chepkoilel Campus, where we used to train scientists. It is a great university. Gone are the days when student leaders used to be remembered for championing strikes. In the modern world, leadership is a matter of exhausting modern strategies of negotiation and discussions with university leaders to ensure the smooth running of the institution.

I am very happy that throughout this year, we have not had any strikes and unrest among the students from the University of Eldoret, unlike in the other years. I congratulate them for that. This must be the right leadership at the right time. I encourage them to continue using modern strategies to approach issues that are facing students in universities.

Currently, Mr. Speaker, Sir, students in universities are receiving very little money from the Higher Education Loans Board (HELB). When we come up with a Bill to support an increment of the loan that these students are getting, this House will support it in order to at least help improve the welfare of our students in the universities. That way, we can avoid these issues where girls in universities rely on sponsors and boyfriends, which can lead to detrimental lifestyles. One of the reasons for having this problem is partly because we, as leaders, have not looked into their welfare.

We, therefore, encourage the students in the Gallery and wish them well. We also thank them for visiting the Senate.

**The Speaker** (Hon. Lusaka): Sen. Sakaja, it is your turn. You may also explain to the House what you are wearing and what it means.

*(Laughter)*

**Sen. Sakaja:** Thank you, Mr. Speaker, Sir. I noticed a bit of commotion when I walked in with this sash that has real gold.

*(Laughter)*

Today, I was honoured and humbled to have received this award of the Chief of the Order of the Burning Spear (CBS). This is in recognition of the legislative efforts that I have done over the last six years since I was a Member of the National Assembly. It is because of the Bills that I have brought to this Parliament. It is very humbling. I would also like to congratulate the rest, who got it, like Sen. Moi and Sen. (Dr.) Zani, who should also wear it. We can wear the sash today until we sleep.

Mr. Speaker, Sir, even as I welcome the student leaders and the students in the Gallery, just the other day, I sat where they are sitting. Not in the Gallery, but as a student leader. When I saw that they are here, I rushed to get this sash to show that leadership in university is not a destination, but a beginning. I was a student leader at the University of Nairobi (UoN), my *alma mater*. I was in the Students Organisation of Nairobi University (SONU), and even when we were there, there was a distinction of those of us who knew that this was just the beginning of a leadership journey. Those who felt leadership as a destination or an end, there is not much to write about them today.

I, therefore, encourage them that this country needs them. We need young people and leaders who are visionary, and who are thinking about the future and are not preoccupied with the past. When this country got its Independence, it was carried on the shoulders of young people. Hon. Tom Mboya was in his 20s; the former President, hon. Mwai Kibaki, was 32 years old when he was the Executive Director of the Kenya African National Union (KANU). There are many others who were very young. In fifty years,

this country, yet again, needs young leaders like these –like the ladies from Kangaru Girls School – who can look at the future in the eye, change this country and rescue us from the shackles of corruption and tribalism. I welcome them.

*Asante*, Mr. Speaker, Sir, because you are the one who put this sash on me. I hope that one day – just like my senior, Sen. Khaniri – I will graduate to another one, as we go on.

Thank you, Mr. Speaker, Sir.

**Sen. Kasanga:** Thank you, Mr. Speaker, Sir, for giving me this opportunity to welcome the students from the Kangaru Girls High School as well as the student leaders from the University of Eldoret. If you have had the opportunity to see the Order Paper for today, you will see that there is a topical issue which this House is about to debate, on matters mental health. As you know, we have seen many cases with university students that can be attributed to mental health challenges.

I, therefore, encourage student leaders when they go back to school, that they institute mechanisms of making sure that they are taking care of their mental wellness. I have had several conversations with other universities, and we have established clubs that speak on this matter, where they can encourage fellow students to talk about it.

High School girls are also susceptible to the pressures of these days and unmet expectations, especially among young people. They must take cases of their mental wellness seriously. Therefore, they should take the word round that the Senate is discussing this topical issue, and we all need to be aware of it, discuss it and encourage fellow students to open up and speak out more.

Thank you, Mr. Speaker, Sir.

**The Speaker** (Hon. Lusaka): Lastly, Sen. (Dr.) Zani.

**Sen. (Dr.) Zani:** Thank you, Mr. Speaker, Sir. Initially, I did not want to speak, because I had already invited the young girls. However, after Sen. Sakaja's inspiration, let me just encourage the young men and women that they are the future of this country; and that everything they do matters and is paid for. I have taught at the university for 23 years since the early 1990s, and I am now in the Senate as a legislator. So is Sen. Sakaja and all the other Senators, who have been trying to work hard to make a difference.

As Sen. Sakaja said today, he has been honoured by the country with a CBS. The same is true for Sen. Moi and myself. The same can be true for many other Senators, as well as yourselves. It is always about work and effort; it is always about putting your best foot forward.

Mr. Speaker, Sir, I have interacted with many students over the years, and sometimes you come across very discouraging situations. You want to take the biggest shortcuts, especially in the examination halls. It does not pay at the end of the day. It is about honesty, integrity, setting up your goals and fighting for these goals, so that when you are awarded, you can step up with your pride and pick that award that is owed to you.

I wish them well and hope that they will learn a lot this afternoon, as they are in the Gallery, watching as the Senators speak. I wish them all the best as university students, as current and future citizens of Kenya.

**The Speaker** (Hon. Lusaka): I had said 'last,' but the Leader of Majority has requested to speak.

Proceed.

**The Senate Majority Leader** (Sen. Murkomen): Thank you, Mr. Speaker, Sir. I welcome the students from Kangaru Girls School and the student leaders from the University of Eldoret.

I have listened to the contribution of Sen. Sakaja and everybody else who spoke here, and I agree with them that for leadership – particularly for those who are still in high school and university – you do not just wake up one day and become a leader. It is a process that requires commitment, passion and dedication. They are walking in the right path.

When I was a first-year student at the University of Nairobi – which was about 19 years ago – I sat somewhere there; and I am lucky that less than 10 years later, I was able to come to this House. Therefore, with dedication, passion, commitment---

*(Loud consultations)*

**The Speaker** (Hon. Lusaka): Consult in low tones, hon. Senators.

**The Senate, Majority Leader** (Sen. Murkomen): Therefore, with dedication, passion and commitment, they will go far. Like Sen. Sakaja, I was a student leader at the UoN from day one. From the Christian Union (CU) Leader in my class, to being the Chairperson of the first Kenya Law Students Society (KLSS) in second year; to being the equivalent of SONU that time, after SONU had been banned, to being the Chairperson of all the CUs in the Country. I, therefore, understand the position they are holding.

I am saying this because there is a disease that came to the university around my time, and thereafter. I am sure that if Sen. Orenge was to tell you here, he might have used almost nothing to campaign to be the SONU chair. However, nowadays student leaders – and I am sure that they have even approached you – across the universities in the country tell you that they have a budget of Kshs200,000, Kshs300,000, Kshs600,000 or even Kshs1 million to be elected to student leadership. We are preparing a generation – Sen. Sakaja, I want you to listen to this – of young people that will provide leadership into the future. However, there is a rot that in the university where campaigns are costing up to Kshs1 million for one person.

Mr. Speaker, Sir, when I stood to be a student leader at the University of Nairobi, I used Kshs500. The only amount I needed was to photocopy the posters and distribute them for people to know me. However, nowadays, university students that we are looking up to change this country ask their fellow leaders to give them something small so that they can vote for them. Today at the university, there are mobilizations along tribal lines or whether a person supports NASA or Jubilee before he or she can be voted for.

Mr. Speaker, Sir, if we want to change this nation going forward, we must go back to the universities and high schools. It is not long ago when I was in the university where I never quite internalized that a person was a Kikuyu or Luhya. I came to realise that issue when I came to elective politics.

Mr. Speaker, Sir, when I was in the law school, I had about 300 votes to become the Chair of the Kenya Law Students Society (KLSS). However, there were only five Kalenjins from first year to fourth year. If I had to rely on my tribe, I would not have

been the Chair of KLSS. However, that disease is back to the universities where the whole mobilization is about a certain group meeting a certain tribe.

As elected leaders in this House, when those students come to us to ask for those amounts of money and to be mobilized based on certain groups, we must have the courage to tell them off. We should tell them to go back to the university and mobilize themselves around issues.

I hope our students who are listening here, will go back and think about ideas and issues so that the strikes at the university will not be about---

Nowadays, you will not hear that a university has been banned or went on strike because of a national issue; it is about food or whether they got a bus to go for a trip or not. This must change.

I hope that the leaders who are listening to us here in this House and across the country will become the change for the university and high school students.

**The Speaker** (Hon. Lusaka): I had said that was the last one. However, I can see that the Senator for Embu would want to welcome the students.

**Sen. Ndwiga:** I thank you, Mr. Speaker, Sir. That is why we like you because you know how to use the Standing Orders of this House, for example, Standing Order No.1 that says that you can reverse anything.

I congratulate the students of Kangaru Girls High School, Embu County, to the House. I encourage them that to look around this House to see how well it is balanced. It is time for them to focus. They are not leaders of tomorrow. That is what we were told. Today, you are leaders of today. *Ninyi ndio viongozi*. Therefore, we hope that you will work hard and achieve the set goals to come to this House or any other positions of leadership.

We are proud of them and their school. In fact, I want this House to know that this is one of the oldest schools in the country. Some of the ladies who have passed through this school occupy very plumb positions in the leadership of this country.

I also remember that at one time, I met the late wife of the former President, Mrs. Lucy Kibaki, who was a teacher in that school. The President used to joke that was why he used to come to Embu often because he was visiting a lady who was teaching in Kangaru Girls High School.

*(Laughter)*

We encourage you to work hard. We are proud of you as a community and a country. This is because Kangaru Girls High School is not a community but a national school. I congratulate and encourage them to work hard.

**The Speaker** (Hon. Lusaka): We are about to vote. However, I can see my Senator from Bungoma want to say something.

**Sen. Wetangula:** Thank you, Mr. Speaker, Sir. I enjoy a special privilege because the Speaker was my student, and I am his Senator. So, I enjoy that dual advantage.

I also join you in welcoming students from Kangaru Girls School. I believe that Kangaru Girls High School was born out of Kangaru Boys High School. When we were in the university, my class of 45 students at the University of Nairobi had a whopping

seven students from Kangaru Boys High School. This means that it was one of the top schools in the country at the time. That it gave an offshoot of Kangaru Girls High School means that the apple did not fall too far from the tree.

I hope that the girls in the Gallery today are destined to be great leaders, lawyers, doctors, engineers and psychologists who will join leadership, including but not limited to this House.

Mr. Speaker, Sir, allow me to join my colleagues who have welcomed the student leaders from University of Eldoret where their vice chancellor is my constituent.

In the last Parliament, University of Eldoret went through turbulent times. We remember when the then sitting Senator for Uasin Gishu County led a gang of thugs to flush out the vice chancellor from the university and we condemned it on the Floor of this House.

I thank the Senate Majority Leader because he stood firm on the side of academia and truth. He condemned the sugary that was committed at that time.

As student leaders, we encourage you to reform the state of university politics. I cannot put it any better than the way Senate Majority Leader has put it. When we were in leadership, the only contest we used to enjoy day in day out was ideological debates and leanings. We were not tied to political tycoons and all manner of people as sponsors to play our university politics.

I encourage the students leaders from the University of Eldoret to be a bastion of intellectual growth and to remain focused on issues that will make this country better. They are not future leaders; they are leaders of today because where they are and whatever they say matters and counts.

Lastly, Mr. Speaker, Sir, this House has been dealing with issues. Sen. Cheruiyot brought a Statement here about the high levels of suicide cases and violence against female students in the universities. We want the students because I know that they sit in the university councils to make sure that the universities have adequate counseling.

I do not know whether Sen. Orengo remembers but during our days, Prof. Donders at the University of Nairobi used to address students on matters of social behavior and moral attitude. He used to say that you can be brilliant as Einstein, however, if your morals are not good, you are nothing to society. Therefore, we want to see things done in a manner that will help this society to grow to be a real Garden of Eden in Africa. We need to move away from tribalism, worshipping money and all the negative things.

## COMMUNICATION FROM THE CHAIR

### APPOINTMENT OF ADDITIONAL MEMBERS TO THE MEDIATION COMMITTEE ON THE KENYA ROADS BILL, 2017

**The Speaker** (Lusaka): Hon. Senators I have a Communication. As you may recall, in concurrence with the Speaker of the National Assembly on the constitution of a Mediation Committee, in accordance with Articles 112(1) (a), (2) (b) and 113 of the Constitution, I appointed the following Senators to serve in the Mediation Committee on the Kenya Roads Bill, (National Assembly Bill No. 47 of 2017).

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*(Sen. Murkomen consulted loudly)*

Order, Senate Majority Leader!

(1) Sen. Fatuma Dullo, CBS, MP.

(2) Sen. Paul Wamatangi, MP.

(3) Sen. Samson Cherargei, MP.

(4) Sen. Enock Wambua, MP.

(5) Sen. (Dr.) Ochillo-Ayacko, MP.

Hon. Senators, upon further consultation with the leadership of the Majority and Minority parties, I have appointed Sen. Naomi Shiyonga, MP; Sen. Millicent Omanga, MP; and Sen. Kiburu Charles Reubenson, MP; to the Mediation Committee on the Kenya Roads Bills (National Assembly Bill No.47 of 2017), to replace Sen. Ochillo-Ayacko, MP; Sen. Fatuma Dullo, MP; and Sen. Samson Cherargei, MP, respectively.

I urge the Mediation Committee to move with speed and deal with this important assignment. I thank you.

We shall now go to Order Nos.8 and 9 because we need to vote. I direct that the Division Bell be rung for two minutes.

*(The Division Bell was rung)*

I now direct that the doors be closed and the Bar drawn.

*(The doors were closed and the Bar drawn)*

You can log in and start voting.

## **BILL**

### *Second Reading*

THE DETERMINATION OF THE NATURE OF BILLS  
PROCEDURE) BILL (SENATE BILLS NO. 30 OF 2018)

*(Sen. Mutula Kilonzo Jnr. and Sen. Sakaja on 21.5.2019 )*

*(Resumption of debate interrupted on 22.5.2019)*

## **DIVISION**

### **ELECTRONIC VOTING**

*(Question, that the determination of the Nature of Bills*

*(Procedure) Bill (Senate Bills No.30 of 2018) be now put and the Senate proceeded to vote by County Delegations)*

**AYES:** Sen. (Prof.) Ekal, Turkana County; Sen. Faki, Mombasa County; Sen. Halake, Isiolo County; Sen. (Dr.) Kabaka, Machakos County; Sen. M. Kajwang', Homa Bay County; Sen. Khaniri, Vihiga County; Sen. Kihika, Nakuru County; Sen. (Dr.) Langat, Bomet County; Sen. (Dr.) Lelegwe, Samburu County; Sen. Linturi, Meru County; Sen. Loitiptip, Lamu County; Sen. Mpaayei, Kajiado County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Mwangi, Nyandarua County; Sen. Mwaruma, Taita-Taveta County; Sen. Ndwiga, Embu County; Sen. Ochillo-Ayacko, Migori County; Sen. Omogeni, Nyamira County; Sen. Orengo, Siaya County; Sen. Sakaja, Nairobi City County; Sen. Wambua, Kitui County; Sen. Wetangula, Bungoma County and Sen. (Dr.) Zani, Kwale County.

**NOES:** Nil

**The Speaker** (Hon. Lusaka): Hon. Senators, the results of the voting are as follows:-

**AYES:** 24

**NOES:** Nil.

**ABSTENTIONS:** Nil.

The "Ayes" have it.

*(Question carried by 24 votes to nil)*

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

**The Speaker** (Hon. Lusaka): Hon. Senators, I now direct that the doors be unlocked and the bars withdrawn.

*(The doors were opened and the bars withdrawn)*

**The Speaker** (Hon. Lusaka): Hon. Senators, we will now proceed to the next Order. I direct that the division bell be rung for five minutes.

*(The Division Bell was rung)*

**The Speaker** (Hon. Lusaka): Hon. Senators, I now direct that the bars be drawn and the doors be locked.

*(The Bars were drawn and doors closed)*

**MOTION****ADOPTION OF REPORT ON THE COUNTY GOVERNMENTS  
BUDGET IMPLEMENTATION REVIEW FOR FY 2017/2018**

THAT, this House adopts the Report of the Standing Committee on Finance and Budget on the Annual Report of the County Governments Budget Implementation Review for the Financial Year 2017/2018, laid on the Table of the Senate on Wednesday 27<sup>th</sup> March, 2019.

*(Sen. (Eng.) Mahamud on 23.5.2019)*

*(Resumption of Debate interrupted on 23.5.2019)*

**The Speaker (Hon. Lusaka):** Hon. Senators, as we go to vote, I determine that this is a matter affecting counties.

**DIVISION****ELECTRONIC VOTING**

*(Question, that this House adopts the Report of the Standing Committee on Finance and Budget on the Annual Report of the County Governments Budget Implementation Review for the Financial Year 2017/2018, laid on the Table of the Senate on Wednesday 27<sup>th</sup> March, 2019, put and the Senate proceeded to vote by county delegations)*

**AYES:** Sen. (Prof.) Ekal, Turkana County; Sen. Faki, Mombasa County; Sen. Halake, Isiolo County; Sen. (Dr.) Kabaka, Machakos County; Sen. M. Kajwang', Homa Bay County; Sen.(Prof.) Kamar, Uasin Gishu County; Sen. Khaniri, Vihiga County; Sen. Kihika, Nakuru County; Sen. (Dr.) Langat, Bomet County; Sen. (Dr.) Lelegwe, Samburu County; Sen. Linturi, Meru County; Sen. Loitiptip, Lamu County; Sen. Mpaayei, Kajiado County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Mwangi, Nyandarua County; Sen. Mwaruma, Taita Taveta County; Sen. Ndwiga, Embu County; Sen. Ochillo-Ayacko, Migori County; Sen. Omogeni, Nyamira County; Sen. Orenge, Siaya County; Sen. Sakaja, Nairobi City County; Sen. Shiyonga, Kakamega County; Sen. Wambua, Kitui County; Sen. Wetangula, Bungoma County and Sen. (Dr.) Zani, Kwale County.

**NOES:** Nil.

**The Speaker** (Hon. Lusaka): Order, Members. These are the results of the Division:

**AYES:** 26

**NOES:** Nil

**ABSTENTIONS:** Nil.

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The “Ayes” have it.

*(Question carried by 26 votes to nil)*

**The Speaker** (Hon. Lusaka): Hon. Senators, I now direct that the Doors be unlocked and the Bars be drawn.

*(The Doors were unlocked and the Bars drawn)*

Hon. Senators, we go back to Order No.5.

### PAPERS LAID

Proceed, Senate Majority Leader.

**The Senate Majority leader** (Sen. Murkomen): Thank you, Mr. Speaker, Sir. I beg to lay the following papers on the Table of the Senate today, Wednesday, 29<sup>th</sup> May, 2019:

#### ANNUAL REPORT OF THE CAJ FOR FY 2017/2018

Annual Report for the Commission on Administrative Justice for the Financial Year 2017/2018

#### REPORTS ON FINANCIAL STATEMENTS OF VARIOUS COUNTY AGENCIES/FUNDS

Report of the Auditor General on the financial Statement of Bungoma County Disaster Management Fund 2017/ 2018

Report of the Auditor General on the financial Statement of Nanyuki Water and Sewerage Company Limited for the year ended 30<sup>th</sup> June, 2018

Report of the Auditor General on the financial Statement of Gatamathi Water and Sanitation Company Limited for the year ended 30<sup>th</sup> June, 2017

Report of the Auditor General on the financial Statement of Gatamathi Water and Sanitation Company Limited for the year ended 30<sup>th</sup> June, 2018

Report of the Auditor General on the financial Statement of Murang’a Water and Sanitation Company Limited for the year ended 30<sup>th</sup> June, 2018

I thank you.

*(Sen. Murkomen laid the documents on the table)*

**The Speaker** (Hon. Lusaka): Proceed, Sen. Sakaja.

**Sen. Sakaja:** Mr. Speaker, Sir, I beg to lay the following Papers on the Table of the Senate today, Wednesday, 29<sup>th</sup> May, 2019:

REPORT ON THE PREVENTION OF TERRORISM  
(AMENDMENT) BILL, 2018

Report by the Standing Committee on National Security, Defence and Foreign Relations on the Prevention of Terrorism (Amendment) Bill (Senate Bills No. 20 of 2018).

REPORT ON THE COUNTY LAW COMPLIANCE AND  
ENFORCEMENT BILL, 2018

Report by the Standing Committee on National Security, Defence and Foreign Relations on the County Law Compliance and Enforcement Bill (Senate Bills No. 23 of 2018).

*(Sen. Sakaja laid the document on the table)*

**The Speaker** (Hon. Lusaka): Next Order.

**STATEMENTS**

LAND COMPENSATION/ENVIRONMENTAL RESTORATION  
IN ROAD CONSTRUCTION PROJECTS

**The Speaker** (Hon. Lusaka): Proceed, Sen. Pareno.

**Sen. Pareno:** Mr. Speaker, Sir, pursuant to Standing Order No.48(1), I rise to seek a Statement from the Standing Committee on Roads and Transportation concerning land compensation for road construction and environmental restoration during and after road construction.

In the Statement the Committee should-

(1) Explain the process and policy of compensating owners whose land has been acquired by the government for construction of roads.

(2) State when the residents of Kajiado whose land was acquired for construction of Kajiado-Mashuru-Isera Road will be compensated for the land surrender to Government for construction of the said road.

(3) Explain the environmental restoration policy obligations of a contractor regarding the environment during and after road construction.

(4) Explain why the contractor of Kajiado-Mashuru-Isera Road namely, Steco Company Limited, in the process of constructing the road has left debris and pieces of polythene bags strewn all over the stretch of the road and why the company has not set sanitation facilities for its workers constructing the road.

(5) State measures that will be taken by the national and county governments to ensure companies engaged in such projects uphold professionalism, integrity and adhere to all laws including those relating to the protection of the environment.

**Sen. Sakaja:** Mr. Speaker, Sir, just to add on that Statement, we are wondering what is happening with these agencies – Kenya National Highways Authority (KeNHA), Kenya Urban Roads Authority (KURA) and Kenya Rural Roads Authority (KeRRA). In Nairobi City County, we are facing many similar issues regarding compensation where people have been moved out, for example, in areas adjacent to Waiyaki Way on the expansion on James Gichuru Road. In Kibera, hundreds of families were removed to pave way for the completion of just one kilometer of road, but to date, they have not been compensated. They are living out there in squalor. We had the same issue on Kangundo Road and Outering Road.

We want to find out what is really happening. This is because by the time these projects are budgeted for and even when they start being executed, that money is available for compensation. In fact, they hold a meeting with the persons affected by the projects and they agree on how it will be done. However, when it comes to paying them, it seems as if there is enthusiasm to pay the contractor as opposed to resettling our people.

I urge the Committee, as it looks into this, to deal with the specific issues raised in the Statement and to also get the overall policy direction with respect to compensation when these constructions are being done. My people in Nairobi City County are really suffering as a result of this. We welcome development but let it be done in a proper manner as we look at the people who are being affected.

**Sen. Mutula Kilonzo Jnr.:** Mr. Speaker, Sir, this is a very serious issue. Recently, we watched an interview about people on the Kibwezi-Kitui Road complaining that they were just seeing dead bodies or bones of people along the road because their graves had been excavated by the road contractors doing the Kibwezi Road before compensation was done.

In fact, the case that Sen. Pareno raised is even worse, because whereas they made an undertaking to do Corporate Social Responsibility like building boreholes; they left a lot of these things undone. Environmental restoration orders were not done either and nothing has been complied with.

In terms of construction of roads - this started during the Standard Gauge Railway (SGR) – sometimes you think we live in a jungle. That is the reason why those of us who sit in the Land Index Bill for mediation have said no to people leaving their land before they are compensated. This is because the result is this sort of thing.

They have moved into the property of a Maasai man in Kajiado County. He has been promised that he will be paid compensation. We have been told that the money is at the National Land Commission (NLC) which has not been reconstituted at the moment. The NLC cannot pay out compensation before the new commissioners are appointed, but then Kenyans are suffering. Is this one of those things that Sen. Mwangi Githiomi's Committee can intervene, because Kenyans are suffering in the hands of the Government and these agencies?

They have now referred the people of Kibwezi to the NLC which only has the CEO in office. He cannot approve the payments. The case of Thwake Dam is similar. The Chinese are on site but you are told the money is sitting at the NLC.

According to Article 40 of the Constitution, the rights of land are not subservient to compulsory acquisition. If you want to do a highway, that is well and good; but you should respect the rights of the landowner, whether this person is a small man or a big man.

What Sen. Sakaja says is true that this land belonged to the people living in Karen. There was a time when the current Governor of Nairobi City County stalled the construction of a road somewhere near the Bomas of Kenya because it affected a big man. They stalled the road for a year. Alternatively, we can resort to what the Governor of Kajiado County has done and just block the place and say: "Forget about it. You will not touch this place until you compensate us". Kenyans are suffering because we are pretending that we are doing this for public good. Since when did public good override the public and their land and rights?

Thank you, Mr. Speaker, Sir.

**The Senate Majority Leader** (Sen. Murkomen): Mr. Speaker, Sir, I join my colleagues in supporting this Statement. We have discussed this issue several times. Sen. Mutula Kilonzo Jnr. and Sen. Sakaja have come with similar kind of questions in the past.

This issue should be handled with finality. The question that we all ask ourselves is: What is the national policy on land compensation? Our Constitution is clear that property rights are part and parcel of our human rights. You cannot deprive our people of their small piece of land - however small it may be - because that is the source of their livelihood.

Mr. Speaker, Sir, if you see the conversation we have had, I am glad Sen. Mutula Kilonzo Jnr. today confirmed that there are still challenges in Thwake in terms of compensation of locals. We are facing similar challenges in Karomenu in Thika and in Aror and Kimwarer Dam. When we raised these issues, people thought we were joking. As a country, we need to agree; between the period where you secure funding for projects, commence the project, loans and obligations run for the people of Kenya and the compensation of the citizens; there must be agreed timelines.

This will ensure that we do not find ourselves in a situation like Aror and Kimwarer where two years down the line, you still tell people that the loan has been approved, the contractor has been given the contract and we are about to start repaying the loan. However, today, the Italian contractor said that they cannot access the site because compensation has not been done and the people on the ground have not been moved. Meanwhile the citizens of Kenya are already repaying the loan, the project cannot start and the people have not been compensated.

Mr. Speaker, Sir, I hope the Committee can come with recommendations here even if it is for legal amendments to the land laws, to the extent that we must sequence these issues and correlate them with the Public Finance Management (PFM) Act requirements. This will ensure that when you borrow money, there must already be an undertaking by the Government to put enough money for compensating the locals at the same time, so that no citizen on the ground will suffer and they will also not start repaying loans for projects that have not started.

That is where the problem is and it is not given to just one project. This problem affects all kinds of projects, whether it is roads, water, irrigation, including bridges. We need to have an overall and overarching policy in the country. I hope the Committee can lead this House. The Senate once, again, can rise to the occasion so that we do not become a talk shop but the House that makes recommendations that are far reaching and useful to the people of Kenya for posterity.

**The Senate Minority Leader** (Sen. Orengo): Mr. Speaker, Sir, I commend Sen. Pareno for bringing this matter. I think what we need are not new laws, like the Majority Leader has said. Whenever you try to bring new laws, normally it is a claw back on the Constitution. The Constitution is clear on this point that the compensation must be prompt. In fact, the understanding of prompt as defined under the law is “immediate” and it must be in full.

There is some type of legislation that we tried to bring through this House; where we were trying to allow the Government to pay in instalments. No, that cannot be possible. Such a law will be rendered void for unconstitutionality. It must be a prompt and just compensation. The only way out for the Government is to allocate funds before you begin the project, so that during the process of land acquisition, you are able to pay full and prompt payment of a just compensation.

Mr. Speaker, Sir, I know particularly in the area around Narok and Kajiado counties, where a lot of infrastructure projects are going on - be it SGR, roads or high voltage transmission lines - there has been an uproar on the way people are being treated. I have had occasions to deal with some leaders from those two counties. Therefore, I hope that when the Government responds through the relevant Committee, it will not just be giving an explanation, but that it must give a commitment in complying with the Constitution and the law and with the issues that Sen. Pareno has raised.

Sometimes you will find a lot of destruction in the areas where a new road has been built. Therefore, I hope the Committee will be---

*(Sen. Kang'ata consulted loudly)*

**Sen. Mutula Kilonzo Jnr.:** On a point of order, Mr. Speaker, Sir.

**The Speaker** (Hon. Lusaka): What is your point of order, Sen. Mutula Kilonzo Jnr.?

**Sen. Mutula Kilonzo Jnr.:** Mr. Speaker, Sir, could you, please, protect the Senate Minority Leader from the Senator for Murang'a County? We can hear him laughing all the way on Harambee Avenue.

**The Speaker** (Hon. Lusaka): Senator for Murang'a, take note of the sentiments of Sen. Mutula Kilonzo Jnr.

**The Senate Minority Leader** (Sen. Orengo): Mr. Speaker, Sir, and the Front Bench because the Senate Majority Leader did not hear what was said. He was busy conversing with others.

Mr. Speaker, Sir, I have made my point that the Government should never engage in a project involving compulsory acquisition of land without planning and

allocating funds in advance in order to meet the compartment that there is in the Constitution.

Sen. Pareno has raised some points about the situation of the environment. That around the road under construction, there is a lot of destruction, wastes and environmental degradation. That road in the eyes of the people has left an environment that is not good for them. Although those who use it may be excited about it. However, the local people who are not using it every day may not quite appreciate that infrastructure.

We hope the Committee will come back with a proper report in good time.

**Sen. Halake:** Thank you very much, Mr. Speaker, Sir, for giving me the opportunity. I rise to support this Statement by Sen. Pareno.

I am very pleased that the Land Index Bill is before mediation committee because I have had issues with it for a very long time. It is very punitive, especially for communities. It is based a model that is colonial in the sense that it cannot purport to do a development at the expense of disenfranchisement of communities, especially in pastoral areas.

Mr. Speaker, Sir, I know that we take advantage of some of these Statements to push through some of the things that are outstanding, especially land issues. As everybody says, land is very emotive. However, the issue of compulsory acquisition of land from anybody be it private owner, or a community land, is unacceptable. I am glad that the mediators have said no to anybody moving out of their land before they are paid their dues. Where will they go without compensation?

*[The Speaker (Hon. Lusaka) left the Chair]*

*[The Deputy Speaker (Sen. (Prof.) Kindiki) in the Chair]*

Mr. Deputy Speaker, Sir, I sit in the Committee on Lands, Environment and Natural Resources where we have so many of these issues. Therefore, it is about time that this House looked at the issue seriously and considers amalgamating all of them so that all the cross-cutting issues are dealt with, once and for all, in the Committee of the Whole.

Mr. Deputy Speaker, Sir, when we went to the Ministry of Lands and Physical Planning, we were told to go to the National Land Commission (NLC). In the case of Standard Gauge Railway (SGR), we were told to go to the Railway Corporation. We brought all of them together. They fought in front of us and it became tricky.

These matters must be dealt with very seriously. We cannot continue to violate the rights of our people. This is a rights issue. Development cannot happen when people are disenfranchised and their lands taken away from them. In fact, foreign direct investors look at this and say this is not how it should be done because communities are suffering. There are certain countries that are very keen on human rights. They are telling their business people not to deal with land issues in Kenya or invest until we get serious about our land laws. Therefore, I am happy to hear that Mediation Committee is on the right track.

Mr. Deputy Speaker, Sir, for the case of community land and resources, we are really concerned about what is going on. This is because both national Government and county governments are literally taking away land through simple gazettements. They do not give explanations. It said that the minute it is public land, there is no compensation. What does it take for land to become public? Is it just gazettement? So, we hope that the mediation Committee will look at these issues. Not everybody is affected. I know that private entities are compensated. The problem is in areas where community land is purported to have been developed.

Mr. Deputy Speaker, Sir, a few weeks ago, I attended a meeting of the World Bank where as communities of northern Kenya, we were told that we have been left behind. Therefore, we should accept the Government to take the land and develop for us, so that we can catch up with the rest of the country. However, we were disenfranchised before. Now we are being told that we will not be compensated because we have been left behind. That is double tragedy that is not acceptable at all. It does not make sense. Why not compensate us, so that we catch up with the rest properly? Why are there different standards and treatment for different areas?

Mr. Deputy Speaker, Sir, this is something that we really need to look at. The integrity of private and community property must be upheld by this House. I am glad that the right questions are being asked. We hope that this will be looked at.

We, as a Committee, will look into these issues and, probably, come up with last solution. We know that we are up to the task. If we do not resolve it at the Committee Stage, we will take it to the highest level possible, including taking it to court, if that is what it will resolve it.

**Sen. Faki:** Asante Bw. Naibu Spika kwa kunipa fursa hii kuchangia arifa ya Sen. Pareno.

Bw. Naibu Spika, hili swala la kulipwa ridhaa kwa wale wanoathirika na miradi ya Serikali limekuwa donda sugu sasa. Kule Mombasa, walijenga SGR ambayo imeweze kufanya kazi kwa muda wa miaka mbili. Lakini, mpaka sasa, kuna watu ambao hawajalipwa ridhaa ya ardhi yao. Pia mali yao ilichukuliwa wakati wa ujenzi wa reli lakini hawajahi kulipwa ridhaa.

Hivi sasa, kuna mradi wa Magongo Road ambao unaendelea. *Contractor* tayari yuko kwenye mradi huo na amelipwa lakini wale ambao wameathirika hawajalipwa. Zile fidia ambazo zinatakikana kulipwa, zimetengenezwa kwa njia ambayo si sawa. Wengine wanalipwa pesa nyingi kwa nyumba ndogo na wenye ardhi na nyumba kubwa wanalipwa malipo ya chini.

Mwaka uliopita, nilileta arifa na Kamati ya Ardhi ikamuita aliyekuwa Mwenyeketi wa NLC pamoja na mkurugenzi mkuu wa Shirika la Reli la Kenya. Wote walilaumiana mbele ya Kamati. Watu walisema hawajalipa na kuleta majina na hali kadhalika.

Swala hili limekuwa donda sugu. Miradi mingi ya Serikali inapangwa bila kuzingatia pesa ambazo zitalipa ridhaa ambao wataathirika na miradi kama ule. Kwa hivyo, ipo haja, ya Waziri wa Ardhi, kuja yeye binafsi kujieleza ni kwa nini watu hawalipwi haraka iwezekanavyo wakati ardhi zao zinapochukuliwa kwa sababu tumeona sasa hakuna makamishena wa NLC.

Miradi yote ya Serikali imekwama kwa sababu Serikali imeshindwa kufidia watu.

Wakati Kamati itakuwa inashughulikia swala la Sen. Pareno, wadau wa sehemu nyingine ambazo zimeathiriwa, kwa mfano, Mombasa, Makueni, Elgeyo-Marakwet ambako kuna mradi wa Bwawa la Kimwarer na hata hapa Nairobi ambapo kuna ujenzi wa barabara kule Westlands waitwe ili tulitatie swala hili mara moja.

**Sen. Omogeni:** Mr. Deputy Speaker, Sir, I also rise in support of the Statement that has been requested by Sen. Pareno. I just want to bring to the attention of the Committee that will look into this matter that this is a problem that affects many areas in this country. When the Committee will be looking into this issue, it should be geared towards giving a solution that will be applied across the country because there are many owners of land who are affected by the Government acquiring their land for worthy projects, but it does not pay them.

Some people have lost their lives. In Kitutu Masaba Constituency which is in Nyamira County, for example, land was taken by the Government to do a water project, but the people protested because they have never been paid. The Government cannot continue with the works.

The World Bank has a policy where the national Government cannot commence construction of even a road before it deals with issues of settlement. It is the same case I have witnessed in North Mugirango Constituency. There is a road to be constructed all the way from Migori to Kisumu. The Government wants people evicted, but no compensation has been done. I hope the Committee will consider moving an amendment to the Act, so that we put in black and white that a project should not commence before owners of land are paid.

We have also a bigger problem because there is an animal we created called the National Land Commission (NLC) that has turned out to be an avenue for mega corruption. In some cases, they do not want to pay people whose land is acquired by the Government because they ask for kickbacks. They make the value of land so high that it does not make economic sense to undertake some projects. We need to address the issue of corruption within the NLC. There have been cases where land is surrendered for particular Government projects, but the NLC turns back and purports to compensate people over public land that is surrendered. We also have the issue of respect for freehold titles. Sometimes people are forced to surrender their freehold titles which are converted to leasehold ones.

There are a number of issues that touch on property rights which are protected by our Constitution. I hope that when the Committee retires to look at this issue, it will consider all the issues and give us a solution that will be beneficial to Kenyans across the country.

I support.

**Sen. (Prof.) Ekal:** Thank you, Mr. Deputy Speaker, Sir, for giving me the chance to contribute to this Statement about the question of unfairness to our citizens when their land is taken. Being a Member of the Committee on Roads and Transportation, I have been to many places where we have cases of people's homes being acquired for construction of roads without anything being given in return. In fact, in many places, people are told to go away. Some end up living on trees like birds. We found that

annoying. I actually made a statement that people are not birds to live on trees without compensating them for their land. That is a big problem in this country.

I come from Turkana County and we have the same problem. People say that we have fallow land in Turkana and nobody uses it. Some say that the land in Turkana and Maasai areas are not occupied. Those who think so should rethink. Those are grazing lands. We have a lot of livestock that need large tracts of land to graze.

The Kenya Defence Forces (KDF) is now penetrating Turkana County and taking huge chunks of land for what they call “military use.” Why does the KDF need big land and why should we have many army bases in Turkana? There is a hidden agenda. However, whenever I mention that, they oppose it vehemently. Of course, I do not believe them. If they take land, they should compensate our herdsmen because that land is there for grazing.

That is a big problem we have in the country and we need to find a way of dealing with it. Otherwise, *wananchi* will continue suffering because somebody else is stronger than them and could do what they want. For example, the KDF soldiers carry guns and threaten people. The same thing is happening in Isiolo. Turkana people who live there have been told to leave their land so that the KDF sets up a camp.

We have the same situation in Baragoi where Turkana people living there have been told to vacate their land, so that the KDF can set up their camps. What is going on? Does the land belong to the people or the KDF? Even if it is a Government institution to be constructed, *wananchi* should be respected and compensated for whatever land that is taken.

People should also be consulted. We should have meetings where people are told what will happen---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Wind up because this is not a Motion for debate. You should just give observations.

**Sen. (Prof.) Ekal:** Mr. Deputy Speaker, Sir, I would have liked to debate. I thank you.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): I direct that this matter be seized of by the Committee on Roads and Transportation. The Committee shall determine further action and steps to be taken thereon.

**Sen. Mutula Kilonzo Jnr.:** On a point of order, Mr. Deputy Speaker, Sir. This matter is a crosscutting issue. Although the Statement by Sen. Pareno is about roads, there are several issues on compensation which are cross-cutting. It will benefit the country to find out how compensation should be done on other sectors other than roads. I mentioned a dam and a road. Sen. Murkomen mentioned also talked of a road in his county. Therefore, I will be satisfied if you direct the Committee to handle all the cross-cutting issues.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): In light of the comments by Sen. Mutula Kilonzo Jnr., I direct that the Committee on Roads and Transportation consults with other sectoral committees, especially the Committee on Lands, Environment and Natural Resources, the Committee on Justice, Legal Affairs and Human Rights and any other committee that they think its mandate would give input. It is so ordered.

Hon. Members, for various reasons, I will defer Order No.10 because the Chairperson is away on official duties. I will also defer Order Nos. 11, 12 and 13. This is because of various reasons like in some cases the relevant committees not being ready with their comments and observations.

### COMMITTEE OF THE WHOLE

THE IMPEACHMENT PROCEDURE BILL  
(SENATE BILLS NO.15 OF 2018)

THE PREVENTION OF TERRORISM (AMENDMENT) BILL  
(SEN. BILLS NO.20 OF 2018)

THE COUNTY GOVERNMENTS (AMENDMENT) BILL  
(SENATE BILLS NO.11 OF 2017)

THE PRESERVATION OF HUMAN DIGNITY AND ENFORCEMENT OF  
ECONOMIC AND SOCIAL RIGHTS BILL (SENATE BILLS NO.27 OF 2018)

*(Committee of the Whole deferred)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Let us move to the next Order.

### BILLS

#### *Second Reading*

THE NATIONAL COHESION AND PEACE BUILDING BILL  
(SENATE BILLS NO.35 OF 2018)

*(Sen. Pareno on 22.5.2019)*

*(Resumption of debate interrupted on 28.5.2019)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Hon. Senators, this is resumption of debate. The last time this matter was being debated in this Chamber, Sen. Orengo had a remainder of 30 minutes.

**The Senate Minority Leader** (Sen. Orengo): Thank you, Mr. Deputy Speaker, Sir. I had gone through some of the provisions of the Bill yesterday. I will make a few observations that I think are important in consideration of this Bill.

Other than changing name of the commission, this new regime of law is also changing the constitution of the commission. The current commission consists of nine commissioners and that includes the chairperson. Eight commissioners are appointed by the National Assembly and that is where we went wrong. We allowed an important

player, in peace building, to be exclusively nominated by the National Assembly and allowed the President to make the appointment.

In this Bill, the process of appointment is not inclusive for there is no people participation. Clause 11 states that the selection panel shall consist of various organisations such as religious organisations, Government Ministries, the Law Society of Kenya (LSK) and others. I have noted that the National Council of Persons living with Disability will form part of the selection panel. I am glad that they are there. However, the same people are always appointed to serve in these commissions.

The LSK, where I am a member, usually features in the selection panels that appoint members of certain commissions or statutory bodies. This Bill has included the National Council of Persons living with Disability.

I will also be happy if we can also include a women organisation. This is because women tend to be affected and impacted more than other sections of society when there is conflict. The post-election violence that took place after the 2007 elections shows how women and young children get impacted more and it speaks to this point. I propose that an organisation such as the Federation of Women Lawyers in Kenya (FIDA-Kenya) or Maendeleo ya Wanawake be included in the selection panel when the amendments are being done.

The number of commissioners has also reduced to be four and that includes the chairperson. An odd number is sometimes favourable for there is always no basis for not voting one way or the other, but Sen. Pareno would probably explain to us the reason as to why the even number was deemed to be appropriate.

We have cases where members of one commission also serve as members of other commissions. I like the work that Kenya National Commission on Human Rights (KNCHR) and the National Gender and Equality Commission (NGEC) are doing. However, you will find that a member of a commission is also a member of a selection panel for another commission and that should be frowned upon. This Bill has addressed that satisfactorily.

If the intention of this Bill was to depoliticise the process of nomination and appointment of this commission, it has succeeded in doing so though having gone through this Bill, I have realised that the commission does not enjoy the independence that the other commissions have in under the Chapter 15 of the Constitution.

We have other statutory bodies that are not constitutionally established, but they enjoy independence. I do not think that this commission will work effectively if they do not have a provision for independence. When making amendment in the Committee Stage, I will propose that we add a clause to make this commission independent. This commission should not operate under the guidance of any person, entity or organization for its work to be done objectively and for it to achieve the purposes for which it has been established.

The statement that President Uhuru Kenyatta and Hon. Raila Amollo Odinga made on 9<sup>th</sup> March, 2018, speaks to some of the issues that we want to address in this Bill. In fact, the handshake should have been geared towards creating an enabling environment which would then enable this country to move towards its objective. In their

statements, the two leaders recounted what had happened in Kenya over the years, since 1963.

Mr. Deputy Speaker, Sir, yesterday, I also tried to recount what has happened since the multiparty election era. I recalled the cycles of violence that happened in 1992, 1997 and in every election that we have had. In those elections, we have been confronted with incidences of ethnic animosity, a society that has become antagonistic, acrimonious, and violent and not at peace with itself.

The two leaders noted that despite the changes that have taken place such as the amendment to the Constitution and the desire to accept change of system of governance, we had not succeeded hence some interventions needed to be made. I will quote what they said in that statement, which is true today as it was on 9<sup>th</sup> March, 2018. They said:

“Yet despite all the reforms, we continue to have bitter disagreements, ethnic antagonism and divisive political competitions have become a way of life.”

We should not isolate this Bill from the effort of the President and Hon. Raila Amolo Odinga who saw it fit to initiate the Building Bridges Initiative (BBI). The BBI committee is to deal with corruption and security. They are to also look at the issue of divisive elections, ethnicity and inclusivity which this Bill speaks to. Therefore, what Sen. Pareno is doing in this Bill is in pursuance in a way of the objectives of the statement that was made on the 9<sup>th</sup> of March, 2018.

If you look at the political conversation that is going on at the moment, I do not think that we will go there if we do not come together as a nation and realize that there is a more important responsibility in front of us even before we come to the elections in 2022. If you see the political groupings and formations that are going on at the moment, contrary even to the statute that is in place and contrary to the objective of this Bill, you would come to the conclusion that 9<sup>th</sup> of March, 2018 came and it is forgotten.

Mr. Deputy Speaker, Sir, Abraham Lincoln once said that “A house divided against itself cannot stand.” He was quoting the Bible; the Gospel according to St. Mark. I do not quote the Bible often.

*(Laughter)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Sen. Orengo, is that a disclaimer?

**The Senate Minority Leader** (Sen. Orengo): Mr. Deputy Speaker, Sir, we are told “Do not quote my name in vain.” Therefore, I am normally very careful not to quote the Bible. People like quoting the Bible. In fact, if you go to political meetings, you will discover that politicians quote the Bible more than the clergy. Politicians read the Bible from Revelation to Genesis; they read it backwards. They can tell you the number of books in the Old and New Testaments. I am happy that our people of the Islamic and Hindu faith do not quote their holy books as much as Christians.

Mr. Deputy Speaker, Sir, a lot of these is just hypocrisy. You will find that someone has stolen, beaten his wife and done all manner of things that he should not do, but he is in a political meeting quoting the Bible: “Love thy neighbour as you love thyself.” I am saying this from the bottom of my heart because I want to make a speech like I have not done this year. We are getting to the point that we are trying to run from.

Some of us have seen political skirmishes for so long that we do not want to see it happen again.

It looks like the Post-Election Violence of 2007/2008 is coming all over again if we are not very careful. We need to stand together now to go through the process of reforming our way of governance as voted by the two leaders. Kenya has always made it when the leadership comes together. When KANU and KADU went to Lancaster, they went as a team and we achieved our Independence. When we wanted to change the Constitution, the Parliamentary Parties Group (PPG) brought people together. There was ceasefire for a while. In 2007, after the elections, there was a grand coalition Government – although it was *nusu mkate* and no one desires that now – that brought people together in order to make transformation in the society.

Mr. Deputy Speaker, Sir, last year, the two leaders under the BBI came together and launched a nine points agenda that if you read through, you will realize to what extent this Bill is necessary and should be passed as yesterday.

My worry is that if you look at what has confronted the Prime Minister of United Kingdom (UK), is that there was division in Parliament and in her own party. A majority of Britons wanted to come out of the European Union (EU), but because of division in the political class, the UK is a very confused society at the moment. Nobody knows where they are headed.

Mr. Deputy Speaker, Sir, I can tell you that even in Kenya, in the next two months, we will begin to wonder where we are going. I hope that the wisdom to try and ceasefire in terms of elective politics will prevail. A lot of the issues raised through the BBI were to do with competitive politics. The other initiatives have dealt with the same point. I, therefore, hope that the political class will heed to this Bill and show more unity of purpose in terms of pursuing the nine point agenda that was a subject matter of agreement between President Uhuru Kenyatta and hon. Raila Amollo Odinga last year.

In conclusion, this is a Bill that should be favourably considered by the House subject to amendments.

I beg to support.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Very Well. I do not see any other request. I now call upon the Mover to reply.

**Sen. Pareno:** Mr. Deputy Speaker, Sir, in reply, I would like to appreciate all the Senators who have given their thoughts and made very good contributions to improve this Bill. I would like to appreciate; Sen. (Rev.) Waqo, Sen. (Dr.) Musuruve, Sen. Farhiya, Sen. Madzayo, Sen. Halake, Sen. Were, Sen. Sakaja, Sen. (Dr.) Zani, Sen. Seneta, Sen. Kwamboka, Sen. Shiyonga and Sen. Orengo.

Mr. Deputy Speaker, Sir, I have noted that the contribution by Sen. Were and Sen. Orengo on the issue of having an odd number for the commissioners. Maybe it does not come out clearly, but our intention was that the commission should have four members plus the chairperson to make up a total of five. If that does not come out well, we shall consider that as the Committee Stage.

I appreciate a good example that was given by Sen. Sakaja and I wish that we had that spirit as a country. He mentioned an instance where the Committee on National Cohesion and Equal Opportunities of the last Parliament visited an area that had warring

parties. After talking to them, they brought them together. They slaughtered and ate together. At the end of the day, the Committee left them hugging each other and they have remained peaceful to date. I wish that is the spirit that we had. That is the kind of cohesion that we would be happy to have in this country.

Mr. Deputy Speaker, Sir, Sen. Sakaja mentioned that we should ensure in this Bill, the National Cohesion and Integration Commission (NCIC) should not be an appendage to any department of Government. This has also been emphasized by Sen. Orengo indicating that we should provide for the independence of this commission if we mean serious business in as far as our cohesion and integration matters are concerned. That is very good contribution.

Initially, as I made my remarks, I noted that there is a directorate on national values and principles that is at the President's Office, dealing with cohesion matters, yet we have NCIC. I am asking the President under whose office this directorate falls, to let it be independent. If we care about building bridges in this country, how we can integrate and how cohesive we are going to be as a country, then we should let this commission do its work and ensure that the duties that have been bestowed to that directorate are handled by the NCIC.

Mr. Deputy Speaker, Sir, there was the issue of the budget which Sen. Orengo mentioned; how much resources we are putting aside for them to be able to do this job. We initially had also noted as we deliberate on this Bill, that, that directorate at the Office of the President is getting more funding than the NCIC. Why have a commission that is meant to bring integration in this country, bring us together, end the conflicts that we have and ensure that we live harmoniously and yet you do not have a budget for it? Why should we create directorate in the Office of the President that has a budget?

That is why in this Bill, we want to have a proper coordinated effort to ensure that there is integration and cohesion in this country, without having to place it in some directorate and yet the NCIC is in existence.

Mr. Deputy Speaker, Sir, Sen. Sakaja also submitted that we should look at how, in the funding that is allocated for cohesion matters, we should empower and ensure that the peace committees also have funding for them to be able to operate. Since these peace committees are in the counties, let us devolve some of these services to the counties and have branches that deal with cohesion matters. We should also have funding for the committees that will be operating right on the ground where the people are.

Sen. (Dr.) Zani talked about the effectiveness of the already existing commission as it is established. Sen. Orengo also brought it up. In his submissions, he actually said that this commission as established has failed. We now have a Bill that will try and make the commission effective. This is a commission which will do its job independent of other people and departments. Its effectiveness is an issue that we need to look at; if they have not performed, why have they not performed? What has hindered their effective performance? This Bill seeks to bring all these issues together to ensure that we have an effective commission.

Sen. Seneta made a very good contribution. She said that we should ensure that there is inclusion of county governments' nominees in the commission. We take into consideration the interests of the counties as a Senate, and therefore, including a nominee

to the commission from the counties should be considered. There should also be inclusion of programmes on peace in the counties as already indicated. We already have peace committees in existence.

As usual, Sen. Kwamboka, was fighting for the youth. She said the way this Bill is drafted does not cover the interests of the youth. For any serious country, we have to think about how our youths can direct their energies in right direction. Most of the time when there is conflict, it is the youth that are involved. It will be good to involve them in this cohesion and integration issues.

Sen. Shiyonga talked about continuity of the commission. It will also be considered. I also appreciate very good proposals by Sen. Orengo, who gave us the history of how this Bill came to be, how we should look at the TJRC Report and how much from that report we should carry forth, to ensure that we include and consider proposals of that Report as we strengthen cohesion in this country. The mode of picking commissioners has now changed and I am happy that Sen. Orengo has---

**The Deputy Speaker** (Sen. Prof.) Kindiki: Senator, you do not stop until you are asked to, which I am about to do.

**Sen. Pareno:** I have not stopped, Sir.

**Sen. Madzayo:** On a point of order, Mr. Deputy Speaker, Sir. I did not want to interject when my sister was talking about a very important matter, but what comes to my attention is, she referred to all the contributors.

Incidentally, mine was done in Kiswahili and I do not know whether my sister really got my points, because all these points she is referring to, Sen. Mutula Kilonzo Jnr., can confirm that they were related to whatever she is submitting. I did not hear her say that my brother spoke in Kiswahili, and although interpretation might be difficult, but I think whatever he said, I heard and it was relevant.

**The Deputy Speaker** (Sen. Prof.) Kindiki: What is out of order if she does not refer to your contribution? Is she obliged by the Standing Order to refer to your contribution?

**Sen. Madzayo:** She is not obliged, but out of---

**The Deputy Speaker** (Sen. Prof.) Kindiki: Order!

**Sen. Madzayo:** Thank you, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. Prof.) Kindiki: No illegal assistance from the corners.

**Sen. Madzayo:** I am obliged, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. Prof.) Kindiki: Sen. Pareno, was Sen. Madzayo a casualty of language? Did he become a casualty by speaking in Kiswahili?

**Sen. Pareno:** I started by mentioning and appreciating him by his name as Sen. Madzayo. I studied Kiswahili and got a principal in Form Six. I would definitely have picked up what he said. All of them contributed very well to this Bill. Again, I appreciate Sen. Madzayo. Probably, he did not hear me mention his name, but his contribution was well noted

**The Deputy Speaker** (Sen. Prof.) Kindiki: So, it is safe to say that next time we will put you to task on your own claim of mastery of Kiswahili. We will ask you to move a Motion or contribute to debate in Kiswahili from "A" to "Z."

**Sen. Pareno:** Mr. Deputy Speaker, Sir, you can test me on that.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Whoever alleges must prove. Proceed.

**Sen. Pareno:** Mr. Deputy Speaker, Sir, I undertake to, one of these days ensure that I do a whole Motion in Kiswahili. This is because it is our language. We are proud to have it as a language in our country. Currently, it has been uplifted to being the language for the entire East Africa. We are proud to speak it. Maybe in future we might as well start a tradition of doing our Motions in Kiswahili.

I was appreciating a lot of contributions from the Members. I will not have done justice if I do not appreciate the amendments that have been proposed. Sen. Orengo has proposed that we do an amendment on the offences on hate speech and how we have defined these offences, racial discrimination and contempt. He has specifically asked that we look Clauses 41, 42 and 43 and, probably, make sure we have done proper definitions of “creation” and “these offences”.

Hon. Members have also proposed that we include women in the formation of this Commission. We should appreciate that a lot of times when we have conflict and issues that affect us in terms of cohesion and integration, women and children are the people who suffer most. We appreciate the provision that this Commission should be independent for it to function properly.

Mr. Deputy Speaker, Sir, we and I have kept saying in this Senate that it is not that we do not have the right laws in place. Even that Act we are now seeking to repeal has some substance and issues on non-discrimination, hate speech and fair treatment. What do we do as a country? I wind up by giving an example of what my Vice Chairperson gave yesterday when we were handling a matter on a taskforce. It was a taskforce that was going round collecting views on certain regulations. We told them how involving the task was. The first thing we noticed that made me feel very sad was that out of 12 members of that taskforce, only two were of a different ethnic background.

When I asked why this was the case, they said the taskforce had come up because they are heads of departments and they were told to call heads of departments to form a taskforce. That means that the heads of departments of each of those departments were from one region. How on earth do we have an integrated Kenya and a cohesive system in this country if we can have such a set-up in this era?

It is not the laws that have a problem. In as much as we want to tighten them and improve on them, it is our implementation. Are we serious even in this BBI? Are we going to implement what they will tell us or will we make it political and start shooting it down and then have the “yes” and “noes” joking around with the lives of the citizens?

That is my conclusion.

Mr. Deputy Speaker, Sir, pursuant to Standing Order No. 61(3)---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order!

**Sen. Pareno:** I am in order, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): You have not done what you came there to do.

**Sen. Pareno:** Mr. Deputy Speaker, Sir, I beg to reply.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): No, you beg to move.

**Sen. Pareno:** Mr. Deputy Speaker, Sir, I beg to move.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): By that you have replied.

**Sen. Pareno:** Yes, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Very well. You are *functus officio* meaning you should sit unless you are on a point of order. In which case, you must raise the Point of order and be allowed accordingly.

The procedure is that once you become *functus officio*, you resume your seat and then you can now seek the attention of the Speaker in the normal way on a point of order.

*(Sen. Pareno resumed her seat)*

*(Sen. Pareno stood up in her place)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): What is it, Sen. Pareno?

**Sen. Pareno:** Mr. Deputy Speaker, Sir, I note that this is a matter that affects counties. I, therefore, request that you defer putting of the question to another date.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): It is so ordered.

*(Putting of the question on the Bill deferred)*

**Sen. Wambua:** On a point of order, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): What is it, Sen. for Kitui County?

**Sen. Wambua:** Thank you, Mr. Deputy Speaker, Sir. I rise on a point of order. I had approached the Chair seeking leave to make a Statement on behalf of suffering teachers across this country. However, I am engaged in a Mediation Committee on the Roads Bill representing the Senate. That matter has been bypassed by time. I am making a request that I be allowed to dispense with it. I beg the Chair.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): We had agreed you make your way here while we were still transacting that order. Is the Statement an emergency?

**Sen. Wambua:** Yes it is, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Approach the Chair.

*(Sen. Wambua approached the Chair)*

Order, Senators! I will apply my interpretation of Standing Order No.1 very broadly and allow Sen. Wambua to request his Statement. There will be no observations or comments and in less than five minutes.

**Sen. Madzayo:** On a point of order, Mr. Deputy Speaker, Sir. You have said that there should be no comments, but I thought your brothers who have been sitting there have made it a tradition that after a Senator reads out his or her Statement, then other Senators can also ride on it. You are now killing that tradition.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Yes. It is a discretion which I have exercised in that manner for good reasons. Of course, it is not arbitrary. We have already disposed of that matter. The owner of the Statement was agreeable to just requesting for

the Statement, so that the Speaker's discretion is exercised. It is because of time and the fact that we had already dispensed of that matter.

**Sen. Madzayo:** Mr. Deputy Speaker, Sir, I am obliged.

**Sen. (Dr.) Zani:** On a point of order, Mr. Deputy Speaker, Sir. I further request that you apply your discretion under Standing Order No.1 to allow us, even for a short time, because Sen. Wambua is coming up with a key Statement. He had mentioned to quite a number of Members and in anticipation, we are looking forward to at least putting in a word just to enhance and make it as serious and possible.

I know you are very conscientious of these things and you look at issues from a very wide perspective. As we make this plea, we anticipate a positive reply.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Sen. (Dr.) Zani, do you want to make my perspective wider?

*(Laughter)*

Let us see how it goes.

Sen. Wambua, proceed.

## STATEMENT

### INTERDICTION OF TEACHERS BY TSC

**Sen. Wambua:** Thank you, Mr. Deputy Speaker, Sir, for indulging me and for this opportunity. I rise to seek a Statement pursuant to Standing Order No.48(1) from the Standing Committee on Education, Information, Communication and Technology regarding the countrywide interdiction of teachers by the Teachers Service Commission (TSC), for allegedly seeking information on the preparedness in rolling out the new Competency Based Curriculum (CBC).

In the statement the Committee should-

(1) Explain the circumstances under which TSC interdicted and stopped the salaries of several teachers, including the following 12 teachers who are the Kenya National Union of Teachers (KNUT) officials from Kitui County.

- |     |                   |   |                          |
|-----|-------------------|---|--------------------------|
| (a) | Alexander Ngulutu | - | Mbondoni Primary School  |
| (b) | Eunice Wambua     | - | Tulimani Primary School  |
| (c) | Michael Erustus   | - | Ithumbi Primary School   |
| (d) | Musyimi Itunduu   | - | Kaango Primary School    |
| (e) | Paul Mbaluka      | - | Mbitini Primary School   |
| (f) | Emmanuel Savuli   | - | Kamunyu Primary School   |
| (g) | Sarah Katheku     | - | Mavuni Primary School    |
| (h) | Thomas Muthengi   | - | Kalole Primary School    |
| (i) | Irene Kivunzi     | - | Kyangungi Primary School |
| (j) | Onesmus Nzau      | - | Ilalu Primary School     |
| (k) | Joseph Kitangu    | - | Kangingo Primary School  |
| (l) | Elizabeth Musyimi | - | Mwingi Special School    |

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All these teachers are elected KNUT officials in Kitui County.

(2) Explain whether and how KNUT and other stakeholders were involved in the preparations for the roll-out of CBC, if at all.

(3) Explain why the Government is allegedly intimidating and silencing teachers who sought clarification on the new CBC through interdiction and threats of delocalization.

(4) State when the interdicted teachers will be reinstated unconditionally.

(5) Explain the measures that the Government will put in place to encourage a robust dialogue with all education stakeholders, including teachers, for a successful roll-out of CBC.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): That is an important issue. I will be surprised if the Committee on Education, Information, Communication and Technology is not seized of that matter already because this matter has been in the public domain. These are issues of the new curriculum and interdiction of teachers who are union officials.

**Sen. Mutula Kilonzo Jnr.:** Mr. Deputy Speaker, Sir, in fact, you are correct that there is even a worse situation in Kajiado County raised by Sen. Pareno. There is a similar issue in Makeni County where 14 have been interdicted. It is worse in Kajiado County because 58 teachers have been interdicted. I am informed that more have been interdicted in Kilifi County.

The Committee is seized of this matter, but what I have not heard from them is whether our proposal to have a Committee of the Whole – so that it is not just the Committee on Education, Information, Communication and Technology matter – because all of us want to address Prof. Magoha on where exactly the country will be when they have interdicted all these teachers. Who will they train if they want to interdict everybody?

It is even worse. I was in a meeting with Hon. Sossion, the Chairperson, Secretary-General, the Treasurer, Mr. Matiangi and they are going to have demonstrations in Nairobi City County on 7<sup>th</sup> June, 2019. I thought maybe the Chairperson would have been here so that proper guidance and directions are given.

I have even suggested to my party leader to act as a mediator because on 7<sup>th</sup> June, 2019, we will have demonstrations in Nairobi City County by all teachers. There will be a crisis.

Mr. Deputy Speaker, Sir, you can direct either this matter comes up tomorrow when the Chairperson is here or some direction of the Committee of the Whole because we must handle this matter like the crisis it is. I hear the Cabinet Secretary (CS) does not have a reverse gear. I was going to look for a hand brake, but I leave it to you.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Sen. Madzayo, would you like to quickly add something?

**Sen. Madzayo:** Yes, Mr. Deputy Speaker, Sir. This idea of interdicting a teacher who basically has aired his opinion as a Kenyan and secondly, in the course of his performance as a representative of a worker, is the height of impunity on the part of whoever gave these orders for the teachers to be interdicted. You realise that this is now prevalent and is affecting all KNUT officials across the country. It is a huge complain. At

the end of the day, these teachers are made to come out on the streets simply because they have been interdicted and an economic death has visited their home.

Mr. Deputy Speaker, Sir, it is a very important point that my brother, Sen. Wambua, has brought out. I also want to enjoin myself with the sentiments of Sen. Mutula Kilonzo Jnr. Let us invite Prof. Magoha to come and explain; if an employee working in his capacity as a representative of a worker goes to his office or in a meeting and says: "This programme has not been given sufficient time for the teachers to roll out". Can we stop it? Can we discuss about it? If by doing so, are they breaking many aspects of the law?.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Very well. We do not have time. I think the point has been made.

Sen. Pareno, could you be brief?

**Sen. Pareno:** Thank you, Mr. Deputy Speaker, Sir. I wanted to say that the Committee was given about 14 days from the day that I raised the Statement on Mashuru zone. Mashuru is a zone where 58 teachers out of 134 were interdicted. Out of the 58 teachers, 22 are head teachers. This left about four schools without a single teacher.

I had a very sad incident where the husband and wife were both interdicted. The wife was so expectant and that same day she was admitted in hospital, losing her child because they could not imagine going back home as breadwinners without a single job. That is how serious the situation is.

As things stand now, there is even more confusion. Those that were interdicted actually told others to report in their positions by allegedly promoting some to become head teachers in the 22 schools. As they were being told to report, KNUT told those ones that had been interdicted, to go back to where they have been before. So, you find double allocation because of those that have been posted and those that were being told to go back to their former positions. There is so much confusion that I need urgent intervention.

Yesterday, I asked the Chairperson of the Committee on Education, Information, Communication and Technology whether they are ready and he told me that he would give us a report as to whether they are able to give a way forward. Maybe the Chair can ask whether they can give us an interim report now as to what has happened since they were given the 14 days.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Are the 14 days over?

**Sen. Pareno:** They are not yet over, but seven days have elapsed.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Okay.

Proceed, Sen. Zani.

**Sen. (Dr.) Zani:** Thank you, Mr. Deputy Speaker, Sir. I will be very brief, I sit in the Committee of Education, Information, Communication and Technology. I see Sen. Kinyua and Sen. (Dr.) Musuruve here; we are all in that Committee. Efforts are being made to have CS Education, Prof. Magoha appear before the Committee because all these issues are very key and important. I think the issue has been the logistics, his schedule and diary.

Today we spoke about this so we are seized of it and our Committee Chairperson, Sen. (Dr.) Langat is trying to do as much as possible to ensure that he comes and answers

all these questions. It is really about intimidation as Sen. Pareno has explained and a way forward has to be found.

Education processes all through the history of this country have always been consultative and people must find a way to have a convergence at one point or another. We do not want to have a situation where it completely blows out of proportion.

**Sen. Were:** Thank you, Deputy Speaker, Sir. I would also like to join my colleagues in expressing themselves on this issue of the crisis in the education sector in the rollout of a CBC. As we wait for CS, Prof. Magoha to come and tell us what is going on, he should also tell us the difference between the CBC and the output-based curriculum. Why is it that teachers are not comfortable with this roll out? How prepared was the Government before this rollout was done?

Mr. Deputy Speaker, Sir, they should have let CS Amina Mohammed to continue being the CS, Education because she held more consultations than what we are seeing now. When this was rolling out under her authority, it was done properly. Right now, when you look at what is happening in private schools versus what is in the public schools you feel empathy for our children in the public schools who therefore...

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Sen. Were! This is not debate. You are not debating a Motion. Do you have additional observations?

**Sen. Were:** Yes, Mr. Deputy Speaker, Sir. I would like to indicate that teachers like all Kenyans have a right to picket and KNUT is their voice. They should be allowed to express themselves as is required in the law.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Very well. The request that had been made earlier by Sen. Judy Pareno is similar to this request. However, Sen. Pareno's request was on a particular area of a county. I find the request for a Statement by Sen. Wambua a little bit broader, especially Parts two and three. Although, it talks about specific teachers, there are general policy issues that are raised in Parts two and three of that request.

As I said, this is a topical issue. Therefore, I recommend to the Committee to deal with this matter as comprehensively as possible, so that we do not have piecemeal issues where we dispense with this and then another version comes tomorrow. The whole idea of a new curriculum and whatever is happening around it should be dispensed of through this process.

The initial Statement by Sen. Pareno was requested for on 16<sup>th</sup> May, 2019. Therefore, the two weeks end tomorrow. However, in the context of what I have said, that there is need for a holistic view in consideration of all this, I direct that the Committee, as expected, should have something to tell the House tomorrow, notwithstanding the new request by Sen. Wambua. It should not be an excuse for overrunning the time that was given in this House.

Therefore, I direct that the Committee on Education gets seized of the matter and engages all stakeholders. Given the gravity of this matter, I direct the Committee to table a report in this House.

Lastly, I observe that the Committee has not expressed inability to deal with the matter. So, we should be hesitant to involve the Committee of the Whole in every other matter. This is because we will stretch the human resources that we have in this House.

Therefore, the Committee on Education should deal with the matter and respond to the issues. If the Senator and the other Senators who have made observations around this issue think the matter requires the attention of the entire House after that, it can be entertained or raised at that point. Therefore, Committee on Education, this House requires your report in the next ten days.

It is so ordered.

Next Order.

## BILL

### *Second Reading*

#### THE MENTAL HEALTH AMENDMENT BILL (SENATE BILLS NO.32 OF 2018)

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Sen. Kasanga, I hope your shoes are on today? Coincidentally, your Bill is on mental health.

*(Laughter)*

**Sen. Kasanga:** Mr. Deputy Speaker, Sir, what are you suggesting?

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Senator. I am not making any suggestions. I am just reminding you that you are supposed to move The Mental Health Bill for Second Reading.

Proceed.

**Sen. Kasanga:** Thank you, Mr. Deputy Speaker, Sir. I believe that I am in order today. I look forward to this.

Mr. Deputy Speaker, Sir, I beg to move that The Mental Health Amendment Bill (Senate Bills No.32 of 2018) be now read a Second Time.

Mr. Deputy Speaker, Sir, this Bill seeks to amend The Mental Health Act of 1989 and update it to the current Kenyan constitutional reality. Article 43 (1) (a) of the Constitution guarantees every person the right to highest attainable standard of health. Section 73 of The Health Act, 2017 obligates Parliament to enact legislation to ensure, *inter alia*, that the rights of an individual suffering from any mental illness, disorder or condition are protected and mental health hospitals with sufficient capacity are established at national and county levels.

Mr. Deputy Speaker, Sir, before I go into the breadth and depth of the Bill, I take this opportunity to acknowledge this journey. This for me has been the highlight of my being in the Senate. If at all we are supposed to transform the lives of Kenyans, for me this is it. This is the one thing that I have seen create such an impact. I can say that I have made a difference by having been given this opportunity by my party leader to serve in this honourable House of the Senate.

Mr. Deputy Speaker, Sir, I have to lay a couple of ground rules. I have learnt along the way that we have to be sensitive to the people who are living with mental

illnesses and conditions. Therefore, it is important that we have the right choice of words as we debate this Bill. We must avoid words like ‘lunacy’ or ‘a mad man’ at this point in time. We have to remember that, as the Senate, just by virtually debating this Bill, we are becoming the ambassadors.

The biggest import or export of this Bill is to fight stigma. Therefore, there is no better way to do that than, as leaders, speak about it, open up and encourage Kenyans that it is about time that we speak on this issue.

It is unfortunate that the Government has completely dropped the ball when it comes to mental health. Only by virtue of a bit of pressure once this Bill was published, is when we began to see them trying to do a couple of things.

I remember two weeks ago when the Cabinet Secretary (CS), for Health said in the newspapers that they want to fund a couple of mental health institutions a little bit more. I said that this is a far cry to what the Government needs to be doing in terms of intervention.

We acknowledge that there was The Mental Health Policy, 2017 that was enacted. However, when it comes to implementation of that, again, it is a far cry. This country still remains far behind when it comes to acknowledging and making strides towards mental health.

Mr. Deputy Speaker, Sir, the World Health Organization (WHO) defines mental health as a state of wellbeing, where individuals recognize and realise their abilities, are able to cope with normal stresses of lives, work productively and fruitfully, and make a contribution to their communities.

That is a broad definition. From this, we can easily draw that the illnesses come out of somebody being unable to have a full life. There are those that we know medically, for example Schizophrenia, obsessive compulsive disorder, attention deficit disorder or bipolar disorders.

*[The Deputy Speaker (Sen. (Prof.) Kindiki) left the Chair]*

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

Fellow Senators, these are definitions that you can get online. However, when you read the WHO definitions, you know that mental illnesses also include depression, anxiety, personality disorders, eating disorders, alcohol and substance addiction and posttraumatic stress disorders.

Many of us have suffered these illnesses whether or not we want to acknowledge it. However, largely, people do not get to know when they are suffering from these illnesses. What happens is that a person finds themselves reacting or behaving in a certain way or being unable to cope with certain pressures of everyday life. It is simply because they have an underlying issue. We need to tell Kenyans today that these are not spirits and they are not bewitched. These are illnesses that can be treated.

The state of our mental health in Kenya is terrible. I remember when we started this journey with a Statement and went on to a Motion which I had cosponsored with

Sen. Chebeni. However, our Statement was never responded to by the Ministry of Health. That is why the need for a Bill came on.

At the time when we were debating the Motion, I remember how the Senate came out fully in support. When we see the statistics, your heart completely breaks.

You can see we are in a society where our Government administration is not even looking out for some of these critical things. You can imagine the losses that Kenya, as a nation, encounters because we have mental illnesses and challenges which we are not addressing.

The professionals who are supposed to deal with mental health fall so far below the recommended standards of WHO. At the time I was compiling my notes 88 psychiatrists, 427 nurses and 14 mental health institutions for a population of almost 52 million Kenyans is a far cry from what is needed.

Mr. Temporary Speaker, Sir, I think in our social group I shared a compilation of articles over the last probably just one year, of the alarming cases that can be attributed to mental illnesses. Many people and organizations have spoken to this because there is nobody else speaking about it, and I want to recognize a couple of them.

From the news articles that I have shared with you, you can easily see that this is crosscutting from the youth to old people. I think there was one particular news article where a 75 year old man hacked his wife to death.

The youth, of course, have been making headlines. There have been cases of Standard Eight pupils who hung themselves because they did not do well. The cases of high school students may be because of substance abuse and campus students because of unmet expectations in love relationships. We have seen and read everything.

Mr. Temporary Speaker, Sir, all these can be attributed to mental illnesses. Some people are unable to cope with work pressure and end up jumping off their office buildings. We have seen that; from young people to much older ones, who you would never even expect at all to have issues and challenges. Somebody just jumps off a building and kill themselves.

Mr. Temporary Speaker, Sir, it is really a sad situation. Before I go into the breadth of the Bill, let me take this moment to acknowledge some of the people I have walked with. I have received a lot of support. I will mention a couple of names; they are doctors. There is Dr. Alvin Juma when we started conceptualizing the need; Dr. Nelly Kitazi who had worked at Mathari Mental Hospital for over 14 years and Dr. Njuguna from the Ministry of Health. Surprisingly he was very encouraging when I started this journey, but then he did a turnaround once the Bill had been published.

There is also Dr. Frank Njenga from Chiromo Lane Medical Centre, who you all know. He has been in this field for the longest time and very vocal about mental health. He is one of the supporters of this Bill. He acknowledges that there is need to look into this issue wholesomely.

We also have Dr. David Bukusu who is based in the Netherlands. He had also worked at Mathari Mental Hospital and had a lot of insights into the Bill. He also gave me a lot of insights on the challenges they had at Mathari Mental Hospital at the time that he was there.

There is also *Capital FM* and an online platform called *Bonga*, where people can log in and have a conversation if they have any issues, are depressed or need to speak to a specialist. *Bonga* has gone into partnership with Dr. Njenga's clinic, so that they can offer professional help to people who want to speak anonymously for those who do not want to be known.

There is also the Kenya National Commission on Human Rights (KNHCR), the Health Rights Advocacy Forum (HERAF), International Institute of Legislative Affairs (IILA) and Calm Mind. Calm Mind is a very special organization that deals with maternal mental health.

Mr. Temporary Speaker, Sir, as I said, every day was a learning lesson for me. We take for granted what new mothers go through. Most of us imagine that they are just getting over giving birth and do not realize that they are actually suffering. It is actually a mental illness. We have come to realize that many of our single mothers, especially the young ones, suffer from this situation.

The African Project Against Suicide (APAS) is another very special group of people whose work is to train trainers on suicide watch. They train people to go and train others on how to manage suicide situations. They deal with people who want to commit suicide; talk to and mentor them.

I have interacted with them and they are doing a good job. We also have Validity Foundation, Headspace National Youth Mental Foundation, Befrienders Kenya, Mental 360 Kenya and Mzalendo Trust. Mzalendo Trust has been instrumental in getting the word out about The Mental Health (Amendment) Bill. We also have Chiromo Lane Medical Centre of Dr. Njenga. They have also been instrumental in supporting this Bill. Others are the Users and Survivors of Psychiatry in Kenya.

It is interesting when you hear the perspectives of people who live with disabilities or illnesses. They have been pertinent when it comes to this Bill because they gave their submissions to the Committee. We also have the Legal Resources Foundation Trust led by Eric and his team. They spoke on how our prisons handle the mental health patients who are incarcerated.

Mr. Temporary Speaker, Sir, allow me to give a special mention to the Makueni Youth Empowerment Forum led by Mr. Daniel Mutinda because they were amongst the first people who asked me what we can do about the young people in Makueni County who, because of drug and substance abuse, are much affected and not productive in the society. That is where part of the conversation on mental health began.

Allow me to also mention Dr. Okello and the legal team in Parliament because they have been very supportive, by giving me advice and encouragement sometimes when I felt like giving up. I also thank the Senate Committee on Health because public participation was overwhelming. We did not finish listening to all the submissions, but they took all the written memoranda and I know they went through them. I cannot wait to see the report they will table.

I have spoken in numerous forums because of this Bill. I have been called to speak in universities and spoken to quite a number of young people. I have also spoken to summits like the *Ongea* Summit. This is a special summit that happens every year. It involves journalists and people who study creative arts. It is interesting to hear what they

go through, being in the public limelight and the pressure that comes with that. Some of them are still young and have challenges with finances, and there are a lot of expectations from them. You can imagine the challenges they go through. I also attended a summit on reducing suicide cases in Africa at Daystar University, and there were many stakeholders who made contributions.

This has been quite a journey for me, but I received a lot of support and you can see why. It is because the Government has not been doing anything. Nature abhors vacuum. Therefore, people have to try and do many things. I was happy to hear in one particular forum that there are specific small groups that do community work around mental health issues in the counties. They mentioned about three or four counties where they had done a pilot project. One of the issues that this Bill seeks to address is community-based care when it comes to mental health patients.

The gravity of mental illness in this country cannot be understated. As we look at this Bill, I urge Senators that we all become ambassadors and speak about it in our various counties or wherever we go to, even if it is abroad. It does not matter because this is also a global issue. Let us become ambassadors and kill the stigma by speaking about it. Let us speak on this issue in depth. Let us give our experiences as well, like we did during the Motion, so that Kenyans can see that we are also human beings and have also walked this journey.

Mr. Temporary Speaker, Sir, if I have to highlight, the purpose of this Bill is to promote mental health and wellbeing of all persons, including reducing the incidences of mental illness. Reducing the same means that there are certain programmes and conversations that have to be at county levels.

The second purpose is to co-ordinate the prevention of mental illness, access to mental healthcare, treatment and rehabilitation services of persons with mental illness. I like the rehabilitation part of it because that is a critical aspect. When people are rehabilitated, instances of recurrence are also reduced. Access to mental healthcare also includes conversations of prevention. That is also important.

In one of social media groups, there is a doctor who said that since he opened his clinic, he gets more and more patients. Logically, the more you treat people, the less they should come to seek for medical attention. That means that they just treat, but do not help with preventive care. Preventive care starts with how you live and eat, and the state of your home. So, there are certain conversations that need to take place, so that cases of illnesses can be prevented.

The third purpose is to reduce the impact of mental illness, including the effects of stigma on individuals, family and the community. There is no doubt that when you are declared to have a mental illness or disorder, somehow, your nuclear and even the extended family gets tagged. That is absolutely wrong. Like we said, these are illnesses that can be treated. We need to fight the stigma, and that is what this Bill seeks to achieve.

The fourth purpose is to promote recovery from mental illness and enhance rehabilitation and integration of person with mental illness into the community. There is the issue of integration. I remember in one of the parliamentary forums on gender-based

violence in Kigali, we looked at some of the interventions on mental illnesses in Rwanda. They have a population of traumatised citizens because of the genocide.

When you do not deal with certain issues over time, they manifest themselves in a different way over periods of time. So, they have gone as far as making sure that every hospital offers psychosocial care for patients and people who may just need to have a conversation. They make sure that when people go back to the society, they reintegrate with the community and are accepted. They also monitor and do follow up. It is possible for us to achieve that as prescribed in this Bill.

Lastly is to ensure that the rights of a person with mental illness is protected and safeguarded. I urge Senators to look at the clauses of this Bill. I am sure we will get different views, like we had during public participation, on how the rights of a person with mental illness should be safeguarded.

Mr. Temporary Speaker, Sir, allow me to highlight some of the clauses in the Bill. Clause 5 seeks to introduce Part 1A, which seeks to delineate the obligations with respect to mental healthcare services between the national Government and county governments. Specifically, the Bill seeks to have the national Government provide policy guidance on mental healthcare and mental health services at national referral hospitals.

It also seeks to place county governments at the centre of provision of mental healthcare by requiring county governments to provide community-based care and treatment for mentally ill persons as well as provide mental healthcare treatment in the county health system from Level 2 through to Level 4 health facilities. This is also an area for debate because we got varied comments from stakeholders. I am looking forward to hear what the Senators will say.

Clause 6 of the Bill seeks to introduce a new part on the rights of persons with mental illness. In particular, the Bill guarantees persons with mental illnesses the right to mental health services and the right to participate in treatment planning, protection from physical and mental abuse, social, sexual and other forms of exploitation. They will also have the right to exercise civil, political and economic rights; the right to access information and the right to confidentiality. That is also a critical part. I urge the Senators to look at this critically. I am sure we will have varied comments and input.

Clause 7 seeks to reduce the membership of the Kenya Mental Health Board from the current 14 to 9 members. This is to increase efficiency and is also in line with the Senate's role as the protector of the interests of the counties. The Bill seeks to have the Council of Governors (CoG) nominate two persons with knowledge and experience in matters related to mental health; to ensure that counties have a say in the policies that originate from the Board.

Mr. Temporary Speaker, Sir, Clause 9 of the Bill seeks to amend Section 5 of the Act to align the functions of the Board with the requirements of the Constitution, which is very critical. This is by ensuring that the Board deals with policy and serves as a regulator for the two levels of Government, in conformity with the Constitution. It puts in place measures to ensure delivery of mental health services to the people.

Clause 10 of the Bill seeks to amend Section 6 of the Act by prescribing qualifications of a person who should be appointed as the Director of Mental Health.

Clause 15 of the Bill seeks to amend Section 9 of the Act, which provides for mental health hospitals by providing that a person who fraudulently procures registration of a private mental health facility should pay a fine. The fines are prescribed in the Bill.

The new Section 9D seeks to ensure that mental health facilities submit monthly reports to the Board and the County Executive Member of the respective county to enable both the national Government and county governments to plan more effectively, since they have the data that is necessary. So, we are calling for data collection and this report that comes back to the national Government will help to enhance and produce better policies over a period of time.

Mr. Temporary Speaker, Sir, in order to protect the person with mental illnesses, Clause 17 of the Bill seeks to amend Section 10 of the Mental Health Act to ensure that a person who voluntarily checks themselves into a mental health facility is reviewed within 72 hours of their voluntary admission. You will be surprised when you hear the stories that come from the public; of how you can find yourself detained for a very long time in a hospital just because you have walked in to seek help. It is very interesting when you hear such things and wonder how that came to be. So, the Bill here has to give that kind prescription.

Clause 22 of the Bill seeks to safeguard the rights of persons who are involuntarily admitted into a mental health facility by setting out conditions for involuntary admission. Involuntary admission does happen and it depends on the status of the mentally ill person at the time they are admitted. However, this issue has been abused severally according to the stories from survivors. There are people who have actually been locked up in a mental health facility, not because they are mentally ill, but because somebody has a vendetta against them. This Bill will take care of such issues and also safeguard the rights of those who are actually mentally unwell.

Clause 32 of the Bill seeks to provide a framework for review of persons with mental illness. It provides for the process of appeal should a person with mental illness be dissatisfied with the findings resulting from the review from the practitioners. At least there is recourse; the buck does not just stop with one practitioner. There is somewhere somebody can appeal if they have an issue with their treatment.

Mr. Temporary Speaker, Sir, Clause 33 seeks to ensure that a person with mental illness is provided with specialized and personalized after-care services. The after-care service is something which must be done. Coincidentally, I do not know at what point the rain started beating us, as Kenyans, that even what we had as a framework and infrastructure for our hospitals disintegrated.

We have stories of our patients having a dispensary right at their doorstep, where they could pick medication. What other countries have done is that within that infrastructure, they have set up psychosocial support. We are not suggesting that you go and build a whole new mental health facility, but expand whatever services are there.

When you have the dispensary right next to your door and expand that service, then you can begin to see how easy it is to give after-care services. Every dispensary will have a practitioner of mental health, who can deal with a certain size of population around him. These things are actually very possible.

Mr. Temporary Speaker, Sir, in order to conform to the Constitution, Clause 35 of the Bill seeks to ensure that transfers within mental health facilities in the counties are undertaken by the County Executive Committees in charge of health. Right now, the Bill prescribes that just to move a mental health patient from one station to another, you have to come to the director here in Nairobi, which does not really make a lot of sense.

The Bill seeks to amend Part 7 of the Act, to protect the right of property of persons with mental illness. Fellow Senators, you must look into the Bill. You have to read each of these clauses very carefully because I know there will be issues for debate. The Bill seeks to introduce an order of priority of persons who may apply to court for orders for management and administration of property of persons with mental illness.

This has been abused world over. Estates of people with mental illnesses are abused and all sorts of people apply to become representatives of the person with the intention of abusing their property. That is an area that we must tighten as legislators. We must ensure that people who are suffering from mental illnesses are not taken advantage of even by their own family members.

Under Part XII, Clause 31 (1) states that-

‘A manager who contravenes the provisions of this Part commits an offence and shall be liable, upon conviction, to imprisonment for a term not exceeding three years or a fine not exceeding two million shillings, or to both.’

In Part XII, Clause 31(2) of the Bill also seeks to ensure that-

‘Any property of a person who is mentally ill which is lost due to maladministration of the person’s estate shall be a civil debt recoverable summarily from the manager’s estate.’

That Clause tightens these issues.

Clause 49 seeks to amend Section 53 of the Act on the general penalty by increasing the fines, for we have to make this serious. To ensure that the interest of the counties are protected, Clause 50 of the Bill seeks to ensure that the Cabinet Secretary consults the county governments when developing regulations under the Act, for such regulations are likely to affect the functions and powers of the county governments.

That gives a general framework of what The Mental Health (Amendment) Bill (Senate Bills No. 32 of 2018) looks like. I know that the Senators would want to peruse through the original Bill, which is at the back of the blue booklet. We have also provided the digest, which is a good guideline for it will show them what the original Bill looks like and what the amendment is proposing. We included them for reference purposes.

I cannot over-emphasise the need of being sensitive in our choice of words and the need of the Senators to be the ambassadors of mental health. We must speak on this issue for it is a national disaster. You will get to know that it is a national disaster when you interact with people. You will realise that Kenyans are suffering. On several occasions, Senators have stood here and said that our health system is on its knees. Sen. Sakaja said that the Government seems to be at war with its people. Sen. Mutula Kilonzo Jnr. said that the education system is on its knees. All these things are affecting Kenyans.

Newspapers publish stories of the Cabinet Secretary for National Treasury borrowing money. I receive phone calls from Kenyans who are scared of that

action; you would think that I can stop him from doing that. Such news have a direct impact on the mental health of Kenyans. We need to speak about this and participate in mental health conversations.

I want to thank Sen. Mutula Kilonzo Jnr., my senior, for accepting to second this Bill. I also want to thank him for his contribution and encouragement.

With those few remarks, I beg to move and call upon Sen. Mutula Kilonzo Jnr. to second.

**Sen. Mutula Kilonzo Jnr.:** Thank you, Mr. Temporary Speaker, Sir. I rise to second this important Bill by Sen. Kasanga; The Mental Health (Amendment) Bill (Senate Bills No. 32 of 2018). I also want to congratulate her for proposing this Bill. I had never taken a keen interest in mental health until Sen. Kasanga brought it up. Just like any family, one of my cousins has mental health issues. My family members in Mbooni lock him in a room for he walks around when left free.

On reading some of these matters, it has come to my attention that mental health is a problem. Somebody once said that we are all mad; the only thing that differs is the degree of madness. Statistics show that up to 20 to 25 per cent of people seeking medical care have mental health issues. I came across an article that I will refer to extensively. The KNCHR did an audit called Human Rights Audit of the Mental Health System in Kenya. They did that audit in 2011 and it is titled ‘Silenced Minds; the Systematic Neglect of Mental Health System in Kenya. The document is nerve-racking. It is shocking.

According to one of the chapters in that Report, Cable News Network (CNN) did a documentary on Mathari Hospital in 2011 entitled ‘Locked up and forgotten’. That documentary portrayed the decaying mental health system in Kenya. The CNN crew found a deceased patient who had died the night before, but was lying in an isolated cell in a male ward. The tragedy is that another patient lay next to the dead body for a whole day and night. This happened in 2011, and Sen. Kasanga has made a proposal in 2019; eight years later. The issues that I have seen in this Report are the same; lack of funding and discrimination.

I have seen a report that says that people who suffer mental disorder are forced into labour and sexually violated. In this report, they have said that a girl in Kathonzi was sexually violated. Fortunately, those people did not throw her in a pit latrine. This happened in Makueni. We have a crisis. We only have one hospital and lock up people who are alleged to be mentally unwell. This report has reminded me of Article 28 of the Constitution, which talks of the right to live with human dignity.

What Sen. Kasanga has done – maybe unbeknown to her - is to give persons who have mental instability or illness their right to dignity. They have to dress well, kept in a nice place, fed and not to be ostracized. They should not be forced into sex, forced to work and or thrown into a dustbin. Look at the case in Nakuru where about 14 or 16 street boys, who were not even mental patients, were picked up from the streets. They were put in a vehicle and dropped in a forest at night to go and die, and for God to take care of them.

It is not unknown to say that a person who is suffering from mental illness has been bewitched. People say they are mad or were bewitched. In Ukambani, you would

say *kamuti*. In other places it is *amuti* when it is big. Recently, a police woman working in Parliament was killed by her boyfriend. Now it has become excusable. Recently, an old man killed his wife because she had become a bother to him. The old man decided to kill her then commit suicide and wrote a suicide note. These cases have become normal.

There is a recent high-profile murder where a girl was brutally murdered. Her throat was cut and was possibly raped by a man. It is likely that the judge will say: "Take this person for psychiatric treatment to check whether they are lunatics." It has become so casual that when one commits murder, they are treated as persons of unstable minds.

This Report highlights that there is no funding. What Sen. Kasanga is saying is that we should put mechanisms in place to ensure that when we are talking about healthcare--- If we were to interrogate the Kshs52 billion budget estimates meant for healthcare that I have in my office, chances are high that Mathari Mental Hospital has not been considered for expansion or for a conditional grant. Conditional grants have tremendously increased since 2013.

Are the mental health patients in Kenya children of a lesser God? Dr. Frank Njenga is famous for his role in psychiatry. Sen. Kasanga has said that the Ministry of Health has proposed a policy, but we have not seen any clear roadmap on that policy. What is the human resource component? We buy medical leasing equipment, but what are we doing about mental health? Do we have access to information? Are we doing enough research to find out why children are committing suicide left, right and centre? Is there a problem with mental health?

Have we established whether the people in the country, who have been rehabilitated for drinking disorder, particularly in the former Central Province, will be affected by this particular Bill? Is recidivism something that ought to be considered? How do we treat public awareness and mental health?

Sen. Kasanga has mentioned that the terminology for mental disorder is not madness. They include bipolar disease, psychosocial problems, schizophrenia and even the ones that have double identity. We cannot even say enough about the important role of mental health. We should look at the legal and proper financial framework, to ensure that these people are treated well. The Constitution says that nobody should be discriminated.

It also says that everyone is equal and everybody must be treated with human dignity. It also says every Kenyan must be given a right to good healthcare, under Article 43 of the Constitution that deals with economic and social rights.

Mr. Temporary Speaker, Sir, this Report identifies several issues that were also captured in the Bill. These are: the right to best available care; the right to be treated with humanity and respect; the right to protection from economic, sexual and other forms of exploitation, physical abuse or degrading treatment and freedom from discrimination on grounds of mental illness. For example, you could be fired because you are perceived to be insane.

There is also the right to community integration. Do we discriminate these people? There is also the right to legal representation. Do these people get legal representation in the event they are found to be unfit? More important is the right to

confidentiality; right to periodic review; right to liberty to persons suffering from mental illness and access to information.

All these things are captured in the Bill, in Clauses 3(h), (f) (g) and (j). This Bill recognizes that even a person who is considered to be mentally ill has a right to representation, information; has civil and economic rights; and, has legal capacity to enter into some form of contractual relationships or dealings. We are just ensuring that this category of people - and I think they can be recognized as people who are either a minority or a group that is discriminated - ought to be offered all the rights that are in the Constitution.

The Amendments are to ensure that under Article 43 of the Constitution, we have mental health facilities. Why does every county not have a mental health facility? I am not sure whether Sen. Kasanga has researched on this, but I am sure that I have not seen a mental hospital in Machakos, Kitui or Makueni Counties. Likewise, I have not heard of one in Taita-Taveta County.

Mr. Temporary Speaker, Sir, should we not as a country say that every county must have a mental health facility? We are talking about funding. Sen. Kasanga mentioned the problem of human resource. The few people who are supposed to take care of the percentages I mentioned--- About 25 per cent of the people seeking healthcare in the country have mental health problems. Despite this, we have grossly under-funded mental healthcare and do not have trained manpower to handle mental patients.

In my view, I wonder why we have not done this before. Sen. Kasanga has done her research and received assistance. Normally, our public hearings are poorly attended. In fact, when the previous Chair, Sen. (Prof.) Kindiki, mentioned that she was moving The Mental Health Bill, we all laughed.

It is amazing that during public participation, Kenyans had more interest on The Mental Health (Amendment) Bill than The Division of Revenue Bill. The only people who had an interest in The Division of Revenue Bill were the stakeholders; the usual culprits and suspects who want more money and do less accountability. In this one, every professional was there; the room was full to capacity. We are doing something right.

Sen. Kasanga is doing something right and getting all the assistance from the Senate. I must say, even if we do not say it too often, that we have a very good Senate team. On matters legislation, feel appreciated wherever you are and listening from. Even if we do not tell you too many times, you are a blessing to us the Senators of this Republic. We do well because of you.

In conclusion, Sen. Kasanga has captured the following key issues in the Bill:

- (i) Strengthening the legal policy framework
- (ii) Integrating mental health into primary healthcare.

The Nakuru County Level Five Hospital must have an elaborate mental health facility, being part and parcel of primary healthcare. In the next budget, we will be seeking conditional grants for all 47 counties, specifically for mental healthcare as part of primary healthcare. On reducing stigma, once we start referring to the people who have mental illness as those who are walking without clothes, how we reduce the stigma and discrimination?

On the issues of expanding financial and human resources, we want to know how much money the national Government, through the Ministry of Health, is putting into research and training of persons who are doing this very important work. We have a long way to go. However, I have read this, and we are going to make progress.

In terms of world health standards, Kenyans through people such as Activist Omtatah are very informed. If one person was to pick the statistics I have here that show that there are Kenyans who are taking advantage of girls, who are considered mentally unfit or have issues, we would have a case for violation of the rights of Kenyans by the Government of the Republic of Kenya. The people who are in Mathari Mental Hospital have not been thrown away; they are Kenyans. They may not speak for themselves, but they are Kenyans and must be treated as such.

Sen. Kasanga appreciates the Committee on health for the work they have done. I challenge them today on the Floor of the Senate to go to Mathari Mental Hospital and give us a report. We want to know the status of Mathari Mental Hospital, which is five kilometres away from the Senate of the Republic of Kenya.

I want to encourage Sen. Kasanga because I have done this thing about persons with disability, children who are mentally unstable, children who are born with asphyxia, which is a condition one can get at birth, that there is something that we can do. The people who take care of the people who are in Mathari Mental Hospital are possibly the worst treated and poorly paid. They live in mud houses, as I saw in a Government of Kenya (GK) remand Prison in Eldoret. Families - a man and his wife - share a house which is partitioned with a *kanga*, and yet we give them the work of treating and caring for people we do not want to live with.

This Bill should look into the reform of mental healthcare and the welfare of the people who have undertaken the sacrifice of treating mentally ill patients in Mathari Mental Hospital. We should ensure that they live well. It is the same way we mistreat our policemen, prison warders, teachers and nurses.

Mr. Temporary Speaker, Sir, people who work hard are not treated well. They are the ones who get the short end of the stick. I have asked this question and want every Senator to think about it. When we sit here and in the Committees, we are paid sitting allowances. You probably sat in four Committees today and have been paid an allowance for all of them.

Do we pay our nurses standing allowances for standing for 16 hours a day? What sort of a country is this where we just treat people so shoddily? I look forward to a country where the question of the right to dignity will be addressed. We always say that all people are equal and they are good Samaritans. Christians pray in church and fill them every Sunday, but we do the opposite.

Mr. Temporary Speaker, Sir, there is a parable in the Bible – I quoted it during the Solai Dam incident – where somebody asked: “While I was in prison, did you visit me? When I was sick, did you come to see me?” As the Senate, we must find a way of going there and appreciating those people who treat these patients. I want to be in that team, to appreciate the people who take care of our patients in Mathari Mental Hospital because they deserve the accolades.

That nice looking sash I saw Sen. (Dr.) Zani and Sen. Sakaja being given today, can we find one person who treats these mental patients and give them an award?

*(Applause)*

I do not know what you will call it, but I want to see the President nominating one of those people, so that I know that we truly care about the people who matter. If leaders are getting sashes for a Bill, and that is what we are paid to do, why do we not go and appreciate those people who are spending their lives and times looking after a person who cannot talk and answer you; cannot take themselves to the toilet, dress themselves or take a shower, and who possibly, use their beds as their toilets? I feel sad, but this is a good proposal.

I second.

*(Question proposed)*

**Sen. (Dr.) Musuruve:** Thank you, Mr. Temporary Speaker, Sir, for giving me this opportunity to add my voice to this very important debate.

I commend Sen. Kasanga for coming up with this Bill. Worldwide, all countries are talking about Sustainable Development Goals (SDGs) and this Bill is addressing SDG No.3; the well-being of people. We cannot talk about looking at the wellbeing of our people if we are not keen about the mental health of the very people.

Before I say much concerning this Bill, there is the issue of a label. Many times people have been labeled and it is painful. Sometimes when someone has a disability, psychological problem or going through some stressful moments and it is concurrent, instead of that issue being addressed, people will call him or her “that lunatic” or “that mad person”. At times, families are labeled as ‘the family of so and so’ or ‘the lady who talks to herself and is not mentally stable.’

A label is terrible because when one is labeled, he loses his human dignity and becomes the label. The person also loses confidence in himself and the family loses confidence too. There is need to come out of that labeling as being sick and lunatic. The name ‘lunatic’ is unacceptable. We must start from the definition, that we should not label people.

Mr. Temporary Speaker, Sir, the Bill states clearly that when you talk of mental health, this is a state of being well in the mind. When one is well in the mind, they can live a fulfilling life. It has come out clearly that when you talk of mental health, it also refers to depression, anxiety, eating disorders and all that. If Kenyans knew that mental health refers to eating disorders, depression and so on, it is possible to cure it at an early age. What I like about this Bill is that mental disorder is curable. So, someone has to be socialized and rehabilitated to move on with his life, unlike having a complete disability.

As the Senate, we have to address this issue and ensure that we promote mental health in this country for the purpose of ensuring everyone is healthy. If everyone is healthy the economy will grow. There is also need to ensure coordination of preventing mental disorders, which means that there is need to research and find out the exact cause of the mental problem. If it is an eating disorder, how can it be treated? If it is depression,

what is the cause and how can it be treated? From the Bill, mental disorders are not permanent. They are curable and someone can go back to society and be productive.

Mr. Temporary Speaker, Sir, as we talk of recoverability, there is need to sensitise the public and communities, so that when somebody has been cured from a mental disorder, he should not be seen as an outcast. The person should be allowed to be part of the society and go on with his life. Sometimes you cannot even blame the society because many people may not know how to accept and include people who have been rehabilitated from mental problems.

Regarding sensitization, this is where counties come in. The Bill talks about having programmes that speak to mental health in counties. If we have such programmes, it will be possible to prevent cases of suicide.

For example, when you read newspapers and listen to electronic media, you hear of people who are depressed. In fact, yesterday, I watched on television a case where a man in a certain county decided to kill the 'jezebel' in his life and thereafter decided to commit suicide. These are cases of depression.

Mr. Temporary Speaker, Sir, if this person was spoken to in good time, we would have arrested the situation. Stress can be addressed if we have centres at the county level, which take care of the mental ability of people. In case people have problems, they go to the centres, so that they are given psychosocial support. Some of these issues are a matter of talking to people, making sure that they see the sense in living and that it is alright to be stressed sometimes.

Sen. Mutula Kilonzo Jnr. has clearly said that there was public participation on this Bill and input from the stakeholders that attended. Therefore, this Bill is acceptable and should see the light day. I like the amendments that are proposed in this Bill and commend Sen. Kasanga for this. There is an important amendment in Clause 7 on protecting the property of persons with mental illness.

Mr. Temporary Speaker, Sir, there are people who are so cunning to people with mental disability. For example, family members will say that now that so and so is sick, they want to administer his or her property. Therefore, at the end of the day, they take away someone's property in the name of taking care of it.

Mr. Temporary Speaker, Sir, there is need for the property of persons with mental issues to be safeguarded. This is because persons with mental issues have children and next of kin. It is biblical that a good person leaves an inheritance for his children and his children's children. So, why should we deny someone who has mental disability this biblical blessing of leaving an inheritance for their children and their children's children? There are many instances when they are abused and their properties taken away. However, this Bill will ensure it does not happen.

Mr. Temporary Speaker, Sir, Clause 8 has an amendment of New Section 4A in regards to when there is a vacancy in the board. In fact, there was a lacuna in the principal Act that this Bill is amending. The principal Act did not state what would happen in case a board member dies and there is a vacancy. However, this particular amendment fills that lacuna. It states that:-

“The office of a member of the Board shall become vacant if the holder—  
(a) dies;

(b) resigns from office by notice in writing addressed to the Cabinet Secretary;

(c) is adjudged bankrupt or enters into a composition scheme or arrangement with the person's creditors;

(d) is convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months; or

(e) is removed from office under any of the circumstances specified in Section 4B.”

Mr. Temporary Speaker, Sir, this is a gap that was not addressed in the principal Act. Therefore, this particular amendment comes to address this gap. For example, when a board member has gross misconduct, it is possible for that vacancy to be filled.

The amendments that are in this Bill make the principal Act to become good, acceptable and workable for our citizens. There is also an amendment in Clause 9 that establishes a public mental health facility managed by the national Government and county governments.

This is good because it obligates the national Government and the county governments to be responsible of persons with mental illness. The Government should not run away from what is happening to Kenyans. The Mover has done research and it is clear that quite a number of people have mental challenges. Therefore, there is need for the Government to come in speedily to ensure that they arrest this issue. If it does not do that, it means that they will be playing the ostrich. We cannot solve issues of Kenyans by playing the ostrich. We must come out clearly to state and address the problem.

Mr. Temporary Speaker, Sir, I also support the Bill by stating that the person in charge of a private mental health facility shall be a mental health practitioner; a psychiatric, psychologists or clinical officer.

There are instances when people come up with organisations that do not have the experience or expertise. They will say that they are psychiatrists who take care of the mentally challenged. However, in the actual sense, they are getting money out of it. The money does not go to the mentally challenged but their pockets.

Mr. Temporary Speaker, Sir, there is need to ensure that anyone who wants to run this kind of clinic or home has the expertise and empathizes with these people. They should not do it out of the drive for money.

People who take care of patients in Mathari Hospital are not paid well and yet, they do the donkey work and deserve an increment. If you go to Mathari Hospital, you cannot do the kind of work that medics do. You will prefer to go home. This is because some of the patients are not able to go to the toilet. They ‘poo-poo’ anywhere, and since a person is employed there, they have to clean it. That is what people go through and have no voice at all.

As we talk about mental illness, I will not fail to talk about persons with disabilities. When you go to some schools, you will find that children in some schools ‘poo-poo’ on themselves. The teachers have to become the nurses and mothers. Some schools parents do not care about their children with disabilities. It is, therefore, up to the teacher to know what to do with those children.

Some parents do not even want them to go for half term. They do not go for them. However, the special needs teachers are the most poorly paid. You will find those who have graduated with degrees and masters teaching in primary schools. Most of them are not promoted and their salaries are not increased, and the Teachers Service Commission (TSC) does not care.

Mr. Temporary Speaker, Sir, there is need for us, as a nation, to empathize with children with disabilities and people with mental illness. If we do not do that, it will be so sad.

*(The red timer went on)*

Mr. Temporary Speaker, Sir, kindly add me two minutes.

As we speak, the Competency Based Curriculum (CBC) was rolled out. However, I can assure you that books have not been procured. I am a Person with Disability (PWD) and have been making a lot of noise, but who cares? If nobody can listen to me yet I am a legislator with disability, who will listen to the common man with a disability?

This is something that must be addressed. The Ministry of Education and the Kenya Institute of Curriculum Development (KICD) must address this. This should reach the President because when it comes to presidential acknowledgements, PWDs are not acknowledged, yet they do so much for this country. I hope one day God will allow me to sit with the President. I will tell him what is happening because sometimes his advisors do not advise him correctly. The PWDs also need accolades and state recognition.

Prof. Ndurumo is the father of sign language in this country, but who cares? He has a lot of knowledge to offer Kenyans, but nobody has recognised him. There is need to recognise PWDs and people who take care of mental health patients because they add value to this country.

Mr. Temporary Speaker, Sir, I hope that what I have said will not just pass like that. I hope one day I will be called to tell them what I am saying, so that we talk and see how PWDs can be given state recognition.

I thank you.

**Sen. Were:** Thank you, Mr. Temporary Speaker, Sir, for this opportunity to contribute to this Bill by Sen. Kasanga. For a long time, we have misunderstood and misinterpreted what mental health is all about.

Sen. Mutula Kilonzo Jnr. said that there were quite a number of stakeholders during public participation. That indicates the interest on the subject. This Bill seeks to amend an Act, and that shows that mental health has been neglected. I am glad that Sen. Kasanga looked at issues that are missing in the Act that made it impossible for us to have proper management of mental health issues.

Mental health has been ignored by governments over time. Therefore, Non-Governmental Organisations (NGOs) have filled the gap. Most of the stakeholders we had during public participation on this Bill were people from NGOs. As I said earlier, for a long time, mental health has been misinterpreted.

Traditionally, there have been various beliefs on mental health, such that anybody who exhibits any illness that we do not seem to understand is referred to as a mad person and is either locked up or tied on a tree or basically banished. Traditionally, they were even thrown into a forest to die there. Until recently, even transgender was considered a mental health issue. That means that it is not only in Kenya or Africa where mental health has been misunderstood, but the world over.

This Bill seeks to ensure mental health treatment at the county level. Since health is a devolved function, county governments have a duty to ensure that mental health issues are mainstreamed in the primary healthcare. As they adopt the Community Health Volunteers (CHVs) models of managing health, they should ensure that all levels of health facilities have a mental health unit.

Mathari Hospital is the only referral hospital for mental illnesses. There is so much stigma such that people even threaten children that if they do anything wrong, they shall be taken there. The stigma associated with mental health makes it impossible for us to look at issues of mental health objectively.

The Bill also seeks to ensure that national and county governments adopt a comprehensive national strategy and plans of action, so that we promote the rights of persons with mental illnesses. It also seeks to develop standards that must be maintained by mental health facilities, both at the county and national level.

Those standards should be developed. We have to know the number of health professionals that are needed in a mental facility, the type and quantity of equipment required, the medication and methods of care. The county governments were not factored in the principal Bill, but will now take a central role in the provision of mental healthcare to patients.

Clause 6 of the Bill also provides for the rights of persons with mental illness. It says that;-

‘Every person with mental illness has the right to—

(a) fully participate in the affairs of the community and in any position suitable and based on the person’s interests and capabilities.’

They are not to be considered disabled in any way. We should always remember that disability is not inability. Mental health patients have a right to health services like any other Kenyan and have a right to consent to treatment. They should not be forced into treatment, but give consent before any treatment is undertaken. We have to treat them with dignity.

Insurance companies have not been providing cover for mental health patients. This Bill seeks to ensure that mental health patients access medical insurance. The Kenya Board of Mental Health has not had representation at the local level for a long time. We are now working on a new constitutional dispensation that will allow the county governments to be represented in the Kenya Board of Mental Health. This Bill has outlined the role of that board. The KNCHR will now have representation in that board and that will help check if the decisions of that board abuse human rights.

The Bill seeks to replace the district mental health councils with the county mental facilities. Clause 14 of the Bill makes provision for the management of mental health facilities at all levels. As we prepare budgets at the county level and national level,

we will have to provide an item on management of mental health facilities, which will help in the management of mental health patients. Initially, people had to go through the director of the board to register a mental health facility, but that duty has now been designated to the respective county executive committee members.

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): Order Senator. Sen. Were will have a balance of 12 minutes when the Bill next appears on the Order Paper.

### ADJOURNMENT

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): Hon. Senators, it is now 6.30 p.m., time to interrupt the business of the House. The Senate, therefore, stands adjourned until tomorrow, Thursday, 30<sup>th</sup> May, 2019, at 2.30 p.m.

The Senate rose at 6.30 p.m.