

# PARLIAMENT OF KENYA

## THE SENATE

### THE HANSARD

Thursday, 26<sup>th</sup> September, 2019

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

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

#### PRAYER

#### PETITIONS

##### RESETTLEMENT OF EAST MAU FOREST EVICTEES

**The Speaker** (Hon. Lusaka): Hon. Senators, I hereby report to the Senate that a Petition has been submitted through the Clerk by Mr. John Njogu Njoroge, a citizen of the Republic of Kenya and the Chairperson of East Mau Forest Evictees in Nakuru County.

As you are aware under Article 119(1) of the Constitution-

“Every person has a right to petition Parliament to consider any matter within its authority, including to enact, amend or repeal any legislation.”

Hon. Senators, the salient issues raised in the said Petition are-

(1) THAT, the Members of East Mau Forest Evictees lived inside the Mau Forest for 70 years as caretakers to the forest since the colonial period in Kenya and were later evicted from the forest in the year 1988.

(2) THAT, persons from different counties among them Bomet, Kericho and Baringo were resettled in the same forest.

(3) THAT, the East Mau Forest Evictees wrote to the Truth Justice and Reconciliation Commission (TJRC) on 21<sup>st</sup> September, 2011 and the National Land Commission (NLC) on 7<sup>th</sup> June, 2018, but no response has been received to date.

(4) THAT, the evictees are currently landless and have lived as squatters since 1988 and have never been resettled.

The Petitioners, therefore, pray that the Senate investigates the matter with a view to resolving the resettlement of East Mau Evictees.

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

**The Senate Majority Leader** (Sen. Murkomen): Thank you, Mr. Speaker, Sir. The question of squatters and particularly the possibility that we still use the word

“squatters” in relation to any citizen of this country is a great shame. Just the same way we confidently talk about people whom we call “slum dwellers”, it is an insult on the integrity of the people of Kenya. It is the responsibility of the State to ensure that its citizens are settled or re-settled to ensure that people can live with dignity in this country, which is a constitutional right. I, therefore, support this.

I speak as a person who knows the pain of being a son of a squatter, moving from one corner to another; being evicted by the police and the impact it has on the right to education, health and dignity. I remember every time our houses were burnt when we were small children, we would be forced to go and sleep under trees and caves. The Speaker knows the place; he was the District Commissioner (DC) of that area. He knows very well what we went through even though he came much later when a lot of those atrocities had been committed.

When I hear that anybody is living in shanties or without shelter, it concerns me. Article 43 of Constitution talks about social economic rights and states that it is the duty of the State to ensure its people are settled. It is also the duty of the State to ensure that Kenyans enjoy the right to a clean environment. We must protect our forests. We have no resource that can be elastic. Therefore, it is important to protect Embobut Forest where I come from, the whole of Cherang’any Hills, Mt. Elgon Forest in your County, Mau Forest which is in seven counties and Mt. Kenya Forest which is in about four counties.

Mr. Speaker, Sir, this duty does not absolve the State of ensuring that as we do so, our citizens live a dignified life. This idea that State officers speak with a lot of contempt of citizens and use language like “I do not care” with a lot of bravado and hubris, belongs to the pre 2010 Constitution. The post 2010 Constitution is about cooperation; sitting down and consulting with citizens to ensure that everything is done within the Constitution and the confines of the protection of personal rights and with an intention of ensuring that you further the welfare of the citizens of this country.

I hope the Committee that will investigate this matter will come back to this House with strong views and recommendations that are implementable.

I want to challenge the Committee on Lands, Environment and Natural Resources to come up with a very good report. Do not be surprised if that report will be the same report that will be found in the United Nations (UN) circles. It may also be used in the African Court on Human and People’s Rights (ACHPR) and many other fora, including the East African Court of Justice (EACJ) when these citizens are looking for fairness and justice. You can see they are already saying that they have done this and that, but they have not succeeded. They have come to the Senate because they have faith in this House.

The report that we will prepare should be implemented by our Government. However, where they are unable to do so, further mechanisms or processes of accountability will ensue and the document we would have prepared will be very useful for it.

Mr. Speaker, Sir, I support.

**The Senate Minority Leader** (Sen. Orenge): Mr. Speaker, Sir, I also would like to support this Petition. As you know, one of the important areas for the struggle for freedom in Kenya was on land. The land question has not been resolved up to now despite more than half a century of independent Kenya.

The Constitution set out a framework with which to deal with the land question including ways and means of dealing with historical injustices in so far as land is concerned. Particularly in the Coastal, Central Kenya and Rift valley, there are many areas where the land question continues to be a big problem that needs immediate resolution.

Mr. Speaker, Sir, it is important that so long as we do not have any means of employment for a majority of Kenyans, land seems to be the only available resource for the ordinary people for purposes of settlement, shelter and even earning their living. Therefore, the land question in this particular contest forms a very important pillar in relation to what the Government needs to do.

Having said that, it is also important that we protect our water towers and forests. You have seen what has been going on in Brazil along the Amazon. It has brought a worldwide concern about the effects of climate change. Climate change is with us, unless we are able to resolve it as a nation because the effects of it can be local depending on how we manage our environment, but even the little things we do within our immediate environment affect the world as a whole.

Therefore, land being a finite resource we must look for more imaginative and innovative ways of trying to give our people shelter and the way to earn their living.

Mr. Speaker, Sir, China has one of the largest populations in the world. Most of China is arid and semi-arid. A lot of China is desert. If it is not a desert, then it is in regions where sustaining human life is extremely difficult. Therefore, the growth of the Chinese economy has helped the big population living in China to try and immigrate into towns and industrial enclaves in order to earn a living.

In Kenya, probably what we need to do, because this will be a persistent problem, that people continue looking for land for speculation. I think this must be stopped. Those owning large tracts of land must surrender that land to the State to settle the people who do not have land.

Mr. Speaker, Sir, if you look at individual Kenyans who own large tracts of land, some of the land they own is bigger than some of the counties in Kenya. They did not get this land as a matter of right or they inherited it from their clans or their families, they got this land from the State. Historically, if you look at the Delameres, for example, the land they got did not belong to them by inheritance, but they were given by a colonial state, and some of this needs to be addressed.

We have reached a level where, for example, we find foreigners in Laikipia being given 100,000 acres of land and there are local communities who are living in Laikipia or Samburu who do not have land. These are nomadic people who need to move with their livestock. We have wildlife which must have corridors for them to move around.

Mr. Speaker, Sir, to enable Kenyans feel that the land question is being dealt with properly, directly and fairly, those who own large tracts of land must explain what they are doing with that land.

If you look at the National Land Policy as it exists today, there is a requirement that there should be some kind of tax on land which is left idle. There is a lot of land in Kenya which belongs to individuals rightly so, but these pieces of land are either leases or freeholds which were originally public land. If they cannot find a way of using that

land effectively for purposes of building the economy, that land should be expropriated and given back to the people.

In this Petition, you find there are people who live in the forest not because they were taken there by anybody, but because that was how they lived in the past. They were hunters and gatherers. It will be highly unjust to move such people out of the forest without compensation or finding alternative settlement. That is not to say that we cannot and should not protect our forests. Those forests must be protected. If there are people living in the forests, we must find a humane way of making sure that they are peacefully moved from those areas to alternative areas and the forests are then protected for the benefit of us and for future generations.

Thank you, Mr. Speaker, Sir.

**Sen. Dullo:** Mr. Speaker, Sir, I stand to support this Petition. It is serious because evictions are taking place everywhere in this country without due process to the law. I believe the law is very clear in that whenever there is an eviction or whenever acquisition of land is supposed to happen, communities must be involved.

This time round when devolution is in place, the county government should be involved when there is an eviction that is taking place or compulsory acquisition of land. Unfortunately, the various institutions of government are allocating land to individuals or institutions of Government without involving communities who are living there.

I have a similar situation in my county today. As we are speaking right now, the Kenya Defence Forces (KDF) is surveying an area where communities have never been involved. They claim that the land was set aside for them in 1960. Those are many years back. This is because there are several settlements that have taken place from 1960 up to date.

Mr. Speaker, Sir, this is really unfair. It has been awhile since communities in Mau South were evicted and up to now they have not been compensated. Where did they go? Will they be thrown to the bush or languish as poor people without land in this country? I really do not understand what is happening in our country.

Mr. Speaker, Sir, I wish the Committee on Lands, Environment and Natural Resources could sit down with the relevant ministries to stop these shenanigans because it is becoming too much.

I support and hope the Committee will speed up the process to ensure that communities get justice whenever evictions take place.

**Sen. Wetangula:** Thank you, Mr. Speaker, Sir. The Petition before the House is very clear. Whoever is petitioning also understands and appreciates that conservation of water catchment areas is necessary. He is not asking about being taken back to the forest, but about investigating and finding a resettlement solution.

Mr. Speaker, Sir, in this country, we lost an opportunity after the Constitution of Kenya 2010 to enact new laws to change the structure of land tenure. We have continued to tell Kenyans and make them believe that if you have no land, you are worthless. It is not true because if you go to many countries, people live very decently without any title deed in their closets.

Mr. Speaker, Sir, if you go to Denmark and your father has 1,000 acres of farmland and he passes on, there is no guarantee that you will inherit that land. You have

to go before a panel, be interviewed and interrogated to prove yourself. If it is a farm, you are supposed to prove that you are capable of running it. That is only when they can let you inherit the land. If you do not, they pass it on to someone who can carry on with farming.

Mr. Speaker, Sir, land is a tool of production; it is not an instrument of pride and ownership. We, therefore, want the Committee of Agriculture, Livestock and Fisheries chaired by the distinguished Senator for Nyandarua, to look into this matter very carefully. Like Sen. Orenge said, we have people who have lived with and protected forests – the Ndorobo, Ogiek and all those other communities. We then have the invaders; people who walk into forests armed with power saws on their shoulders. They will mow down any tree in sight, burn charcoal and create deserts where we have tropical forests. Those are the people that we must deal with.

Mr. Speaker, Sir, in resettling people we must also encourage the Government to create urban centers with amenities and facilities where people can live in small holdings. They should have schools, hospitals, police station, *et cetera*; so that they cannot be tempted to run back to the forest.

The Majority Leader and his Government should feel ashamed of themselves. This is because the European Union (EU) Governments are sending money to Kenya to protect and conserve forests and to plant trees; when the Jubilee Government is so fixated with brick and motor and grandiose projects which are fueled by greed and corruption. We do not have any money in the budget that we just passed from the Government of Kenya to replant trees in any of the counties yet the Europeans have given Kshs80 million to each of the 11 identified counties to plant trees. Therefore, our priorities are all wrong!

Lastly, even the money that the Europeans have given as we were evicting people from the Mau, there is no allocation of part of that money to the Mau Reforestation. Instead, they have sent it to other places, where they are mis-describing it as water towers.

The very last, Mr. Speaker, Sir, is this. Senate Majority Leader, we must bring a Bill to this House to protect forests by obligating the Government to avoid this moving in and out of forests all the time. Let us fence off all national forests and protect them together with the wildlife there in; the flora and fauna, and leave the protectors of the forests – the Ogiek and Ndorobo – to continue hunting and gathering as we evolve them to better lives.

**Sen. Kinyua:** Thank you, Mr. Speaker, Sir, for giving me this opportunity. From outset, I stand to support this Petition. It is heartbreaking to see how Kenyans are being treated, by being evicted from where they have lived for a long time. However, it is not lost to us that we must maintain our environment. However, as we do so, it is equally important to make sure that Kenyans are living and are treated with dignity.

Mr. Speaker, Sir, if you come to Laikipia, we are facing the same problem in an area called Marmanet. The people who were living there were evicted from that forest and were sent to villages. If you go to Nyahururu, there is a village called Maina and Manguo Villages, where people are living in very unconducive conditions. It is so unfortunate, because in Laikipia, it is believed that we have very large tracts of land yet

the people who are in them are foreigners. It, therefore, beats any logic for any Government to be in power and yet its citizens are suffering.

If you also go to Nanyuki, you will find a place called Kwambuzi, where people were evicted and they are living in villages in those bad conditions. If you go to Majengo, Nanyuki, and Rikie, you will find that the conditions they are living in there are bad, with no hospitals or roads. It is as if the Government has neglected its people.

Mr. Speaker, Sir, we are a people who know how to maintain our environment. If you go to Mt. Kenya, we have a very good environment, but it does not help Kenyans. It helps just a few people, because we keep on suffering. We have all those animals like Elephants in these big tracts of land. When they leave those areas, they come to our small pieces of land to cause havoc. We feel frustrated, and that is why I stand to support this Petition.

Mr. Speaker, Sir, I congratulate the Committee which is chaired by Sen. Mwangi Githiomi for the good job they are doing. We brought the Petition of Marmanet, and it is our hope that they will do a good job so that the people of Laikipia get justice, not only small pieces of land. This is because 90 per cent of Laikipia is occupied by about 10 people. Therefore, all we are asking for is that we be given what belongs to us.

Thank you, Mr. Speaker, Sir.

**Sen. (Dr.) Langat:** Thank you, Mr. Speaker, Sir, for also giving me this chance to make my contribution on this Petition.

It is, indeed, very sad that at this time, people have been living for around 70 years in an unstable situation by being displaced. Up to now, they are still squatters in their own country. I want to narrow down to the issue of Mau, on which I have little knowledge about. The people who are living in Mau--- Remember that I am not saying "Mau Forest" because not all the places those people are living in is necessarily the gazetted forest. Sen. Orengo was saying that some of them were the Ogiek, Ndorobo and the rest, who were from Kericho and Bomet and who were historically living in the current areas that were occupied by the colonialists. They planted tea, took them as schemes and displaced those people who actually went to the forests. The colonial master then left. It is unfortunate that the tea plantations are there and they are not benefitting those people in any way; and they never went back to their former land.

Some of the other lands that were ancestral were finally occupied by the current black colonial masters. These are the people who were fortunate, after Independence, and had political power. They occupied large chunks of land at the expense of those people who were regarded as intruders in the forest today. Some of them were originally from Bomet and Kericho, and are now in Mau. They are actually not in the gazetted forest; they are in a block which was trust land for the Maasai. The people who lived there initially sold the land to these particular people, and they even have rightful title deeds. However, the interesting part of it is that whenever evictions take place, the people from the Cabinet Secretary (CS) for the Ministry of Lands and Physical Planning or the Ministry of Environment and Forestry and the rest simply send in guards to displace these people without even asking them. You even hear utterances from some of our fellow politicians and leaders, saying that title deeds are mere papers, yet these people are suffering.

The worst part of it is on that side of Mau, where even during our campaigns, all of us, including the President, went to those places. We then assured those people that they are rightfully there. They now wonder what happened. They have been telling us: “So you are lying, come and tell us that you were cheating us so that we see what next.” Those are the places where the Government constructed schools and issued title deeds, which are there.

Right now, Mr. Speaker, Sir, the threats of eviction are very rife and they have just been told that after the national examinations, they should prepare to leave. It is, therefore, very interesting. I would like to ask that Committee, with all humility, that they should bring us a solution to this perennial problem. I wish they would conduct a lot of research and investigate exactly what is happening among these people. We have been mistaken a lot; even some of our colleagues have asking me, “Langat, with all your education, are you are supporting people to live in forests?” That is interesting. Those people have been misunderstood because no one has listened to them.

Mr. Speaker, Sir, people from South Rift are not insane to encroach into the forest. In fact, where I come from in Bomet County, we have Chepalungu Forest which nobody has ever interfered with. We are also surrounded by the Mau Forest in parts of Bomet and Kericho counties and no one has ever touched the trees.

We know historically that those people were displaced. Most of the land in Nakuru County which belonged to the former Agricultural Development Corporation (ADC) that they could have been given by the previous governments was rewarded to people who were in positions of power. Those people do not use the land up to this time. People are being chased from Mau Forest yet their land is being occupied by people who do not use it. That is an issue that has to be corrected with sobriety so that this perennial problem comes to an end.

Mr. Speaker, Sir, I support this Statement and urge the Committee that will be given the responsibility to look into the issues to do thorough work and bring a solution to the problem that has been affecting our people. It is not only in Bomet because land issues are many.

When we were in Taita-Taveta County, we realised that 65 per cent of the land is occupied by animals. In fact, animals benefit from it more than human beings. Whenever human beings attack the animals, they are treated harshly more than when the animals---

**Sen. Wetangula:** Land is owned by animals and two individuals.

**Sen. (Dr.) Langat:** Mr. Speaker, Sir, this is something we need to take seriously.

I support.

**Sen. (Dr.) Kabaka:** Thank you, Mr. Speaker, Sir, for giving me this opportunity to also to air my view. I was laughing here with Sen. Wetangula who is my senior. He said that in Taita-Taveta County where Sen. Mwaruma comes from – I can see Sen. Mwaruma listening – vast land is owned by two Kenyans. That is nothing but historical injustice because one of the individuals is a foreigner and the other is a local.

Those who happen to have been students of law at the University of Nairobi (UoN) in earlier years, including my senior Sen. Orengo here, must have read the land law at its inception. They must have been taught by the late Prof. H.W.O.O who did two

good manuals. One was historical and the second one was a substantive land law. My concern is the one on the history of land law in Kenya.

One of the key cases which every student would recall is that of Ole Jogo where Maasais were evicted from their ancestral land by the white imperialists. When they sued, ultimately they lost on the basis that Africans did not have a cogent conventional administration. That meant the capacity to enter into contractual agreements with the Whiteman.

You will realise that this is a replica of what happened in other countries, including countries in the Amazon Basin as it has been mentioned by my senior Sen. Orengo. Those who use DSTV to watch Nat Geo Wild see how the environment has been destroyed by the imperialists who do mining and deforestation and so on and so forth. It is all over the world.

Mr. Speaker, Sir, if you overfly Mau and other areas of the so called big water towers in Kenya, you will definitely be moved to tears. I have overflowed there thrice with the Senator for Narok County, Sen. Olekina. I found myself sobbing after seeing the wanton destruction of the forest for no reason. You will see people burning charcoal and tributaries have dried. That definitely affects the Nile waters.

Whereas we have genuine Kenyans who have been affected and do not have land--- I am trying to avoid using the word squatters because it is not a good expression at this time of the new constitutional dispensation. Others are speculators especially in the urban areas. They speculate on private land and that creates some conflict.

Mr. Speaker, Sir, someone has said that this problem is universal. Without going very far, we have a problem in Mavoko which is just next to where I come from. The land initially belonged to the Kamba community. However, historically, after the Government of Her Majesty the Queen paved way to the Independence Flag of Kenya, the powers of land ownership was vested in the Prime Minister, then to the President and eventually the Commissioner for Lands then.

Sen. Orengo was once the Minister for Lands. The leases were given to the East African Portland Cement Company (EAPCC) for 99 years to extract raw materials used to manufacture cement. While perusing the copies of the leases, there is a condition that states that upon exhaustion of the raw materials, the same land was to revert to the State. By implication *ipso facto*, the State holds the land in trust for itself and also for the public.

In those conditions, the EAPCC has no legal right to sell the land to third parties yet they have done that. They have sold the land to key individuals. Some American companies have put up very nice houses there. Instead of giving it back to the Kamba community and others who live there--- Mavoko is a cosmopolitan sub-county in Machakos County - those people have entered the said land and done fantastic development. It is a big shame that the Government wants to evict them. The other day, the County Commissioner of Machakos County issued a very terse notice that the said Kenyans be evicted forthwith, without due regard to the law relating to eviction.

Mr. Speaker, Sir, one ground for eviction is that, that land be set aside for the Government to push for the four agendas, among others, housing development. The question then is: Is it the policy of the Government to destroy multibillion houses to pave

way for another house? As the Senator from that area, I read a lot of mischief. It is in the public domain, which we shall prove to the State, that, that land will be grabbed by some people from Nairobi.

Reading your mood, when you look at me, I know that time is of essence.

**The Speaker** (Hon. Lusaka): I was wondering whether you are discussing a different Petition.

**Sen. (Dr.) Kabaka:** No, Mr. Speaker, Sir. I drew an analogy and said that the question of eviction is very universal in all other areas. I took the case of where I come from. My role, under Article 96 of the Constitution, is representation of the people from where I come from; the inter-link between the national Government and the counties. I would be doing a disservice to discuss matters from other counties *per se*, without drawing some semblance to what is happening now. Next week, Godwilling, I will bring a similar Motion.

In summary, the law has been sought in this country. In the High Court, there was the Muthurwa case, where Justice Lenaola, my former classmate and a Judge of the Supreme Court today, gave resounding procedures of evicting squatters. This included the domestication of international laws principles that require the State to have fair regard to shelter, health of women and youth, school going children, whether or not the schools are open. This is a way of upholding Chapter Four of our Constitution; the Bill of Rights, which is elaborate from Articles 19 to 57.

I support the Petition by this particular Kenyan. The Committee on Lands, Environment and Natural Resources should critically look at the issues being raised here and come up with a resolute solution, to make sure that affected Kenyans do not live on trees like birds. They need to lead decent lives, so that we can have a harmonious country. Otherwise, the two tribes will remain; the haves and the have not's. The wisdom by Karl Max is at play to date.

I support.

**Sen. (Dr.) Ali:** Thank you Mr. Speaker, Sir. I will not take long, like Sen. (Dr.) Kabaka. The last statement he made is with regard to the haves and have not's. This Committee should look into the land tenure system. Since most of those who have huge tracts of land are in leadership, they should provide some money, so that their land can be bought by the Government to resettle these poor Kenyans. Otherwise, we will end up with counties like Laikipia, Kiambu, Nakuru and Taita-Taveta, where some few individuals own most of the land in the county, while the rest are squatters.

I support the Petition.

**The Speaker** (Hon. Lusaka): Hon. Senators, pursuant to Standing Order No 232 (1) the Petition should be committed to the relevant Standing Committee for its consideration. In this case, I direct that the Petition be committed to the Standing Committee on Lands, Environment and Natural Resources. In terms of Standing Order 232 (2), the Committee is required, in not more than 60 calendar days from the time of reading the prayer, to respond to the petitioners, by way of a report addressed to the Petitioner and laid on the Table of the House.

I thank you.

*(The Petition was referred to the Standing Committee  
on Lands, Environment and Natural Resources)*

The Next Petition is by Sen. Murkomen.

CANCELATION OF CONSTRUCTION OF KIMWARER DAM  
AND SCALING DOWN OF AROR DAM

**The Senate Majority Leader** (Sen. Murkomen): Mr. Speaker, Sir, I wish to present a Petition to the Senate from the residents of Elgeyo-Marakwet County concerning the arbitrary cancellation of Kimwarer Dam and scaling down of Aror Dam. I will read out their names at the end of the Petition.

We, the undersigned citizens of the Republic of Kenya and residents of Elgeyo-Marakwet County draw the attention of the Senate to the following-

THAT, by a media release by the President's Spokesperson on 18<sup>th</sup> September, 2019, the public was informed of His Excellency the President's decision to cancel the construction of Kimwarer Dam and scaling down of development of Aror dam, based on a Report of a Technical Team, which had been appointed by the Head of State.

THAT, a careful review of the Statement by the Petitioners reveals the following issues of concern:

(1) The Technical Committee whose Report formed the basis for the President's drastic decision to cancel the projects was chaired by the Principal Secretary for Infrastructure, Prof. Paul Maringa and comprised Julius Matu, Quantity Surveyor, Eng. Benjamin Mwangi and Eng. John Muiruri.

(2) That the report of the Committee raised doubt regarding the financial and technical viability of the Kimwarer and Aror dam projects and recommended cancelation of Kimwarer dam project and scaling down of Aror dam project on five grounds: Lack of technical design; Lack of feasibility study and existence of fault line on the project area; that the area is settled and compensation and resettlement costs will arise; Unsustainable operation and maintenance costs; and, Overpricing.

Aside from the Press statement, the report has not been published in full, thus the detailed assessments that led to the President's decision are unavailable to the public gallery and the Petitioners more particularly.

THAT the instruments for the appointment of the Technical Committee and the Committee's method of work over the 30-day period of its existence as intimated in the press statement are unavailable to the public.

THAT the Petitioners are deeply aggrieved by the decision to interfere with these projects whose significance to the lives of hundreds of thousands of the people of Elgeyo-Marakwet stands thwarted and wish to respond to the five issues raised by the Technical Committee as follows-

The lack of technical design of Kimwarer Dam is not a surprise as the contract negotiated between the Kenyan Government and the Engineering Procurement and Construction contractor entailed the design, financing and building components. The lack of design cannot, therefore, be the basis for any cancelation as the design process is an

integral part of the contract. To the best of our knowledge the contractors have now finalized the design of the project.

On lack of feasibility study and existence of a fault line, the report's suggestion that no feasibility study on Kimwarer dam has been conducted and reliance on a feasibility study conducted two decades ago indicating the existence of a faultline is completely misleading. This is because the Report does not take into account the fact that under the present project, a comprehensive geo-technical study has been concluded by the current contractor and no significant geological concerns identified.

Further, under the contract, all risks on design and construction are borne by the Engineering, Procurement and Construction contractor, hence, no project risks are envisaged or unmitigated.

Mr. Speaker, Sir, on the question of compensation, Article 40 of our Constitution protects property rights and recognises that whenever such property is compulsorily acquired for public purposes, full, prompt and fair compensation is payable. The Petitioners are aware that the Government of Kenya has paid out billions of shillings to landowners in relation to displacement and resettlement of people in various dam projects: Thwake Dam in Kitui County, Kshs3 billion; Karumenu Dam in Kiambu County, Kshs3 billion; Ruiru Dam II in Kiambu County, Kshs3 billion; Thiba Dam in Kirinyaga County, Kshs5 billion and Mwache Dam in Kwale County, Kshs4.9 billion.

The Petitioners find the decision to ground the cancelation of the project on the need for compensation to be disturbingly discriminatory of the landowners and communities in Keiyo and Marakwet.

On the issue of Operation and Maintenance Costs; it was suggested by the Technical Committee that the water supply mechanism to the dam would involve pumping hence costly and unsustainable. The real position is that water would flow downstream from the dam to a powerhouse to generate 20 MW of electricity and then to irrigate 2,000 Hectares. None of this water would be pumped at any stage.

On the issue of over pricing and the proposed down-scaling of Aror Dam, we are aware that two independent studies done in 2012 by NTN of Iran and in 2013 by WAPCOS, a state owned engineering agency of the Government of India, placed the cost of Aror multipurpose dam at Kshs29.7billion and Kshs30.2 billion respectively. The Technical Committee has now proposed to scale down Aror by 40 per cent from a 96 metre to 60 metre dam at a construction cost of Kshs15.4 billion.

The Petitioners wonder whether the Kshs15.4 billion includes costs of design, financing and insurance. The non-availability of this information means that the Petitioners and Kenyans are not in a position to determine whether any cost saving will be realised. Instead, what is clear to the Petitioners is that the proposed-scaling down of the dam from 96 metres to 60 metres compromises the long term objective of the project namely, maximum water harvesting and storage necessary for ensuring sustainable provision of water even during prolonged future droughts.

THAT the petitioners believe that there are serious constitutional and legal violations that emanate from the Technical Committee's report. These violations touch on among others matters, infringement of human rights of the people of Elgeyo-Marakwet County.

THAT the Petitioners request the Senate to intervene and halt this unfair, discriminatory and arbitrary decision to cancel the Kimwarer and scaling down of Aror Dams on the following grounds-

(1) The composition of the Technical Committee is contrary to the provisions of the Public Service (Values and Principles) Act, 2015 which requires impartiality and equity in provision of public service (Section 7(1) (c) and (d) and 7(5) of the Act) to the extent that all the members of the Technical Committee do not represent the ethnic, gender and regional diversity in Kenya.

(2) The establishment of the Technical Committee was not made by the President in writing and under seal in terms of Article 135 of the Constitution and the committee's precise composition and mandate was unknown to Kenyans until the time it submitted its findings.

(3) The Report of the Committee is not available to the public hence denying the public the right to assess the validity of its findings in detail.

(4) The decision to establish an ad-hoc Technical Committee to investigate only two projects out of hundreds of projects across the country and to use the results of that investigation to deny the people of Elgeyo Marakwet County their rightful share of national development amounts to gross violation of the Constitution.

(4) The decision of H.E the President to revoke an international contract is likely to constitute a unilateral breach that will occasion colossal financial loss to the country which liability will diminish revenue available for sharing between national and county governments and thus detrimental to the people of Kenya.

(5) The decision to ground the cancellation of the Kimwarer and Aror dam projects on the need for compensation of landowners is flagrant discrimination in light of the massive land related compensation made elsewhere by the Kenyan Government with respect to numerous infrastructure projects.

THAT, the petitioners submit this Petition through their able and duly elected representative, Sen. Onesimus Kipchumba Murkomen.

THAT, none of the issues raised in this Petition are pending before any court of Law, constitutional or any other legal body

WHEREFORE, your humble Petitioners Pray that the Senate-

(1) Do investigate the issues raised with a view of ensuring that the people of Elgeyo Marakwet County are not deprived of development projects that they deserve.

(2) That the Senate do everything under the law to ensure that the Report of the Technical Committee is not implemented until such time that the Senate will have determined that the said Committee is legally constituted and their actions determined to be fair and justifiable.

This Petitions signed on 25<sup>th</sup> September 2019 by-

(1) Mr. Peter Bargetuny, P.O Box 541 Iten; and

(2) Mr. Titus Chemase, P.O Box 57 Chepkorio.

I thank you.

Mr. Speaker, Sir, now that I have presented the Petition on behalf of the residents of Elgeyo- Marakwet, I would like to make a few comments.

Kenyans have a lot of faith in the Senate. There is a lot of faith that this country should be governed as per the Constitution. What I read from this Petition is that the members of the public who are eager to know the truth say that we have more than 50 projects related to water. However, only two projects have been subjected to *ad hoc* and arbitrary investigations.

The investigations were done by a Technical Committee that is not known in law as it was appointed without gazettelement or in writing. The Petitioners are praying that the Senate audits the position in law of the Technical Committee and the subsequent implementation of their report. Further, the Petitioners would like to know whether the Technical Committee was competently appointed and if they had the legal and constitutional mandate to carry out the work they did. Petitioners would also like to know whether the Head of State can unilaterally cancel a contract that exists between parties that are meant to implement a project.

Mr. Speaker, Sir, in May 2014, the President held a press conference to announce to the public that he must pay the Anglo-Leasing contracts despite the fact that no services were delivered. Payment had to be made because of the way the international legal instruments were mismanaged. The Petitioners are worried that we can easily find ourselves in a situation where some contractor will be paid colossal amounts of money for breach of contract without delivering service to the people of Elgeyo-Marakwet County and the people of Kenya as a whole. We may end up paying without having a project on one hand and we will not get the money back. I say that because we have seen this situation happen in many of the international disputes that have involved the people of Kenya, especially under International Centre for Settlement of Investment Disputes (ICSID) or the London Court of International Arbitration (LCIA).

I support the Petitioners' argument that this is not so much about the technicality of the project and whether money was stolen. The Petitioners are not asking the Senate to determine whether money was stolen or not. The Petitioners would like to find out whether legal processes have been followed so that if the process is fair, the results will be fair. There is a separate discussion elsewhere in a court of law with regard to whether money was stolen or not. The Petitioners would like to find out whether the project was cancelled fairly.

Mr. Speaker, Sir, we have been informed that the Aror Dam will be scaled down to Kshs15.5billion from Kshs28 billion by scaling down its size from a size of 96 metres to 60 metres. That means that if the project was 96 metres, it would carry the amount of money that existed from the beginning. We wonder how a Committee that is not appointed properly in law came to the conclusion that a Bill of Quantity (BQ) of Kshs15.5 billion will put up the dam. Maybe a proper BQ would come to Kshs5 billion and we would end up saving Kshs10 billion. The Committee to that will tasked be with this Petition will look into the legal question as to whether proper procedure was followed to arrive at a certain decision and whether the decision is fair.

The Petitioners have raised serious issues on fairness of distribution of development. In the last Parliament, Sen. Wetangula was always insistent in this House on publishing of all the projects that are happening in Kenya and their location in the country for us to ascertain whether the projects have been distributed fairly. Yesterday,

while discussing the approval of the County Government Cash Disbursement Schedule for the Financial Year 2019/2020, we insisted that donor funded projects, which I must add, should go to the projects that are funded by the loans taken by the people of Kenya, must be distributed fairly across the country.

These Petitioners are saying that there are two projects that are in their county. Since Independence projects of such magnitude have never been implemented in their county. We have been told that compensation is going on for some projects in Kiambu County, Thwake Dam and other places. Now that these projects are going on, they are asking this question: Can it be found in law that there is discrimination in terms of distribution of projects, particularly in applying the process of investigation on projects that are only in one county and not other over 50 projects that are being constructed across the country? These are the key issues.

I wanted to emphasize this because it would be erroneous to imagine that any of us, including myself, would block or criticize a process that is fair and which arrives at a decision that says Kenyans get value for money.

I beg to support the comments of this Committee. I believe the relevant Committee which will handle this matter will be fair to the people of Elgeyo-Marakwet and Kenya.

Thank you, Mr. Speaker, Sir.

**The Speaker** (Hon. Lusaka): Hon. Senators, pursuant to Standing Order No.231, I shall now allow comments, observations and clarifications in relation to the Petition for not more than 30 minutes.

Sen. Wetangula, you may now proceed.

**Sen. Wetangula:** Thank you, Mr. Speaker, Sir. Listening to the Senate Majority Leader presenting the Petition, I did not hear him say that the Technical Committee visited the areas where the dams are being constructed to find out whether the issues at hand are issues that the population have anything to do with.

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

*[The Temporary Speaker (Sen. (Prof.) Kamar) in the Chair]*

Madam Temporary Speaker, listening to him reminds me of a good old saying in my community that even the circumcisers' son feels pain. For the last seven years, we have watched in awe and anger as the resources of the country are shared between two regions. These are projects of mega proportions. From the onset, I agree with the Senate Majority Leader that unilateral and unlawful decisions by anybody, including the President, must be dealt with as such.

Madam Temporary Speaker, last week I checked with the Budget Office - Sen. Orenge should hear this - I wanted to know how much money from the national Government is being disbursed to Bungoma County which has a population of over two million people. I was shocked to find out that out a budget of Kshs3 trillion, Bungoma County will receive Kshs2.1 billion which includes Constituency Development Funds

(CDF) of Kshs900 million. Therefore, Bungoma County is getting Kshs1.1 billion from a budget of Kshs3 trillion.

As we support the people of Elgeyo-Marakwet - I drive through the area where one of those dams is being constructed every other day - it is actually a natural site for a mega dam. I would have made a similar decision if I was the President to build a dam and not to discontinue its construction. Those dams will not just serve Elgeyo-Marakwet. They will serve Uasin Gishu, Baringo, Nakuru and if they are not selfish, can extend up to Nandi and other places. The core issue that the Senate Majority Leader has read out, even listing about several projects in Central Kenya, what about us? We pay taxes. This Government has decided that this country belongs to two regions. They share resources as they wish and develop as they wish.

Madam Temporary Speaker, the other day I was asking myself, the artery of Kenya's economy, the highway from Mombasa to Malaba turning over Mau Summit to Kericho and Kisumu, carries 60 per cent of our external trade. We are busy constructing railways and terminating them in Naivasha, in the middle of somebody's land instead of opening up highways to improve our economy. This is the mismatch that this Government of Jubilee is doing to this country.

Madam Temporary Speaker, it is an eye opener for the Senate Majority Leader for once to stand up now and see the other side of the coin. Now that the boot is on the other leg, we can all now speak from the same side that an injustice to the people of Bungoma is an injustice to the people of Elgeyo-Marakwet, Siaya and all Kenyans in other counties.

The Committee that will look at this must also go out of their way and see the mega dams that have been talked about everywhere in this country and find out how far have the constructions are. What are the levels of exaggeration of procurement in those projects?

Madam Temporary Speaker, lastly is the point that the Senate Majority Leader mentioned about external resources coming to the country. There are people who sit in the National Treasury and routinely share external resources, loans and donations to their areas and regions to the exclusion of others. In the Western Region, we are now used to receiving the President and his Deputy every other day to come and make promises: "*Hii itajengwa, hii itafanywa, hii itazinduliwa, na hii itafanyika.*" They finish talking and go away.

*(Laughter)*

Our people are now used to---

**The Temporary Speaker** (Sen. (Prof.) Kamar): Order, Sen. Wetangula! Which language were you speaking? We did not understand you.

**Sen. Wetangula:** Madam Temporary Speaker, I was quoting and it is allowed in the Standing Orders.

**The Temporary Speaker** (Sen. (Prof.) Kamar): What did you quote?

**Sen. Wetangula:** *Hii itafanywa*, I am quoting what somebody said---

*(Laughter)*

*“Hii itafanyika, hii itazinduliwa”*, that is allowed under our Standing Orders.

**Sen. Mwangi:** On a point of order, Madam Temporary Speaker.

**The Temporary Speaker** (Sen. (Prof.) Kamar): I can see a point of order from Sen. Mwangi.

**Sen. Mwangi:** Madam Temporary Speaker, is it in order for Sen. Wetangula to continue emphasizing that the resources of this country are shared between two regions, while in some parts of the country like Nyandarua County, for the last 20 years, there has not been Government funds?

*(Applause)*

**Sen. Wetangula:** Madam Temporary Speaker, it is good to know that there also some unfavoured children in the favored regions.

**The Senate Minority Leader** (Sen. Orengo): On a point of information, Madam Temporary Speaker.

**The Temporary Speaker** (Sen. (Prof.) Kamar): Proceed, Sen. Orengo.

**The Senate Minority Leader** (Sen. Orengo): Madam Temporary Speaker, I was watching the debate in the House of Commons yesterday with a lot of interest. In fact, some of it is being discussed this morning. From what I have heard from the Senate Majority Leader, what he has stated here in really strong terms and from what the Senator of Nyandarua County has said, Sen. Wetangula, do you not think that belonging in Jubilee is now becoming a disaster because even those who belong to it are also making all this noise?

**The Temporary Speaker** (Sen. (Prof.) Kamar): Whom are you informing about Jubilee?

**The Senate Minority Leader** (Sen. Orengo): I am informing him because he is crying about---

**The Temporary Speaker** (Sen. (Prof.) Kamar): But he is not a Member of Jubilee. Sen. Orengo, you cannot inform him about things that he is not involved in.

**The Senate Minority Leader** (Sen. Orengo): Madam Temporary Speaker, this is information---

**The Senate Majority Leader** (Sen. Murkomen): On a point of order, Madam Temporary Speaker.

**The Temporary Speaker** (Sen. (Prof.) Kamar): Another point of order on a point of order? I want him to clear so that we can get the point of order from Sen. Murkomen.

**The Senate Minority Leader** (Sen. Orengo): Madam Temporary Speaker, I am giving him information and he has agreed to receive it. If he does not want to receive information which is factual, then I can really understand because old men do not like bones being mentioned like Chinua Achebe Said.

**The Temporary Speaker** (Sen. (Prof.) Kamar): Sen. Murkomen, another point of order?

**The Senate Majority Leader** (Sen. Murkomen): Madam Temporary Speaker, is it in order for Sen. Orengo to insinuate that belonging to a certain political party in this

Republic means that a person is denied development? Is the opposite also true that if a person belongs to ODM, he or she is happier in this Government?

**Sen. Wetangula:** Madam Temporary Speaker, let me finish by reminding my good friend Sen. Murkomen just like I told him the other day that he belongs to the outer layer of the onion peel. We now appreciate him. Just like the Petition said, he is the able and distinguished Senator for Elgeyo-Marakwet County who is now able to articulate, feel and see the injustices the people of Elgeyo-Marakwet County are receiving without any fear or favour. He is now able to feel the pain that we have been feeling all these years. That is why I said that even the circumciser's son can feel pain.

**Sen. Dullo:** Thank you, Madam Temporary Speaker. I take this opportunity to support the petitioners from Elgeyo-Marakwet County. I do not want to delve into politics that was expressed here. The President, using his discretion has cancelled the project. However, a lot needs to be done before the cancellation of the project.

This project was designed for the people of Elgeyo-Marakwet County to solve the problem of pastoralists and farmers in that area. The Committee that was set in place should have done due diligence and ensured that they go on the ground to look at the extent of the work that has taken place, the issues on the ground in terms of the benefits that are supposed to accrue from this particular project before cancellation, the ramification in terms of cancellation and whether procedures were followed or not. The cancellation of this project is like putting food on the table for a person who is hungry and has not eaten for a whole week and then withdrawing it. This is a serious matter. The people of Elgeyo-Marakwet County have been denied, as a result of this cancellation, a worthy project that would have improved their lives.

I do not know why this project was singled out. There are so many projects in this country that have not followed procedure. Unfortunately, this has come to the limelight and the focus of the country is the project in Elgeyo-Marakwet County.

I hope that the Committee that will be delegated this particular Petition will seriously look into this matter and advise accordingly so that the people of Elgeyo-Marakwet get back this project so that they can benefit from it and ensure that, in future, things are done properly.

Madam Temporary Speaker, I appeal to the President to change his mind for the benefit of the people of Elgeyo-Marakwet. It is not the mistake of the individuals or the members of the public who were the direct beneficiaries of this project; it is the technical people. Therefore, I appeal to him to rethink his decision and appoint another Committee to go on the ground and advice of how this project was implemented and the effects that it will have on the people of Elgeyo-Marakwet after cancellation.

I support this Petition and hope that the Committee will do proper work and advice the relevant institutions.

**The Senate Minority Leader (Sen. Orengo):** Thank you, Madam Temporary Speaker. There are two issues to be dealt with which the Senate Majority Leader did not distinguish. One is the question of fraud which is being dealt with in another forum. However, some of the questions that he has raised are legitimate and needs some inquiry. For example, the award of tenders and signing of contracts is governed by statute which is the Public Procurement and Assets Disposal Act. Before a contract is awarded, it goes

through an entire process where due diligence is done and many people are involved, including the Attorney-General, when it is a contract of this nature.

Similarly, when there is need to cancel a contract which has been awarded like the one we are talking about, its cancellation goes through a legal process. So, this is a legitimate question to be inquired into by the relevant Committee.

Madam Temporary Speaker, if you remember, in the Anglo Leasing matter, the President decided that the money must be paid and it arose in circumstances where the Government of Kenya decided to cancel the contract. There were proceedings in an international tribunal. It did not matter the decision that the Government of Kenya had taken and we ended up paying a lot of money.

Similarly, Tanzania tried to start a new airline which was a good effort by the Government of Tanzania. However, when the first plane landed in Johannesburg, it could not leave. So, cancellation may cause a lot more problems than trying to find a lawful way of terminating the contract, if it must. That is an important question for this Committee to look into.

The other question is the actual decision by the President. Under the Public Procurement and Asset Disposal Act, there is a process for cancelling a contract. So, I do not understand how the President would cancel. If he did it, then the Constitution says that it must be in writing. That is a legitimate question to be looked into and answers given.

Having said, we should be careful about the huge capital contracts and projects which the Government has been undertaking. I have said before that President Kibaki was wary of not eating more than he could chew in terms of debt, borrowing and undertaking projects.

In Ghana, Lake Volta which is the largest manmade lake in Africa was a good idea. However, eventually it was one of the reasons which brought President Kwame Nkrumah down. The country was taken through a lot of problems because a lot of resources were used to the neglect of other projects and other needs.

I am seeing a situation in Kenya where we undertake projects which, probably, are not well planned for and overpriced. In Siaya County, we have many dams which were built during the colonial days. They still exist. How the colonial Government was able to do them with little resources and without loans and merely using internal and national resources is something which needs a case study. Many projects were done during that period without a lot of borrowing.

Madam Temporary Speaker, in the current circumstance, we should look into the possibility of the building of dams as a way of scheming money. When one realizes that it is too much to bite, they target certain areas and stop projects in certain areas while allowing certain areas to go on. This is something that we should look at. This Government should think seriously about the manner in which it conceives projects and implements them. Once a project is planned and budgeted for, whether the revenue is locally or externally raised, there should not be a problem about finishing those projects. There is no project under the Public Finance Management Act (PFM) that can be undertaken without a plan, budget and appropriation. It cannot be done. I understand more than Kshs20 billion or Kshs30 billion was paid. How it was paid and from which

funds, then there is nothing that has gone on in the ground; it is something that we must look into.

I would imagine that building a dam is akin to building a contract where you do not pay the entire sum. You pay in stages; you get certificates for every stage that has been completed. We need a proper and thorough examination, because we will be taking the people of Elgeyo-Marakwet for fools if we announce that we are building dams and suddenly they are told they will no longer be built or they have been scaled down. This is an important matter because it may offer a solution to others. It is not just going to be Elgeyo-Marakwet, Kimwarer and Aror. Something is boiling similar to the case of Kimwarer in all these dams.

Those who come from areas where dams have not been built and are in the process of being built, or where they are being built and have it stopped, do not laugh. It may be too early to be joyous. Maybe the same fate is waiting.

Overall, my position is that the Government rather than arresting and prosecuting people, they should come and give a proper explanation. Taking people to court is not good enough for a Government which is elected. They should come and explain. The people they are accountable to is Parliament. The sovereign are the people of Siaya and Elgeyo-Marakwet counties.

*(Interruption of debate on Petition)*

### COMMUNICATION FROM THE CHAIR

VISITING DELEGATION FROM KAMWERA ACADEMY  
SCHOOL, NAIROBI COUNTY

**The Temporary Speaker** (Sen. (Prof.) Kamar): Finally, before I give a chance to Sen. Langat, I have a Communication to make.

Hon. Senators, I would like to acknowledge the presence in the Public Gallery this afternoon, of visiting students and teachers from Kamwera Academy School in Nairobi 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 wish them a fruitful visit.

*(Resumption of debate on Petition)*

**Sen. Langat:** Thank you, Madam Temporary Speaker. I join you in welcoming our children, the pupils from Nairobi County to the Senate. We love them. This House will continue to protect them and make sure that their welfare as pupils is well taken care of.

Concerning the Kimwarer and Aror projects, I want to mention a few things. First of all, I have been following it seriously. When we put it into context historically, it is very funny that these projects were proposed by the Government about 30 years ago. I understand that even the feasibility study that was used for Kimwarer in particular, was

the one which was done 28 years ago. When you check on these projects and see the delays that have taken place, you cannot avoid thinking that the idea of the cancellation of the Kimwarer project is more political than the reality on the ground. It is very unfortunate that we can politicize very important projects that are aimed at solving problems that have been facing people since time immemorial.

Madam Temporary Speaker, if you go to that place, you will never fail to sympathize with the people living there. These people travel up to 300 kilometres to get water. Water is life. What hurts most is that there are so many dams in this country which are worth about Kshs156 billion. However, the question that is now in everyone's mind is: Why Kimwarer and Aror? Even if these dams were affected by some scandals, it is high time that the Government narrows down to those particular thieves or those involved in the scandals. The projects should not be cancelled. This is punishing innocent people because of one or two people. In any time in history, we will never lack people who have problems. How come whenever there is a problem somewhere, we cancel the whole project that could benefit millions of people because of some few individuals?

The cancellation of Kimwarer Dam is more political than reality. You can never convince people in that area that it is genuine. Even those people who went to investigate the status of those projects are not even closer to that place. They did most of their work in hotels in Eldoret. They never frequently visited those places to find out the actual problems of those areas. It is high time that we rise to the occasion. I hope the Committee that will investigate this matter will be fair to the people of Eleyo-Marakwet because they pay taxes just like any other citizens in this country. Why should it be an issue to the point of cancellation when it comes to the projects designed to benefit them?

I will be very happy to see other dams that were proposed together with Kimwarer being investigated, and we see the same solution happen to them. This selective idea of investigating some particular projects in a particular area, during a particular political period concerning some places, no one can understand that it is genuine. Everybody will take it as if it is political.

I urge the Committee that will investigate this, to assist not us who have water where we come from, but the people Elgeyo-Marakwet who are taxpayers in this country. They have suffered for a long time because of lack water.

Madam Temporary Speaker, I support this Petition. I want to encourage it to continue. When it comes to compensation, the land owners of most of the other dams in this country in Kiambu, Machakos and everywhere else have been adequately compensated. Why was the compensation of these other projects delayed? It raises another question. As one of the leaders from those regions, we are not going to relent until the rights of the people of this area are honoured and taken seriously.

**The Temporary Speaker** (Sen. (Prof.) Kamar): Thank you, hon. Senators. Pursuant to Standing Order 232 (1), the Petition stands committed to the relevant Standing Committee, which in this case, is the Committee on Justice, Legal Affairs and Human Rights, because of the tilt of the debate. It does not seem to fit in any other, except the human rights oriented committee.

In terms of Standing order No.232 (2), the Committee will be required in not more than 60 calendar days from the time of reading the prayer, to respond to the

petitioner by way of a report addressed to the petitioner and laid on the Table of the Senate.

I thank you.

*(The Petition was referred to the Committee on Justice, Legal Affairs and Human Rights)*

Next Order

**The Temporary Speaker** (Sen. (Prof.) Kamar): The Senate Leader of Majority, do you have the weekly Statement, pursuant to Standing Order 48(1)?

Hon. Senators, you know that he is not in his best mood, but it will take a minute and then we can go to Sen. (Dr.) Ali's Statement.

## STATEMENTS

### BUSINESS FOR THE WEEK COMMENCING TUESDAY, 1<sup>ST</sup> OCTOBER, 2019

**The Senate Majority Leader** (Sen. Murkomen): Thank you, Madam Temporary Speaker. Hon. Senators, pursuant to Standing Order No.52(1), I hereby present to the Senate the Business of the House for the week commencing Tuesday, 1<sup>st</sup> October, 2019.

On Tuesday, 1<sup>st</sup> October, 2019, the Senate Business Committee (SBC) will meet to schedule the business of the Senate for the week. On that day, and subject to further direction by the SBC, the Senate will consider Bills due to the Second Reading and the business that will not be concluded in today's Order Paper.

On Wednesday, 2<sup>nd</sup> October and Thursday, 3<sup>rd</sup> October, 2019, the Senate will consider Bills at the Committee of the Whole stage and Business that will not be concluded on Tuesday, and any other business scheduled by the SBC.

Hon. Senators, with respect to the status of Bills, the House has a total of 26 Bills pending completion in the Senate, with 17 Bills at the Second Reading stage and nine at the Committee of the Whole Stage. I urge respective Standing Committees to conclude consideration of the Bills and table reports pursuant to Standing Orders. In the same breath, I urge respective Movers of Bills and Motions to avail themselves whenever their business is listed on the Order Paper.

Hon. Senators, I also take this opportunity to urge respective committees to expeditiously conclude with Statements and Petitions pending before them.

Madam Temporary Speaker, I thank you and hereby lay Statement on the Table of the Senate.

*(Sen. Murkomen laid the document on the Table)*

**The Temporary Speaker** (Sen. (Prof.) Kamar): Thank you, Senator. I just want to correct that. It was pursuant to Standing Order No.52(1).

Now pursuant to Standing Order No.48(1), I call on Sen. (Dr.) Ali to make his Statement.

RECRUITMENT OF SENIOR PERSONNEL AT THE  
GEOTHERMAL DEVELOPMENT COMPANY

**Sen. (Dr.) Ali:** Thank you, Madam Temporary Speaker. I rise pursuant to Standing Order No.48(1) to seek a Statement from the Standing Committee on Labour and Social Welfare regarding the recruitment of senior personnel at the Geothermal Development Company (GDC). In the Statement, the Committee should address the following-

(1) State the policy or regulatory framework that guides the recruitment of senior personnel at the GDC.

(2) Confirm compliance with Chapter Six of the Constitution with regard to the filling of vacancies as advertised in two daily newspapers – *the Daily Nation* and *the Standard* – on 12<sup>th</sup> February, 2019, specifically with regard to the interviews involving the positions of senior managers.

(3) Establish whether regional and gender balance were taken into consideration during the recruitment exercise at the GDC for the period in question.

Madam Temporary Speaker, there is a big scandal at the GDC. They decided to advertise for 11 positions and then claimed they did not get enough people in four of the positions. For the seven remaining positions, the directors decided to give each one of them one position to fill. Therefore, the people who were qualified and who were number one in the interviews and had worked in the organizations for the last several years, none of them was taken and people from outside were brought in.

Madam Temporary Speaker, the situation is so bad to the extent that the members who are working at the GDC and who applied for these positions of managers – who were deputy managers and others – have decided to write to the Directorate of Criminal Investigation (DCI), the Ethics and Anti-Corruption Commission (EACC) and everywhere else. Injustice and nepotism of the highest order is happening at the GDC.

Madam Temporary Speaker, I am informed that the seven persons who were recruited all come from one region. Therefore, these issues of nepotism and corruption in this country will cause this country to fall. I, therefore, urge the people concerned to stop this behaviour and the Committee responsible to look into this urgent issue immediately and as fast as possible.

Thank you, Madam Temporary Speaker.

**The Temporary Speaker** (Sen. (Prof.) Kamar): Okay, that automatically stands committed to the Standing Committee on Labour and Social Welfare.

Let us move on.

STATUS OF FLIGHTS ARRIVING IN KENYA  
FROM MOGADISHU, SOMALIA

**The Temporary Speaker** (Sen. (Prof.) Kamar): I just want to confirm to Members that the Statement by Sen. Farhiya is being deferred as per her own request.

*(Statement deferred)*

Next Order.

**MOTION**

APPROVAL OF THE COUNTY GOVERNMENTS CASH DISBURSEMENT  
SCHEDULE FOR FINANCIAL YEAR 2019/2020

THAT, pursuant to Section 17 of the Public Finance Management Act and Standing Order 183 of the Senate, this House approves the Report of the Standing Committee on Finance and Budget on the County Governments Cash Disbursement Schedule for Financial Year 2019/2020, laid on the Table of the House on Wednesday, 25th September, 2019.

*(Sen. Mutula Kilonzo Jnr. on 25.9.2019)*

*(Resumption of Debate interrupted on 25.9.2019)*

**The Temporary Speaker** (Sen. (Prof.) Kamar): Hon. Senators, for the convenience of the House, Order No.8 is deferred.

*(Motion deferred)*

Next Order.

**BILL**

*Second Reading*

THE ESTABLISHMENT OF CHILDREN'S HOMES BILL  
(SENATE BILLS NO. 12 OF 2019)

**The Temporary Speaker** (Sen. (Prof.) Kamar): I do not see the Mover. I have not seen a request on this Bill on the Establishment of Children's Homes.

*(Bill deferred)*

## MOTIONS

### LEGAL AND POLICY INTERVENTIONS FOR CAREGIVERS OF PERSONS WITH PERMANENT MOTOR AND NEUROLOGICAL DISORDERS

THAT, AWARE that Cerebral palsy, Down syndrome, Autism and other permanent motor and neurological disorders are birth defects characterised by, among others, disturbances of sensation, perception, cognition, hearing loss, congenital heart defects, lower than average IQ, impairment in social interaction, and rigid, repetitive behaviors;

COGNIZANT that persons born with these and other permanent motor and neurological disorders face considerable difficulties in the social and behavioural aspects of their lives, including discrimination, physical challenges, mental and emotional health issues, and problems with inclusion and social isolation;

ACKNOWLEDGING the critical role that parents and caregivers of persons with permanent motor and neurological disorders play in ensuring that they realize their potential to the fullest extent possible and that they have long, healthy, and satisfying lives;

RECOGNIZING that, in taking care of these persons, caregivers make considerable sacrifices in the pursuit of education, employment, investment, and other opportunities for their own advancement and, in some cases, spend the most productive years of their lives taking care of persons with these disorders;

NOTING that most caregivers lack the training, tools and psychosocial support required in taking care of persons with these permanent disorders, are often subjected to the same stigma as the persons they take care of, and are exposed to stresses and pressure that have an adverse impact on their mental and physical wellbeing;

CONCERNED that, while a lot of progress has been made in taking care of other vulnerable and disadvantaged members of the society, equivalent efforts have not been made to recognize the important role that caregivers play, to create, through policy and legislation, a conducive environment for the provision of adequate, safe and informed care to persons with these disorders;

NOW THEREFORE, the Senate resolves that the Ministry of Labour, Social Security and Services, together with the County Governments, formulate a policy framework for the recognition, training, empowerment and protection for caregivers of persons with permanent motor and neurological disorders, including: -

- a. provision of financial assistance and incentives to caregivers, including inclusion in the list of beneficiaries under the *Inua Jamii* Cash Transfer Programmes;

- b. provision of appropriate tax reliefs and exemptions to caregivers, equivalent to those advanced to other Persons with Disabilities (PWDs);
- c. exemption from taxes on goods and services required for the care and protection of persons with the disorders; and
- d. provision of the specialized training, psychosocial and other support necessary to engage in income-generating activities for caregivers of persons with permanent motor and neurological disorders, including accessing the quota set aside in law for vulnerable groups for the supply of goods and services to government entities.

**The Temporary Speaker** (Sen. (Prof.) Kamar): Hon. Senators, following consultations, Order No.10 is also deferred.

*(Motion Deferred)*

Next Order.

ENGAGEMENT OF COMMUNITY HEALTH WORKERS BY  
COUNTY GOVERNMENTS

THAT, AWARE THAT county health facilities, and the promotion of primary health care are devolved functions, and each county government is striving to offer the best healthcare to the people of Kenya;

COGNIZANT THAT, the provision of healthcare services is continuously riddled with numerous challenges ranging from understaffing of personnel to inadequate facilities and equipment resulting in congestion in hospitals further restricting effective service delivery;

NOTING THAT every Kenyan has a right to affordable and accessible healthcare, and the President has launched a pilot universal health care program called “Afya Care” that will see many Kenyans access improved healthcare;

CONCERNED THAT, the diverse nature of counties and wanting infrastructural development is compromising the quality and accessibility of health centres especially during emergency situations, resulting in the loss of many lives occasioned by the failure by patients to reach health facilities in time;

FURTHER CONCERNED THAT, in each county there are numerous unemployed community health workers who are adept at working with communities in emergency situations, and have the requisite experience to support the medical practitioners in our country where, according to the World Health Organization 2014 report, there are two (2) doctors for every ten thousand (10,000) people;

NOW THEREFORE, the Senate resolves that the Council of Governors in partnership with the Ministry of Health:-

1. Develop a policy for the training, certification and employment of community health workers to enhance the emergency health service delivery in the Counties; and,
2. Facilitate the said community health workers with the necessary basic equipment for use during emergency cases.

**The Temporary Speaker** (Sen. (Prof.) Kamar): Hon. Senators, Sen. Nyamunga is out of the country on an official trip. Therefore, this Order also stands deferred.

*(Motion deferred)*

*[The Temporary Speaker (Sen. (Prof.) Kamar) left the Chair]*

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

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): Let us move on to the next Order.

## MOTION

### FORMATION OF COMMUNITY FOREST ASSOCIATIONS

AWARE THAT, natural and forest resources prevent floods, droughts, erosion and sedimentation, and increase water supply needed to generate more power, expand farm productivity, and meet the ever-increasing demand for domestic consumption of our exploding population;

NOTING THAT, Article 69 of the Constitution and Section (5), (6) and (21) of the Forests Conservation and Management Act (FCMA) 2016 mandates National & County Governments with the responsibility of protecting, collaborating, maintaining, utilizing and attaining a tree cover of at least 10 per cent of the land area in Kenya;

APPRECIATING THAT, there is need to achieve a holistic ecosystem approach to forest resource management, so as to prevent irreversible consequences of human activities on the environment, it is time to make an urgent call upon our citizenry to actively participate in the protection of forests and plant trees;

NOW, THEREFORE, the Senate urges-

1. THAT, all Citizens as per Article 69(2) of the Constitution, and Sections 48 –52 of the Forest Conservations Management Act be encouraged through the relevant National Government ministries and County departments to contribute in formation of Community Forest Associations to expedite Community Participation in Forest Resources Management;
2. THAT, the National Government and all the 47 County Governments operationalize Tax & Fiscal Incentives (as per FCMA Section 53 –55) to promote forest conservation and management, and prevent degradation of

- tree cover in Public, Private and Community Lands (as measures of ensuring sustainability);
3. THAT the National Government communicates progress towards establishment of a National Tree Planting Week, so that State Agencies, Corporations and Kenyans can adequately prepare for the event;
  4. THAT all County Assemblies initiate processes of enacting legislation on Forestry Functions for County Governments (As per FCMA Section 21).
- The Temporary Speaker** (Sen. (Dr.) Lelegwe): Order No.12 stands deferred.

*(Motion deferred)*

Let us move on to the next Order.

### MOTION

#### FREE ADMINISTRATION OF SNAKE BITES ANTI-VENOM IN PUBLIC HEALTH FACILITIES

THAT, AWARE THAT, there is an abundance of snakes in various parts of the country namely; Kitui, Baringo, Wajir, Kajiado, Embu and Tana River Counties among others, which poses a high mortality rate of snake bites across these counties;

FURTHER AWARE THAT, all patients bitten by snakes should be assessed by medically-trained staff to determine the species responsible, the amount of venom injected and the variable time course for development of signs, requiring that patients be kept under observation for at least 24 hours;

CONCERNED THAT, these incidences of snake bites are a neglected emergency in Kenya owing to the low awareness of snake bites as a public health problem in the country resulting to victims being maimed and even losing lives;

FURTHER CONCERNED THAT, poor infrastructure and poverty contribute to delays in seeking and receiving treatment for snake bites including the high cost of acquiring and storing the anti-venom;

RECOGNIZING THAT, it is essential for snakebite victims to get supportive care followed by the administration of the anti-venom as soon as possible following a snake bite;

NOTING THAT, Article 43 (1) (a) of the Constitution provides that every person has the right to the highest attainable standard of health;

NOW THEREFORE, the Senate urges the Ministry of Health in collaboration with the County governments to establish programs to sensitize people on the management of snake bites and to ensure timely supply and free administration of the anti-venom in public health facilities, concentrating on sub county health facilities in the affected counties, and

further ensure that these facilities are equipped with the necessary infrastructure for the storage of the anti-venom.

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): Hon. Senators, Sen. Kwamboka who is the Mover requested deferment of this Motion. Therefore, the Motion is deferred.

*(Motion Deferred)*

Let us move on to the next Order.

### POINT OF ORDER

#### CONSIDERATION TO SET ASIDE TWO HOURS ON THURSDAYS TO CONSIDER CPAIC REPORTS

**Sen. M. Kajwang'**: On a point of order, Mr. Temporary Speaker, Sir. Considering the rate at which certain business is being pushed forward, I understand that when Members of this House are not here, they must be attending to other parliamentary business elsewhere in or outside the country. Since we came back for this session, we have had cases of deferment of business of the House.

I seek the indulgence of the Chair that we make a resolution to dedicate every Thursday afternoon from 2.30 p.m. to 4.30 p.m. to consider and debate on reports of the County Public Accounts and Investments Committee (CPAIC). We have a stash of 70 reports that await adoption by this House. These reports have previously been brought to this House. In the last session, we laid more than 30 reports on the Table of the House. However, the House went on recess and the session ended without the House considering those reports.

To help deal with situations, because sometimes we are not sure whether we will exhaust the business for the day on Thursday, I beg the Chair to consider and indulge the Senate Business Committee (SBC), so that we set aside Thursday afternoons for county oversight reports. I assure you that the House will never be short of business because the number of reports that the CPAIC is holding are enough to keep this Senate busy for the next six months.

Mr. Temporary Speaker, Sir, even if you will not rule on it now, I beg that you consider setting aside Thursday afternoons because we spend Wednesdays on Divisions and Tuesdays on Bills. We should set aside the first two hours on Thursdays for consideration of the CPAIC reports and use the remaining time on Motions.

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): Thank you, Sen. M. Kajwang'. You have raised a very important point. I hope the SBC will take note of your concerns.

**Sen. (Prof.) Kamar**: Mr. Temporary Speaker, Sir, earlier on I was trying to get your attention to support Sen. Sen. M. Kajwang' who is the Chairperson of the CPAIC on the need to debate on reports of the counties as soon as possible. I am glad you have ruled that the SBC should pay attention to that.

We do not want to be caught up with time. When we go to meetings, like we did in Kitui County, we discovered that we are not on the same page with the governors and

the Members of County Assembly (MCAs). Senators must be ahead of everybody in terms of that.

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): Next Order.

### MOTION

NOTING OF REPORTS OF THE 50<sup>TH</sup>, 51<sup>ST</sup> AND 52<sup>ND</sup> SESSIONS OF THE ACP  
AND MEETINGS OF THE 35<sup>TH</sup> AND 36<sup>TH</sup> ACP-EU JPA

**Sen. (Prof.) Kamar:** Mr. Temporary Speaker, Sir, I beg to move the following Motion-

THAT, this House notes the Report of the Parliament of Kenya Delegation to the 50<sup>th</sup> Session of the ACP Parliamentary Assembly and the 35<sup>th</sup> Session of the ACP-EU Joint Parliamentary Assembly held in Brussels, Belgium, from 13<sup>th</sup> to 20<sup>th</sup> June, 2018, laid on the Table of the House on Wednesday, 20<sup>th</sup> February, 2019; and the Reports of the Parliament of Kenya Delegation to the 51<sup>st</sup> Session of the ACP Parliamentary Assembly and the Inter-Sessional Meetings of the ACP-EU Joint Parliamentary Assembly held in Brussels, Belgium, from 9<sup>th</sup> to 11<sup>th</sup> October, 2018 and the 52<sup>nd</sup> Session of the ACP Parliamentary Assembly and the 36<sup>th</sup> Session of the ACP-EU Joint Parliamentary Assembly held in Cotonou, Benin, from 25<sup>th</sup> November to 5<sup>th</sup> December, 2018, both laid on the Table of the House on Thursday, 8<sup>th</sup> August, 2019.

Mr. Temporary Speaker, Sir, on behalf of the Speaker, Sen. Faki and I attended the 50<sup>th</sup> Session of ACP-EU Joint Assembly. It took place alongside the 35<sup>th</sup> Session of the ACP-EU Joint Assembly. They were held from 16<sup>th</sup> to 20<sup>th</sup> June, 2018, and 13<sup>th</sup> to 15<sup>th</sup>, June, 2018, respectively in Brussels, Belgium.

The session was preceded by meetings of three standing committees; the Committee on Political Affairs, Committee on Economic Development, Trade and Finance and the Committee on Social Affairs and Environment.

The 35<sup>th</sup> Session of ACP-EU Joint Assembly and the 50<sup>th</sup> Plenary Sessions of ACP deliberated on various matters of concern to the member states and also exercised scrutiny over the European Commission, ACP and African Union (AU) councils through a question and answer session.

I will highlight four areas of the deliberations that took place which are as follows-

- (1) Demographic Growth - the challenges and opportunities globally;
- (2) Global Impact of Migration - this is an issue of migrants from the ACP states moving to the West;
- (3) Immigration - how immigrants are being handles; and,
- (4) Fighting Xenophobia, racism and discrimination.

All these were very important topics to both the ACP and European Union groups because xenophobia has spread. It is in both in European and ACP states.

When it comes to immigration it touches both; where the immigration is taking place and the recipients are going to settle. This became very important topics of discussion during the 50<sup>th</sup> Session of the ACP-EU and the 35<sup>th</sup> Session of the ACP Parliamentary Group.

Mr. Temporary Speaker, Sir, the Standing Committee on Political Affairs, Economic Development, Trade and Finance and the Committee on Social Affairs and Environment considered the following several areas for purposes of reporting: The ACP-EU looked at the relations between the ACP and EU post Cotonou. The Cotonou relations are coming to an end in the year 2020 and this has become a major point of discussion.

Also discussed was the social and environmental consequences of urbanization, particularly the signed management of industrial waste in the ACP group of countries. Also brought forward was the impact on the illegal trade in sanitary products, including seeds and other agricultural inputs on the ACP countries' economies.

On the sidelines of the two sessions, a number of conferences and meetings also took place, which had a lot of bearing to the agenda that was being discussed. Two specific side events that were very important under the ACP-EU umbrella were the women and youth forums.

Mr. Temporary Speaker, Sir, in line with its unique role of parliamentary scrutiny over the ACP and EU institutions by this membership, holding of formal question time sittings with the European Commission and the ACP and EU Council presidency in every session is also emphasized.

The Assembly sought the European Commission on a number of matters on the partnerships between the European Union and the ACP group of States post 2020, when the Cotonou agreement will be expiring.

The external action of the EU in the coming years with the emphasis on the increase in the external expenditure proposed by the Commission for the next multi annual financial framework was also put on the table. In addition, the new corporation and development financial structure and the proposal for integration of the European Development Fund (EDF) into the EU's budget were discussed. Other debates also included urgent motions on the urgency of new measures to fight international terrorism and the humanitarian crisis in South Sudan.

Mr. Temporary Speaker, Sir, in the current context of the conference, the delegation noted that the discussions on the future of the ACP-EU corporation picked up pace in the year 2015, with both the EU and the ACP group of states engaging in a soul searching exercise and preparing the future positions. This is because this has been discussed for quite a while now. For the last three years, the discussions on post Cotonou have been going on and there have been meetings of councils of ministers at the regional level, including the East African region, the African Group, Caribbean Group and the Pacific Group. Therefore, the future post Cotonou is very high in the agenda in the forum of the ACP-EU Joint Parliamentary Assembly.

The complex policies and the process of reaching consensus on how post Cotonou will look like is evidence based and requires a lot of debate. That debate is going on even now under different groupings. The stakes involved in the review process are high and

they include the EDF, providing predictable resources and accounting for a larger share of the EU development aid than any other external instrument.

This has been discussed because of the fact that the amount of money that comes under the European Development Fund has always been limited and the ACP groups have been pushing for an increase.

The other area is the growing number of alternative competing policy and institutional framework such as the Joint Africa-Europe Strategy, which is posing a major challenge over policy coordination and coherence for the various partners involved. This became a major debate because the European Union seemed to have indicated at that stage that they would like to deal with Africa as Africa and not as ACP and yet the foundation of this parliamentary Assembly, the ACP-EU, is the union between the African, Caribbean and the Pacific Groups, knowing very well that the ACP groups are actually brothers and sisters. This is because the Caribbean and the Pacific residents are people who left Africa long time ago.

During these meetings discussions were held on whether the European Union will continue with ACP the way it is or they will go regional, so that they deal with Africa, Caribbean and Pacific separately. This proposal was strongly opposed by the ACP group because of the belief that the only reason we have the ACP Joint Parliamentary Assembly is so that we realize the unity of the ACP Group.

Mr. Temporary Speaker, Sir, at the time the discussions were going on, there was a meeting of AU in Rwanda. There was a communication that was sent by our delegation of the ACP Group of parliamentarians to our Heads of State to make it very clear that we stand by the position that ACP remains one and we are very happy that pronouncements were made. Our own Head of State made the pronouncement in Rwanda that we will not break the ACP Group or negotiate with the EU as entities of Africa, the Caribbean and the Pacific separately, but we must work together because of the importance of keeping these three groups in a united state.

Mr. Temporary Speaker, Sir, the Cotonou partnership agreement which links the EU and its 28-Member States with the tri-continental group of 79 states, that is, the ACP Group is, as I said earlier, going to end in 2020, and negotiations are on. It is often hailed as a very unique agreement, taking into account its legally binding nature, holistic approach to development, comprehensive scope, covering the three pillars of aid, trade and political cooperation and the joint management arrangements that have been put in place.

It offers a single framework for the operation of the European Investment Bank in the ACP countries. That is why Members of Parliament from the 79 partner states from the ACP Group insist that this grouping of ACP must continue.

The Cotonou Agreement that replaced the Lome Convention was concluded for a period of 20 years, commencing in the year 2000. That is why it will lapse in the year 2020. The ACP and the EU have, therefore, begun in earnest the internal consultations on the future of the relationship and whether we will remain in the same structure or the structure will change.

The former negotiations are set to commence in August/September, 2018 which they actually did. I am happy to report that our Minister of Foreign Affairs and ambassadors are moving very well on that.

Mr. Temporary Speaker, Sir, the partnership is also critical for a number of reasons among them; it has the EU and 79 countries from Africa, the Caribbean and the Pacific. Most of them are former colonies of the EU and this unity ACP-EU is one of the largest global partnerships.

It builds on a long period of over 40 years of partnerships. It underpins a legally-binding contract; CPA based on three pillars as I said earlier; trade, aid and political co-operation. The European Development Fund (EDF) is the main instrument for providing the community aid for development co-operation by the African Union (AU) to the ACP States.

The 10<sup>th</sup> EDF covered the period 2008 and 2013 and provided a budget of more than 22 billion Euros. The 11<sup>th</sup> EDF increased to 31.5 billion Euros. This partnership has a lot of support that comes to this ACP countries and this is what we have appreciated. We believe as Members of this Assembly that the current structure is useful to all of us.

As I finalize, the delegation is concerned that the parties in the Cotonou partnership agreement led by the governments, including parliamentarians and the civil society, private sector operators and local authorities will need to address a set of existential questions that have arisen from the past, especially when they look critically at the past 20 years.

Mr. Temporary Speaker, Sir, the Kenyan delegation in this meeting was led by the Deputy Speaker of the National Assembly, Hon. Cheboi. I was the co-leader of the delegation. We also had Hon. Ali Dido Rasso, Hon. Lilian Gogo and Sen. Faki in the first meeting. In the second meeting we had Sen. Were as part of the delegation.

With those remarks, we are very grateful as a delegation to the Speakers of the two Houses for putting together this very strong delegation and entrusting us with this big agenda.

I beg to move and request Sen. (Prof.) Ongeru, to second.

**Sen. (Prof.) Ongeru:** Thank you, Mr. Temporary Speaker, Sir, and Sen. (Prof.) Kamar, for giving me the opportunity to second this Motion which has been very well articulated. I think for the benefit of everybody else, the ACP-EU partnership is based on the understanding that within the ACP there are 79 countries that form the ACP Group. Within the EU there are issues that are being canvassed in terms of development and other issues.

Indeed, when you combine all those issues together, you can narrow down that, this partnership and particularly the ACP-EU Cotonou Agreement had the impact of being able to create an even balance between the developed and the developing nations. This is how this partnership came into vogue. This partnership took into account issues of poverty as the main issue and sustainable development.

As you know, we have the Sustainable Development Goals (SDGs), the seven goals that had been articulated through the United Nations (UN). I had the singular honor and occasion to be able to be part and parcel of that when we were discussing about the new sustainable development and the new urban agenda. It had a way of escalating and

debating on how to handle some of the most difficult issues that are found within the developing nations, particularly the handling of solid waste management.

It is an eye opener because it is a creation of problems and issues for us to be able to articulate. I am happy that during that session, one of the issues that they looked at was the global impact of migration. Migration has an effect on both sides. The other point is immigration and the xenophobia that has unfortunately become so rampant within one of our ACP countries.

Mr. Temporary Speaker, Sir, the most important issue that must come out quite clearly in this report and in this engagement of the ACP-EU Cotonou Agreement of 2020, is the issue of how do you balance the global resources to be equitably shared amongst the nations of this world; the global village? That is why, it is important that in looking at these agreements and in engaging in these meetings, we must look at the issues that stand out quite clearly. One of them for Africa, for that matter; for Kenya, within Kenya's regions and counties is the issue of poverty.

I hope that this is one of the richest debates that must have occupied most of their time, because, how do you address the issues of poverty? There are so many people who are living below 1\$ a day. It is very pathetic. Issues of migration are related to the well-being of people; people searching for better or greener pastures. Therefore, they want to emulate the economies that are doing relatively better than their own economies.

This imbalance is the one which is causing this major problem of migration. It is important, therefore, that in these ACP-EU partnerships, these issues are squarely discussed and a solution found. It should not only be a solution in words but in terms of effects and in being able to cause action-oriented steps to be taken so that you can address these poverty issues.

As far as I know, the only way that we can address issues of this nature is basically to look at what ails us in the developing nations. I dare venture that one of the most important elements that we see here today is environment. The second element is energy. The third element is health and the fourth element is education.

When you go through the SDGs, goal one is no poverty and goal two is zero hunger. All are related to poverty. Goal three is good health and well-being. Goal four is quality of education. Goal five, gender equality, goal six, clean water and sanitation. I can go on and on. These are issues within our purview and domain.

Therefore, for us to stem the impact of global migration, we need to ensure that the resource flow from the well-to-do nations to the non-wealthy nations is timely and predictable.

I think that is why we said that you are not helping Africa; you are simply balancing the ecological systems of the globe. If you do not do so, the world becomes unsustainable and we cannot live in it.

Mr. Speaker, Sir, the bad habits of the north, for instance, issues of the environment; they have brought effluent. The discharges to the environment are the ones that have caused what is left of the forests in Europe. This is where the carbon sink has been exhausted. Therefore, when it rains, it is only acid. They are looking towards the Amazon Forest and the forest in the Congo basin to give them some leeway of survival.

When you hear of the carbon exchange, it is nothing except the unsustainable way of development in the north. They are, therefore, borrowing the habits in the south.

Consequently, we have suffered environmental degradation because of the weather patterns that have completely changed. Therefore, the food production has brought about poverty. People are not able to even produce enough for their survival. In this partnership, I believe our delegation must keep their eye on the ball. That is by saying: “Hold on. You are the people who have created this mess for us. You are the people who have amassed all the resources for your consumption. How do you then share out those resources?”

I remember at one stage when I was negotiating at the Biodiversity Convention for the sharing of biodiversity resources and the technological advances in the biodiversity, I came across very awkward haughty attitude of the so-called developed nations saying: “We have been able to invest so much in our research and, therefore, you must be able to pay through the patent rights that have been set out.” Africa and the Caribbean countries suffer these uneven developments because the north has carried away everything that needed to be carried and, therefore, we continue being poor. Environmental degradation makes the situation even worse.

Mr. Temporary Speaker, Sir, this partnership is useful because we are able to make sound arrangements and development based on sustainable development and questions of how to deal with the solid waste management. One of the biggest elements in Kenya today, for instance, is that of cancer. We are asking several questions such as why there is such an upsurge of cancer. Is it because of the discharges and effluents that are coming through industries? Who are the owners of these industries? Where are the raw materials coming from? Have we allowed people to treat this solid waste management in a manner that is safe and acceptable? Have we exploited the solid waste management for our clean energy requirements?

These are the major economic, social and political issues. Coming to political issues, when you look at issues such as xenophobia, it is nothing except people saying, “Hold on. Why are you taking jobs in our country when we do not have anything to even put on the table?” It boils down to that basic element that people have been so deprived to a level where they can start causing mayhem to other citizens of this world. Of course, we do not condone that.

Mr. Temporary Speaker, Sir, the ACP-EU partnership Conference in Cotonou, Benin, 2020 must now start churning out coherent, sustainable, development through the investment of resources that are predictable and sustainable.

This is a good partnership. I think we can take credit that we are in that group. I thank the delegation that represented us in this area. Most importantly, they should bring all these elements that have been brought out that we should address them for the benefit, not only of Kenya, but Africa, ACP and the globe.

Thank you. I support.

*(Question proposed)*

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): Proceed, Sen. Cheruiyot.

**Sen. Cheruiyot:** Thank you, Mr. Temporary Speaker, Sir, for giving me this chance. I rise to support this very important Motion that is before us; the adoption of this Report by our delegation at the 50<sup>th</sup> ACP-EU Conference. It is important that we put things into perspective.

We are living in very interesting times; that on many occasions, it is not considered in this country to be a noble thing to sometimes travel to some of these conferences and give our input and get to learn and interact with leaders and legislators from other parts of the world.

This has come at a time when in the course of today, there was a big discussion online about the value that some of these excursions; benchmarking trips or conferences such as this one, whose Motion for adoption of this Report we are deliberating. Many things have been said on the gains or otherwise, of these activities.

It will be important for the country to note that many are the times when Members of Parliament or other leaders engage in these kinds of collaborations and partnerships. It is the direction the world is moving. We are coming from a history where the era of strongmen is long gone and not with us anymore. There were days when if you picked the continent of Africa, three, four or five men - because there were no women on that high table - they would sit and resolve almost all the challenges that the continent was facing.

However, the truth as it is right now is that in many of the countries the world over, this era of strongmen and women who would rule an entire region with an iron fist is no more. Therefore, if you want to deliberate on issues that are facing a particular continent, region or people, you will sit at a table and deliberate and hope to agree.

It is in conferences like this particular one that many of the global challenges that we continue to face as a people – either as individual countries, the region we come from, the continent or globally – are discussed at an open forum, where we get to educate and understand each other.

The way the interactions are structured is such that it is a laid-back approach to these issues. This is because you get to sit down with people who come from different parts of the world, understand each other and have a view of things from the other person's point of view. This is very different from how you get to interact with issues by reading online or in the news. For example, just getting to understand what is happening, like where certain regions are struggling with xenophobic attacks or where others are with bulging with a well-educated youth population that has nothing useful to do. However, when you interact and engage with leaders from those regions, some of these issues simply get sorted out, even by some of the resolutions that are proposed and adopted in some of these conferences.

Therefore, it goes without saying – having read through the report scrutinizing some of the topics that this delegation got to consider during their time in Brussels – that it is a great and very enriching report for any legislator who wants to have an impact in our society, both to the African, Caribbean, Pan-African and the European regions. For example, when they speak about the demographic growth, how can we forge collaborations between the aging European population *vis-a-vis* the young bulging and well-educated African population? This is the big debate that exists globally.

It is through collaborations in such conferences that our colleagues attended where they are able to make an impression on our colleagues in the European Union (EU) on where there can be a transfer of knowledge and skills as well as the opportunities that are there and which are mutually beneficial for our people. This is not just a case of us pleading.

It is not where we imagine that, as Africans, we will be seated at the table, extending our begging bowls to our colleagues from the EU, saying, “Oh, we have young people who can work for you.” That is not the case. This is actually a mutually beneficial exercise, where for the challenges that they face, we have the solution. Similarly, they have the solutions to some of the challenges that we face, as a continent, considering that their democracy is older than ours. The relationship, as it is, is no longer that of the colonialist and the colonized; sitting at a table where you want to imagine that because of our history, and how we have been socialized, that one would have an upper hand over the other.

Reading through this Report and following through some of the deliberations and conference resolutions, you must appreciate the contributions of the delegation that we sent there. This is not only for us, a country, but for the entire African Continent. They put up a strong case to understand that what Africa needs, more than anything, is collaboration and that the era of aid is long gone.

On our own, we are able to put out a strong case and provide much of the skills and requisite knowledge required to make our significant contribution in alleviating, poverty, disease, ignorance and many challenges that we continue to face, as a continent. Therefore, reading through the contributions of our colleagues, I thank them for the brilliant representation.

Of course, it is difficult to sit at that table and try to make such a strong case while moving to the second topic, where you discuss issues of migration. Knowing that part of the problems they are presenting are of our own people who are trying to cross into Europe via boats, *et cetera*. It does not match well; that on one hand you are saying: “We have well-educated young people who can provide solutions to you.” On the other hand, the person you are trying to sell your continent who tells you: “Okay; that is fair enough.”

Our biggest challenge is immigration, where many of our young people are dying, as they try to make these journeys via rickety boats and the kind of things that they do.” I have seen from the deliberations that many of the countries were able to inform the conference on what steps they were taking. These are challenges that are all over. Even Europe, at a particular time if you read through history, when they faced the challenges of disease, they moved to other continents. When they had the challenge of resources, they moved downwards to Africa and that is why they came and colonized us.

Therefore, this issue of Africa being viewed as a failed region simply because of upheavals in certain parts of this continent is as a result of people trying to fend for themselves. We have to understand that in the human mindset, not everyone is made with the tenacity to hang in there, fight and believe that there can be a better future for our continent. Of course, there are bound to be people who will imagine that Europe or the Pacific offers a better opportunity for them than here in Africa.

The contributions of the 28 countries that form the EU come from a position of understanding that these challenges can be surmounted. That a solution can be found for these young people from the countries facing upheavals so that they can settle in their countries by solving that particular problem, instead of just closing their borders and saying: "Nobody is allowed here." People will always find a way in, whether you like it or not. That is the experience that Europe has had for the last five to 10 years. The stricter they become with their immigration laws, the more creative those who want to beat the system have become. One way or the other, you end up having the illegal immigrants with you.

Therefore, it would make more sense if, in conferences like these, you suggest solutions. There is the discussion of what the EU Development Fund Aid is doing in many of the African, Caribbean and Pacific countries. It will be good that in such deliberations, they get to hear from the leaders on what it is that will create more impact; what is it that will keep this bulging young population from thinking that the only way out of the challenges they are facing as a country is by running away to Europe.

I have read in the Report that the delegation also spent time discussing the xenophobic attacks and discrimination. It is good that countries, in forums like this, get to have knowledge and information transfer on how each of the individual countries is able to surmount many of these challenges. Of course, it would be good to hear from our colleagues from the affected countries. While our colleagues in the southern part of Africa continue to face this challenge of xenophobic attacks, Europe also has a similar challenge of racism.

Football fans know that one of the biggest challenges on the issues of integration that Europe continues to face is that they take a firm stand against fans or people that discriminate others based on the color of their skin. It will be a good learning experience to our colleagues who we have had a discussion in this House, where we felt that, for example, South Africa is not responding in the right way to the challenges of discrimination. It would be good to learn from our counterparts in Europe on how they are taking a firm stand.

Two days ago, I saw how West Ham United Football Club was able to put out the name of a racially abusive fan, and they banned him for life. He can, therefore, not be part of them, because that is not the world they believe in. These are good experiences that us, who come from this particular region, can also be firm with the rest of the region.

Discrimination, although pronounced in countries like South Africa, happens even to us, at a local level. When you are a leader, you have to learn from experiences. We were challenging our colleagues the other day when we were having tea at the Senators Lounge that discrimination begins even with you, as a Senator. The number of people that you employ in your office, do they only come from the dominant community in your county?

How is the representation of the minority in your county reflected in your office as a Senator? Those are the issues of discrimination that we need to be alive to.

These are such interesting times for such conferences. I would have liked to hear what the key highlights were; the moments that stole the show or challenged people to

give attention to particular problems that the globe continues to face either in Africa, the Caribbean, the Pacific or the European Union (EU).

I would have liked to hear how the young Ms. Greta Thurnberg has captured the attention of the world on environmental issues at the on-going session of the United Nations General Assembly (UNGA). That young girl said what all the Head of States put together in that room were unable to say. Ms. Thurnberg said that the business of measuring each other's ego and trying to look good would not solve the environmental issues or degradation that the world continues to face.

Mr. Temporary Speaker, Sir, it is my sincere hope that as they conclude this year's session of UNGA, they will heed to the cry of Ms. Greta Thurnberg and the millions of young children across the globe who feel the challenges of environment.

I beg to support this report by our colleagues.

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): I call upon the Mover to reply.

**Sen. (Prof.) Kamar:** Mr. Temporary Speaker, Sir, I thank my colleagues for contributing to this Report. I commend this Report to all the Senators to read because there are a lot of practical solutions that can come out of this because of the nature of the way this parliamentary group operates, where we have three committees as I mentioned earlier, there is the Committee of Social and Environment, the Committee of Economy, Finance and Trade and a Political Committee.

You will find that within the structure of this parliamentary group, we deal with very practical and current issues. As the Senator of Kericho County has stated, there are a lot of practical solutions that come out of this Report because, by the very nature of how we approach it, topics are fronted to us for discussion. There have been very interesting topics on various areas such as terrorism. We looked at the issue of terrorism in its global nature and reduced it to intercontinental relations that have been affected by it. Looking at this Report, you will find that there are so many issues that have been raised.

Mr. Temporary Speaker, Sir, in the Political Committee, we looked at the state of politics in various counties. We discussed the political situation in Kenya even after the 'Handshake'. A member brought a Motion on the 'Handshake' and wanted to understand what it meant. We articulated the peace that has been experienced after the 'Handshake'. We deal with very specific issues.

The issue of immigration has been an eye-sore to everybody because xenophobia is not just an African issue. Xenophobic attacks are also experienced a lot in Europe. There have been cases in France where people have been fighting against anybody coming to their country. The issue of Brexit also arose from xenophobia. It was a national decision to take care of their border and isolate any entry without permission. The movement of Europeans has also been curtailed because of the Brexit.

As mentioned by Sen. (Prof.) Ongeru, this is a relationship that brings out a number of collaborative agendas that deal with everything from climate change to development co-operation. These are important issues to us because climate change has made the ACP States, particularly Africa, to be the solution providers without recognition. This is where you have the natural resource bank. This is where climate change is being ameliorated.

Therefore, there is need for resources from those who have over-exploited their own regions to shift the resources to develop the countries that have conserved their natural resources and have given them a bank for carbon dioxide to be absorbed.

Mr. Temporary Speaker, Sir, climate change has been discussed at length and that is why I commend this report to the Members of this House so that all of us are appraised on not only the relationship between Africa, Kenya and Europe, but also on the development agendas that will benefit us.

The EU is Kenya's second largest development corporation partner. It is second to the World Bank. Similarly, the EU is the second largest destination of Kenyan products after the Common Market for Eastern and Southern Africa (COMESA). As a result of that, our relationship with the EU is extremely important and that is why it is so gratifying that the Houses of Parliament are represented at the parliamentary sessions. Our Council of Ministers is represented by our Cabinet Secretaries in various forums so that we tap on the relationships and ensure that it works for us.

With those remarks, I beg to move.

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): Hon. Senators, this Motion does not affect counties. I will, therefore, put the Question.

*(Question put and agreed to)*

Hon. Senators, the Movers of Order Nos. 15, 16, 17 and 18 are not in the House. Therefore, they all stand deferred.

NOTING OF REPORT ON THE GLOBAL SUMMIT  
ON OPEN GOVERNANCE PARTNERSHIP

THAT, this House notes the Reports of the Parliament of Kenya Delegation on the Global Open Governance Partnership Summits held in Tbilisi, Georgia, from 17<sup>th</sup> to 19<sup>th</sup> July, 2018, laid on the Table of the House on Wednesday, 20<sup>th</sup> February, 2019, and in Ottawa, Canada, from 29<sup>th</sup> to 30<sup>th</sup> May, 2019, laid on the Table of the House on Thursday, 11<sup>th</sup> July, 2019.

*(Motion deferred)*

NOTING OF REPORT OF THE FOURTH AND FIFTH  
PARLIAMENT OF THE PAN AFRICAN PARLIAMENT

THAT, this House notes the Reports of the Sixth Ordinary Session of the Fourth Pan - African Parliament held in Midrand, South Africa, from 7<sup>th</sup> to 18<sup>th</sup> May, 2018, laid on the Table of the House on Tuesday, 24<sup>th</sup> July, 2018; the First Ordinary Session of the Fifth Parliament of the Pan African Parliament held in Kigali, Rwanda, from 18<sup>th</sup> October to 3<sup>rd</sup> November, 2018, laid on the Table of the House on Tuesday, 12<sup>th</sup> March, 2019; and, the Second Ordinary Session of the Fifth Parliament of the

Pan-African Parliament, held in Midrand, South Africa from 6<sup>th</sup> to 18<sup>th</sup> May, 2019 laid on the Table of the Senate on Tuesday, 10<sup>th</sup> September, 2019.

*(Motion deferred)*

NOTING OF REPORT ON THE 3RD STATUTORY MEETING OF THE  
FP-ICGLR COMMITTEE ON ECONOMIC DEVELOPMENT

THAT, this House notes the Report on the 3rd Statutory Meeting of the Committee on Economic Development, Regional Integration and Natural Resources of the Forum of Parliaments of the International Conference of the Great Lakes Region (FP -ICGLR) held in Bujumbura, Burundi, from 13<sup>th</sup> to 14<sup>th</sup> March, 2019, laid on the Table of the House on Tuesday, 21<sup>st</sup> May, 2019.

*(Motion deferred)*

NOTING OF REPORT ON THE UN CONFERENCE  
ON CLIMATE CHANGE (COP 24)

THAT, the Senate notes the Report of the Parliament of Kenya Delegation to the United Nations Conference on Climate Change (COP 24) held in Katowice, Poland, from 3<sup>rd</sup> to 14<sup>th</sup> December, 2018, laid on the Table of the Senate on Thursday, 25<sup>th</sup> July, 2019.

*(Motion deferred)*

**ADJOURNMENT**

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): Hon. Senators, there being no other business, it is now time to adjourn the House. The Senate, therefore, stands adjourned until Tuesday, 1<sup>st</sup> October, 2019, at 2.30 p.m.

The Senate rose at 5.10 p.m.